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**TRAFFICKING IN WOMEN AND CHILDREN:
A Comparison between South Africa and Cameroon**

by

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DEDICATION

This dissertation is dedicated to my lovely son Lele Muluh Curtis-Light.



DECLARATION

TO WHOM IT MAY CONCERN

I, Megha Nkem, identity number PTACMR000250913 and student number 215055454, do hereby declare that the minor dissertation submitted for Magister Legum in International Law Degree to the University of Johannesburg, apart from the help recognised, is my own work and has not previously been submitted to another university or institution of higher education for a degree.



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LIST OF ABBREVIATIONS

| | |
|----------------------|------------------------------------------------------------------------------------------------|
| UN----- | United Nations |
| AU ----- | African Union |
| NGO's----- | Non-Governmental Organizations |
| UNESCO ----- | United Nations Educational Scientific and Cultural Organization |
| Rome Statute----- | Rome Statute of the International Criminal Court (ICC) of 2002 |
| UNTOC ----- | United Nations Convention against Transnational Organized Crime |
| Palermo Protocol --- | Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children |
| ILO ----- | International Labour Organization |
| ICTY ----- | International Criminal Tribunal of the Former Yugoslavia |
| ILC ----- | International Law Commission |
| IOM ----- | International Organization for Migration |
| UNODC ----- | United Nations Office on Drugs and Crime |
| UNICEF ----- | United Nations International Children's Emergency Fund |
| UNHCR----- | United Nations High Commissioner for Refugees |
| IDPs ----- | Internally displaced persons |
| TVPA ----- | Trafficking Victims Protection Act's |
| UN.GIFT----- | United Nations Global Initiative to Fight Human Trafficking |
| AU.COMMIT ----- | African Union Commission Initiative against Trafficking Campaign |

CHAPTER ONE

GENERAL INTRODUCTION

It ought to concern every person, because it is a debasement of our common humanity. It ought to concern every community, because it tears at our social fabric. It ought to concern every business, because it distorts markets. It ought to concern every nation, because it endangers public health and fuels violence and organized crime. I'm talking about the injustice, the outrage, of human trafficking, which must be called by its true name-modern slavery.

- President Barack Obama

1. *Evolution and Background to the Study*

Trafficking is widely regarded as a global scourge as it affects both children and adults alike, with women and girl children being the most vulnerable.¹ From the ancient Greek and Romans to the medieval times, and up until today, human trafficking and exploitation has been in existence across the globe for thousands of years where humans have been subjected to various forms of physical and sexual slavery.² The European Slave trade in Africa from the 1400s marked the beginning of human trafficking and exploitation even though prior to this date, other forms of human trafficking had been in existence. Throughout the 1400s to the 1600s, other countries became more involved in the European slave trade which acted as a boost to the trade seeing the sale in more humans.³ Trafficking, as it relates to human beings, came into international use in the early twentieth century in connection with white slavery:⁴ a term that was initially used to refer to forcible or fraudulent recruitment to prostitution.⁵

¹ Gallinetti and Kassan edited by Sloth-Nielson *Children's Rights in Africa* (2008) 239.

² Rutgers University campus coalition against trafficking
<http://www.eden.rutgers.edu/~yongpatr/425/final/timeline.htm> (02-10-2015).

³ Agatucci *African Timelines Part III: African Slave Trade & European Imperialism* (2010).

⁴ White slavery is of great relevance to this topic because of its nature since it was a form of slavery for young white women which sparked the awareness of sexual exploitation of women internationally.

⁵ Gallagher *The International Law of Human Trafficking* 2010 13.

According to Doezema, the term “white slavery” means the procurement - by the use of force, deceit, or drugs – of a white woman or a girl against her will for prostitution.⁶ In 1904, the first convention against white slavery was adopted⁷ which sought to suppress the “criminal traffic” of women and girls forcefully procured for “immoral purposes”.⁸ Although it is widely argued that this act was only put into place in order to control the number of European women who were seeking to find jobs abroad, according to Kangaspunta, the agreement still stands as a moral action against the trafficking of women.⁹

In subsequent years, several international agreements concluded under the League of Nations dealt with, *inter alia*, Suppression of the Traffic in Women and Children (1921)¹⁰ and Suppression of the Traffic in Women of Full Age (1933).¹¹ While none of these treaties defined “Traffic” or “trafficking”, they were uniformly concerned with the organized and coerced movement of women and girls abroad for the purposes of prostitution.¹² As a result of these conventions, children of both genders were also recognized as victims of trafficking. The United Nations (herein UN) in 1949 adopted the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others.¹³ This Convention required State parties to punish all those involved in the trafficking process which entailed procurement, and the result which also entailed exploitation (prostitution).¹⁴ The same interpretation could also be traced to the early white slavery instruments as well as the numerous work of the UN on human trafficking right up to the end of the 1980’s.¹⁵ In the late 1980’s and early 1990’s, there were still disagreements on the definition of the term

⁶ Doezema “Loose Women or Lost Women? The re-emergence of the myth of white slavery in contemporary discourses of trafficking in women” 1999 *Gender Issues* 23-50.

⁷ International Agreement for the Suppression of the White Traffic of 1905.

⁸ See n 5 above.

⁹ Kangaspunta “A short History of Trafficking in Persons” *Freedom from fear Magazine* <http://f3magazine.unicri.it/?p=28> (02-10-2015).

¹⁰ International Convention for the Suppression of the Traffic in Women and Children of 1922.

¹¹ International Convention for the Suppression of the Traffic in Women of Full Age of 1934.

¹² See n 5 above.

¹³ Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others of 1949 (the 1949 Trafficking Convention).

¹⁴ See 1949 Trafficking Convention n 13 Art 1, 2 and 6.

¹⁵ See for example UN works such as “Inquiry on the Status of Combating of the Traffic in Persons and of the Exploitation of the Prostitution of Others: Report of the Secretary General” 1982 UN Doc. E/CN.4/Sub.2/Ac.2/1982/13.

“trafficking” especially as prostitution and the inadequacies of the current international legal framework to prevent the sexual exploitation of women was being debated.¹⁶ While the issue surrounding the definition of the term “trafficking” was being debated between states, intergovernmental organisations and non-governmental organisations (herein NGO's), a consensus was finally reached and by the end of 2000, the adoption of a trafficking Protocol came to light. The Protocol’s understanding of trafficking has been adopted, explicitly or implicitly, by all relevant UN organs and agencies, as well as other intergovernmental organizations working on the issue.¹⁷

Turning to Africa, human trafficking can be seen as part of a bigger “humanitarian crisis” gripping sub-Saharan Africa with deep historical roots.¹⁸ While trafficking in women and children has been taking place in every part of the world for a very long time, Africa is the central part of this story but one that has not equally captured the world’s attention.¹⁹ Trafficking in women and children is linked to the history of Africa’s involvement in the global trade in slaves. Women and children are trafficked for the sex trade but also for a host of other domestic, agricultural and commercial purposes.²⁰

2. Problem Statement

Human trafficking is a crime against humanity as stipulated by the Rome Statute.²¹ It involves an act of recruiting, transporting, transferring, harbouring or receiving a person through the use of force, coercion or other means, for the purpose of exploiting them.²² Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and across international borders. However, laws both at the national and international levels have been put in place criminalising this act such as the Palermo Protocol.

¹⁶ See Wassyla Tamzali, “*The Penn State Report: Report of an International Meeting of Experts on Sexual Exploitation, Violence and Prostitution*” (1999, UNESCO and the Coalition against Trafficking in Women Annex 1).

¹⁷ See n 5 above 42.

¹⁸ Referring to the European slave trade of the 1400-1600’s.

¹⁹ Lawrence BN Roberts RL *Trafficking in Slavery’s Wake* 2012.

²⁰ See n 19 above.

²¹ The Rome Statute of the International Criminal Court of 2002 (herein Rome Statute). The Rome Statute makes specific reference to “trafficking in persons” as a crime against humanity in Art 7(1) and 7(2) (c), its enslavement provision.

²² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of 2000 [hereinafter Palermo Protocol].

Even with these laws, human exploitation still exists in almost every country of the world most especially in poverty stricken countries. At the national level a number of additional problems arise which fall into three general categories: political/social factors; data bias (manipulation with statistics); and definitional/legal ambiguity.²³

Since the international community has identified trafficking as a problem and decided that law will be used to structure and enable at least part of the solution to that problem, states on their own must tackle this problem from the roots which will go a long way in improving the current situation facing the world with regards to human trafficking.

3. *Aim of Research*

The aim of this study is to take a closer look at human trafficking: causes, consequences, advantages and disadvantages. The study brings out reasons why despite several laws put in place both at the national and international levels, human trafficking still has not been able to be curbed or reduced, yet it has stood the test of time flourishing as the days go by. Focus is laid on two contrasting regions of Africa looking at the situation in Cameroon from West Africa and South Africa from the Southern African region.

