

**A LEGAL RESPONSE TO CHILD TRAFFICKING IN AFRICA:
A CASE STUDY OF SOUTH AFRICA AND BENIN**

**Submitted in partial fulfilment of the requirements of the degree LLM
(Human Rights and Democratisation in Africa)**



**Prepared under the supervision of
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29 October 2007

DECLARATION

I, **Rino KAMIDI**, declare that the work presented in this dissertation is original. It has never been presented before to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signed

Date



Supervisor: Professor Julia Sloth-Nielsen

Signature

Date

PROLOGUE

'We must rally our forces to prevent vulnerable people from falling into the clutches of traffickers, to bring those responsible to justice, and to shelter the victims.'(1)

'Trafficking in human beings is morally reprehensible, it is illegal; it robs people of their dignity and violates their fundamental human rights. It objectifies and commodifies individuals, preys on the vulnerable and the marginalised, it perpetuates their vulnerabilities and it repeatedly victimises and re-victimises those who are the objects of trafficking.'(2)

'Human beings are not commodities to which a price can be attached; they are creatures with inherent worth and infinite worth; they ought to be treated as ends in themselves, never merely as means to an end.'(3)

'The increasing internationalisation of the sale of children, child prostitution and child pornography is most disconcerting. Children are not only sold for these purposes at the national level, but they are also trafficked across frontiers far and wide. The problem transcends national frontiers and local jurisdiction. There is thus an urgent need for international cooperation to counter the illicit trade.'(4)

'Children have the right to be protected from all forms of abuse, neglect, exploitation and violence. Societies must eliminate all forms of violence against children. Accordingly, we resolve to:

(a) Protect children from all forms of abuse, neglect, exploitation and violence; (...)

(c) Protect children from all forms of sexual exploitation, including paedophilia, trafficking and abduction.' (5)

(1) Greetings from the United Nations Secretary General, M. Ban Ki-Moon, to the participants in the Global Initiative to Fight Human Trafficking Interfaith Dialogue held in Cape Town, South Africa, on 3-5 October 2007.

(2) Opening Address by Dr. EG Pahad, Minister in the Presidency of the Republic of South Africa, delivered at the Global Initiative to Fight Human Trafficking Interfaith Dialogue held in Cape Town, South Africa, on 3-5 October 2007.

(3) Ackermann J in *S v Dodo 2001 (3) SA 382 (CC) para 38*.

(4) V Muntarhorn, Special Rapporteur on the sale of children, child prostitution and child pornography, UN Doc. E/CN.4/1994/84, p.3, para. 3.

(5) UNGA Resolution A/RES/S-27/2 of 10 May 2002 'A World Fit For Children' para 43.

DEDICATION



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This research paper is the result of eleven months of hard work, hardships and sacrifices, constraints and challenges. Eleven months devoted to one ambition: to be equipped for making Africa a better place tomorrow, and to move from human wrongs to human rights.

The achievement of this goal would not have been possible without the daily guidance of the Almighty God. Shall he be praised forever!

My father and my big family accompanied me and filled my heart with hope, strength, and with courage. I will always be grateful.

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LIST OF ABBREVIATIONS

ACHPR	AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS
ACRWC	AFRICAN CHARTER ON THE RIGHTS AND THE WELFARE OF THE CHILD
AFJB	ASSOCIATION DES FEMMES JURISTES DU BENIN
ART	ARTICLE
AU	AFRICAN UNION
CC	(SOUTH AFRICAN) CONSTITUTIONAL COURT
CEDAW	CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN
CIDT	CRUEL, INHUMAN AND DEGRADING TREATMENT
CRC	CONVENTION ON THE RIGHTS OF THE CHILD
CUBAC	CHILDREN USED BY ADULTS TO COMMIT CRIME
ECOSOC	ECONOMIC AND SOCIAL COUNCIL (OF THE UN)
ECOWAS	ECONOMIC COMMUNITY OF WEST AFRICAN STATES
IAWJ	INTERNATIONAL ASSOCIATION OF WOMEN JUDGES
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
ICESCR	INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
ILO	INTERNATIONAL LABOUR ORGANISATION
ILO C138 (OR C138)	ILO CONVENTION CONCERNING THE MINIMUM AGE FOR ADMISSION TO EMPLOYMENT
ILO C182 (OR C182)	ILO CONVENTION 182 CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILD LABOUR (C182) OF 1999
IOM	INTERNATIONAL OFFICE FOR MIGRATION
IPU	INTER-PARLIAMENTARY UNION
NPA	NATIONAL PROGRAMME FOR ACTION
NGO	NON-GOVERNMENTAL ORGANISATION
OHCHR	OFFICE OF THE HIGH COMMISSIONER OF HUMAN RIGHTS
OPCC	OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

OPSC	OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY
PARA	PARAGRAPH
PRMC	PERMANENT REGIONAL MONITORING COMMISSION
RAPCAN	RESOURCES AIMED AT THE PREVENTION OF CHILD ABUSE AND NEGLECT
SACTAP	SOUTHERN AFRICAN COUNTER-TRAFFICKING ASSISTANCE PROGRAMME
SADC	SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
SAJHR	SOUTH AFRICAN JOURNAL OF HUMAN RIGHTS
SALRC	SOUTH AFRICAN LAW REFORM COMMISSION
SANTAC	SOUTHERN AFRICAN NETWORK AGAINST TRAFFICKING AND ABUSE IN CHILDREN
SDGEA	SOLEMN DECLARATION ON GENDER EQUALITY IN AFRICA
THE WOMEN'S PROTOCOL	PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN IN AFRICA
TIP	TRAFFICKING IN PERSONS
TOC	TRANSNATIONAL ORGANISED CRIME CONVENTION
UDHR	UNIVERSAL DECLARATION OF HUMAN RIGHTS
UN	UNITED NATIONS
UNGA	UNITED NATIONS GENERAL ASSEMBLY
UNICEF	UNITED NATIONS CHILDREN'S EDUCATION FUND
UNICEF IRC	UNITED NATIONS CHILDREN'S EDUCATION FUND INNOCENTI RESEARCH CENTRE
UNODC	UNITED NATIONS OFFICE ON DRUGS AND CRIME

CHAPTER 1: INTRODUCTION

1.1. Statement of the problem

Human trafficking has emerged over the past three decades as an issue of considerable concern for the international community,¹ and governments around the world have committed themselves to enacting legislation to combat the trade in humans.² This has resulted in the adoption of international standards and important obligations of governments, to address the trafficking in persons (TIP) and in particular child trafficking, which appears as a worldwide form of modern-day slavery, and a facet of transnational organised crime.

Trafficking violates the human rights guaranteed to children under international law, in, most notably, the United Nations Convention on the Rights of the Child (CRC). Children's survival and development are threatened, and their rights to education, health, and protection are denied.³

In Africa, the scourge of child trafficking is still widespread, although African States have accepted, signed, or ratified international instruments condemning this practice. These include the CRC and its Optional Protocols,⁴ and the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁵ supplementing the UN Convention Against Transnational Organised Crimes (hereafter referred to as the Palermo Protocol). The Rome Statute of the International Criminal Court,⁶ the ILO C182, and other texts also address the criminalisation of trafficking in human beings.

At the regional level, the ACHPR, the Women's Protocol and, more importantly, the ACRWC, offer directives to counter this phenomenon. During the EU/African Summit held in Cairo in 2000, heads of State consented to prepare an 'Action Plan to Combat Trafficking in Human Beings'. This was a priority on their agenda, along with issues of democracy, good governance, and human rights.

¹ R Pharoah *Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa* Institute for Security Studies (2006) 75.

² As above.

³ IPU and UNICEF *Combating Child Trafficking: Handbook for Parliamentarians* No. 9 (2005) IPU and UNICEF 7.

⁴ Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (hereafter referred to as the Optional Protocol on Children in Armed Conflict or OPCC), and the Second Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (herein referred to as the Optional Protocol on Sale of Children or OPSC), both adopted in 2002.

⁵ UNGA Resolution A/RES/55/25 of 15 November 2000, adopted in December 2000.

⁶ The Rome Statute considers trafficking under enslavement, which constitutes a crime against humanity.

In this regard, T.D Truong notes that West and Central African governments have made significant efforts since 1996⁷ to address TIP. The Libreville Plan of Action of December 2000,⁸ the ECOWAS Declaration and Plan of Action of December 2001,⁹ the Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa¹⁰ of July 2005, among other texts, demonstrate the African commitment to fight this scourge. Going further, on 16 June 2007, the African Union dedicated the 2007 Day of the African Child to trafficking in children.

However, the situation on the ground remains unchanged. UNICEF estimates that more than 200,000 children are enslaved by cross-border smuggling and trafficking in Western and Central Africa.¹¹ In Southern Africa, Anti-Slavery International raised the alarm in 1991-1992 already and reported trafficking from Mozambique to South Africa.¹² In 2003, an IOM report described child trafficking from Lesotho, Mozambique, and Malawi to South Africa.¹³ This demands more investigation, considering that the phenomenon is increasing and child victims seem not to be adequately protected against traffickers.

Different attempts to counter child trafficking in Africa have failed to guarantee victims' effective protection. The necessity to question (and evaluate) the legal response to this phenomenon is imperative.

1.2. Research question

Since the adoption of a definition thereof in the Palermo Protocol, the discussion on TIP has been made easier, but not less controversial.¹⁴ Trafficking in children violates the inherent right of a child to grow up in a protective environment, and the right to be free from all forms of abuse and exploitation.¹⁵

⁷ T.D Truong *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management* UNESCO Poverty Series (2006) 69.

⁸ 'Libreville Plan of Action on the Development of Strategies to Fight Child Trafficking for Exploitative Labour Purposes in West and Central Africa'.

⁹ Hereafter referred to as the ECOWAS Declaration and the ECOWAS Plan of Action.

¹⁰ This agreement was signed by Benin, Burkina Faso, Cote d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo.

¹¹ 'What is victims consent? Can children consent?' <http://www.unodc.org/trafficking> (accessed 29 April 2007). See also Department of State *Trafficking in Persons Report* (2006) U.S Department of State Publication 6; United Nations Office on Drugs and Crime (UNODC) *Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo* (September 2006) 24.

¹² Truong (n 7 above) 68.

¹³ As above.

¹⁴ Truong (n 7 above) 72.

¹⁵ Department of State (n 11 above) 13.

If one can argue that an African attempt to counter this issue exists, questions arise about the effectiveness, or the adaptability, of the legal measures undertaken. The main question this research seeks to answer concerns the adequacy of a legal framework dealing with human trafficking in Africa. Thereafter, if it is found that a legal framework exists, how effective are these texts? If they are not effective, what measures can be taken in order to offer better protection to the child victims? Can steps undertaken in different countries contribute to an African response to child trafficking?

1.3. Justification for the study

Two centuries ago, the British Empire abolished the slave trade; this marked the 'beginning of the end for the transatlantic traffic in human beings'.¹⁶ At an academic level, as African role-players intend to counter human trafficking in their countries, this study emanated from a genuine concern regarding this continuing phenomenon and the implementation and enforcement mechanisms in the light of the rights of victims.

This study will investigate the potential causes of this state of affairs, which could be the inadequacy of legal texts and absence of implementation mechanisms, lack of co-ordination amongst the actors implicated, the insufficiency of political will to respond to the problem, the permeability of borders, or the lack of information in the accounts of victims and their parents.

1.4. Objectives

The principal objective aims to address and ensure safety, special protection, and security to child victims of trafficking. Stated differently, the study will examine the situation of child victims through a human rights perspective.¹⁷ In so doing, this study will identify the existing legal framework in the international and regional environment.

Furthermore, this study seeks to raise awareness about the illegality and harmful consequences of all forms of child trafficking. Finally, the necessity to take appropriate criminal as well as administrative action, at all levels, to effectively prohibit and penalise child trafficking shall be the final concern.

¹⁶ 'Bicentenary of the Abolition of the slave trade' http://www.direct.gov.uk/en/slavery/DG_065859 (accessed 27 October 2007).

¹⁷ By definition, a human right is a universal moral right, something which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human being simply because he is human. M Cranston *What are Human Rights?* (1973) London 36.

1.5. Methodology

This study will be library-based, descriptive, and analytical. Secondary sources such as conventions, treaties, books, the Internet, journals, articles, and case law, will be used. These sources are believed to provide a better approach for a qualitative study than other methods of research such as questionnaires, interviews, or human observation.¹⁸

The paper will explore the literature before comparatively reviewing two pilot countries, Benin and the Republic of South Africa (South Africa). Representing West Africa, Benin was one of the first African countries to regulate the displacement of minors abroad in 1961.¹⁹ Yet, child trafficking is still prevalent. Similarly, the status of South Africa as a unique place for trafficking raises concerns.²⁰

1.6. Literature survey

At this stage, books, articles and Internet websites or reports from UNICEF IRC, IOM, UNODC, and other NGOs to conceptualise the topic have been read. Further readings are expected to help obtain a clear determination and conceptualisation of the issue.

In his book 'Sexual Abuse of Children', R Levesque principally concentrated on the issue of sexual maltreatment, sexual exploitation, or use and abuse of children by adult offenders.²¹ There is no mention of trafficking of children for the purpose of either sexual exploitation or any similar purpose.

It is in a 2002 publication of the OHCHR that the question of trafficking, proposing ideas for a legal framework and a law enforcement response, was finally raised.²² No consideration of an African perspective is detailed in this paper.

R Pharoah described the situation in South Africa. 'Getting to Grips with Trafficking',²³ but does not address the perspective of an African response to child trafficking per se. Furthermore, T. D Truong described how international organisations and NGOs could

¹⁸ See S Labovitz and R Hagedorn *Introduction to Social Research* 3 ed (1981) Mc Graw-Hill Book Company 68-81.

¹⁹ See Loi No 61-20 du 5 juillet 1961 relative au déplacement des mineurs de dix-huit ans hors du territoire de la République du Dahomey.

²⁰ Pharoah (n 1 above) 25.

²¹ Roger J.R. Levesque *Sexual Abuse of Children: a Human Rights Perspective* (1999) Indiana University Press.

²² OHCHR *Recommended Principles and Guidelines on Human Rights and Human Trafficking* UN (2002).

²³ Pharoah (n 1 above).

intervene in a 'best practice' approach. His research on human trafficking in Sub-Saharan Africa is more a 'critical analysis of migration processes in relation to human rights abuses'.²⁴

Therefore, this study will approach child trafficking dealing with the legal response in specific countries, with the aim of suggesting an African response to end or, at least, to decrease the phenomenon in Africa.

1.7. Chapter outline

Chapter 1 consists of giving a general background to the study and its scope. Chapter 2 addresses the definitions of concepts, distinguishing child trafficking with its closely related notions on the one hand, and push and pull factors on the other hand. This is important to understand Chapter 3, which discusses the existing legal framework at both international and regional levels. Then Chapter 4 explores the approaches to counter child trafficking on the ground and assesses their effectiveness. To conclude, Chapter 5 outlines the findings and traces a possible way forward to combat trafficking in children in Africa.



²⁴ Truong (n 7 above) Preface.

CHAPTER 2: TRAFFICKING IN PERSONS: KEY CONCEPTS

2.1. Introduction

The first thing one needs to consider to understand 'TIP' is to define it. In this context, it is equally important to shed light on other notions connected to TIP. Another thing is to explore the roots of trafficking; this may help in assessing the legal approach to TIP that will be addressed later in this study.

2.2 Trafficking and related notions

2.2.1. Defining TIP

TIP is a phenomenon that occurs in the context of migration. 'Migration' means 'the movement of large numbers of people, from one place to another',²⁵ 'from one geographical unit to another across an administrative or political border, with the intention of settling indefinitely or temporarily in a place other than [the] place of origin'.²⁶ In this context, migration can be legal, illegal, within a country's borders, or transnational. When illegal, its clandestine nature can take the form of TIP or smuggling of migrants. The distinction between the two concepts is provided below.

TIP entails the violation of the basic human rights of its victims. Of the different instruments that have addressed this issue,²⁷ the United Nations Convention against Transnational

²⁵ *Oxford Advanced Learners Dictionary 7ed* (2005) Oxford University Press 930.

²⁶ 'Migration typologies' <http://www.iom.int/Jahia/Jahia/pid/522> (accessed 18 October 2007).

²⁷ Those instruments are the 1904 and 1910 International Agreement for the Suppression of White Slave Traffic; the 1926 Slavery Convention; the 1930 International Convention for the Suppression of the Traffic in Women and Children; the 1933 International Convention for the Traffic in Women of Full Age. They also appeared, under the aegis of the UN: the 1949 Convention for the Suppression of the Traffic In Persons and of the Exploitation of the Prostitution of Others; the 1956 Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery; the 1966 ICCPR; the ICESCR of the same year and the 1979 CEDAW;

From the eighties and nineties, the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment; the CRC; the 1990 International Convention on the Rights of All Migrant Workers and Members of Their Families; and the 1993 Hague Convention on Inter-country Adoption, are relevant. The following are also worth looking at: the World Conference on Human Rights (Vienna, 1993); the International Conference on Population and Development (Cairo, 1994); the Fourth World Conference on Women (Beijing, 1995); the 1996 Stockholm Congress Against Commercial Sexual Exploitation of Children. Additionally, the 1998 Rome Statute; the 1999 ILO C182; the OPCC and the OPSC, are of equal importance. At the UN General Assembly, Resolutions 53/116 'Traffic in Women and Girls' (December 1998), 55/2 'Millennium Declaration' (September 2000), 59/496 'Trafficking in Women and Girls' (February 2005), 61/144 'Trafficking in Women and Girls' (December 2006), 61/180 'Improving Coordination of Efforts against Trafficking in Persons' (December 2006), and the ECOSOC Resolution 2006/27 (July 2006) offer valuable information.

