

APPRAISING THE LEGAL REGIME ON SEXUAL OFFENCES AGAINST CHILDREN IN NIGERIA

Abstract

The rate of child molestation in Nigeria is alarming and disturbing. This paper interrogates the legal regime on sexual offences against children in Nigeria. It specifically examines the extant criminal legislations that prohibit and punish carnal connection between adults and children in Nigeria. The paper adopted doctrinal research method through critical content analysis of relevant laws and scholarly works on the subject matter. It found that sexual offences against children are extant and unabated notwithstanding the avalanche of criminal legislations that prohibit the act and punish perpetrators. The authors recommended among others moral cum value re-orientation, sex education, and strict enforcement of the extant criminal legislations in the Nigerian Laws. It concludes that carnal knowledge of a child; whether male or female is a crime as well as a violation of the human right norms of the child.

Keywords: Child, Sex, Offences, Legal Regime, Nigeria.

1. Introduction

Children sustain the society. They constitute the voiceless, innocent, harmless and vulnerable constituency.¹ Given their innocence, they are easily exploited in various ways-economic, sexual, social, cultural and even religious. Oddly, adults who are entrusted with the care and protection of children take undue advantage of their innocence and vulnerability to exploit them, hence, the need for specific legal rights for children distinct from adults.² According to the Black's Law Dictionary, a child is a person who has not attained the age of fourteen years under common law.³ It also defines a juvenile as any person who has not reached the age of eighteen years at which he can be treated as an adult under the criminal justice system.⁴ The Labour Act⁵ defines a child as a person below the age of twelve. It further defines a young person as a person under the age of eighteen years.⁶ This is similar to the provisions in both Criminal⁷ and Penal⁸ Code Acts. The Administration of Criminal Justice Act, 2015 defines an infant and a child as a person who has not attained the age of seven and eighteen years respectively, while a young person refers to a person who has attained the age of fourteen but has not attained the age of seventeen.⁹ However, the principal legislation on child matters defines a child as a

* **IGWE, Chinedu Akam PhD**, Senior Lecturer & Head, Department of Private and Property Law, Faculty of Law, Federal University, Wukari, Nigeria. Legaljournal2016@yahoo.com 07031814067.

** **UCHA, Caroline Agom LLM, BL, PhD** Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Ebonyi State, Nigeria.

¹ JO Adedoyin-Raji and Others 'Towards an Effective Legal Protection and Development of Nigerian Child' [2016] *EBSU Journal of International Law and Juridical Review* (4) (2) 106; TC Nhenga- Chakarisa 'Who Does the Law Seek to Protect and from What? The Application of International Law on Child Labour in an African Context' [2010] *African Human Rights Law Journal* (10), 162.

² Chinedu A Igwe 'Public Policy and Legal Rights' in M E Mgbemena and Others (ed.), *Fundamentals of Public Policy* (Eternal Press, 2021) 261.

³ BA Garner (ed) *Black's Law Dictionary*, (7th edn West Group, 1999) 232.

⁴ *Ibid*, 871.

⁵ Cap L1 LFN, 2010, s 91.

⁶ *Ibid*.

⁷ Cap C 38 LFN 2010, s 30.

⁸ Cap P3 LFN 2010, s 50.

⁹ Administration of Criminal Justice Act, 2015, s 494. The Administration of Criminal Justice Act by s 493 repealed Criminal Procedure Act Cap C14, LFN 2010 which had defined a 'child' as a person below the age of twelve.

person who has not attained the age of eighteen years.¹⁰The definition under the Child's Rights Act supersedes those contained in other enactments subject to the constitution.¹¹A child within the context of this paper is a person under the age of eighteen years.

Adults have continued to exploit the innocence and vulnerability of children to the extent that cases of child rape,¹² molestation and defilement have become a daily occurrence and on the increase.¹³ Thus, child sexual exploitation in Nigeria is a silent epidemic. The recent UNICEF report indicates that six in every ten girls and boys in Nigeria are victims of violence just as twenty-three million girls and women are married as children.¹⁴ The report further states that 1 in 3 children do not complete primary education; 27.2% children between the ages of 6 and 11 years do not attend school; 25.8% of children between 12 and 17 years have no access to education while only 35.6% children between the age of 3-5 months attend preschool.¹⁵Researches show that healthcare and management of child sexual abuse cases are poor due largely to late presentation of the victims to health facilities and partly due to negligence on the part of the healthcare givers and security personnel.¹⁶

Child sexual offences are variegated. They involve luring, coercing or forcing a child into prostitution, sex trafficking, early marriage, child sex tourism or any other sexual or pornographic venture for pleasure, price, pain or otherwise whether to the child or a third party. According to Oluwaleye and Adefisoye, child sexual molestation includes:

incest, prostitution, oral sex, prolonged kissing, cuddling, French kissing, looking at children with or without clothing with the intent to be sexually aroused, touching, folding, or kissing a child's genital, making a child fold (sic) an adult's genitals, forcing a child to undress, spying on a child in the bathroom or bedroom, exposing the children to adult sexuality, performing the acts in front of a child, exposing genitals, exposing one's nudity for the sexual gratification of the adult. Others including telling dirty stories, videotaping or filming of children with the intent to create sexual stimulation, exploitation, exposing a child for sexual purposes on the internet, selling a child's services as a prostitute; having a child perform in pornography, exchanging or purchasing child pornography.¹⁷

