

# UNIVERSAL PERIODIC REVIEW

## NIGERIA

Contribution prepared by:

<p><b>Women Consortium of Nigeria (WOCON)</b> <b>In collaboration with ECPAT International</b></p>	
--	--

### Women Consortium of Nigeria

**The Women Consortium of Nigeria (WOCON)** is a grassroots human rights organization, committed to the promotion and enforcement of the rights of women and children. WOCON holds a United Nations special consultative status and has a membership consisting of 25 individuals and 11 organization affiliated members. The structure comprises of a four (4) member Board of Trustees and a six (6) member Executive Board. There is a total of 19 paid staff and many volunteers in its three (3) office branches situated in Lagos, Ogun and Enugu States of Nigeria.

WOCON is an Affiliate member of ECPAT international and has been engaged in various programs and activities for the enforcement of the rights of women and children particularly the Girl-child in Nigeria since its inception in 1995. We are also strong advocates for the entrenchment of sustainable democracy and good governance in our country. Website: <http://www.womenconsortiumofnigeria.org/node/1>

**ECPAT International** (End Child Prostitution, Child Pornography and Trafficking of Children for sexual purposes) is the leading global network working to end the commercial sexual exploitation of children (child prostitution, child pornography and child trafficking). It represents 82 member organizations from 75 countries. ECPAT International holds Consultative status with ECOSOC. Website: [www.ecpat.net](http://www.ecpat.net)

## Executive summary

The Federal Republic of Nigeria is a federal constitutional republic comprising thirty-six states and a Federal Capital Territory in Abuja.<sup>1</sup> The Child Rights Act (2003) is a Federal Act and a domestication of the Child Rights Convention, codifies the rights of children in Nigeria but strictly only applicable to the Federal Capital Territory Abuja because the issue of children is under the States Portfolio in accordance with the Nigerian Constitution<sup>2</sup>. Each state is required to enact its Child Rights Law (CRL). Since the last UPR on Nigeria a total of 24 of the 36 States have enacted their respective States Child Rights Laws (CRLs). The Child Rights Act (CRA) and the State Laws define the child in accordance with the UN Convention on the Rights of the Child as a person below 18 years of age. However in practice and under the Nigerian socio-cultural context, the definition of a child varies widely due to lack of uniformity in the cultural systems.

Moreover although the CRA establishes the legal minimum age of marriage at 18 year and penalizes any contravention, the incidents of child marriages still abound. Some of the States especially in the Northern States have failed to pass their CRL and as such do not have any minimum age for marriage thereby condoning child marriages and the attendant abuses on the girl child especially.

Nigeria has two codes of criminal law which are the Criminal Code governing southern States and the Penal Code governing the States of northern Nigeria. With the introduction of the Sharia (the moral code and religious law of Islam) as part of the penal law in some States in the Northern part of Nigeria, children are sometimes treated as offenders rather than victims.

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003 as amended in 2005) though provides a strong legal framework to combat human trafficking, prostitution and pornography, it is however very weak in implementation especially the protection vulnerable women and children. The law enforcement agents particularly the National Police Force charged with the responsibility of enforcing all laws including those prohibiting commercial sexual exploitation, particularly prostitution is not effective and lacks the technical knowhow. Most members of the National Police Force are not trained on State laws and do not have the knowledge of such laws protecting children from a particular worst form of child labor within a specific State leading to monumental increase in child labor.

Criticising the situation of child labour in Nigeria the Freedom House “Freedom in the World 2011: Nigeria describes the situation of child abuse as “*According to UNICEF, there are 15 million child laborers in Nigeria, 40 percent of whom are at risk of being trafficked. Forced labor is widespread, and the government makes no effort to combat it.*”<sup>3</sup> Many of the Nigerian engage in various hazardous labour some of which are the ILO worst forms of labour. These forms of labour include hawking on the streets, domestic slavery, prostitution, begging, and artisan mining to mention a few.

Although the Nigerian government has developed several mechanisms to address the issue of trafficking, especially for sexual exploitation abroad, little or no attention is being paid to domestic trafficking in Nigeria which is increasing with impunity of traffickers. There is also a lack of data on the commercial sexual exploitation and abuse of children in Nigeria.

