

## EXAMINATION OF THE LEGAL FRAMEWORK ON TRANSNATIONAL HUMAN TRAFFICKING IN WEST AFRICA: A CALL FOR ECOWAS INTERVENTION.

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### **Abstract:**

*Human trafficking is on the increase in west Africa. The upward swing in the menace of human trafficking is a function of a cynical exploitation of the legal regime of the Economic Community of West African States (ECOWAS) on free movement of persons and goods by transnational organised criminal groups as well as other socio-economic factors. The major objective behind the creation of ECOWAS was the attainment of sub-regional integration through the free movement of people and trade. This paper examines the legal framework for combating the human trafficking in the ECOWAS sub-region and finds that there is a dearth of enforceable community-wide legislation on human trafficking. The lack of criminal jurisdiction in the ECOWAS Community Court leaves human trafficking which is a transnational crime to the exclusive jurisdiction of municipal courts. The paper argues that the municipal institutions are ill-equipped to tackle crimes of an international character like human trafficking. Municipal law enforcement and judicial structures are limited by the intricacies of conflict of laws and operational constraints like extraditions and other procedural hamstrings to the successful prosecution of transnational criminal suspects. The paper points out that the absence of a pan-ECOWAS legal framework to combat human trafficking is an enabler of the menace as criminals may take refuge in one member state while orchestrating criminal activities in other states. The paper calls for the adoption of a comprehensive ECOWAS protocol on transnational crimes including human trafficking.*

**Keywords:** West Africa, human trafficking, legal framework, transnational crimes.

### **1.0 INTRODUCTION**

The west African sub-region has witnessed increased cross-border movement of people and trade in the past half-century due to the effect of the policy of the Economic Community of West African States (ECOWAS) on free movement of people, goods and services across its member states. At

the core of the objectives of ECOWAS is the principle of freedom of movement and settlement of community citizens in any part of the ECOWAS community.<sup>1</sup>

One unintended consequence of the free movement regime of ECOWAS is the incidence of transnational crimes including human trafficking. Studies have shown that the transborder human trafficking is on the rise in the sub-region.<sup>2</sup> While the rising spate of transnational crimes like human trafficking in west Africa is attributable in part to the ECOWAS' policy of free movement of persons and trade, the responsibility for seeking solutions to these challenges is left to individual member states of ECOWAS. This is due to the absence of a community wide anti-crime arrangement in the sub-region. Therefore, crimes are left to the domestic law enforcement and security arrangement of each member state. This structural imbalance in crime management in the ECOWAS sub-region has militated against the successful containment of transnational crimes including human trafficking in the region.

This paper examines the legal framework for managing human trafficking in west Africa with a view to identifying its shortcomings and proffering solutions to them. The paper is presented in six parts excluding the abstract. This introduction is the first part followed by an overview of the problem of transborder human trafficking in west Africa. Part three covers the legal framework of human trafficking in the area while the fourth part identifies the limitations of the legal framework. Recommendations and the conclusion are devoted to the last parts of the paper.

## **2.0 OVERVIEW OF HUMAN TRAFFICKING IN WEST AFRICA**

Human trafficking is a criminal activity that consists mainly of the exploitation of the vulnerabilities of other persons. Phillippe Lazaro provides a simplistic definition of human

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<sup>1</sup> Article 3 (d) (iii) of the Revised ECOWAS Treaty (1993) & the Protocol Relating to the Free Movement of Persons, Residence and Establishment (A/P.1/5/79).

<sup>2</sup> Samuel Kehinde Okunade and Lukong Stella Shulika, 'The Dynamics of Child Trafficking in West Africa' AHMR African Human Mobilty Review - Volume 7 No 3, SEP-DEC 2021, p. 120. <<https://sihma.org.za/journals/AHMR%207:3%202021%20The%20Dynamics%20of%20Child%20Trafficking%20in%20West%20Africa.pdf>> accessed 24 December 2024.

trafficking as “the illegal trade of men, women, and children, and the exploitation of their bodies and labour.”<sup>3</sup> (sic) in the absence of a more nuanced academic definition of human trafficking, this paper will make do with a list of activities that constitute human trafficking. According to Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000 (commonly known as the Palermo Protocol), ) (UNGA Resolution 55/25), trafficking in persons, as the protocol describes human trafficking, means the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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.”<sup>4</sup>

The above provision can be summarized to mean that human trafficking is the illegal recruitment or movement of persons for the purpose of forced labour, commercial sexual exploitation or organ harvesting.<sup>5</sup> Under the Palermo Protocol, human trafficking consists of three elements. These are:

- (a) **The act**-Recruitment, transportation, transfer, harbouring, receipt of persons.
- (b) **The means**: Threat of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, giving payments or benefits.
- (c) **The Purpose**: exploitation, prostitution, forced labour, organ harvesting.<sup>6</sup>

Human trafficking is both an international crime and a transnational crime. The distinction between the two terms is that transnational crimes are crimes that involve more than one country in their

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<sup>3</sup> Phillippe Lazaro, ‘Connecting the Dots: Human Trafficking and Climate Change, Plant with Purpose’ <<https://plantwithpurpose.org/stories/connecting-the-dots-human-trafficking-and-climate-change/>> accessed 20 December 2024.