Empirical cases of child sexual molestation exist in Nigeria. In Benue State, one Ogbuja Andrew and his son Ogbuja Victor were arrested on allegation of sexual molestation of a 13-year-old Elizabeth Ochanya Ogbanje who, on October 17, 2018 died as a result of complications arising from the sexual molestation.¹⁸The National Agency for the Prohibition of Trafficking in Persons subsequently arrested and arraigned at the Federal High Court, Makurdi Division Mrs Felicia Ochiga-Ogbuja on two count

¹⁰ Child Rights Act Cap C50 LFN 2010, s 277 (1)(CRA); Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 (TPA), s 82; Compulsory, Free Universal Basic Education Act Cap C52 LFN 2010, s 15.

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap C23, LFN 2010, (CFRN, 1999) s 1 (3).

¹² *Lucky v State* (2016) 13 NWLR (pt 1528) 128; *Anyigor v The State* (2019) 14 NWLR (pt 1691) 45.

¹³ JM Oluwaleye and I D Adefisoye 'Interrogating the Causes, Effects and Societal Responses to Rape and Child-Defilement in Nigeria' [2023] *Interdisciplinary Journal of Rural and Community Studies* (3) (2) 11-22.

¹⁴ UNICEF 'Nigeria Child Protection' <<https://www.unicef.org/Nigeria/media/2836/file/UNICEFo/o20protection/o20fact0/020sheet.pdf>> Accessed 9/3/2024.

¹⁵ UNICEF 'Nigeria Education' <https://www.unicef.org/nigeria/media/2846/file/UNICEF%20Nigeria%20education%20fact%20sheet.pdf> Accessed 9/3/2024.

¹⁶ EO Akin-Odanye 'Prevalence and Management of Child Sexual Abuse Cases Presented at Nigerian Hospitals: A Systematic Review' [2018] *Journal of Health and Social Sciences* (3) (20) 109-124.

¹⁷ JM Oluwaleye and I D Adefisoye 'Interrogating the Causes, Effects and Societal Responses to Rape and Child-Defilement in Nigeria' [2023] *Interdisciplinary Journal of Rural and Community Studies* (3) (2) 11-22.

¹⁸ Rose Ejembi 'Ochanya: Wife, Mother of alleged rapists have case to answer-Court' Daily Sun vol 17, N0 4480, Friday June 26, 2020, 5.

charges bordering on omission to take action against the sexual exploitation of the victim by her husband and son.¹⁹ On May 30, 2020, eleven suspects were alleged to have sexually molested a 12 year old girl in Dutse Local Government Area of Jigawa State.²⁰ Further, Eli and others detailed a report of two cases of child sexual abuse where a 4 year old nursery 3 pupil was sexually molested by a 14- year old boy just as a 6 year old primary 1 girl was also sexually abused by a 15 year old next door neighbour.²¹ The authors noted that given poor record keeping and under reporting of child sexual abuse, it is difficult to accurately estimate the prevalence of the scourge.²²

Royal fathers are not left out of the menace. Oba David Ogungbemi, 62, the Aketewi of Iketewi in Obokun Local Government Area of Osun State, his son Gbenga 21, and one Sarafa Olayiwola were sometime in May 2020 arrested and remanded in police custody for defiling a 14-year-old girl and impregnated the child.²³ Uchenna Mbahotu 23, sexually assaulted two minors in Owerri North Local Government Area of Imo State. A 13-year-old girl trafficked from Akwa-Ibom State to Lagos State for prostitution told her gory experience to the press thus: “I am from Oron, Akwa-Ibom State. I come to Lagos in January 2020. I was told I was coming to work as a maid only to discover it was prostitution job and I could not leave because I didn’t know anywhere in Lagos.”²⁴

Sexual offence against children is an insidious form of maltreatment particularly by a family member of the child. The experience could be agonizing and traumatic. It could lead to extreme feeling of guilt, incredible anguish, intense fear, anxiety, regressive behaviour, mistrust of adults, increased vulnerability to further sexual exploitation, possibility of becoming a perpetrator of similar crime on others, fear of future intimate relationship, thus leading to frigidity, low self-esteem, delinquency, diseases, anti-social behaviour, alienation from peers, tendency for criminality²⁵ and ultimately death,²⁶ hence the need for effective legal regime to prohibit the acts, protect the vulnerable constituency and punish the offenders. It is imperative to state that Nigeria is a state party to various child protecting international legal instruments.²⁷ To this end, signature, ratification and domestication of the said

¹⁹Ibid.

