



THE LEGAL APPRAISAL OF BABY FACTORIES IN NIGERIA

By
Charles I.G Agwor*
Wodo Chika*

ABSTRACT

The study's central focus is on the legal Appraisal of Baby factories in Nigeria. The research subject is quite a novel and one that tends to arouse interest of scholars and readers. The general challenges of infertility which is the major cause of delay or bane in reproduction and its effects was highlighted. Baby factories in Nigeria and its practices was x-rayed of course the first baby factory discovered in Nigeria was made public in 2008. In the same vein, factors promoting baby factories was evaluated. The study also considered the sales and trafficking of children and children as victims of baby factories respectively. Legal frameworks regulating the activities of the baby factories both nationally and international were appraised, to wit; the constitution of the Federal Republic of Nigeria 1999(as amended), the Criminal Code, Penal Code and the Child's Right Act 2003. Others are; the United Convention of Rights of a Child 1989, The Hague Convention 1993, The United Nation Organization for Education, Science, and Culture(UNESCO) 2006 and The United Nation convention on Rights of a Child 2003. The Federal Ministry of Health, the Judiciary, National Agency for Prohibition of Trafficking in Persons 2003 and Non-Governmental organization as motivations changed with the responsibility to regulate and supervise the subject of research were highlighted. The study concluded with summary of findings and recommendations.

INTRODUCTION

Baby factory is a syndrome in Nigeria that requires urgent action to curtail, as it is the spreading like wild fire. It is a form of human right violation that relates to child trafficking, forceful or illegal adoption and force labour as the case may be. The term “baby factory” has no precise definition and it is impossible to pinpoint the exact time when the practice started in Nigeria. The term was coined by a journalist to describe criminal activities involving restriction of person's movement against his or her will, forced impregnation, sales of babies and illegal adoptions¹. The term baby factory is used interchangeably with “baby harvesting” or “baby

* Charles I.G Agwor, PhD, LL.M, BL, LLB Department of Private and Property Law, Faculty of Law, Rivers State University charlesagwor@gmail.com; 08037951051

* Wodo Chika, LL.M, BL, LLB, Department of Private and Property Law, Faculty of Law, Rivers State University chilady_28@yahoo.co.uk, TEL: 07033723299

¹ E.F Awolabi, 'Towards the Curtailing of Baby Factory Syndrome in Nigeria' *Kiu Journal of Humanities* (2017)(1) 267.



farming”. It is also a situation where young women are illegally given shelter and harbored to produce children for trafficking and illegal adoption either at their will or under slavery like condition.

It is wordy of note that human trafficking especially child abuse is not a problem bedeviling Africa or developing alone as there are reported cases even in the United States, France, Denmark, United Kingdom. Malaysia Rwanda, China, Sao Tome, Romania Indonesia, Nigeria etc. it has been noted that the booming trade is more pronounced in the south east geographical zone in Nigeria.² There are several reports that the baby factories are more prevalent in cross River, Akwa Ibom, Anambra, Abia, Rivers and Imo states. Other states such as Benue, Lagos, Borno, Ogun and Ondo have also witnessed some cases where baby factory were busted and some operators arrested.³ The reason for this menace of baby factories sweeping statement is mainly in the southern part of Nigeria and other developing countries where it is patronized. It is not far from challenge of infertility amongst the female folks which the treatment have over decades remains a very serious problem to families around the globe. These has now led to legal adoption and surrogacy which are viewed to be the pragmatic solution to this global infertility problem.

In adoption, the purpose is to obtain a family for a baby or a child⁴. Even though issues of parental rights exist in adoption, the institution is established to ensure the best interest of a child by providing a loving and secure home for a child. In surrogacy, the parental rights issues are inherent to an institution that does not exist for the best interest of the child but for the purpose of fulfilling the desire of an individual or a couples to become parents. However the illegal method of child bearing or adoption is of high increase which shall be discussed in details.

It is pivoted to observe that this challenge of baby factories ravaging the Nigerian society is already attempting to eat up into the fabrics of many who are responsible citizens including medical practitioners, nurses and other health workers. The study intends to interrogate the extent of the practice, the possible way of curtailing it and identifying some major damages

² E.F Awolabi, ‘Towards the Curtailing of Baby Factory Syndrome in Nigeria’ Kiu Journal of Humanities (2017)(1), 268

³ Ibid.

⁴ T.O Ibrahim, ‘Adoption Practice in Nigeria- An Overview’(2013)(19) *Journal of Law, Policy and Globalization*; 9



and impact in our society, especially in the security sector, education, orphanage homes, ministry of social worker and medical facilities.

