

***TRAFFICKING IN CHILDREN: EFFECTIVE
SOLUTIONS FOR AFRICAN COUNTRIES***

BY

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DECLARATION

I BUKASA BINENE declare that

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DEDICATION

This dissertation is dedicated to my wonderful parents, Mr and Mrs Binene for the inspiration, unwavering support, confidence in me, and the infinite number of sacrifices you have made for me in my rocky journey to where I am today. You have always believed in me and never at any point doubted my strengths and capabilities. Your everlasting love has been and still is invaluable. For that I say I love you Mom and Dad. May the Lord bless you with long lives.

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Abstract/Summary

Trafficking in Children: Effective Solutions for African Countries

Trafficking in persons in general and in children in particular is a phenomenon that affects each and every country in the world. No African country is immune from trafficking, the quasi-totality of them are simultaneously countries of origin, transit and destination of trafficked children. They are trafficked internally or trans-nationally for all types of exploitations, such as sexual exploitation, labour exploitation, and removal of body parts. In spite of joint efforts by the international community to eradicate trafficking in children, research reveals that this modern form of slavery is a phenomenon on the rise instead of decreasing. The situation is more alarming on the African continent where most countries have not yet found appropriate solutions to the problem.

Child trafficking is fought through prevention and criminalization. The former entails measures such as awareness raising and the alleviation of factors that make children vulnerable to trafficking and the demand that fosters all forms of exploitation of children. Criminalization measures stress the enactment of comprehensive anti-trafficking legislation, investigation and prosecution of traffickers and protection of child victims of trafficking.

This dissertation evaluates the best solutions to prevent and eradicate child trafficking. It seeks to recommend practices which are effective for African countries by taking into consideration the continent's realities, such as resource limitations and underdevelopment.

List of Abbreviations and Acronyms

African Charter: African Charter on the Rights and Welfare of the Child.

CRC: Convention on the Rights of the Child.

DCEC: Directorate on Corruption and Economic Crime.

ILO: International Labour Organization.

IOM: International Organization of Migration.

ICMPD: International Centre for Migration Policy Development.

PACO: Programme against Corruption and Organized Crime in South–Eastern Europe.

Palermo Protocol: Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

TIP Reports: Trafficking in Persons Reports.

Trans-National Convention: United Nations Convention against Trans-national Organized Crime.

UNHCHR: United Nations High Commissioner for Human Rights.

UNGIFT: United Nations Global Initiative to Fight Human Trafficking.

UNICEF: United Nations Children’s Fund.

USAID: United States Agency for International Development.

US: United States of America.

Chapter One: Introduction

1.1. Introduction

Border-crossing is associated with the rising levels of legal and illegal migration around the world as well as an increase of trans-national criminal activities, among them trafficking.¹ Trafficking in persons in general and in children in particular is described as ‘a modern-day form of slavery, a new type of global slave trade’.² It dispossesses people of their human rights and freedoms. In addition, trafficking heightens global health risks, and it supplies the proliferation of organized crime syndicates.³ As a result of this, the international community is conjugating significant efforts to eradicate this crime.⁴

The ‘common denominator’ of trafficking in persons is the use of force, fraud, or coercion to subject a victim to the exploitation for a benefit.⁵ Human traffickers target vulnerable groups, such as children and endeavour to mislead them, and win their confidence.⁶ Tricks used are, for instance, promises of a better life through employment, educational opportunities and marriage.⁷ Children can be trafficked for sexual exploitation, coerced labor, street begging, removal of body parts, forced marriage,

¹ A Derks *Combating Trafficking in South-East Asia: A Review of Policy and Programme Responses* (2000) International Organization of Migration available at www.iom.int/jahia/ewbdav/site/myjahiasite/shared (accessed 02 July 2008) at 6.

² Department of State (United States of America) *Trafficking in Persons Report* (2008) available at www.state.gov/g/tip/rls/tiprpt/2008/ (accessed 02 July 2008) at 1.

³ *Ibid* at 5, see also J Chuang ‘The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking’ (2006) 27 *Michigan Journal of International Law* 437 at 438.

⁴ J Fitzpatrick ‘Trafficking as a Human Rights Violation: the Complex Intersection of Legal Frameworks for Conceptualizing and Combating Trafficking’ (2003) 24 *Michigan Journal of International Law* 1143 at 1144.

⁵ TIP report *op cit* note 2 above at 7.

⁶ M Garder ‘Chapter 240: Human Trafficking Combating the Underground Slave Industry in California’ (2006) 37 *McGeorge Law Review* 190 at 190-191.

⁷ R Kandathil ‘Global Sex Trafficking and the Trafficking Victims Protection Act of 2000: Legislative Responses to the Problem of Modern Slavery’ (2006) 12 *Michigan Journal of Gender and Law* 87 at 92; see also H Diep ‘We Pay the Economic Manipulation of International and Domestic Laws to Sustain Sex Trafficking’ (2005) 2 *Loyola University Chicago International Law Review* 309 at 318.

forced conscription and illegal adoption.⁸ Child trafficking can take place within the country (internal trafficking) or across the international borders, from one country to another (transnational trafficking). Given the global character and complexity of trafficking, in this dissertation the focus is only on effective solutions to fight and eradicate trafficking in children on the African continent.⁹

1.2. Key Questions

Despite a multitude of international instruments and initiatives aimed at preventing and combating child trafficking (or trafficking in general), trafficking remains a significant international problem.¹⁰ Therefore, this study will concentrate on the measures used so far in addressing child trafficking and their effectiveness, with a view to formulate recommendations for increasing the effectiveness of the action against child trafficking. As one of the objectives of the research is to contribute to a better intervention against child trafficking on the African continent, the study will refer throughout to the situation of African countries. The key questions of the study are:

- ❖ What is the extent of current efforts to prevent and eradicate child trafficking in Africa?
- ❖ What are the main solutions to child trafficking used globally?
- ❖ What are the best solutions for African countries to child trafficking?

⁸ SS Kreston 'Trafficking in Children in South Africa: An Analysis of Pending Legislation' (2007) 8 (1) *Child Abuse Research in South Africa* 35 at 35. See further S Scarpa 'Child Trafficking: International Instruments to Protect the Most Vulnerable Victim' (2006) 44 *Family Court Review* 429 at 432

⁹ For the purpose of this study the term 'child' shall mean any person under eighteen years of age. This is in line with article 3 (d) of the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, UN Doc A/55/383(2000), Supplementing the United Nations Convention against Transnational Organized Crime.

¹⁰ SC Inglis 'Expanding International and National Protections against Trafficking for Forced Labour Using a Human Rights Framework; (2001) 7 *Buffalo Human Rights Law Review* 55 at 55-56. See further R Stevens 'The Trafficking of Children: A Modern Form of Slavery, Using the Alien Tort Statute to Provide Legal Recourse' (2006) 5 *Whittier Journal of Children and Advocacy* 645; SL Nel 'Victims of Human Trafficking: are they Adequately Protected in the United States?' (2005) 5 *Chicago-Kent Journal of International and Comparative Law* 3.

Crime prevention is one of the objectives of the Palermo Protocol and of the criminal law in any legal system around the world (Roman-Dutch, Anglo- Saxon or Islamic).¹¹ The Protocol imposes an obligation on States-parties to take appropriate measures to prevent trafficking in persons especially in children.¹² The international community has invariably been hostile to the idea that some human beings can be enslaved by others because the former are considered less human, inferior or because of their sex, age, race or nationality.¹³ The ratification of anti-trafficking conventions and in particular the Palermo Protocol followed by the incorporation of its standards into national legislation is seen as a primary weapon to prevent and discourage this crime. Eradication of factors fostering trafficking, such as poverty, and the elimination of the demand of services of trafficked victims, such as demand for sexual exploitation, are seen as effective solutions to this problem.¹⁴

Preventive measures have to be coupled with prosecution of traffickers for better results. If trafficking has taken place, then comprehensive anti-trafficking legislation is necessary to detect traffickers' activities, gather sufficient evidence, prosecute them, and rescue, protect and reintegrate child victims of trafficking. It is believed that the imposition of heavy sentences on traffickers will send a strong signal to potential suspects while the assets confiscated will help compensate child victims for their exploitation.