²⁰ Igwe (n.2) 263.

²¹ S Eli and Others ‘Sexual Abuse Report of 2-Cases’ [2022] *Greener Journal of Medical Sciences* (12) (1) 74-75.

²²Ibid.

²³ Shina Abubakar and Chinonso Alozie ‘Monarch, Prince, one other remanded for defiling 14-year-old girl’ *Vanguard* vol 27, NO 64070, Friday May 15, 2020, 2.

²⁴ Evelyn Usman (n.23).

²⁵ Josephine Bulkley and HA Davidson, *Child Sexual Abuse: Legal Issues and Approaches*, National Legal Resource Centre for Child Advocacy and Protection, 1980, 3-4.

²⁶ Jaffe Maureen and Rosen Sonia, *Forced Labour: The Prostitution of Children; Symposium Proceedings* (Diane Publishing 1997) 10.

²⁷UN Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990 in accordance with article 49. Nigeria signed it on 26 January, 1990 and ratified it on 19 April, 1991; African Charter on the Rights and Welfare of the Child adopted by the twenty-sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU (now AU) at Addis Ababa, Ethiopia, July 1990. Nigeria ratified it on 23 July, 2001; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, 2000 which entered into force on 12 February, 2002. Nigeria signed it on 8 September, 2000 and ratified it on 25 September, 2012; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography adopted by the UN General Assembly resolution A/RES/54/263 of 25 May, 2000 and entered into force on 18 January, 2002. Nigeria signed it on 8 September, 2000; UN Convention Against Transnational Organized Crime, 2000, entered into force on 23 September, 2003 in accordance with article 38. Nigeria signed and ratified it on 13 December, 2000 and 28 June 2001 respectively; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (The Palermo Protocol), adopted by the General Assembly Resolution A/RES/55/25 of 15 November, 2000 at the fifth-fifth session of the UN

international legal instruments are clear indications that the country evinces the intention to keep faith with her international obligations. However, children and adults alike particularly loving and caring guardians do neither understand nor appreciate domestication of international legal instruments. What is rather of utmost concern to them is the practical and utilitarian enjoyment, benefit and protection of the law and law enforcement agencies. Where the relevant laws remain paper tigers, the security, welfare and wellbeing of children will continue to be eroded.

This paper is segmented into various parts, namely, introduction, a critique of local laws on sexual offences against children as well as conclusion and recommendations to advance proactive measures that would guarantee adequate and quality protection to children against sexual molestation in Nigeria.

2. Legal Framework on Sexual Offences against Children in Nigeria

Given the vulnerability of children to sexual molestation by adults and the negative impact of same on the victims such as physical injuries, fatigue, emotional trauma, stress, disorder, depression, sleeplessness, sexual dysfunction among others, various laws have been enacted to protect children and punish child sex predators. Conceded that sexual molestation of children constitutes crime as well as violation of human rights norms of the victim, this research x-rays the criminal perspective of the subject in relation to children.

2.1 Child's Rights Act

The Child's Right Act is a domestication of the lofty principles contained in the UN Convention on the Rights of the Child²⁸ as well as the African Charter on the Rights and Welfare of the Child.²⁹ As a national legislative measure to achieve the protection of a child, the Child's Rights Act provides that a child shall not be used for the purpose of prostitution, domestic or sexual labour or for any unlawful or immoral purpose; or be procured for prostitution or for the production of pornography or for any pornographic performance.³⁰ Unfortunately, section 30 (2) of the Child's Rights Act does not create any offence. This is because there is no punishment section for the violators of the prohibited acts. Thus, for an offence to be created, the act which constitutes the offence must be defined and punishment prescribed in a written law.³¹ However, where a child protected under section 30 subsection (2) paragraphs (a) (e) is used for prostitution or procured for the same purpose, any person who has taken carnal advantage of the child or who procured the child for the said purpose may respectively be charged under sections 31 (1) (2) and 30 (3) of the same Act. Section 31 (1) (2) of the Act criminalizes any sexual intercourse with a child, and further prescribes imprisonment for life as punishment for same. Similarly, section 30 (1) (3) prohibits any form of unlawful dealing in a child, and prescribed imprisonment for a term of ten years for anyone found guilty of unlawful dealing in a child.

It is noteworthy to point out that section 31 of the Child's Rights Act has made sexual intercourse with a child a strict liability offence. It explicitly provides that no person shall have sexual intercourse with a child as such sexual intercourse constitute rape and punishable on conviction to imprisonment for

General Assembly. It became effective on 25 December, 2003 in accordance with article 17. Nigeria signed it on 13 December, 2000 and ratified same on 28 June, 2001, etc.

²⁸Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 and entered into force on 2 September 1990 in accordance with article 49. Nigeria signed it on 26 January, 1990 and ratified it on 19 April, 1991.

²⁹Adopted by the twenty-sixth Ordinary Session of the Assembly of Heads of State and Government of the OAU at Addis Ababa, Ethiopia, July 1990. Nigeria ratified it on 23 July, 2001.

