

T.I.P REPORT

| New NAPTIP Act passed | 2003 Act Repealed | Shorter Tenure for D-G |

Replaced E-S position with D-G

While the former title for the administrative head of the Agency was Executive Secretary as under the 2003 Act (as amended in 2005), the newer provision [continued on page 3]

Minimum Sentences Imposed

This perhaps is unarguably to greatest improvement to the laws of sentencing and conviction for Trafficking Offences. By prescribing minimum sentences, Courts are better guided in comparison with the lenient punishments under the old law. Not only does the 2015 Act prescribe for minimum sentences [continued on page 8]

New Functions and Departments

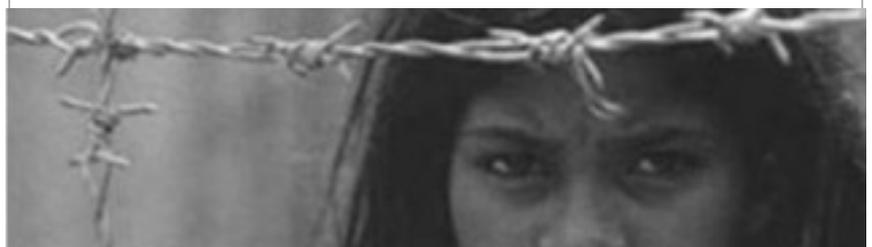
From 12 functions, the Agency now has 21 functions and 2 new departments while the older ones have been empowered to perform greater functions and cover more ground [continued on page 4]



Introduction

A reform of the 2003 NAPTIP Act was long overdue. Thus the 2015 Act could not have been passed at a better time and in better form too. The 2015 Act balances conformity with international best practices with a distinct socio-cultural relevance to the Nigerian situation by encrypting provisions of the Palermo Protocol into the Act and in the same vein, relaxing the law to allow the employment of 12-year olds and above as domestic workers.

Particularly impactful, is the holistic approach adopted by the Act in preventing and enforcing the law against trafficking in persons. The Act strongly emphasises collaborative efforts locally and internationally. This approach not only recognises the unequipped state of Nigerian law enforcement agencies





New Standards: Palermo Protocol

One of the greatest impacts of this 2015 NAPTIP Act is that it brings the Nigerian law on trafficking in persons into conformity with the provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol). The bedrock provisions of the Protocol are reconstructed by the Act in raising its standards to cover more ground and improve victim protection.

The definition of Trafficking in Persons as in Article 3 of the Palermo Protocol has been converted into the elements of the offence of Trafficking in Persons by Section 13 of the Act. Furthermore, Section 80 of the Act lifts the definitions of Trafficking in Persons and Exploitation from the Protocol, putting the law in conformity with international best standards.

Furthermore, by specifically providing that the funds and property accruing to the Victims of TIP Trust Fund should be expended on damages and victim support services, the new Act aligns with Article 6(3) of the Protocol, a provision which was unavailable under the 2003/2005 law [Continued on the right]

and officers, it also underlines the value of cooperation between local ministries and agencies and international organisations. While the 2003 Act also provides for this, this report reveals how the 2015 Act not only provides for but creates opportunities for alliances, exchange of information and personnel, and extradition of offenders.

As is demonstrated below, the 2015 Act also reaffirms the position of the Agency as a law enforcement agency and its officers as such. While NAPTIP's status as a law enforcement agency was not in issue, this Act further validates that status, practicing the theory of it by granting it greater autonomy.

The most valuable features of this new Act is the express prohibition of all forms of trafficking and the structured punishments prescribed for each offence as compared with the general arbitrary nature of those under the 2003 Act.

New Standards: Palermo Protocol [Continued]

Another prominent inclusion to the 2015 NAPTIP Act which the older law was silent on is the issue of border control. As recommended by Articles 11 & 12 of the Palermo Protocol, the new Act provides in Section 5 (r): [The functions of the Agency shall be to] establish and maintain a system for monitoring trans-border activities relating to trafficking in



persons in order to identify suspicious movements and persons involved. The effort to control the border as a means of prevention of TIP is further demonstrated by the insertion of S.26 (1): Any person who knowingly, in order to obtain, directly or indirectly a financial or material benefit, procures the illegal entry of a person into a country of which the person is not a citizen or a permanent resident commits an offence... (2) Any person who intentionally or in order to obtain a financial or material benefit from another person, engages in fraudulent acts or conducts purportedly for the purpose of procuring, facilitating or promoting the actual or intended entry into, transit across or stay in a country in which that other person is not a national or a permanent resident commits an offence... (which provision was previously unavailable).

In further pursuance of Article 11 (2) and (3) of the Protocol, the 2015 Act improved on the older provision by including sea vessel operators to the list of those responsible for preventing the use of their vessels and transportation companies for the commission of TIP offences.