The Palermo Protocol is the most important anti-trafficking international law. As will be seen later in this study, unlike all previous anti- trafficking or anti-slavery conventions, the Protocol addresses trafficking in persons comprehensively and gives a definition

¹¹ The purposes of the Palermo 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 2).

¹² Article 9 *ibid*; see further S Egan 'Protecting the Victims of Trafficking: Problems and Prospects' (2008) 1 *European Human Rights Law Review* 106 at 109.

¹³ Scarpa *op cit* note 8 above at 434; see also S Ramage 'Tackling the Trafficking of Women and Children: A Report from the Capita Anti-People Trafficking Conference' (2006) 162 *Criminal Law* 6 at 7.

¹⁴ ILO *Demand Side of Human Trafficking in Asia: Empirical Findings* (2006) available at www.ilo.org/public/english/standards/1pic (accessed 05 September 2008) at 102.

covering all types of trafficking in the modern society.¹⁵ Most of anti-trafficking instruments drafted before the Palermo Protocol limit trafficking to sexual exploitation and do not define trafficking in persons and in particular in children.

1.3. The Complexity of Child Trafficking

There are many reasons ascribed to why children continue to be victims of trafficking and these motives vary from region to region.¹⁶ Some of the reasons include discrimination against children (gender-based discrimination, discrimination based on race, ethnicity, religion, social origin and class), incest and rape, political instability, armed conflict and natural disasters.¹⁷ Economic and social imbalances between and within developed and developing countries, the demand for cheap labour, prostitution and other forms of sexual exploitation, are also enumerated.¹⁸ Poverty, betrayal, cupidity, misogyny, illiteracy, unemployment combined with increasing barriers to legal migration are among the major causes of trafficking.¹⁹

Finally, financial motives perpetuate trafficking in children. It is reported that the crime generates 9.5 billion US dollars each year and perpetrators invest in this business because it involves high profit, less expenditure and relatively low risk.²⁰ Unlike drugs and weapons, which offer a one-time monetary transaction, victims of trafficking are reusable

¹⁵ Harvard Law Review Association 'Remedying the Injustices of Human Trafficking through Tort Law' (2006) 119 *Harvard Law Review* 2574; see also E Defeis 'Protocol to Prevent, Suppress and Punish Trafficking in Persons : A New Approach' (2004) 10 *ILSA Journal of International and Comparative Law* 485 at 487, S Dillon 'What Human Rights Law Obscures: Global Sex Trafficking and the Demand for Children' (2008) 17 *UCLA Women's Law Journal* 121 at 163; A Gurucharri 'Human Trafficking and the Everyday: A Case Study of Nicaragua's Response to the International Movement against Trafficking in Persons' (2005) 2 *Loyola University Chicago International Law Review* 245.

¹⁶ MY Matter 'Monitoring the Status of Severe Forms of Trafficking in Foreign Countries: Sanctions Mandated under the U.S. Trafficking in Victims Protection Act' (2003) *Brown Journal World Affairs* at 161-162.

¹⁷ Molo Songololo *Trafficking in Children for Purposes of Sexual Exploitation* (2000) available at www.staysafe.co.za/data/attachments/country%20report%20-rsa.txt (PDF version) (accessed 02 July 2008).

¹⁸ T Moran *Health and Human Trafficking* (2003) IOM available at www.iom.int/jahia/webdav/site/myjahiasite/shared/mainsite/IDM/workshops/health_and_migration (accessed 02 July 2008) at 2.

¹⁹ Scarpa *op cit* note 8 above at 430.

²⁰ TIP report 2005 *op cit* note 2 above at 13-14; see also N Ray 'Looking at Trafficking through a New Lens' (2006) 12 *Cardozo Journal of Law & Gender* 909.

merchandise.²¹ Most often trafficking involves three parties: the victims, the facilitators, and the customers.²² Facilitators are usually small organized criminal groups, successful in their operations due to modern technology.²³ According to Schwab, although trafficking is facilitated by these groups, the ‘key player’ is often a trustworthy member of the community who induces victims with false promises mentioned above.²⁴ Sometimes parents or family members are involved in the trafficking process.²⁵ Garrard describes customers as ‘people who are serviced by the victim.’²⁶ Traffickers force victims out of their family protection, and then use dreadful methods of detaining them, such as violence, confiscation of identity and travel documents, drugs, abuse (sexual, physical and psychological) and threats of harm to their families.²⁷ These ‘tactics’ compel victims to cooperate, discourage them from seeking help from the police, and keep them under the total control of traffickers.²⁸ With no documents, work, money, contact with family members, and considering themselves as illegal immigrants, victims have no choice than to surrender completely to traffickers.²⁹

The definition of trafficking in persons, and in particular in children proposed in the Palermo Protocol is taken as reference in this dissertation. According to the Protocol: ‘the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons”.’ There are no exact statistics on the number of people trafficked every year worldwide.³⁰ Annually, despite joint efforts

²¹ TIP report 2006 *ibid* at 12 (All reports are available on the same website.)

²² V Garrard ‘Sad Stories: Trafficking in Children – Unique Situation Requiring New Solutions’ (2006) 35 *Georgia Journal of International and Comparative Law* 145 at 150.

²³ S Mathews ‘International Trafficking in Children: Will New U.S. Legislation Provide an Ending to the Story?’ (2005) 27 *Houston Journal of International Law* 649 at 663.

²⁴ K Schwab ‘Comment the Sexual Exploitation of Children: Suppressing the Global Demand and Domestic Options for Regulating Prostitution’ (2005) 13 *Tul. Journal International & Comparative Law* 333 at 334.

²⁵ Mathews *op cit* note 23 above at 660.

²⁶ Garrard *op cit* note 22 above at 151. According to the author, a customer might be the aunt or uncle using a niece as a domestic slave, the sex tourist sleeping with young girls or a guerilla army which uses children to fight in armed conflicts.

²⁷ G Potts ‘Global Trafficking in Human Beings: Assessing the Success of the United Nations Protocol to Prevent Trafficking in Persons’ (2003) 35 *George Washington Int’l Law Review* 227 at 229 – 230.

²⁸ T Raviv ‘International Trafficking in Persons: A Focus on Women and Children – the Current Situation and the Recent International Legal Response’ (2003) 9 *Cardozo Women’s Law Journal* 659 at 662 – 663.

²⁹ *Ibid.*

³⁰ Scarpa *op cit* note 8 above at 431.

by the international community to fight trafficking in persons, it is estimated that approximately 800,000 people are trafficked across national borders.³¹ This figure does not incorporate millions trafficked within their own countries.³² Roughly, 80 percent of transnational victims are women and girls and up to 50 percent are children.³³ According to estimations done by the International Labour Organization, 12.3 million people are in forced labour around the world and approximately 20% of them could be victims of trafficking.³⁴ With regard to children the same report estimates that children represent nearly 50% of all victims of forced labour.³⁵

1.4. Motivation for the Study

Two reasons have motivated the choice of this subject. Firstly, trafficking in persons, especially children, is a serious crime that requires effective solutions. Trafficking in Persons reports, which are the most comprehensive reports on the efforts of all countries to fight trafficking, published by the United States Department of State, reveal that more than 80% of the countries in the world have not yet found appropriate solutions to trafficking in persons and in particular in children.³⁶ The situation is more alarming on the African continent where the quasi-totality of countries do not comply with the minimum standards for the eradication of this crime.³⁷ Although some drastic measures have been instituted at the international, regional and national level to combat this crime, recent evaluations reveal that they are ineffective.³⁸ The research done so far indicates that in Africa there is an over-reliance on criminal law means for combating trafficking.