³⁰ CRA, Section 30 (2) (a) (e).

³¹ CFRN, 1999, s 36 (12).

life.³² Under subsection 3 of section 31, it is immaterial that the offender believed the person to be of or above the age of eighteen years or that the child consented to the sexual intercourse. Besides sexual intercourse with a child, any person who sexually abuses or sexually exploits a child in any manner whatsoever commits an offence and liable on conviction to imprisonment for a term of fourteen years.³³ This is in line with section 21 of the same Act which renders child marriage null and void and thereby clears any doubts; thus under no circumstance is sexual intercourse with a child lawful subject to the Constitution of the Federal Republic of Nigeria, 1999.³⁴

The Child's Rights Act does not provide any definition of the offence of rape. Traditionally, rape means unlawful carnal knowledge of woman or girl without her consent or with her consent if the consent is obtained by force, or by means of threats or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or in the case of a married woman, by impersonating her husband.³⁵ In *Okoh v Nigerian Army*,³⁶ carnal knowledge was defined as sexual intercourse, especially with an underage female. Intercourse means physical contact especially involving the penetration of the vulva by the penis. These definitions may cause injustice to a boy child when another person has carnal knowledge of him with or without his consent. The offender may not be charged for rape, which carries punishment of life imprisonment. Thus, in *Magaji v. The Nigerian Army*,³⁷ the accused was alleged to have had carnal knowledge of four males contrary to section 81 (1) (a) of the Armed Forces Decree No. 105 of 1993.³⁸ He was found guilty of sodomy and convicted to seven years imprisonment. Again, when a child is involved, the issue of consent is irrelevant.³⁹ Hence a child cannot consent to sex.⁴⁰

Unlawful carnal knowledge which refers to carnal connection which takes place otherwise than between husband and wife is complete upon penetration.⁴¹ The slightest penetration is sufficient even if the hymen was not ruptured or that there was no emission of semen. This includes penetration of the vagina, anus or mouth by the penis or by any other part of a person's body or thing.⁴² Hence, the definition of rape under the Violence Against Persons Prohibition Act, 2015 is to be preferred as it includes obtaining consent by the use of any substance or addictive capable of taking away the will of such person while both girl and boy children can be unlawfully penetrated through vagina, anus or mouth⁴³ as the case may be. For purpose of clarity, section 1 (1) (a) (b) (c) of Violence against Persons (Prohibition) Act, 2015 define the offence of rape thus;

- (1) A person commits the offence of rape if-
- a. He/She intentionally penetrates the vagina, anus or mouth of another person with any other part of his/her body or anything else;
 - b. The other person does not consent to the penetration; or

³² CRA, Section 31 (1) (2). See generally, MA Ajanwachuku & HP Faga, 'Perpetration of the Offence of Rape by Minors in Nigeria: A Call for Legislative Re-statement of the Law', (2016) 13(8) *US-China Law Review* 593-594.

³³ *Ibid.*, Section 32 (1) (2).

³⁴ CFRN 1999, s 29 (4) (a) (b).

³⁵ Criminal Code Act, s 357; *Idam v FRN* (2020) 12 NWLR (pt 1737) 1.

³⁶ (2018) 6 NWLR (pt 1614) 176.

³⁷ (2008) 34 NSCQR (pt. 1) 108.

³⁸ Now Armed Force Act, Cap. A2, LFN, 2010, Section 81 (1) (a).

³⁹ CRA, Section 31 (3).

⁴⁰ *Adonike v The State* (2015) 7 NWLR (pt 1458) 237.

⁴¹ CCA, Section 6.

⁴² Violence Against Persons Prohibition Act 2015, Section 1 (1) (a) (b) (c) (2) (hereinafter 'VAPPA').

⁴³ *Ibid.*, F Anyogu and BN Okpalaobi, 'Violence against Person (Prohibition) Act 2015 and Other Existing Gender Legislation: A Comparative Analysis' [2017] *NAUJILI*, (8), (1), 37.

- c. The consent is obtained by force or means of threat or intimidation of any kind or by fear of harm or by means of false and fraudulent representation as to the nature of the act or the use of substance or addictive capable of taking away the will of such person or in the case of a married person by impersonating his/her spouse.

The punishment for the offence of rape under the Act is imprisonment for life except where the offender is less than fourteen years of age, he/she shall be liable to a maximum punishment of fourteen years imprisonment.⁴⁴ The Act allows the court of trial to award appropriate compensation to the victim as it may deem fit in the circumstance of each case.⁴⁵

Curiously, it is observed that by virtue of section 1 (2) (i) of the Violence Against Persons Prohibit Act, 2015 where a person who is less than fourteen years of age commits the offence of rape, he shall be liable to a maximum punishment of fourteen years' imprisonment. But section 31 (1) (2) of Child's Rights Act respectively provides that no person shall have sexual intercourse with a child and any person who does so commits the offence of rape and shall be liable on conviction to imprisonment for life. It is immaterial that the child consented to the sex act.⁴⁶ Given the above provisions of the child's Rights Act, it is submitted that a child does not possess the requisite mental capacity to commit the offence of rape although the same offence may be committed against a child. This is because the Child's Rights Act, a specific law on children takes primacy over any other Act on child matters subject to the constitution. Thus, section 1 (2) (i)⁴⁷ is void.