4. *Significance of Study*

The purpose of this study is to bring out the ills of human trafficking and make states consider eradicating it as a priority especially as it leads to loss of human dignity.

Even though human trafficking could be economically beneficial to both the trafficker and the victim at some point in time, the end result always favours the trafficker and places the victim at his mercy. Hence the need to sensitize women and children on the negative issues surrounding human trafficking.

5. *Literature Review*

Generally, the negative impact of human trafficking has been very visible and ongoing for a very long time. Hence it has attracted the attention of many researchers due to the flourishing nature of the trade despite several anti-trafficking laws in place.

The literature review clearly defines human trafficking, its causes, various forms and consequences. The situation in two African countries from contrasting regions brings in some differences and similarities faced by Africa as a whole. The literature review further reveals

²³ International Organization for Migration (IOM) *Human Trafficking: New Directions for Research* 2008.

geographic patterns and trafficking trends closely followed by traffickers. Worth noting is the fact that, due to the continuing conflicts in Africa, trafficking in child soldiers and women has hardly been able to stop.²⁴ The work on post-conflict trafficking is much broader- covering all areas of the world as another emerging pattern is the heightened risk faced by displaced children and women before, during and after conflict.²⁵

Even though human trafficking could be economically beneficial to the victim, states should consider eradicating human trafficking as a priority because it separates family members, it promotes sexual slavery, and it degrades human dignity.

However, challenges such as the fear to report cases by victims, lack of comprehensive data, population tracking, awareness-raising, multi-disciplinary examination of inter-related phenomena related to such persons, reliable information on their numbers, prevention and protection services and reliable indicators for measuring interventions for such victims are lacking to fight against the crime of human trafficking.²⁶ While recommendations such as poverty-alleviation and education programs, human rights awareness, rehabilitation and reintegration of victims within their home communities, as well as critical individual and public health risks from rising prevalence of HIV/AIDS and other related health complications are cited in order to foster the reduction of the crime.²⁷

Finally, every country should criminalize trafficking offences whether committed domestically or internationally.²⁸ The promotion of education and schooling for children increases the awareness of the dangers of trafficking, and may reduce the number of cases.²⁹ Also, States need to harmonise their laws so that the criminalization of trafficking offences runs if not same but at least, through all states. States need to extend extra-territorial jurisdiction to nationals and residents, recognise trafficking in children as an extraditable offence, remove the double criminality requirement as a basis for asserting extra-territorial jurisdiction,³⁰ remove double jeopardy,³¹ adopt a uniform age of sexual consent and also

²⁴ Nelson, Guthrie and Coffey, *Literature Review and Analysis Related to Human Trafficking in Post-Conflict Situations* 2004 http://pdf.usaid.gov/pdf_docs/Pnacy689.pdf (05-10-2015).

²⁵ See n 24 above.

²⁶ See n 24 above.

²⁷ See n 24 above.

²⁸ Wylie and McRedmond *Human Trafficking in Europe* 2010 208.

²⁹ Fong "Literature review on Trafficking in West and East Africa"
http://www.childtrafficking.com/Docs/gaatw_04_final_0708.pdf (29-09- 2015).

³⁰ In this case, as long as a conduct is criminal in the state seeking to prosecute, it must be immaterial whether it is also criminal in the state where it occurred.

remove the formal requirements to file a complaint since in most countries, a formal request for prosecution from the foreign government is necessary before the offenders country will prosecute a trafficker.³²



³¹ Double jeopardy requires that a person cannot be tried twice for the same offence.

³² See n 28 210.

CHAPTER TWO

WHAT HUMAN TRAFFICKING IS ALL ABOUT

Definition of Human Trafficking

After fighting and finally putting slavery and slave trade to an end, the world is experiencing a new form of slavery called human trafficking. Bought and sold, consumed and exploited: human bodies, labour personhood, and dignity have become the most valuable reusable and profitable products in the 2011 world market.³³ In November 2000, the United Nations Convention against Transnational Organized Crime (herein UNTOC) was adopted in Vienna.³⁴ At the same Conference, two Protocols were also adopted one of which was the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (herein Palermo Protocol),³⁵ supplementing the UNTOC. UNTOC is a mother convention which establishes a general regime for tackling transnational organized crime.³⁶ Amongst many definitions of the term human trafficking, the UNTOC defines trafficking in persons as:

“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”³⁷

The International Labour Organization (herein ILO) defines human trafficking as “the recruitment, transportation, transfer... for the purposes of exploitation.”³⁸

³³ Kim *Prosecuting Human Trafficking as a Crime Against Humanity Under The Rome Statute* (2011) 1.

³⁴ United Nations Convention against Transnational Organized Crime of 2000.

³⁵ See Palermo Protocol n 22 above.

³⁶ Piotrowicz, “Smuggling and Trafficking of Human Beings” in Chetail and Bauloz (eds) *Research Handbook on International Law and Migration* (2014) 132.

³⁷ UNTOC Art 3(a).

³⁸ Adepoju *Review of Research and Data on Human Trafficking in Sub Saharan Africa* (2005) 75 77. This definition is same as that of the UNTOC.

Meanwhile in 1994 the UN General Assembly defined trafficking as the “illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries in transition with the end goal of forcing women and children into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour”.³⁹

While the report from the Roundtable also defines and brings forth the elements of trafficking, which are movement, deception, coercion and force,⁴⁰ the Palermo Protocol also defines trafficking in persons same as the UNTOC.

However, the Rome Statute on its part fails to define trafficking in persons but incorporates the Palermo Protocol’s definition since Palermo is the primary international instrument on human trafficking and because Palermo’s means element⁴¹ has been accepted as customary international law.⁴² This has been clearly illustrated in the International Criminal Tribunal of the Former Yugoslavia (herein ICTY) case of *Prosecutor v Kunarac*,⁴³ where it was found that while there was no definition of enslavement in the ICTY statute, the International Law Commission’s (herein ILC) definition of enslavement as a crime against humanity constituted customary international law.⁴⁴ The ICTY stated:

“Under this definition [of enslavement, which includes trafficking], indications of such enslavement include elements of control and ownership; the restriction or control of an individual’s autonomy, freedom of choice or freedom of movement; and, often, the accruing of some gain to the perpetrator. The consent or free will of the victim is absent. It is often rendered impossible or irrelevant by, for example, the threat or use of force or other forms of coercion; the fear of violence, deception or false promises; the abuse of power; the victim’s position of vulnerability; detention or captivity, psychological oppression or socio-economic

³⁹ Salah *Child Trafficking in West and Central Africa: An Overview* (2001) 2
<http://www.unicef.org/media/newsnotes/africchildtraffick.pdf> (05-10-2015).

⁴⁰ Miller and Stewart *Report from the Roundtable on the Meaning of "Trafficking in Person: A Human Rights Perspective* (1998) 11.

⁴¹ In Art 3 of the Palermo Protocol, the means element constitutes “threat or use of force or other forms of coercion, of abduction... a person having control over another person”.

⁴² See n 33 11.

⁴³ *Prosecutor v Kunarac* 2001 ICTR 541-42.

⁴⁴ See n 43 above.

conditions”.⁴⁵

Thus, *Kunarac* accepts Palermo’s means elements as customary international law indicating the Rome Statute uses Palermo’s definition.

From the above definitions, it can be gathered that without an exploitative character, the mere movement of persons cannot be considered human trafficking even if the movement is against the person’s will and involves force or other forms of coercion.⁴⁶ However, worthy of note is the fact that human trafficking requires the movement of persons within national boundaries or across international borders for the purpose of exploiting those persons.⁴⁷

In the world of today, human trafficking is one of the most lucrative forms of business as it has been considered a multibillion industry whose profits compares only to those from the trade of arms and drugs.⁴⁸ Human trafficking has become a fast-growing global criminal activity, and it affects just about every country in the world.⁴⁹ Countries can act as places of source, transit or destination.⁵⁰ Each year, at least four million people are trafficked worldwide, with an annual profit of up to US\$7 billion for the trafficking network.⁵¹ The global industry was valued at between US\$5–7 billion at an International Organization for Migration (herein IOM) Conference in 1994, but rigorous methodology for such calculations has been slower to emerge.⁵² Trafficking victims often believe they are accepting jobs in the labour, domestic service, restaurant, and factory sectors,⁵³ and are taken across borders - sometimes through coercive methods - where they often end up in exploitative situations.⁵⁴

⁴⁵ See n 43 above.

⁴⁶ Manzo K “Exploiting West Africa’s children: trafficking, slavery and uneven development” 2005 *Area* 37 393–401.

⁴⁷ See Adepoju n 38 91.

⁴⁸ Srikantiah “Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law” 2007 *Boston University Law Review* 157 163.