Organised Crimes (TOC) of 2000 and its two supplementing Protocols,²⁸ are the most appropriate because they best raise the issue of victims' rights.²⁹

Thus, TIP is a 'transnational organised crime', a transnational offence committed by an organised criminal group³⁰ and is defined broadly 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 purpose 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.*³¹

This definition can be dissected into three elements: an action, the means, and the purposes of exploitation.³² The 'action' refers to the recruitment, transportation, transfer, harbouring or receipt of persons. The 'means' include threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. At a minimum, the 'exploitation' will encompass exploiting the prostitution of

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At the African level, the 1981 ACHPR; the 1990 ACRWC, and the 2003 Women's Protocol, are the most significant instruments.

²⁸ Palermo Protocol (n 5 above) and the Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter referred to as the 'Smuggling Protocol'), both adopted in November 2000. The third supplementing Protocol to the Convention (Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, adopted in May 2001) will not be of any relevance in this study.

²⁹ UNODC (n 11 above) 20.

³⁰ 'Transnational means that the offence is committed (a) in more than one State; (b) in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) in one State but has substantial effects in another State'.

'Organized criminal group means a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit'.

Arts 2(a) and 3(1)(b) TOC Convention. See also T Obokata *Trafficking of Human Beings from a Human Rights Perspective – Towards a Holistic Approach* (2006) Martinus Nijhoff Publishers 29-32.

³¹ Art 3(a) Palermo Protocol. See Annexure I.

³² UNODC (n 11 above) 21; UNODC *Trafficking in Persons: Global Patterns* (April 2006) 50. See also OHCHR *Abolishing Slavery and its Contemporary Forms* (2002) United Nations 22.

others, other forms of sexual exploitation, forced labour or services, slavery or similar practices, and the removal of organs.

The expression 'at a minimum' was aimed at providing a non-exhaustive list of different types of exploitation; new forms and means of exploitation were not excluded for two reasons.³³ First, being a fast-growing industry, it makes sense that new forms and means of exploitation of TIP will equally be covered by the Protocol; secondly, State parties are free to incorporate other types of exploitation in the realm of TIP.

Article 3(b) clearly mentions the consent of the victim as being irrelevant where any of the means set forth in paragraph (a) have been used.³⁴ Even if the means referred to earlier have not been used, whenever 'the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation'³⁵ occurs, it amounts to TIP, regardless of whether the incidence of TIP takes place in peace or wartime. In this context, 'child' means 'any person under eighteen years of age',³⁶ a subject of rights like every human being, 'not an object of his family's rights and duties'.³⁷ To this end, it is admissible that in giving specific emphasis to child victims, the Protocol recognizes that children have special rights and needs under international law; thus, their best interests shall be a guiding principle in all matters.³⁸

When the victim is an adult, it does not matter whether the victim knew the nature of the work. The ignorance of the working conditions is enough to qualify as TIP. To illustrate, a sex worker who knows that he/she will perform sexual activities is still a victim of TIP, as long as it can be proved that he/she was ignorant of the exploitative conditions of the work. The emphasis is not placed on the type of services he/she is expected to deliver but rather on the abuse to make him/her abide by the criminal's rules.³⁹ Similarly, the parents' or guardian's consent is equally insignificant because they ignore the conditions of exploitation to which the child will be subjected.

³³ A Gallagher 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly* 974 987. See also 'Summary of The United Nations Convention against Transnational Organized Crime and Protocols Thereto' <http://www.unodc.org/palermo/convensumm.htm> (accessed 17 August 2007).

³⁴ n 11 above.

³⁵ Art 3(c) Palermo Protocol.

³⁶ Art 3(d) Palermo Protocol.

³⁷ Y Kolosov 'The Rights of the Child' in J Symonides (ed) *Human Rights: Concepts and Standards* (2000) Ashgate 259 259.

³⁸ Gallagher (n 33 above) 989.

³⁹ UNODC *Trafficking in Persons and the Global Programme* (leaflet) http://www.unodc.org/pdf/HumanTrafficking_leaflet.pdf (accessed 18 October 2007).

TIP is a relationship that involves two persons or a group of persons, the victim(s) and the trafficker(s). The traffickers are the 'recruiters; transporters; those who exercise control over trafficked persons; those who transfer and/or maintain trafficked persons in exploitative situations; and those who profit either directly or indirectly from trafficking, its component acts and related offences'.⁴⁰ Simply stated, traffickers are those who benefit from the exploitation of their victim(s), in one way or another.

Going beyond those considerations, the Protection Project,⁴¹ for instance, has used the broadness of the definition of TIP to include within its scope, forced marriage, early or child marriage, marriage by catalogue, sex tourism, and pornography. It embraces also illicit inter-country adoption, involvement of children in armed conflict, domestic servitude, begging, and other forms of child labour.⁴²

As a result, the breadth of this definition of TIP impairs an easy understanding of the issue of trafficking and opens a Pandora's Box, as TIP covers a number of possible situations. To overcome these difficulties, three questions can be envisaged: what, how and why. In responding to these three questions, one will be able to differentiate between the material element (what and how)⁴³ and the intentional element (why),⁴⁴ as decisive factors for the determination of TIP. However, in practice, the distinction between trafficking and other notions is not always clear.

2.2.2. Related notions

The first notion related to TIP is the smuggling of migrants. In terms of Article 3 of the Smuggling Protocol, 'smuggling' is 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of illegal entry of a person into a State Party of which the person is not a national or permanent resident'. It is the illegal facilitation of border crossing

⁴⁰ 'Women, war, peace and trafficking' <http://www.womenwarpeace.org/issues/trafficking/trafficking.htm> (accessed 14 September 2007).

⁴¹ The Protection Project is a Human Rights Research Institute based at The Johns Hopkins University School of Advanced International Studies (SAIS), Washington DC, USA.

⁴² The Protection Project *Human Rights Report on Trafficking in Persons, Especially Women and Children: A Country-by-Country Report on a Contemporary Form of Slavery* 3ed (2005) Massachusetts 1. In terms of child marriage, the idea is that even when a 16 years old girl has freely consented to the marriage, for instance, the mere fact of being a minor invalidates the consent and can amount to a form of TIP.

⁴³ It consists of the 'action' and 'the means'. See also n 31 above.

⁴⁴ The purpose of exploitation. See also n 31 above.

between the smuggler and the smugglee, and their relationship ends once the smugglee has successfully entered the country of destination.⁴⁵

Although this definition of the smuggling of migrants hints that it differs from TIP,⁴⁶ the UNODC has provided four elements to illuminate their disparity:⁴⁷

- a. the consent: while the smugglees have consented to the smuggling, trafficked persons have not done so freely and consciously, and a tainted consent is not a defence;
- b. the element of exploitation: smuggling stops when smugglees get to their final destination; trafficking ends with the exploitation of the victims. In cases where the exploitation does not appear as such (e.g. child marriage), the means used and other considerations (e.g. the best interests of the child) will provide guidance;
- c. the source of financial gain: smugglers benefit from the fees generated by the illegal entry of migrants; traffickers derive advantage from the exploitation of their victims;
- d. the territory: smuggling entails crossing transnational borders, which may not necessarily be the case with trafficking.

To explain, let us consider an example of an individual X (the smugglee) to whom assistance is offered (by a smuggler) for the purposes of illegal migration. The consent of the smugglee is a first consideration and his/her relationship with the smuggler depends on a reward in exchange for the promise of a successful migration process. The relationship ends when X achieves his/her goal. In the case of trafficking, the free and conscious consent of the victim does not exist, leading to his/her exploitation by the trafficker.

Another concept to consider is slavery. The definition of slavery and its prohibition evolved from a moral prohibition to a legal one.⁴⁸ The 25 September 1926 Slavery Convention identified slavery as '*(the) status or condition of a person over whom the powers attaching to the right of ownership are exercised*'.⁴⁹ This embraces debt bondage, serfdom, marital bondage, slave labour and sexual bondage or exploitation and trafficking.⁵⁰ It is also the

⁴⁵ G Hosken *Human Trafficking 'A Huge Problem' in South Africa* Pretoria News, March 07 2006 <http://www.iol.co.za> (accessed 07 July 2007).

⁴⁶ Obokata (n 30 above) 20. See also Gallagher (n 33 above) 1000f.

⁴⁷ UNODC (n 11 above) 21. See also Obokata (n 30 above) 21; UNODC 'How is "trafficking in persons" different from the smuggling of migrants?' http://www.unodc.org/unodc/en/trafficking_victim_consent.html (accessed 15 July 2007).

⁴⁸ C Bassiouni *Crimes against Humanity in International Criminal Law* (1992) Martinus Nijhoff Publishers 516.

⁴⁹ Art 1 Slavery Convention.

⁵⁰ Bassiouni (n 48 above) 299.

'most extreme expression of the power human beings possess over their fellow beings, representing the most direct attack on the essence of the human personality and dignity'.⁵¹

TIP and slavery share 'illegal migrations, violence, violations of human rights and labour standards, poverty and gender discrimination'.⁵² The key distinctive element of slavery is the 'right of ownership' over human beings, which was legal in the past.⁵³ In the context of trafficking, the intention to exploit the vulnerability of the victims in the place of destination is enough to qualify as TIP.⁵⁴ In practice, the intention to exploit can be deduced from the taking away of the victims' passports or the refusal to provide additional information on the real conditions of work, for instance.

From the above, one can derive a broad definition of TIP that includes different criminal behaviours; but it is 'a rather lengthy (and difficult) definition'.⁵⁵ Yet, its Achilles heel remains the high risk of confusion between the related concepts, especially in the drafting of domestic legislation, and as regards the prosecution of transgressors.

Bearing in mind that TIP is a crime, its definition should be clear enough to make people understand what it entails. In terms of child trafficking, ILO suggests the following: 'a child has been trafficked if the child has been moved within a country, or across borders, whether by force or not, with the purpose of their exploitation'.⁵⁶ Getting inspiration from that, a trouble-free definition of TIP would encompass the removal of a person from one place to another, regardless of his/her consent, for the purpose of exploiting him/her for the sake of profit by a third party.

Yet, the suggested definition does not pretend to offer the best approach. It is suggested that, at the national level, State parties incorporate elements from their cultural and social realities into the definition of TIP. This will help with the elaboration of legislation designed to address their specific needs, notably the push factors.

⁵¹ M Nowak 'Civil and Political Rights' in J Symonides (n 37 above) 69 80.

⁵² R Masika (ed) *Gender, Trafficking and Slavery* (2002) Oxfam GB 7.

⁵³ Obokata (n 30 above) 18.

⁵⁴ Obokata (n 30 above) 19.

⁵⁵ V Muntarhorn 'Human Rights versus Human Trafficking in the Face of Globalization' http://www.hawaii.edu/global/projects_activities/Trafficking/Vitit.pdf (accessed 11 September 2007).

⁵⁶ 'Definition of child trafficking' <http://www.child-labour.org.za/definitions/updated-note-on-the-definition-of-child-trafficking/> (accessed 18 October 2007).

2.3. Factors that sustain TIP

The UNODC distinguishes between 'push' and 'pull' factors that sustain TIP.⁵⁷ Push factors drive people to leave a region in search of a better life somewhere else.⁵⁸ These factors include economic poverty, unemployment, discrimination against women, escape from war and humanitarian crises, corruption in the public and private spheres, and the involvement of organised crime groups or networks.⁵⁹ Defective immigration policies and law enforcement mechanisms are also contributors.⁶⁰

The list provided above is not exhaustive. Traditions such as the placement of children⁶¹ away from their homes, a culture of early marriage,⁶² family break-ups and violence,⁶³ lack of education and peer pressure⁶⁴ are of equal impact. The lack of birth registration facilitates the exploitation of children without a legal identity,⁶⁵ and the impact of the HIV/AIDS pandemic produces its own legacy of widows or orphan-headed households.⁶⁶

The demand for cheap manual labour and the high demand for paid sex in destination countries,⁶⁷ the lack of information on the risks involved,⁶⁸ together with parents offering or selling their children for financial advantage,⁶⁹ nourish the pull factors or purposes of TIP. Military conscription, marriage, illicit adoption, sport, begging, and organ harvesting complete the list.

2.4. Conclusion

This chapter was aimed at exploring TIP. As the start, it was understood to be under the broad context of migration, within a country's borders or across borders. Different legal instruments have addressed one of the issues related to TIP. Yet, the best approach that

⁵⁷ UNODC (n 11 above) 25.

⁵⁸ As above.

⁵⁹ UNODC (n 11 above) 25. See also Department of State (n 11 above) 16; Department of State *Trafficking in Persons Report* (2007) U.S Department of State Publication 35.

⁶⁰ As above.

⁶¹ Truong (n 7 above) 71.

⁶² 'Human traffickers thrive in Mozambique' <http://www.citizen.co.za> (accessed 28 March 2007).

⁶³ Hosken (n 45 above).

⁶⁴ As above.

⁶⁵ IPU and UNICEF (n 3 above) 18.

⁶⁶ J Martens, M Pieczkowski and B van Vuuren-Smyth *Seduction, Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa* 3ed (2003) IOM 15.

⁶⁷ UNODC (n 11 above) 28. Department of State (n 11 above) 17 and (n 59 above) 35.

⁶⁸ Pharoah (n 1 above) 41.

⁶⁹ Pharoah (n 1 above) 30.

covers a human rights perspective comes from the UN TOC and the Palermo Protocol. These instruments have shown that TIP is a transnational crime that involves actions and means to exploit human beings. With due consideration of the best interests of the child, the Palermo Protocol emphasises the need to offer better protection to the child and deems irrelevant the consent of the child as well as the consent of parents or guardians.

The elements contained in the definition of TIP failed to guarantee a clear distinction with the smuggling of migrants, or slavery. At first glance, the fate for victims of TIP, smuggling or slavery seems alike. This is why State parties are called to develop legislation that can provide clearer distinctions between TIP and its related notions and to consider appropriate responses to the push and pull factors of TIP. However, before focusing on national legislation, it is important to look at the existing legal framework at the international and regional level.



CHAPTER 3: THE LEGAL RESPONSE TO CHILD TRAFFICKING

3.1. Introduction

This chapter outlines key instruments that can inform the protection of the African child from TIP. At the international level, the CRC and its OPSC, the Palermo Protocol, the ILO C182 and its Recommendation 190, and the Rome Statute will be considered. At the regional level, the ACHPR, the ACRWC, and the Women's Protocol will be explored.

3.2. International Law

3.2.1. The CRC and its OPSC

The CRC⁷⁰ and its OPCC⁷¹ and OPSC⁷² are the main instruments protecting the rights of the child, and which conceive children not only as objects of protection, but subjects of rights as well.⁷³

3.2.1.1. CRC

Several articles of the CRC inform on the measures to be undertaken against child trafficking. Utilising the four general principles adopted by the CRC,⁷⁴ for instance, one can construct a protective framework for the child. The most relevant articles are: Articles 32, 34, 35, and 39.

3.2.1.1.1. Article 32

Article 32 is related to trafficking as 'the sale of or traffic in children that can occur for the purposes of economic exploitation'.⁷⁵ State obligations under this article are to provide for a minimum age for admission to employment, appropriate regulation of the hours and conditions of employment, as well as appropriate penalties to ensure the effective

⁷⁰ UNGA Resolution 44/25 of 20 November 1989, entered into force on 2 September 1990. As of 13 July 2007, 140 States are signatories and 193 are parties to the Convention. See Annexure II.

⁷¹ UNGA Resolution A/RES/54/263 of 25 May 2000, entered into force on 12 February 2002. This Protocol will not be addressed, as it does not provide much information on this study.

⁷² UNGA Resolution A/RES/54/263 of 25 May 2000, entered into force on 18 January 2002.

⁷³ See J Zermatten *The Best Interests of the Child. From the Literal Analysis to the Philosophical Scope* Working-Report (March 2003) Institut International Des Droits De L'enfant 3.

⁷⁴ See arts. 2 (the non-discrimination clause), 3 (the best interest principle), 6 (the right to life, survival and development) and 12 (the right to participate).

⁷⁵ S Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (1999) Martinus Nijhoff Publishers 559. See also R Hodgkin and P Newell *Implementation Handbook for the Convention on the Rights of the Child* (2002) UNICEF 475.

enforcement of that provision.⁷⁶ Hazardous and harmful works are prohibited.⁷⁷ From this article, connections between economic exploitation and hazardous work emerge and invite some explanation.

Article 32 does not define 'economic exploitation of the child', but it is argued that it is work that 'threatens the physical, mental, emotional, or social development of the child'.⁷⁸ That exploitation occurs when the financial remuneration of the services in kind is less than that which would be paid to adults, or whenever work or employment affects the well-being of young children or their education, has also been said.⁷⁹

As regards hazardous work, Art 3 of ILO C138 sets a minimum age of 18 years, especially when that work is 'likely to jeopardize the health, safety or morals of young persons'.⁸⁰ In the case of trafficking, considering the working conditions of the children involved, it rightly fits within this category. Article 7 of the ILO C138 does not apply as it relates to the permission, in terms of national law, to use persons of 13 to 15 years for light work. For this purpose, light work is, by its very nature, neither harmful to the child's health or development, nor prejudicial to his/her education. Work performed by trafficked children cannot match this concept.

Compared to the Palermo Protocol, Article 32 focuses only on the economic exploitation of the child, as well as hazardous and dangerous work. Still, it remains important as it can shed light on what economic exploitation of the child is, which is not made explicit in the Palermo Protocol.

3.2.1.1.2. Article 34

The focus in this article is on children subjected to sexual exploitation and sexual abuse. No definition is given of the concept of 'sexual exploitation'. For Muntarbhorn, 'sexual exploitation' is 'the use of children for the sexual satisfaction of adults'.⁸¹ He suggests two supplementary definitions, which are of great significance for this study. 'Child prostitution' is 'the sexual exploitation of a child for remuneration in cash or in kind, usually but not always

⁷⁶ See art 32(2).

⁷⁷ See art 32(1).

⁷⁸ Detrick (n 75 above) 564. See also Hodgkin and Newell (n 75 above) 486-489.

⁷⁹ As above.

⁸⁰ Detrick (n 75 above) 565.