In addition, the 2015 NAPTIP Act incorporates the provisions of Article 10 of the Protocol through Section 5 (q) which invites the Agency to collaborate with intelligent agencies and financial monitoring bodies to exchange experts and personnel locally and internationally. Unlike Section 4 (j) of the older Act which lists a group of Nigerian agencies and ministries which NAPTIP is expected to cooperate with, the new Act describes the relevance of the collaborating organisations and what manner of information and intelligence which should be exchanged.

The development of the NAPTIP Act to include provisions which align with the international benchmark is a welcome improvement. However, in the bid to conform with these international standards, one must not pretend that the socio-cultural factors at this end of the world are identical to those of the draftsmen of the Protocol. We therefore must take care to apply these laws and adjudicate them in the context of our unique socio-cultural fabric.

From Executive Secretary to Director-General

While the former title for the head of the Agency was the Executive Secretary as under the 2003 Act as amended in 2005, the new provision substitutes this for the position of a Director-General who also plays the role of Secretary to the Agency's Governing Board (Section 8 (1)). Furthermore, this Director-General has a shorter term of 4 years as compared with 5 years allotted to the Executive Secretary. The most improved portion of this provision regarding the leadership of the Agency is the inclusion of law enforcement officers to the category of those eligible to become Director-General. Under the 2003/2005 Law, Section 6 (2) suggested that the Executive Secretary emanated from the public service. Section 8 (1) of the new Act provides that the Director-General "shall be from the directorate cadre in the Public Service" of the Federation or its equivalent in any Law Enforcement Service.

The impact of widening this loop to include Law Enforcement officers is the new emphasis it places on the role of NAPTIP as one of Nigeria's law enforcement agencies. Despite being a piece of general knowledge, law enforcement leadership of the Agency confirms and underlines this sometimes relegated status of the Agency.

NAPTIP's New Functions & Departments

The 2003 Act created 4 units to perform 10 main duties of the Agency while the 2005 Amendment Act changed the units to departments and added 3 additional duties. The 2015 Act broadens the scope of 2 of the subsisting departments, establishes 2 additional departments and now burdens the Agency with 20 functions to perform including the obligatory “such other activities as are necessary for the efficient discharge of the functions conferred on it” as in S. 5 (u).

Formerly known as the Investigation Department, the 2015 Act has renamed it the Investigation and Monitoring Department. The Legal Department is now the Legal and Prosecution Department. The two new departments established by the new Act are the Research and Programme Development Department and the Training and Manpower Development Department under S.11 (i).

Noteworthy is the more holistic approach the new Act takes by mandating coordinated preventive, regulatory and investigatory functions — as in S. 5 (d) — towards achieving the goal to eliminate trafficking. While the Agency was responsible for the enhancement of the effectiveness of law enforcement agents to suppress TIP, the 2015 Act requires that the effectiveness of the law enforcement agents as well as their partners should be enhanced by the Agency (S.5 (g)). This buttresses the need for intimately interconnected operations not envisaged by the 2003 Act. S.5 (e) in such clear terms instructs that ALL cases of trafficking should be investigated as well as provides a long list of specifics from exploitative labour to illegal smuggling of migrants and sale of persons which provision is absent from the 2003/2005 Act.

S. 5 (h) specifically mentions radio and television which are more engaging methods to the list of means to be employed in creating public awareness of TIP compared to the previous Act which speaks generally of seminars and workshops which are not as far-reaching as the media. The aim of awareness under the old law was to stimulate public interest in the problem while the 2015 Act seeks to create awareness aimed at educating against the dangers of TIP. This approach was most likely chosen based on the conclusive research to the effectiveness of public enlightenment and further preaches the message of a holistic approach to fighting TIP by involving all stakeholders which in this instance are the public. The provisions of the 2015 Act indicate that for the use of media to be effective and create the desired result, funds must be generated and set aside for active media campaigning. The government and the Agency must be willing to fund its media ambition or seek local and/or international support if it is to achieve the goal of the draftsmen who included the words ‘radio’ and ‘television programmes’.

The 2003 Act provides that the Agency is responsible for the strengthening and enhancement of effective legal means for international cooperation in criminal matters for suppression of international TIP. The more recent Act revises this provision by empowering NAPTIP to strengthen cooperation and conduct joint operations with relevant law enforcement and security agencies, international authorities and other relevant partners. This empowers NAPTIP to not only cooperate internationally but to also, in practice and on the field, work together with relevant law enforcement agencies. This validates the stance that as long as the organisation involved is instrumental to the Agency's performance of its functions, the NAPTIP can work fully with it and conduct joint operations.