⁴⁹ Richard *International Trafficking in Women to the United States: A Contemporary Manifestation of Slavery and Organized Crime* (2000) 1.

⁵⁰ Latomaa “Human Trafficking in Finland” 2014 *Intercultural Human Rights Law Review* 229 270.

⁵¹ Young “*Trafficking of Humans Across United States Borders: How United States Laws Can be Used to Punish Traffickers and Protect Victims*” 1998 73.

⁵² Morrison “Human Smuggling and Trafficking” 2002 *Forced Migration Online Research Guide* <http://www.forcedmigration.org/research-resources/expert-guides/human-smuggling-and-trafficking/alldocuments> (06-10-2015).

⁵³ Chuang *Redirecting the Debate Over Trafficking in Women: Definitions, Paradigms, and Contexts* (1998) 65 69.

1. *Child Trafficking. Who is a Child?*

The UN Convention for the Rights of a Child (herein CRC) states that a child is any individual under the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.⁵⁵

The CRC articulates the human rights of children more completely, provides a set of guiding principles that fundamentally shape the way in which we view children and finally states that all children have the same interconnected rights which are of equal importance.⁵⁶

The CRC stipulates that ‘state parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form’.⁵⁷ Article 35 therefore places an obligation on states for the protection of children in the above mentioned events amongst which is human trafficking. Children who form a bigger portion of the vulnerable population or victims of human trafficking are bestowed with special status and protection by international law through the CRC.

However, it is important to know where to draw the line in order to establish what child trafficking entails. The CRC "universalized a western model of childhood as an eighteen year old time period characterized by school, play and freedom from responsibility”.⁵⁸ In accordance, the Palermo Protocol also defines a child to mean any person under the age of eighteen.⁵⁹

With differences in national legislations and cultures particularly in Africa, it is not always easy to determine who should be considered a child.⁶⁰ In African communities, children are obliged to work at early ages of their lives in order to support their families. Due to this, the

⁵⁴ Young n 51 73.

⁵⁵ United Nations Convention on the Rights of the Child of 1990 [hereinafter CRC].

⁵⁶ UNICEF “Convention on the Rights of the Child” http://www.unicef.org/crc/index_understanding.html (06-11-2015).

⁵⁷ Article 35 of the CRC of 1990.

⁵⁸ Manzo n 46 above.

⁵⁹ Art 3(d) Palermo Protocol.

⁶⁰ Shu-Acquaye “Human Trafficking: Trends in Africa” 2012 *Gonzaga Journal of International Law* 1-32.

ILO brings down its minimum working age to fifteen years,⁶¹ while twelve years is acceptable for certain light work.⁶²

Though with a lot of criticism, the western model of eighteen years is what has been widely used and accepted.⁶³ As such, the CRC should be considered in its entirety, as a tool for understanding and responding to the trafficking and related exploitation of children.⁶⁴

Child trafficking in its simplest form is defined as when a child has been moved within a country, or across borders, whether by force or not, with the purpose of exploiting the child.⁶⁵

Adepoju identifies six ways through which children are trafficked in West and Central Africa: abduction; payment of money to the parents; bonded placement, enrolment for a fee by an agent for domestic work at the request of the children's parents; placement for a token sum for specified duration or for gift items; and the parents enlisting of children under the guise that they would be enrolled in school, trade or training.⁶⁶

While recent research has yielded information on the nature of child trafficking, little is known about its magnitude; hence the ILO's 2002 estimation of 1.2 million children being trafficked each year remains the reference.⁶⁷

2. *Distinction Between Trafficking and Slavery*

Human trafficking and slavery are related, yet different.⁶⁸ While the Slavery Convention of 1927 defines slavery as "the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised",⁶⁹ trafficking on the other hand is the recruitment, transportation and transfer of a person for the purposes of exploitation. Even though both share a common denominator which is exploitation, they differ in that slavery is

⁶¹ International Labour Organization, Minimum Age Convention of 1973 Art. 2
<http://www.unhcr.org/refworld/docid/421216a34.html> (06-10-2015).

⁶² See n 61 Art. 7 and Manzo n 46 395.

⁶³ See Manzo n 46 395.

⁶⁴ See Gallagher n 5 65.

⁶⁵ Defined by *The programme Towards the Elimination of the worst forms of Child Labour (TECL)* of the ILO Pretoria, after an engagement with the United Nations Office on Drugs and Crime and International Organisation for Migration 2007 http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf.

⁶⁶ See Adepoju n 38 77.

⁶⁷ UNICEF "Child protection from violence, exploitation and abuse"
http://www.unicef.org/protection/57929_58005.html (12-10-2015).

⁶⁸ See Manzo n 46 393.

⁶⁹ Convention to Suppress the Slave Trade and Slavery League of Nations of 1926 Art 1.

a form of exploitation as opposed to trafficking, which is a means to exploitation.⁷⁰ In effect, human trafficking could be compared to slave trade rather than slavery. According to these definitions, human trafficking and the slave trade would overlap in the case where the trafficked person ends up in a situation that would be considered slavery.⁷¹

3. *Distinction Between Human Trafficking and Smuggling*

To fully understand human trafficking, one has to differentiate between human trafficking and human smuggling as not all persons who leave their home countries are necessarily victims of trafficking.⁷² The UNTOC defines smuggling as "the procurement in order to obtain directly or indirectly, a financial or other material benefit, through the illegal entry of a person into a state party of which the person is not a national or a permanent resident".⁷³ Hence with human smuggling, the person being smuggled is a participant of the crime since he accepts to do it, pays for it and is very cooperative during the journey,⁷⁴ while with human trafficking, there must be an element of force, fraud, or coercion as highlighted by the Palermo definition of trafficking.⁷⁵ Both practices involve human movement but what differ in both, are the motives in the trafficker's mind and whether the victim upon reaching his/her destination is then subjected to coercion, violence or threat of violence under exploitative circumstances.⁷⁶ Hence smuggling entails a requirement of the victims consent and to some extent, the cooperation of the victim while trafficking is a criminal practice that ignores or overcomes the will of the trafficked person upon arrival at their destination, for the purpose of their exploitation.⁷⁷ However in some cases, some people who believe that they are being smuggled are actually being trafficked, although they do not find this out until it is too late.⁷⁸

4. *Forms of human trafficking*

⁷⁰ See Manzo n 46 396.

⁷¹ See Shu-Acquaye n 60.

⁷² Inglis *Expanding International and National Protections Against Trafficking for Forced Labour Using a Human Rights Framework* (2001) 55 82.

⁷³ See Morrison n 52.

⁷⁴ See Palermo Protocol n 22.

⁷⁵ See UNTOC n 1.

⁷⁶ See Inglis n 72 69 82.

⁷⁷ See Piotrowicz n 3 139.

⁷⁸ See Piotrowicz n 3 139.

Trafficking can take many forms. While women and girls are lured from their homes and forced into prostitution in large cities, sex tourism areas, or sexual exploitation by military(also by peacekeepers),⁷⁹ men and boys of all ages are forced to work in commercial sectors, agricultural sectors, fishing industries, mines, sweatshops and also street begging,⁸⁰ not leaving out child soldiering.⁸¹ Accordingly, poor families sell their children into forced marriages, domestic servitude,⁸² slavery, bonded labour and sex trafficking⁸³ which will be elaborated in the subsequent paragraphs.

The ILO Convention on Forced Labour defines the term forced or compulsory labour or better still involuntary servitude as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.⁸⁴ The ILO further states that almost 21 million people are victims of forced labour worldwide, while 11.4 million are women and girls, 9.5 million are men and boys.⁸⁵

Citizens of developing countries are the most vulnerable of this form of trafficking as they are recruited and trafficked using deception and coercion after which they find themselves held in conditions of slavery in a variety of jobs such as agricultural, construction and domestic servitude.⁸⁶

More so, the Palermo Protocol includes bonded labour as a form of exploitation related to human trafficking.⁸⁷ Debt bondage also known as bonded labour, is a type of forced labour, involving a debt that cannot be paid off in a reasonable time where the employer or enforcer artificially inflates the amount of the debt, adds exorbitant interest, charges for living expenses, deducting little or nothing from the debt and increasing the amount of time so that

⁷⁹ Picarelli *Trafficking, Slavery and Peacekeeping: The Need for a Comprehensive Training Program, Conference Report* (2002).

⁸⁰ Martin and Callaway “Human Trafficking and Smuggling” 2011 *Global Migration Governance* 226.

⁸¹ Alfredson “Child Soldiers, Displacement and Human Security” 2002 *Disarmament Forum* 3 17-27.

⁸² Fyfe *Child Labour* (2008).

⁸³ US Department of Labour “Bonded and Forced Child Labour” <http://www.dol.gov/ilab/reports/child-labor/pakistan.htm> (07-10-2015).