---

1 WIPO, Brief background information on the legal framework of Nigeria <http://www.wipo.int/wipolex/en/outline/ng.html>, accessed on 07-02-2013

<sup>2</sup> Section 17 (3) (f) of the Constitution of the Federal Republic of Nigeria 1999

<sup>3</sup> Available at <http://www.freedomhouse.org/report/freedom-world/2011/nigeria>

The conflicting laws pertaining to the commercial sexual exploitation of children has greatly undermined the protection of the rights of children and contributed to the impunity with which these rights are violated.

## **Legislation on Protection of Children against Commercial Sexual Exploitation**

### **1.1 International Legal Framework**

Nigeria is party to several relevant international instruments<sup>4</sup> including the following:

- The UN Convention on the Rights of the Children – in 1990;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography – in 2010.
- UN Protocol to Prevent and Punish Trafficking in Persons, Especially Women and Children (2000) – in 2001;
- ILO Convention No.182 (Worst Forms of Child Labor) – in 2002

However, Nigeria did not sign nor ratify the third Optional Protocol to the Convention on the Rights of the Child on a complaints mechanism for violations of children’s rights.

### **1.2 Regional Legal Framework**

Nigeria is party to the following relevant regional instruments:

- African Charter on Human and Peoples’ Rights (1981)
- The Protocol to the African Charter on the Rights of Women in Africa (2003)
- African Charter on the Rights and Welfare of the Child (1999)
- African Common Position on Children (2000)
- Declaration on the Fight Against Trafficking in Persons (2001)
- ECOWAS Plan of Action against Trafficking in Persons (2002-2003).

### **1.3 Nigerian Domestic Legal Framework**

The Nigerian Federal Child Rights Act codifies the rights of children but its application is limited to the Federal Capital Territory Abuja as the subject of children is under the States jurisdiction under the Constitution of the Federal Republic of Nigeria. Each State is required to enact its own Child Rights Law (CRL). Prior to the reporting period, 24 of the 36 states have adopted their own CRLs leaving 12 States mostly, the Northern States that have not passed their Child Rights Laws<sup>5</sup>.

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 as amended 2005 provides a strong legal framework to combat human trafficking.<sup>6</sup> The National Agency for Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) was established under the Act and charged with the responsibility of enforcing the Act. NAPTIP established shelters in the six geographical zones for the accommodation and reintegration of rescued or repatriated of

---

<sup>4</sup> See Olateru-Olagbegi, Bisi & Ikpeme, Anne, Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour, International Labour Organization publication, Available at [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_083149.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf)

<sup>5</sup> Amnesty International 2012 Report on Nigeria Available at <http://www.amnesty.org/en/region/nigeria/report-2012>

<sup>6</sup> N. Jones, E. Presler-Marshall, N. Cooke and B. Akinrimisi, “Promoting synergies between child protection and social protection in Nigeria”, February 2012, p. 19.

trafficked victims. However both the Act and the Agency have not been adequate for the protection of victims and have not been effective in implementation to significantly curb the trend of trafficking or prosecute the traffickers to stop the impunity. The NAP TIP Act has been found that it “lacks victims or witness protection, it has not complied with the internationally recommended human rights standard approach.”<sup>7</sup>

The United States Trafficking in Persons on Nigeria latest report also demoted Nigeria from Tier 1 to Tier 2 because it found that “the government did not demonstrate sufficient progress in its anti-trafficking law enforcement efforts”<sup>8</sup>

The situation is further compounded in some of the Northern States that apply *Shari'a* (the moral code and religious law of Islam) treat children as offenders rather than victims. For example, the *Shari'a* Penal Code of the Zamfara State defines an offender as anyone who “does any obscene or indecent act in a private or public place, or acts or conducts himself/herself in an indecent manner.” Treating child victims of commercial sexual exploitation as offenders is of violation of internationally accepted standards for the treatment of such children.<sup>9</sup>

Furthermore the CRA establishes minimum age of 18 for marriage and imposes penalty of N500,000 and or 5 years imprisonment for offenders. The law is flagrantly abused and thousands of girl children are forced into marriage under Customary and Islamic laws before they are 18. Child Marriage has resulted in truncating the education of child victims in negation of their rights and exposing them to health hazards such as obstetric fistula. Child marriage is a form of commercial sexual exploitation as the parents or the guardians who give away their girls at early ages have monetary and material gains in the transactions.