<sup>4</sup> Article 3 (a), Palermo Protocol

<sup>5</sup> Roland Aghahiusi Ukhurebor, ‘Human Trafficking and Nigeria’s Development: An Examination of the Benin Metropolis’ Edo State, Nigeria, Benue Journal of Peace and Conflict Studies (BENJOPECS), Vol. 1, No. 1 (2022) p.119 <<https://bsum.edu.ng/journals/benjopecs/vol1n1/files/8.pdf>> accessed 22 December 2024.

<sup>6</sup> International Organization for Migration & World Bank Group, Economic Shocks and Human Trafficking Risks-Evidence from IOM’s Victims of Human Trafficking Database, IOM Publications, <[https://publications.iom.int/system/files/pdf/ECONOM~1\\_0.PDF](https://publications.iom.int/system/files/pdf/ECONOM~1_0.PDF)> accessed 22 December 2024.

planning, execution or impact<sup>7</sup> while international crimes are crimes that the international community considers to be serious enough to warrant global prohibition e.g. war crimes and genocide.<sup>8</sup> An international crime can take place within the borders of a single country. Transnational crimes involve a plurality of countries in their planning, execution and effect whereas an international crime can occur exclusively within the borders of a single state like the Rwandan Genocide.

According to the United Nations Convention against Transnational Organised Crime, there are four criteria for a crime to be categorised as a serious transnational crime. They are:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State;
- (d) It is committed in one State but has substantial effects in another State<sup>9</sup>.

To the extent that transborder human trafficking involves more than one country in its planning, execution and effect, it qualifies as a transnational crime. It also qualifies as an international crime by virtue of its fitting into the categories of internally criminalised conducts by virtue of Article 5 (1) of the UN Convention against Transnational Organised Crime and Article 3 of the Palermo Protocol.

In the context of west Africa, transnational human trafficking is the illegal, coercive or fraudulent movement of persons across national borders for the purpose of exploitation. Unfortunately, there is a rising trend in human trafficking in the sub-region in recent years. According to an August

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<sup>7</sup> Akobella Joshua, 'An Analysis of the ECOWAS Treaty and Protocol on Free Movement of Persons: Balancing the ECOWAS Dream and Sub-Regional Security' UIJPIL, Vol. II, June 2021, pp.1-27.

<sup>8</sup> Ibid; Jay S Albanese, 'Deciphering the Linkages between Organised Crime and Transnational Crime' *Journal of International Affairs*, Fall/Winter 2012, Vol. 66, No. 1, The Trustees of Columbia University in the City of New York (2012). P.2.

<sup>9</sup> United Nations Convention against Transnational Organised Crime adopted by General Assembly resolution 55/25 on November 15, 2000 <<https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/creation-of-a-review-mechanism-for-the-un-convention-against-transnational-organised-crime-and-its-protocols>> accessed 18 April 2025.

2023 Deutsche Welle (DW) report, “Human trafficking and migrant smuggling are on the rise in West Africa.”<sup>10</sup>

The West African sub-region is one of the largest human trafficking hubs in the world.<sup>11</sup> It is said that human trafficking is more prevalent in West Africa than in any other region in Africa.<sup>12</sup> According to a United Nations Office on Drugs and Crimes (UNODC) report, three-fourths of all the victims of human trafficking in West Africa are children.<sup>13</sup> These children are majorly engaged in forced labour in mines and agriculture.<sup>14</sup> Because of the labour intensive nature of quarry and farm work, boys are exploited more than girls in West Africa.<sup>15</sup> According to another UNODC report, 1164 Girls and 1389 boys were trafficked in West Africa between 2016 and 2019 while only 49 Girls and 109 Boys were trafficked in East Africa and 62 girls and 60 boys were trafficked in Southern Africa in the same period.<sup>16</sup>

Transborder human trafficking in West Africa is not limited to the territories of the ECOWAS member states. It goes as farther afield as other parts of Africa and even beyond Africa. For example, 17% of trafficked persons in North Africa is from West Africa while West Africa also accounts for an estimated 7% of human trafficking victims in East Africa.<sup>17</sup> The impact of human trafficking in West Africa is felt as far away as in Europe where it is estimated that about 38% of

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<sup>10</sup> Ben Shemang and Mimi Mefo Takambou, ‘Human trafficking a growing menace for Africa’ Deutsche Welle, <[https://www.dw.com/en/human-trafficking-a-growing-menace-for-africa/a-66369429#:~:text=Human%20trafficking%20and%20migrant%20smuggling,Trafficking%20in%20Persons%20\(NAPTIP\)>](https://www.dw.com/en/human-trafficking-a-growing-menace-for-africa/a-66369429#:~:text=Human%20trafficking%20and%20migrant%20smuggling,Trafficking%20in%20Persons%20(NAPTIP)>) Accessed 16 October 2024.

<sup>11</sup> (n 2)

<sup>12</sup> Ogunniyi D and Idowu O, ‘Human trafficking in West Africa: An implementation assessment of international and regional normative standards’ (2022) *The Age of Human Rights Journal*, 19, 165-185, <<https://revistaselectronicas.ujaen.es/index.php/TAHRJ/article/view/6851>> accessed 21 December 2024.

<sup>13</sup> UNODC, ‘Human trafficking in West Africa: three out of four victims are children says UNODC report’ (February 5, 2021), <[https://www.unodc.org/conig/en/human-trafficking-in-West-africa\\_-three-out-of-four-victims-are-children-says-unodc-report.html](https://www.unodc.org/conig/en/human-trafficking-in-West-africa_-three-out-of-four-victims-are-children-says-unodc-report.html)> accessed 20 December 2024.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> UNOOC, Global Report on Trafficking in Persons-2020-Sub-Saharan Africa, <[https://www.unodc.org/conig/uploads/documents/Publications/GLOTiP\\_2020\\_SSA.pdf](https://www.unodc.org/conig/uploads/documents/Publications/GLOTiP_2020_SSA.pdf)> accessed 21 December 2024.

