

# THE PHENOMENON OF “BABY FACTORIES” IN NIGERIA AS A NEW TREND IN HUMAN TRAFFICKING

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## ABSTRACT

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According to the United Nations Organisation for Education, Science and Culture (UNESCO), Nigeria is one of the leaders in human trafficking among African countries. In Nigeria, persons are usually trafficked for the purposes of prostitution, begging, domestic servitude and other types of underpaid and exploited forced labour. In recent years, traffickers in Nigeria have also started exploiting their victims for “baby harvesting.” The first cases of “baby harvesting” were reported in 2006 by UNESCO in its policy paper “Human trafficking in Nigeria: Root Causes and Recommendations.” However, the case studies related to “baby harvesting” examined in the policy paper did not evidence exploitation of persons and most likely could amount to sale of infants and illegal international and domestic adoptions.

Meanwhile, it is well known that traffickers are rather responsive to demand, prompting them to create new criminal schemes. Since 2006 “baby harvesting” in Nigeria has taken a more dangerous and complex form involving human trafficking alongside other illegal activities. For example, according to recent mass media reports, teenage girls and young women are brought by traffickers to the so-called “baby factories” with false promises of jobs or safe abortions. As a result, they are confined and forced to give birth. Some of the victims are trafficked while being pregnant; others are later impregnated by men specially hired for such purposes. Allegedly, their babies are sold for international or domestic adoption, rituals, slave labour or sexual exploitation.

There is little research on this type of human trafficking. Therefore, the purpose of this paper is to start an academic conversation about the phenomenon of “baby factories” as a new trend in human trafficking in Nigeria in order to raise awareness of this problem among legal professionals and human rights activists. The paper will define the “baby factory” issue by reviewing several case studies and describing the current legal framework for combating this phenomenon. Further, the author will examine the root causes of the “baby factories” in Nigeria, analyse the measures undertaken by the Nigerian government against “baby harvesting”, and provide recommendations for addressing this problem.

## I. INTRODUCTION

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Human trafficking is a serious crime and a global phenomenon involving millions of victims of at least 136 different nationalities from around 118 countries worldwide.<sup>1</sup> Trafficked persons are exploited in different economic sectors and for various purposes. In Nigeria, victims are usually trafficked for the purposes of prostitution, begging, domestic servitude and other types of underpaid and exploited forced labour.<sup>2</sup> In recent years, traffickers in Nigeria have also started exploiting their victims for “baby harvesting.” The first cases of “baby harvesting” were reported in 2006 by the United Nations Organisation for Education, Science and Culture (UNESCO) in its policy paper “Human trafficking in Nigeria: Root Causes and Recommendations.”<sup>3</sup> However, the case studies related to “baby harvesting” examined by the policy paper did not evidence exploitation of persons and would more likely be categorised as the sale of infants or illegal adoptions.

Meanwhile, it is well known that traffickers are rather responsive to demand, prompting them to create new criminal schemes. Since 2006 “baby harvesting” in Nigeria has taken a more dangerous and complex form involving human trafficking alongside other illegal activities. For example, according to recent media reports, teenage girls and young women are brought by traffickers to so-called “baby factories” with false promises of jobs or safe abortions. Instead, they are confined and forced to give birth. Some of the victims are trafficked while being pregnant; others are later impregnated by men specifically hired for such purposes. Allegedly, their babies are sold for international or domestic adoptions, rituals, slave labour or sexual exploitation.<sup>4</sup>

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<sup>1</sup> UNODC, *Global Report on Trafficking in Persons 2012* (United Nations publication, Sales No. E.13.IV.1), at 1, 7, available at [http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking\\_in\\_Persons\\_2012\\_web.pdf](http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf).

<sup>2</sup> UNESCO, Human trafficking in Nigeria: Root Causes and Recommendations (Policy paper, No. 14.2 (E)), 27 (2006), available at <http://unesdoc.unesco.org/images/0014/001478/147844E.pdf>; U.S. Department of State, *Trafficking in Persons Report 2013* [hereinafter *TIP Report 2013*], at 285, available at <http://www.state.gov/documents/organisation/210737.pdf>.

<sup>3</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 31.

<sup>4</sup> See Uduma Kalu, *How child trafficking network operates in South East*, Vanguard (July 30, 2011), available at <http://www.vanguardngr.com/2011/07/how-child-trafficking-network-operates-in-south-east/>; Isioma Madike, *The ABC of Baby Factories (National Mirror Investigation)*, CKN Nigeria (May 26, 2013), available at <http://www.cknnigeria.com/2013/05/the-abc-of-baby-factories-national.html>; *Nigeria “baby factory” raided in Imo State*, BBC (May 10, 2013), available at <http://www.bbc.co.uk/news/world-africa-22484318>; *32 teens freed in Nigeria “baby factory” raid*, CBS News (June 2, 2011), available at [http://www.cbsnews.com/8301-503543\\_162-20068184-503543.html](http://www.cbsnews.com/8301-503543_162-20068184-503543.html); *Nigeria frees 16 in “baby factory” raid*, news24 (June 20, 2013), available at <http://www.news24.com/Africa/News/Nigeria-frees-16-in-baby-factory-raid-20130620>; Philip Caulfield, *Police in Nigeria free 32 pregnant teens from “baby factory;” newborns sold into labour, sex markets*, Daily News (June 2, 2011), available at: <http://www.nydailynews.com/news/world/police-nigeria-free-32-pregnant-teens-baby-factory-newborns-sold-labour-sex-markets-article-1.127079#ixzz2VH1sr4f1>.

There is little research on this type of human trafficking. Therefore, the purpose of this paper is to start an academic conversation about the phenomenon of “baby factories” as a new trend in human trafficking in Nigeria in order to raise awareness of this problem among legal and human rights professionals. The lack of clarity among Nigerian law enforcement and legal professionals, as to whether “baby factories” constitute human trafficking or merely violate adoption rules, allows operators of such “factories” to escape prosecution and continue their illegal activities.<sup>5</sup> In order to shed further light on this activity, this paper examines whether such “baby factories” constitute a human trafficking offence and suggests measures for preventing “baby harvesting” crimes in the future. The importance of this academic conversation is also emphasised by the fact that human trafficking may potentially become an international crime of *jus cogens*. Attainment of such status would allow legal academics to advocate for application of universal jurisdiction to all existing and emerging types of human trafficking including “baby factories,” which may be an effective tool in fighting the impunity with which many traffickers currently act.<sup>6</sup> Accordingly, the paper will first explain the concept of human trafficking and the status of this crime under international law, define the “baby factory” issue by reviewing several case studies, and then describe the current legal framework for combating this phenomenon. Further, the author will examine the root causes of the “baby factories” in Nigeria, analyse the measures undertaken by the Nigerian Government against “baby harvesting,” and provide recommendations for ensuring effective prosecution of this crime, addressing its supply side and reducing demand for such babies.

## II. WHAT IS HUMAN TRAFFICKING?

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Human trafficking was first defined in 2000 by the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime (*Palermo Protocol*).<sup>7</sup> The definition of human trafficking comprises three constituent elements: the acts, the means, and the purpose. The acts include “recruitment, transportation, transfer, harbouring or receipt of persons.” Any of these criminal acts must be committed by one of the following means to constitute human trafficking: “threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a

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<sup>5</sup> See pp. 10, 11, 14, 17, footnotes 64, 83, 84, 103 of this paper for more information on this issue.

<sup>6</sup> See pp. 6-8, footnotes 31-45 of this paper for information on whether human trafficking may be considered as a self-standing international crime subject to universal jurisdiction.

<sup>7</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, *entered into force* 25 December 2003 [hereinafter *Palermo Protocol*], art. 3(a), available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

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.” The purpose of such acts must be exploitation which includes “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.”

To establish criminal liability for human trafficking each of these three elements must be proven, unless a victim of human trafficking is a child. In cases of child trafficking, the means used are irrelevant for the existence of human trafficking as a criminal offence.<sup>8</sup> The Palermo Protocol also states that traffickers cannot use a victim’s consent to exploitation as a defence to avoid criminal responsibility for human trafficking once any of the prohibited means of trafficking are established.<sup>9</sup> Since the means do not constitute an element of the crime of child trafficking, consent of a child to exploitation is always considered invalid even if a child gave such consent without being threatened, forced, coerced, abducted or deceived.