2.2 The Criminal Code Act

The Criminal Code Act⁴⁸ is applicable to the Southern State of Nigeria.⁴⁹ Chapters 21, 21a, 30 and 31 of the Act relate to the offence against morality and allied offences. Section 216 prohibits and punishes unlawful and indecent dealing with a boy under the age of fourteen years with seven years imprisonment.⁵⁰ Again, defilement of girls under the age of thirteen years is a felony and the accused if found guilty and convicted, shall be liable to imprisonment for life with or without caning.⁵¹ But an attempt to commit the same offence of unlawful carnal knowledge of a girl under the age of thirteen years attracts an imprisonment term of fourteen years with or without caning. The prosecution for the offence itself or its attempts must commence within two months after the offence is committed and no person shall be convicted upon the uncorroborated testimony of one witness. Corroboration is independent evidence that confirms or makes more certain the testimony of a child.⁵² It may be the admission by the accused that he committed the offence, circumstantial evidence or medical evidence.⁵³ It is observed that the limitation period for the offence is too short and does not afford adequate legal protection to the child victim given the vulnerability of a child sought to be protected. It is contended that the punishment prescriptions under the Criminal Code Act in relation to offence against the person of a child are inadequate *vis-a-vis* the gravity of the offence therein. Interest of justice would be better served if the accused is prosecuted under Section 32 (1) (2) of the Child's Rights Act

⁴⁴ VAPPA 2015, a 1 (2) (i).

⁴⁵ Ibid, Section 1 (3).

⁴⁶ CRA 2003, Section 31 (3).

⁴⁷ VAPPA 2015.

⁴⁸ Cap C38 LFN 2010.

⁴⁹ Southern State are: Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers States.

⁵⁰ CCA, Section 16

⁵¹ Ibid, Section 218

⁵² *Iko v. The State* (2007) 14 NWLR (pt. 732) 221

⁵³ *Ogunbayo v The State* (2007) 8 NWLR (pt. 1035) 157; *Akindipe v The State* (2012) 16 NWLR (Pt 1326) 318

which criminalize sexual abuses and exploitation of a child in any manner whatsoever with fourteen years imprisonment term and devoid of limitation period for prosecution.

Similarly, any person who being the owner of any premises or having or acting or assisting in the management of any premises induces or knowingly permits any girls of or above thirteen but under sixteen to be in such premises for the purpose of being unlawfully carnally known by any man, whether a particular man or not is guilty of misdemeanour and liable to imprisonment for two years.⁵⁴ If the girl is under the age of thirteen years, the accused if convicted shall be liable to imprisonment for life with or without caning.⁵⁵ Unfortunately, section 220 of the Act permits the accused person to raise and rely on the defence that he believed on reasonable ground that the girl was of or above the age of sixteen years.⁵⁶ Section 222A and 222B are, in substance, specific in trafficking of girl children for sexual exploitation or prostitution. First, any person having the custody, charge or care of a girl under the age of sixteen years, who causes or encourages the seduction, unlawful carnal knowledge or prostitution of or the commission of an indecent assault upon such a girl shall be liable to imprisonment for two years.⁵⁷ A person shall be deemed to have caused or encouraged the seduction, unlawful carnal knowledge or prostitution of a girl who was seduced, unlawfully carnally known or who has become a prostitute if he knowingly allowed her to consort with or to enter or continue in the employment of any prostitute or person of known immoral character.⁵⁸ Second, by section 222B, whoever, having the custody, charge or care of a child who has attained the age of four years and is under the age of sixteen years, allows the child to reside in or frequent brothel is liable to a fine of One Hundred Thousand Naira or imprisonment for six month or to both such fine and imprisonment. Children who are allowed to frequent or reside in brothels are likely to be subjected to sexual exploitation which may adversely impact on their psychological and physical development in life. Again, the One Hundred Thousand Naira fine for the offence is paltry and insignificant to serve as deterrent to child sexual exploitation syndicates and predators.

Section 223 provides for internal and external trafficking for purpose of sexual exploitation. It provides thus:

Any person who-

- (1) procures a girl or woman who is under the age of eighteen years to have unlawful carnal connection with any other persons, either in Nigeria or elsewhere; or
- (2) procures a woman or girl to become a common prostitute either in Nigeria elsewhere; or
- (3) procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere; or
- (4) procures a woman or girl to leave her usual place of abode in Nigeria with intent that she may, for the purpose of prostitution, become an inmate of a brothel, either in Nigeria or elsewhere, is guilty of a misdemeanor, and liable to imprisonment for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of the witnesses. The offender may be arrested without warrant. The above provision is explicit on internal and external procurement of a child for the purpose of prostitution. Such horrendous act merely carries punishment of two years imprisonment notwithstanding the length of time, degree of exploitation and level of injury that may have been caused to the child victim.