<sup>17</sup> (n12)

irregular immigrants to Europe are from West and Central African countries.<sup>18</sup> Some of these irregular migrants are victims of human trafficking.<sup>19</sup>

The drivers of human trafficking in West Africa are complex and inter-related. They can be grouped into large sectoral categories like economic factors, social factors, environmental factors, political factors and technological factors.

## **2.1 ECONOMIC FACTORS**

Poverty is one of the major enablers of human trafficking in West Africa. The sub-region is among the poorest in the world.<sup>20</sup> 12 of the world's 50 poorest countries are found in West Africa.<sup>21</sup> Endemic poverty and absence of economic opportunities fuel exploitation including human trafficking.<sup>22</sup> Economic migration in search of so-called greener pastures tends to expose vulnerable groups to exploitation.<sup>23</sup> Poverty has caused vulnerable and indigent families to give out their children to affluent "benefactors" for overseas travels in the hope of finding opportunities for upward economic mobility abroad. This practice heightens the risks of human trafficking.<sup>24</sup> Other families outrightly selling their children for cash.<sup>25</sup>

In Nigeria, for example, child trafficking is headlined by the upsurge in the "baby factory" syndrome in recent years. A baby factory is an arrangement whereby unmarried pregnant women are warehoused in specific premises until they deliver their babies after which, they are paid off in exchange for their babies who are taken from them and sold off at a premium to childless buyers

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<sup>18</sup> International Organization for Migration, Irregular Arrivals To Europe, Nationalities, IOM, <[https://dtm.iom.int/dtm\\_download\\_track/41141?file=1&type=node&id=28751#:~:text=Nationalities%20of%20West%20and%20Central,and%20Central%20African%20nationals%20\(Fig](https://dtm.iom.int/dtm_download_track/41141?file=1&type=node&id=28751#:~:text=Nationalities%20of%20West%20and%20Central,and%20Central%20African%20nationals%20(Fig)> accessed 21 December 2024.

<sup>19</sup> (n 12)

<sup>20</sup> ECOWAS, ECOWAS VISION 2020, (June 2010), p. 2 <<https://www.araa.org/sites/default/files/2023-07/ECOWAS%20VISION%202020.pdf>> accessed 16 October 2024.

<sup>21</sup> WACSI, The Politics of Regional Integration in West Africa, OSIWA, (2011) <<https://wacsi.org/wp-content/uploads/2020/10/11.-The-Politics-of-Regional-Integration-in-West-Africa.pdf>> 16 October 2024.

<sup>22</sup> Alexis A Aronowitz, 'The Social Etiology of Human Trafficking: How Poverty and Cultural Practices Facilitate Trafficking' The Pontifical Academy of Social Sciences, <[https://www.pass.va/en/publications/acta/acta\\_20\\_pass/aronowitz.html](https://www.pass.va/en/publications/acta/acta_20_pass/aronowitz.html)> accessed 17 October 2024.

<sup>23</sup> UNODC, Addressing the Root Causes of Trafficking, <[https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296\\_tool\\_9-2.pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf)> accessed 22 December 2024.

<sup>24</sup> (n 2)

<sup>25</sup> Ibid.

by the proprietor.<sup>26</sup> The allure of promised payment entices these women into agreeing to conceive and deliver their babies strictly for sale thus underlining the dire economic hardship facing them.

Furthermore, the creation of a single continental market and the progressive removal of national borders for trade facilitation has made it easy for human trafficking to thrive within West Africa. The launch of the African Continental Free Trade Area (AfCFTA) in 2019 had increased the volume of informal cross border trade (ICBT).<sup>27</sup> ICBT is defined as:

Trade in legitimately produced goods and services, which escapes the regulatory framework set by the government, as such avoiding certain tax and regulatory burdens. Informal trade thus refers to goods traded by formal and informal firms that are unrecorded on official government records and that fully or partly evade payment of duties and charges. Such goods include commodities which pass through unofficial routes and avoid customs controls, as well as goods that pass through official routes with border crossing points and customs offices yet involve illegal practices.<sup>28</sup>

This definition is wide enough to accommodate such illegal practices as smuggling, under-invoicing and false declaration of origin of goods.<sup>29</sup>

ICBT is a sector that is dominated by women and children making it a high-risk venture for human exploitation.<sup>30</sup> ICBT accounts for a huge chunk of trade in Africa. For example, ICBT between Republic of Benin and Nigeria is estimated to account for 75% and 20% of their respective GDPs..<sup>31</sup> It is estimated that the volume of ICBT in Africa is equivalent to between 7% and 16%

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<sup>26</sup> Okonkwo and others, (2020) 'Women and the Upsurge of "Baby factories" in Southeastern Nigeria: Erosion of Cultural Values or Capitalism?' *Journal of International Women's Studies*, 21(6), 405-415 at p. 405, <<https://vc.bridgew.edu/cgi/viewcontent.cgi?article=2315&context=jiws>> accessed 23 December 2024

<sup>27</sup> Plan International, 'The African Continental Free Trade Area Agreement- Its Implications on Cross-Border Issues Affecting Children' Plan International (December, 2020), <<https://plan-international.org/uploads/sites/90/2023/03/AfCFTA-Study.pdf>> accessed 16 August 2024.