Baby Factories in Nigeria

In Nigeria the practice of reproductive medicine is facing new challenges with multiplication and expansion of baby factories in hospitals, orphanages or homes that have been converted to a place of where young women give birth to children for sales in black markets.⁵ Illegal baby factories are operating institution that have been linked to human trafficking across the world⁶. The discovery of the first baby factory was about decade ago, with the proliferation of the new ones within the southern part of the country since 2008 – 2014. About twenty baby factories were discovered by the law enforcement agents and more than 290 pregnant women were found⁷. Young women and teenagers who under the law should not indulge or engage in sex were either forced into baby factories to give birth to children. The young women with unwanted pregnancies seek for shelter to enable them give birth there after the baby is sold. Others who are victim of rape and kidnap were held under captivity or against their will until delivery⁸.

In Nigeria reports of various actors involved in baby factory business engage men whose sole responsibility is to impregnate these women and the babies are sold out after delivery⁹. However, several ethical issues in baby factories such as encouraging underage pregnancy, rape and violence carried out on women, trafficking of infants of which some are used as sacrifice as a result of these illegal baby factories that are operating secretly. It's likely that children born in baby factory facilities are expose to undue hazards and risk of death if not well taken care of and provided with adequate health services¹⁰. The rise and increase in baby factories is attached to social stigma on desperate teenagers with unwanted pregnancies who are now persuaded to give up their babies for a financial benefit. Another issue is the high rate of burden and stigmatization on the area of infertility. In some communities infertile couples are ostracized as they are perceived to unlucky and often become ridicule and object of public

⁵ O. Makinde, 'Infant Trafficking and Baby Factories: A New Tale of Child Abuse in Nigeria' (2016) *Child Abuse Review*; 433.

⁶ Huntley, 'The Phenomenon of Baby Factories in Nigeria as a New Trend in Human Trafficking' <<http://www.peacepalacelibrary.nl/ebook/files/377512125.pdf>> accessed 15th December 2022.

⁷ O.Makinde (n1) 433.

⁸ Huntley (n2).

⁹ Onuhua, *New Wares of Trade: Understanding Evolving Baby Factory and Trafficking in Nigeria*. A Paper presented at 5th International conferences of the Institute of Security Studies.

¹⁰ O. Makinde(n1) 433.



humiliation and shame. Due to this, women no longer see the trained physician rather result to local methods were they are encouraged to avoid ultra sound and antenatal throughout the pregnancy with the conviction that they carry a miracle pregnancy that will not be visible. At the expected time of delivery those pretending to be pregnant knowingly obtain in baby from one the baby factories and while those fooled are presented with babies from the baby factories after being sedated. Hence the involvement of medical and health workers or personnel are sometimes involved in the operation of baby factories has been reported in national and international media of their involvement¹¹.

It has come to the notification that some of the health workers play major role in assisting with deliveries in the baby factories and in some cases own and run these baby factories in the name of social service, rendering service by linking women to carry unwanted pregnancies with those willing to have the children. Most times this health workers in question are quack and whose license has expired but claim to be professional in their field of operation through deception.

However, there are no formal agreement between the women that tend to carry these pregnancies or any between the baby factories and the couple that desire these babies. It should be noted that regulated surrogacy itself is not without challenge and dangers. If practiced responsibly, punishment will be meted to those who violate the rules of this practice. Surrogacy and other assisted reproductive techniques if well-defined procure better solution to women with infertility issues. Children born in baby factories are born into neo- slavery¹². Due to the restriction upon mothers that have given birth, the rights of the children is said to be abused in the baby factories. The abuse is rather classified into two menace:

The first challenge is that of immediate abuse caused by baby factories where the mother is separated from the child shortly after child birth which may pose immediate risk as a result of lack of nutrition on the child hereby causing the child to have a low sugar blood level also referred to as hypoglycemia which may damage the child's brain. In a reported case, the proprietor of the baby factory asked the reporter who posed as a one of the patrons if they wanted baby with placenta or baby without placenta¹³. These however indicates that these women do not get to see the children and transferred immediately to the buyer. This is

¹¹ Onuohua (n2)

¹² A.C Okoli and F Okpaleke, 'Human Trafficking and Trajectories of Neo- Slavery' 2014 (2)(2), *The Nigeria Experience and Political Economy Outline International Journal of Liberal Arts and Social Science*;86-96

¹³ T. Cristainsson, 'Expressen Reveals Baby Factories (2014) < <http://www.expressen.se/nyheter/exclusive-expressen-reveal-baby-factories/> [9 November 2014]



degrading and height of exploitation were children are seen as commodity as a result of quest for wealth. And due to lack of feeding the natural feeding will be altered and may expose the children to starve with outcome that may manifest as a result of hypoglycemia. The inability to take adequate care may present premature and low birth weights and deficiency of growth¹⁴ on the new born due to separation of the infant and their biological mother resulting to neonatal mortality¹⁵ (death of children under 28 days after giving birth). Teenagers are most likely or have the chance of having premature labor and delivery in addition to complication in pregnancy throughout the neo natal phase¹⁶. Despite all of these abuse the infant is being trafficked¹⁷

The second aspect of abuse is that of delayed or long term abuse. It emphasis that these symptom may not indicate unlike the immediate abuse rather may present later in life with developmental abnormalities. Instance were the abuse is chronic these children tend to feel neglected leading to severe emotional and psychological under development¹⁸. Although not all fall into hands of bad parenting, some fall in the hands of loving and caring parents. Whether they fall into loving or abusive parents the facts still remains that these business called baby farming or baby harvesting still remain an illicit business.