⁸¹ See Detrick (n 75 above) 593. See also G. Van Bueren *The International Law on the Rights of the Child* (1995) Martinus Nijhoff Publishers 275.

organised by an intermediary (parent, family member, procurer, teacher, etc)'.⁸² 'Child pornography' is 'the visual or audio depiction of a child for the sexual gratification of the user, [involving] the production, distribution and/or use of such material'.⁸³

These three definitions have in common the objectification of the child, whose personality and dignity are denied to satisfy a third person. The key elements of the use of fraudulent means, combined with the purpose of exploitation, are underlined and suffice to define the crime, in disregard of the victim's consent.⁸⁴

Article 34 provides more understanding of sexual exploitation and sexual abuse. Although it is not very clear, scholars have successfully commented on it, which makes it similar to the exploitation of the prostitution of others and other forms of sexual exploitation referred to in Article 3(a) of the Palermo Protocol.

3.2.1.1.3. Article 35

Article 35 deals specifically with child trafficking:

States parties shall take appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or the traffic in children for any purpose or in any form.

The wording of this Article reveals both the vagueness of the provision and the insufficiency of national measures to meet the requirements of the child's protection. The vagueness relates to the failure to define 'abduction', 'sale', and 'trafficking'; whereas the inadequacy of domestic measures calls for bilateral and multilateral co-operation.

An attempt to define 'abduction of children' highlights its difference with the related notion of 'illicit transfer and non-return of children abroad' that is described in Article 11 of the CRC. Abduction of children is a form of exploitation, while the illicit transfer and non-return of children abroad relates to parental child abduction across borders.⁸⁵ As regards the sale of children, Muntarhorn gave the following working definition:

⁸² Detrick (n 75 above) 594.

⁸³ As above.

⁸⁴ See Hodgkin and Newell (n 75 above) 513.

⁸⁵ See also Detrick (n 75 above) 598; Van Bueren (n 81 above) 280.

'[T]he transfer of a child from one party (including biological parents, guardians and institutions) to another, for whatever purpose, in exchange for financial or other reward or compensation'.⁸⁶

The definition of (child) trafficking came only a decade later, with the advent of the Palermo Protocol.

As one can see, nothing much could be expected from State parties to the CRC in their fight against child trafficking when the mother Convention on children's rights does not provide sufficient clarification of key concepts. It is expected that State parties will not make much progress to understanding legal principles enshrined in international instruments if no guidance is given.

Returning to national measures, the Committee on the Rights of the Child (hereafter referred to as the Committee) believes that the success of national measures can be judged by, *inter alia*:

- a) the adoption of legislation that aims to ensure effective protection of children against abduction, sale and trafficking, including the consideration of these acts as criminal offences;
- (b) awareness and information campaigns to prevent the occurrence of child abduction, sale and trafficking;
- (c) the allocation of appropriate resources for the development and implementation of relevant policies and programmes.⁸⁷

This approach has the merit of offering a range of actions that State parties can take but does not address the reintegration of the victims, as compared to the Palermo Protocol.⁸⁸ Failure to implement the proposed actions results in States falling far short of their goals. The next Chapter will examine appropriate attempts at implementing the above-mentioned suggestions in a domestic context.

At the level of international co-operation, the signing of co-operation agreements will help to design a clear prevention and prosecution mechanism by exchanging information regarding traffickers,⁸⁹ and to extradite and prosecute them.

Yet, the eradication of the sale of children, and the associated child prostitution and pornography, remained a matter of concern and therefore demanded the identification of

⁸⁶ Detrick (n 75 above) 604. See also Hodgkin and Newell (n 75 above) 526-527.

⁸⁷ Detrick (n 75 above) 603.

⁸⁸ See Art 6(3) Palermo Protocol.

⁸⁹ See also Detrick (n 75 above) 603.

specific and effective measures. This explains the adoption of the OPSC at the dawn of the twenty-first century.

3.2.1.1.4. Article 39

Article 39 speaks about the physical and psychological recovery and social re-integration of the child victim. This provision also applies to CIDT. It is particularly significant in the context of child trafficking where the trauma suffered can be an obstacle to the rehabilitation of a victim. State parties therefore have the obligation to promote measures and provide suitable environments to this end.⁹⁰

3.2.1.2. The OPSC

With 115 signatories and 123 State parties,⁹¹ this Optional Protocol is particularly relevant as it is aimed at achieving the goals of the CRC and the implementation of Articles 32, 34, and 35 among others.⁹²

The OPSC acknowledges the increase in international trafficking of children for the purposes of sale, prostitution, and pornography,⁹³ and the extreme vulnerability of the girl-child to sexual exploitation.⁹⁴ The definitions of 'sale of children', 'child prostitution' and 'child pornography',⁹⁵ for the first time in an international instrument, show a great evolution in the struggle for the protection of children's rights, and improve upon the definitional attempts referred to above. For the sake of completeness, organ harvesting and forced labour are included.⁹⁶ The attempts to commit any of the said acts, and complicity in any of them,⁹⁷ are also criminalised.

⁹⁰ See Hodgkin and Newell (n 75 above) 581-587.

⁹¹ As of 18 October 2007. See 'Optional Protocol on the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, New York, 25 May 2000' http://www.ohchr.org/english/countries/ratification/11_c.htm (accessed 18 October 2007).

⁹² See para 1 Preamble.

⁹³ See para 3 Preamble. See also Hodgkin and Newell (n 75 above) 647.

⁹⁴ See para 5 Preamble. See also OHCHR *Legislative History of the Convention on the Rights of the Child* (2007) United Nations.

⁹⁵ Art 2: For the purposes of the present Protocol.

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

⁹⁶ See Arts 3(1)(i)(b) and 3(1)(i)(c) OPSC.

⁹⁷ See Art 3(2) OPSC.

Article 5 goes a step further and encourages State parties to make extraditable all the acts referred to earlier. It advocates, with Articles 6 and 10, the strengthening of international co-operation in the prosecution of offenders, while article 8 focuses on the protection of victims.

All these provisions would remain meaningless if, as provided by Article 12, the Committee did not compel State parties to report on the measures taken to implement those provisions within two years following the Protocol's coming into force.

The OPSC is logically one of the best attempts to counter some manifestations of child trafficking. Yet, the plague goes beyond a simple matter of selling, prostituting or using children in the pornographic industry, which relate only to the 'end' purposes. Child trafficking is more; it is about a whole process of exploitation, from the supply to the demand side, through different criminal acts prejudicial to the child. Consequently, this state of affairs dictated the adoption of the holistic approach offered by the Palermo Protocol.

3.2.1.3. Palermo Protocol

Over the years the impact of TIP on the victims' dignity and rights,⁹⁸ and the consequences for their health⁹⁹ have raised concern about this particular crime. 'The Convention represents a major step forward in the fight against transnational organised crime and signifies the recognition of U.N. Member States that this is a serious and growing problem that can only be solved through close international cooperation'.¹⁰⁰

The TOC Convention is a binding document; States that ratify it must take 'measures against transnational organised crime', including the creation of 'domestic criminal offences to combat the problem and the adoption of new, broad frameworks for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training'.¹⁰¹ In accordance with its Article 37(1), this Convention can be supplemented by one or more

⁹⁸ Like the right to life, privacy, freedom of movement, liberty and freedom from slavery or servitude and from cruel, inhuman and degrading treatment (CIDT).

⁹⁹ Such as physical, sexual, reproductive, and mental health. See IOM *Breaking the Cycle of Vulnerability: Responding to the Health Needs of Trafficked Women in East and Southern Africa* (September 2006) Pretoria 13.

¹⁰⁰ UNODC (n 32 above) 49. As of 13 July 2007, 147 States were signatories and 137, parties. See 'United Nations Convention against Transnational Organized Crime' http://www.unodc.org/unodc/crime_cicp_signatures_convention.html (accessed 18 October 2007).

¹⁰¹ As above.

protocols. To become a Party to a protocol, a State must first be party to the TOC Convention.¹⁰²

The Palermo Protocol came into force on 25 December 2003 and, to date, 117 countries have signed, and 115 have ratified it.¹⁰³ Its fame derives from its features of 'establishing the first internationally agreed definition of the crime of trafficking in humans, for advancing national and regional initiatives and for facilitating crime-control cooperation'.¹⁰⁴

The Palermo Protocol was designed to prevent and combat TIP, protect and assist the victims, and promote co-operation among State parties in order to meet those objectives.¹⁰⁵ It offers a better identification of child victims compared to the CRC by defining '(child) trafficking'¹⁰⁶ and 'child'.¹⁰⁷

The Protocol applies to offences that are transnational in nature.¹⁰⁸ This seems to suggest that only cross-border trafficking is considered, to the detriment of its intra-border dimension. Thus, it offers a way out to offenders who could argue their innocence when TIP is committed within a country's borders, based on the *nullum crimen, nulla poena sine lege*¹⁰⁹ principle. Stated differently, in the process of cross-border trafficking, if traffickers are caught within the borders of a country of origin, they could claim their innocence, based on article 4. Yet, this does not stand to reason because the intention to exploit is enough to qualify as TIP, and State parties must develop national legislation to cover TIP within their borders.

Article 5, which provides for criminalisation of TIP, tones it down somewhat by requiring the prerequisite *intentional element*. Looking at the crime as such, one can legitimately question the validity of this argument. Each State party has the option to prosecute the attempt to commit the crime, and/or the accomplice to the offence. Leaving it optional to States weakens the Protocol; a broader criminalisation concept of the offence would have addressed properly the seriousness of the matter and offered a better form of protection to

¹⁰² See art 37(2) TOC Convention.

¹⁰³ See Annexure III.

¹⁰⁴ H Askola *Legal Response to Trafficking in Women For Sexual Exploitation in the European Union* (2007) Hart Publishing Oxford 123. See para 2 Palermo Preamble and Pharoah (n 1 above) 3.

¹⁰⁵ Art 2. See also para 1 Preamble.

¹⁰⁶ Art 3(c) Palermo Protocol.

¹⁰⁷ Art 3(d) Palermo Protocol.

¹⁰⁸ Art 4 Palermo Protocol.

¹⁰⁹ No crime or sanction without a law. It means that nobody can be prosecuted or sanctioned for an act not proscribed by the law applicable at the moment of the infringement.

victims.¹¹⁰ Alternatively, the Protocol remains silent on the aggravating circumstances of TIP that can result in serious injuries to the victim and even in his/her death.

Article 6 invites State parties to protect the victims to the extent possible under domestic law. The idea of a possible extent would suggest that there is no obligation as such and the State can still claim the unavailability of resources. This tends to neglect the best interests of the child. States are simply encouraged to give due consideration to the implementation of physical, psychological or social recovery, in accordance with the needs of children.

On a positive note, the Protocol devotes five detailed articles to prevention, co-operation and other measures to combat TIP. Article 9 (4) calls for measures 'to alleviate factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity'. This is not a comprehensive list; States may consider culture and other factors as well. In societies where trafficking in children can be justified under traditions and cultures, for instance, these traditions and culture must be weighted against the best interests of the child and should inspire the drafting of new pieces of legislation or policies for the benefit of a more accurate protection of the child.

In providing or strengthening law enforcement programmes, child and gender-sensitive issues must be of paramount consideration and guide the co-operation with NGOs and other elements of civil society.¹¹¹ The non-refoulement and non-discrimination principles should be considered when the protection of refugees and victims are at stake.¹¹²

Three provisions¹¹³ mention the progressive realisation of protective measures. Should States parties have been compelled to allocate resources to the protection of victims, then the debate on the best interests of the child principle would have been improved. In addition,

¹¹⁰ A good and recent example to fill in these gaps is certainly the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, adopted on 12 July 2007 by the Committee of Ministers of the Council of Europe. Although this document is specific to children's sexual exploitation and abuse, its chapter VI provides for substantive criminal law provisions and can shed light on the prosecution of TIP. The rationale is that 'making certain acts criminal offences (...) facilitates action against crime at national and international level' by harmonising co-operation. See 'Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse' [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2007\)1002/10](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2007)1002/10) and 'European Committee on Crime Problems, Draft Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse, Explanatory Report' [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2007\)112](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2007)112) (both accessed 28 August 2007).

¹¹¹ See Art 10.

¹¹² Art 14(1) and (2).

¹¹³ Arts 6, 11 and 12.

the child and gender-sensitive approaches are welcomed in the protection phase. Yet, specific provisions on children could have provided better protection and assistance.

Another thing to consider is the large role of border officials as well as embassy personnel in the detection of potential victims. Building up their capacities would probably shrink the permeability of borders. The Protocol does not provide for such mechanisms. Does this imply that this is not considered an important tool against TIP? Nevertheless, there is hope that, at the request of a State party, some amendments would be permitted to improve the Palermo Protocol five years after its coming into force.¹¹⁴ Indeed, in terms of Article 18 (1), such amendments can be possible only five years after the entry into force of the Protocol.

3.2.1.4. The ILO C182 and its Recommendation 190

Adopted on 17 June 1999, this ILO Convention came into force on 19 November 2000. As of 13 September 2007, the Convention has 165 ratifications.¹¹⁵ J. Sloth-Nielsen argues that the adoption of this Convention was, *inter alia*, a response to the poor accession of African and Asian countries to ILO C138.¹¹⁶

Article 1 of C182 provides for immediate and effective measures to secure both the prohibition and the elimination of the worst forms of child labour, which include trafficking of children¹¹⁷ among others. C182 applies to persons under 18 years¹¹⁸ involved in any work likely to harm his/her health, safety or morals.¹¹⁹ National laws or regulations are invited to regulate this sector¹²⁰ and State parties must assess the responsiveness of those measures periodically.¹²¹ If needed, international co-operation and assistance shall provide support to the existing mechanisms to eliminate the worst forms of child labour.¹²²

To facilitate the implementation of C182, its accompanying Recommendation 190 puts forward a Programme of Action and the determination of hazardous work and

¹¹⁴ Art 18(1).

¹¹⁵ See 'Convention No. C182' <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C182%20> (accessed 13 September 2007).

¹¹⁶ J Sloth-Nielsen 'The Interface between Child Protection, Child Justice and Child Labour via Convention 182 on the Elimination of the Worst Forms of Child Labour' in S Meuwese, S Detrick and S Jansen et al. (eds) *100 Years of Child Protection* (2007) Wolf Legal Publishers 205 205.

¹¹⁷ Art 3 C182.

¹¹⁸ Art 2 C182.

¹¹⁹ Art 3(d) C182.

¹²⁰ Art 4(1) C182.

¹²¹ Art 4(3) and 6 C182.

¹²² Art 8 C182.

implementation measures as a matter of priority.¹²³ Being a Recommendation, this document does not have a binding effect. However, it offers a holistic approach for the criminalisation of the worst forms of child labour including trafficking in children,¹²⁴ and the economic and social measures to support the elimination of their occurrence.

Thus, the Recommendation 190 improves the approach to child exploitation by providing effective tools to assist the provisions of the CRC and other instruments discussed above. Its major problem is certainly its recommendatory nature. There is a necessity to look at other instruments to fill in the possible gaps, particularly with reference to the prosecution of offenders.

3.2.1.5. The Rome Statute

Adopted on 17 July 1998, the Rome Statute entered into force on 1 July 2002. It aims to complement national criminal jurisdictions in the exercise of their jurisdiction over perpetrators of the most serious crimes of international concern.¹²⁵ As of 1 January 2007, there are 104 Parties to the Statute.¹²⁶

The Rome Statute does not include provisions specifically directed at child trafficking. However, reading the provisions of genocide, crimes against humanity and war crimes, one can find implied references to different forms or manifestations of child trafficking. Article 6(e) includes, within the scope of genocide, the act of forcibly transferring children of a national, ethnical, racial or religious group to another group with the intent to destroy the said group, in whole or in part. The connection with child trafficking will be established once it is proved that this transfer of children will end in their exploitation. In other words, once there is forced displacement of children for the purpose of their exploitation, as already mentioned in Chapter 2, and in circumstances where such a displacement would impair the survival of the victim group, the crime will amount to genocide coupled with trafficking. An illustration would certainly be the case of the massive and forceful displacement of all or part of a small village's child population for the purpose of exploitation.

Article 7(2)(c) deals with enslavement in the context of crimes against humanity. Enslavement will result from an act committed as part of a widespread or systematic attack

¹²³ 'ILO Recommendation No. 190: Worst forms of Child Labour, 1999' <http://www.ilocarib.org.tt/childlabour/r190.htm> (accessed 13 September 2007).

¹²⁴ Recommendation 12.

¹²⁵ 'Art 1 Rome Statute' http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf (accessed 13 September 2007).

¹²⁶ See 'Assembly of States Parties' <http://www.icc-cpi.int/statesparties.html> (accessed 13 September 2007).

directed against a civilian population, with knowledge of the attack.¹²⁷ It means 'the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children'.¹²⁸ Again, emphasis is placed on the purpose of exploitation (enslavement) that would result from the whole process of TIP.

Article 8(2)(b)(xxvi) gives jurisdiction to the Court over other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, *inter alia*, conscripting or enlisting children under the age of 15 into the national armed forces or using them to participate actively in hostilities. This provision strengthens the articles in the CRC and the OPSC with regard to the prosecution of perpetrators, particularly as the Statute itself pleads for the extradition of criminals, and complements national measures.

3.3. Regional Law

3.3.1. The ACHPR

Adopted in June 1981, the ACHPR came into force in October 1986. Its Preamble underlines the necessity to establish 'bodies to promote and protect human and peoples' rights'. The concept of peoples' rights prevails over individual rights, especially when it comes to issues affecting children and women.¹²⁹ To illustrate, as far as children are concerned, only Article 18(3) specifically refers to them. Nevertheless, reading the other provisions of the ACHPR, one can argue that they imply broad protection of the rights of the child.

Article 5 prohibits 'all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment or treatment.' Slavery occupies the first place in the above list; this is certainly done in order to recognise its prevalence in a few areas of the continent (Mauritania, Niger, etc.), and to emphasise the need to put an end to this practice.