<sup>28</sup> UNCTAD (2019). *Borderline: Women in informal cross-border trade in Malawi, the United Republic of Tanzania and Zambia*. (quoted in (n 27))

<sup>29</sup> Ibid.

<sup>30</sup> (n 27)

<sup>31</sup> Aimee Dushime, 'The role of the AfCFTA in improving informal cross-border trade in Africa, Future Africa Forum' <<https://forum.futureafrica.com/the-role-of-the-afecta-in-improving-informal-cross-border-trade-in-africa-2/>> accessed 27 December 2024.

of all formal intra-African cross-border trade<sup>32</sup> and between 30% and 72% of the value of formal cross-border trade in the continent.<sup>33</sup> The huge volume of ICBT exposes its practitioners who are mostly women and children to the risk of exploitation by organised criminal groups and corrupt border officials.<sup>34</sup>

## 2.2 SOCIAL FACTORS

The erosion of cultural values and the craze to make money by fair or foul means have been identified as factors that drive the upward swing in human trafficking in West Africa.<sup>35</sup> The lack of moral scruples on the part of the operators of baby factories have led to the increasing use of orphanages and maternity clinics as fronts for child trafficking rackets.<sup>36</sup>

Furthermore, the growing acceptance of extra-marital pregnancies and single parenthood in several West African societies contributes to the risk of child trafficking and prostitution of vulnerable women. Allied to the above social factors is the get-rich-quick syndrome prevalent among young adults in West Africa which fuels their desperation to emigrate to ostensibly more affluent societies in search of opportunities and wealth. These mental predisposition to migration at any cost accounts for the increasing spate of voluntary or cooperative trafficking.<sup>37</sup> This is a trafficking model in which the victims volunteer themselves for trafficking in the hope of a better life at the end of the trafficking. Simply put, it is “the act of releasing oneself for trafficking.”<sup>38</sup>

There are cultural and religious practices that encourage human trafficking in West Africa. For instance, the *almajiri* system in Northern Nigeria allows parents to hand over their children to a religious leader to raise them as religious scholars.<sup>39</sup> Similar systems operate in other West African societies like the *mendiants* of Mali and Senegal and the street children of The Gambia and Niger.

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<sup>32</sup> Edwin Gaarder and others, ‘Towards an estimate of informal cross-border trade in Africa’ ECA, <<https://repository.uneca.org/handle/10855/46374#:~:text=Our%20estimate%20found%20ICBT%20to,formal%20trade%20between%20neighbouring%20countries>> accessed 27 December 2024.

<sup>33</sup> Ibid.

<sup>34</sup> (n 27)

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Stellamarris Ngozi Okpara, ‘Media, the Family and Human Trafficking in Nigeria’ in The Handbook of Research on the Global Impact of the Media on Migration Issues, (2020), <<https://www.igi-global.com/dictionary/media-the-family-and-human-trafficking-in-nigeria/78644>> accessed 27 December 2024.

<sup>38</sup> Ibid.

<sup>39</sup> (n 24)



Under these cultures, several children are placed under the care of a single master who assumes responsibility for their upbringing and ultimate destiny in life.<sup>40</sup> These children engaged in street begging and may result in other harmful practices. In Nigeria, the *almajiri* system is susceptible to abuse by the masters and has become a recruitment source of fighters for religious fundamentalist and terrorist groups like the Boko Haram, Islamic State West African Province ISWAP and Ansaru terror groups.<sup>41</sup>

Finally, false portrayals of success abroad coupled with social media misinformation mounts pressure on impressionable youth to succumb to human trafficking.<sup>42</sup>

### **2.3 ENVIRONMENTAL FACTORS**

According to Phillippe Lazaro, “A poor environment creates the conditions that make people vulnerable to human trafficking.”<sup>43</sup> Deforestation and other forms of environmental degradation have resulted to increased rural-urban migration with attendant dangers of human trafficking.<sup>44</sup> In the words of Nigeria’s National Agency for the Prohibition of Trafficking in Persons (NAPTIP), “When climate disaster strikes, it dislocates people and throws them into poverty. People are made to migrate. Forced migration increases the rate of vulnerability and exposure to the risk of human trafficking.”<sup>45</sup>

The social dislocation that climate change engenders is a driver of human trafficking in many regions of the world including West Africa.<sup>46</sup> The arid and semi-arid Sahel region of West Africa

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<sup>40</sup> (n 24)

<sup>41</sup> Iro Aghedo and Surulola James Eke, ‘From Alms to Arms: The Almajiri Phenomenon and Internal Security in Northern Nigeria’ *The Korean Journal of Policy Studies*, Vol. 28, No. 3 (2013), pp. 97-123, p. 106, GSPA, Seoul National University < [https://s-space.snu.ac.kr/bitstream/10371/90897/1/05\\_Iro%20Aghedo.pdf](https://s-space.snu.ac.kr/bitstream/10371/90897/1/05_Iro%20Aghedo.pdf)> accessed 27 December 2024

<sup>42</sup> Roland Aghahiusi Ukhurebor (n 5)

<sup>43</sup> (n 2)

<sup>44</sup> (n 26)

<sup>45</sup> NAPTIP, Fight Against Human Trafficking and Displacement in Nigeria Receives a Boost as NiMET Joins Forces with NAPTIP to Scale Up Awareness and Enlightenment Across the Country, (September 25, 2024), <<https://naptip.gov.ng/fight-against-human-trafficking-and-displacement-in-nigeria-receives-a-boost-as-nimet-joins-forces-with-naptip-to-scale-up-awareness-and-enlightenment-across-the-country/#:~:text=We%20are%20seeing%20the%20increasing,the%20risk%20of%20human%20trafficking>> accessed 24 December 2024

<sup>46</sup> U.S. State Department, The Intersection Between Environmental Degradation and Human Trafficking, <<https://2009-2017.state.gov/j/tip/rls/fs/2014/227667.htm>> accessed 26 December 2024.

have caused the migration of large populations to more environmentally conducive regions. This exodus is fraught with dangers of human exploitation by criminals.