⁸⁴ ILO Forced Labour Convention 1930 (No. 29), *Convention concerning Forced or Compulsory Labour*, Art 2(1).

⁸⁵ ILO <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (09-10-2015).

⁸⁶ See Interpol *Connecting Police For A Safer World* <http://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Types-of-human-trafficking> (09-10-2015)

⁸⁷ US Department of State *Trafficking in Persons Report* 113-15 (2009) 16.

the individual must work.⁸⁸ The victim, who is promised a job, education, or other type of benefit in exchange, usually enters into the initial debt voluntarily.⁸⁹ It is a cycle of debt where there is no hope for freedom as the victim keeps paying an unending debt.

In addition to debt bondage, is another form of human trafficking known as sex trafficking. Sex trafficking is the recruitment, transportation, or harbouring of persons through threat, use of force, or other coercion for the purpose of sexual exploitation.⁹⁰ According to the United Nations Office on Drugs and Crime (herein UNODC) of detected trafficking victims, 53% are subjected to sexual exploitation.⁹¹ The trafficking of women and children for sexual exploitation has made some observers conclude that the profits from the sex trade in women and children are among the highest sources of illegal income in the world, ranking just below drugs and gun dealing.⁹²

In Africa, sex trafficking is so common because of high levels of poverty. Women who often find themselves in such circumstances are those fleeing their homes in search of better lives while children in such circumstances are those who have been kidnapped, sold out either by their families or previous owners. Thousands of African women from West Africa are annually trafficked to Western Europe for forced commercial sex work according to the UNDOC. Nigeria is said to be the largest single source of trafficked women in Europe and the Middle East, with an estimated 10,000 Nigerian sex workers in Italy, many of them victims of trafficking.⁹³ While in Southern Africa, South Africa is the primary African destination of trafficked women because it is the regional power house, and its image as a destination of opportunities is regularly used by traffickers to lure women and girls into

⁸⁸ Bales "Human Rights and Contemporary Slavery" 2008 *Graduate School of International Studies, University of Denver* 14 <http://www.du.edu/korbel/hrhw/researchdigest/slavery/slavery.pdf> (09-10-2015).

⁸⁹ See n 87 above.

⁹⁰ See n 88 above.

⁹¹ United Nations Office on Drugs and Crime (UNODC) <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menu> (12-10-2015).

⁹² Kelly, Maghan and Serio *Illicit Trafficking* (2005) 87.

⁹³ UNODC <http://www.unodc.org/unodc/en/frontpage/2012/October/nigeria-launches-anti-human-trafficking-campaign-appoints-goodwill-ambassadors.html> (12-10-2015).

trafficking traps.⁹⁴ The majority of people trafficked into South Africa are from its neighbouring countries.⁹⁵

The sad part of this type of trade is that, children are not left out. United Nations International Children's Emergency Fund (herein UNICEF) estimates that 2 million children are subjected to prostitution in the global commercial sex trade.⁹⁶ The use of children in the commercial sex trade is prohibited under the Palermo Protocol, and criminalization of commercial sexual exploitation of children is mandatory under international covenants and protocols to all state parties.⁹⁷ As one of the worst forms of child labour, child sex trafficking has devastating consequences on its victims, "including long-lasting physical and psychological trauma, disease (including HIV AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possible death".⁹⁸

Furthermore, child soldiering which is common in Africa is another form of human trafficking. The prevalent use of children in armed combat is a contemporary manifestation of slavery and a form of human trafficking that is equally serious and as lucrative as the international crimes of drug trafficking and weapon trade.⁹⁹ With so many simplified definitions of human trafficking, Tiefenbrun and Valentine particularly choose their words as they state that "trafficking in persons, especially women and children, is the purchase and sale of human beings as cargo for the purposes of engaging in exploitative forms of labour such as sex work or participation in armed conflict".¹⁰⁰ Child soldiering therefore, involves the "unlawful recruitment of children, often through force, fraud, or coercion, for labour or sexual exploitation to participate in armed conflicts, performing duties such as combatants,

⁹⁴ Consultancy Africa Intelligence

http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=233&Itemid=156 (12-10-2015).

⁹⁵ UNESCO "Human Trafficking in Mozambique: root causes and recommendations" 2006

<http://unesdoc.unesco.org/images/0014/001478/147846E.pdf> (12-10-2015).

⁹⁶ See n 87 22.

⁹⁷ See n 87 22.

⁹⁸ See n 87 22.

⁹⁹ Tiefenbrun, *Sex Sells But Drugs Don't Talk: Trafficking of Women Sex Workers and an Economic Solution* (2002) 161.

¹⁰⁰ See Tiefenbrun n 99 167.

porters, cooks, guards, servants, messengers, or spies”¹⁰¹ Trafficking in children for their use on the battlefield is a human rights violation that rises to the level of slavery.¹⁰²

In 2007, the UN estimated that 57 armed groups and forces were using children in 2007, which was a great increase from 40 armed groups that used children in 2006.¹⁰³ With such variations, it is practically difficult coming up with an accurate number of children participating in armed conflicts.¹⁰⁴ Africa harbours approximately one-half of the child soldiers around the world¹⁰⁵ because of political, economic and social instability.¹⁰⁶

5. *Stages of Human Trafficking*

Typically, there are four stages of human trafficking:

- Recruitment which includes strategies such as selecting vulnerable women—usually poor, young, and uneducated—who are easy to trick and will believe promises of future employment, traffickers hide behind an apparently legal business using techniques such as false promises of passports, work visas, and well-paying jobs;
- Transportation/entry which includes strategies such as providing all necessary documentation and carrying out research on the weaknesses existing at the port of entry of their destination where they usually bribe border officials most especially because of the forged documents they carry;
- Delivery/marketing which includes making contact with clients using standard marketing techniques, prearranging deals through legal or illegal businesses, such as domestic employment agencies, entertainment agencies, and escort services, marketing through organized crime rings for sex trade, while making sure the trafficked woman is kept dependent on trafficker until delivery. Traffickers at this stage use techniques such as advertising in pornographic magazines and websites (matchmaking websites), delivery to farm labor, sweat shops; domestic service agencies;

¹⁰¹ See n 87 20 and 22.

¹⁰² See Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C, 7105 (2006) [hereinafter TVPA].

¹⁰³ See n 87 20.

¹⁰⁴ See n 87 20.

¹⁰⁵ UN Office for the Coordination of Humanitarian Affairs “Africa: Too small to be fighting in anyone's war”2003 *IRIN* <http://www.irinnews.org/indepthmain.aspx?IndepthId=24> 10-10-2015).

¹⁰⁶ MacMullin and Loughry *Investigating Psychological Adjustment of Former Child Soldiers in Sierra Leone and Uganda* (2004) 460.

- And above all the exploitation stage where traffickers use strategies such as threats of violence against victim's relatives in home country, actual violence on victim to ensure compliance and silence, create and maintain debt, create and maintain alcohol and drug dependency, keeping victim in isolation by retaining victim's passport and threatening to turn them over to the authorities; whereby the above mentioned techniques and strategies used at each stage may differ depending on the particular recruiting locality and the difficulties that may arise in moving humans across borders.¹⁰⁷

However, the sophistication of the trafficker's organization matters too as, the third or even fourth stages of exploitation may be directly linked to the initial stage of recruitment.¹⁰⁸

6. *Factors Contributing To Human Trafficking In Africa*

Several factors account as reasons why people migrate from their homes only to find themselves in slavery. Human trafficking can be caused by a number of factors depending on the region, political, cultural and social factors.¹⁰⁹ However, there are some common trends that are associated with trafficking in general amongst which are civil unrest, tradition of migration, lack of human rights, poverty, oppression and a general lack of opportunity which will be seen in the paragraphs that follow.¹¹⁰

Poverty is the number one cause of human trafficking in Africa.¹¹¹ In West Africa, Sawadogo focuses on socio-economic and politico-institutional forces as the major causes of transnational human trafficking.¹¹² According to him, socio-economic factors such as the soaring of prices of commodities remains a security risk since it destabilises vulnerable governments and can therefore constrain people to behave even in contradiction with social and moral norms in order to break through their miserable conditions.¹¹³ He further sees from

¹⁰⁷ IOM *Breaking the Cycle of Vulnerability* 14 (2006)

http://www.iom.int/jahia/vebdav/site/myjahiasite/shared/shared/mainsite/published/docs/books/Breaking_the_Cycle2.pdf (25-02-2016).

¹⁰⁸ Center For Problem-Oriented Policing "*The Exploitation of Trafficked Women*" http://www.popcenter.org/problems/trafficked_women/ (10-10-2015).

¹⁰⁹ Sawadogo "The Challenges of Transnational Human Trafficking in West Africa" *African Studies Quarterly* (2012) 96 104.

¹¹⁰ Caitlin Huber "The Burgen Project" <http://borgenproject.org/causes-of-human-trafficking/> (12-10-2015).