The crime of human trafficking can be national or transnational. The Palermo Protocol primarily fights the transnational organised crime of human trafficking, since the Palermo Protocol supplements the United Nations Convention Against Transnational Organised Crime and must be interpreted together with it.<sup>10</sup> The crime of human trafficking is transnational when:

1. It is committed in more than one state;
2. It is prepared, planned, directed or controlled in one state, but its commission takes place in another state;
3. Trafficking was carried out by an organised criminal group that is engaged in a criminal activity in more than one state; or
4. It was committed in one state, but has a substantial effect in another state.<sup>11</sup>

Human trafficking is often referred to as an international crime. While in some instances human trafficking as an “international crime” is defined synonymously with “transnational crime” as understood by the Palermo Protocol and the United Nations Convention Against Transnational

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<sup>8</sup> *Id.* at art. 3(c).

<sup>9</sup> *Id.* at art. 3(b).

<sup>10</sup> *Id.* at art. 1; United Nations Convention Against Transnational Organised Crime, *entered into force* 29 September 2003, art. 3, available at <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>11</sup> United Nations Convention Against Transnational Organised Crime, *supra* note 10, art. 3(2).

Organised Crime,<sup>12</sup> some organisations and scholars regard it as an international crime against humanity prohibited by Article 7 of the Rome Statute of the International Criminal Court (*the ICC Statute*).<sup>13</sup> For example, UNESCO and the United Nations Office on Drugs and Crime (*UNODC*) refer to human trafficking as a crime against humanity in its publications.<sup>14</sup> Authoritative scholars who argue that trafficking in persons may constitute a crime against humanity include Dr. Mohamed Y. Mattar and Professor Tom Obokata.<sup>15</sup>

Article 7(1) of the ICC Statute explicitly prohibits criminal conduct related to human trafficking, such as “enslavement,” “sexual slavery,” “enforced prostitution,” “forced pregnancy,” and “any other form of sexual violence of comparable gravity.” At the same time human trafficking may be prosecuted by the International Criminal Court (*ICC*) as an international crime against humanity only when it is committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” According to Dr. Mattar and Professor Obokata trafficking in persons may meet these key elements of the crime against humanity. Their findings, supported by the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), scholarly works, and opinions of the International Law Commission, are summarised below.

“An attack directed against civilian population” does not necessarily mean a military attack. According to Article 7(2)(a) of the ICC Statute it means “a course of conduct involving the multiple commission of acts” prohibited by Article 7(1) of the ICC Statute. For example, trafficking of multiple persons may be considered as an attack against a civilian population.<sup>16</sup> Such an attack must be committed “pursuant to or in furtherance of a State or organisational policy.” The term “organisational policy” suggests that not only States, but also organisations (e.g. organised criminal

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<sup>12</sup> See Interpol, *Trafficking in Human Beings*, available at <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Trafficking-in-human-beings>; HM Government, *Human Trafficking: The Government's Strategy 5* (2011), available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/97845/human-trafficking-strategy.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97845/human-trafficking-strategy.pdf). For instance, Interpol and the Government of the United Kingdom refer to human trafficking as an international organised crime most probably meaning that it is a transnational organised crime as understood by the Palermo Protocol and the United Nations Convention Against Transnational Organised Crime, *id*.

<sup>13</sup> Rome Statute of the International Criminal Court, *entered into force* 1 July 2002, [hereinafter *ICC Statute*], available at <http://untreaty.un.org/cod/icc/statute/rome.htm>.

<sup>14</sup> See Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 20; UNODC, *Act Against Human Trafficking*, available at: <http://www.unodc.org/documents/human-trafficking/Act-Against-Human-Trafficking.pdf>.

<sup>15</sup> Dr. Mohamd Y. Mattar, *The International Criminal Court (ICC) Becomes a Reality: When Will the Court Prosecute the First Trafficking in Persons Case?*, ProtectionProject.com (July 9, 2002), available at: <http://www.protectionproject.org/wp-content/uploads/2010/09/icc.pdf>; Obokata Tom, ‘Trafficking of Human Beings as a Crime Against Humanity: Some Implications for the International Legal System’, *International and Comparative Law Quarterly* 2005 54(2) p. 445 available at: <http://search.proquest.com/docview/236656143?accountid=11091>.

<sup>16</sup> See Obokata, *supra* note 15, at 451.

groups) may implement a policy to commit attacks against civilian population. The existence of such a policy may be proven by the widespread or systematic nature of a particular act itself.<sup>17</sup>

The attack against a civilian population must be either widespread or systematic. Human trafficking may be widespread when it is large-scale in nature and involves the “multiplicity of victims.” Systematic conduct is evidenced by the organised nature of the acts and their repetition on a regular basis.<sup>18</sup>

Another core element of the crime against humanity is the “knowledge of the attack.” For example, a trafficker must not only have a criminal intent to commit a crime of human trafficking, but also must know that there is an attack on the civilian population (e.g. trafficking of multiple persons) and that his actions constitute part of such an attack.<sup>19</sup> According to Professor Obokata, knowledge of such an attack by traffickers is presumed by the definition of human trafficking in the Palermo Protocol.<sup>20</sup>

Given the above description of the elements of the crime against humanity, trafficking in persons might amount to an international crime under the ICC Statute. For example, human trafficking is widespread, it affects 161 countries worldwide.<sup>21</sup> About 27 million men, women and children become victims of this crime at any given time.<sup>22</sup> Further, human trafficking may be also systematic, especially when it is committed by organised criminal groups. In turn, the systematic nature of the crime suggests that traffickers are aware of other trafficking cases in which their criminal group is involved and, therefore, have at least a general idea of an attack on the civilian population.

The ICTY case of *Prosecutor v. Kunarac* could further support the argument that human trafficking constitutes a crime against humanity.<sup>23</sup> In this case the ICTY found two Bosnian soldiers guilty of a crime against humanity (enslavement and rape). According to the facts of the case, defendants kept several women in remote locations for several months. They visited the premises occasionally, raped the women, had “complete control over their movements, privacy and labour,” and treated them as their property. The women had to perform all the household chores, obey all demands of the soldiers, and had no opportunity to escape from these premises. The defendants allowed other soldiers to rape and abuse these women. One of the defendants eventually sold several of these

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<sup>17</sup> *Id.* at 452-453.

<sup>18</sup> *Id.* at 451-452; Mattar, *supra* note 15.

<sup>19</sup> Obokata, *supra* note 15, at 452.

<sup>20</sup> *Id.* at 453.

<sup>21</sup> Polaris Project, *International Trafficking*, PolarisProject.org, available at <http://www.polarisproject.org/human-trafficking/international-trafficking>.

<sup>22</sup> TIP Report 2013, *supra* note 2, at 7.

<sup>23</sup> ICTY, T.Ch. I, *Prosecutor v. Kunarac*, Case No. IT-96-23-T&IT-96-23/1-T, Judgment, 22 February 2001, available at <http://www.icty.org/x/cases/kunarac/tjug/en/kun-tj010222e.pdf>.

women to other soldiers.<sup>24</sup> This ICTY judgment could be influential for future human trafficking cases brought before the ICC due to the following reasons. First, the facts of this case may be attributable to different human trafficking situations. Second, in holding that enslavement constitutes a crime against humanity, the ICTY also found that indications of enslavement could include trafficking in persons.<sup>25</sup>

If human trafficking were to be considered an international crime against humanity one of the advantages would be that, unlike the Palermo Protocol, the ICC Statute allows prosecuting non-State actors.<sup>26</sup> In the case of human trafficking, such non-State actors may be organised criminal groups and traffickers belonging to such groups. The ICC may exercise territorial and nationality jurisdiction over the alleged perpetrators. To date, the ICC has not tried any human trafficking cases. However, should such precedent occur in the future, human traffickers, who are either Nigerians or operate on the territory of Nigeria, may become prospective “targets” of the ICC, since Nigeria signed the ICC Statute on 1 June 2000 and ratified it on 27 September 2001.<sup>27</sup>

At the same time, not all cases of human trafficking may be classified as crimes against humanity and hence be subject to jurisdiction of the ICC. For example, those human trafficking offences, in which organised criminal groups are not involved, are unlikely to reach the high threshold of crimes against humanity that must be “part of a widespread or systematic attack.” Further, the ICC Statute does not “concern itself at all with the definition of trafficking,”<sup>28</sup> and instead Article 7(1) only enumerates crimes that are related to this offence. Therefore, a crime of human trafficking is likely to be excluded from the category of crimes against humanity if subsequent exploitation of a victim does not amount to “enslavement” or other offences related to trafficking in persons and prohibited by Article 7(1) of the ICC Statute.<sup>29</sup>

However, should human trafficking be considered as a self-standing international crime (without falling into the scope of crimes against humanity), the application of universal jurisdiction by domestic courts of any State might be an alternative and possibly even more effective way to fight the impunity of traffickers. According to legal doctrine, universal jurisdiction may be asserted by any

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<sup>24</sup> *Id.* at paras. 728-742, 746-782.