## **2.4 POLITICAL FACTORS**

The political conditions in many African societies create enabling environments for human trafficking. These conditions include lack of respect and protection of human rights, armed conflicts and displacement of populations across national borders, absence of political will or capacity to fight human trafficking, corruption, weak law enforcement and judicial institutions, etc.<sup>47</sup>

The activities of terrorists and bandits in the Sahel region of West Africa (especially in Niger, Nigeria, Burkina Faso and Mali) have resulted to the displacement of large populations of citizens. The United Nations High Commissioner for Refugees (UNHCR) in their 2023 Annual Report stated that there were more than 300,000 Nigerians displaced in Cameroon, Chad and Niger as a result of the Boko Haram insurgency in North Eastern Nigeria.<sup>48</sup> These refugees displaced abroad are exposed to the machinations of cross border human traffickers who are eager to exploit their vulnerabilities.

Many West African countries are beset by several economic, security and political challenges. Their respective governments are too occupied with finding solutions to these existential threats confronting them to have the time and resources to spare for human trafficking. Moreover, human trafficking affects the poor and vulnerable in the society. Therefore, the elites in government circles do not tend to give it the attention it deserves. Public resources are often allocated to matters that affect the elites more directly. In this atmosphere of near indifference to the evil of human trafficking, its perpetrators find a fertile ground to thrive.<sup>49</sup>

## **2.5 TECHNOLOGICAL FACTORS**

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<sup>47</sup> (n 23)

<sup>48</sup> UNHCR, Annual Results Report-2023-Nigeria,< [https://reporting.unhcr.org/sites/default/files/2024-06/WCA%20-%20Nigeria%20ARR%202023\\_0.pdf](https://reporting.unhcr.org/sites/default/files/2024-06/WCA%20-%20Nigeria%20ARR%202023_0.pdf)> accessed 26 December 2024

<sup>49</sup> (n 11)

The exponential growth of the information technology sector globally in the last quarter century has seen to the increase in communication and commerce around the world. The ease of commercial activities and the relative anonymity that the internet affords have been exploited by human traffickers to enhance their nefarious trade.

Traffickers have leveraged the resources provided by the internet to advertise, recruit and exploit their victims.<sup>50</sup> Also, digital tools like webcams, livestreaming and virtual meetings have eliminated the necessity of physical transportation of victims and perpetrators of human trafficking. The digital spaces have been used to recruit victims through fake job advertisements and voluntary transportation to venues of exploitation.<sup>51</sup>

Child trafficking has witnessed a boom through the use of the internet. In its 2017 report titled “The State of the World’s Children- Children in the Digital World” UNICEF stated that:

It has never been easier for bullies, sex offenders, traffickers and those who harm children to contact potential victims around the world, share images of their abuse and encourage each other to commit further crimes. Digital connectivity has made children more accessible through unprotected social media profiles and online game forums. It also allows offenders to be anonymous – reducing their risk of identification and prosecution – expand their networks, increase profits and pursue many victims at once.

Children’s privacy is also at stake. Most children – and many parents – have very limited, if any, awareness of how much personal data they are feeding into the internet, much less how it might one day be used. No child is safe from online risk, but the most vulnerable are those most likely to suffer the harms<sup>52</sup>.

This means that the internet now serves as an enabler of human trafficking as a lot of trafficking activities can take place behind keyboards and monitors without third party observation. The

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<sup>50</sup> UNODC, ‘Traffickers Use of the Internet; Digital Hunting Fields’ <[https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP\\_2020\\_Chapter5.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_Chapter5.pdf)> accessed 24 December 2024

<sup>51</sup> Ibid.

<sup>52</sup> UNICEF, The State of the World’s Children 2017- Children in a Digital World, <<https://www.unicef.org/reports/state-worlds-children-2017>> accessed 26 December 2024.

elimination of the need for physical contact in the course of trafficking has made it easier than ever for traffickers to perpetrate their crimes without much risk of immediate detection.

### **3.0 LEGAL FRAMEWORK FOR COMBATING HUMAN TRAFFICKING IN WEST AFRICA**

There are a few international legal instruments for combating human trafficking in the West African sub-region. Most countries in West Africa are members of the Economic Community of West African States (ECOWAS).<sup>53</sup> There is however, a near dearth of ECOWAS' home-grown legislation on human trafficking. This means that the legal regime on human trafficking in the West African sub-region consists primarily of the municipal laws of individual states and international legal instruments adapted to meet local peculiarities.

In this part of the paper, the applicable legal framework for combating human trafficking in West Africa will be identified and discussed.