¹¹¹ See Adepoju n 38 80.

¹¹² See n 109.

¹¹³ See n 109 96 97.

a political point of view that the false conception that national resources belong to those in power which has led to the general disregard of domestic and regional regulations has also led to the spread of corruption which together with the socio-economic forces, has paved the way for transnational human trafficking in this part of the world increasing the exodus of people from their home countries.¹¹⁴

Furthermore, the pull up north where better living conditions exist, natural disasters like droughts and poor social and cultural practices such as gender inequality in typical rural African communities make girls and women vulnerable to exploitation in Africa, hence promoting migration.¹¹⁵ Some of the most vulnerable people to trafficking therefore are those who are migrating or displaced due to a “push” like conflict or natural disaster, or a “pull” like the change for better economic and social opportunities.¹¹⁶

Also, culture plays a great role in promoting human trafficking. As a part of culture, African families are used to migrating in order to find better living places. Hence they see the act of sending their children away in order for them to learn a trade, study or work, as part of that culture of bettering their lives while traffickers capitalise on this point and use it as a tool to exploit their innocent victims.¹¹⁷ However, this perversion of cultural traditions where childcare is the responsibility of the extended family somehow provides social balance and is meant to stop the cycle of poverty by placing the children of the poor with wealthier relatives for proper care and upbringing.¹¹⁸ Sometimes, the parents or guardians solicit the help of traffickers themselves not knowing the conditions the children will be facing.¹¹⁹

Apart from culture, armed conflict in Africa is one of the major causes of human trafficking,¹²⁰ as it destroys livelihoods, severely damages national economies and causes mass population movements where reports from the United Nations High Commissioner for Refugees (herein UNHCR) also known as the UN Refugee Agency show that as of mid-2015 in Africa alone, there existed 4,419,845 refugees while 1,044,031 were being assisted by the UNHCR of which when combined with asylum-seekers, internally displaced persons (herein

¹¹⁴ See n 109 96 97.

¹¹⁵ See n 28 7.

¹¹⁶ See n 109.

¹¹⁷ See Salah n 39.

¹¹⁸ UNESCO, Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper Poverty Series n° 14.2 (E) Paris 2006 34 and 35 <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf> (10-10-2015)

¹¹⁹ See n 118.

¹²⁰ See Adepoju n 38 80.

IDPs), returnees (refugees and IDPs), stateless persons, and others of concern, a total sum of 17,067,303 people constituted the total population of concern by June 2015.¹²¹ Most often during periods of high insecurity such as wars, the vulnerability of women and children is increased, the promotion of prostitution which often involves the abduction of women and children into armed groups/factions also increases, increased poverty of survivors, particularly widows and female headed-households which all make the vulnerable population to either voluntarily or forcefully join the armed group.¹²² While armed conflict distorts and magnifies conditions of hardship and insecurity it creates fertile conditions for trafficking in all aspects.¹²³ This can clearly be seen in the recent migration crisis facing Europe with thousands and thousands of immigrants taking dangerous trips from North Africa across the Mediterranean Sea into Europe.¹²⁴ All this caused by the socio-economic and political instability in the Maghreb region.

On an international platform, although sexual brutality and enslavement have been viewed as the unfortunate outcome of war, rather than crimes, studies of rape in war have however proven the contrary.¹²⁵ The wartime slavery of “comfort women”, and the conflicts in Darfur, the Democratic Republic of the Congo (herein DRC), Liberia, Rwanda and the former Yugoslavia, have conclusively demonstrated that sexual violence is not an outcome of war, but that women’s bodies are an important site of war, which makes sexual violence an integral part of wartime strategy.¹²⁶

Again, the demand side for sexual exploitation and cheap labour is one of the contributors to human trafficking in the world at large. As a pull factor, the increase in demand for cheap labour continues to attract vulnerable populations from poorer regions which on the other hand is caused by the push factor of poverty.¹²⁷ Also, high demand for cheap and submissive child labour in the informal economic sector is of vital importance because children demand

¹²¹ See n 118 14 and UNHCR Mid-Year Trends 2015 <http://www.unhcr.org/56701b969.html> (25-02-2016).

¹²² See n 118 13.

¹²³ See n 118 28.

¹²⁴ UNHCR Report “The sea route to Europe: The Mediterranean passage in the age of refugees” 2015 <http://www.unhcr.org/5592bd059.html> (13-10-2015).

¹²⁵ Coomaraswamy “The United Nations Special Rapporteur on Violence against Women, Its Causes and Consequences” 1997 <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf> (13-10-2015).

¹²⁶ See n 125.

¹²⁷ See UNESCO n 118 13.

less pay and will ask fewer questions as to their working conditions.¹²⁸ However, even though the demand side for sexual exploitation and cheap labour keeps increasing, the economic inequality in developing countries is one of the major reasons pushing victims to fall prey. In all, due to lack of birth registrations in most poor areas of Africa, traffickers exploit the fact by recruiting victims who could hardly be traced from their points of origin. As a result, the Ouagadougou Action Plan¹²⁹ encourages the collection and exchange of information on the means and methods used by traffickers and urges the States to take measures to improve the registration of births and the provision of identity documents.¹³⁰

7. *Consequences Of Human Trafficking*

In as much as human trafficking deprives people of their human rights and freedoms, victims are left to face several consequences, both long and short term. However, the impact of human trafficking goes beyond individual victims; it undermines the safety and security of all nations it touches.¹³¹

The impact of Human Trafficking on victims takes many forms, all of which could be devastating to the individual victim, who often suffer physical and emotional abuse, rape, threats against self and family, passport theft, and even death.¹³²

Apart from the above listed short or immediate consequences, there also exist long term consequences such as:

- Debt bondage - victims are never able to pay off their debt.
- Isolation - no one around them speaks their language except for their employer.
- Fearful of law enforcement which leads to a failure to recognize assistance.
- Threats of exposure - victims feel that they have failed and are ashamed.
- Use and threat of reprisals against loved ones - victims will tolerate abuse to protect a family member.¹³³

¹²⁸ See Salah n 39 5.

¹²⁹ African Union *Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children As adopted by the Ministerial Conference on Migration and Development 2006 1*

<http://www.au.int/en/sites/default/files/Ouagadougou%20Action%20Plan%20-%20E.pdf> (12-10-2015)

[hereinafter *Ouagadougou Action Plan*].

¹³⁰ See *Ouagadougou Action Plan* n 129 3.

¹³¹ The United States Attorney's Office, Northern District of Iowa <http://www.justice.gov/usao-ndia/human-trafficking-response-team/impact-human-trafficking-victims> (12-10-2015).

¹³² See n 131.

CHAPTER THREE

CASE STUDY

1. Case Study – Cameroon

The United States' (herein US) Department of State places Cameroon on the Tier 2 position, indicating that it is a country whose government has not fully complied with the Trafficking Victims Protection Act's (herein TVPA) minimum standards, but is making significant efforts to bringing themselves to compliance with those standards.¹³⁴

Cameroon is a source, transit, and destination country for children subjected to forced labour and sex trafficking and a country of origin for women subjected to forced labour and forced prostitution.¹³⁵ The culture of parents in rural areas always handing over their children to their richer relatives in big towns for promises of education or a better life in the city has been greatly exploited by traffickers who over the years have been discovered and security heightened, making the traffickers to resort to kidnapping their victims.¹³⁶ However, as heightened public awareness about trafficking has led to parents being less willing in giving their children to these intermediaries, Cameroonian children are being exploited in many sectors such as domestic service; street vending; mining; agriculture; urban transportation and construction sectors; in prostitution within the country not leaving out hereditary slavery in the northern chiefdoms.¹³⁷

Cameroon currently has several legal instruments to protect children, as well as trafficked victims in general, from forced labour to prohibition of women and children working during the night.¹³⁸ Cameroon has ratified most key international conventions concerning child labour and human trafficking such as ILO Convention on Minimum Age, ILO Convention, Worst Forms of Child Labour, UN CRC, UN CRC Optional Protocol on Armed Conflict and

¹³³ See n 131.

¹³⁴ US Department of State "Country Narratives: Cameroon" 2013 *Trafficking in Persons Report* <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215416.htm> (12-10-2015).

¹³⁵ See n 134.

¹³⁶ See n 134.

¹³⁷ See n 134.

¹³⁸ See the ILO *Synthesis Report Based on Studies of Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Gabon, Ghana, Mali, Nigeria, and Togo* 2001 International Programme on the Elimination of Child Labour.