<sup>25</sup> *Id.* at para. 542.

<sup>26</sup> International Criminal Court, *Understanding the International Criminal Court*, 5, available at <http://www.icc-cpi.int/iccdocs/PIDS/publications/UICCEng.pdf> (last visited Sept. 26, 2013).

<sup>27</sup> Information on the status of ratification of the ICC Statute is available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg\\_no=XVIII-10&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=XVIII-10&chapter=18&lang=en).

<sup>28</sup> Anne T. Gallagher, *The International Law of Human Trafficking*, Cambridge: Cambridge University Press 2010 p.216.

<sup>29</sup> See Obokata, *supra* note 15, at 453; see also Jean Allain, *Slavery in International Law: Of Human Exploitation and Trafficking*, Leiden: Martinus Nijhoff Publishers 2013 p.286.



State over serious international crimes under customary international law, which have reached *jus cogens* status, regardless of territorial or nationality links.<sup>30</sup> The examples of such crimes are piracy, genocide, crimes against humanity, war crimes, torture, slavery, and slave-related practices.<sup>31</sup>

The question then arises: could human trafficking be seen as an international crime of *jus cogens* status? This question is rather controversial with no definitive answer, since there is lack of unanimity among scholars as to the criteria for international criminalisation of prohibited conduct. For example, Antonio Cassese and Robert Cryer are proponents of a narrow definition of an international crime, one which comprises only core international crimes that may be prosecuted by international criminal tribunals and excludes other offences such as trafficking in persons.<sup>32</sup> Another prominent scholar, Cherif Bassiouni, defines international crimes more broadly and refers to human trafficking as an international crime that has reached *jus cogens* status.<sup>33</sup> The author of this paper favours Robert Currie's approach that classifies human trafficking as a transnational crime of international concern, primarily because human trafficking does not meet two conditions required of an international crime: direct individual liability under international law and application of universal jurisdiction.<sup>34</sup> Indeed, neither treaties nor customary international law explicitly impose criminal responsibility for human trafficking directly on individuals. Further, the text of the Palermo Protocol does not suggest that it allows States Parties to apply universal jurisdiction to human traffickers.

Meanwhile, it is quite possible that human trafficking may become an international crime and even attain *jus cogens* status in the future.<sup>35</sup> In particular, this crime is prohibited by the Palermo Protocol, which, as a treaty, may generate customary international law.<sup>36</sup> The legal literature suggests that there may be several indicators evidencing that a "treaty crime" is evolving into a customary international rule of *jus cogens* status. First, such "treaty crime" should shock conscience of

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<sup>30</sup> See A. Cassese et al., *Cassese's International Criminal Law* Oxford: Oxford University Press 2013 p. 278 ; Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* Cambridge: Cambridge University Press 2010 pp. 50-51; Robert J. Currie, *International & Transnational Criminal Law* Toronto: Irwin Law 2010 pp. 77-78; M. Cherif Bassiouni, *Introduction to International Criminal Law* Leiden: Martinus Nijhoff Publishers 2013 pp. 236-238; Princeton Project on Universal Jurisdiction, *The Princeton Principles on Universal Jurisdiction* (2001), principle 2(1) available at [http://lapa.princeton.edu/hosteddocs/univ\\_jur.pdf](http://lapa.princeton.edu/hosteddocs/univ_jur.pdf).

<sup>31</sup> See Cryer et al., *supra* note 30, at 51; M. Cherif Bassiouni, 'International Crimes: Jus Cogens and Obligatio Erga Omnes', *Law & Contemporary Problems* 1996 59(4) pp. 63, 68; *The Princeton Principles on Universal Jurisdiction*, *supra* note 30, principle 1(1) and 1(2).

<sup>32</sup> Cryer et al., *supra* note 30, at 4; Cassese et al., *supra* note 30, at 20-21.

<sup>33</sup> Bassiouni, *supra* note 30, pp.142-144, 148, 240.

<sup>34</sup> See Currie, *supra* note 30, at 19, 316, 324-327; these two criteria of international crimes are also confirmed by the following materials: Black's Law Dictionary 834 (8<sup>th</sup> ed. 2007) (definition of an "international crime"); Cassese et al., *supra* note 31, at 20; Cryer, *supra* note 30, p. 8.

<sup>35</sup> Currie, *supra* note 30, at 305; see also Neil Boister, *An Introduction to Transnational Criminal Law* Oxford: Oxford University Press 2012 p.19 (discussing how a transnational crime may become a core international crime).

<sup>36</sup> Michael P. Scharf, *Customary International Law in Times of Fundamental Change: Recognising Grotian Moments* Cambridge: Cambridge University Press 2013 pp. 43-44; Mark E. Villiger, *Customary International Law and Treaties: a Manual on the Theory and Practice of the Interrelation of Sources*, Leiden: Martinus Nijhoff Publishers 1997 p. 182.

humanity.<sup>37</sup> Second, it should be universally criminalised by all States in their national legislation,<sup>38</sup> especially by States non-parties, since they invoke a conventional rule not as a contractual obligation, but rather as a customary law.<sup>39</sup> Third, States should support “the introduction of individual criminal liability for this crime in international law.”<sup>40</sup> Finally, there should be general agreement among States that a treaty rule prohibiting this crime is peremptory in nature, in other words it aims “to protect an essential common interest” and its violation will affect “the rights of each and all.”<sup>41</sup>

Accordingly, it may be argued that human trafficking is evolving into a self-standing international crime. For example, human trafficking is recognised as a heinous crime shocking the conscience of humanity.<sup>42</sup> By August 2012, 153 countries and territories have criminalised “fully or partially all or most forms of trafficking in persons.”<sup>43</sup> Further, some States explicitly provide for application of universal jurisdiction to human trafficking in their national legislation, thus elevating this offence to the status of an international crime.<sup>44</sup> Further discussions by international law professionals at international fora would send a message to State officials that treating human trafficking as an international crime and applying universal jurisdiction would be beneficial to the international community in ending the impunity with which human traffickers currently operate.

### III. DEFINING THE PHENOMENON OF “BABY FACTORIES”

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Human trafficking is widespread in Nigeria. According to the latest Trafficking in Persons Report of the U.S. Department of State, Nigeria continues to be a source, transit, and destination country for

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<sup>37</sup> See Boister, *supra* note 35, p. 19.

<sup>38</sup> Currie, *supra* note 30, p. 305.

<sup>39</sup> Villiger, *supra* note 36, pp. 50, 184.

<sup>40</sup> Boister, *supra* note 35, p. 19.

<sup>41</sup> Luigi Condorelli, ‘Customary International Law: the Yesterday, Today and Tomorrow of General International Law’, in Antonio Cassese (ed.), *Realising Utopia: the Future of International Law* Oxford: Oxford University Press 2012 pp. 147, 153.

<sup>42</sup> See Bassiouni, *supra* note 30, p. 242; Obokata, *supra* note 15, p. 445; Miriam Cohen, ‘The Analogy Between Piracy and Human Trafficking: A Theoretical Framework for the Application of Universal Jurisdiction’, *Buffalo Human Rights Law Review* 2010, 16, pp. 206, 228 (2010).

<sup>43</sup> *Global Report on Trafficking in Persons 2012*, *supra* note 1, at 82-83.