Factors Promoting Baby Factories.

Baby factories are fashioned and organized by either professional or by quacks with little knowledge of reproductive system. They disguise themselves to be of help to humanity thereby causing havoc in the society by recruiting teenagers and impregnating them. They are kept in secluded places such as hospitals, maternity homes and orphanages¹⁹ upon delivery the child will the sold to a client who in no way be connected to the biological mother.

It is an irony to note that the participants in these baby factory business are numerous and whose functions are outlined in the crime. They play major roles in the baby factories which

¹⁴ C.B Duvanel and Others, 'Long-Term Effects of Neonatal Hypoglycemia on Brain Growth and Psychomotor Development in Small-for-Infant Gestational- Age Preterm Infants' (1999) (134) (4)

¹⁵ A. Conde-Agudelo and Others, 'Kangaroos Mother Care to Reduce Morbidity and Mortality in low Birth Weight Infants' (1999) *Review the Cochrane Library*.

¹⁶ P. Mukhopadyhyay and Others, 'Hospital-Abused Perinatal Outcome and Complication in Teenage Pregnancy in India' (2010) (28)(5), *Journal Health Population and Nutrition*;494-500

¹⁷ A.M Frasser and Others, ' Association of Young Material Age with Adverse Reproductive Outcome

¹⁸ M. Koizumi, H. Takagish 'The Relationship between Child Maltreatment and Emotion Recognition (2014) < <http://www.nytimes.com/2011/09/18/nyregion/chinas-adoption-scandals-send-chills-through-families-in-united-states.html>> Accessed 18th December 2022

¹⁹ E.F Awolabi, 'Towards the Curtailing of Baby Factory Syndrome in Nigeria' *Kiu Journal of Humanities* (2017)(1) 267.



includes medical practitioner, nurses and midwives who are responsible for the maintaining of the baby factories, whose functions is to encourage the teenager to reproduce as at when due. Prior before delivery the nurses and midwives ensures routine check (antenatal) for the pregnant girls²⁰. Security agents are bribed to overlook crimes committed in the baby factories and allow able bodied men to impregnate teenage girls. Documents are forged to enable them sell the babies to clients who patronize them²¹. Some teenagers involved in the baby factory business go with the intention to make profit while others who are victims of rape, kidnap are kept in seclusion pending on the arrival of the child that have been booked for sale. Despite the facts to curb this societal menace in Nigeria it tend to grow rapidly. Baby factory is now an avenue for infant trafficking. The teenager hence the need to be properly guarded and support from their families not to be victims of this illicit business called baby factory.

Child Sales and Trafficking

The definition of human trafficking was first defined in 2000 by the UN Protocol to Suppress and Punish Trafficking in Persons mostly women and children supplementing the United Nations Convention against Transnational Organized Crime²². It is the process whereby infants are being sold. The process that turns a baby into a commodity, a product for financial value²³. It describes baby buying and selling as phenomenon that reflects their perverseness of a society where elements are capitalism. Commercialization and commodification become a channel for creation of wealth at all cost irrespective of the illegality. This process of baby selling and buying business is however growing into the black market transnational network in Nigeria, substantiating the predominant activities of trafficking in the region.

Sales of infant seem to a booming business as a result of the upshot of baby factories. Child sale and trafficking have become a major concern in the society. Where trafficking encompasses the recruitment, transportation, transfer, harboring or receipt of person, by means of threat or use of force or other forms of coercion, of abduction of fraud of deception, the abuse of power, position or giving or receiving of payment or benefits to achieve, consent of a person having control over another person for the purpose of exploitation. Exploitation such as

²⁰ Awolabi (n 19).

²¹ Ibid., 268

²²United Nations Convention Against Transnational Organized Crime Article 3(a) <
<http://www.undoc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

²³ A.C Okoli, "Commercialization and commodification of illicit: A Political Economy of Baby Buying /Selling in South East of Nigeria"(2014)(2)(2) *International Journal of Education and Research*;80



prostitution or any form of sexual exploitation, slavery or practice similar to slavery like removal of organs, an act to constitute trafficking which must constitute three elements that must be present²⁴:

1. The Act (what is done) recruitment , transfer harboring or receipt;
2. The means (how is done) of persons, threat or use force or other forms of coercion, of abduction of fraud, of deception, of abuse of power or vulnerability, or giving payment or benefits to perform in control of the victim;
3. The purpose (Why it is done) for the purpose of exploitation, forced labor, slavery or similar practice and the removal of organs.