Palermo Protocol on Trafficking in Persons.¹³⁹ But it has not ratified the UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.¹⁴⁰

In addition, protection is given through regular employment regulations.¹⁴¹ The government also encourages victims to assist in the investigation and prosecution of trafficking crimes as victims may file suits or seek legal action against traffickers and since children are the main victims of trafficking in Cameroon, family members may also bring civil suits against traffickers on behalf of children.¹⁴²

However, despite these efforts, the government does not take adequate steps in ensuring trafficking victims receive access to protective services, and data collection has remained sporadic and does not cover the entire country, resulting in unreliable and incomplete statistics on victim identification and law enforcement.¹⁴³

Recently, young Cameroonian girls have been deceived to go to Kuwait in search for greener pastures but the few who have managed to return, have recounted their horrible ordeals in Kuwait.¹⁴⁴

The outcry of most of these girls has been for the government of Cameroon to help provide jobs so that people will avoid going out of the country in search of jobs and falling prey to traffickers.¹⁴⁵ Yet the government has done nothing towards addressing the plea.

Human trafficking in Cameroon is thus on the rise with this recent Kuwait incident as the Cameroonian Radio Television (herein CRTV) unveiled that among the African women



¹³⁹ ILO, http://www.ilo.org/dyn/normlex/en/f?p=1000:11110:0::NO:11110:P11110_COUNTRY_ID:103038 (last accessed 13-10-2015).

¹⁴⁰ See n 139.

¹⁴¹ See n 138 above; Cameroon decree no. 68/DF/253 (1968) which dictates the working conditions for domestic workers and Cameroon decree no. 69/DF/287(1969) which governs contracts for apprenticeships, and requires that apprentices be at least 14 years old and forbids any single male tutor from housing an apprentice.

¹⁴² See n 139 above.

¹⁴³ See n 139 above.

¹⁴⁴ CRTV in its top news “Kuwait: young Cameroonian girls ill-treated worse than animals” 2015, recounts how Cameroonian girls have of recent been victims of human trafficking in Kuwait <http://crtv.cm/fr/latest-news/top-news-24/kuwait-young-camerooniangirls-ill-treated-worse-than-animals-15029.htm> (12-10-2015).

¹⁴⁵ Precious Core My Pen Speaks, a personal blogger who recounts the individual stories of three Cameroonian girls who returned from Kuwait <http://www.preciouscore.com/2015/07/three-sad-tales-from-enslaved.html> (12-10-2015).

found in Kuwait. Cameroonians make 90% of the population and that each day, close to 30 Cameroonians flood into Kuwait.¹⁴⁶

2. Case Study – South Africa

South Africa, also rated as a Tier 2 country is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking.¹⁴⁷ Amongst the victims of human trafficking in South Africa, South Africans constitute the largest number of victims within the country where children are mostly recruited from poor rural areas to urban centers, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where girls are subjected to sex trafficking (most common being underage sex tourism) and domestic servitude while boys are forced to work in street vending, food service, begging, criminal activities, and agriculture.¹⁴⁸ The rest come mostly from the neighbouring countries of the southern region of Africa. The study also indicates the possible existence of practices connected with trafficking of body parts for *muti* and religious rituals.¹⁴⁹

The sad part of it all is that many labour and sex trafficking victims don't even know they are victims of a crime, some of whom have been exploited in a distorted net of "culture" such as 'ukuthwala'¹⁵⁰ in the leading South African case of *Jezile v S and Others*¹⁵¹ where a precedent was set as the High Court (Western Cape) confirmed all convictions by the trial court on human trafficking and rape, setting aside only the convictions on the counts of assault.

¹⁴⁶ See n 144 above.

¹⁴⁷ US Department of State: Trafficking in Persons 2015 Report: Country Narratives, South Africa <http://www.state.gov/documents/organization/243561.pdf> (12-10-2015).

¹⁴⁸ See n 147 above.

¹⁴⁹ UNODC Country Profiles Africa and the Middle East https://www.unodc.org/documents/data-and-analysis/glotip/Country_Profiles_Africa_Middle_East.pdf (12-10-2015).

¹⁵⁰ Meaning "to carry" in isiXhosa and isiZulu – a customary practice used to bypass extensive and lengthy marriage rituals.

¹⁵¹ *Jezile v S and Others* (A 127/2014) [2015] ZAWCHC 31 (23 March 2015). The precedent set in this case was that of the customary practice of 'ukuthwala' not being considered as a defence in trafficking, rape and assault cases; see also Custom Contested Views and Voices, where in the appeal case judgement was handed down against Myumeleni Jezile, concerning a 22-year sentence for rape, assault and trafficking, by the Wynberg Regional Court in Feb 2014 <http://www.customcontested.co.za/jezile-ukuthwala-judgment-signals-progress-and-continuing-challenges/> (12-10-2015).

Also, in the South African case of *Ntonga and Others v State*,¹⁵² where judgement was passed against the defendants who were found guilty of human trafficking for sexual purposes, rape and sexual exploitation of children, though on appeal the charge of sexual exploitation was dropped.¹⁵³ With a bunch of other cases on the line, it therefore shows South Africa is making an effort in prosecuting traffickers unlike in Cameroon where only a few successful prosecutions have been registered.¹⁵⁴

Furthermore, the 2010 European case of *Ranstev v Cyprus and Russia*¹⁵⁵ throws more light to the fact that States are obliged to meet their obligations by protecting victims and potential victims of human trafficking.¹⁵⁶ This obligation comes from Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which prohibits slavery, forced labour and servitude.¹⁵⁷



¹⁵² *Ntonga and Others v State* 2013 CA 159.

¹⁵³ See n 152 above.

¹⁵⁴ See other cases such as *Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another* 2012 (22369/11 ZAWCHC).

¹⁵⁵ *Ranstev v Cyprus and Russia* 2000 ECHR 25965/04.

¹⁵⁶ See n 36 144.

¹⁵⁷ See n 36 143.

CHAPTER FOUR

THE LAW AND HUMAN TRAFFICKING: APPLICATION AND IMPACT

1. Combatting Human Trafficking At The International Level

The international community demonstrated the political will to answer a global challenge with a global response through the signing of the Palermo Protocol in 2000, with the view that, since crime crosses borders, so must law enforcement.¹⁵⁸ If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means and if the enemies of progress and human rights seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.¹⁵⁹ Some human rights instruments expressly ban or make illegal human trafficking,¹⁶⁰ while others do not mention human trafficking as such, but refer to slavery, forced labour and servitude as violations of human rights.¹⁶¹

¹⁵⁸ Koffi Annan the then Secretary General of the UN stated in his foreword at the United Nations Convention Against Transnational Organized Crime And The Protocols Thereto http://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf (12/10/2015).

¹⁵⁹ See Morrison n 52 above.

¹⁶⁰ See American Convention on Human Rights 1144 UNTS 123, 22 Nov 1996 Art 6(1) which refers to trafficking in women (but not men and children); Convention on the Elimination of All Forms of Discrimination against Women 1249 UNTS 13, 18 Dec 1979 Art 6; Convention on the Rights of the Child 1577 UNTS 3, 20 Nov 1989 Art 35; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 2171 UNTS 227, 25 May 2000; Council of Europe Convention on Action Against Trafficking in Human Beings CETS No 197, 16 May 2005 Preamble [herein after COE Convention].

¹⁶¹ Universal Declaration of Human Rights, General Assembly Resolution 217A (III) UN Doc A/810, 10 Dec 1948 Art 4; International Covenant on Civil and Political Rights 999 UNTS 171, 16 Dec 1966, Art 8; European Convention for the Protection of Human Rights and Fundamental Freedoms CETS No 005, 4 Nov 1950 Art 4; African Charter on Human and Peoples' Rights 1520 UNTS 217, 27 Jun 1981 Art 5.

Recently, the fight against trafficking in human beings has gained a more prominent place in international and regional forums.¹⁶² This is particularly true with regard to the United Nations Global Initiative to Fight Human Trafficking (herein UN.GIFT) and the Blue Heart Campaign.¹⁶³ Launched in March 2007, UN.GIFT was conceived to promote the global fight on human trafficking, on the basis of international agreements reached at the UN.¹⁶⁴ UN.GIFT aims to mobilize state and non-state actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; ensuring adequate protection and support to those who fall victim; and supporting the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons.¹⁶⁵

2. *Combatting Human Trafficking at the Regional Level*

Apart from the international movements, there exist regional campaigns under the African Union (herein AU) such as the African Union Commission Initiative against Trafficking Campaign (herein AU.COMMIT) which aims at sensitising member states on the objectives of AU. COMMIT.¹⁶⁶ The Campaign endeavours to raise awareness of the AU's continued commitment towards addressing the problem of trafficking in human beings throughout the African continent.¹⁶⁷

In addition, the Africa-European Union Partnership on Migration, Mobility and Employment and the Sixth African Development Forum, call for the implementation of the Ouagadougou Action Plan to combat trafficking in human beings especially women and children.¹⁶⁸ The Action Plan stipulates that under international law, trafficking in human beings is categorized as a form of slavery, and therefore a violation of fundamental human rights and customary international law.¹⁶⁹ Hence, as one of the *jus cogens* norms (absolute freedom from slavery)

¹⁶² AU.COMMIT Campaign “The Africa-EU Partnership 2 UNIONS 1 VISION” <http://www.africa-eu-partnership.org/success-stories/aucommit-campaign-when-fight-against-trafficking-becomes-priority-africa> (13-10-2015).