<sup>44</sup> Dr. Helmut Satzger, *International And European Criminal Law* München: C.H. Beck, Hart, Nomos 2012 pp. 32-33 (German International Penal Code applies universal jurisdiction to human trafficking); Amnesty International, Ghana: *End Impunity Through Universal Jurisdiction* 2012 pp. 24-25, available at

<http://www.amnesty.org/en/library/asset/AFR28/004/2012/en/6e4a6edf-0202-4560-8f0b-6b840ce67724/afr280042012en.pdf>;

J. Reynolds, ‘Universal Jurisdiction to Prosecute Human Trafficking: Analyzing the Practical Impact of a Jurisdictional Change in Federal Law’, *Hastings International & Comparative Law Review* 2011 34(2) pp. 387, 399 (In 2008, U.S. Congress reauthorised the Trafficking Victims Protection Act and granted universal jurisdiction to U.S. courts to hear cases of human trafficking).

victims of different forms of forced labour and sex trafficking.<sup>45</sup> Though the Report mentions sex trafficking, forced prostitution, domestic servitude, begging, forced labour in street vending, agriculture and mining as the types of human trafficking in Nigeria, in recent years, Nigeria has become also notorious for “baby factories” and “baby harvesting.” There is no legal definition for the phenomenon of “baby factories” or “baby harvesting.” These terms are used by journalists to describe criminal activities in Nigeria involving restriction of a person’s movement against such person’s will, forced impregnations, sale of babies and illegal adoptions. Based on media reports, “baby factories” thrive in the South-East of Nigeria, in particular, the States of Anambra, Lagos, Abia, Imo, Enugu and Ebonyi.

The first cases of “baby harvesting” in Nigeria were officially reported in 2006 by UNESCO.<sup>46</sup> It specifically referred to three Nigerian States: Abia, Ebonyi and Lagos. The detected cases had a similar fact pattern. Pregnant teenagers or adult women with unwanted pregnancies approached doctors, clinics, nurses or orphanages that subsequently took care of these girls and women during their pregnancies. When babies were born they were sold to couples. The natural mothers of the babies signed papers repudiating their claims on the babies and received monetary compensation. UNESCO neither revealed any evidence showing how exactly babies were used upon their sale to a third party, nor reported any trace of exploitation of pregnant women and young girls as well as their babies. Therefore, it is rather doubtful that these cases could be considered to be human trafficking. At a minimum, they would constitute crimes such as the illegal adoption or sale of children.

Since 2006 media have reported at least eleven more cases of “baby factories” in Nigeria and revealed new facts about this phenomenon evidencing the core elements of human trafficking. According to these reports women and girls are lured into such “factories” through deception and abuse of their vulnerability. Thus, traffickers usually approach their victims with false promises of jobs or safe abortions. There are at least two factors that make these victims vulnerable: being children (most victims are still teenagers)<sup>47</sup> or being pregnant out of wedlock, which carries a social stigma in Nigeria.<sup>48</sup> Girls and women are locked up at facilities used as “baby factories,” allowing their traffickers to establish control over them and hold them until they give birth to babies that are subsequently sold to third parties. Those victims who are not pregnant upon their arrival at the “baby

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<sup>45</sup> TIP Report 2013, *supra* note 2 at 285.

<sup>46</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 31.

<sup>47</sup> See The Constitution of the Federal Republic of Nigeria [hereinafter *the Constitution of Nigeria*], sec. 29 (4)(a), available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>. The age of majority in Nigeria is 18 years, *id.*

<sup>48</sup> Research in Brief, *Reducing Unintended Pregnancy in Nigeria* (2005 Series No.4), at 3, available at <http://www.guttmacher.org/pubs/rib/2005/10/04/rib4-05.pdf>; Myne Whitman, *Why Baby Factories will continue to thrive in Nigeria*, YNaija.com (May 23, 2013), <http://www.ynaija.com/myne-whitman-why-baby-factories-will-continue-to-thrive-in-nigeria-y-superblogger/>; Madike, *supra* note 4.

factory” are forcibly impregnated there; with some of them being held at the facility for extended periods and repeatedly impregnated.<sup>49</sup> Though babies are mostly sold for the purposes of adoption, they are also allegedly used for sacrifices in black magic rituals, the sex trade, and manual labour upon their sale to third parties.<sup>50</sup> Should these allegations prove to be true, then these infants may also be victims of human trafficking along with their biological mothers.

The “baby factory” industry flourishes in Nigeria as confirmed by media reports of police raids on such facilities. For example, in May 2008, police rescued about 25 teenage girls from a hospital in Enugu.<sup>51</sup> In June 2011, police freed 32 teenage girls from a “baby factory” located in the city of Aba, Abia state.<sup>52</sup> In October 2011, 17 pregnant girls were saved from an orphanage in Lagos.<sup>53</sup> In May 2013, police rescued 6 teenage girls from a “baby factory” in Enugu, 17 pregnant teenage girls and 11 babies in Southern Imo province, and about 26 teenage girls in Umuaka village, Imo State.<sup>54</sup> In June 2013, police freed 16 pregnant young women from a clinic in Aba City, Abia State.<sup>55</sup> In July 2013, police arrested an owner of the illegal home “Moonlight Maternity Home” and a nurse working for him for selling babies from unwanted pregnancies.<sup>56</sup> In August and September 2013, police unveiled two more cases of baby factories in Imo State.<sup>57</sup> Several “baby factories” were also reported in Anambra State.<sup>58</sup>

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<sup>49</sup> Madike, *supra* note 4.

<sup>50</sup> Kalu, *supra* note 4; Madike, *supra* note 4; *Nigeria “baby factory” raided in Imo State*, *supra* note 4; Reals, *supra* note 4; *Nigeria frees 16 in “baby factory” raid*, *supra* note 4; Caulfield, *supra* note 4.

<sup>51</sup> Chris Oji, *Court detains suspect of illegal maternity home*, The Nation (July 2, 2008), available at [http://www.thenationonlineng.net/archive2/tblnews\\_Detail.php?id=54707](http://www.thenationonlineng.net/archive2/tblnews_Detail.php?id=54707); Adelani Adepegba, *Medical Doctor Turned Us Into Sex Machines, Impregnated Us and Sold Our Babies – Rescued Teenagers*, Nigeria Village Square (Feb. 6, 2010), available at: <http://www.nigeriavillagesquare.com/forum/main-square/48278-medical-doctor-turned-us-into-sex-machines-impregnated-us-sold-our-babies-rescued-teenagers.html>; *Police Raids Reveal Alleged Network of “Baby Farms,”* FoxNews (Nov. 15, 2008), available at: <http://www.foxnews.com/story/2008/11/15/police-raids-reveal-alleged-network-baby-farms/>.

<sup>52</sup> Reals, *supra* note 5; Caulfield, *supra* note 4.

<sup>53</sup> *Nigerian baby factory raided*, news24 (Oct. 16, 2011), available at: <http://www.news24.com/Africa/News/Nigerian-baby-factory-raided-20111015>.

<sup>54</sup> Cheryl K. Chumley, *Nigeria busts another baby factory, saves 6 pregnant teens*, The Washington Times (May 15, 2013), available at <http://www.washingtontimes.com/news/2013/may/15/nigeria-busts-another-baby-factory-saves-6-pregnant/>; *Nigerian police liberate second “baby factory” in a week*, The Raw Story (May 15, 2013), available at <http://www.rawstory.com/rs/2013/05/15/nigerian-police-liberate-second-baby-factory-in-a-week/>; Cheryl K. Chumley, *17 pregnant teens rescued from Nigerian baby factory*, The Washington Times (May 10, 2013), available at <http://www.washingtontimes.com/news/2013/may/10/17-pregnant-teens-rescued-nigerian-baby-factory/>; Chris Njoku, *Pregnant teenagers open up: How we were lured to baby factory home*, National Mirror (May 12, 2013), available at <http://nationalmirroronline.net/new/we-were-lured-to-the-motherless-babies-home/>.

<sup>55</sup> Alozie Ogbonna, *16 Pregnant Girls, Women Rescued from ‘Baby Factory,’* All Africa (June 21, 2013), available at <http://allafrica.com/stories/201306210775.html>.