- (i) The Palermo Protocol:** Adopted on 15<sup>th</sup> November, 2000 and coming into force on 25<sup>th</sup> December, 2003, the Palermo Protocol represents the first global consensus on the definition of human trafficking.<sup>54</sup> The definition of Palermo Protocol's human trafficking which was earlier reproduced in this paper<sup>55</sup> remains the most popular and widely accepted definition of the concept especially in the international context.<sup>56</sup>

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<sup>53</sup> Mauritania left the bloc in 2002 while Burkina Faso, Mali and Niger followed suit on January 29, Beloved John, 'Niger, Mali and Burkina Faso officially exit ECOWAS' Premium Times, (January, 29, 2025), <https://apnews.premiumtimesng.com/news/770288-niger-mali-burkina-faso-officially-exit-ecowas.html> accessed April 17 2025.

<sup>54</sup> Youth Underground, Palermo Protocol, <<https://youth-underground.com/the-palermo-protocol/#:~:text=In%20December%202000%2C%20the%20international,the%20%E2%80%9CPalermo%20Protocol%E2%80%9D>>> accessed 27 December 2024

<sup>55</sup> (n 4)

<sup>56</sup> (n 12)

Apart from the definition of human trafficking, the highlights of the key provisions of the Palermo Protocol include:

- (a) **Criminalisation of human trafficking- Article 5:** Under the provisions of this article, State Parties are obligated to criminalise human trafficking, attempted trafficking, participating as an accomplice, and organising and directing trafficking.
- (b) **Victim protection and assistance-Article 6:** Under this article, state parties are enjoined to provide assistance and protection for victims of human trafficking. The scope of the assistance and protection include keeping the identities of victims of trafficked persons and judicial proceedings relating to them confidential; provision of information on available administrative and judicial remedies and resources as well as information on victim's legal rights; provision of adequate housing and counselling and rehabilitation services and ensuring the physical safety of victims.
- (c) **Safe hosting of victims - Article 7-** State parties are also enjoined to make provisions for hosting victims of human trafficking in their territory in appropriate cases. In this regard, state parties are obligated to give appropriate consideration to humanitarian and compassionate factors in the exercise of its discretion to grant or deny asylum to victims of human trafficking.
- (d) **Victim repatriation-Article 8 -** State Parties of which victims are nationals or have a right of permanent residence are required to facilitate the safe repatriation of citizens or nationals with due regard for the safety of the victim by providing necessary travel documents and a return without undue or unreasonable delay. This implies the provision of a safe environment for the return of trafficked persons without the danger of further exploitation.
- (e) **Prevention of human trafficking\_- Article 9-** State parties are required to establish comprehensive policies, programs and measures for the prevention of human trafficking and protection of victims from re-victimisation.
- (f) **Capacity building and inter-agency cooperation-Article 10-** This article requires state parties to provide law enforcement training to aid in the identification of potential trafficking victims and perpetrators' tactics and operational models. It also requires information sharing and cooperation among law enforcement and immigration officials of

State Parties regarding transportation routes, fraudulent documents, and potential traffickers.

- (g) **Border controls and security of travel documents-Articles 11 and 12:** These articles enjoin state parties to ensure adequate security at their borders and ensure that travel documents issued by them are of high security standards. State parties are further required to ensure that their immigration policies include obligation of carriers and owners of means of transportation to ensure the validity of identity and travel documentations of their passenger in order to eliminate fraud and human trafficking.

All West African countries<sup>57</sup> have ratified the Palermo protocol. This means that they are theoretically committed to implementing it within their territories.

- (ii) **African Charter on Human and Peoples' Rights:** The African Charter on Human and peoples' Rights (the African Charter) is a human rights instrument setting out in broad outline the human rights standards to which its signatories commit. Although it is not solely dedicated to combating human trafficking, its Article 5 recognises the right to the respect of the dignity and legal status of every person. It also calls for the prohibition of slavery, slave trade, torture, cruel, degrading and inhuman treatment as well as all forms of exploitation. The prohibition of human trafficking can be inferred from the use of such terms as exploitation, slavery and slave trade.

- (iii) **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa:** Popularly known as the Maputo Protocol, this instrument is a supplementary protocol to the African Charter on Human and Peoples' Rights with emphasis on women's rights. It contains provisions that address the issue of women trafficking. For example, Article IV (2) (g) requires state parties to "prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk."<sup>58</sup> Article III (3) enjoins state parties to "adopt and implement appropriate measures to prohibit any exploitation or degradation of women." Similarly,

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<sup>57</sup> The West African Countries that have ratified the Palermo protocol includes: Benin, Burkina Farso, Cape Verde, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

<sup>58</sup> Article 4 (2) (g) Maputo Protocol

Article IV (1) obligates state parties to prohibit all forms of “exploitation, cruel, inhuman or degrading punishment and treatment” of women.

This Protocol forms part of the international obligations of West African states to the African Union. If implemented, it has the potential to address the danger of women exploitation in the sub-region.

**(iv) ECOWAS Common Approach on Migration:** This is a 2008 non-binding agreement of the Authority of Head of States and Governments of ECOWAS. Its principal objective is the development of common principles on the promotion of free movement of persons within the ECOWAS territory and legal and safe migration through the sub-region. Concerning human trafficking, the “ECOWAS Member States reaffirmed their willingness to combat all entities, in the North and South, which promote the recruitment, transportation and exploitation of irregular migrants, particularly women and children.” The instrument makes combating human trafficking and offering humanitarian assistance to its victims’ moral imperatives to all member states.