¹⁶³ UN.GIFT HUB <http://www.ungift.org/knowledgehub/en/about/index.html> (13-10-2015).

¹⁶⁴ UN.GIFT n 163 above.

¹⁶⁵ UN.GIFT n 163 above.

¹⁶⁶ AU.COMMIT Campaign on Combating Human Trafficking 2009-2012 http://www.au.int/en/sites/default/files/AU_COMMIT_STRAT%20-%20E.pdf (13-10-2015).

¹⁶⁷ See n 166 above.

¹⁶⁸ See n 166 above.

¹⁶⁹ See n 166 above.

under international law, states have a non-derogable obligation to respect and ensure respect for freedom from slavery and any form of trafficking.¹⁷⁰ The Action Plan urges member states and Regional Economic Communities to use the same action plan as a reference to develop and reform their policies and laws on trafficking in persons.¹⁷¹

2.1 Case Law- Regional Level

Case law has done a great deal in the prohibition of human trafficking especially as seen in the West African case of *Hadijatou Mani Karaou v Republic of Niger* where the applicant suffered a violation of human rights through slavery for nine years, yet her national legislation could not do well to protect her and/or seek payment for damages.¹⁷² The Economic Community of West African States' Community Court of Justice, a regional court, ruled in favour of the applicant thereby setting a precedent for other governments to follow suit in reframing their legislations or following the international conventions and protocols of human rights to which they are member states.¹⁷³ The court has registered many other successful cases though not on human trafficking but individual human rights cases.¹⁷⁴

However, the Southern African Development Community (herein SADC) Tribunal has not been as successful as its West African counterpart in prosecuting cases. A tribunal that was essentially established to strengthen the rule of law in the region, afford citizens recourse for human rights violations and hold their governments accountable met with stiff resistance in 2010. The lone *Mike Campbell case* on land reform where judgement was passed but was never respected by the government of Zimbabwe led to the suspension of the court in August 2010 which was later on agreed to become operational but with the human rights section out.¹⁷⁵ With such constraints therefore, the SADC Tribunal is handicapped in handling human rights cases, talk less of human trafficking cases. This accounts for the reason why no other human rights case has ever been registered at the regional level apart from the lone *Mike Campbell case*.

¹⁷⁰ See n 166 above.

¹⁷¹ See n 166 above.

¹⁷² *Hadijatou Mani Karaou v Republic of Niger* 2008 ECW/CCJ/APP/0808 judgment ECW/CCJ/JUD/06/08.

¹⁷³ See n 49 above.

¹⁷⁴ See Center for Human Rights University of Pretoria *African Human Rights Case Law Database* <http://www.chr.up.ac.za/index.php/documents/african-human-rights-case-law-database.html> (28-10-2015).

¹⁷⁵ *Mike Campbell (Pvt) Ltd and Others v Republic of Zimbabwe* 2008 2/2007 SADCT 2.

3. *Combatting Human Trafficking At The National Level*

With the urge for all state parties to enact legal instruments to combat human trafficking, Cameroon being a member of the Palermo Protocol, currently has legal instruments in place to fight against child labour and human trafficking victims.¹⁷⁶ Partly drawing inspiration from the UNODC Model Law, the 2011 Cameroonian Law Relating to the Fight Against Trafficking in Persons and Slavery prohibits all forms of trafficking in persons, and under section 4 prescribes a penalty of 10 to 20 years' imprisonment.¹⁷⁷ Section 5 prescribes penalties ranging from 15 to 20 years' imprisonment if the trafficking victim is 15 years of age or younger, if violent pretexts are used to coerce the victim, or if the victim sustains serious injuries as a result of trafficking. Section 3 prescribes penalties for debt bondage ranging from 5 to 10 years' imprisonment.

However, in the case of South Africa, prior to the enactment of the Trafficking Bill, traffickers were prosecuted for general offences such as kidnapping, assault and murder, or under certain acts such as the Sexual Offences Act of 1957, the Immigration Act of 2002, to name a few.¹⁷⁸ After becoming a party to the Palermo Protocol, South Africa was obliged to domesticate it and in 2013, using the UNODC Model Law, she enacted the Prevention and Combating of Trafficking in Persons Bill,¹⁷⁹ which finally came into force in August 2015 with its main objective of giving effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements, providing for persecution of offenders, providing for the prevention of trafficking, protection and assistance to victims.

Looking at both countries, they comply with international and national legislation. But the problem comes in where Cameroon fails in putting the law into action as it currently registers a few convicted perpetrators. In 2015, the government initiated 25 trafficking investigations, prosecuted eleven defendants, and secured eight convictions for child trafficking crimes, a significant increase from the five prosecutions and one conviction reported the previous year

¹⁷⁶ See n 141 above.

¹⁷⁷ LAW No 2011 / 024 OF 14 DECEMBER 2011

<http://www.justiceandpeacebamenda.org/attachments/article/24/THE+LAW+AGAINST+TRAFFICKING+IN+PERSONS+AND+SLAVERY.pdf> (13-10-2015).

¹⁷⁸ Najemy "South Africa's Approach to the Global Human Trafficking Crisis: An Analysis of the Proposed Legislation and the Prospects of Implementation" 2010 9 *Washington University Global Studies Law Review* 171 180.

¹⁷⁹ Prevention and Combating of Trafficking in Persons Bill of 2010 [herein Trafficking Bill].

with sentences ranging from one to 15 years imprisonment.¹⁸⁰ The Cameroonian government has failed in effecting proper data collection, in finalising the draft legislation to improve the 2011 law which for the past three years has been under consideration; failed in providing assistance to victims leaving NGO's to step in and above all, has made no effort in punishing involved public officials.¹⁸¹ Although Cameroonian trafficking victims were identified in several European and Middle Eastern countries, the government took no action against suspicious labour recruiting practices.¹⁸²

South Africa on the other hand has registered a good number of convicted traffickers, has carried out a lot of awareness campaigns with a lot of NGO's in and around the country with toll free numbers to call and report cases unlike Cameroon. Yet it faces some setbacks as its counterpart where it has failed to prosecute or convict public officials allegedly complicit in the trafficking offence, failed to neither monitor child and adult force labour nor convict he traffickers meanwhile labour trafficking victims are the most common in South Africa.¹⁸³

Still on the national level, a look at neighbours to the case study countries will go a long way to throw more light in the fight against human trafficking in Africa. In West Africa, Nigeria stands out as it has registered a number of successful human trafficking trials such as in the *Attorney General of the Federation and Toyin Ogbebor* case, where the accused had deceitfully induced four victims to go abroad after promising them good jobs in hair saloons but instead used them for prostitution upon their arrival.¹⁸⁴ She was sentenced to two years imprisonment or a NGN 50,000.¹⁸⁵ Also, the Federal High Court of Nigeria in the case of *Attorney General of the Federation v Joseph Sunday Effiong*,¹⁸⁶ gave a ten year sentence to the accused who had had custody of the eleven year old victim keeping her as a domestic servant while engaging in unlawful carnal knowledge with her to the extent of getting her pregnant and also detaining her against her will. However, looking at the southern part of Africa, Mozambique also registers one prominent case of *Muiambo and Mahvahve*¹⁸⁷ where the Tribunal Judicial Provincial de Manica gave a seven year term of imprisonment to the

¹⁸⁰ See n 147 above.

¹⁸¹ See n 147 above.

¹⁸² See n 147 above.

¹⁸³ See n 147 above.

¹⁸⁴ *Attorney General of the Federation and Toyin Ogbebor* 2008 NCT/140/06.

¹⁸⁵ See *Attorney General of the Federation and Toyin Ogbebor* above.

¹⁸⁶ *Attorney General of the Federation v. Joseph Sunday Effiong* 2008 FHC/UY/70C/07.

¹⁸⁷ *Muiambo and Mahvahve* 2010 Processo n. 31/10.

accused for acquiring and eleven year old girl as a security for a loan the girl's father owed him, while the father of the girl received a six year prison term.¹⁸⁸ This is to show that, even though the case study countries are not exercising the laws in place, neighbouring countries to them are acting, of which they should copy from them and join hands in fighting human trafficking.

The above falls under treaty law, while soft law also plays a vital part in regulating human trafficking. Besides treaty law, soft law has become a privileged avenue for clarifying applicable norms and promoting inter-state cooperation on migration. Though not a formal source of law as such, an impressive number of non-binding instruments have been adopted during the last decade.¹⁸⁹



¹⁸⁸ See *Muiambo and Mahvahve* above.