A case in point is that of a former Governor of Zamfara State and a Senator who in 2010 married a 13 year old Egyptian Girl in Abuja having paid the parents of the girl a \$100,000 US Dollars. Despite condemnation from the NGOs the said Senator was neither prosecuted nor convicted for the contravention of the CRA, crime of child trafficking and slave dealing all within the laws of Nigeria.<sup>10</sup>

Nigeria has two codes of criminal law: the Criminal Code operating in the southern States and the Penal Code governing the States of northern Nigeria. Various offences come under the codes – concerning deprivation of liberty, slave dealing, defilement and prostitution – which could be used to prosecute cases of child marriages, trafficking in minors and young women for sexual exploitation and child labour. However, the codes contain loopholes that perpetrators of child marriages and traffickers exploit, often totally avoiding prosecution and punishment.<sup>11</sup>

For example, although there are stiff penalties ranging from life imprisonment to 14 years against anyone who has “unlawful carnal knowledge” of girls below the age of 13, 14 and 17 respectively under which category a person who marries a child will fall, the definition of unlawful carnal knowledge in both codes condones such acts between husband and wife. Section 6 of the Criminal Code defines “unlawful carnal knowledge” to mean carnal connection which takes place otherwise than between husband and wife.<sup>12</sup>

---

<sup>7</sup> See [www2.ohchr.org/english/bodies/cedaw/docs/ngos/IDMCNigeria41.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/IDMCNigeria41.pdf)

<sup>8</sup> 2012 US Trafficking in persons Report: Nigeria Available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm>

<sup>9</sup> United States Department of Labor’s Bureau of International Labor Affairs, 2011 Findings of the Worst Forms of Child Labor, Nigeria, p. 467.

<sup>10</sup> Aljazeera publication captioned “Nigerian senator marries girl of 13 - Bride's parents received dowry of \$100,000 before wedding took place in Abuja”. Available at <http://www.aljazeera.com/news/africa/2010/05/2010518858453672.html>

<sup>11</sup> N. Jones, E. Presler-Marshall, N. Cooke and B. Akinrimisi, “Promoting synergies between child protection and social protection in Nigeria”, February 2012, p. 19.

<sup>12</sup> Chapter 1 section 6 of the Criminal Code Act Laws of the Federation 1990

Furthermore, the conflicts in the contents of the Criminal and Penal Codes, the NAPTIP Act, Labour Laws, customary, religious and other laws and policies make implementation for the protection of children and young people impossible and expose the children to various forms of abuses particularly sexual exploitation with perpetrators getting away without punishment.

## **1. Legislation Addressing Child Prostitution, Child Pornography and Child Trafficking**

### **2.1 Legislation on Child Prostitution**

Article 2 (b) of the OPSC defines “child prostitution” as “the use of a child in sexual activities for remuneration or any other form of consideration”.

The Penal Code operative in the Northern part and which is fashioned along Islamic laws criminalizes prostitution<sup>13</sup>. While the Criminal Code operative in the southern part of Nigeria does not criminalize prostitution per se but criminalises, soliciting for immoral purposes, operation of brothels and living on the earnings of prostitutes. Neither the Children’s Rights Act nor the Criminal Code nor the The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act provide any comprehensive definition of child prostitution, which is a major gap which should be addressed as a priority.

The Nigerian criminal legislation only provides a definition of adult prostitution, which only refers to female prostitution. The Criminal Code in fact refers to Prostitution as though only women can be prostitutes and does not address prostitution of men or boys.