³¹ TIP report 2005 *op cit* note 2 above at 6; see also SW Tiefenbrun 'The Domestic and International Impact of the US Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?' (2005) 2 *Loyola University Chicago International Law Review* 193.

³² TIP report 2005 *ibid*.

³³ *Ibid*.

³⁴ P Belser *Minimum Estimate of Forced Labour in the World* (2005) ILO available at www.ilo.org/dyn/declaris/declarationweb.download_blob?var_documentid=5073 (accessed 02 August 2008) at 4.

³⁵ *Ibid* at 6.

³⁶ TIP report *op cit* note 2 above at 44. The Percentage was calculated by taking the number of countries in tier 2, tier 2 watch list and tier 3 times hundred and divided by the total number of countries tiered.

³⁷ *Ibid*.

³⁸ Ray *op cit* note 20 above at 910; see also CF Crawford 'Cultural, Economic and Legal Factors Underlying Trafficking in Thailand and their Impact on Women and Girls from Burma' (2006) 12 *Cardozo Journal of Law & Gender* 821 at 821-822; J Soto 'Show Me the Money: the Application of the Asset Forfeiture Provisions on the Trafficking Victims Protection Act and Suggestions for the Future' (2004) 23 *Penn State International Law Review* 365.

However, as the experience in other countries indicates, trafficking is a modern day form of slavery and cannot be eradicated using ordinary criminal law. By identifying good practices in preventing and combating trafficking, this study aims to contribute to a change in the approach used on the African continent by stressing the need to enact anti-trafficking legislation in all countries.

Secondly, the vulnerability of children to trafficking and its devastating psychological, health and social consequences motivated this dissertation. Factors such as physical, sexual, and psychological abuse, forced use of drugs and alcohol, social restrictions and manipulation, economic exploitation and poor living conditions rob these children of their childhood and any chance of success in their lives.³⁹ Children are tomorrow's adults and any society minded of its own future has to prioritize children's issues, and has to be very sensitive to any situation endangering their well-being, such as trafficking. Thus, the focus of this dissertation is on child trafficking and effectiveness of current solutions in Africa.

Furthermore, the literature review for the purpose of this proposal shows a lack of writings focusing on solutions to human trafficking in general and child trafficking in particular in Africa. This dissertation aims to fill this gap in literature.

1.5. Methodology

This dissertation is a library based study. It is based on both primary and secondary sources. Information is gathered from national legislation, international law and from analytical commentators. With regard to commentators, the dissertation mainly uses publications from international journals and from organizations specializing in preventing and combating trafficking in persons. United States Department of State Trafficking in Persons reports are also scrutinized because they present a global picture on the

³⁹ IOM *Breaking the Cycle of Vulnerability* (2006) available at iom.org.za/site/index.php?option=com_docman&task=cat_view&gid=21&Itemid=50 (accessed 02 July 2008) at 13; see also A Schwartz 'Sex Trafficking in Cambodia' (2004) 17 *Colombia Journal of Asian Law* 371 at 372; J Todres 'The Importance of Realizing "Other Rights" to Prevent Sex Trafficking' (2006) 12 *Cardozo Journal of Law & Gender* 885 at 886.

worldwide efforts to end child trafficking. This study adopts a multi-disciplinary approach in that it reviews legal as well as social sciences literature (for example, psychology and social science).

1.6. Overview of the Chapters

This section gives a brief overview of what will be covered by subsequent chapters of the dissertation. It is hoped that this will make it easier for the reader to follow the development of the dissertation.

After a brief introduction of what constitutes trafficking and the challenges in fighting against it, the second chapter analyzes the extent of child trafficking in Africa and the international legal framework. Chapter three explores the prevention of child trafficking on the African continent. Trafficking cannot be suppressed without addressing the demand of children for sexual exploitation, child sex tourism, and domestic work. Trafficking is a symptom and cannot be eliminated without addressing the root causes. Thus, some of them, such as poverty and corruption and best practices to dismantle them are examined in this chapter.

Chapter four explores the reactive solutions after trafficking has occurred. In other words, it explores the effectiveness of the current practices of investigation, arrest and prosecution of traffickers. This chapter stresses the role of law enforcement agencies in combating trafficking. In so doing, the focus is on police officers, judicial officers, prosecutors and immigration agents. The necessity and importance of national and international cooperation among law enforcement agencies is also discussed. The chapter closes with the discussion on the prosecution of traffickers, witnesses and victims protection as well as reintegration and possible repatriation of victims to their countries of origin.

Chapter five summarizes the major findings and recommendations of the dissertation.

Chapter Two: The Extent of Child Trafficking in Africa and the International Legal Framework

2.1 Introduction

This chapter explores the extent of the child trafficking phenomenon on the African continent. This is followed by the examination of the international legal framework on trafficking in human beings in general and in children in particular. Some anti-trafficking agreements signed before the Palermo Protocol (2000) are discussed and their effectiveness evaluated. Thereafter, an analysis of the Palermo Protocol is conducted and its importance to trafficking in human beings is evaluated.

2.2 The Extent of the Child Trafficking Phenomenon on the African Continent

According to Egan, there is no country in the world in general and in Africa in Particular that is immune from child trafficking.⁴⁰ A random sample of countries taken from Southern Africa (South Africa and Angola), Central Africa (Cameroon), West Africa (Burkina Faso) and North-East Africa (Egypt) is explored below to present the situation of child trafficking on the African continent.

Angolan girls are trafficked within the country for domestic servitude and commercial sexual exploitation, while boys are trafficked internally for agricultural or unskilled labour.⁴¹ South Africa, the Democratic Republic of Congo, Namibia, and Portugal are the primary destination points for Angolan children who are trafficked trans-nationally.⁴² Congolese children are trafficked to Angola to work in diamond mines.⁴³

⁴⁰ Egan *op cit* note 12 above at 105.

⁴¹ UNICEF Report *Child Trafficking in Southern Africa* (2009) available at www.asisa.org/node/9361. (accessed 05 June 2009); see also TIP report 2008 *op cit* note 2 above at 56-57; see further J Fowler (UNICEF) *Human Trafficking in Africa Fueled by War, Economic Hardship, and Lack of Birth Registration* (2004) Associated Press.

⁴² UNICEF Report *ibid.* See also IOM *Eye on Human Trafficking* (2006) available at www.dfa.gov.za/consular/2006/eyeact2006.pdf (accessed 05 June 2009) at 7. See further *Human*

Burkina Faso is a source, transit, and destination country for children trafficked for the purposes of forced labor and commercial sexual exploitation.⁴⁴ Within the country, most children are trafficked from rural areas to urban centers, for domestic servitude, sexual exploitation and forced agricultural labor.⁴⁵ Burkinabe children are trafficked to other West African countries for the same purposes listed above.⁴⁶ Children from these West African countries are trafficked to Burkina Faso.⁴⁷ Some Burkinabe girls are lured to Europe with promises of jobs as maids, but are forced into prostitution after arrival.⁴⁸ Girls from Nigeria, Togo, Benin, Ghana and Niger are specifically trafficked to Burkina Faso for commercial sexual exploitation.⁴⁹

Cameroon is a source, transit and destination country for children trafficked for the purposes of forced labor and commercial sexual exploitation.⁵⁰ Most victims are trafficked within the country, with girls primarily trafficked for domestic servitude and sexual exploitation.⁵¹ Children are trafficked to Cameroon from Nigeria, Chad, the Central African Republic, Congo, Benin and Niger for forced labor in agriculture, fishing and street vending.⁵² Cameroon is a transit country for children trafficked between Gabon

Trafficking and Modern-Day Slavery: Republic of Angola (2008) available at gvnet.com/humantrafficking/Angola.htm (accessed 05 June 2009).