⁵⁴ CCA Section 219.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid, Section 222A (1)

⁵⁸ Ibid, Section 222A (2)

It is also an offence under the Act to abduct a girl under the age of eighteen years with intent to have carnal knowledge of her.⁵⁹ The offence is a misdemeanor and the offender is liable to imprisonment for two years.⁶⁰ It is a defence for the accused person to prove that he reasonably believed that the girl was of or above the age of eighteen years.⁶¹ The Act punishes persons – male or female who trades in prostitution with two years imprisonment and in the case of second or subsequent conviction, shall in addition to any term of imprisonment be liable to canning.⁶² Also, section 227 punishes conspiracy to induce any girl by means of any false pretence or other fraudulent means to permit any man to have unlawful carnal knowledge of her with imprisonment for three years.

In relation to child pornography, the Criminal Code Act prohibits obscene publication. An article is deemed to be obscene if it tends to deprave and corrupt persons who are likely to read, view or hear the matter contained or embodied in it.⁶³ In *DPP v White*,⁶⁴ the court held that ‘deprave’ or ‘corrupt’ refers to the effect of the article on the mind and it is not necessary that any sexual activity should result. An ‘article’ for the purpose of obscene publication means “anything capable of being or likely to be looked at and read or looked at or read and includes any film, or record of a picture or pictures, and any sound records.”⁶⁵ Section 233D provides that it is an offence for any person, either for gain or otherwise to distribute or project any article deemed to be obscene. The offence is punishable on conviction by a paltry fine not exceeding four hundred naira or by imprisonment for a term not exceeding three years or both fine and imprisonment. The point here is that the prescribed punishment in the Act is the maximum. The court has wide discretion to exercise and may sentence the offender to even N50.00 fine. The Act limits the period of prosecution to not more than two years after the commission of the offence.⁶⁶

2.3 The Panel Code Act

The Panel Code Act⁶⁷ applies to the northern states of Nigeria. It contains salient provisions that seek to protect children from sexual exploitation. Section 275 specifically deals with procurement of minor girl for illicit intercourse. It punishes any person, who by any means whatsoever, induces any girl under the age of eighteen years to go from any place or to do any act with intent that such a girl will be forced or seduced into illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.⁶⁸ Also, importation of a girl from foreign country, into Nigeria for immoral purposes is a crime and punishable with imprisonment which may extend to ten years in addition to fine.⁶⁹

⁵⁹Ibid, Section 225

⁶⁰Ibid.

⁶¹Ibid.

⁶²Ibid, Section 225 A (i) (a) (b) (4).

⁶³Ibid, Section 233c.

⁶⁴ (1992) AC 894.

⁶⁵ CCA, 2010, s 233B.

⁶⁶Ibid, Section 233D.

⁶⁷ Cap P3, LFN 2010. The Code in s 4 defined ‘man’ and ‘woman’ to denote a male human being and a female human being of any age. This includes a child of any age. By Section 5 (2), a child becomes a person when it has been born alive whether it has breathed or not; and whether the umbilical cord is severed or not. By this, an unborn child is unknown to the Code as a person. Again, a child under seven years lacks the capacity to commit an offence.

⁶⁸Penal Code Act, s 275.

⁶⁹Ibid, Section 276.

The Panel Code Act prohibits and punishes child trafficking for immoral purpose. It provides that whoever buys, sells, lives, lets or hires or in any way obtains possession or dispose of any person under the age of eighteen years with intent that the child shall be used or likely be used of the purpose of prostitution or for any other immoral or unlawful purpose is liable to imprisonment for maximum term of ten years and a fine.⁷⁰ Carnal intercourse against the order of nature with any man, woman or animals is an offence under the Code and punishable with imprisonment up to fourteen years and fine.⁷¹ It needs to be pointed out that the Panel Code Act did not criminalize an attempt to have carnal intercourse against the order of nature unlike the Criminal Code Act. But it is laudable that section 284 of the Penal Code punishes the offence of carnal intercourse against the order of nature with stiffer punishment than section 15 (b) of the Trafficking in Person (Prohibition) Act, 2015.

In some cases, children who are trapped in child labour situation especially as domestic servants are subjected to various acts of gross indecency by the use of force or threats. Sections 285 provides that any act of gross indecency upon the person of another without his consent or by the use of force or threats compels a person to join with him in the commission of such act shall be liable to seven years maximum term of imprisonment and fine provided that any consent given by a person who is under the age of sixteen years to such an act when committed by his teacher, guardian or any person entrusted with its care or education shall not be deemed to be a consent within the meaning of the said section 285. It is sad that the punishment for the offence of gross indecency by the use of force or threats is only a maximum term of seven years and fine without prescription of minimum term of imprisonment to ensure adequate judicial sanction in the event of trial and conviction. The Code ought to prescribe minimum and maximum terms of imprisonment and an award of compensation to the victim in the same criminal trial.