Trafficking of a child is now an international problem that have to do with women and children been trafficked, then sold as sex slave to the owners, holier and so on, these people perpetually use them and relegate them as bonded slaves to work for them. Nigeria just like any other countries in the world is not an exception to the menace. Child trafficking in Nigeria is dated as far back as the 1980's following the economic hardship caused by structural adjustment program²⁵ imposed by the Nigerian government. The public recognition focuses on the issue and no exact figure or data to really emphasis on the number of persons that are victim of trafficking²⁶

The International Labor Organization (ILO) approximate that over 120 million Nigerians are victims of trafficking²⁷. With regards to survey indicates that 10,000 Nigerian engaged in prostitution in Italy. Most of these women and girls are victim of trafficking to United States with Akwa Ibom states having the highest rate of child trafficking in Nigeria²⁸. Nigeria is just like any other country facing the challenge of child trafficking. It is shocking and worrisome

²⁴ (n23).

²⁵ A plan implemented by the World Bank and International monetary economics to be more productive. This program helps the borrowing nation pay off its debts and have a growing economy that will sustain them into future

²⁶ A.A Abramowitz, "Human Trafficking, Human Misery: The Global Trade in Human Being (Santa Barbara, CA Greenwood Publishing Group 2009)77.

²⁷ Child Trafficking in West: Policy Response (2002) UNICEF, Innocent in Sight Research Centre <<http://www.unicef.org/publication/325-child-traffic-in-west-africa-policy-responses.html>> accessed 14th December 2022

²⁸ G.Foxcroft, 'The Niger Delta Child Right watch project involves the NGO:Stepping Stones Nigeria, Basic Right Counsel Initiative Centre for Environment, Human Right and Development'(200) <<https://www.gary@steppingstonesnigeria.org>> accessed 14th December 2022



that Nigeria is among the top eight countries with maximum number of human trafficking in the world.²⁹

Children as Victims of Baby Factories

Baby factories and Child trafficking denies children of their rights under the Child's Right Act. The UN Convention for the Rights of a Child emphasizes the rights of a child to be cared for by his/ her parents³⁰ while it has been reported that most of the children from baby factories end up as "adoptees" through the wrong route, the potential for exploitation at these homes as a result of lack of official status and possibility of their involvement³¹ in illicit activities like prostitution, drug pushing, domestic servitude and organ harvesting, children trafficked could easily be introduced to these illegal practices or become victims at an early age. Abandonment by adopted parents is also a possible when it is discovered that the child has some developmental problem.

It is observed that many children from baby factories have often ended up as sacrifices for deities at shrines. And some are potential terrorist because they are bought over by terrorist organization and groomed for the purpose of engaging in suicide missions. The countless of young people participating in the ongoing insurgency in some parts of Nigeria is not unconnected with some of this children adopted, bought over from the baby factories across the nation and groomed for destruction. It has been argued that besides human trafficking, organ trafficking is also growing. The need to continue to meet the demands of the market can also be thought to fuel the breeding of children for harvesting of their organs.

LEGAL AND INSTITUTIONAL FRAMEWORK

Relevant legal and institutional framework regulating the subject matter in Nigeria will be a comprehensive appraisal in relation to baby factories and special attention to their short coming.

²⁹ R.S.Shatshari, 'Criminal Prosecution of Human Trafficking in Nigeria: Progress and Challenge within the National Agency for the prohibition of Trafficking in person' (2010) (2) *Bayero University Journal of Public Law*; 45.

³⁰ O. A Makinde and Others, ' Baby Factories in Nigeria: Starting the Discussion Towards a National Prevention Policy (2017) Trauma Violence and Abuse. < <http://www.mc.manuscriptcentral.com/tra>> Accessed 2nd February 2023.

³¹ Ibid.



National Frameworks

The national legal instruments among others, the Constitution of Federal Republic of Nigeria, Child's Rights Act, Criminal and Penal Code of Nigeria. The study shall examine some national legal instrument among others, the constitution of the federal republic of Nigeria. The administration of Criminal Justice Act, the Child's right Act in relation to the subject matter.

The Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution of the federal republic of Nigeria³² is the highest law of the land and is not subject to any other laws³³ hence any other law subject to the constitution in order not to be declared inconsistent³⁴. In 1979³⁵ of the Constitution of the Federal Republic of Nigeria clearly established the protection of a child, which provided '*children and young person's [...] be protected against any exploitation whatsoever and against moral and material neglect*'. The 1999 constitution³⁶ although not having the above provision, did clearly state in Chapter IV that fundamental rights of every Nigerian should not be violated.

In the Constitution of the Federal Republic of Nigeria, a treaty will be enforceable in Nigeria if passed into law by the National Assembly³⁷. Regarding the constitution it prohibits trafficking. By virtue of section 34(1) (b) (c)³⁸ provides that no one shall be held into slavery or servitude and no one is required to perform forced or compulsory labor. Matters relating to a child has an exclusive legislative jurisdiction where some states have enacted laws on Child's Right³⁹. The media by the provision of s.22 of the constitution has the freedom of expression and to provide information to the masses and sharpen public opinion and ensure right information is impacted for national growth and development to educate its citizen. The issue of baby factory came into limelight in 2006 and since then the media has constantly reported issues to the public.