Slavery impairs the right to liberty and security of the person, and his/her freedom. Additionally, it leads to the arbitrary and unlawful detention of human beings for the purpose of exploitation. Article 6 of the Charter re-affirms the obligations of State parties to protect individuals against any infringement of the previously mentioned rights. This will advance the

¹²⁷ See art 7(1)(c) Rome Statute.

¹²⁸ Art 7(2)(c) Rome Statute.

¹²⁹ See T W Bennett 'Human Rights and the African Cultural Tradition' in W Schamle (ed) *Human Rights and Cultural Diversity* (1993) Keip Publishing 269 273.

realisation of equal protection by the law for the benefit of individuals,¹³⁰ and respect for their life and personal integrity.¹³¹

How then can one reconcile these protective provisions with Article 18(2), which protects the family in its role as custodian of morals and traditional values, which, in many cases, violates children's rights? The following analysis of the ACRWC and the study analysis of Benin in the next Chapter shall attempt to resolve this question.

3.3.2. The ACRWC

Adopted in July 1990, the ACRWC entered into force in November 1999 and seeks to offer better protection to the African child. Its Article 2 goes beyond the CRC in considering every human being below the age of 18 to be a child, and Articles 3, 4(1), 4(2) and 5 recall the four general principles relevant to the child's protection.

In the light of Article 32 of the CRC, Article 15 of the ACRWC invites States to implement measures to protect the African child against all forms of economic exploitation. Unlike the CRC, this article includes the formal as well as the informal sector of the economy. This is of extreme value, considering that in Africa the informal sector is, if not bigger, at least as important as the formal sector. There is a necessity to consider its regulation when it comes to child exploitation.

Article 27 on the sexual exploitation of the child improves Article 34 of the CRC by criminalising also the *encouragement* of a child to engage in any sexual activity. The deep misery of some African families has lead parents, tutors and siblings to exploit the sexual potential of children to procure food for the survival of the whole family. The ACRWC aspires to put an end to this shameful practice.

To make Article 35 of the CRC more appropriate, the ACRWC includes parents and legal guardians in the category of potential perpetrators of the crimes of sale, trafficking and abduction of children.¹³² In addition, the prohibition of begging as a new form of trafficking is an advance, by comparison to the CRC.¹³³ Article 35 responds to some particular forms and/or purposes of trafficking, such as the culture of placement of the child or their early marriage. Similarly, Article 21(3) read together with Article 1(3) can inform State parties in

¹³⁰ Art 3(2) ACHPR.

¹³¹ Art 4 ACHPR.

¹³² Art 29(a) ACRWC.

¹³³ Art 29(b) ACRWC.

their efforts to discourage any custom and tradition conflicting with the best interests of the child, especially with regard to the girl-child.

3.3.3. The Women's Protocol

This instrument is relevant as it refers also to girls.¹³⁴ Adopted in July 2003, it entered into force in November 2005. Article 2 recalls the commitment to eliminate discrimination against women. Article 4.2(g) is more specific as it addresses the prevention of TIP, prosecution of perpetrators and protection of women at risk. Knowing that TIP is also about trade, Article 19(f) becomes relevant as it provides for the reduction of the negative effects of globalisation on women.

The Assembly of Heads of State and Government of the AU agreed to *'launch, within the next one year, a campaign for systematic prohibition of the recruitment of child soldiers and abuse of girl children as wives and sex slaves in violation of their Rights as enshrined in the African Charter on Rights of the Child'*.¹³⁵ The initiation, launch, and engagement of sustained public campaigns against the problem of trafficking in girls¹³⁶ was scheduled within a two-year timeframe. To the best of my knowledge, these two initiatives have not yet materialised.

Beyond the regional level, three relevant sub-regional instruments have also addressed TIP. The SADC Declaration on Gender and Development of 1997 and its addendum (The Prevention and Eradication of Violence Against Women and Children) underline the necessity to adopt legal and social measures, and to provide services to assist the victims.¹³⁷ Those provisions can also inform TIP, particularly when viewed from the victims' perspective.

Similarly, in 2001, the Heads of State and Government of the ECOWAS adopted the ECOWAS Declaration. This Declaration recognises that TIP is a criminal act, that poverty, lack of education and opportunities render children vulnerable, and that therefore they need special protection for their development and wellbeing.¹³⁸ The Declaration emphasises the importance of co-operation between States to facilitate the extradition of criminals, as a tool to be used in this connection.¹³⁹

¹³⁴ Art 1(k) Women's Protocol.

¹³⁵ Para 3 of the Solemn Declaration on Gender Equality in Africa (SDGEA) of July 2004.

¹³⁶ See also para 4 SDGEA.

¹³⁷ See paras H(viii) and (ix) of the SADC Declaration and paras 8, 11, 12, 13, 15, 16 and 18 of its addendum.

¹³⁸ See paras 4, 6 and 8 of the ECOWAS Declaration.

¹³⁹ See paras 12, 15, 17 and 24.

Child trafficking deprives the continent of its human resources, and its human productive force. Though they have been adopted and came into force after the Palermo Protocol, the Women's Protocol, the SDGEA and the ECOWAS Declaration have failed to guarantee effective protection to the girl-child.

3.4. Conclusion

TIP is a process. The examination of the legal instruments considered above shows that different provisions can be used to address child trafficking at one stage or another during its course of action. The problem however lies somewhere else. 'The world is not lacking in international agreements, but it is lacking in effective implementation'.¹⁴⁰ Thus, the question of implementation shall be addressed in the next Chapter.



¹⁴⁰ n 55 above.

CHAPTER IV: COUNTERING CHILD TRAFFICKING IN THE FIELD

4.1. Introduction

In the previous Chapters, emphasis was given to conceptualisation issues as well as legal provisions enshrined in international and regional instruments to combat child trafficking. This Chapter aims to analyse, *in concreto*, what the situation is like on the ground. This will aid in understand the existing gap between legal provisions, and trafficking of the African child. To this end, Benin and South Africa, which are both parties to the Palermo Protocol,¹⁴¹ will inform the study, the former being the first African country to legislate on the issue of the displacement of minors out of Benin borders, in 1961,¹⁴² and the latter being the primary destination of children trafficked in Southern Africa.¹⁴³

4.2. Benin

4.2.1 General situation

The Benin population has been said to comprise over six million inhabitants, of whom 33% live below the national poverty line, 14% in extreme poverty; almost 50% of that population are children under the age of 15.¹⁴⁴

Child trafficking in rural areas has been revealed¹⁴⁵ since the publication of the final report of Beninese women lawyers in July 2000¹⁴⁶ and the MV Etireno case of April 2001.¹⁴⁷ Benin is known as source, transit and destination country for TIP.¹⁴⁸

There are three different approaches of trafficking flows in Benin.¹⁴⁹ First, child trafficking refers to a process through which a child is removed from his/her parents' protection and

¹⁴¹ See Annexure III.

¹⁴² n 19 above.

¹⁴³ Pharoah (n 1 above). See also UNICEF Innocenti Research Centre *Trafficking in Human Beings, Especially Women and Children, in Africa* (2004) 23.

¹⁴⁴ UNODC (n 11 above) 26.

¹⁴⁵ UNODC (n 11 above) 52.

¹⁴⁶ Association des Femmes Juristes du Bénin (A.F.J.B) 'Etude pour l'Identification d'un Projet d'Appui a la Lutte contre le Trafic d'Enfants au Bénin' (2000) A.F.J.B. Cotonou.

¹⁴⁷ The MV Etireno is a Nigerian ship that was involved in the trafficking of 43 Beninese children in April 2001. See 'The Etireno enigma' <http://www.mess-s-antonio.it/msahome/ing/riviste/rivest/a2002/Feb/Art/14%20The%20etireno.htm>; 'Child slavery: Africa's growing problem' <http://asia.cnn.com/2001/WORLD/africa/04/16/child.slavery/index.html> (both accessed 24 September 2007). See also Ministère de la Justice, de la Législation et des Droits de l'Homme et Ministère de la Famille, de la Protection Sociale et de la Solidarité *Pour une Application Plus Efficace des Textes de Loi Relatifs au Trafic des Enfants* 3ed (2002) 22 .

¹⁴⁸ A.F.J.B (n 146 above) 4. See also A Adepoju 'Review of research and data on human trafficking in sub-Saharan Africa' (2005) 43 *International Migration* 77; Department of State (n 59 above) 66.

authority to be used as a commodity. Secondly, it is the transportation of a child, within the country borders or abroad, in conditions contrary to the provisions of migration legislation applicable. Thirdly, it is the transportation of a child for training, exposing him/her to mistreatment and exploitation, from his/her place of origin to another place.

Those approaches have informed a number of studies. It is for instance reported that rural areas supply the demand for sexual exploitation in large cities of Benin (Cotonou and Porto-Novo) or overseas (Belgium, France and Germany). Nigeria, Cote d'Ivoire, Cameroon, and Guinea represent the demand for child labour. Conversely, Benin remains an important destination country for children from Niger, Togo, and Burkina Faso for labour exploitation purposes.¹⁵⁰

Adding to the factors identified in point 2.3 above, the large family size, the ignorance of the risks involved in trafficking, the high demand for cheap and submissive child labour in the informal economic sector, and more importantly the cultural tradition of 'placement of children' is the key factor for trafficking.¹⁵¹

In African traditions, the child is a sign of prosperity for the family and deserves a maximum of protection from different tribulations; he/she is sent where his/her education, future and security are best guaranteed.¹⁵² In Benin, the extended family or a family's friend in urban centres is the final destination where a child will be placed to become a 'vidomegon',¹⁵³ and the risk of trafficking is simply ill perceived by families and communities.¹⁵⁴

In the past, parents had the right to visit their children and make sure that they were in safe hands.¹⁵⁵ Many current Beninese authorities have passed through the system of *vidomegon* in their childhood,¹⁵⁶ which explains the persistence of the culture.

¹⁴⁹ Ministère de la Famille, de la Protection Sociale et de la Solidarité *Oeuvrons Tous Ensemble Pour la Lutte contre les Migrations, le Trafic et l'Exploitation des Enfants* (2001) 2.

¹⁵⁰ UNODC (n 11 above) 11. See also Department of State (n 59 above) 66.

¹⁵¹ UNODC (n 11 above) 27. See also T Thanh-Dam *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management* (2006) UNESCO 71.

¹⁵² A.F.J.B (n 146 above) 5. This practice is common in the region and identified as *Kalifa* in Mali and *Mbindaan* in Senegal. See UNICEF Bureau Régional pour l'Afrique de l'Ouest et du Centre *Problématique du Travail et du Trafic des Enfants Domestiques en Afrique de l'Ouest et du Centre* Ceprass (1998) 7.

¹⁵³ From the Fon, a widely spoken language of Benin, it means 'foster child'. See Ministère de la Justice (n 147 above).

¹⁵⁴ UNICEF (n 152 above) vii.

¹⁵⁵ A.F.J.B (n 146 above) 6.

¹⁵⁶ As above.

However, the situation has changed. In some instances, parents were found to be accomplices in the exploitation of their own children, 'selling' them for financial gain.¹⁵⁷ This gives room for different types of abuse of victims of trafficking, especially those trafficked for (domestic) child labour purposes. Domestic labour in the host home is distinct from the work done by children in their home to assist parents in different tasks. The former involves the exploitation of the child for cheap labour, his/her docility, peacefulness, and extensive working hours.¹⁵⁸ It usually involves children that are not directly linked to the family of the trafficker and who do not benefit from the product of their work; they are abused and exploited. On the other hand, the work done by children in their home entails children that help their parents in their daily work (farm, craft, arts, etc.). In these cases, children benefit from the product of their work as this product contributes to the improvement of their family's living standards.

In the case of child labour, the determination of the best interests of the child raises particular concerns, as parents trust the virtues of the practice of *vidomegon*, in complete disregard of possible negative effects of this embedded culture on the health and the future of the youth. Child victims of domestic labour (and trafficking in general) are exposed to different kinds of abuses and mistreatment such as: physical and psychological (beatings, torture, malnutrition, murder), sexual (assaults, rape), sexually transmitted infections and diseases (HIV/AIDS), unwanted pregnancies, and post traumatic stress disorder.¹⁵⁹ The next step is then to see how Benin responds to this embedded culture that imperils the health of its youth.

4.2.2 Legal framework for child trafficking

National laws will inform the study before looking at bilateral or multilateral agreements between Benin and its neighbouring countries.

4.2.2.1. National laws **4.2.2.1.1. The Constitution**

The Constitution¹⁶⁰ guarantees the protection of basic civil and political rights and freedoms of the people, including children. Article 26 guarantees the right to equality and special protection to the child. Article 15 refers to the inherent right to life, freedom, security, and integrity of a person. Article 18 protects from CIDT. Article 38 deals with the protection of

¹⁵⁷ Pharoah (n 1 above) 30. See also UNODC (n 11 above) 27.

¹⁵⁸ UNICEF (n 152 above) 14.

¹⁵⁹ IOM (n 99 above) 35-37. See also IPU and UNICEF (n 3 above) 16.

¹⁶⁰ See 'Constitution de la République du Bénin' <http://ofpa.net/constitution/constben.doc> (accessed 3 October 2007).

rights and interests of Beninese citizens abroad, while article 40 invites the State to publicise and make available the Constitution as well as human rights instruments ratified by the State.

Family law and labour law also contain provisions related to child trafficking.¹⁶¹ However, the more relevant instruments are the 5 July 1961 Act (herein referred to as the 1961 Act), the 5 April 2006 Act (thereafter referred to as the 2006 Act),¹⁶² and the 17 April 1973 Penal Code (referred to as the Penal Code).¹⁶³

4.2.2.1.2. The 5 July 1961 Act

This Act is one of the oldest to address the issue of child trafficking in Africa. Its article 1 was said to be innovative as it prohibits any displacement of a child outside the country prior to a written authorisation from the chief of his/her district of origin. Anyone who infringes this provision will be sentenced to two to five years imprisonment or a fine of between 25,000 and 150,000 CFA,¹⁶⁴ whenever he/she is found within ten kilometres away from national boundaries.¹⁶⁵

Considering the harm caused to the exploited child, the value and the effectiveness of this sentence is debatable. It is suggested that while the first administration of Benin intended to discourage such behaviour, on the one hand, it failed to provide for an effective deterrence apparatus, on the other hand.

When a minor has been forcefully displaced, without any consent or authorisation of his/her parents or legal guardians, for the purpose of exploitation, the death penalty will be the sentence.¹⁶⁶ The same sentence will apply to parents, legal guardians, or tutors who have consented to 'give' their children to traffickers. The act, as well as the attempt to commit the act, is punishable.

In this case, the death penalty that is, ultimately, a consequence of the use of force (the means used to traffic), and the subsequent exploitation (the purpose of trafficking). Without

¹⁶¹ See A.F.J.B (n 146 above) 64-97.

¹⁶² Loi No. 2006-04 du 5 avril 2006 portant conditions de déplacement des mineurs et répression de la traite d'enfants en République du Bénin.

¹⁶³ Ordonnance No. 73-37 du 17 avril 1973, modifiant les dispositions du Code Pénal en ce qui concerne la traite des personnes et les enlèvements de mineurs.

¹⁶⁴ CFA or Franc CFA (read 'franc cefa') is the currency used in the old French colonies of Africa. As of 5 October 2007, 1CFA equals USD (US Dollars) 0.002158. Therefore, 25,000 CFA and 150,000 CFA would be equivalent to USD 53.952 and USD 323.715. See <http://fr.finance.yahoo.com/convertisseur/convert?amt=25000&from=XAF&to=USD&submit=Convertir> (accessed 5 October 2007).

¹⁶⁵ Art 3, 1961 Act.

¹⁶⁶ Art 5, 1961 Act.

going into the debate on the legality of the death penalty,¹⁶⁷ it is much better in terms of bringing deterrence to the forefront.

However, it has been said that focusing on the Beninese minor only¹⁶⁸ and limiting the territoriality of the Act to ten kilometres beyond the national border¹⁶⁹ reduced the scope of application and responsiveness of the Act.¹⁷⁰ In addition, becoming obsolete, the 1961 Act could no longer guarantee a minimum of protection to victims of trafficking, criminal laws being of strict application. A new Act was thus most welcome.

4.2.2.1.3. The 5 April 2006 Act

In 2006, a new Act came into force, replacing the 1961 Act. The 2006 Act innovates in defining child trafficking, which responds to the wishes expressed in article 5 of the Palermo Protocol. In this context, 'all conventions aiming at infringing the freedom or the personality of a child, shall it be for free or not' or 'the recruitment, transportation, transfer, placement, reception or fostering of a child for the purpose of exploitation regardless of the means used' shall be defined as trafficking. Exploitation shall include all forms of slavery, the use of children in armed conflicts or in any other illegal activity, organ harvesting, child prostitution and pornography, and any other activity prejudicial to his/her health, security and morality.¹⁷¹ Child labour is prohibited, save under the conditions prescribed by the law and international conventions.¹⁷²

With reference to the written authorisation from the chief of the district as referred to in article 1 of the 1961 Act, article 7 includes two exceptions to the displacement of a child, with due consideration of the best interests principle. Those derogations are a decision from the judiciary or a recommendation from health or social services.

In the case of a foreign child, save for humanitarian reasons, access to the national territory will be denied unless he/she is accompanied by a parent or any other person who can justify

¹⁶⁷ In 1961, the death penalty was not a matter of concern. For current developments, see generally William A. Schabas *The Abolition of the Death Penalty in International Law* (2002) Cambridge University Press 363-365; L Chenwi *Towards the Abolition of the Death Penalty in Africa – a Human Rights Perspective* (2007) PULP 29-34.

¹⁶⁸ Art 1, 1961 Act.

¹⁶⁹ Art 2, 1961 Act.

¹⁷⁰ Ministère de la Justice (n 147 above) 33.

¹⁷¹ Art 4, 2006 Act.