⁴³ Protection Project *Angola* (2008) available at www.childtrafficking.com/content/library/ (accessed 04 June 2009) at 1; see also (Media Facts) A Rossi, ed., *Trafficking in Human Beings, Especially Women and Children, in Africa* (Annunziata, Italia: UNICEF Innocenti Research Centre, 2003).

⁴⁴ TIP report *op cit* note 2 above at 78-79; see also Protection Project *Burkina Faso* (2008) available at www.childtrafficking.com/content/library/ (accessed 05 June 2009) at 1; see further UNICEF *The War against Child Trafficking* (2005) available at www.unicef.org/bfa/english/protection_916.html (accessed 05 June 2009).

⁴⁵ TIP report *ibid*. See also Fowler *op cit* note 41 above.

⁴⁶ Child Labour *World Bank and Aid Group Examine Burkina Faso* (2002) UN wire; see also T Olori: *Child Labour Concerns Give Cocoa a Bitter Taste* (2003) available at www.humanrightswaech.com (accessed 24 July 2008).

⁴⁷ *Ibid*.

⁴⁸ Rossi *op cit* note 43 above.

⁴⁹ *Ibid*.

⁵⁰ Protection Project *Cameroon* (2008) available at www.childtrafficking.com/content/library/ (accessed 05 June 2009) at 1; see also TIP report *op cit* note 2 above at 84-85.

⁵¹ S Tetchiata *Cameroon: Legislation against Child Trafficking Only a First Step* (Press Report (2006)) available at ipsnews.net/news.asp?idnews=34063 (accessed 05 June, 2009); see also Protection Project *Cameroon* (2008) available at www.childtrafficking.com/content/library/ (accessed 05 June 2009) at 1.

⁵² A Johanness (Media Report) *Human Rights and Torture in Cameroon* (2007) available at www.tigweb.org/express/panorama/article.htm/content.id (accessed 05 June 2009).

and Nigeria, and from Nigeria to Saudi Arabia.⁵³ It is a source country for girls transported by sex trafficking rings to Europe, primarily France, Germany, and Switzerland.⁵⁴

South Africa is a source, transit and destination country for trafficked children.⁵⁵ South African girls are trafficked within their country for the purposes of commercial sexual exploitation and domestic servitude, while boys are trafficked internally for use in street vending, food service and agriculture.⁵⁶ Child sex tourism is prevalent in a number of South Africa's cities.⁵⁷ South African girls are trafficked trans-nationally to Ireland, the Middle East and the United States for domestic servitude.⁵⁸ Girls from other African countries are trafficked to South Africa for commercial sexual exploitation and domestic servitude. Occasionally, these children are trafficked onward to Europe for sexual exploitation. Thai, Chinese, and Eastern European girls are trafficked to South Africa for debt-bonded commercial sexual exploitation. Boys from Mozambique, Zimbabwe, and Malawi are trafficked to South Africa for farm and domestic work.⁵⁹

Egypt is a transit country for girls trafficked from Uzbekistan, Moldova, Ukraine, Russia and other Eastern European countries to Israel for sexual exploitation, and is a source for children trafficked within the country for commercial sexual exploitation and domestic servitude. Some of Cairo's estimated one million street children, both boys and girls, are exploited in prostitution. In addition, wealthy men from the Gulf reportedly travel to Egypt to purchase temporary marriages with Egyptian women, including in some cases

⁵³ *Ibid.* See also C Mbunwe (Media report (2005)) available at www.postnewsline.com/2005/09170_survovors_of.htm (accessed 05 June 2009).

⁵⁴ Protection Project: *op cit* note 11 above at 1; see also C Mbunwe (Press Report (2007)) available at www.ejfoundation.org/pdf/irewoc%20250407.pdf (accessed 05 June 2009).

⁵⁵ TIP report *op cit* note 2 above at 227-228.

⁵⁶ A Rademeyer & P de Bruin (Media Report (2009)) available at www.iol.co.za/index.php?click_id (accessed 03 June 2009).

⁵⁷ TIP report *op cit* note 2 above at 227-228.

⁵⁸ *Child Trafficking: A Concern in South Africa (Media Report (2007))* available at www.humantrafficking.org/updates1562 (accessed 05 June 2009).

⁵⁹ TIP report *op cit* note 2 above at 227-228; see also UNESCO *Human Trafficking in South Africa: Root Causes and Recommendations* (2007) available at www.childtrafficking.com/content/library/ (accessed 04 June 4, 2009) at 16-17; see further B Siva *Child Trafficking Concerns Highlighted* (Media Report (2009)) available at www.iol.co.za/index.php (accessed 03 June 2009).

girls who are under age of 18, often facilitated by the females' parents and marriage brokers.⁶⁰ Some Egyptian cities may also be destinations for sex tourism.⁶¹

In conclusion, no African country is immune from human trafficking in general and child trafficking in particular. Most African countries fall within all three categories, namely country of origin, country of transit and country of destination of trafficked children. Children are trafficked internally and internationally for different types of exploitations, mainly sexual exploitation and labour exploitation. Trafficking cases for organ removal are also reported from time to time.⁶² The following analyses the most important international conventions on human trafficking.

2.3 Analysis of International Laws on Trafficking in Human Beings

The ratification of international conventions addressing and defining clearly the trafficking phenomenon and indicating States on what measures and steps to take in order to prevent and eradicate the above evil is the first step in the prevention of child trafficking.⁶³ A number of anti-trafficking international instruments are explored below. This is followed by the indication of the reason for these agreements being ineffective in addressing trafficking in children. The Palermo Protocol is explored in detail.

2.3.1. Anti-Trafficking International Instruments Prior to the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)⁶⁴

A number of international and regional agreements address the issue of 'involuntary servitude' and trafficking in persons in general and in particular children.⁶⁵ The most

⁶⁰ *The Language of Numbers: Child Trafficking* (Media Report (2008)) available at egyptianchronicles.blogspot.com/2008/01/language-of-numbers-child-trafficking.html (accessed 05 June 2009).

⁶¹ Protection Project *Egypt* (2008) www.childtrafficking.com/content/library/ (accessed 12 June, 2009) at 3.

⁶² See Media Report available at yemenpost.net/detail/23450789.aspx?id=3&5sudid (accessed 05 June 2009).

⁶³ See the preamble of the Palermo Protocol.

⁶⁴ Most of the provisions in these international conventions apply and protect both women and children so that singularizing girl children only becomes technically wrong. In this study, given that the emphasis is put on children, the word 'women' means girls under the age of 18 years.

relevant are the 1904 International Agreement for the Suppression of White Slave Traffic,⁶⁶ the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁶⁷ and the 1979 United Nations Convention on the Elimination of all Forms of Discrimination Against Women.⁶⁸ Other international instruments that address the issue of trafficking are the 1966 International Covenant on Civil and Political Rights,⁶⁹ the 1966 International Covenant on Economic, Social and Cultural Rights,⁷⁰ the 1989 United Nations Convention on the Rights of the Child and its two Optional Protocols (the Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Protocol on the Involvement of Children in Armed Conflict, both adopted in 2000),⁷¹ the International Labor Organization Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999),⁷² the United Nations Convention Against Transnational Organized Crime (2000),⁷³ and the African Charter on the Rights and Welfare of the Child.⁷⁴ Unlike most

⁶⁵ EF Defeis 'Protocol to Prevent, Suppress and Punish Trafficking in Persons – A New Approach' (2004) 10 *ILSA Journal of International and Comparative Law* 485.