<sup>56</sup> Tony Edike, *Nigeria: NSCDC Smashes Illegal Baby Factory, Arrests Doctor, Nurse*, All Africa (July 12, 2013), available at <http://allafrica.com/stories/201307120144.html>.

<sup>57</sup> *Baby factory: Two suspects nabbed in Nigeria’s Ebonyi*, TVC News (Aug. 19, 2013), available at <http://www.tvcnews.tv/?q=article/baby-factory-two-suspects-nabbed-nigerias-ebonyi>; Ignatius Okpara, *Police in Imo Arrest Child Trafficking, Baby Factory Operator*, African Examiner (Sept. 8, 2013), available at <http://www.africanexaminer.com/police-in-imo-arrest-child-trafficking-baby-factory-operator/>.

<sup>58</sup> Tony Adibe et al., *Nigeria: Why Baby Factories Boom in South East*, All Africa (June 8, 2013), available at <http://allafrica.com/stories/201306101203.html>.

“Baby factories” are usually disguised as maternity homes, orphanages, social welfare homes, clinics, and even water bottling factories. The traffickers are the owners of these facilities, with some of them being medical doctors. They run their “business” with the help of employees, among whom may be men specifically hired to impregnate women and girls. According to media reports, “baby factories” are operated by well-organised criminal syndicates.<sup>59</sup> Some of the traffickers are recidivists and have been arrested several times by police for operating such “baby factories.” The most notorious of them are Dr. Akunne, Dr. Orikara, and a woman known as “Madam One Thousand.”<sup>60</sup>

In May 2008, police arrested Dr. Akunne for running a “baby factory” disguised as a maternity and social welfare home. The doctor forcefully impregnated teenage girls and confined them in the facility against their will. Once the babies were born, he sold them to third parties. The girls claimed that the doctor took away their cell-phones and deleted stored numbers to prevent them from contacting their friends and relatives for help. They also complained about malnutrition and poor care.<sup>61</sup> Dr. Akunne was subsequently prosecuted and jailed.<sup>62</sup> Before his last arrest in 2008 he had been arraigned three times for child trafficking and operating “baby factories.” However, every time he was arrested he was subsequently granted bail, which allowed him to continue his illegal activities.

Dr. Orikara's clinic, The Cross Foundation, was raided by police twice, in June 2011 and June 2013.<sup>63</sup> Both times pregnant teenage girls and women were rescued from this facility. Police claim that The Cross Foundation is in fact a “baby factory,” and Dr. Orikara is a serial human trafficker who allegedly sold babies to third parties for rituals or other purposes. The first case of June 2011 was referred to the Nigerian state agency fighting human trafficking, the National Agency for Prohibition of Trafficking in Persons (*NAPTIP*). However, the Agency claimed it did not have jurisdiction over such cases and returned the case back to the police. There is no information whether this doctor was ever prosecuted after this first arrest.

A woman known as “Madam One Thousand” has been allegedly engaged in human trafficking for at least ten years. She operates a “baby factory” disguised as a maternity home and a drinking water

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<sup>59</sup> Madike, *supra* note 4; *Police Raids Reveal Alleged Network of “Baby Farms,” supra* note 51.

<sup>60</sup> See e.g. Adepegba, *supra* note 51; *Police Raids Reveal Alleged Network of “Baby Farms,” supra* note 51; Caulfield, *supra* note 4; Ogbonna, *supra* note 55; *Nigeria frees 16 in “baby factory” raid, supra* note 4; Njoku, *supra* note 54.

<sup>61</sup> For more details see Oji, *supra* note 51; Adepegba, *supra* note 51; *Police Raids Reveal Alleged Network of “Baby Farms,” supra* note 51.

<sup>62</sup> Tony Adibe et al., *supra* note 58.

<sup>63</sup> For more information see Reals, *supra* note 4; Caulfield, *supra* note 4; Ogbonna, *supra* note 55; *Nigeria frees 16 in “baby factory” raid, supra* note 4.

factory in a remote village of Umuaka, Imo State. During the latest police raid in May 2013 about 26 teenage girls were rescued.<sup>64</sup> According to mass media she hires scouts and medical doctors to work for her. Scouts look for vulnerable girls giving them false promises of jobs or safe abortions, and doctors refer pregnant girls to this Madam's maternity home. Among her employees are also men who impregnate the girls and women. Victims were confined in this facility that is enclosed by high fences covered with sharp pieces of glass and iron wires to prevent them from escaping. The women complained about poor nutrition and living conditions and some of them were even subjected to hard labour while being pregnant. Before the last police raid in May 2013 "Madam One Thousand" had been arrested at least twice, but had not been prosecuted. She is now on the run and wanted by the police.

According to media reports, girls and women that are lured into "baby factories" are usually from local towns and villages in Nigeria. However, there is no information as to the country of destination of the babies who are sold. Since "baby factories" may be operated by well-organised criminal syndicates, and human trafficking networks are widespread all over the world, it is possible that human trafficking for the purposes of "baby harvesting" may constitute not only a national crime, but also amount to a transnational organised crime under the Palermo Protocol.

The above description of "baby factories" phenomenon also shows that this crime is widespread in Nigeria and affects multiple victims. Moreover, it may be systematic in nature, since some of the operators of "baby factories" are allegedly serial human traffickers and are part of human trafficking networks. The organised and systematic nature of this crime may evidence that traffickers are aware that their criminal group trafficked other persons multiple times. Therefore, under certain circumstances it may also be argued that human trafficking for the purposes of "baby harvesting" can be elevated to a crime against humanity under the ICC Statute.

In order to prove whether "baby harvesting" as a form of human trafficking constitutes a transnational organised crime or a crime against humanity, reputable NGOs and International Organisations should conduct comprehensive field research to gather further information on destination countries for such babies, the number of victims, the criminal groups involved in operation of "baby factories" and the countries where they engage in illegal activities, and the purposes for which such babies are bought. Should these investigations uncover facts that support a finding that "baby factory" crimes are transnational and organised, or constitute a crime against humanity, it would give incentive to Nigeria, as a State Party to the Palermo Protocol and the ICC Statute, to take measures to eradicate

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<sup>64</sup> For more information see Njoku, *supra* note 54; *Madam one thousand baby making industry*, Naija News Today (May 21, 2013), <http://naijanewstoday.com/madam-one-thousand-baby-making-industry/>.

this problem and prosecute traffickers operating “baby factories.”<sup>65</sup> In addition, the international community could use such findings as leverage in convincing other countries involved in these criminal activities to cooperate with the Nigerian Government to fight against this phenomenon.

Potentially, “baby factories” phenomenon may also become a self-standing international crime of *jus cogens* if human trafficking attains this status in the future. This would allow legal professionals to advocate for application of universal jurisdiction to operators of “baby factories,” which may pose a serious challenge for them to escape prosecution. Nigerian lawyers may contribute to the change of status of trafficking for “baby harvesting” by starting discussion of this issue at various conferences and symposiums.

#### IV. LEGAL FRAMEWORK

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Nigeria has ratified or acceded to most of the important international instruments fighting human trafficking and protecting women and children. Among them are the United Nations Convention Against Transnational Organised Crime (2000) and the Palermo Protocol (2000), the United Nations Convention on the Rights of the Child (1989) and the Optional Protocol to it on the Sale of Children, Child Prostitution, and Child Pornography (2000), the ICC Statute (2002), Convention on the Elimination of All Forms of Discrimination Against Women (1979) and the Optional Protocol to it (1999), the International Labour Organisation Convention No. 182 on the Worst Forms of Child Labour (1999), and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).<sup>66</sup>

As a State Party to these treaties Nigeria undertook, *inter alia*, to take legislative and other appropriate measures to criminalise trafficking in persons and the sale of children including for the purpose of illegal adoption, to prevent and combat the abduction of children, illicit transfer and non-return of children abroad, to protect children and women from economic exploitation, sexual exploitation, sexual abuse and any other form of exploitation, to ensure that children are not separated from their parents against their will, to design and implement programs to eliminate the sale, trafficking and forced labour of children.<sup>67</sup>

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<sup>65</sup> Nigeria ratified the Palermo Protocol on 28 June 2001. Information on the status of ratification is available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en).

<sup>66</sup> Information on the status of the treaties and information on their ratification is available at <http://treaties.un.org/Pages/ParticipationStatus.aspx>.