¹⁷² Art 5, 2006 Act.

the purpose of the journey and the final destination by way of an identification document.¹⁷³ When a foreign child is accompanied by a person not mentioned in the preceding article, the latter will be compelled to provide evidence of their good faith with a letter endorsed by any competent authority from that child's country of origin.¹⁷⁴ Failure to do so can lead to the refusal to grant access to the national territory to that child; this decision is within the power of any administrative or judicial authority.¹⁷⁵ This provision addresses particularly the issue of Benin as a child trafficking country of destination, which was not the case in the 1961 Act. The latter concentrated on Benin as a country of origin only.

Article 14 protects minors who have decided, on their own, to seek their haven far from home, putting themselves in a position of vulnerability. It provides for their return to their hometown or their placement in foster care institutions in cases where any return would be inappropriate in the light of their best interest.¹⁷⁶ This provision improves the protection given to teenagers who leave their families without parental consent, in an attempt to escape poverty in rural areas.

Parents who 'give' or facilitate the traffic of their child, in one way or another, will be sentenced to a period of six months to five years imprisonment.¹⁷⁷ A cumulative sentence of one to three years imprisonment and a fine of 50,000 to 500,000 CFA,¹⁷⁸ or 500,000 to 2,500,000 CFA,¹⁷⁹ will apply to anyone who fails to complete the required administrative procedures while displacing or transporting a child within, or beyond, national borders, respectively. The attempt is equally punishable,¹⁸⁰ and the same sentences will apply, whether Benin be the country of origin or destination.¹⁸¹ More importantly, a criminal convicted for child trafficking will be sentenced to ten to twenty years imprisonment,¹⁸² and

¹⁷³ Art 9, 2006 Act. See also art 12. Identification documents must contain the place of origin, final destination, purpose of the journey, and the identity of the person who will receive the child or the name of the institution where this child is going.

¹⁷⁴ Art 10, 2006 Act. Article 13 complements art 10 by requesting, from the person who accompanies the child, a document proving filiations or any existing link between himself/herself and the child.

¹⁷⁵ Art 11, 2006 Act.

¹⁷⁶ Art 14, 2006 Act.

¹⁷⁷ Art 16, 2006 Act.

¹⁷⁸ Art 17, 2006 Act. It is equivalent to USD 107.905 to 1,079.051. See n 164 above.

¹⁷⁹ Art 18, 2006 Act. The value of the fine shall represent USD 1,079.051 to 5,395.256. See n 164 above.

¹⁸⁰ As above.

¹⁸¹ Art 19 2006 Act.

¹⁸² Art 21 2006 Act.

life imprisonment whenever illegal means such as threats, force, fraud, etc. have been used; they constitute aggravating circumstances.¹⁸³

To address the prevalence of child labour in Benin, the 2006 Act provides for a fine of 500,000 to 5,000,000 CFA¹⁸⁴ coupled with a prison term of six to twenty-four months, or one of these sentences only, for anyone who exploits child labour, whatever the nature of the work might be.¹⁸⁵ Knowing that domestic labour is one of the most prominent forms of child trafficking in Benin, the text of this article is debatable. First, the prison term is less than in the case of displacement or transportation of a child; secondly, the sentence is optional; thirdly, it sends the message that money can wipe out the crime. Moreover, this Act remains silent about its implementation, which impairs its aim of supplementing the Penal Code.

4.2.2.1.4. The Penal Code

The Penal Code contains a whole section devoted to child trafficking (articles 354 to 355-C). Article 354 provides broadly for the death penalty in any case of conviction for trafficking. The same sentence applies to smuggling and kidnapping of minors.¹⁸⁶ Nothing specific is said about its implementation.

Using this Code, 35 cases of child trafficking were investigated from October 2005 to August 2006; in eight cases, convictions resulted in sentences from three months to a year.¹⁸⁷ Alas, the 2006 Act, which supplements the Penal Code has not been implemented yet, because 'additional legislation currently in draft form must be passed before this 2006 law can be enforced',¹⁸⁸ which impairs the effective protection of children at the national level.

What is the situation at the regional level? Do bilateral or multilateral agreements provide for better mechanisms? The next section will attempt to address those questions.

4.2.2.2. Bilateral and multilateral agreements

One of the latest bilateral agreements is the 9 June 2005 'Agreement between the Republic of Benin and the Federal Republic of Nigeria on the Prevention, Repression and Abolition of

¹⁸³ Art 23 2006 Act. The absence of the death penalty as a sentence for the commission of trafficking with aggravating circumstances shows an evolution to a de facto abolition of the death penalty in Benin. See Chenwi (n 167 above) 31 for further details.

¹⁸⁴ This is equivalent to USD 1,079.051 to 10,790.513. See n 164 above.

¹⁸⁵ Art 22, 2006 Act.

¹⁸⁶ Art 355 Penal Code.

¹⁸⁷ Department of State (n 59 above) 67.

¹⁸⁸ As above.

Human Trafficking, especially Women and Children'. This Agreement has 23 articles. Its Preamble reaffirms the commitment to implement the ECOWAS Plan of Action,¹⁸⁹ and refers to the Palermo Protocol regarding the need for inter-country cooperation to fight human trafficking.¹⁹⁰ It aims to develop common strategies to combat TIP, to protect and rehabilitate the victims, and to promote close cooperation between the two countries.¹⁹¹

Article 7 provides for extradition; article 10 emphasises the need for necessary measures to protect the private life and the identity of the victims, in conformity with the Palermo Protocol. Article 17 discusses the return of the child from the perspective of his/her best interests. This prevents the child from victimisation in the case where parents are either accomplices, or simply aiming to stigmatise a child who failed to bring money home or other goods, in cultures where child migration or placement is believed to open the doors to a prosperous life. Social rehabilitation, and physical and psychological re-education of victims shall be guaranteed by appropriate measures.¹⁹²

In February 2002, Benin signed an Agreement known as 'Measures to combat trafficking in human beings in Benin, Nigeria and Togo', with the UNODC.¹⁹³ This Agreement intends to collect and analyse data in the three countries and strengthen their capacity to respond to TIP through a regional joint action.¹⁹⁴ To this end, law enforcement, training of criminal justice officials and promotion of closer cooperation between agencies should be the tools to use.¹⁹⁵

Beyond those bilateral agreements, there are multilateral accords on judicial cooperation, signed in 1961 and 1992 respectively. The former provides for judicial cooperation between the signatories¹⁹⁶ and the latter aims to strengthen the criminal response to TIP.¹⁹⁷ Yet, the protection and repatriation of victims of trafficking and extradition of traffickers was still a matter of concern; this led to the signature of another agreement in 1996.¹⁹⁸ Moreover, in

¹⁸⁹ n 9 above. See discussion below.

¹⁹⁰ Paras 2, 3 and 4 of the Preamble.

¹⁹¹ Art 2 ECOWAS Plan of Action.

¹⁹² Art 18 ECOWAS Plan of Action.

¹⁹³ UNODC (n 11 above) 17.

¹⁹⁴ As above.

¹⁹⁵ As above.

¹⁹⁶ As above. See also n 10 above.

¹⁹⁷ Also called the 'ECOWAS Convention on Mutual Assistance in Criminal Matters', it was adopted on 29 July 1992 in Dakar, Senegal. See UNODC (n 11 above) 73.

¹⁹⁸ Also called the 'Extradition Treaty', this agreement is a quadripartite between Nigeria, Benin, Ghana and Togo. The agreement complements the 'Convention on Extradition' adopted on 6 August 1994 in Abuja, Nigeria, which gave national criminal courts jurisdiction over crimes committed in another country or against that country's citizens. See UNODC (n 11 above) 73.

2000, the Libreville Platform of Action offered guidelines to combat child trafficking for labour exploitation in West and Central Africa, and emphasised the need for joint action with international organisations.

A well-known multilateral agreement is the ECOWAS Declaration that owes its fame to the straightforward condemnation of human trafficking that one can read throughout the text.¹⁹⁹ With regard to children, the Preamble acknowledges their vulnerability and the need for special protective measures,²⁰⁰ whether it be through the adoption of legal provisions²⁰¹ or effective inter-state cooperation.²⁰² The social rehabilitation of victims, their protection from further victimisation, the reduction of the demand, and the preparation of a sub-regional convention against trafficking²⁰³ are also addressed.

More recently, Benin signed the 'Multilateral Agreement to Combat Child Trafficking in West Africa' in Abidjan, Cote d'Ivoire.²⁰⁴ Specifically targeted to child trafficking, this Agreement is much more protective than the ECOWAS Declaration and acknowledges the increase of child trafficking, and the need for a pressing response by the adoption of multilateral legal instruments in the region.²⁰⁵ In similar vein, it draws inspiration from, amongst others, the 2005 Bilateral Agreement between Benin and Nigeria, the ECOWAS 2001 Plan of Action and the UNGA Declaration 'A World Fit for Children'. Child trafficking is prohibited, all its forms shall be forbidden, and the victims, regardless of their nationality, deserve respect, dignity, and non-discrimination.

The best interests of the child and his/her welfare are the paramount considerations.²⁰⁶ For instance, when the age of the victim cannot be ascertained properly, the presumption of his/her age shall be in his/her favour.²⁰⁷ All measures to combat child trafficking shall incorporate the idea of prevention, protection, repatriation, reunion, rehabilitation, reintegration, repression, and cooperation.²⁰⁸

¹⁹⁹ See n 9 above.

²⁰⁰ Para 7 of the Preamble.

²⁰¹ Paras 8 to 13 of the Preamble and 5th commitment of the Declaration.

²⁰² Paras 14 to 16 of the Preamble and 1st commitment of the Declaration.

²⁰³ See commitments 7, 8, 16 and 18.

²⁰⁴ n 10 above.

²⁰⁵ Cumulative reading of paras 2, 5, 7, 8, 11, and 13 of the Preamble. See also arts 2 and 3.

²⁰⁶ Art 5.

²⁰⁷ Art 4.

²⁰⁸ Art 6.

State parties are bound by special obligations in respect of their status as origin, transit, or destination countries. States of origin are compelled to identify the itineraries of child trafficking networks, to dismantle them, to prosecute and punish traffickers and accomplices alike, and to contribute to the repatriation cost of child victims.²⁰⁹ Transit countries shall, *inter alia*, facilitate the passage through their territories of the partners involved in the control of child trafficking and secure the temporary care of child victims through specialized services or departments pending their repatriation.²¹⁰ Destination countries shall undertake to immediately withdraw and assume responsibility for the child victim of trafficking after his/her identification, facilitate his/her reintegration in the territory of origin and organise his/her repatriation in the best conditions possible.²¹¹

To ensure the implementation of those measures, a Permanent Regional Monitoring Commission (PRMC) shall be created.²¹² It is composed of State parties' delegates from government and civil society,²¹³ and meets once every year.²¹⁴ The timing of meetings is debatable as trafficking is a fast-growing phenomenon and every day brings new ingredients in the perfection of trafficking methods and means. The PRMC assessment of State parties' protective measures may be meaningless, as these measures encounter a risk of becoming outdated quickly.

However, in its concluding observations, the Committee on the Rights of the Child admitted in September 2006 that Benin has made efforts to combat child trafficking; but there is still much to do.²¹⁵ This can also explain why the Trafficking in Persons 2007 Report still considers Benin as a Tier 2 country.²¹⁶ In this context, one needs to ask: what is to be done

²⁰⁹ Art 9(d), (e) and (g).

²¹⁰ Art 11(f) and (h).

²¹¹ Art 10(a), (c) and (f).

²¹² Art 12.

²¹³ Art 15.

²¹⁴ Art 17.

²¹⁵ See 'Committee on the Rights of the Child: Consideration of Reports Submitted by State Parties under Article 44 of the Convention. Concluding Observations: Benin (paras 7,8,10, 68(c), 71, 72(c), 72(g))' [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.BEN.CO.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.BEN.CO.2.En?OpenDocument) (accessed 19 October 2007).

²¹⁶ Using the Minimum Standards for the Elimination of TIP provided for in the American Trafficking Victims Protection Act of 2000, the US Department of State classifies countries of the world in a tier system, depending on their commitment to the fight against trafficking. Countries range from Tier 1 (fully comply), to Tier 2 (do not fully comply but makes significant efforts towards compliance), Tier 2 Watch list (do not fully comply but tries to bring themselves into compliance) and Tier 3 (do not fully comply and are not making a single effort to comply). See Department of State (n 59 above) 14, 29 and 66.

The Tier System 3 Minimum Standards consist of the prohibition and punishment of acts of trafficking, the setting of adequate sentences in accordance with the gravity of the offence and the elimination of trafficking

when legal mechanisms appear to be limited to good intentions and do not adequately address the problem on the ground? It is suggested that other strategies or stopgap measures must be put in place.

4.2.3 Beyond the legal framework

The previous paragraph has shown how limited national laws, and bilateral and multilateral agreements have been in their response to child trafficking in Benin. In August 1999, lest the situation worsens, the Ministry of Family, Social Protection and Solidarity created the first Village Committees in the area most affected by child trafficking, with the assistance of UNICEF.²¹⁷

UNICEF explains that the creation of Village Committees was aimed at providing social surveillance over the movement of children in the villages by raising awareness and reporting suspected cases of child abuse, fraudulent departures of children, or children exposed to trafficking, and by monitoring the reintegration of trafficked children.²¹⁸ The scenario is the following: when a child leaves the village, the Committee rapidly investigates the missing child and alerts the nearest Juvenile Protection Squad.²¹⁹ In many cases, this rapid response has thwarted the transportation of many children to neighbouring countries. One of the advantages of the Village Committees is their on-the-spot supervision, which encourages spontaneous monitoring of local children, an early warning system, and a division of tasks, so that everyone involved is assigned a clear-cut role in the process.²²⁰ The Committees also provide efficient birth and death registers in the villages, which keep population information up to date, allowing for a better understanding of the current situation and movement of children, compensating for an ineffective official registry of births, marriages, and deaths. In

through sustained efforts. See Susan S Kreston 'Human Trafficking in Human Beings: An Overview and Global Perspective' Paper presented at the 'Trafficking in Human Beings: National and International Perspectives', Conference held on 17 August 2007, University of the Free State, Bloemfontein, South Africa (hereafter referred to as the Bloemfontein Conference).

²¹⁷ UNICEF (n 143 above) 44. See also IPU and UNICEF (n 3 above) 45ff.

²¹⁸ As above. See UNICEF Insight Innocenti *La Traite d'Enfants en Afrique de l'Ouest: Réponses Politiques* (2002) UNICEF 14. See also Ministère de la Famille, de la Protection Sociale et de la Solidarité *Les Comites Locaux de Lutte contre le Trafic des Enfants au Bénin* (2005) MPFSS et UNICEF.

²¹⁹ The Juvenile Protection Squad is a structure that falls under the jurisdiction of the Criminal Police Department, is specialised in the investigation of situations involving minors in physical and moral danger, and can intervene proactively on its own initiative or upon request. UNODC (n 11 above) 78. See also Department of State (n 59 above) 67.

²²⁰ UNICEF (n 143 above) 44.

2005, the number of Committees was estimated to number 1044, of which 840 have been inaugurated with UNICEF assistance.²²¹

As a result, the number of birth registrations has increased, while the number of *vidomegons* has decreased, thanks to close collaboration between the Committees and the Juvenile Protection Squad, which are the most relevant institutions in responding to child trafficking. Where the implementation of pieces of legislation delays the protection of children, those two mechanisms offer complementary measures. They remain a practical option because of their low cost and the involvement of villagers in protecting their own children, although they face conceptual difficulties at times with regard to the understanding of all issues related to child trafficking in Benin.

To conclude, the situation in Benin has shown that an abundance of legal instruments does not necessarily guarantee the full protection of children from trafficking; the implementation of those instruments remains problematic. The creation of stopgap measures offers practical and low-cost solutions to address trafficking in children, especially in rural areas. These temporary measures promote unity and cooperation among different actors (Government, NGOs, and communities) committed to the same goal, which legal measures often fail to achieve because they derive from a top-down system, where the approach of the drafters may not be easy to understand in the countryside, hence impairing the implementation.

Having completed the analysis of Benin, the next section will look at the situation in South Africa, the second case study.

4.3. South Africa

4.3.1. General situation

The question of child trafficking was first addressed as a concern in 2000 with the publication of the Molo Songololo report, followed months later by studies carried out by IOM and UNICEF.²²² Molo Songololo reports that between 28,000 and 38,000 children are prostituted in South Africa; in Cape Town, 25% of the prostitution services are offered by children.²²³ Similarly, IOM reveals that South Africa is a country of destination for victims from Angola, Botswana, DR Congo, Lesotho, Mozambique, Malawi, South Africa, Swaziland, Tanzania,

²²¹ Ministère de la Famille (n 218 above).

²²² See Susan S. Kreston 'Trafficking in Children in South Africa: An Analysis of the Pending Legislation' (2007) 8 *Child Abuse Research in South Africa* 35 37.

²²³ Kreston (n 216 above). See also Molo Songololo *Trafficking in Children for the Purposes of Sexual Exploitation* (2000) South Africa 26.

Zimbabwe, and Zambia.²²⁴ This movement was later confirmed by UNICEF, which additionally describes South Africa as a country of origin and transit for child trafficking.²²⁵ A recent study by SANTAC estimates that 'as many as 30,000 young people annually arrive in South Africa from SADC countries'.²²⁶

Different factors explain the migration flow; the most important are the search for better livelihoods where children presume they stand better chances of education, employment or businesses opportunities, is one pull factor;²²⁷ conflict and natural disasters,²²⁸ corruption of border officials, HIV/AIDS related orphan-headed households,²²⁹ and endemic poverty²³⁰ have an important impact as well.

4.3.2. Legal framework for child trafficking

The scope of the protection of children against trafficking in the national legislation will be the first point to examine, before moving to the existing bilateral or multilateral agreements addressing the issue of child trafficking.