In terms of victims, while the older Act provides for the rehabilitation of victims, the 2015 Act provides for their protection, assistance and rehabilitation, deliberately broadening the scope of the Agency's responsibility towards trafficked victims. Furthermore, when the direct implication of not only rehabilitating, but protecting and assisting victims is considered, the Agency requires increased funding, training and support.

The 2005 Amendment inserted subsection (l) to S. 4 which saddled the Agency with the duty to prosecute and investigate TIP offences in consultation with the Attorney-General of the Federation. S. 5 (m) of the 2015 Act deletes the portion requiring consultation with the Attorney-General of the Federation thus vesting in the Agency the power to not only investigate, but also to prosecute TIP offences. This is groundbreaking as it removes the bureaucracy and politics associated with involving another government department in making prosecution decisions thereby saving time and resources. This puts the Agency in the same cadre as the Police after *FRN v Osabon (2006) 5 NWLR (Pt. 973) 361*. This autonomy granted to the Agency in this regard is a welcome development.

Although the repealed Act does allow for international partnerships, a pattern noticed throughout the new Act is the greater emphasis placed on cooperation and collaboration with international organisations. S. 5 (q) invites the Agency to collaborate with government bodies both within and outside Nigeria and specifically lists the areas of collaboration as:

- (i) movement of proceeds and properties derived from trafficking in persons...;
- (ii) identities, location and activities of persons suspected of being involved in trafficking in persons...;
- (iii) exchange of personnel and other experts.

This provision for extensive partnerships makes the performance of NAPTIP's duties more probable in the realisation that there is need to collaborate with other nations to tackle trans-border TIP and also in light of the current unavailability of all the resources and expertise needed locally.

S. 5 (r) is a commendable addition to the Act as it puts forward a practical means of identifying victims. By maintaining a trans-border monitoring system, trafficking plans can be foiled before the offender is able to exit the origin country, thus also a means of preventing the actual trafficking and saving the resources to be expended in repatriation. Monitoring the borders systematically also allows records and reports to be generated on trans-border activity. However, it is insufficient to mandate the Agency to maintain a system of border monitoring, the equipment to establish the system and effectively monitor the borders must be provided and maintained. This might also include the need for Information Technology and related components for monitoring and record-keeping.

Extradition and deportation of persons involved in trafficking in persons was unavailable under the 2003 Act. By S. 5 (s) of the 2015 Act, the NAPTIP is empowered to deal with TIP matters connected extradition and deportation as well as provide mutual legal assistance between Nigerian and other countries. These powers vested in the Agency are subject to the supervision of the Attorney-General.

Improved 'Trafficking' Definition

Perhaps the most commendable provision of the 2015 Act is the redefinition of what constitutes Trafficking in Persons:

2003/2005 Act S.64	2015 Act S.80	Difference
Trafficking	Trafficking or Traffic in Persons	
includes all acts or attempted acts involved in	shall mean	2015 Act is more direct rather than vagueness created by using the word 'includes'
recruitment, transportation within or across Nigeria's borders, purchase, sale, transfer, receipt or harbouring of a person	the recruitment, transportation, transfer, harbouring or receipt of a person	Deleting the condition of transportation 'within or across Nigeria's borders' makes way for the extradition provision in the 2015 Act; therefore, even if the transportation of the victim was not within or across Nigeria's borders, the activity, if other elements of the offence are found, still qualifies as trafficking.

<p>involving the use of deception, coercion or debt bondage</p>	<p>by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, the abuse of power of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person over another person or debt bondage</p>	<p>This is the most socio-culturally relevant portion of this provision to the Nigerian situation. It is not uncommon to see the abuse of power or the giving or receiving payments to achieve the consent of a person over another person such as in forced marriages of minors, payments to parents or guardians for their wards to be transported to urban areas to work as a 'houseboy' or 'housegirl'. Arrangements like these are socially accepted. The 2015 Act has lengthened the list of procurement methods that could result in the offence of trafficking thereby widening the ambit of the offence in Nigeria. While charges were limited under the 2003 Act such as recruitment involving the use of coercion (or 2 other means), a suspect can now be charged with recruitment by means of coercion or by 8 other means). This fills a vacuum in the law. For example, under the 2003 law, one who recruited another by means of giving payment to the person's aunt to achieve the aunt's consent over the person for the purpose of forced labour could not have been validly charged for trafficking as the law did not require that the trafficking offence would involve the use of payment to achieve consent</p>
<p>for the purpose of placing [...] conditions,</p>	<p>for the purpose of placing [...] conditions,</p>	
	<p>the removal of organs or generally for exploitative purposes</p>	<p>the addition of this phrase fills any lacunae as to what offences may fall within the ambit of trafficking as it now includes placing or holding a person for generally exploitative purposes. It is left for the adjudicator of the law to determine what situations not described here will qualify as exploitative</p>