The children however are not exempted. The chapter IV of the constitution expressly set out provision relating to fundamental rights where every child is entitled to rights set out in this

³² CFRN 1999 (as amended)

³³ Ibid., s.1 (1).

³⁴ Ibid., s.1(3).

³⁵ CFRN 1979

³⁶ CFRN 1999 (as amended)

³⁷ CFRN S.1

³⁸ CFRN 1999(as amended)

³⁹ S.4 (4) (a) CFRN 1999 (as amended).



part. The Child's Right Act however expanded and extended the rights and what is due to Nigerian child in the society.

The Criminal Code of Nigeria

The criminal code applies in the southern state of Nigeria. The criminal code⁴⁰ punishes individual who has custody or care of any girl below the age 13 years , thereby inducing, persuading seduction and unlawful sexual intercourse or involved in prostitution or to commission indecent assault upon such a girl with the imprisonment of 2 years and S. 2.33 of the criminal code also provides that any individual who procures a young girl or woman for the purpose of prostitution or with intention that he lives in a brothel for purpose of prostitution within outside Nigeria. Anyone who convinces and persuade any young girl or woman by false pretense or through deception means to facilitate unlawful engagement in sexual intercourse between her or any man is liable for 3 years imprisonment.

Penal Code of Nigeria

The penal code⁴¹ is applicable to the northern part of Nigeria. Any individual who persuades a child under the age of 18 years to go from place to place or indulge in any act with the intention that such girl be forced or seduced to illicit sexual intercourse with another is liable to 10 years in imprisonment as stated in the code and a fine.⁴² The code explicitly provides that any individual who intentionally obscures or kidnaps or abduct any person's any offender with same punishment shall be meted on that person⁴³. And anyone who buys, sells, hires, or obtain possession or disposes a person under the age of 18 years with intention that the person will gain employment or used for any purpose, that person shall be punished with imprisonment of 10 years as penalty⁴⁴ and any individual that deals in slavery should be liable to 14 years of imprisonment and a fine⁴⁵. However it is a criminal offence under penal code to indulge on women trafficking.

⁴⁰ S.222 Criminal Code

⁴¹ Penal Code Act 1990

⁴² S.275 Penal Code Act 1990

⁴³ S.277 Penal Code Act

⁴⁴ S.2.88 Penal Code Act

⁴⁵ S.289 Penal Code Act



It is however important to note that both Criminal Code and Penal Code protects the interest of a child against illicit operation of so called baby factories on nature of how people make babies.

Childs Rights Act 2003

The Act provides the best interest of a child to be a paramount action. And matters relating to a child whether undertaking by an individual, public or private body, institution or service of court of law, legislative or administrative authority must ensure the best interest of a child shall be of primary concern⁴⁶. The Act covers for the rights and protection of a child, taking into account the rights and duties of a child parents, legal guardian whether an individual or institution, services, Agencies organization or bodies legally responsible for the child⁴⁷. Although not all 36 states have adopted the Child's Right Act law⁴⁸. Part 11, provides for the rights and responsibilities of a child and hence further provides that the provisions of Chapter 1v of the 1999 apart from fundamental human rights, shall apply if those provisions are expressly stated in the Act.

The Act implements the stipulation of the United Nations Convention on the Right of the Child⁴⁹. Under the Act a child is a person below the age of 18 years⁵⁰. The Act is against child trafficking, abduction, removal and transfer of a child from his parents without their consent and will; forced exploitative labour of a child; sales of children, sexual intercourse with a child, any form sexual exploit on a child⁵¹. And all of these are offences are criminalized which may however be involved in this so called baby factories. The penalty of such offences ranges from 5 years in imprisonment without a fine.

The Act provides rights for children and some of the rights are however relevant to the issue of baby factories and they include, the right to parental care, the right to dignity, protection and maintenance, the right to unborn child to protection against harm⁵², health and health service⁵³.

⁴⁶ S.1 Child's Rights Act 2003.

⁴⁷ S.2 Child's Rights Act 2003

⁴⁸ < <http://www.nigeria-rights.gov.ng/focus-areas/child-rights.html> > Accessed 15th January 2023

⁴⁹ Unicef Nigeria, "Childs Right Act"

<http://www.unicef.org/Nigeria/ng_publications_Childs_Rights_Act_2003.pdf> Accessed 15th January 2023.

⁵⁰ Childs Right Act 2003.