4.3.2.1. National laws **4.3.2.1.1. The Constitution**

In terms of section 7(2)²³¹ of the Constitution, 'the state must respect, protect, promote and fulfil the rights in the Bill of Rights'. Section 9 guarantees the right to equality, and equal protection and benefit from the law. 'No person may unfairly discriminate directly or indirectly against anyone on one or more grounds (...)'.²³² Consequently, children cannot be discriminated against in their entitlement to the protection of the law.

Section 28, which defines a child and all the rights to which he/she is entitled, underlines the overriding consideration of the best interests' principle.²³³ In that context, the child shall not

²²⁴ Martens (n 66 above) 125. M Chichaya and Merab K. Kiremire *A Situational Analysis of the Abuse and Trafficking of Children in Southern Africa* (2007) Terre des Hommes Schweiz and Santac (unpublished draft) 20. See also Adepoju (n 148 above) 79.

²²⁵ Kreston (n 222 above) 26.

²²⁶ Chichaya and Kiremire (n 224 above).

²²⁷ Chichaya and Kiremire (n 224 above) 40.

²²⁸ As above.

²²⁹ They are estimated to be 1,2 million children out of an under 18 population of 18,417,000; this represents 15%. See Chichaya and Kiremire (n 224 above) 26. See also Molo Songololo (n 223 above) 26.

²³⁰ 11% of the South African population lives under USD1 per day. Chichaya and Kiremire (n 224 above) 26.

²³¹ 'Section' is the terminology adopted in South Africa instead of 'Article'.

²³² Section 9(4).

²³³ Section 28(2).

be subjected to slavery, servitude or forced labour.²³⁴ All those provisions aim to protect the child from all kinds of violation of its dignity, which is a core value of the Republic.²³⁵

4.3.2.1.2. The Children's Act 38 of 2005

Trafficking in children is dealt with in Chapter 18 of this Act, which intends to give effect to the Palermo Protocol. Chapter 1 gives a more advanced definition of child trafficking compared to article 3(c) of the Palermo Protocol,²³⁶ as it includes also the adoption of a child through illegal means.²³⁷ Chapter 18 of this Act intends to give effect to the Palermo Protocol.²³⁸

Section 284(1) explicitly prohibits trafficking in children and disqualifies the consent of the person having control over the child as a defence in a prosecution.²³⁹ This worthy development of the law makes the prosecution and punishment of perpetrators more effective. In addition, in order to discourage anyone's passivity, or reluctance to assist in the protection of children from all forms of abuse, an employer would incur liability for the acts of his/her employee or agent acting on his/her behalf or within the scope of his/her employment.²⁴⁰ For the same reasons, section 285 condemns a series of acts, including the use of the Internet to facilitate child trafficking. In a computerised society, the evil of new technologies of information and communication is indisputable; the use of the Internet for

²³⁴ Section 13.

²³⁵ Section 1. See also Kreston (n 222 above) 42; GE Devenish *A Commentary on the South African Bill of Rights* (1999) Butterworths 81-83; I Currie and J de Waal (2005) *The Bill of Rights Handbook* Juta 272-274; A Chakalson 'Human dignity as a Foundational Value of Our Constitutional Order' (2000) 16 *SAJHR* 193 196; L Ackermann 'Equality and the South African Constitution: The Role of Dignity' (2000) 60 *Heidelberg Journal of International Law* 537 537. See also *S v Makwanyane* 1995 (3) SA 391 (CC) para 144; *National Coalition for Gay & Lesbian Equality v Minister of Justice* 1999 (1) SA 6(CC) para 29 and 30 (Ackermann J); *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) para 56.

²³⁶ See n 31 above.

²³⁷ Trafficking, in relation to a child

(a) means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic

(i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or

(ii) due to a position of vulnerability, for the purpose of exploitation; and

(b) includes the adoption of a child facilitated or secured through illegal means.

²³⁸ Section 281.

²³⁹ Section 284(2)(a).

²⁴⁰ Section 284(3).

child pornography, for instance, needed to be addressed. It is believed that this provision will achieve this goal.²⁴¹

Section 291 extends the scope of application of the Child Act to other territories, as implied in article 4 of the Palermo Protocol, as long as the offence is committed by a South African citizen or permanent resident. This extra-territorial jurisdiction presents the advantage of a more effective prosecution of offenders.

Yet, there are still some challenges. Kreston believes that the Children's Act fails to provide for prevention, the institution of special investigation units, the identification and rehabilitation process, or the prohibition against charging children with any offences they may have committed while being trafficked.²⁴² Nevertheless, it is still maintained that Chapter 18 of the Children's Act is not a trafficking in persons law per se, and only provides for temporary measures in anticipation of a more specific law. The implementation of this Act has been delayed by the drafting of its consolidated regulations. These regulations will complement the Act and should be finalised by December 2007, before their possible amendment and adoption by Parliament in early 2008. Because the implementation of the Act is scheduled for 2008, the protection on the ground is imperial; a quicker process would have been more advantageous and more effective.

43.2.1.3. Combating of Trafficking in Persons Bill (hereinafter referred to as the Bill)

The South African Law Reform Commission is currently finalizing a report on TIP, which will contain the Commission's final recommendations and proposed draft legislation.²⁴³ Chapter 1 underlines the objectives of giving effect to the Palermo Protocol and providing protection of victims of trafficking and prevention of TIP.²⁴⁴ This chapter extends the definition of TIP to the 'sale, supply, procurement, capture, removal [of persons] (...), within or across the borders of the Republic, by any means including the use of (...) intimidation (...)'.²⁴⁵ It criminalises TIP²⁴⁶ and suggests a fine or a maximum of 20 years imprisonment or both fine and

²⁴¹ See comparatively how the internet has assisted in the identification of a Canadian paedophile in Thailand. 'Christopher Paul Neil named as Interpol-hunted Pedophile' <http://fisherwy.blogspot.com/2007/10/christopher-paul-neil-named-as-interpol.html> (accessed 17 October 2007).

²⁴² Kreston (n 222 above) 43.

²⁴³ L Stuurman 'Recommendations for New Legislation in South Africa', Paper presented at the 'Trafficking in Human Beings: National and International Perspectives', Bloemfontein Conference (n 216 above).

²⁴⁴ Section 2.

²⁴⁵ Section 1.

²⁴⁶ Section 5.

imprisonment for any convicted person.²⁴⁷ Considering the seriousness of the crime, leaving the sentence optional is debatable, as the payment of only a fine will not achieve deterrence of the crime. Nevertheless, apart from this provision in article 38(1), the philosophy of the text is to respond as best as possible to the philosophy of the Palermo Protocol.

This is why, for instance, section 8 prohibits the use of services procured by victims of trafficking. That provision is said to be controversial,²⁴⁸ because, in practice, it will be difficult to assess a consumer's good faith with the reasonable person standard test. In the case of prostitution, for instance, a consumer will encounter practical difficulties in assessing the age of the prostitute. If he does, he may not wonder whether that prostitute engaged freely in the practice, or whether he/she is a victim of trafficking. Nevertheless, the rationale behind the provision is probably to discourage the demand side of trafficking, as contemplated by section 9.

Chapter 2 offers guiding principles to decide whether a person is a victim of trafficking or not. Those principles procure the best protection possible for trafficked victims who are often treated as tantamount to criminals, thereby losing the benefit of appropriate protection of the law, whose objective to protect children. In addition, reporting victims of trafficking is mandatory for immigration officials, police officials, labour inspectors, social workers, social service professionals, medical practitioners, or registered nurses. However, any person may report such cases.²⁴⁹

The Bill provides foreign victims with a non-renewable suspension of deportation for a period of 60 days maximum.²⁵⁰ This period will allow victims to come to terms with what has happened to them and to make informed decisions as to whether they want to assist in the investigation and prosecution of their traffickers.²⁵¹ It is recommended that this period be assessed on a case-by-case basis because, in practice, victims can take some time before making confessions, due to the trauma they suffered and their unwillingness to suffer this again by exposing their experiences.

In the case of child victims, their repatriation should occur with their best interests.²⁵² If there were reasons to believe that the child is at risk of re-victimisation once back home, his/her interests would compel the Republic to offer better alternative in South Africa.

²⁴⁷ Art 38(1). See also Kreston (n 222 above) 47-48.

²⁴⁸ Stuurman (n 243 above).

²⁴⁹ Stuurman (n 243 above).

²⁵⁰ Section 15.

²⁵¹ Stuurman (n 243 above).

²⁵² Section 36.

In respect of the extra-territoriality of jurisdiction, the reasoning developed under the Children's Act will prevail. In terms of section 19(1)(a) of the Supreme Courts Act, the High Court is empowered to exercise universal jurisdiction over international crimes such as slavery.²⁵³ It is suggested that this jurisdiction be extended to include trafficking.

Yet, the Bill's progressive approach to counter TIP will wait some time before being effective. The SALRC report will be submitted to the project leader of the SALRC not later than December this year. This will be submitted to the Minister of Justice, who will then be at liberty to introduce the legislation in Parliament.²⁵⁴ Because of this, people caught currently for human trafficking can only be prosecuted for common law crimes such as kidnapping, abduction, assault, rape, murder.²⁵⁵

4.3.2.1.4. The Criminal Law (Sexual Offences and Related Matters) Amendment Bill (B50-2003)

The Sexual Offences Amendment Bill clearly states that its clauses dealing with trafficking for sexual purposes only, are simply transitional provisions until other legislation is passed.²⁵⁶ 'A person ('A') who trafficks any person ('B'), without the consent of B, is guilty of the offence of trafficking in persons for sexual purposes.' Similarly, a person who, in one way or another, is involved directly or indirectly in trafficking, is guilty of the same offence.²⁵⁷

The Sexual Offences Bill provides criminal sanctions against any person directly or indirectly involved in running a brothel, as well as any parent or guardian of a child that "orders, permits, or in any way assists in bringing about, or receives any consideration for, seduction, or prostitution of such a child."²⁵⁸ This is a significant improvement compared to the Child Care Act 74 of 1983, as amended in 1999. The latter "criminalizes the actions of those directly involved in child sexual exploitation as well as any person legally linked to a property

²⁵³ Stuurman (n 243 above).

²⁵⁴ As discussed with Stuurman (Private e-mail received on 15 October 2007).

²⁵⁵ See also *State v Amien Andrews (Cape Town)*, *State v Elizabeth Maswanganye (Pretoria)*, *State v Phillips- 'The Ranch' case (Johannesburg)*, as referred to by N Qaba in 'Prosecuting Trafficking without Trafficking Laws', Paper presented at the 'Trafficking in Human Beings: National and International Perspectives', Bloemfontein Conference (n 216 above). The author could not trace references for the cases referred to.

²⁵⁶ Section 65-66. Kreston (n 222 above) 43. See also Qaba (n 255 above).

²⁵⁷ Section 71(1) and 71(2). Qaba (n 255 above).

²⁵⁸ See Chichaya and Kiremire (n 224 above) 77. See also a recent condemnation in August 2007 of a '[f]ather arrested for selling daughter as prostitute' <http://www.child-labour.org.za/newsroom/news/worst-forms-of-child-labour-general/commercial-sexual-exploitation-of-children/father-arrested-for-selling-daughter-as-prostitute-beeld-johannesburg-1-aug-07> (accessed 12 October 2007).

where such exploitation takes place”,²⁵⁹ but did not specifically incriminate the child’s parents or guardian.

From the above developments, it can be said that South Africa ‘is moving slowly towards creating legislation that could help counteract this problem’.²⁶⁰ The criminal syndicates operate without fear of repercussions for buying and selling people, because they know that there are no laws in South Africa under which they can be prosecuted for TIP.²⁶¹ Moreover, since April 1997 and the submission of its first periodic report to the CRC Committee, South Africa has not reported on the measures undertaken to improve the situation of children, either on the basis of the CRC or its OPSC.²⁶²

In that general context, the Trafficking in Persons Report 2007 concludes that ‘the Government of South Africa does not comply with the minimum standards for the elimination of trafficking, however, it is making significant efforts to do so. South Africa is placed on Tier 2 Watch List for a third consecutive year for its failure to show increasing efforts to address trafficking over the last year’.²⁶³

Confronted by the inability of the law to protect children from trafficking currently, it is helpful to look at any action or perspective, beyond the legal sphere, aimed at keeping children away from traffickers.

4.3.2. Beyond the legal framework

Unlike Benin, South Africa does not have structures such as the Village Committees to monitor trafficking in children. Yet, a number of institutions and NGOs assist the victims of trafficking and try to raise awareness. Different stakeholders such as Government, ILO, IOM, UNODC, UNICEF, Terre des Hommes, etc., assist South African civil society on the ground.

To illustrate, SANTAC, NPA, RAPCAN, and Molo Songololo are known to be at the frontline of the fight against trafficking in children.²⁶⁴

²⁵⁹ Chichaya and Kiremire (n 224 above) 76.

²⁶⁰ K Blackman, IOM information co-ordinator, cited in Hosken (n 45 above).

²⁶¹ As above.

²⁶² See ‘Submissions of Reports by State parties’ [http://www.ohchr.org/english/bodies/crc/docs/Avance Versions/CRC.C.44.2.pdf](http://www.ohchr.org/english/bodies/crc/docs/Avance%20Versions/CRC.C.44.2.pdf) (accessed 19 October 2007).

²⁶³ Department of State (n 59 above) 185.

²⁶⁴ Chichaya and Kiremire (n 224 above) 7 and 81-82.

Another initiative worthy of mention is the organisation of the 'Cape Town Interfaith Dialogue to Combat Human Trafficking' held in Cape Town, from 3 to 5 October 2007. It was admitted that '[a]longside governments, alongside the private sector, alongside the rest of civil society, Religious Leaders and faith-based NGOs have the potential to bring unique perspectives and particular contributions to the battle to defeat this terrible scourge'.²⁶⁵ The Declaration formulated at the end of this Dialogue takes into account the adoption of new strategies to support the government efforts in the fight against TIP in general and children in particular. The Declaration is expected to be read and published in February next year at the Vienna Forum on Human Trafficking.²⁶⁶ Additionally, during the 'IAWJ Africa Region Conference on human trafficking' held in Boksburg (South Africa, 18-20 October 2007), high-ranking officials have urged the adoption of appropriate laws to fight TIP.²⁶⁷

4.4. Conclusion

This Chapter was aimed at exploring the existing legal framework to counter trafficking of children in Benin and South Africa. The study has shown similarities in the need for an urgent response to the issue of child trafficking. Different pieces of legislation have been examined; they have demonstrated the evolution of the law as to the protection of victims, the prevention of trafficking, and the prosecution of traffickers. While a trafficking law has been passed by the Beninese Parliament in 2006, and is expected, therefore, to guide the prosecution and conviction of traffickers, this is not yet the case in South Africa. The most relevant pieces of legislation that can inform the prosecution of traffickers are still awaiting consolidated regulations, or their introduction into Parliament. Thus, prosecutors have their '[h]ands tied on child trafficking until [a] bill [is] passed'.²⁶⁸

National legislation has missed therefore the goals of deterrence and effective protection of children from trafficking, relying on cooperation agreements to come to the rescue to assist in the prosecution of this cross-boarder crime.

²⁶⁵ Welcome Address by Archbishop Njongonkulu Ndungane, Archbishop of Cape Town, delivered at the 'Global Initiative to Fight Human Trafficking Interfaith Dialogue' held in Cape Town, South Africa, on 3-5 October 2007. See Annexure VI.

²⁶⁶ See http://www.ungift.org/ungift/en/vienna_forum_on_human_trafficking.html (accessed 1 October 2007).

²⁶⁷ 'Women judges meet to discuss human trafficking' http://www.iol.co.za/index.php?set_id=1&click_id=13&art_id=vn20071018041158716C193000 (accessed 26 October 2007).

²⁶⁸ Hanna I Win 'Hands tied on child trafficking until bill passed' <http://www.child-labour.org.za/newsroom/news/worst-forms-of-child-labour-general/child-trafficking/hands-tied-on-child-traffic-until-bill-passed-2013-cape-times-cape-town-18-jun-07> (accessed 17 October 2007).

The Beninese Village Committees and the Juvenile Protection Squad, as opposed to an active civil society in South Africa, have been successful in attempting to respond to the question of trafficking in children. Their networks have shown different approaches, which shed light on the way towards an effective legal response to child trafficking in Africa. These approaches convert into recommendations that will be addressed in the next Chapter.



CHAPTER V: CONCLUSION AND RECOMMENDATIONS

5.1. Conclusion

This study was aimed at exploring a possible legal framework to address trafficking in children in Africa. To this end, three questions were designed to assist the study. They addressed the existence of a legal framework, the effectiveness of the measures it provides, and the steps undertaken in the two case studies.

First, Chapter 1 introduced the topic and provided a general orientation for the study. Then, Chapter 2 outlined the key concepts of, and related to, TIP. Thereafter, Chapter 3 explored the relevant instruments that could address trafficking in children at both the international and regional levels. Finally, Chapter 4 focused on the adequacy of legal measures in Benin and South Africa.

The study has showed how difficult the interpretation of the definition of TIP on the ground has been and the risks of confusion with smuggling. Some attempts to adopt and implement such legal responses have failed to protect the African child, and confirmed the hypotheses formulated in Chapter 1. Thus, the protection of the African child from trafficking remains elusive,²⁶⁹ and calls for some further suggestions.

5.2. Recommendations

To start with, the 'Recommended Principles and Guidelines on Human Rights and Human Trafficking'²⁷⁰ should be considered. They focus on the primacy of human rights, the prevention of trafficking, protection and assistance to victims, and the criminalisation, and punishment of traffickers. Stated differently, a human rights approach should be the paramount consideration in prevention, protection, and prosecution of traffickers.

As to prevention, appropriate pieces of legislation that are behaviour changing should be passed and implemented. Where such legislation exists, they must be strengthened 'with an eye towards preventing child trafficking'.²⁷¹ In addition, awareness campaigns must ensure that legal concepts are translated into vernacular languages to facilitate the understanding of anti-trafficking policies. Moreover, TIP should be addressed in a broad manner, tackling the

²⁶⁹ Muntarhorn (n 55 above).