**(v) Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children:** This is a 2006 action plan adopted in Tripoli, Libya by the Ministerial Conference on Migration and Development of the European Union and African States. The action plan is anchored on a set of “general principles” which include respect for human rights in combating human trafficking; women empowerment and poverty alleviation as well as addressing unemployment, uneven distribution of wealth, armed conflict, corruption, and discrimination.

The action plan includes the following points:

- (a) Prevention and awareness raising:** States are required to adopt education, skill acquisition and counselling as preventive measures against human trafficking. Women empowerment and creation of employment opportunities are viable agents of discouraging human trafficking. Finally, states are required to leverage mass media in sensitising their populations to the dangers of human trafficking.
- (b) Victim protection and assistance:** The action plan requires states to base their victim protection programmes and policies on international human rights instruments. They are

also required to track victims of human trafficking and provide them with needed assistance and support. Furthermore, states are mandated to adopt measures to avoid criminalisation of victims of trafficking, as well as stigmatisation and the risk of revictimisation. States are also enjoined to educate victims of human trafficking of their legal rights and the available legal avenues of remediation.

(c) **Legislative Framework, Policy Development and Law Enforcement:** Under this rubric, states are required to sign, ratify and implement the UN Convention against Transnational Organised Crime and the Palermo Protocol. The action plan restates and adopts the provisions of these two instruments.

**(vi) ECOWAS Convention on Mutual Assistance in Criminal Matters:** Adopted in 1992, this Convention obligates member states to give the highest measure of mutual assistance to each other in criminal investigation and prosecution. The nature of mutual assistance envisaged by the Convention include recording of witness' statements or evidence; service of court processes, forfeiture and confiscation of proceeds of crimes, examination of sites, provision of information and evidentiary items, etc. With regard to human trafficking, this Convention serves as a tool for harnessing multi-state efforts to combat human trafficking in the sub-region.

**(vii) West African Central Authorities and Prosecutors against Organized Crime (WACAP):** This is a creation of UNODC aimed at creating synergy among prosecutorial agencies in the sub-region.<sup>59</sup> WACAP is linked to the Bamako Declaration on Impunity, Justice, and Human Rights in West Africa, which emphasises mutual legal assistance networks among magistrates in different countries. The WACAP serves to bridge the jurisprudential and procedural differences between the common law and civil law jurisdictions in the sub-region.

WACAP's programmes are divided into two phases. Under the first phase, prosecutors and courts are connected to their counterparts within and outside the sub-region. This leads to network building and exchange of information among different jurisdictions. In the first

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<sup>59</sup> UNODC, West African Central Authorities and Prosecutors against Organized Crime, WACAP, <[https://www.unodc.org/documents/organized-crime/GPTOC/13-87039\\_WACAP\\_Leaflet\\_Ebook.pdf](https://www.unodc.org/documents/organized-crime/GPTOC/13-87039_WACAP_Leaflet_Ebook.pdf)> accessed 30 December 2024.



phase, regular meetings and training programmes of prosecutors and other stakeholders are expected to result to exchange information about their respective legal systems and procedures, to develop a common language, and to share good practices.<sup>60</sup> The expected outcomes of the first phase is improved response to requests for mutual legal assistance and extradition as well as the seizure and confiscation of the proceeds of crime.

In the second phase, the prosecutors and practitioners are expected to develop capacity and skill set necessary for successful prosecution of transnational crimes including human trafficking. The essence of the WACAP programme is to foster cooperation and mutual assistance across borders which would lead to successful prosecution of transnational crimes.

**(viii) Municipal Laws of Member States:** Apart from international, regional and sub-regional legal instruments, municipal laws remain pivotal in confronting human trafficking in West Africa. Indeed, the implementation of the international instruments depends on the efficacy of municipal measures in that regard. Although all West African countries are signatories to the Palermo protocol and other multi-lateral arrangements to combat human trafficking, very few have developed local laws that derive from and build on the principles espoused by the international and regional legislation. With the exception of Senegal, there is a near-dearth of local legislations dedicated to implementing the Palermo Protocol or otherwise combating human trafficking. This paper will limit its analysis of municipal anti-human trafficking laws to Nigeria which has developed robust anti-human trafficking measures and structures in the last two decades.

Nigeria's flagship anti-human trafficking law is the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPLEA), 2015. The stated objectives of the Act include provision of an effective and comprehensive Legal and Institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offences in Nigeria and the protection of victims of Human Trafficking.<sup>61</sup> These objectives are a restatement and enforcement of the Palermo Protocol. Other pieces of legislation that prohibit and criminalise

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<sup>60</sup> Ibid.

<sup>61</sup> Section 1 TIPLEA

human trafficking include section 34 of the Labour Act that prohibits forced or compulsory labour; section 398 of the Criminal Code Act criminalises slave trade and sections 284 and 287 of the Penal Code criminalise forced labour and slavery, respectively. The Act also creates a dedicated government agency to implement its provision and combat human trafficking.<sup>62</sup>

A few other countries like Ghana and Senegal have enacted similar custom-made legislations aimed at combating human trafficking in West Africa.<sup>63</sup> In summary, the legal framework for fighting transborder human trafficking in West Africa comprises international, regional, sub-regional and municipal legislations and legal instruments.