Express Prohibition

This definition above is now embedded in S.13 of the Act which is the express, all-encompassing prohibition section of the Act. S.13 is crafted out of the S.80 definition of trafficking in persons and attempts to address all probable incidences of trafficking especially those not envisaged by the 2003 Act. S.13 may be referred to as the umbrella provision of this Act. S.13 further explains what it means to abuse a position of vulnerability. This particular aspect of this more recent provision is more culture sensitive considering how socio-culturally acceptable it is for wards to be placed with guardians for the purpose of finding work/better living and provides recourse to justice where such relationships are abused to the point of trafficking. Furthermore, (3) of that Section provides that any person within or outside Nigeria who directly or indirectly

- does or threatens an act predatory to or in furtherance of an act of TIP or
- omits to do anything reasonably necessary in the prevention of an act of TIP or
- facilitates activities of those engaged in TIP or
- procures any other person by any means whatsoever to commit any offence under this Act or
- acts as an accomplice in the commission of a TIP offence or
- promises or induces any other person by any means whatsoever to commit any of the offences referred to in this Act commits an offence and is liable to a minimum of 5 years imprisonment and a minimum fine of N1,000,000

The same section extinguishes victim consent of the intended exploitation as a defence where the trafficker used any of the means listed in the definition. Furthermore, simply recruiting, transporting, transferring, harbouring and receiving a person under 18 years for the purpose of exploitation shall be considered as TIP even without the adoption of any of the methods set out in the definition of TIP in the Act.

The tentacles of this provision are long and wide protecting both adults and children from all forms of exploitation and extending its reach to those outside Nigeria. The omission clause places a duty on the society at large to do everything reasonably necessary to prevent an act of TIP. The risk of liability where a child is involved is even greater.

Minimum Sentences Imposed

Besides the creation of new offences, the most dramatic improvement to the Act is the prescription of minimum sentences and removal of several fine options.

	2003/2005	2015	Improvements
Offence	S.11 Exportation and Importation of any person out of Nigeria	S.14 Importation and Exportation of any person	
Elements Any person who:-	(a) exports from Nigeria to any place outside Nigeria any person under the age of eighteen years with intent that such person, or knowing it to be likely that such person will be forced or seduced into prostitution in that place; or (b) imports into Nigeria, any person under the age of 18 years with the intent or knowing it to be likely that such person will be forced into prostitution anywhere in Nigeria	(a) imports another person into Nigeria, knowing or having reason to know that the person will be forced or induced into prostitution or other forms of sexual exploitation in the country or while in transit (b) exports another person from Nigeria, knowing or having reason to know, that the person will be forced or induced into prostitution or other forms of sexual exploitation in the country to which the person is exported or while in transit	<ul style="list-style-type: none"> protects both adults and minors prostitution and other forms of sexual exploitation in the country or while in transit <p>By virtue of the new Act, if a 23 year old Amina is imported into Nigeria to work in domestic servitude on a vessel popularly known to drug its female passengers and use them as sex workers while onboard, it would not be a defence that Amina is an adult and was not imported for prostitution because the trafficker had reason to know that she would be induced into sexual exploitation while in transit</p>
Punishment	<ul style="list-style-type: none"> 10 years imprisonment No option of fine 	<ul style="list-style-type: none"> Minimum 5 years imprisonment and Minimum fine of N1,000,000 	
Offence	S.12 Procurement of any person	S.15 Procurement of any person for sexual exploitation	

<p>Elements Any person who:-</p>	<p>(a) by use of deception, coercion, debt bondage or any means whatsoever induces any person under the age of eighteen years to go from one place to another to do any act with intent that such person, may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person; or (b) in order to gratify the passions of another person, procures, entices or leads away, even with such person's consent, any person under the age of eighteen years,</p>	<p>(a) by use of deception, debt bondage, or any means whatsoever, induces any person under the age of eighteen years to go from one place to another to do any act with intent that such person, may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person (b) keeps, detains or harbours any other person with intent, knowing or having reasons to know that such a person is likely to be forced or induced into prostitution or other forms of sexual exploitation with or by any person or an animal</p>	<p>Rephrases sub-section (b) to:</p> <ul style="list-style-type: none"> • protect adults • 'having reason to know' – reasonable knowledge will suffice to establish liability • includes 'other forms of sexual exploitation' • creates liability where sexual exploitation is with an animal
<p>Punishment</p>	<ul style="list-style-type: none"> • 10 years imprisonment • No option of fine 	<ul style="list-style-type: none"> • 5 years imprisonment and • N500,000 fine 	
<p>Offence</p>	<p>S.14 Procurement of any person under 18 years</p>	<p>S.16 Abuse, procurement or recruitment of any person under 18 years for prostitution or other forms of sexual exploitation</p>	