⁶⁶ International Agreement for Suppression of the 'White Slave Traffic', adopted on 18 May, 1904, entered into force 18 July, 1905 (hereinafter 'the 1904 Convention').

⁶⁷ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted and opened for signature, ratification and accession by General Assembly resolution 317 (IV) of 02 December, 1949, entered into force 25 July, 1951 (hereinafter 'the 1949 Convention').

⁶⁸ Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature, ratification and accession by General Assembly resolution 34/180 of 18 December, 1979, entered into force 03 September 1981 (hereinafter 'CEDAW').

⁶⁹ International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200 A (XXI) of 16 December, 1966, entered into force 23 March 1976 (hereinafter 'the ICCPR').

⁷⁰ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution. 2200 AC (XXI) of 16 December, 1966, entered into force 03 January, 1976 (hereinafter 'the ICESCR').

⁷¹ Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November, 1989, entry into force 02 September, 1990 (hereinafter 'CRC'). It has been supplemented by two Optional Protocols, one on the Involvement of Children in Armed Conflict, adopted and opened for signature, ratification and accession by General Assembly resolution A/Res/54/263 of 25 May, 2000 entered into force 12 February, 2002 (hereinafter 'Armed Conflict Protocol'). The second is on the Sale of Children, Child Prostitution and Child Pornography, adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May, 2000 entered into force 18 January, 2002 (hereinafter 'the sale of children Protocol').

⁷² ILO 182, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, adopted by the conference at its 87th session, Geneva, 17 June, 1999, entered into force 19 November, 2000.

⁷³ The United Nations Convention against Transnational Organized Crime, adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November, 2000, entered into force 29 September, 2003.

of the above mentioned conventions which apply to both children and adults, some international laws deal specifically with children such as the CRC and its Protocols, the African Charter and the ILO Convention 182.⁷⁵

Most of conventions stated above are criticized for being ineffective in addressing the problem of trafficking in children.⁷⁶ Like many other international treaties, the enforcement mechanisms are weak and are limited to States' self-reporting.⁷⁷ The lack of comprehensive agreement on the specifics of trafficking remains a great challenge faced by these conventions.⁷⁸ Some of them address trafficking as an incidental subject, not as main subject of their enactments.⁷⁹ Without such an inclusive international law, says Garrard, trafficking in children had to be addressed using a 'jungle of various provisions spread across numerous agreements'.⁸⁰ The 1904 Convention had many flaws and was supplemented and modified by many subsequent protocols and treaties.⁸¹ The definition of trafficking provided in the 1949 Convention is now criticized for being inadequate in fighting trafficking which is actually perceived as a much broader and complex phenomenon.⁸² The main criticism is that it has tackled trafficking only for prostitution, neglecting its multiple modern manifestations.⁸³ Even within the category of 'sexual slavery', only prostitution is aimed at, leaving aside many other forms of sexual exploitation that women face in the twenty first century.⁸⁴

⁷⁴ African Charter on the Rights and Welfare of the Child OUA Doc. CAB/LEG/24.9/49 (1990), entered into force 29 November, 1999 (hereinafter 'African Charter').

⁷⁵ Garrard *op cit* note 22 above at 159.

⁷⁶ *Ibid* at 161. See also Inglis *op cit* note 10 above at 59.

⁷⁷ Defeis *op cit* note 65 above at 486.

⁷⁸ Garrard *op cit* note 22 above at 161. For example, the CEDAW is limited in scope as it protects only girls.

⁷⁹ For instance, the CRC, the CEDAW, the ICCPR and the ICESR.

⁸⁰ Garrard *op cit* note 22 above at 161.

⁸¹ *Ibid.* the Convention is racially biased (protect only white women) and addresses only trafficking for the exploitation of prostitution.

⁸² Inglis *op cit* note 10 above at 161.

⁸³ Scarpa *op cit* note 8 above at 436. As will be discussed in detail below, trafficking can be done for forced labour, organ removal or slavery-like practices.

⁸⁴ Ray *op cit* note 20 above at 911. Other forms of sexual exploitation include 'marriage and domestic servitude which result in sexual exploitation that cannot be termed as prostitution.' A girl may be exploited as a domestic worker and sexual slave or 'may be confined to the house, denied opportunity to contact her family, kept isolated, and even prostituted by her husband'.

The 1949 Convention has not been ratified by many States because it has adopted an ‘abolitionist model’ to manage prostitution, calling on State parties to punish persons involved in the exploitation of prostitution of others a matter habitually left to ‘domestic policy.’⁸⁵ Many States preferred dealing with prostitution otherwise than to follow the drastic recommendations in the Convention.⁸⁶ The CRC and the African Charter are criticized for not defining what they mean by trafficking in children and for urging States parties to eradicate trafficking without specifying in detail means by which it should be done.⁸⁷ Given the ineffectiveness of prior agreements and the complexities of trafficking in modern society, the need for a new international agreement dealing comprehensively with this phenomenon was felt.⁸⁸

2.3.2 The Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

Being aware of the link between trafficking in persons especially in children and organized crime, the United Nations drafted the Palermo Protocol to supplement the Transnational Convention.⁸⁹ The purpose of the Transnational Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.⁹⁰ The Palermo Protocol is the first international agreement which deals comprehensively with the problem of trafficking in persons, especially in children.⁹¹ The Palermo Protocol must be read in conjunction with the Transnational Convention, which requires State parties to legislate on various matters relevant to the issue of trafficking in persons.⁹²

⁸⁵ Garrard *op cit* note 22 above at 159.

⁸⁶ Scarpa *op cit* note 8 above at 436.

⁸⁷ Garrard *op cit* note 22 above at 161.

⁸⁸ *Ibid.*

⁸⁹ S Mathews *op cit* note 23 above at 670.

⁹⁰ Article 1 of the Transnational Convention.

⁹¹ *South African Law Reform Commission Discussion Paper* 131 (hereinafter SALRC Discussion Paper) Available at www.doj.gov.za/salrc/dpapers/dp111_prj131/chapter%20/%20introduction.pdf (accessed 11 October 2008) at 12.

⁹² *Ibid* at 13. Article 1 of the Palermo Protocol states that ‘it shall be interpreted together with the Convention.’ And that ‘the provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.’ Article 37 (4) of the Transnational Convention stipulates that any Protocol to the Convention must be interpreted together with the Convention, taking into account the purpose of that Protocol.

Unlike the previous agreements that failed to define trafficking in persons, article 3 of the Palermo Protocol gives a definition that covers the quasi-totality of modern manifestations of trafficking in human beings:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of 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.⁹³

States parties are required to fulfill their obligations by including not only the elements listed above but also others that would help them to adapt the definition to local realities.⁹⁴ The consent of the victim is irrelevant where any of the means set out above have been used.⁹⁵ The terms of the Protocol are more severe where a child is involved.⁹⁶ Some authors argue that the Palermo Protocol definition does not cover every possible type of trafficking and it deals only with the involvement of organized crime in trafficking.⁹⁷ In other words, trafficking taking place within the national boundaries of a country and those perpetrated by non-organized crime syndicates (for instance, an uncle exploiting his niece as a domestic worker) are excluded.⁹⁸

The counter-arguments are that, firstly, as stated above, the Palermo Protocol needs to be read together with the Transnational Convention. The United Nations Office on Drugs and Crime explains that ‘the Protocol is not a stand-alone instrument. It must be read and applied together with the parent Convention, and each country is required to become a

⁹³ Article 3 (a) of the Palermo Protocol.