2.4 Trafficking in Persons (Prohibition) (Enforcement and Administration) Act 2015

Prior to 2003, there was no comprehensive federal law in place either to protect victims of trafficking or to prosecute the offenders. This weakened the efforts to combat the menace. Trafficking in Persons (Prohibition) (Enforcement and Administration) Act 2015⁷² repealed the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (as amended). The objectives of the extant Trafficking in Persons Act are clearly stated to *wit*:

- a. Provide an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offence in Nigeria;
- b. Protect victims of human trafficking;
- c. Promote and facilitate national and international cooperation in order to meet the objectives set out “in a and b above”⁷³

The objectives as stated above are in consonance with the purpose of the Palermo Protocol to *wit*: to prevent and combat trafficking in person especially women and children; protect and assist the victims of such trafficking with full respect for their human rights and promote cooperation among states parties in order to meet the objectives.⁷⁴

⁷⁰Ibid, Section 278.

⁷¹Ibid, Section 284.

⁷² It received the assent of the President on the 26th March, 2015.

⁷³ TPA, Section 1 (a) (b) (c). TPA, 2015 is a domestication of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime 2000 and partly the Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime 2000.

⁷⁴ Palermo Protocol, Article 2

The Trafficking in Person (Prohibition) Act prohibits a range of offences in relation to trafficking for the purpose of prostitution or of sexual exploitation. Section 14 provides that any person who imports another person into Nigeria with the intent to force or induce the person into prostitution or into any other form of sexual exploitation in Nigeria or exports any person outside of Nigeria for the same purpose commits an offence and is liable on conviction for a term of not less than five years and a fine of not less than N1, 000,000.00. Section 15 criminalizes the intentional use of deception, coercion, debt bondage or any means to induces any person under the age of 18 years to go from one place to another with the intent that such person will be forced or seduced into illicit intercourse with another person. In *Mariam Mohammed v AFG*,⁷⁵ the appellant and one Eunice Owoyele were arraigned before the Federal High Court, Ikeja Division on 1st day of February 2011 on three counts charge bordering on trafficking of some persons to Libya where the victims were sexually molested, sold and forced into prostitution. The trial court convicted the appellant which was affirmed by the Court of Appeal and upheld by the Supreme Court.

It is equally a crime under the Act for any person to keep, detain or harbor person either knowing or having a reason to know that such a person may be forced or induced into prostitution or other forms of sexual exploitation with or by any person or an animal.⁷⁶ The offender is liable on conviction to imprisonment for 5 years and a fine of N500, 000.00.⁷⁷

An analysis of sections 14 and 15 above shows obvious legislative insensitivity in the punishment parts of the two sections in respect of the offences created therein. While section 14 deals with transboundary trafficking for the purpose of prostitution or other forms of sexual exploitation with a punishment of ‘a term of not less than 5 years and a fine of not less than N1,000,000.00’, section 15 (a) deals with internal traffic in persons under the age of 18 for the purpose of illicit intercourse with another person and section 15 (b) relates to harbouring a person with intent to force or induce her into prostitution or other forms of sexual exploitation with or by any person or *an animal*.⁷⁸ For emphasis, the punishment under section 15(a),(b) is definite to *wit* :imprisonment for 5 years and a fine of N500,000.00.

Granted that the crime created under section 14 is transboundary, it is submitted that the offence under section 15(b) is more serious and damaging. The act of prostitution and other forms of sexual exploitation in section 14 is between the victim and an animal.⁷⁹ An animal means any kind of animal whatsoever, such as dog, goat, antelope, elephant, chimpanzee, crocodile, etc. Besides the health hazard in sexual connection between human being and an animal, the act is intrinsically and extrinsically unnatural. Yet section 14 carries stiffer punishment than Section 15(b). Section 14 sets minimum punishments of not less than 5 years and a fine of not less than N1, 000,000.00. Here, the court has discretion as to the maximum punishment upon conviction. But section 15 sets a definite punishment term of imprisonment of 5 years and a fine of N500, 000.00 only. It is contended that any person who retains another person with intent that the later be induced or forced into sexual connection with an animal has not only committed offences under the Act but has also violated, in the gravest manner, the fundamental rights of the victim in terms of rights of life, liberty, movement and dignity of the human person of the victim. Worst still, the victim may be a voiceless, harmless and destitute child. In the

⁷⁵ (2021)3NWLR (Pt.1764) 397.

⁷⁶ TPA 2015, Section 15 (a) (b).

⁷⁷ Ibid.

⁷⁸ We italicized for emphases.

⁷⁹ TPA 2015, Section 15(a)(b).

circumstance, it is suggested that life imprisonment is the appropriate punishment in addition to forfeiture of every known and traceable proceed of the crime.