<p>Elements Any person who:-</p>	<p>(1) who procures a person who is under the age of eighteen years to have unlawful carnal knowledge with any other person or persons, either in Nigeria or any place outside Nigeria (2) who procures any person under the age of eighteen years to-- (a) become a prostitute, either in Nigeria, or any place outside Nigeria; (b) leave Nigeria with intent that such person may become a prostitute in any place outside Nigeria; (c) leave such person's usual place of abode in Nigeria, with intent that such person engage in prostitution either in Nigeria or any place outside Nigeria,</p>	<p>(1) 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, any person or persons, either in Nigeria or anywhere else (2) who procures or recruits any person under the age of 18 years to be conveyed from his usual place of abode, knowing or having reasons to know that such a person may be subjected or induced into prostitution or other forms of sexual exploitation outside Nigeria</p>	<ul style="list-style-type: none"> • includes 'recruitment' • replaces 'may become a prostitute' with 'may be subjected to or induced into prostitution' to show element of external influence such force, coercion or inducing drugs • includes 'other forms of sexual exploitation'
<p>Punishment</p>	<ul style="list-style-type: none"> • 10 years imprisonment • No option of fine 	<ul style="list-style-type: none"> • Minimum of 7 years imprisonment and • Minimum fine of N1,000,000 	
<p>Offence</p>	<p>S.15 Procurement of any person for prostitution, pornography and use in armed conflict</p>	<p>S.17 Procurement or recruitment of any person under 18 years for pornography or brothel</p>	

<p>Elements Any person who:-</p>	<p>(a) procures, uses or offers any person for prostitution, or the production of pornography, or for pornographic performance; (b) keeps a brothel; (c) allows a person under the age of eighteen years to be in a brothel or trades in prostitution;</p>	<p>1. (a) procures, recruits, uses or offers any person under the age of 18 years for the production of pornography or for pornographic performances (b) allows a person under the age of 18 years to be harboured in a brothel</p> <p>2. Notwithstanding the punishment prescribed in subsection 1, a convicted person under this section shall in addition to the prescribed punishment be liable to not less than 1 year imprisonment where he administered or stupefied victim with any drug substance</p>	<ul style="list-style-type: none"> • removes the keeping of brothels as an offence under the jurisdiction of the Agency except where the brothel harbours a person below 18 years • also removes the procurement of a person for production of pornography from the ambit of the Agency where the person is below 18 years • includes greater punishment where victim stupefied with drugs • separates offences relating to pornography from those relating to use of person to traffic drugs and in armed conflict
<p>Punishment</p>	<ul style="list-style-type: none"> • 14 years • no option of fine 	<ul style="list-style-type: none"> • Minimum of 7 years imprisonment and • Minimum fine of N1,000,000 + Minimum of 1 year where convict stupefied victim by administering drug substance 	
<p>Offence</p>	<p>S.15 Procurement of any person for prostitution, pornography and use in armed conflict</p>	<p>S.19 Procurement or recruitment of any person for use in armed conflicts</p>	

Elements Any person who:-	(c) procures, uses or offers any person for the production and trafficking in drugs; (d) traffics any person for the purpose of forced or compulsory recruitment for use in armed conflict	for the purpose of forced or compulsory recruitment for use in armed conflict	
Punishment	<ul style="list-style-type: none"> • 14 years • no option of fine 	<ul style="list-style-type: none"> • Minimum of 5 years imprisonment and • Minimum fine of N1,000,000 	
Offence	S.16 Foreign travels which promote prostitution	S.18 Foreign travel which promotes prostitution or sexual exploitation	
Elements Any person who:-	organises or promotes foreign travels which promote prostitution of any person or encourages such activity	organises, facilitates or promotes foreign travels which promote prostitution or other forms of exploitation of any person or encourages such activity	<ul style="list-style-type: none"> • includes 'facilitation' and covers 'other forms of exploitation'
Punishment	<ul style="list-style-type: none"> • 10 years imprisonment • No option of fine 	<ul style="list-style-type: none"> • Minimum of 7 years imprisonment and • Minimum fine of N1,000,000 	
Offence	S.21 Buying or selling a person for a purpose	S.21 Buying or selling a person for a purpose	
Elements Any person who:-	buys, sells, hires, lets or otherwise obtains possession or disposes of any person under the age of eighteen years with intent that such person be employed or used for immoral purposes or knowing it to be likely that such person will be employed or used for any such purposes	buys, sells, hires, lets or otherwise obtains the possession or disposal of any person with intent, knowing it to be likely or having reasons to know that such a person will be subjected to exploitation	<ul style="list-style-type: none"> • protects both adults and minors against • all forms of exploitation are covered by the use of the word 'exploitation'
Punishment	<ul style="list-style-type: none"> • 14 years • no option of fine 	<ul style="list-style-type: none"> • Minimum of 5 years imprisonment and • Minimum fine of N2,000,000 	
Offence	S.22 Unlawful forced labour	S.22 Forced labour	