⁹⁴ James Puleo, Senior Advisor on Migration Policies and Migration Management, *Address at the MIDSA Workshop on Extra-Regional Irregular Migration and Migrant Smuggling to through and from the Southern African Development Community (SADC) Region in Johannesburg, South Africa* (2003) Available at www.sarpn.org.za/documents/d000735/index.php (accessed 09 December 2008) (hereinafter ‘Puleo Speech’).

⁹⁵ Article 3 (b) of the Palermo Protocol.

⁹⁶ Article 3(c) of the Palermo Protocol provides that ‘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.’

⁹⁷ Kreston *op cit* note 8 above at 36.

⁹⁸ *Ibid.*

party to the Convention in order to become a party to the Protocol.’⁹⁹ The two instruments are complementary. What is missing in the Transnational Convention can be found in the Palermo Protocol and vice-versa. Secondly, article 34(2) of the Transnational Convention stipulates that the crime of trafficking in persons can be established in the domestic laws of a country irrespective of the transnational nature of the crime or the involvement of an organized criminal group. Other provisions in the Transnational Convention relevant to trafficking in persons are, for instance, participation in an organized criminal group (Article 5), corruption (Article 8), jurisdiction (Article 15), extradition (Article 16), obstruction of justice (Article 23) and witness protection (Article 24).¹⁰⁰

According to the Palermo Protocol, the crime of trafficking consists of the following elements (a) the action: the recruitment, transportation, transfer, harbouring or receipt of persons, (b) the means: threat, use of force or other forms of coercion, abduction, fraud, deception, 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 and (c) the purpose: 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.¹⁰¹ All three elements do not necessarily have to take place in order to establish the crime of trafficking in persons, as long as the intention to exploit the victims can be proved, the offender may still be prosecuted.¹⁰²

⁹⁹ United Nations Office on Drugs and Crime *Summary of the Palermo Protocol* (2002) available at www.unodc.org/unidc/in/traffickingconvention.html. (hereinafter ‘UNODC’) (accessed 09 December 2008)

¹⁰⁰ American Bar Association Central European and Eurasian Law Initiative (hereinafter ‘CEELI’) *An Introduction to the Human Trafficking Assessment Tool: an Assessment Tool Based on the Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children Supplementing Organized Crime* (2005) Available at www.childtrafficking.com/content/library/ (accessed 09 December 2008).

¹⁰¹ Article 3 of the Palermo Protocol.

¹⁰² See AD Jordan *The Annotated Guide to the Complete U.N. Trafficking Protocol* (2002) Available at www.childtrafficking.com/content/library/ (accessed 17 July 2008). It is stated that ‘the U.N. definition is not appropriate for use in domestic criminal codes. It has too many elements that would have to be proven by the prosecutor, thus making prosecutions more difficult. Also, some of the language is ambiguous which could also lead to legal challenges by defendants.’ It is important to incorporate the quintessence of that definition into national legislation using simple and clear language.

Children are only mentioned in article 3 (c) and in article 6(4) of the Palermo Protocol despite recommendations from the human rights activists to address the special need and legal status of children.¹⁰³ The United Nations High Commissioner for Human Rights encourages States parties to consider appropriate measures with respect to trafficked children.¹⁰⁴ Furthermore, States parties must incorporate relevant provisions into their domestic trafficking legislation from instruments that address exclusively children's matters such as the CRC and its Optional Protocols, African Charter and ILO Convention 182.¹⁰⁵

Until 2008, the Palermo Protocol was signed, ratified and acceded to by approximately nineteen African Countries only and few have enacted comprehensive anti-trafficking legislation as required by it.¹⁰⁶ The ratification and accession to all the above instruments, especially the Palermo Protocol, is the first step that African nations must take to prevent trafficking in children. This must be followed by the enactment of national laws addressing specifically the crime of trafficking in persons. The Palermo Protocol is the 'floor' not a 'ceiling' for standards that are to be incorporated in domestic legislation for African countries to be able to comprehensively fight trafficking in children.¹⁰⁷

In summary, before the Palermo Protocol countries had to fight trafficking in children using a jungle of provisions scattered in various international instruments. These previous laws were criticized for being ineffective in addressing this crime; thus, the adoption of the Palermo Protocol, which is a comprehensive and effective tool. African nations are recommended to supplement the Protocol insufficiencies with other international human rights laws.

¹⁰³ *Ibid* at 12.

¹⁰⁴ Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council; Addendum: Recommended Principles and Guidelines on Human Rights and Human Trafficking U.N. High Commissioner for Human Rights, Substantive Sess. , Agenda Item 14 (g), at 5, U.N. DocE/2002/08/Add.1. (2002) available at www.childtrafficking.com/content/library/ (accessed 02 January 2009).

¹⁰⁵ Jordan *op cit* note 102 above at 12.

¹⁰⁶ TIP report *op cit* note 2 above at 280-284. Countries that have signed, ratified and accessed the Palermo Protocol are: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Egypt, Equatorial Guinea, Gabon, Lesotho, Libya, Madagascar, Mali, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa and Tanzania.

¹⁰⁷ CEELI *op cit* note 100 above at 31.

2.4 Conclusion

African countries are not immune from human trafficking in general and child trafficking in particular. Most African countries fall within all three categories, namely country of origin, country of transit and country of destination of trafficked children. Children are trafficked internally and internationally for different types of exploitations, mainly for sexual exploitation and labour exploitation. Trafficking cases for organ removal are also reported from time to time.

Before the Palermo Protocol countries had to fight trafficking in children using a jungle of provisions scattered in various international instruments. These previous laws are criticized for being ineffective in addressing this crime; thus, the adoption of the Palermo Protocol, which is a comprehensive and effective tool. African nations are recommended to ratify the Palermo Protocol and translate its provisions into domestic laws. They need to supplement the Palermo Protocol's insufficiencies with other international human rights laws. Non ratification does not mean non action. Nations on the continent that are not yet parties to the Palermo Protocol are encouraged to utilize its provisions as reference in the fight against child trafficking or to utilize anti-slavery provisions in their respective domestic laws to eradicate this crime. The following chapter explores the prevention of child trafficking on the African continent.

Chapter Three: Preventing Trafficking in Children in Africa

3.1 Introduction

This chapter firstly presents the extent of efforts made by African countries to prevent child trafficking. Thereafter, demand side of trafficking in children for sexual exploitation, child sex tourism and domestic work are discussed. According to TIP Report, these are fields in which trafficked children's labour is the most consumed on the African continent. Corruption and child poverty are respectively discussed as factors that foster child trafficking in Africa. Every point evaluates the current practices to address child trafficking on the continent and concludes with the recommendation of what seem best practices for African countries.

3.2 The Extent of Child Trafficking Prevention Efforts on the African Continent

Child trafficking prevention efforts are centralized and reduced mainly to awareness raising on the African continent. Prevention of trafficking in children is supported in all anti-slavery agreements and in particular the Palermo Protocol. States parties are called, under article 9, to establish comprehensive measures and strategies to prevent trafficking in children, namely: awareness raising and economic initiatives, in collaboration with non-governmental organizations. Many governments on the continent conduct on a regular basis public awareness campaigns designed to raise awareness on child trafficking.¹⁰⁸ The campaigns include pamphlets on children's rights, banners, newspaper articles, and radio and television spots. In some other countries, such as South Africa, Togo and Egypt, governments are not much involved in the prevention of child trafficking, leaving that task completely to non-governmental and international

¹⁰⁸ See Protection Projects *Angola, Cameroon, DRC, Zambia, Namibia, Gabon, Benin, Burkina Faso, Morocco, Libya, Tunisia, Botswana, Zimbabwe, Malawi, Burundi, Chad, Sudan, Tanzania* (2008) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009). See further TIP report op cit note 2 above at 52-297.

organizations operating in their respective countries.¹⁰⁹ In addition to awareness raising and economic initiatives, States parties must alleviate factors that make children vulnerable to trafficking, such as poverty, underdevelopment, social and economic injustices, political instabilities and illiteracy. States parties are to strengthen their policies and other measures through bilateral and multilateral cooperation to discourage the demand that promotes all forms of exploitations and leads to child trafficking.