Regarding the prohibition of acts related to child prostitution as referred in Article 3 of the OPSC, the Child Rights Act prohibits the worst forms of child labor, including the use of children for prostitution.<sup>14</sup> Article 30(1) of the CRA stipulates that “No person shall buy, sell, hire, let on hire, dispose of or obtain possession of or otherwise deal in a child.” Article 30 (2) provides that “A child shall not be used for the purpose of... (a)prostitution...” and “(e)procured or offered for prostitution”.

Section 223 and 224, of the Criminal Code criminalize the procurement of a girl or woman who is under the age of eighteen to have sexual intercourse with another person or persons, to become a common prostitute, or to leave her home or even Nigeria with the intent that she may become a prostitute in a brothel elsewhere, either in Nigeria or outside the country.

Such provisions are not consistent with Article 3 of the OPSC, especially as it only protects girls under eighteen from being procured for the purpose of prostitution whereas boys are totally excluded from such legal protection. This major loophole in criminal legislation should be urgently addressed.

### ***Key recommendations***

- **Review current laws addressing child prostitution in order to provide a definition of child prostitution, which is in line with Article 2 of the OPSC as well as prohibitive measures consistent with Article 3 of the OPSC. The definition and the prohibitive measures should be applicable to ALL children under 18 (girls and boys).**

---

<sup>13</sup> Sections 222 & 223 of the Penal Code CAP 345 Laws of the Federation of Nigeria 1990

<sup>14</sup> United States Department of Labor’s Bureau of International Labor Affairs, 2011 Findings of the Worst Forms of Child Labor, Nigeria, p. 466.

- **Harmonise the laws on sexual exploitation of children including those perpetrated as a result of child marriage and child trafficking to protect all children irrespective of their States and provide uniform punishment for all offenders.**
- **Ensure that children victims of prostitution should never be prosecuted for being involved in prostitution and have systematically access to adequate care and protection services.**
- **Provide substantial capacity building for specific law enforcement agencies in charge of implementing child protection laws on the issue of child prostitution.**
- **Develop and implement appropriate policies and programs for preventing child prostitution and ensuring the recovery and social reintegration of child victims.**

## **2.2 Legislation on Child Pornography**

Article 2 (c) of OPSC defines “child pornography” as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”. Article 3(1)(c) provides that each State Party shall ensure that producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2 are fully covered under its criminal or penal law.

Article 30 (2)(e) of the CRA states that “A child shall not be used—procured or offered...for the production of pornography or for any pornographic performance...”

However, the CRA does not provide for a definition of child pornography, which is a major gap, nor does the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act which Article 15(a) prohibits the use and procurement of any person for the production of child pornography or for pornographic performances.

Criminal Code’s Section 233B, on *Obscene Publications* prohibits materials deemed to be obscene. As the term “obscene” is very broad and open to various interpretations, the prohibition provided by the Criminal Code is not consistent with Article 2 of the OPSC.

Section 233D of the Criminal Code prohibits the production and distribution of materials deemed to be obscene. Again, this prohibition is not consistent with the OPSC due to the fact that its focused only on “obscene” materials and not on child pornography.

The lack of definition and prohibition of child pornography in the Nigerian domestic legal framework is of great concern and a legal reform process should be started to address such legal gaps.

### ***Key recommendations***

- **Bring current laws addressing child prostitution in line with the OPSC by providing a definition of child prostitution, as well as prohibitive measures consistent with Article 3 of the OPSC.**
- **Any reference to “obscene” materials should be avoided in all provisions addressing child pornography.**
- **Develop and implement appropriate policies and programs preventing child pornography and ensuring the recovery and social reintegration of child victims.**

## 2.3 Legislation on Child Trafficking

Nigeria is a source, transit and destination country for child trafficking.<sup>15</sup> Since the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act was passed in 2003, there has been some marginal progress in the fight against trafficking, especially in terms of prosecution and awareness raising. The Trafficking Act provides a strong legal framework to combat human trafficking, especially child trafficking for sexual purposes.<sup>16</sup>