<p>Elements Any person who:-</p>	<p>(1) (a) requires any other person, or permits any place within or outside Nigeria, to be used for forced labour</p>	<p>(a) requires, recruits, transports, harbours, receives or hires out a person to be used for forced labour within or outside Nigeria; or (b) permits any place or premises to be used for the purpose of forced labour</p>	<ul style="list-style-type: none"> enlarges scope of offence to include recruitment, transportation, hiring and harbouring
<p>Punishment</p>	<ul style="list-style-type: none"> fine not exceeding N100,000 or 5 years imprisonment or both 	<ul style="list-style-type: none"> 7 years imprisonment and Minimum fine of N2,000,000 	
<p>Offence</p>	<p>S.22 Unlawful forced labour</p>	<p>S.23 Employment of a child as domestic worker and inflicting grievous harm</p>	

<p>Elements Any person who:-</p>	<p>(b) employs a child to work in any capacity except where he is employed by a member of his family or light work of an agricultural, horticultural or domestic character, or (c) employs a child in any case to lift, carry or move anything so heavy as to be likely to adversely affect his physical, mental, spiritual, moral or social development, or (d) employs a child as a domestic help outside his own home or family environment, or (e) employs a child in an industrial undertaking</p>	<p>1 (a) employs, requires, recruits, transports, harbours, receive or hires out, a child under the age of 12 years as a domestic worker (b) employs, requires, recruits, transports, harbours, receives or hired out, a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child 2 Notwithstanding the punishment prescribed in subsection (1) of this section, a convicted person under this section shall in addition to the prescribed punishment be liable to: (i) a term of not less than 2 years imprisonment where the child is denied payment or reasonable compensation for services rendered (ii) a term not less than 3 years where the child is defiled or inflicted with bodily harm</p>	<ul style="list-style-type: none"> • wider scope to include requirement, recruitment, harbouring, receipt and hiring out so that these qualifications do not exempt offences under this category • removes exception of employment by family member as this can easily be abused • Sets age limit for classification as a child • use of ‘work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child’ sets a greater standard that covers all activities under S. 22 (b-e) and foresees any related situations of exploitations.
<p>Punishment</p>	<ul style="list-style-type: none"> • fine not exceeding N100,000 or • 5 years imprisonment or • both 	<ul style="list-style-type: none"> • Minimum 2 years imprisonment • Maximum 7 years imprisonment • No option of fine 	
<p>Offence</p>	<p>S.23</p>	<p>S.24 Trafficking in slaves</p>	
<p>Elements</p>	<p>Similar elements in both Acts</p>	<p>Similar elements in both Acts</p>	

Punishment	Imprisonment for life	<ul style="list-style-type: none"> • Minimum 7 years imprisonment and • Minimum fine of N2,000,000 	
Offence	S.24 Slave dealing	S.25 Slave dealing	
Elements	Similar elements in both Acts	Similar elements in both Acts	
Punishment	Imprisonment for life	<ul style="list-style-type: none"> • Minimum of 7 years imprisonment and • Minimum fine of N2,000,000 	
Offence	S.27 Attempt	<p>S.29 Attempt to commit an offence under this Act</p> <p>S.30 Where evidence establishes an attempt to commit an offence or the commission of the full offence</p>	
Elements	Similar elements in both Acts	Similar elements in both Acts	
Punishment	<ul style="list-style-type: none"> • 12 months imprisonment or • a fine of N50,000 or • both 	Half of the punishment for the offence	
Offence	S.28 Offence by bodies corporate	S.31 Offences by a body corporate	
Elements	Similar elements in both Acts	<p>Similar elements in both Acts</p> <p>(3) Nothing contained in subsections (1) and (2) of this section shall render any person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence</p>	<p>Inserts clause to protect unsuspecting officers and those who diligently sought to prevent commission of TIP offence</p>