The Palermo Protocol recommends States parties to take all preventive measures identified above to prevent child trafficking. Given the length constraints with regard to this research, the emphasis in this chapter is on the demand for children for sexual exploitation, child sex tourism and domestic servitude and on some of the factors that make children vulnerable to trafficking on the African continent such as poverty and corruption. The demand side of trafficking is discussed below.

3.3 Addressing the Demand Side of Trafficking

Both ‘demand’ and ‘supply’ factors impact on the nature and persistence of trafficking in children.¹¹⁰ States have to understand and address the ‘underlying dynamics’ of both of them in order to eradicate trafficking.¹¹¹ Addressing only one is not an effective strategy; States in their previous efforts put most of their energies on ‘supply factors’ and neglected the role of demand in sustaining this criminal activity.¹¹² Economically speaking, it is argued that ‘if there were no consumers and no demand, there would be no income potential and thus no supply.’¹¹³ From this point of view the demand is a decisive part of all markets; trafficking sector included.¹¹⁴ Diminishing the demand for trafficked children prevents children from getting absorbed into trafficking. Although, in the context of trafficking demand and supply factors are closely interconnected, making it

¹⁰⁹ *Ibid.* See also UNESCO *Human Trafficking in South Africa: Root Causes and Recommendations* (2007) available at www.childtrafficking.com/content/library (accessed 12 June,2009) at 50-52; see further UNESCO *La Traite des Personnes au Togo: Facteurs and Recommandations* (2007) available at www.childtrafficking.com/content/library (accessed 12 June 2009) at 48-49.

¹¹⁰ ILO *op cit* note 14 above at 102.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid* at 2.

¹¹⁴ *Ibid.*

difficult to separate them, the demand remains the immediate ‘driving force’ behind trafficking in children.¹¹⁵ The Palermo Protocol makes reference to ‘the demand’ as a subject of prevention. Article 9.5 provides that:

States parties shall adopt or strengthen legislative or other measures, such as education, 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.¹¹⁶

The Protocol makes a correlation between demand and trafficking.¹¹⁷ The demand is understood as ‘the nature and extent of exploitation of the trafficked victims after reaching the destination point, as well as the social, cultural, political, economic, legal and developmental factors that shape the demand and influence or enable the trafficking process.’¹¹⁸ Below is a discussion of the demand for children for sexual exploitation, child sex tourism and domestic work fields in which services of trafficked children are the most consumed on the African continent.¹¹⁹

3.3.1 Sexual Exploitation

Although children are trafficked for miscellaneous purposes in Africa, the overview above shows that they are mainly trafficked for sexual exploitation.¹²⁰ Some African countries have specific legislation addressing the commercial sexual exploitation of children but the demand side of trafficking is not addressed in most of them.¹²¹ For

¹¹⁵ *Ibid.* It is argued that ‘poverty and expectations of better earning opportunities induce thousands of children to migrate and seek employment in unregulated and informal sectors where they are extremely vulnerable to exploitation. This abundant labour supply, which makes children’s services and labour easily available at a low cost, fuels a level of demand that would not otherwise be there.’

¹¹⁶ Article 9(5) of the Palermo Protocol.

¹¹⁷ MY Mattar *The Appropriate Legal Response to the Issue of Demand: A Comparative Legal Analysis* (2003) Paper presented at a conference on Demand Dynamics: The Forces of Demand in Global Sex Trafficking, Held in Chicago Illinois October 16-17 2003 available at www.childtrafficking.com/content/library/ (accessed 13 September 2009) at 1.

¹¹⁸ ILO *op cit* note 14 above at 2.

¹¹⁹ *Ibid.* See also TIP report *op cit* note 2 above at 52-229.

¹²⁰ See point 2.2 above; see also DM Hughes: *Best Practices to Address the Demand Side of Sex Trafficking* (2004) available at www.childtrafficking.com/content/library/ (accessed 13 September 2009) at 1.

¹²¹ TIP report *op cit* note 2 above at 52-192.

example, male buyers of sexual services from child prostitutes or child victims of trafficking are not prosecuted at all.¹²²

Cannon notes that ‘exploitation of prostitution’ and trafficking are inseparable.¹²³ In this regard the Palermo Protocol adheres to the philosophy of the precedent international conventions that do not separate trafficking and prostitution, such as the CEDAW and the 1949 Convention.¹²⁴ Legislative orientations taken by States to deal with the demand for sexual exploitation or prostitution can be classified into three categories: abolitionist approach, liberal approach and incriminatory approach. The relevance, advantages and disadvantages of each are presented below, followed by the suggestion of the option that can be commendable for African countries.

3.3.1.1 Abolitionist Approach

The abolitionists present prostitution as a ‘form of male sexual violence against women and children.’¹²⁵ They argue that the normalization of a ‘market in commercial sexual services’ means reduction of children, mainly girls, to mere ‘commodities’ and any distinction between forced and voluntary prostitution becomes impossible to establish.¹²⁶ According to supporters of this approach, trafficking is defined and sustained by consumer demand for commercial sexual services, without which this business could be highly unproductive.¹²⁷ Consequently, the only parties that should be incriminated are those who abuse children in prostitution; which mean pimps, traffickers, and clients.¹²⁸

¹²² *Ibid.*

¹²³ IJ Cannon *Primes on the Male Demand for Prostitution* (2006) available at www.childtrafficking.com/content/library/ (accessed 13 September 2009) at 8.

¹²⁴ *Ibid.*

¹²⁵ G Ekberg ‘The Swedish Law that Prohibit the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings’ (2004) 10 (10) *Violence Against Women* 1187 at 1189.

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ HB Israel and N Levenkron *The Missing Factor. Clients of Trafficked Women in Israel’s Sex Industry* (2005) available at www.childtrafficking.com/content/library/ (accessed 13 September 2009) at 26.

Some countries in the world, like Sweden, have passed laws prohibiting the purchase of sexual services.¹²⁹ The ratio behind this Swedish law is that ‘when buyers risk punishment, the number of men who buy prostituted persons decreases and the local prostitution markets become less lucrative.’¹³⁰ Traffickers will then choose other and more profitable destinations.¹³¹ According to Swedish authorities, the legislation has produced some positive results, including an end to the recruitment of new victims particularly children for prostitution, and a strong reduction (75 – 80%) in the number of clients.¹³² By 2004, the country was reported as having the lowest number of street prostitutes in comparison to other European countries.¹³³

The opponents of this approach attribute the visible decline in prostitution to a better organization of the underground sex industry, where prostitutes are much more vulnerable to harm and exploitation and have no opportunity to complain.¹³⁴ Moreover, they say that Swedish men may have taken on a new identity as sex tourists.¹³⁵ The Swedish model can be promoted as a good practice model, but more research should be conducted to assess the feasibility of this approach in other countries, especially those where the socio-economic context is very different.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ Ekberg *op cit* note 125 above at 1198. Israel and Levenkron make it clear that the concept of a prostitution industry includes ‘brothels, sex, night and striptease clubs, street prostitution, escort services, internet marketers of prostituted women and children, mail-order-bride agencies, phone sex operations, sex tourism agencies, as well as the creators and distributors of pornography. Can also be included, third-party beneficiaries, such as travel agencies, hotels and air companies that benefit from the prostitution of women and children in the tourism industry.’

¹³² Israel and Levenkron *op cit* note 128 above at 30.