⁵¹ CRA S.27 – S.33

⁵² S.17 of Child's Right Act 2003

⁵³ S.5 of the Child's Right Act 2003



The Act also provides that state and federal Government shall provide facilities and if prescribed by the appropriate authority, such facilities are approved for adoption service

INSTITUTIONAL FRAMEWORK

National Agency for Prohibition of Trafficking in Persons 2003

NAPTIP is regulated by federal Government agency its purpose is to eradicate and fight trafficking in persons, NAPTIP Act have four departments namely; Investigation Department, Legal Departments, Public Enlightenment Department and counselling and Rehabilitation Department are created to enable the agency carry out their duties adequately and proficiently. They are responsible for enforcement and administration of the Trafficking Act 2003 and any matter relating to the coordination of all Nigerian laws on human trafficking⁵⁴. They have the power to investigate crimes related to human trafficking and initiate or improve specific training program for law enforcement agents⁵⁵. The Act criminalizes any person under age of 18 years of buying and selling⁵⁶.

Huntley asserts that the government actions have proved unsuccessful reason being that the current policies on child right and social protection by federal, states and local government are weak to enforce strict means. In 2011 NAPTIP said that based on its investigation baby factory activities indicated that babies were sold for illegal adoption, used for child labour, prostitution and some fall in the hands of rituals. And these babies approximately \$6400 were sold⁵⁷

Federal Ministry of Health in Nigeria

The Federal ministry of health is headed and supervised by the president of the Federal Republic of Nigeria. The minister is however seconded by the permanent secretary based on the year of civil service career rather than appointment⁵⁸ it has several departments with specialization in different areas of healthcare. The family health department is saddled with

⁵⁴ CFRN S.29(4) (a)

⁵⁵ S.4 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003

⁵⁶ S.21 NAPTIP Act

⁵⁷ BBC NEWS 2013

⁵⁸ J. Athanasius, "11 Functions Of The Federal Ministry Of Health, Nigeria"

<https://infoguidenigeria.com/functions-federal-ministry-health/>> accessed 12 January 2023.



the responsibility of awareness of creation of reproductive, maternal Neonatal and child health⁵⁹.

Under the Health Sector Reform 2006, the Ministry of Health is saddled with the following responsibilities;

- a. The ministry of health formulate and regulate health functions and it is not limited to regulate functions which goes beyond quality assurance and making sure standards are sets as required by the ministry both in personnel and that of infrastructure. Evaluation and monitoring activities are carried out in public and private agencies that are registered
- b. The federal ministry health of develops and implement strategies in which Public Private Partnership work hand in hand to promote the quality of health care services within the country.⁶⁰
- c. Another significant function is the improvement in data base information policy which enable the health sector to strategies plan for the development of the policy.
- d. The issue of manpower development is one of the functions stated in the reform to enhance productivity and upgrade the skills and knowledge of personnel to ensure staff undergo training as well as being acquainted with modern technology.
- e. The reform is saddled with the duty to supervise and control the standard of health facilities. The ministry of health is to supervise and control every Governing board and day to day running of government organizations and government agencies.
- f. The development and management of financial guidelines to enable the ministry manage the hospital internally.
- g. The federal ministry of health makes recommendation on how to operate budget which includes increase in salaries coupled with allowance or whether the need for adjustment and benefits that has accrued within the health sector.
- h. The need for evaluation and quality of health practices within federal ministry of health.

⁵⁹ Federal Ministry of Health < <http://www.fmh.gov.ng/>> Accessed 19 December 2022.

⁶⁰ (n 59).



There is need for the Federal Ministry of Health to tighten up the area of supervision of health facilities to avoid illegal baby factories and avoid the proliferation of new ones⁶¹.

The Judiciary

The judiciary as an institution is saddled with the duty to ensure that the fundamental right of its citizen is protected. In the case of *Governor of Lagos state v Ojukwu*⁶² the Supreme Court held that the law is no respecter of persons, principalities government or powers and the court stand between the citizen and the government to see that the state or government is bound by law and respect the law.

In the contemporary world it denotes that in a democratic society without the rule of law the society is tantamount to wholesome arbitrariness⁶³. The Supreme Court in the case of Ojukwu exhibited the importance and need for the observance of the rule of law. Uwais JCS has this to say “if the government treats courts order with levity and contempt, the confidence of the citizen in court will be seriously eroded and the effect of that will be the beginning of the anarchy in replacement of the rule of law”.

It has observed been that 25% of married women around the globe are infertile which indicates that infertility is a major challenge faced by many families and in Nigeria infertility is widely carries with social stigma on women who are unable to carry pregnancy and these has lead this women to indulge themselves on illegal adoption and baby sale from the so called baby factories which is unfair and inhumane for infertile women to be called or tagged as barren and cursed and treated as a nobody by her husband. Illegal adoption and buying and selling of babies in baby factories is not justified and everyone who desire a child of their own should follow the right procedure to avoid criminality.

On the other hand the practice of surrogacy is at increase playing a large role to unite couples who long and desire a complete family. But due to lack of awareness and issue of stigmatization people do not want to be associated with surrogacy. It is the right of the court to protect its

⁶¹ (n59).

⁶² (1986) 1 NWLR (pt.) 627 -639.