Punishment	<ul style="list-style-type: none"> Instigating, conniving or neglecting officer: 3 years imprisonment or N200,000 or both Body Corporate N2,000,000 and the Court may issue an order to wind-up the body and its assets and properties forfeited to the Victims of Trafficking Trust Fund. 	<ul style="list-style-type: none"> Instigating, conniving or neglecting officer: same punishment provided under the Act for individual committing the offence Body corporate: Fine of N10,000,000 and Court may issue winding up order and order to transfer all assets and properties to the Victims of Trafficking Trust Fund 	<ul style="list-style-type: none"> The prescription of the same punishment for offenders under body corporates is now made equivalent to punishment for regular individual offenders Body Corporate now required to pay a fine 5 times higher than earlier prescribed thereby making the punishment more stringent and hopefully creating a greater deterrent
Offence	<p>S.29 Commercial carrier</p> <p>S.30 Responsibility of tour operators and travel agents</p> <p>S.31 Responsibilities of Airlines</p>	S.35 Responsibility of Airlines, commercial carriers, tour operators and travel agents	<ul style="list-style-type: none"> classifies all groups under one category and one section includes sea vessels
Elements	Similar elements in both Acts	Similar elements in both Acts	
Punishment	<p>Commercial carrier: 2 years or a fine of N2,000,000</p> <p>Tour operators, travel agents and airlines: Maximum of N200,000 fine</p>	Maximum fine of N10,000,000	More stringent, albeit reasonable, punishment imposed. Maybe include a possible ban on some routes/ destinations?
Offence	S.58 Obstruction of the Agency of authorised officer	S.32 Obstruction of the Agency or her authorised officer	
Elements	Similar elements in both Acts	Similar elements in both Acts	

Punishment	<ul style="list-style-type: none"> • Maximum of 5 years imprisonment or • Fine of N50,000 or • both 	<ul style="list-style-type: none"> • Maximum of 5 years imprisonment or • Fine of N250,000 or • both 	More stringent fine imposed; one of the few offences in 2015 Act that allow for option of fine.
Offence	S.42 (3) Failure of arrested person to fully disclose assets and properties	S.54 Failure, negligence or refusal to fully disclose assets and properties	
Elements	Similar elements in both Acts	Similar elements in both Acts	
Punishment	10 years imprisonment	2 years imprisonment	

Creation & Removal of Offences

The progressive, socio-culturally relevant nature of the 2015 Act is further exhibited by the creation of additional offences. Considering the prevalence of genital mutilation in rural communities, the prohibition of organ harvesting under the NAP TIP Act is a welcome development. This is contained in S. 20 of the Act. S. 26 prohibits trafficking offences relating to fraudulent entry of persons stipulating a minimum of 5 years’ imprisonment without the option of fine. The Act further contemplates conspiracy in S.27 and prescribes the same punishment for the offence as provided by the Act and half of the punishment where the offence was not actually committed. Furthermore S.28 addresses escape and aiding and abetting the escape of one in lawful custody of the Agency. Sections 33 and 34 prohibit impersonation or assumption of the character of an officer of the Agency and tampering with evidence and witnesses respectively, stipulating a maximum of 5 years’ imprisonment or a minimum fine of N250,000 or both as punishment.

Unlawful detention with intent to defile, procuring defilement of any person by threats, fraud or administering drugs, Kidnapping from guardianship, Kidnapping and abducting in order to commit culpable homicide earlier provided for in S. 17 - 20 of the 2003 Act are not replicated in the 2015 Act. The reason behind this may be that the offences listed under those sections are not necessarily trafficking offences and should not fall within the ambit of the Anti-TIP Agency. S.25 of the 2003 Act entertains double jeopardy by stipulating that Nigerians convicted of TIP offences abroad are retried on their return to Nigeria for ‘bringing the image of Nigeria into disrepute’. The 2015 Act commendably excludes this provision. Furthermore, s.26 of the 2003 Act has been removed from the 2015 Act putting offences by aliens in the same category as offences by indigents.

Speedy Dispensation of Justice

The new Act makes further improvements to the practice and procedure of the law such as seen in S. 36(3) which recommends that the courts reduce the penalty of a convicted person where, before the proceeding, such person facilitated the identification of other accused persons or after the proceeding, made possible the arrest of such persons. This is arguably a progressive provisions because it secures more arrests and subsequently, more convictions, quickening the adjudication system. However, the capacity of the prosecution must be built to correctly participate in such

negotiations. Another progressive provision of the 2015 Act is S.37 which empowers the Court to adopt all legitimate measures which it considers necessary to avoid delays and the abuse of the court proceedings. While this provision encourages speedy dispensation of justice, the Judiciary needs to be guided as to what measures are considered necessary in the avoidance of delay and also guided as to the limits of this provision.

Additionally, S.37 (2) disallows the Courts from entertaining stay of proceedings in criminal matters brought under the Act. This provision is however, subject to the Constitution of the Federal Republic of Nigeria.

Finally, S. 44, buttressing the earlier provisions encouraging speedier justice dispensation allows for investigation without a search warrant in certain situations of verifiable urgency as listed in subsection (i).

Victim Protection

In addition to maintaining the victim protection sections 50 - 52 of the 2003/2005 Act, S.63 of the 2015 Act gives the victim 3 rights to information— on court and administrative proceedings; assistance to enable appropriate representation of victim's views and concerns; counselling and information as regards legal rights in a language understandable to the victim. This places a heavy duty on the Courts to ensure to protection of these rights. S.64 establishes Transit Shelters run by Agency staff to protect, assist, counsel, rehabilitate and train victims. The Act further entitles victims to compensation, restitution and recovery.