¹⁸⁹ See for example The UNHCR *Guidelines on International Protection: The application of Art. 1 (A)(2) of the 1951 Convention and/or 1967 Protocol relating to the status of Refugees to victims of trafficking and persons at risk of being trafficked*, UN Doc. HCR/GIP/06/07 (2006) and also UN Children's Fund, *Guidelines for the Protection of Child Victims of Trafficking* (2006).

CHAPTER FIVE

CHALLENGES AND RECOMMENDATIONS

1. Challenges

Human trafficking has become a very common trend in African countries, where the laws on human trafficking are either virtually non-existent or, if in existence, weak or inapplicable.¹⁹⁰ Many obstacles stand in the way of enforcing existing legislation making them to be toothless.¹⁹¹ The main problem is the extensive ignorance on the existence of legislation and the underlying lack of implementation.¹⁹² Even after implementation, problems still arise as in the case of Nigeria, an ILO study revealed that when interviewed about child trafficking legislation, 22 policy makers answered that such legislation did not exist, when in fact it did, while only twelve surveyed knew of its existence.¹⁹³ Such extensive ignorance of an existing legislation against human trafficking gives a clear path for perpetrators to keep on doing business knowing there are no laws against them as is the case in Cameroon where no so called “agent” has been taken to court either by the victims themselves or their relatives for human trafficking in relation to the Cameroonian girls enslaved in Kuwait. Although border control and monitoring is also used as a means of prevention, in the context of Sub Saharan Africa, traditional cross-border migration and the close links between communities around the borders areas make the border control technically impossible.¹⁹⁴ Police often lack training, and the absence of good inter-country coordination and cooperation has hindered the effectiveness of prevention initiatives.¹⁹⁵ Still at the borders, there is no proper control because of the role corruption plays in helping traffickers sustain their illicit business as they bribe police and government officials.¹⁹⁶

¹⁹⁰ US Department of State *Trafficking in Persons Report 47 49* (2010) available at <http://www.state.gov/documents/organization/142979.pdf> (14-10-2015).

¹⁹¹ See Shu-Acquaye n 28 28.

¹⁹² See ILO n 138 37.

¹⁹³ See ILO n 138 above.

¹⁹⁴ See Fong n 29.

¹⁹⁵ UNICEF “Child Trafficking in West Africa Policy Response” 2002 *Innocenti Research Centre* <http://www.unicef-irc.org/publications/pdf/insight7.pdf> (21-05- 2015).

¹⁹⁶ See n 23 185.

The problem of poverty in Africa acts as one of the main challenges in the fight and this can be seen as very few cases reach the courts because victims do not have the resources to gain access to the courts.¹⁹⁷ High levels of poverty in rural areas also push many young people to fall prey on a constant basis even after hearing disturbing stories from their predecessors. Also, many victims do not file complaints for fear of their loved ones being harmed or even themselves by the perpetrators.¹⁹⁸ The complexity and length of judicial procedures is another obstacle to effective enforcement of legislation as cases often take years.¹⁹⁹ Also, the strong resistance faced by regional courts in effecting judgements on state governments goes a long way in weakening its strength to act as was seen in the SADC Tribunal case which led to the freezing of the human rights section. Moreover, national and international involvement checking for international violations can unintentionally do more harm than good if proper care is not taken. These unintentional effects of the involvement of international bodies could be seen in the involvement of the UN specifically in Kosovo and Sierra Leone.²⁰⁰ In each of these cases, the involvement of the UN in these crisis areas led to increased rates of human trafficking especially increased demand for prostitutes due to the increased amount of males in the country.²⁰¹

2. Recommendations

The starting point is for African governments to objectively accept the existence of the phenomenon as a serious regional and international problem and from there pull their human and material resources in order to expand regional capacity and to form a robust strategic alliance against crime and trafficking.²⁰² These African heads of states should also come to an agreement of respecting the final judgements of the Regional Courts as well as the African Court on Human and Peoples Rights especially with regards to human rights violations. The promotion of education and schooling for children increases the awareness of the dangers of trafficking, and may reduce the number of cases.²⁰³ Adult literacy classes for

¹⁹⁷ See ILO n 138.

¹⁹⁸ See ILO n 138 37.

¹⁹⁹ See ILO n 138 37-38.

²⁰⁰ Smith and Smith "Human Trafficking: The Unintended Effects of United Nations Intervention" 2011 *International Political Science Review* 32(2) 125-145.

²⁰¹ See n 200 above.

²⁰² See n 25 101.

²⁰³ Fong n 29 9.

parents can also increase the awareness of trafficking and their rights.²⁰⁴ In Cameroon, for example, the ministries of Women's Affairs and Social Affairs have an active informal education program for girls where they use a network of social and youth centres to provide education on issues of trafficking.²⁰⁵ Raising awareness through education is thus one of the most important ways to fighting this heinous crime as it will lead to a reduction in victims and more cases will be reported. In South Africa for as well as in Cameroon, the creation of job opportunities and other forms of employments for the youth in rural areas will see young women and men having something to keep themselves busy with rather than going after greener pastures in strange cities they have never been in before.

Battling human trafficking requires work from all parties, including governments, international organizations, and nongovernmental organizations, as well as individuals which will go a long way to increase monitoring at borders, locals watching out for one another since, a widespread consensus suggests that the solution requires a multi-branched approach to human trafficking focusing on all root causes.²⁰⁶

Victim protection is very vital in the recovery process as not only those participating as witnesses in criminal trials should be protected but all victims throughout the whole recovery process.²⁰⁷ Victims must be provided with both psychological and medical treatment.²⁰⁸ Cameroon needs to copy the victim assistance scheme of South Africa which is very effective, disburse out budget for such projects and encourage many NGO's to come into the country to help in fighting this heinous crime.

Furthermore, national legislations should be unified and extra-territorial jurisdiction be extended to both nationals and residents. This is to say, anti-trafficking legislation should have territorial and extra-territorial jurisdiction to ensure that nationals/residents are held accountable for acts committed outside their territory.²⁰⁹

²⁰⁴ See for example International Labour Organisation/International Programme on the Elimination of Child Labour (ILO/IPEC) 2001 programme on "Combating Trafficking in Children for Labour Exploitation in West and Central Africa: A Synthesis Report. Based on Studies of Benin, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Ghana, Mali, Nigeria and Togo" Geneva: ILO 44.

²⁰⁵ See UNICEF n 195 17-18.

²⁰⁶ See Trafficking in Persons Report 2010 n 87 13.

²⁰⁷ See Trafficking in Persons Report 2010 n 87 14.

²⁰⁸ See Trafficking in Persons Report 2010 n 87 5 13.

²⁰⁹ See COE Convention n 160 above.

CONCLUSION

The high profits and low risks of punishment such as arrest, prosecution and other negative consequences for human trafficking make it an attractive business.²¹⁰ Traffickers have exploited the lack of rule of law, the non-implementation of existing anti-slavery laws, corruption of judicial systems and high rates of poverty to their benefit.²¹¹ These lapses have allowed perpetrators to go unpunished as prosecutions are rare and fraught with difficulties.²¹²

Trafficking in human beings is a widespread problem all over the world, and ending this crime against human dignity will not be easy without joint efforts from all actors especially in Africa.²¹³ However, preventing the problem from the roots is the most important aspect which entails states ensuring thorough education and training of the entire population through mass media and information campaigns, training of persons in key positions particularly the police and boarder control officers, and most importantly, viable employment or other livelihood opportunities for youth in general and in particular for young women who face the greatest risk.²¹⁴ Although the profits from trafficking are enormous, and the traffickers have great resources at their disposal,²¹⁵ human rights activists must also persevere in their efforts to assist law enforcement and prosecutors.²¹⁶ Moreover, on a global scale, policy and legislation changes need to be made in order to create a safer environment not just for the people of the source countries, but for people all over the globe.²¹⁷ In all, we each have a responsibility to make this horrific and all-too-common crime a lot less common.²¹⁸

²¹⁰ Fitzgibbon “Modern Day Slavery? The Scope of Trafficking in Persons in Africa” 2003 *Africa Security Review* 1.

²¹¹ See Fitzgibbon n 210 above.

²¹² See Fitzgibbon n 210 above.

²¹³ See Latomaa n 50 270.

²¹⁴ See *Ouagadougou Action Plan* n 129 above.

²¹⁵ See Inglis n 72 78-79 and 82.

²¹⁶ Joshi “Face of Human Trafficking” 2002 *Hastings Women's Law Journal* 52.

²¹⁷ Whitman and Gray “Transnational Human Trafficking” 2015 *Global Security Studies*.

²¹⁸ John Kerry speech on the US Department of State “Trafficking in Persons Report” 2014 <http://www.state.gov/j/tip/rls/tiprpt/2014/index.htm> (14-10- 2015).

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