

Investigations of Migrant Smuggling: Nigeria's Experience

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Being Text Presented at UNODC Hybrid Special Event scheduled on the week of the 9th Working Group on Smuggling of Migrants & 12th Working Group on Trafficking in Persons tagged “Doing Better: the Principle of Non-Punishment of Trafficking Victims & Investigations of Migrant Smuggling Held on 28 June 2022 (09:00-10:30 CEST)

Introduction

- The Palermo protocol on Smuggling of Migrants has been domesticated as part of Nigeria's national legislations.
- SOM offences are covered under two national Legislations:
 - i. Immigration Act 2015 and
 - ii. Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 (TIPPEA, Act 2015).
- This presentation is based on cases investigated and prosecuted under the TIPPEA, Act 2015.

Section 26 TIPPEA, ACT 2015

- (1) Any person who knowingly, in order to obtain, directly or indirectly, a financial or material benefit, procures the illegal entry of a person into a country of which the person is not a citizen or a permanent resident, commits an offence, and is liable on conviction to imprisonment for a term of not less than 5 years without an option of fine,
- **Points to note in investigating SOM under this section:**
 - (i.) knowledge that the procurement is illegal (ii.) Direct or indirect financial or material benefit (iii) the person procured is not a citizen or permanent resident of the receiving state

Section 26 TIPPEA ACT 2015

- (2) Any person who, intentionally in order to obtain a financial or material benefit from another, engages in fraudulent acts or conducts purportedly for the purpose of procuring, facilitating or promoting the actual or intended entry into, transit across or stay in a country in which that other person is not a national or a permanent resident, commits an offence and is liable on conviction for a term of not less than 5 years without an option of fine and shall refund all monies fraudulently obtained from the victim
- **Points to Note:** (i.) intention to engage in fraudulent acts (ii.) Financial or material benefit (iii.) Fraudulent acts or conducts to facilitate intended or actual entry, transit or stay (iv.) The victim is not a national or permanent resident.

Nature of Cases Investigated So far

- Investigations commenced as a result of intelligence shared by Law Enforcement from the receiving State or detected at point of departure.
- Major kingpins facilitating SOM resides outside Nigeria (usually in the receiving country).
- Recently SOM cases investigated mostly involved the movement of children to join their parents/relations who resides in the receiving country.
- Using Resident Card of an 8-month baby to move 3 a month baby to Spain.
- Falsification of documents to obtain visa (birth certificate, surname, school details, marriage) etc

Review of some Concluded Cases

- **Federal Republic of Nigeria v. Olayinka Bello Taiwo:** Defendant is the Proprietress of a school. Arrived the UK with 2 minors for educational excursion but were refused entry by the border officers on allegation of HT.
- Border Officer referred the case back to Nigeria for investigation.
- The intention of taking the minors was to join their biological mothers who are residents in the UK.
- Defendant convicted and sentenced to 5 years imprisonment without an option of fine on 10 December 2018.

Review of some Concluded Cases

- **Federal Republic of Nigeria v. Izekor, John Porter Emmanuel:** the Defendant holds Nigeria's passport and Spanish Resident permit. He is based in Spain with his family.
- Concluded arrangement with another lady (now late) in Spain and returned to Nigeria to perfect Parental fraud and return to Spain with the Child.
- Came to Nigeria with his daughter's travel documents and Spanish Resident Permit to take a three-month-old baby (born 25 April 2019) back to Spain.
- The Lady (now late) attempted to travel with the 3-month-old on the 14 July 2019 but arrested at the Murtala Muhammad International Airport, Lagos

Federal Republic of Nigeria v. Izekor, John Porter Emmanuel Review Continues

- Convicted and sentenced to 7 years imprisonment without an option of fine on 3 June 2022.
- The court also made the following orders:
- The Nigerian passport of the prisoner and that of his daughter are to be forfeited to the Federal Republic of Nigeria and return to the Nigeria Immigration Service
- The Resident permits of the Prisoner and his daughter also forfeited being instruments used in the commission of the offence.

Review of some Concluded Cases

- **Federal Republic of Nigeria v. Alatise Oluwasanmi Samuel & Olusegun Richards Ologbe:** A lady based in France contracted the defendants (a syndicate for SOM/HT) to bring a victim to her.
- The Lady in France processed the passport of the victim and used a different name for her. The 1st Defendant was with the victim all through the processes.
- The victim was arranged as the wife of the 1st Defendant, and they increased her age from 25 to 40 years old.
- On 4 January 2017 while at the airport, the victim could not remember her name at departure, and they were stopped from travelling.
- On 17 March 2021, the defendants were sentenced to 5 years imprisonment without an option of fine.

Major Challenges

- Lack of cooperation by states involved or delay response to Mutual Legal Assistance (MLA) is a major setback to the effective investigations and prosecutions of SOM cases.
- SOM planning sometime takes longer period before execution. It makes tracing and gathering of relevant pieces of evidence to support prosecution a challenging task.
- The ever-changing fraudulent acts/conducts by SOM criminal networks, sometime makes it difficult for law enforcement officers to detect and dismantle it.
- Lack of parallel investigations and prosecutions of all those involved in the state of origin and the destination country.

Lessons Learnt

- The cooperation (formal and informal) of all the states involved is needed to thoroughly investigate and prosecute SOM cases. The UK maximally demonstrated this by providing all the visa application and other documents in *FRN v. Olayinka Bello Taiwo*.
- Digital mobile forensic examination should be deployed in all SOM investigations. Relevant pieces of evidence were extracted in the above reviewed cases on the cell phones of both Defendants and victims.
- Law Enforcement officers must be more vigilant and understand their environment. The fraudulent acts/conducts employ by SOM syndicate keeps evolving.
- There should be parallel investigations and prosecutions in the origin and destination states.