Section 16 is specific on trafficking of children to satisfy sexual passion either of the trafficker or any other person in Nigeria or elsewhere. It provides:

- (1) Any person who procures or recruits any person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation with himself or any other person, either in Nigeria or anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00;
- (2) Any person who procures or recruits any person under the age of 18 years to be conveyed from his usual place of abode, knowing or having reason to know that such a person may be subjected or induced into prostitution or other forms of sexual exploitation in any place outside Nigeria, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than 1,000,000.00.

Section 18 prohibits every person from organizing, facilitating or promoting foreign travels with a view to encouraging prostitution or other forms of sexual exploitation of any person. The punishment on conviction is imprisonment for term not less than 7 years and a fine not less than N1, 000,000.00. It is also an offence under the Act to procure or recruit a person under the age of 18 years for pornographic performance or to harbor such person in a brothel. The offence is punishable with minimum of seven years imprisonment and not less than N1, 000,000.00 fines.⁸⁰ However, where the convict has administered the child victim with any drug substance, he shall be liable to an additional punishment of not less than one year imprisonment.⁸¹

2.5 The Immigration Act, 2015

The Immigration Act 2015 provides that any foreigner resident in Nigeria or who seeks to be admitted into Nigeria may be deported from Nigeria or be refused entry into Nigeria respectively if he is a prohibited immigrant, that is to say, if he is a trafficker, smuggler of migrants,⁸² a prostitute, brothel keeper, a householder that permits the defilement of young persons in his premises or encourages the seduction of a child or young person or a person trading in prostitution or a procurer.⁸³ A person who knowingly lives wholly or in part on the earnings of prostitution or who, in any public place persistently solicits or importunes for immoral purposes; or a person who, for the purpose of gain, exercises control, direction or influence over the movements of a prostitute in such a manner as to show that such person is aiding, abetting or compelling his or her prostitution with any person or generally is said to be trading in prostitution.⁸⁴

Similarly, a procurer is a person who procures or attempts to procure any person to leave his or her usual place of abode with intent to engage in prostitution or become an inmate of brothel either within or outside Nigeria; or by threats or intimidation procures or assists to procure any person to have any unlawful carnal connection either within or outside Nigeria; or by false pretence or false representation procures any person, not being a common prostitute or of known immoral character to have any unlawful carnal connection either within or outside Nigeria; or applies or administers to or causes to be taken by a person any drug, matter, or thing, with intent to stupefy or over power him or her so as to

⁸⁰Ibid, Section 17 (1) (a) (b).

⁸¹Ibid, Section 17 (2).

⁸² Immigration Act 2015, Section 44 (1) (c).

⁸³Ibid, Section 44 (1) (h) (i) (ii) (iii) (iv) (v).

⁸⁴Ibid, Section 44 (4) (e) (i) (ii).

enable any person to have unlawful carnal connection with that person.⁸⁵ Any person who is trading in prostitution or who is a prostitute or a procurer is a prohibited immigrant and liable to be refused entry or to be deported out of Nigeria.⁸⁶ Section 44 (4) (g) of the Immigration Act 2015 defines prostitution to include the offering by a person of his or her body commonly for acts of lewdness for payment although there is no act, or offer of an act of ordinary sexual connection. To the extent that the definition did not restrict prostitution to womenfolk as men can be objects of sexual activity, it is submitted that the definition is appropriate unlike the definition in section 18 (3) (g) of the repealed Immigration Act which restricted the definition of prostitution to womenfolk.

3. Conclusion and Recommendations

The paper has interrogated various criminal legislations that prohibit and punish child sexual molestation in Nigeria. A sexual crime against a child is not only a crime under the law but a gross violation of the guaranteed human rights norms of the child. Certainly, unreported cases of sexual exploitation of children are more than the reported cases. This is because the crime of child sexual exploitation takes place more in secret places at rural and urban areas. It is in rare cases of deaths, pregnancies and complications that reports are made. Where the victim is silenced through intimidation, secret settlement with their guardians, arranged forced marriages, poverty, illiteracy or bogus promises of economic as well as educational assistance, the crime is suppressed and buried.

Obviously, the innocence of children, poverty of their parents and illiteracy of both combine to expose children to sexual exploitative predators just as non-prosecution of most perpetrators has increased the crime in Nigeria. Specifically, protection, rehabilitation and compensation of the child victim of sexual exploitation should take priority in the fight against the scourge but without less attention to the prosecution and severe punishment of the perpetrators. This is because a threat to the welfare and wellbeing of children (the future leaders) is in essence, a national threat as no country can develop above her leaders.

Again, the need for public enlightenment campaign on the push and pull factors that expose children to sexual molestation as well as moral re-orientation and sex education cannot be over emphasized. This can be achieved through radio jingles, sex and moral education in schools, religious places as well as naming and shaming the perpetrators.

⁸⁵Ibid, Section 44 (f).

⁸⁶Ibid, Section 44.