Other Developments

Apart from the provisions of the 2015 Act as listed above, the following subsections introduce further welcome developments to the law against Trafficking in Persons which were not included in the 2003/2005 Act:

- S. 23: Employment/recruitment/requirement/transportation/harbour/receipt/hiring out a child under the age of 12 years as a domestic worker is an offence prohibited under the Act. By setting the age limit at 12, the Act removes the vagueness created by the 2003 Act when it simply referred to 'child'. In addition, the Act recognises the Nigerian socio-cultural situation where pre-teenagers are often transported from rural and usually poor backgrounds and employed as domestic workers in the city. While child is interpreted to mean one below 18 years for the whole Act, this section is limited to those below 12 years. Although the adoption of this stance poses a possible risk of abuse and sexual exploitation to the domestic worker, subsection 2(ii) cures this by prescribing a minimum term of imprisonment of 3 years where the over-12-year old child is defiled or inflicted with bodily harm. This subsection envisages the risks associated with such employment arrangements and provides criminalises them. However, training must be provided to officers of the Agency on the detection and monitoring of such settings as there are several challenges associated with the discovery, detection, monitoring and enforcement of the law in such domestic surroundings.

- S. 43(3): This section provides guidance to the Courts on the conditions under which a search warrant should be granted. Although training might be required for the interpretation of these conditions, the older Act provided no such guidance.
- S. 44 (3) provides that only a woman can search a woman. This protects women, both victims and traffickers.
- S. 44 (4), (5) Prevent frivolous litigation against Agency and protect Agency staff in the course of their employment by dislodging criminal or civil liability in case of injury/death or damage to property where officer used reasonably necessary force. Though wide its in ambit, the insertion of these subsections into the law gives Agency officers wider room to fulfil their search, arrest and seize duties without fear.
- S. 45: The introduction of audio-visual recording simplifies the process of gathering and storing evidence which in turn enhances the smooth tender of evidence in Court. In addition subsection (3) provides for the admissibility of video recording and other forms of electronic evidence before the Courts subject to the Evidence Act. The Courts must be appropriately guided on the weight to be attached to such evidence when tendered.
- S. 47: While both the old and new Acts protect informants who volunteer information to the Agency, the 2015 Act goes a step further urging the Court, at its discretion, to entertain applications from the Attorney-General, the Agency or any law enforcement body seeking the protection of a witness or other person within the relevant proceeding. It also directs that the Court may *suo motu*, if convinced that the life of a witness is endangered, take measures to protect the identity and particulars of such witness. The Court is further empowered to exclude all those not party to the matter from the proceedings
- S. 55 - 62 provide guidance on the disclosure, forfeiture, disposal, seizure and investigation of properties of persons arrested under the Act.
- S.68 of the 2015 Act establishes a Committee known as the Trust Fund Committee having general control over the administration and management of the Victims of Trafficking Trust Fund. This Committee did not exist under the old law and thus there was no mechanism to oversee the disposal of the fund. Furthermore, s. 67 (4) specifically provides for the use of the Fund.
- Sections 69 - 74: To further validate the cross-country collaborative approach adopted by the 2015 Act in investigations and monitoring trans-border activities, these sections allow foreign states to request assistance in the investigation and prosecution of offences under the Act and vice versa and where such request is to be granted, considerations to be made and procedure to be followed. According to S.73, *offences under this Act are considered to be extraditable crimes for which extradition may be requested, granted or obtained under the Extradition Act, Laws of the Federation of Nigeria, 2004*. The provision of S.74 also allows for the exchange of information relating to human trafficking, organised criminal groups, and traffickers between Nigeria and other states. This development facilitates the flow of information and the
- By virtue of S.76, the Agency requires a pre-action notice 30 days before any civil action is to be commenced against it.

- S.77 protects members of the Board, employees and officers of the Agency by indemnifying any such member of staff out of the assets of the Agency against any proceedings brought against such employee provided the act complained of is within that officer's powers.

Conclusion

Because the 2015 law sets higher standards for the enforcement and application of the law against trafficking, it creates another need — the need to equip and build the capacity of those who are saddled with the responsibility of the enforcing, implementing and adjudicating this law. For the laudable improvements to the anti-TIP law to be given any effect, the work has just begun. Following the successful incorporation of this law into the Agency, the Agency itself must transit from its methods and mindsets under the old law to meet the high standards set by this 2015 Act. From interpretation, to sentencing, prosecution to victim protection, investigation and monitoring, the Act has created a lacunae for knowledge and understanding that needs to be filled in order to fulfil its purpose.