Although the relevant Nigerian government agencies, including the National Agency for the Prevention of Trafficking in Persons (NAPTIP), have developed several mechanisms to address the issue of trafficking in persons, especially for sexual exploitation abroad, little or no attention is being paid to domestic trafficking in Nigeria. This has contributed to increased suffering and exploitation in a sector that is hidden from the sight of the public.<sup>17</sup> Furthermore, the CRC Committee noted that the overwhelming majority of rescued victims of trafficking is girls for purposes of sexual exploitation and that the rate of successful prosecutions remain low.<sup>18</sup>

Moreover there is no structured programme for reintegration of rescued or repatriated victims of trafficking. NAPTIP is preoccupied with reunion with parents and families which in many cases are inappropriate for the protection of the children as some of the family members may have been involved in the initial trafficking of the children. The lack of structured procedure for reintegration was noted in the Trafficking Report on Nigeria where it states that: *-The government did not have a formal procedure in place to repatriate and reintegrate Nigerian victims subjected to trafficking abroad*<sup>19</sup>”

### *Key Recommendations*

- **Ensure that specific measures aimed at identifying child victims of trafficking are established.**
- **Provide capacity building to agents from the National Agency for the Prevention of Trafficking in Persons (NAPTIP) on the issue of child trafficking and on the way to handle such cases in a child-friendly manner.**
- **Take all measures to ensure investigate cases of child trafficking and prosecute and convict perpetrators of child trafficking in accordance with national laws and international Standard.**
- **Ensure that the child victims of trafficking are not treated as offenders but as victims, providing the children services and support.**
- **Develop and implement appropriate policies and programs for prevention, recovery and social reintegration of child victims of trafficking.**

## 2.4 Legislation on Child Sex-Tourism

The Trafficking Act also provides legal safeguards for the protection of children from sex-tourism. Section 16 prohibits tours aimed at organizing and promoting and promotion the prostitution of any person or encourages such activity.

---

<sup>15</sup> United States Department of Labor’s Bureau of International Labor Affairs, 2011 Findings of the Worst Forms of Child Labor, Nigeria, p. 466.

<sup>16</sup> N. Jones, E. Presler-Marshall, N. Cooke and B. Akinrimisi, “Promoting synergies between child protection and social protection in Nigeria”, February 2012, p. 19.

<sup>17</sup> O. Tade and A. A. Aderinto, “Factors influencing the Demand for Domestic Servants in Oyo State, Nigeria”, International Journal of Child, Youth and Family Studies (2012) 4.1, p. 525.

<sup>18</sup> CRC, Concluding Observations, 2010 (Children’s Rights Convention), para. 86.

<sup>19</sup> Available at <http://www.state.gov/g/tip/rls/tiprpt/2011>

Section 30 contains very detailed provisions addressing the responsibility of tour Operators and Travel Agents in preventing and combating the sexual exploitation of children through travel and tourism. By providing that “Every tour operators and travel agents shall- (a) notify its clients of its obligation under this Act not to aid and abet, facilitate or promote in any way the traffic in any person; (b) notify their clients of their obligation under this Act not to aid, abet, facilitate or promote in any way, any person’s pornography and other person’s exploitation in tourism; (c) insert in contracts with corresponding suppliers in destination countries, clauses requiring them to comply with the obligations stated in the preceding paragraphs of this subsection; (d) refrain from utilizing messages on printed material, video or the Internet that could suggest or allude to behavior incompatible with the objective of this Act; (e) inform their staff of their obligations under this Act, and (f) include clauses regarding their obligations under this Act to their staff in new employment contracts.

Article 16 and 30 of the Trafficking Act can be considered as good practice examples in terms of legislation addressing child sex tourism. In addition the criminalising of attempt<sup>20</sup> to commit any of the offences under the NAP TIP Act are also good initiatives as the clandestine nature of trafficking makes the investigation of the crimes difficult after the completion of the crime.

However, there is a strong need for the government to provide relevant law enforcement agents to receive capacity building on child sex tourism cases and on the way to handle such cases.

---

<sup>20</sup> Section 50 of the Trafficking in persons (Prohibition) Law enforcement and Administration Act 2003 as amended in 2005.