²⁷⁰ 'Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, 20 May 2002' [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.2002.68.Add.1.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.2002.68.Add.1.En?Opendocument) (accessed 21 October 2007).

²⁷¹ IPU and UNICEF (n 3 above) 64.

supply as well as the demand aspects thereof. According to the UNODC, push and pull factors culminate in one single thing, namely, the struggle for life against poverty. In Sub-Saharan Africa, any means used can justify the escape from misery. On the one hand, victims have a dream to achieve and therefore are naïve, and on the other hand, traffickers use ruses to offer their prey the myth of a haven. This means that the alleviation of poverty should also be addressed in order to reduce the vulnerabilities of potential victims,²⁷² children without caregivers first.²⁷³

In connection with protection, Benin has demonstrated how gainful collaboration between the State and other stakeholders in the fight against TIP can be. It is suggested that, where African States are not be in a position to guarantee a minimum of protection, local communities should come to the rescue. The direct involvement of traditional leaders is essential;²⁷⁴ religious leaders, youth organisations, and civil society in general have a duty to protect African children.

Tools for victims' identification, safety of the repatriation environment, rehabilitation and social reintegration of victims, coupled with a bottom-up approach would add to the protection of victims.²⁷⁵

As far as the prosecution of offenders is concerned, extradition agreements are the most welcome. Yet, these agreements must go far beyond mere intentions, and must ensure effective deterrence within countries and at their borders. A proper definition of TIP, distinct from smuggling of migrants, would assist border control officials and prosecutors in their tasks at both local and regional levels.

Overall, a rational, holistic and integrated rights-based approach is needed to ensure a minimum floor of protection for the African child. 'Actions to prevent victims from having their dreams of a better future turn into nightmare of exploitation and servitude'²⁷⁶ is needed. African States have the obligation to deepen their knowledge and understanding, enhance coordinated efforts, increase capacity building and training, and undertake prevention, education and awareness campaigns, and allocate proper budgets to make these measures

²⁷² See 'What are the Millennium Development Goals?' <http://www.undp.org/mdg/basics.shtml>; J A OCAMPO 'The Millennium Development Goals Report' (2007) UNITED NATION <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf> (both accessed 15 August 2007).

²⁷³ IPU and UNICEF (n 3 above) 64.

²⁷⁴ Adepoju (n 148 above) 91.

²⁷⁵ UNICEF (n 3 above) 66. See also Commonwealth Secretariat *Report of the Expert Group on Strategies for Combating Trafficking of Women and Children: Best Practice* (2003) Commonwealth Secretariat 31-32.

²⁷⁶ n 16 above.

effective. This is a starting point that will improve States ability to criminalise TIP, and therefore secure all the benefits attached in the best interests of the African child.

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ANNEXURES



UNIVERSITY *of the*
WESTERN CAPE

ANNEXURE I

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

Article 2

Statement of purpose

The purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.

Article 3

Use of terms

For the purposes of this Protocol:

- (a) "Trafficking in persons" shall mean 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 purpose 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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

Article 4

Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5

Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6

Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7

Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8

Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

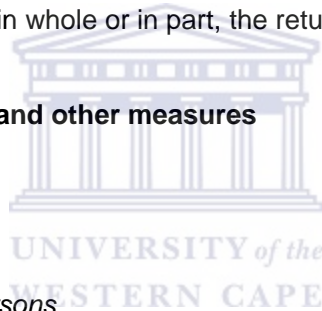
1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.



4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10

Information exchange and training

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons.

The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11

Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12

Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13

Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention³ and the 1967 Protocol⁴ relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

I. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 16

Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention.

For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol.

Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19

Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 20

Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English,

French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.



ANNEXURE II

Convention on the Rights of the Child New York, 20 November 1989

Last update: **13 July 2007**

Entry into force: **2 September 1990, in accordance with article 49 (1).**

Registration: **2 September 1990, No. 27531.**

Status: **Signatories: 140, Parties: 193.**

Text: United Nations, *Treaty Series*, vol. 1577, p. 3 ; depositary notifications C.N.147.1993.TREATIES-5 of 15 May 1993 [amendments to article 43 (2)] [1](#); ; and C.N.322.1995.TREATIES-7 of 7 November 1995 [amendment to article 43 (2)].

Note: The Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by resolution 44/25 [2](#) of 20 November 1989 at the Forty-fourth session of the General Assembly of the United Nations. The Convention is open for signature by all States at the Headquarters of the United Nations in New York.

Participant	Signature	Ratification, Acceptance (A), Accession (a), Succession (d)
Afghanistan	27 Sep 1990	28 Mar 1994
Albania	26 Jan 1990	27 Feb 1992
Algeria	26 Jan 1990	16 Apr 1993
Andorra	2 Oct 1995	2 Jan 1996
Angola	14 Feb 1990	5 Dec 1990
Antigua and Barbuda	12 Mar 1991	5 Oct 1993
Argentina	29 Jun 1990	4 Dec 1990
Armenia	.	23 Jun 1993 a
Australia	22 Aug 1990	17 Dec 1990
Austria	26 Aug 1990	6 Aug 1992
Azerbaijan	.	13 Aug 1992 a
Bahamas	30 Oct 1990	20 Feb 1991
Bahrain	.	13 Feb 1992 a
Bangladesh	26 Jan 1990	3 Aug 1990
Barbados	19 Apr 1990	9 Oct 1990
Belarus	26 Jan 1990	1 Oct 1990
Belgium	26 Jan 1990	16 Dec 1991
Belize	2 Mar 1990	2 May 1990
Benin	25 Apr 1990	3 Aug 1990
Bhutan	4 Jun 1990	1 Aug 1990
Bolivia	8 Mar 1990	26 Jun 1990
Bosnia and Herzegovina 3	.	1 Sep 1993 d
Botswana	.	14 Mar 1995 a
Brazil	26 Jan 1990	24 Sep 1990
Brunei Darussalam	.	27 Dec 1995 a
Bulgaria	31 May 1990	3 Jun 1991
Burkina Faso	26 Jan 1990	31 Aug 1990
Burundi	8 May 1990	19 Oct 1990
Cambodia	.	15 Oct 1992 a
Cameroon	25 Sep 1990	11 Jan 1993
Canada	28 May 1990	13 Dec 1991

Cape Verde	.	4 Jun 1992 a
Central African Republic	30 Jul 1990	23 Apr 1992
Chad	30 Sep 1990	2 Oct 1990
Chile	26 Jan 1990	13 Aug 1990
China 4 , 5	29 Aug 1990	2 Mar 1992
Colombia	26 Jan 1990	28 Jan 1991
Comoros	30 Sep 1990	22 Jun 1993
Congo	.	14 Oct 1993 a
Cook Islands	.	6 Jun 1997 a
Costa Rica	26 Jan 1990	21 Aug 1990
Côte d'Ivoire	26 Jan 1990	4 Feb 1991
Croatia 3	.	12 Oct 1992 d
Cuba	26 Jan 1990	21 Aug 1991
Cyprus	5 Oct 1990	7 Feb 1991
Czech Republic 6	.	22 Feb 1993 d
Democratic People's Republic of Korea	23 Aug 1990	21 Sep 1990
Democratic Republic of the Congo	20 Mar 1990	27 Sep 1990
Denmark	26 Jan 1990	19 Jul 1991
Djibouti	30 Sep 1990	6 Dec 1990
Dominica	26 Jan 1990	13 Mar 1991
Dominican Republic	8 Aug 1990	11 Jun 1991
Ecuador	26 Jan 1990	23 Mar 1990
Egypt	5 Feb 1990	6 Jul 1990
El Salvador	26 Jan 1990	10 Jul 1990
Equatorial Guinea	.	15 Jun 1992 a
Eritrea	20 Dec 1993	3 Aug 1994
Estonia	.	21 Oct 1991 a
Ethiopia	.	14 May 1991 a
Fiji	2 Jul 1993	13 Aug 1993
Finland	26 Jan 1990	20 Jun 1991
France	26 Jan 1990	7 Aug 1990
Gabon	26 Jan 1990	9 Feb 1994
Gambia	5 Feb 1990	8 Aug 1990
Georgia	.	2 Jun 1994 a
Germany 7	26 Jan 1990	6 Mar 1992
Ghana	29 Jan 1990	5 Feb 1990
Greece	26 Jan 1990	11 May 1993
Grenada	21 Feb 1990	5 Nov 1990
Guatemala	26 Jan 1990	6 Jun 1990
Guinea	.	13 Jul 1990 a
Guinea-Bissau	26 Jan 1990	20 Aug 1990
Guyana	30 Sep 1990	14 Jan 1991
Haiti	26 Jan 1990	8 Jun 1995
Holy See	20 Apr 1990	20 Apr 1990
Honduras	31 May 1990	10 Aug 1990
Hungary	14 Mar 1990	7 Oct 1991
Iceland	26 Jan 1990	28 Oct 1992
India	.	11 Dec 1992 a

Indonesia	26 Jan 1990	5 Sep 1990
Iran (Islamic Republic of)	5 Sep 1991	13 Jul 1994
Iraq	.	15 Jun 1994 a
Ireland	30 Sep 1990	28 Sep 1992
Israel	3 Jul 1990	3 Oct 1991
Italy	26 Jan 1990	5 Sep 1991
Jamaica	26 Jan 1990	14 May 1991
Japan	21 Sep 1990	22 Apr 1994
Jordan	29 Aug 1990	24 May 1991
Kazakhstan	16 Feb 1994	12 Aug 1994
Kenya	26 Jan 1990	30 Jul 1990
Kiribati	.	11 Dec 1995 a
Kuwait	7 Jun 1990	21 Oct 1991
Kyrgyzstan	.	7 Oct 1994 a
Lao People's Democratic Republic	.	8 May 1991 a
Latvia	.	14 Apr 1992 a
Lebanon	26 Jan 1990	14 May 1991
Lesotho	21 Aug 1990	10 Mar 1992
Liberia	26 Apr 1990	4 Jun 1993
Libyan Arab Jamahiriya	.	15 Apr 1993 a
Liechtenstein	30 Sep 1990	22 Dec 1995
Lithuania	.	31 Jan 1992 a
Luxembourg	21 Mar 1990	7 Mar 1994
Madagascar	19 Apr 1990	19 Mar 1991
Malawi	.	2 Jan 1991 a
Malaysia	.	17 Feb 1995 a
Maldives	21 Aug 1990	11 Feb 1991
Mali	26 Jan 1990	20 Sep 1990
Malta	26 Jan 1990	30 Sep 1990
Marshall Islands	14 Apr 1993	4 Oct 1993
Mauritania	26 Jan 1990	16 May 1991
Mauritius	.	26 Jul 1990 a
Mexico	26 Jan 1990	21 Sep 1990
Micronesia (Federated States of)	.	5 May 1993 a
Monaco	.	21 Jun 1993 a
Mongolia	26 Jan 1990	5 Jul 1990
Montenegro ⁸	.	23 Oct 2006 d
Morocco	26 Jan 1990	21 Jun 1993
Mozambique	30 Sep 1990	26 Apr 1994
Myanmar	.	15 Jul 1991 a
Namibia	26 Sep 1990	30 Sep 1990
Nauru	.	27 Jul 1994 a
Nepal	26 Jan 1990	14 Sep 1990
Netherlands ⁸	26 Jan 1990	6 Feb 1995 A
New Zealand ⁹	1 Oct 1990	6 Apr 1993
Nicaragua	6 Feb 1990	5 Oct 1990
Niger	26 Jan 1990	30 Sep 1990
Nigeria	26 Jan 1990	19 Apr 1991
Niue	.	20 Dec 1995 a
Norway	26 Jan 1990	8 Jan 1991

Oman	.	9 Dec 1996 a
Pakistan	20 Sep 1990	12 Nov 1990
Palau	.	4 Aug 1995 a
Panama	26 Jan 1990	12 Dec 1990
Papua New Guinea	30 Sep 1990	2 Mar 1993
Paraguay	4 Apr 1990	25 Sep 1990
Peru	26 Jan 1990	4 Sep 1990
Philippines	26 Jan 1990	21 Aug 1990
Poland	26 Jan 1990	7 Jun 1991
Portugal 5	26 Jan 1990	21 Sep 1990
Qatar	8 Dec 1992	3 Apr 1995
Republic of Korea	25 Sep 1990	20 Nov 1991
Republic of Moldova	.	26 Jan 1993 a
Romania	26 Jan 1990	28 Sep 1990
Russian Federation	26 Jan 1990	16 Aug 1990
Rwanda	26 Jan 1990	24 Jan 1991
Saint Kitts and Nevis	26 Jan 1990	24 Jul 1990
Saint Lucia	30 Sep 1990	16 Jun 1993
Saint Vincent and the Grenadines	20 Sep 1993	26 Oct 1993
Samoa	30 Sep 1990	29 Nov 1994
San Marino	.	25 Nov 1991 a
Sao Tome and Principe	.	14 May 1991 a
Saudi Arabia	.	26 Jan 1996 a
Senegal	26 Jan 1990	31 Jul 1990
Serbia 3	.	12 Mar 2001 d
Seychelles	.	7 Sep 1990 a
Sierra Leone	13 Feb 1990	18 Jun 1990
Singapore	.	5 Oct 1995 a
Slovakia 6	.	28 May 1993 d
Slovenia 3	.	6 Jul 1992 d
Solomon Islands	.	10 Apr 1995 a
Somalia	9 May 2002	.
South Africa	29 Jan 1993	16 Jun 1995
Spain	26 Jan 1990	6 Dec 1990
Sri Lanka	26 Jan 1990	12 Jul 1991
Sudan	24 Jul 1990	3 Aug 1990
Suriname	26 Jan 1990	1 Mar 1993
Swaziland	22 Aug 1990	7 Sep 1995
Sweden	26 Jan 1990	29 Jun 1990
Switzerland	1 May 1991	24 Feb 1997
Syrian Arab Republic	18 Sep 1990	15 Jul 1993
Tajikistan	.	26 Oct 1993 a
Thailand	.	27 Mar 1992 a
The Former Yugoslav Republic of Macedonia 3 , 10	.	2 Dec 1993 d
Timor-Leste	.	16 Apr 2003 a
Togo	26 Jan 1990	1 Aug 1990
Tonga	.	6 Nov 1995 a
Trinidad and Tobago	30 Sep 1990	5 Dec 1991
Tunisia	26 Feb 1990	30 Jan 1992
Turkey	14 Sep 1990	4 Apr 1995

Turkmenistan	.	20 Sep 1993 a
Tuvalu	.	22 Sep 1995 a
Uganda	17 Aug 1990	17 Aug 1990
Ukraine	21 Feb 1990	28 Aug 1991
United Arab Emirates	.	3 Jan 1997 a
United Kingdom of Great Britain and Northern Ireland 4 , 11	19 Apr 1990	16 Dec 1991
United Republic of Tanzania	1 Jun 1990	10 Jun 1991
United States of America	16 Feb 1995	.
Uruguay	26 Jan 1990	20 Nov 1990
Uzbekistan	.	29 Jun 1994 a
Vanuatu	30 Sep 1990	7 Jul 1993
Venezuela	26 Jan 1990	13 Sep 1990
Viet Nam	26 Jan 1990	28 Feb 1990
Yemen 12	13 Feb 1990	1 May 1991
Zambia	30 Sep 1990	6 Dec 1991
Zimbabwe	8 Mar 1990	11 Sep 1990



ANNEXURE III

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Entry into force: 25 December 2003, in accordance with article 17 which reads as follows:

"1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization. 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later."

Status: Signatories: 117, Parties: 115.

Text: [Doc. A/55/383](#).