<sup>67</sup> United Nations Convention on the Rights of the Child, *entered into force* 2 September 1990, articles 9, 11, 32-35; The Palermo Protocol, *supra* note 7, articles 5, 9; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, *entered into force* 18 January 2002, art. 3; Convention



Meanwhile, Nigeria has neither signed nor ratified Hague Convention No.33 on the Protection of Children and Cooperation in Respect of Intercountry Adoption (1993),<sup>68</sup> which aims, *inter alia*, to prevent the abduction, sale of children and child trafficking and to establish transparent mechanisms for interstate adoptions. This fact may partly explain the lack of adequate policies and legislation on the adoption process in Nigeria.<sup>69</sup>

At the regional level Nigeria is a party to the following treaties related to human trafficking: the African Charter on Human and Peoples' Rights (1982), the African Charter on the Rights and Welfare of the Child (1990), and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003).<sup>70</sup> These regional treaties reinforce Nigeria's duties stipulated by the international instruments fighting human trafficking, in particular: to protect women and children from all forms of abuse and exploitation, to combat trafficking in women and children, and to prevent abduction of children and their separation from parents against their will.<sup>71</sup>

According to the Constitution of the Federal Republic of Nigeria (*the Constitution*), any treaty will be enforceable in Nigeria only if it is passed into law by the National Assembly (Nigerian Parliament).<sup>72</sup> To date Nigeria enacted the following laws combating human trafficking: Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003 and Child Rights Act 2003.<sup>73</sup> Various aspects of human trafficking are also covered by Nigerian Criminal and Penal Codes.<sup>74</sup> Further, the Nigerian supreme law, the Constitution, prohibits slavery, servitude, inhuman or degrading treatment, and forced labour.<sup>75</sup>

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on the Elimination of All Forms of Discrimination Against Women, *entered into force* 3 September 1981, art. 6; International Labour Organisation Convention No. 182 on the Worst Forms of Child Labour, *entered into force* 19 November 2000, art. 6.

<sup>68</sup> Information on the status of signatures and ratification of this treaty is available at [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=69#nonmem](http://www.hcch.net/index_en.php?act=conventions.status&cid=69#nonmem).

<sup>69</sup> See Dr. Onyemelukwe-Onuobia, *Nigeria: Baby Factories... After the Outrage*, All Africa (May 28, 2013), available at <http://allafrica.com/stories/201305280973.html?viewall=1>.

<sup>70</sup> Information on the ratification status of these regional agreements is available at <http://www.achpr.org/instruments/>.

<sup>71</sup> African Charter on Human and Peoples' Rights, *entered into force* 21 October 1986, articles 5, 18(3), 25; African Charter on the Rights and Welfare of the Child, *entered into force* 29 November 1999, articles 15, 16, 19, 27, 29; Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, *entered into force* 25 November 2005, articles 3, 4.

<sup>72</sup> The Constitution of Nigeria, *supra* note 47, sec. 12.

<sup>73</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 48-50; Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers 18-22, available at [http://www.ungift.org/doc/knowledgehub/resource-centre/UNIFEM\\_GAATW\\_A\\_Handbook\\_for\\_Legal\\_Actors\\_and\\_Service\\_Providers.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/UNIFEM_GAATW_A_Handbook_for_Legal_Actors_and_Service_Providers.pdf).

<sup>74</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 48.

<sup>75</sup> The Constitution of Nigeria, *supra* note 47, sec. 34.



The Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003 (*Trafficking Act 2003*) defines human trafficking, criminalises offences related to human trafficking, and establishes the National Agency for the Prohibition of Trafficking in Persons and other related matters (*NAPTIP*) to combat this phenomenon.<sup>76</sup> Section 50 of the Trafficking Act 2003 defines the act of trafficking as “all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery like conditions.” This definition is narrower than the one provided by the Palermo Protocol. For example, Nigerian legal definition does not include the means such as abuse of power or abuse of the vulnerability of the victim, and does not mention the removal of organs as the purpose of exploitation of the victim. Moreover, unlike the Palermo Protocol, the Trafficking Act 2003 does not differentiate between child trafficking and trafficking of adult persons. Therefore, under Nigerian law, in cases of child trafficking, all three core elements of the crime must be proven as in the case of adult victims: the acts, the means and the purpose.

Though the Trafficking Act 2003 primarily combats trafficking in persons for the purpose of sexual exploitation, including prostitution and pornography,<sup>77</sup> some of its provisions may also be related to human trafficking for the purpose of “baby harvesting.” For example, one of the purposes of human trafficking included in the definition of this crime is involuntary reproductive servitude.<sup>78</sup> Further, among the criminalised offences are the sale of children for the purpose of exploitation or other immoral purposes; accepting, receiving or detaining a person against that person’s will as a slave, holding or possessing any person as a slave; and procuring a child to have sexual intercourse with a man including by use of threats, intimidation, fraud or administration of drugs.<sup>79</sup> The punishment for these offences varies from imprisonment from 10 years to a life sentence with or without an option of fine.

NAPTIP is responsible for enforcement and administration of the Trafficking Act 2003 and coordination of all Nigerian laws on human trafficking.<sup>80</sup> It has the power to initiate investigations of the crimes related to human trafficking and may initiate or improve specific training programs for law enforcement agents.<sup>81</sup> However, it is questionable whether NAPTIP can effectively combat the “baby

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<sup>76</sup> The text of the Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003 is available at [https://www.unodc.org/doc/en/2010/Nigeria\\_Trafficking\\_Persons\\_Act\\_2003\\_R-10-1\\_2010.pdf](https://www.unodc.org/doc/en/2010/Nigeria_Trafficking_Persons_Act_2003_R-10-1_2010.pdf).

<sup>77</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 49.

<sup>78</sup> Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003, *supra* note 76, sec. 50.

<sup>79</sup> *Id.* at secs. 14(1), 18, 21, 23, 24.

<sup>80</sup> *Id.* at sec. 4.

<sup>81</sup> *Id.* at secs. 4(c), 5.

factories” phenomenon. For example, according to the Head of its Public Relations Unit, Arinse Orakwue, NAPTIP is not responsible for “the issue of baby sales... it is a corruption of the legal adoption process and the police has overriding coverage on that matter.”<sup>82</sup> Besides, in June 2011, NAPTIP refused to investigate the case of Dr. Orikara for operating a “baby factory” claiming it lacked jurisdiction and returned the case to the police.<sup>83</sup>

The Child Rights Act 2003 implements the provisions of the United Nations Convention on the Rights of the Child.<sup>84</sup> Under this Act a child is a person under 18 years of age.<sup>85</sup> The Child Rights Act criminalises the following offences related to child trafficking: abduction, removal and transfer of a child from his parents without their will; forced or exploitative labour of a child; sale of children, sexual intercourse with a child, sexual abuse and sexual or any other forms of exploitation of a child.<sup>86</sup> All of these offences may be involved in the operation of a “baby factory.” The punishment for these crimes ranges from imprisonment from 5 years to a life sentence with or without an option of fine. At the same time, according to Section 4(4)(a) of the Constitution, Nigerian States enjoy exclusive legislative jurisdiction over matters of child law. Some States have already enacted their own laws on Child Rights and urged others to do the same.<sup>87</sup>

The Criminal and Penal Code of Nigeria were adopted before the Trafficking Act 2003. They do not define the crime of human trafficking, however, they criminalise offences related to it, such as: slave dealing, forced labour and sexual offences.<sup>88</sup> Overall, these Codes do not address the issue of human trafficking comprehensively and do not prohibit most of its forms.<sup>89</sup>

Despite Nigeria’s legislative efforts to combat human trafficking, it still thrives in Nigeria, and “baby factories” continue to emerge. In 2012, the U.S. Department of State downgraded Nigeria from a Tier 1 to a Tier 2 ranking in its Trafficking of Persons Report. In 2013, its ranking remained

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<sup>82</sup> Madike, *supra* note 4.

<sup>83</sup> *Nigeria frees 16 in “baby factory” raid*, *supra* note 4.

<sup>84</sup> The text of the Child Rights Act 2003 is available at [http://www.unicef.org/nigeria/ng\\_publications\\_Childs\\_Right\\_Act\\_2003.pdf](http://www.unicef.org/nigeria/ng_publications_Childs_Right_Act_2003.pdf).