⁶³ Ozehome, *The Role of Constitution in an Emerging Democracy*. A paper presented at the LAWSAN Conference in Benin City (2005) 85.



citizen and where there are no laws the maternity clinic and health workers take laws into their hands. Presently no laws prohibiting or enforcing surrogacy. And where it is the duty of the court to protect its citizen from disputes between the surrogate mother and the commissioning parents where parties fails to comply with the terms and conditions. Individuals arrested as a result of this crime such matters ends up at the police station and not charged to court. Court should also take into consideration of the up rise of baby factories in our society and ensure harsh punishment be issued on culprits even though it appears that there are rare cases of human trafficking and baby factories in our court. What then happens to the medical practitioner caught in operation of baby factories?

The Ministry of Social Welfare and Rehabilitation

Childs Right Act⁶⁴ provides for establishment of adoption service in all the states. The Act however states that every government shall for the purpose of adoption establish and maintain within the state and that of federal government within Federal Capital Territory. The service is designed on to meet the need of a child who may or has been adopted. This basically emphasis's on the fact that government is saddled with the responsibility to provide requisite facilities and ensure such facilities is an approved one for adoption and approved by appropriate authority. The act stipulates that every state in the federation of Nigeria is expected to have a ministry whose purpose is for adoption. In Rivers state of Nigeria the ministry is referred to as ministry of Social welfare and Rehabilitation. Its central focus is related to adoption and adoption processes in the state. An application is made by a legal practitioner of adopting parents to the honorable commissioner of the Ministry and it is expected that certain requirement be fulfilled by the applicant and sent to the ministry. This also include the visit of Child Development Officer to visit the home of the adopted and subsequently time to time to be informed of the condition and welfare of the child adopted.⁶⁵ All legal formalities of adopting must be in accordance to law which the so called baby factory violates and fails to adhere to proper procedures of adopting a child rather than causing nuisance in the society.

Non-Governmental Organization.

Around the world, countries, organization and institution are expected to protect the human rights. To ensure human rights protections, some agencies were created to monitor, report

⁶⁴ Child's Right Act 2003.

⁶⁵ CRA 2003 s148.



violation in some cases force some countries and organization to abide by human rights. The non-governmental organization with human rights or women platform will serve as a catalyst for international consensus building at international level organization and permit NGO involvement.⁶⁶ It is an irony that these baby factories are registered under Non-Governmental Organization (NGO) that ostensibly champion and protect Women and Children Right⁶⁷ such as Ezeuma Women and Children Rights Protection Initiative owned by medical practitioner.

INTERNATIONAL LEGAL FRAMEWORK

The international instruments highlights relevant to or having direct or indirect connection with sales of infant, child trafficking and baby factories.

United Nation Convention on Rights of a Child 1989

By virtue of Article 7 a child has a right to names and right to be registered and have a nationality. Due to the level of criminality trafficker arrange for fake documentation that consist the names and nationality of the child in a passport and shipped to different parts of the world or alternatively transfer the children without being registered or with a passport⁶⁸. The Article⁶⁹ emphasis on the rights of a child to know his or her parents. Children born in baby factories are denied this rights. In United Kingdom a matter was reported where an infertile couple who is of Nigerian descendant was promised by a miracle performer in Nigeria she would have a baby of her own. Upon the return from Nigeria to United Kingdom a DNA test was ordered and was discovered that the supposed parents were not genetically related to the baby in question⁷⁰. As further investigation took place, the couple realized they were scammed, the so call miracle performer uses divers means and to the length of sedating her client and secures an infant from the baby factories as the miracle baby. The question still remains if these women had pregnancy symptom in the course of expecting this miracle babies and if they did as enlightened and exposed these couple are never attended any of the antenatal and if the scammer who pose to be a miracle performer does his diver means produce a child without getting pregnant. And why did the couple travel all the way to Nigeria to seek for a child when

⁶⁶U. Chioma 'Anambra Police Bursts Baby Factory, Teenage Prostitution Ring, Rescues 35 Girls' the Nigeria Lawer < <http://www.thenigerialawyer.com>> accessed 5 January , 2023.

⁶⁷ T. O Ibrahim ' Adoption Practice in Nigeria- overview (2013) (19)*Journal of Law, Policy and Globalisation*; 9

⁶⁸ Art. 7

⁶⁹ Ibid.

⁷⁰ Ibid.



she knew quite alright that infertility treatment could be corrected in United Kingdom or was she one of the inpatient ones who indulge in criminality of trafficking. However as a result of this this event the true parents of that child were never known and the presiding judge granted custody on the grounds that the parents were scammed.

The CRC⁷¹ highlights the roles of government in taking measures to stop children from being taken out of their countries illegally. The need for Nigeria to improve and make more effort to establish that the CRC is complied. The act implements the stipulation of the United Nations Convention on the Right of the Child⁷². Under the Act a child is a person below the age of 18 years⁷³. The Act is against child trafficking, abduction, removal and transfer of a child from his parents without their consent and will; forced exploitative labour.