Note: The Protocol was adopted by resolution [A/RES/55/25](#) of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations. In accordance with its article 16, the Protocol will be open for signature by all States and by regional economic integration organizations, provided that at least one Member State of such organization has signed the Protocol, from 12 to 15 December 2000 at the Palazzi di Giustizia in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

Country	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
Afghanistan		
Albania	12 December 2000	21 August 2002
Algeria	6 June 2001	09 March 2004
Angola		
Argentina	12 December 2000	19 November 2002
Armenia	15 November 2001	01 July 2003
Australia	11 December 2002	14 September 2005
Austria	12 December 2000	15 September 2005
Azerbaijan	12 December 2000	30 October 2003
Bahamas	09 April 2001	

Bahrain		7 Jun 2004 a
Barbados	26 September 2001	
Belarus	14 December 2000	25 June 2003
Belgium	12 December 2000	11 Aug 2004
Belize		26 September 2003a
Benin	13 December 2000	30 Aug 2004
Bolivia	12 December 2000	18 May 2006
Bosnia and Herzegovina	12 December 2000	24 April 2002
Botswana	10 April 2002	29 August 2002
Brazil	12 December 2000	29 January 2004
Bulgaria	13 December 2000	5 December 2001
Burkina Faso	15 December 2000	15 May 2002
Burundi	14 December 2000	
Cambodia	11 November 2001	02 July 2007
Cameroon	13 December 2000	06 February 2006
Canada	14 December 2000	13 May 2002
Cape Verde	13 December 2000	15 Jul 2004
Central African Republic		06 October 2006 a
Chile	08 August 2002	29 Nov 2004
China		
Colombia	12 December 2000	4 Aug 2004
Congo	14 December 2000	
Costa Rica	16 March 2001	09 September 2003
Côte D' Ivoire		
Croatia	12 December 2000	24 January 2003
Cuba		
Cyprus	12 December 2000	06 August 2003
Czech Republic	10 December 2002	
Democratic Republic of the Congo		28 October 2005 a
Denmark 1	12 December 2000	30 September 2003
Djibouti		20 April 2005 a
Dominican Republic	15 December 2000	
Ecuador	13 December 2000	17 September 2002
Egypt	01 May 2002	05 March 2004
El Salvador	15 August 2002	18 March 2004
Equatorial Guinea	14 December 2000	07 February 2003
Estonia	20 September 2002	12 May 2004
Ethiopia		
European Community	12 December 2000	06 September 2006 AA
Finland	12 December 2000	07 September 2006 A
France	12 December 2000	29 October 2002
Gambia	14 December 2000	05 May 2003
Georgia	13 December 2000	05 September 2006
Germany	12 December 2000	14 June 2006
Greece	13 December 2000	
Grenada		21 May 2004 a
Guatemala		01 April 2004a
Guinea		9 Nov 2004 a
Guinea-Bissau	14 December 2000	10 September 2007
Guyana		14 Sep 2004 a

Haiti	13 December 2000	
Honduras		
Hungary	14 December 2000	22 December 2006
Iceland	13 December 2000	
India	12 December 2002	
Indonesia	12 December 2000	
Iran (Islamic Republic of)		
Ireland	13 December 2000	
Israel	14 November 2001	
Italy	12 December 2000	02 August 2006
Jamaica	13 February 2002	29 Sep 2003
Japan	09 December 2002	
Kazakhstan		
Kenya		5 Jan 2005 a
Kiribati		15 September 2005 a
Kuwait		12 May 2006 a
Kyrgyzstan	13 December 2000	2 Oct 2003
Lao People's Democratic Republic		26 September 2003 a
Latvia	10 December 2002	25 May 2004
Lebanon	09 December 2002	05 October 2005
Lesotho	14 December 2000	24 September 2003
Liberia		22 Sep 2004 a
Libyan Arab Jamahiriya	13 November 2001	24 Sep 2004
Liechtenstein	14 March 2001	
Lithuania	25 April 2002	23 June 2003
Luxemburg	13 December 2000	
Madagascar	14 December 2000	15 September 2005
Malawi		17 Mar 2005 a
Mali	15 December 2000	12 April 2002
Malta	14 December 2000	24 September 2003
Mauritania		22 July 2005 a
Mauritius		24 September 2003 a
Mexico	13 December 2000	04 May 2003
Monaco	13 December 2000	5 June 2001
Montenegro ²		23 October 2006 d
Morocco		
Mozambique	15 December 2000	20 September 2006
Myanmar		30 March 2004 a
Namibia	13 December 2000	16 August 2002
Nauru	12 November 2001	
Netherlands ³	12 December 2000	27 July 2005 A
New Zealand ⁴	14 December 2000	19 July 2002
Nicaragua		12 Oct 2004 a
Nigeria	13 December 2000	28 June 2001
Niger	21 August 2001	30 Sep 2004
Norway	13 December 2000	23 September 2003
Oman		13 May 2005 a
Pakistan		
Panama	13 December 2000	18 Aug 2004

Paraguay	12 December 2000	22 Sep 2004
Peru	14 December 2000	23 January 2002
Philippines	14 December 2000	28 May 2002
Poland	04 October 2001	26 September 2003
Portugal	12 December 2000	10 May 2004
Republic of Korea	13 December 2000	
Republic of Moldova	14 December 2000	16 September 2005
Romania	14 December 2000	04 December 2002
Russian Federation	12 December 2000	26 May 2004
Rwanda	14 December 2000	26 September 2003
Saint Kitts and Nevis		21 May 2004 a
Saint Vincent and the Grenadines	20 November 2002	
San Marino	14 December 2000	
Sao Tome and Principe		23 August 2006 a
Saudi Arabia	10 December 2002	20 July 2007
Senegal	13 December 2000	27 October 2003
Serbia	12 December 2000	6 Sep 2001
Seychelles	22 July 2002	22 Jun 2004
Sierra Leone	27 November 2001	
Singapore		
Slovakia	15 November 2001	21 Sep 2004
Slovenia	15 November 2001	21 May 2004
South Africa	14 December 2000	20 February 2004
Spain	13 December 2000	01 march 2002
Sri Lanka	13 December 2000	
Suriname		25 May 2007 a
Swaziland	08 January 2001	
Sweden	12 December 2000	1 July 2004
Switzerland	02 April 2002	27 October 2006
Syrian Arab Republic	13 December 2000	
Tajikistan		08 July 2002 a
Thailand	18 December 2001	
The former Yugoslav Republic of Macedonia	12 December 2000	12 Jan 2005
Togo	12 December 2000	
Trinidad and Tobago	26 September 2001	
Tunisia	13 December 2000	14 July 2003
Turkey	13 December 2000	25 March 2003
Turkmenistan		28 Mar 2005 a
Uganda	12 December 2000	
Ukraine	15 November 2001	21 May 2004
United Kingdom of Great Britain and Northern Ireland	14 December 2000	09 February 2006
United Republic of Tanzania	13 December 2000	24 May 2006
United States of America	13 December 2000	03 November 2005
Uruguay	13 December 2000	4 Mar 2005
Uzbekistan	28 June 2001	
Venezuela	14 December 2000	13 May 2002
Vietnam		
Yemen		

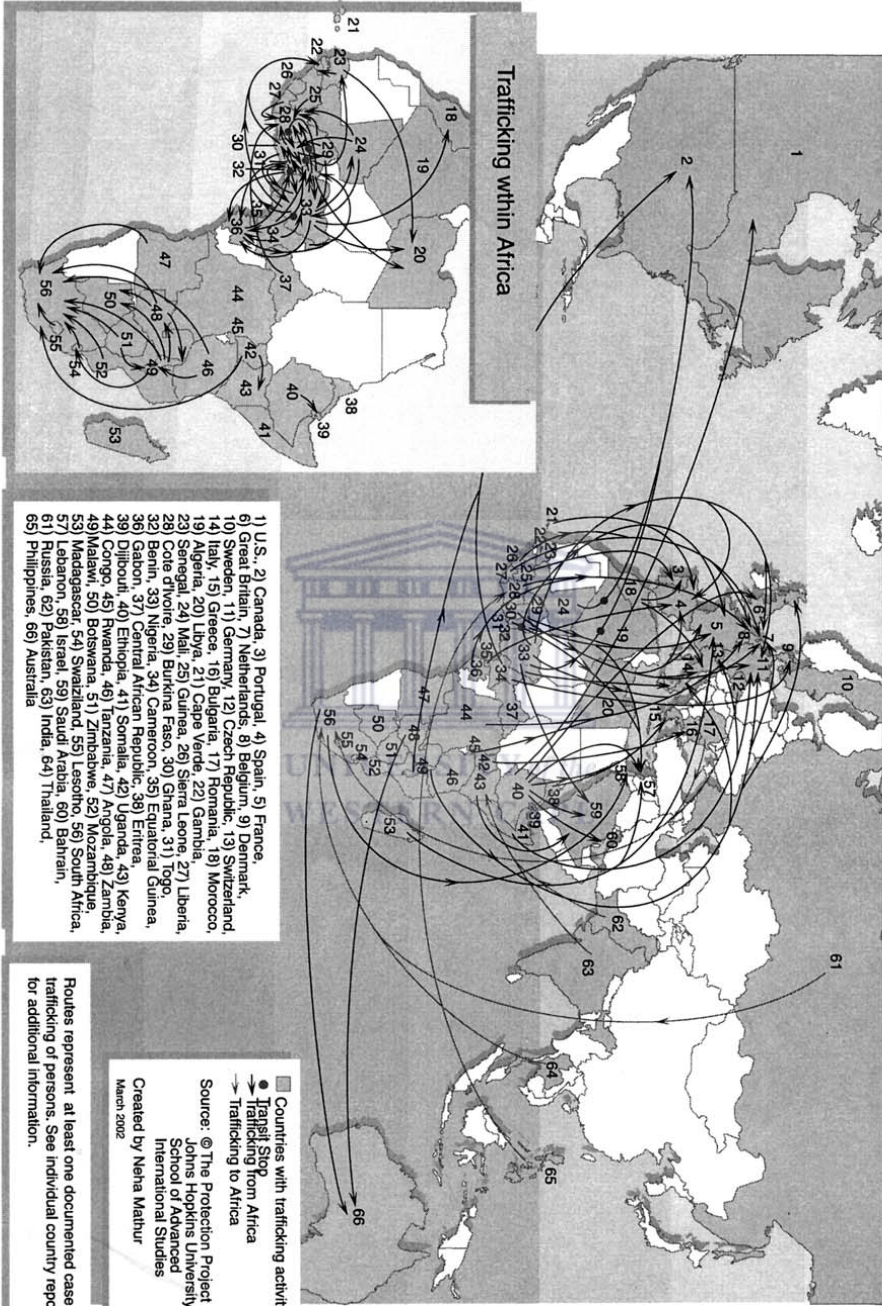
Zambia		24 April 2005 a
Zimbabwe		



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ANNEXURE IV

Trafficking of Persons, Especially Women and Children: Africa Routes



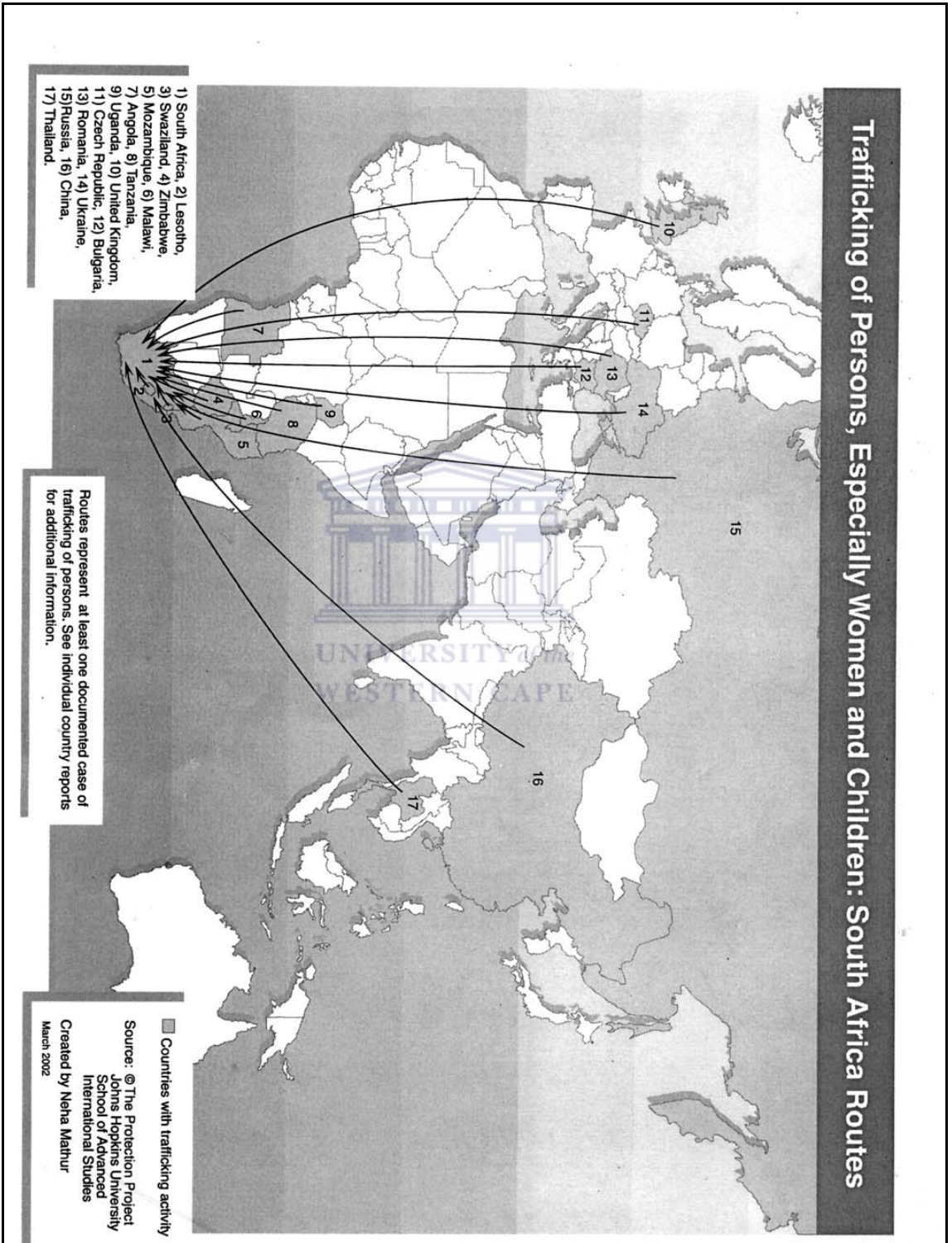
- 1) U.S., 2) Canada, 3) Portugal, 4) Spain, 5) France,
- 6) Great Britain, 7) Netherlands, 8) Belgium, 9) Denmark,
- 10) Sweden, 11) Germany, 12) Czech Republic, 13) Switzerland,
- 14) Italy, 15) Greece, 16) Bulgaria, 17) Romania, 18) Morocco,
- 19) Algeria, 20) Libya, 21) Cape Verde, 22) Gambia,
- 23) Senegal, 24) Mali, 25) Guinea Bissau, 26) Guinea,
- 27) Liberia, 28) Sierra Leone, 29) Ivory Coast, 30) Eritrea,
- 31) Nigeria, 32) Cameroon, 33) Equatorial Guinea,
- 34) Gabon, 35) Central African Republic, 36) Congo,
- 37) Djibouti, 38) Ethiopia, 39) Somalia, 40) Uganda, 41) Kenya,
- 42) Rwanda, 43) Tanzania, 44) Angola, 45) Zambia,
- 46) Malawi, 47) Botswana, 48) Mozambique,
- 49) Madagascar, 50) Swaziland, 51) Lesotho, 52) South Africa,
- 53) Lebanon, 54) Israel, 55) Saudi Arabia, 56) Bahrain,
- 57) Russia, 58) Pakistan, 59) India, 60) Thailand,
- 61) Philippines, 62) Australia

Countries with trafficking activity
 Trafficking Stop from Africa
 Trafficking to Africa

Source: © The Protection Project
 Johns Hopkins University
 School of Advanced
 International Studies
 Created by Neha Mathur
 March 2002

Routes represent at least one documented case of trafficking of persons. See individual country reports for additional information.

ANNEXURE V



ANNEXURE VI

Archbishop Njongonkulu Ndungane
“What Religious Communities Can Do To Combat Human Trafficking”
UNODC Global Inter-Faith Dialogue
St George’s Cathedral, 3 October 2007

Madam Deputy President, Your Excellencies, Honoured Guests, Fellow-members of the Western Cape Religious Leaders’ Forum, Brothers and Sisters – I greet you in the name of the One God, Creator, Redeemer and Sustainer.

It is my distinctive honour and pleasure to welcome you to the beautiful city of Cape Town; and to this Inter-Faith Dialogue; which it is my privilege to co-host, together with Mr Antonio Maria Costa, the Executive Director of the United Nations Office on Drugs and Crime.

This year marks the bicentenary of the landmark decision to abolish slavery in the United Kingdom.

Yet now it is estimated that around 800,000 [eight hundred thousand] people are trafficked across international borders annually. Beyond this, as many as 12.3 [twelve comma three] million people each year are either enticed or entrapped, transported or transferred, for purposes of economic exploitation.

Human trafficking is big business. It earns around \$32bn [thirty-two billion dollars] a year.

Human trafficking is the most heinous of all organised crimes. It is a shame to our consciences. It removes from its victims all basic human rights and denies their intrinsic humanity.

Human life is sacred. All the great faith traditions affirm this. So do the broad principles of Natural Law.

Two and a half thousand years ago the Greek playwright Sophocles argued, through the voice of Antigone, that there are ‘unwritten and unfailing statutes in heaven’ that govern the just treatment of human beings in life and in death.

In similar vein, the great Roman politician and philosopher Cicero argued that:

‘True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting.’

He went on to say that ‘there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times, and ... God, who is over us all, is the author of this law, its promulgator, and its enforcing judge.’

On this basis, the dignity of the human person, the intrinsic value and significance of each human individual, cannot be put in question.

Human trafficking is thus an offence against our most fundamental understanding of what it is to be a human being.

Faith communities can, and must, give a strong lead in proclaiming that the worth of a person cannot be measured merely in dollars, nor can any individual be reduced to a tradable commodity.

Alongside governments, alongside the private sector, alongside the rest of civil society, Religious Leaders and faith-based NGOs have the potential to bring unique perspectives and particular contributions to the battle to defeat this terrible scourge.

I am therefore delighted at the partnership we have in this Dialogue with the United Nations Office on Drugs and Crime. I am also delighted that the Government of South Africa, our National Prosecuting Authority, and the Africa Prosecutors’ Association, are also participating in this meeting, which is part of the wider ‘Global Initiative to Fight Human Trafficking.’

We cannot claim to be part of a civilised world as long as there is effective enslavement of so many people, 80% [eighty percent] of whom are women and children; who are all too often the first to suffer wherever there is deprivation and degradation of human life.

Earlier this year, I hosted a Conference of the world-wide Anglican Communion which addressed God’s call for his church to serve his world. Alongside the Millennium Development Goals, we identified two additional priorities, one being ‘Protecting Children’s Rights and Preserving Young Lives.’ We were all too aware of the vulnerability of children, especially in conflict and post-conflict areas.

A delegation of young people at the Conference, calling themselves 'Pilgrims for Peace,' proclaimed:

'Children are created, known, and loved by God; they have their own potential and capacity to know and love God ... and to exercise their own leadership. All children... deserve the love and protection of the Church, which has a unique role in developing children's potential.'

50% of trafficked children are minors, and they deserve the unrelenting efforts of the Church, and of us all.

Let me sum up. Human trafficking is a crime against humanity, and a sin. Countering it will require integrated strategies and united actions. Religious Leaders and faith-based organizations have a responsibility to make a unique and critical contribution.

However, we know that unsupported human agency is very limited in what we can achieve by ourselves.

Therefore, it is right that we begin our time together in this Cathedral by committing ourselves in prayer to the task that is before us.

Let us pray:

Almighty and Eternal God, source of life and love, we ask for your blessing upon our meeting. Guide and empower us by your Holy Spirit with the wisdom to understand what we must do, and the will to carry it out; so that all your children may be free, to live in peace and security. This we ask, for the honour and glory of your Holy Name. Amen.

[You may now need to invite / usher the next person who is to pray to the Lectern.]