<sup>85</sup> Child Rights Act 2003, *supra* note 85, sec. 277.

<sup>86</sup> *Id.* at secs. 27, 28, 30-33.

<sup>87</sup> Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers, *supra* note 73, at 21; Hanibal Goitom, *Nigeria: Several Nigerian States Urged to Adopt Federal Child Protection Law*, Library of Congress (Dec. 4, 2009), [http://www.loc.gov/lawweb/servlet/lloc\\_news?disp0\\_l205401712\\_text](http://www.loc.gov/lawweb/servlet/lloc_news?disp0_l205401712_text); see also UNICEF, Information Fact Sheet, The Child’s Rights Act (2007), available at [http://www.unicef.org/wcaro/WCARO\\_Nigeria\\_Factsheets\\_CRA.pdf](http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf); UNICEF, Nigeria, Child rights and participation, [http://www.unicef.org/nigeria/children\\_1938.html](http://www.unicef.org/nigeria/children_1938.html). 16 out of 36 Nigerian States have passed this Act into their local child protection law; among them are Abia, Anambra, Ebonyi, Imo, and Lagos, which are notorious for “baby factories,” *id.*

<sup>88</sup> Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers, *supra* note 73, at 21.

<sup>89</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, at 48.

unchanged.<sup>90</sup> Further, according to UNODC, “Nigeria has been only moderate successful in protecting women and children from harm and reintegrating victims.”<sup>91</sup> This may evidence that either legal frameworks aimed at fighting human trafficking in Nigeria are ineffective and too weak to confront this problem including the “baby factory” phenomenon or there is lack of their effective implementation by law enforcement.<sup>92</sup>

## V. ROOT CAUSES

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Among the root causes of the phenomenon of Nigerian “baby factories” may be those that facilitate any other forms of human trafficking, such as poverty and high unemployment rates particularly in rural areas, low levels of education and literacy, corruption, and lack of information on human trafficking.<sup>93</sup> For example, the majority of the Nigerian population lives below the income poverty line on less than 1 dollar per day.<sup>94</sup> Poverty levels are higher in rural areas, making women and children from these areas more vulnerable to human trafficking.<sup>95</sup> In case of “baby factories” traffickers may be more successful in “recruiting” such victims, inciting them with false promises of jobs or money in exchange for their babies. The lack of education and low levels of literacy also contribute to the poverty problem, since they limit women’s and children’s opportunities to get better rewarded jobs in the future. This may also allow traffickers to entice their victims with promises of receiving education and acquiring skills.<sup>96</sup>

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<sup>90</sup> See TIP Report 2013, *supra* note 2, at 41-46. Each year the U.S. Department of State places countries into one of four tiers in its annual Trafficking of Persons Report. The placement is based on the effectiveness of measures undertaken by governments in fighting human trafficking in their countries. Tier 1 is the highest ranking, showing that a government fully complies with the minimum standards for elimination of trafficking set by the Trafficking Victims Protection Act (TVPA), a U.S. anti-trafficking law. Tier 2 ranking evidences that a government did not fully comply with the TVPA minimum standards, but is making significant efforts to do so, *id.*; see also the U.S. Department of State, Trafficking in Persons Report 2012, at 271, available at <http://www.state.gov/documents/organisation/192597.pdf>; TIP Report 2013, *supra* note 2, at 285.

<sup>91</sup> UNODC, Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo 14 (2006), available at [http://www.unodc.org/documents/human-trafficking/ht\\_research\\_report\\_nigeria.pdf](http://www.unodc.org/documents/human-trafficking/ht_research_report_nigeria.pdf).

<sup>92</sup> See Emmanuel Joseph Chukwuma Duru & Ufiem Maurice Ogonnaya, ‘Combating Human Trafficking in Nigeria: An Evaluation of State Policies and Programs’ *Mediterranean Journal of Social Science* 2012 pp.161,163 available at [http://www.mcser.org/images/stories/2\\_journal/mjss\\_september\\_2012/emmanuel%20joseph%20duru.pdf](http://www.mcser.org/images/stories/2_journal/mjss_september_2012/emmanuel%20joseph%20duru.pdf).

<sup>93</sup> Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, *supra* note 91, at 25-28; Meleena M. Bowers, *Room for Improvement: Nigeria’s Approach to Trafficking*, IMPOWR Imprints Virtual Journal, 2-4 (2012), available at [http://www.impowr.org/sites/default/files/vjrn/IMPOWR\\_-\\_Room\\_for\\_Improvement.pdf](http://www.impowr.org/sites/default/files/vjrn/IMPOWR_-_Room_for_Improvement.pdf); Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers, *supra* note 73, p. 13; Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, pp. 31-33.

<sup>94</sup> Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, *supra* note 91, at 26.

<sup>95</sup> *Id.* at 25-26; TIP Report 2013, *supra* note 3, p. 285.

<sup>96</sup> See Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p. 37.

Corruption is another major problem in Nigeria, particularly among police and judges. Both can be easily bribed to reach favourable outcomes for alleged traffickers.<sup>97</sup> Corruption of law enforcement and judges makes the arrest and prosecution of traffickers inefficient and contributes to high profit and low risk of the human trafficking “business,” including “baby factories” in Nigeria.<sup>98</sup>

A lack of information and awareness about human trafficking and, in particular, “baby factories” also make women and children more susceptible to this phenomenon. Many people in Nigeria do not have a clear understanding of what constitutes human trafficking.<sup>99</sup> When approached by traffickers, victims may not anticipate either their future exploitation or lack of freedom and extreme living conditions.<sup>100</sup> As a result, they become easier targets for deception by traffickers. Further, due to lack of awareness of human trafficking, people do not recognise it and cannot report it promptly to the law enforcement.<sup>101</sup> Even legal professionals in Nigeria do not fully understand this phenomenon, making prosecution of traffickers even more challenging.<sup>102</sup>

There are also particular factors that may contribute to exploitation of women and children in “baby factories,” such as gender discrimination and social stigmas in Nigerian society. For example, traditional Nigerian society considers girls to be inferior to boys and tolerates violence against women.<sup>103</sup> Parents regard girls as a poor investment and are unwilling to send them to schools, finding them more suitable for domestic work.<sup>104</sup> This in turn limits girls’ future opportunities to find a well-paid job and provide for themselves and ensures a steady supply of women and teenage girls for traffickers, including those operating “baby factories.”<sup>105</sup>

Social stigmas that contribute to the existence of “baby factories” in Nigeria are those against teenage pregnancies, pregnancies out of wedlock, couples’ infertility and legal adoptions.<sup>106</sup> The first two help ensure that there is an abundant supply of women, teenage girls, and their new-borns at

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<sup>97</sup> Bowers, *supra* note 93, pp. 3-4.

<sup>98</sup> Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers, *supra* note 73, p.13.

<sup>99</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p. 37; Bowers, *supra* note 93, p. 3.

<sup>100</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, pp. 37-38.

<sup>101</sup> Access to Justice for Trafficked Persons in Nigeria. A Handbook for Legal Actors and Service Providers, *supra* note 73, p. 13.

<sup>102</sup> NAPTIP, Factsheet 8: Challenges, available at <http://www.naptip.gov.ng/docs/FACTSHEET0001.pdf>.

<sup>103</sup> Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, *supra* note 91, p. 26; Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p.32.

<sup>104</sup> Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, *supra* note 91, pp. 26-27.

<sup>105</sup> See Bowers, *supra* note 93, p. 4.

<sup>106</sup> See *Reducing Unintended Pregnancy in Nigeria*, *supra* note 48, p. 3; Whitman, *supra* note 48; Madike, *supra* note 4; Dr. Onyemelukwe-Onuobia, *supra* note 69.

such “baby factories.” The last two help to promote demand for such babies, since “adoptive” parents pass off these babies for their biological infants to avoid cultural and societal disapproval.<sup>107</sup>

## VI. PROGRAMS AND MEASURES UNDERTAKEN

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In addition to ratifying the authoritative international and regional treaties related to human trafficking, adopting anti-trafficking legislation, and establishing the NAPTIP Agency, Nigerian authorities have conducted numerous nationwide public awareness campaigns to educate citizens and law enforcement about the phenomenon of human trafficking, to warn parents about new trends in human trafficking and new schemes used by traffickers to “recruit” their victims, and to inspire communities to participate in the prevention of human trafficking.<sup>108</sup> There is no information whether the issue of “baby factories” was raised during any of these campaigns.