#### **4.0 LIMITATIONS OF THE LEGAL FRAMWORK FOR COMBATING HUMAN TRAFFICKING IN WEST AFRICA**

As already stated in this paper, the principal international legal framework for fighting transnational human trafficking is the Palermo Protocol. However, the Palermo Protocol itself relies on the capacity and disposition of state parties to implement its provisions. This arrangement is fraught with inherent limitations such as the lack of capacity or the political will of many countries to implement anti-human trafficking measures in their territories, among other factors. Some of the major limitations are discussed in this part of the paper.

- (i) **Conceptual limitations:** The Palermo Protocol focuses on the role of organized criminal gangs in transnational human trafficking. There is scant interest in small scale individual level human trafficking.<sup>64</sup> The focus on organized criminal groups means that other levels of trafficking could slip under the radar of law enforcement agencies. Transnational human trafficking perpetrated on level lower than organised criminal groups have as serious an impact on the victims as those committed by organised criminal syndicates

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<sup>62</sup> Section 2 (1) TIPLEA that establishes the National Agency for the Prohibition of Trafficking in Persons.

<sup>63</sup> Ghana's Human Trafficking Act, 2005 and Senegal's Law No. 2005-06, 2005

<sup>64</sup> (n 23)

- (ii) **Structural limitations:** The Palermo Protocol and most of the multi-lateral anti-human trafficking legislations are state-focused. They mandate the state parties to institute measures aimed at curbing transnational human trafficking. The emphasis on government downplays the potential influence of civil society on human trafficking eradication efforts. The fixation on state action to the exclusion of civil society is a major limitation on the efficacy of the anti-human trafficking measures.
- (iii) **Discrepancies in legal frameworks:** As stated earlier in this paper, the Palermo Protocol and its offshoots depend on domestic enforcement to have effect. However, there is a lack of uniformity in the respective legal regimes of human trafficking in West African countries. Some of the countries do not even have a statute dedicated to addressing the evil of human trafficking in line with their international obligations. The discordance in the legal regimes applicable in different countries makes it difficult for a coordinated assault on human trafficking at the sub-regional level. Moreover, the dichotomy in the legal systems operated in west Africa (i.e. common law and civil law) makes it difficult to achieve consensus among different jurisdictions on the best approach to tackling transnational crimes like human trafficking.
- (iv) **Weak enforcement:** Many countries in West Africa lack the capacity or even the political will to enforce anti-human trafficking measures. Traffickers identify such conducive places and turn them into human trafficking hubs. Many countries in West Africa have long and porous borders. This makes it difficult to effectively police the borders. Traffickers exploit these vulnerabilities to perpetrate their nefarious trade.
- (v) **Corruption:** Corruption is still endemic within law enforcement and judicial circles in many West African countries. This undermines efforts to tackle human trafficking.
- (vi) **Inadequacy of data:** Many countries in West Africa do not have accurate databases on human trafficking. Some of them do not even have the structures or agencies responsible for collecting and processing such data. The lack of credible data on human trafficking undermines efforts at combating it.

## 5.0 RECOMMENDATION

The paper has identified some of the limitations militating against the effective implementation of the legal measures for fighting transnational human trafficking in west Africa. The proposed solutions to the limitations include:

- (i) **Centralisation of the legal regime:** It was observed in the course of the analysis in this paper that there is a discordance in the efforts of different countries in meeting their international obligations to combat transnational human trafficking. While some countries have developed robust legal mechanisms for addressing the menace, others have yet taken any substantial step in that direction. It might be concluded that the reliance placed on state parties for the implementation of international anti-human trafficking legislation has failed in west Africa. This position is supported by the growth of human trafficking in the sub-region. This calls for the centralisation of anti-human trafficking measures in the sub-region.

It is suggested that ECOWAS should create a law enforcement agency with community wide jurisdiction to combat trans-national human trafficking. This will remedy the deficiencies created in countries without adequate anti-human trafficking measures. Furthermore, the jurisdiction of the ECOWAS community court should be expanded to include criminal jurisdiction over trans-national human trafficking. In this way, judicial ineptitude and incapacity will no longer be a clog in the wheel of anti-human trafficking effort.

- (ii) **Civil society involvement:** The extant legal regime on transnational human trafficking is state-centric. This has tied up anti-trafficking efforts in bureaucratic bottle necks and inefficiency. It is, therefore, suggested that there should be greater involvement of non-governmental organisations (NGOs) in the fight against the scourge. This will enhance transparency, accountability and efficiency.
- (iii) **Administrative reforms:** The failure of many west African countries to give effect to their international obligations to combat human trafficking is a pointer to the need for legislative and other reforms in those countries. These countries should, as a matter of urgency, enact the necessary legislation and adopt allied policies to effectuate the ideals and action plans outlined in the multi-lateral agreements on human trafficking.

Some of the defaulting states lack the capacity to attain the requisite reforms on their own. It becomes necessary for development partners to support them with financial and technical assistance to achieve these goals.

## **6.0 CONCLUSION**

Transnational human trafficking is a scourge afflicting humanity. West Africa is among the regions most ravaged by the scourge. It is used as origin, transit and destination zones for human trafficking. West African countries have signed to a number of multi-lateral instruments targeted at human trafficking. Unfortunately, these legislations have failed to achieve their purpose in the sub-region due to the reliance on state parties for their implementation.

The paper suggests a more hands-on approach by ECOWAS to addressing the menace of human trafficking in west Africa. ECOWAS should consider taking on a more direct role in law enforcement and prosecution of transnational human trafficking. It is suggested that NGOs should be given greater roles in the anti-trafficking advocacy.