Hague Convention 1993

The convention is on protection of children and co-operation in respect of inter country Adoption referred to as Hague Adoption Convention adopted in 1993. This convention like UNCRC adopts the principle of the best interest in every adoption processes⁷⁴. The Hague Convention on inter country adoption attempts to clarify some grey areas in respect to trafficking but Nigeria has not been domesticated. Inter country adoption has always perceived as a form of child trafficking⁷⁵ but to some it is an advancement to help children in need. As such a clear guideline on the practice of inter- country adoption are urgently needed which might include the ratification of Hague Convention in Nigeria. Hence the instrument cannot apply in the country by virtue of section 12 of the constitution for such treaty to be part of the law in Nigeria.

United Nation Organization for Education, Science and Culture (UNESCO) 2006

Nigeria has the highest record in human trafficking amongst African nations. As time went on traffickers in Nigeria started exploiting their victims for baby harvesting⁷⁶. And the first reported cases by UNESCO in 2006 are Lagos, Abia and Ebony state. UNESCO revealed that teenage pregnancy or adult with unwanted pregnancies upon delivery the babies were sold and

⁷¹ Art. 11

⁷² Unicef Nigeria, 'The child right' <<https://www.unicef.org/nigeria/topics/child-rights>> accessed 13 February, 2023.

⁷³ Child's Right Act 2003.

⁷⁴ H.V.Loan, 'Hague Convention of 29th May on Protection of Children ND Co-operation in Respect to inter-country Adoption (1993) (3) *The International Journal of Children's Rights*.1.

⁷⁵ Ibid.

⁷⁶ *Human trafficking in Nigeria: Root Causes and Recommendation*. UNESCO 2006.



mothers of the babies were asked to sign an undertaking in respect to babies not to lay claims in the future and monetary compensation given in return. UNESCO did not reveal if the baby were trafficked but rather sale of babies which constitute crime such as illegal adoption. More cases of baby factories were reported and revealed in Nigeria which had element of human trafficking. These women are lured to the baby factories through deception and abuse. They approach their victim by making false promises of lucrative job or safe abortions. And most of these victims are teenager contrary to s.29 of the constitution⁷⁷(the age of majority is 18 years). These teenagers that are stigmatized in the society are taken to this baby factory facilities and allowing traffickers to have control over them until they give birth.

UNESCO 2006 had identified that poverty, perversion of cultural traditions and that of manipulation of religious rituals are the reasons for these baby factories in Nigeria hence menace to the society.

CONCLUSION

The illegal operation of baby factories in Nigeria has no little means rob many children of their natural privilege to be protected and nurtured by their biological parents. Baby factories, though illegal have become a source were couples who are not able to have biological children have resorted to as an opportunity to have children of their own. No doubt children are seen as source of security and assurance to couple in their old age, they consummate conjugal ties between couples and therefore are every couple desire. The questions that often come to mind are why are the operators engaging in the production and sales of young babies? Why are young mothers allowing their selves to be hired and forced into being impregnated and eventual of their babies? Why couples accept to be client and patronize baby factories? It is unconnected to the decadence in the society's morals, escalating poverty and lack of regulation of orphanage homes to say the least.

It is observed that illiteracy, lack of information on human trafficking and its illegality, the quest for greener pastures for some teenagers which has made them vulnerable to baby factories and their clients. Being pregnant out of wedlock, the social stigma attached therein has pushed many young ladies to patronize baby factories to relief them of their duty and responsibility of caring for children born in such circumstance.

⁷⁷ CFRN S 29 (4) (a)



To tackle the menace of baby factories involves multifaceted approach that includes serious advocacy and campaign on the ills of illegal operations of orphanage homes and baby factories. Policy makers and law makers and the law enforcement agencies must rise to the occasion by enacting legislation banning the operation and patronage to baby factories and infant trafficking, including adopting of young ladies. There is urgent need for proper education of members of society on the processes of legal adoption, sex and sexual relationship, reproductive health and family planning which will enable adolescent prevent unwanted pregnancies and other sexual vulnerabilities like sexual transmitted infections.

RECOMMENDATIONS

1. Law makers should enact a law expressly prohibiting baby factory in Nigeria with strict punishment regime. The law should be in line with international best practices. The said law when enacted should be circulated to reach the Nigerian populace. Courts of law must also take into consideration this law in course of prosecuting culprit of baby factories.
2. Free medicals should be made in various Government hospital to assist women with the problem of infertility, so as to reduce the level of baby factories in our society. If proper treatment is taken the issue of illicit business of baby harvesting will not be numerous in our society.
3. It is important that all states in Nigeria domesticate and implement Childs Rights Act 2003. This will help to prosecute any illegal adoption agencies and provide legal protection for adopters and adoptee against any socio- cultural implication of child adoption.
4. The National Assembly should facilitate the bill relating to Surrogacy and assisted reproductive technology to enact the Act that will regulate its practices in Nigeria in line with international best practices. The Act when enacted should be circulated to reach all categories of persons within the Nigerian territories.