The latest campaign titled “I am Priceless” was launched in October 2012 jointly with UNODC and the European Union.<sup>109</sup> It is a nationwide three-year anti-trafficking initiative that will include meetings with citizens at town halls and schools, grass-root awareness activities, dissemination of advocacy materials, and media appearances and advocacy visits by the Goodwill Ambassadors to state governors and traditional rulers.<sup>110</sup> Further, NAPTIP elaborated a strategic plan on the coordination of anti-trafficking efforts for 2012-2017 and started its implementation by organising workshops with stakeholders.<sup>111</sup>

The U.S. Department of State characterised Nigeria’s effort to prevent human trafficking through these campaigns as modest, and, according to some legal and policy professionals, these anti-trafficking programs have even failed.<sup>112</sup> There may be several reasons for this failure. First, is the poor funding of these campaigns by the Nigerian Government and international donor agencies or misuse of such funds by government officials and NGOs.<sup>113</sup> Second, these campaigns target mostly citizen in urban and developed centres, rather than remote rural areas, where the majority of

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<sup>107</sup> See Dr. Onyemelukwe-Onuobia, *supra* note 69.

<sup>108</sup> TIP Report 2013, *supra* note 2, p. 287; Emmanuel Joseph Chukwuma Duru & Ufiem Maurice Ogbonnaya, *supra* note 92, p. 163; Bowers, *supra* note 93, p. 8.

<sup>109</sup> *Nigeria launches anti-human trafficking campaign, as two Goodwill Ambassadors are named*, UNODC (Oct. 10, 2012), <https://www.unodc.org/unodc/en/frontpage/2012/October/nigeria-launches-anti-human-trafficking-campaign-appoints-goodwill-ambassadors.html?ref=fs1>.

<sup>110</sup> *Id.*

<sup>111</sup> TIP Report 2013, *supra* note 2, p. 287.

<sup>112</sup> *Id.*; Bowers, *supra* note 93, p. 2; Emmanuel Joseph Chukwuma Duru & Ufiem Maurice Ogbonnaya, *supra* note 92, p. 163.

<sup>113</sup> Emmanuel Joseph Chukwuma Duru & Ufiem Maurice Ogbonnaya, *supra* note 92, p. 163.

trafficking victims are recruited.<sup>114</sup> Finally, Nigerian anti-trafficking programs fail to address the correlation between poverty, low levels of education, illiteracy and human trafficking.<sup>115</sup>

Since 1999 the Nigerian Government has implemented programs to alleviate poverty as a major cause of human trafficking, such as the National Poverty Eradication Program and the National Economic Empowerment Development Strategy. However, they did not significantly affect women and children, probably since women are usually not involved in the implementation of these programs.<sup>116</sup> In 2003, Nigeria adopted the Universal Basic Education (UBE) Program providing greater access to basic education in Nigeria (up to the junior secondary level).<sup>117</sup> This education is free and compulsory. Parents whose children are found on the streets and do not attend classes may be subject to imprisonment. However, to date thousands of young children are seen on the streets of Nigeria during school hours, making them potential targets for traffickers, with no parent having been arrested or prosecuted for it as of yet.<sup>118</sup> Besides this, the UBE program has other challenges, such as inadequate funding, lack of competent teachers, and poor motivation of teachers.<sup>119</sup>

## VII. CONCLUSION AND RECOMMENDATIONS

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The “baby factory” is both a profitable illegal “business” and a new trend in human trafficking in Nigeria. Being widespread and allegedly operated by organised criminal syndicates, this phenomenon poses a great challenge for the Nigerian Government to eradicate it. Though Nigeria has already undertaken several legislative and other measures to address human trafficking problem within its borders, some of them had been introduced prior to the emergence of “baby factories.” Therefore, it is unlikely that they will be effective in fighting this form of human trafficking. In this

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<sup>114</sup> *Id.* p. 163; Bowers, *supra* note 93, p. 2.

<sup>115</sup> Emmanuel Joseph Chukwuma Duru & Ufiem Maurice Ogbonnaya, *supra* note 92, p. 163; Bowers, *supra* note 93, pp. 10-11.

<sup>116</sup> See Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p. 51.

<sup>117</sup> *Id.* p. 52; Uche S. Anaduaka & Chinyere F. Okafor, ‘The Universal Basic Education (UBE) Programme in Nigeria: Problems and Prospects’, *Basic Research Journal of Education Research and Review* 2013, 2(3) pp. 43-45 (2013), available at

<http://basicresearchjournals.org/education/pdf/Anaduaka%20and%20Okafor.pdf>.

<sup>118</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p. 52; Anaduaka & Okafor, *supra* note 117, at 44.

<sup>119</sup> Human trafficking in Nigeria: Root Causes and Recommendations, *supra* note 2, p. 52; Anaduaka & Okafor, *supra* note 117, p. 44.

respect, the following steps may be recommended in order to make the “baby factory” industry less attractive for traffickers:

1. To ratify Hague Convention No.33 on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993) as this may help to establish transparent mechanisms for adoptions, as well as improve policies and legislation in this field;
2. To address the “baby factory” issue in anti-trafficking legislation, clarifying which agency has jurisdiction to investigate such matters;
3. To differentiate child trafficking from human trafficking of adults similarly to the Palermo Protocol in order to facilitate the investigation of such cases and prosecution of traffickers;
4. To ensure that NAPTIP receives sufficient funding for its anti-trafficking awareness campaigns and that the “baby factory” issue is included into their agenda;
5. To bring awareness to “baby factories” phenomenon and its dangers among people who are more likely to become victims of this type of human trafficking;
6. To educate law enforcement, lawyers and judges about “baby factories” and its correlation with human trafficking;
7. To engage reputable law firms to handle “baby factories” cases on a pro bono basis;
8. To re-examine programs addressing poverty and illiteracy in Nigeria in order to identify their main challenges in fighting these major causes of human trafficking and to adjust these programs accordingly; and
9. To develop programs breaking social stigmas and taboos that encourage the operation of “baby factories.”

NGOs and International Organisations are further encouraged to conduct more detailed research related to the “baby factory” phenomenon for its better understanding and finding effective solutions to combat it. In particular, a thorough investigation of the following aspects of this crime is recommended: demand side of “baby factories,” destination countries for babies upon their sale, approximate number of victims of “baby factories” (including biological mothers and their babies), correlation between traffickers operating “baby factories” and organised criminal groups, and countries where such traffickers engage in criminal activities. The findings of such research could be useful not only to Nigeria, but also to countries where reports of similar activities have surfaced.<sup>120</sup>

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<sup>120</sup> *Thai Police Free 14 Women From Illegal Baby-Breeding Farm in Bangkok*, Huffington Post (Feb. 24, 2011), available at [http://www.huffingtonpost.com/2011/02/24/vietnamese-women-freed-fr\\_n\\_827595.html](http://www.huffingtonpost.com/2011/02/24/vietnamese-women-freed-fr_n_827595.html); Jo Tuckman, *£700 for a child? Guatemalan ‘baby factory’ deals in misery and hope*, The Guardian (Mar. 13, 2007), available at <http://www.theguardian.com/world/2007/mar/14/jotuckman.international>; Natalie Clarke, *The shocking truth about the baby factories*, Daily Mail (Dec. 22, 2006), available at <http://www.dailymail.co.uk/femail/article-424450/The-shocking-truth-baby-factories.html>; Tim Hume, *Chinese newborn, allegedly sold by doctor, is reunited to parents*, CNN (Aug. 8, 2013), available at <http://www.cnn.com/2013/08/07/world/asia/china-baby-trafficking-shaanxi/index.html>.

In addition, international law professionals may contribute to the fight against impunity of operators of “baby factories” by prompting the international community to recognise human trafficking as a self-standing international crime of *jus cogens* and to apply universal jurisdiction to all forms of this crime including “baby factories.” To achieve this goal this issue should be included into agendas of various national, regional and international fora.