¹³³ Ekberg *op cit* note 125 above at 1193. The author reports that in a comparative study done in 2004 it was found that the number of women and children in street prostitution in Sweden was no more than 500 for 9 million inhabitants and the number of women and children involved in street prostitution in Denmark was 5,500 to 7,800 for 4.5 million inhabitants. (Denmark doesn’t have legislation that prohibits the purchase of sexual services). It is also reported that Sweden no longer is an attractive market for traffickers. Traffickers and pimps are businessmen who calculate profits, marketing factors and risks of getting caught when they decide in which countries they wish to sell a victim into prostitution.

¹³⁴ Israel and Levenkron *op cit* note 128 above at 30

¹³⁵ *Ibid.*

3.3.1.2 Criminalization, Prohibitive or Incriminatory Approach

Unlike the first approach, the criminalization approach prohibits prostitution of any kind and penalizes all involved in it, both females in prostitution (children included) and the customer.¹³⁶ This approach is followed by some Muslim countries that practice Islamic law. In these countries, a man who buys sexual services is considered to be committing ‘adultery.’ This is a crime under Islamic law which punishes the ‘adulterer’ and the ‘adulteress.’¹³⁷ Across the United States and Canada, a number of States follow this approach as well, but unlike most Muslim countries, the law does not have a religious connotation.¹³⁸ These States hold that ‘prostitution is devoid of social value and can be eliminated by uncompromising enforcement of criminal law.’¹³⁹

In practice, reports confirm that more females, including children, have been arrested under prostitution laws than their counter-parties male buyers.¹⁴⁰ In reaction to the criticism above, efforts have been made to arrest male-clients of prostitutes, such as the ‘impoundment of vehicles, confiscation of driver’s licenses, publishing the clients’ names and photograph in the newspaper and implementation of education programs for purchasers of sex acts (johns’ schools)’ have been implemented.¹⁴¹ The purpose of johns’ schools is to eliminate the ‘recidivism’ of men who buy commercial sex and to move from criminal prosecution of buyers of commercial sex acts to prevention and rehabilitation.¹⁴² All johns’ schools report very low rates of recidivism of men who attend the schools.¹⁴³

¹³⁶ M Torrey & S Dubin *Demand Dynamics: the Forces of Demand in Global Sex Trafficking* (2003) Available at www.childtrafficking.com/content/library (accessed 04 September 2008) at 100.

¹³⁷ *Ibid.* This approach is practiced by countries such as ‘Saudi Arabia, Pakistan, Yemen, Iran, Mauritania, Jordan Bahrain, Sudan, Tunisia, Malaysia, Brunei and the United Arab Emirates.’

¹³⁸ Israel and Levenkron *op cit* note 128 above at 26.

¹³⁹ *Ibid* at 28.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid* at 29. Consequently, the criminal justice system will be discharged of some burden and offenders can avoid a criminal record. See also E Eldridge ‘Patterns of Sex Offending and Strategies for Effective Assessment and Intervention’ in C Itzin ed., *Home Truths about Child Sexual Abuse* (London, Routledge 2000) at 329

¹⁴³ Hughes et al *op cit* note 120 above at 31; see also C Davidson: *Sex Exploiter* (2001) at 28 available at www.childtrafficking.com/content/library (accessed 04 September 2008) For example, the First Offender Prostitution Program, offered in San Francisco, California, includes: ‘review of laws on prostitution and

Critics claim that the ‘zero tolerance’ approach is catastrophic to females including children engaged in prostitution since it compels them to operate into isolated and unsafe locations where they are exposed to greater threat of violence and abuse.¹⁴⁴ On the other hand police, have been criticized for concentrating their efforts in poor neighborhoods and tending to ignore the existence of prostitution in richer neighborhoods.¹⁴⁵ The workshops or johns’ schools are also criticized for infringing on the right to a fair legal procedure and presumption of innocence since participants are required to admit guilt in order to have charges against them dropped and be placed in the programmes.¹⁴⁶ This approach can also be criticized for not making a distinction between adult and children prostitutes and for considering every one involved in prostitution as criminal. This state of affairs is not satisfactory for addressing demand. The focus should be on male buyers and females in prostitution in general and children in particular must be considered victims.

3.3.1.3 Liberal or Regulatory Approach

Some legal systems have chosen to legalize prostitution (liberal or libertarian stance) in order to fight child trafficking.¹⁴⁷ According to tenants of this approach, intimating that the ‘commercial sex market’ should be eliminated in order to solve the problem of trafficking for prostitution is a ‘draconian and wrong headed’ point of view.’¹⁴⁸ Germany,

street facts on prostitution; risk prevention and treatment of HIV/AIDS and other sexually transmitted diseases; effects of prostitution on neighborhoods video that describes peer support programmes for women leaving prostitution; effects of prostitution on women’s lives; survivor testimony; dynamics of pimping and child prostitution; sex addiction behaviors and expectations of purchasers of commercial sex acts challenges to men’s capacity for intimacy. The testimonies of survivors educate the purchasers of commercial sex acts about prostitution

¹⁴⁴ Israel and Levenkron *op cit* note 128 above at 29.

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ MY Matter *The Appropriate Legal Responses to the Issue of Demand: A Comparative Legal Analysis* (2003) at 2 available at www.childtrafficking.com/content/library/ (accessed 04 September 2008).

¹⁴⁸ B Anderson & JOC Davidson *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (2003) International Organisation for Migration available at www.iom.int/jahia/webdav/site/myjahiasite/shared/mainsite/published_docs/serial_publications/mrs_15_20_03.pdf at 10-11. The question asked is if in order to tackle the problem of child labour in sugar cane plantations, for instance, the demand for sugar should be eradicated. From this point of view, questions about the demand side of trafficking for sexual exploitation are clearly about ‘employer demand for forced labour rather than consumer demand.’

Netherlands and some States in Australia have taken the lead in legalizing prostitution.¹⁴⁹ According to them, the fight against child trafficking should include the normalization and control of brothels.¹⁵⁰

Critics of this approach state that legalization does not improve the prevention of child trafficking for sexual exploitation and organized crime networks do not register with the government, pay taxes or protect people in prostitution.¹⁵¹ The approach is mainly criticized for not addressing the demand side of trafficking which has resulted in normalization of commercial sex and attraction of sex tourists.¹⁵²

3.3.1.4 Suggested Approach for African Countries

The issue of prostitution and related activities is one of the most sensitive for many States and most are opposed to any external interference.¹⁵³ Even the Palermo Protocol does not define the terms ‘prostitution’ and ‘exploitation of prostitution of others’, leaving every State at liberty of defining them according to their national legislation.¹⁵⁴ Most African countries adhere to the incriminatory approach.¹⁵⁵ Prostitution and all related activities are prohibited in most African countries. Unfortunately, as the experience has shown in other countries following this approach, these laws are either ineffective or are one sided, having a disproportionate negative effect on children. Mostly females are arrested, including children, leaving male clients enjoying relative impunity. This is exacerbated by the fact that most children engaged in prostitution are above the age of statutory rape, and prosecution of the male clients becomes impossible.

¹⁴⁹ Cannon *op cit* note 123 above at 9. See also Torrey & Dubin *op cit* note 136 above at 100.

¹⁵⁰ K Bales *Understanding the Demand behind Human Trafficking* (undated) available at www.childtrafficking.com/content/library/ (accessed 04 September 2008) at 16.

¹⁵¹ TIP report *op cit* note 2 above at 29. See also Cannon *op cit* note 149 above at 10.

¹⁵² Israel and Levenkron *op cit* note 128 above at 31; see also Hughes et al *op cit* note 143 above at 32. According to these authors the government of Netherlands’ 2000 compliance report to the CEDAW Committee states that ‘prostitution is in and of itself no problem and can’t be regarded as a form of violence against women.’ The Netherlands criticized CEDAW for regarding prostitutes as victims.

¹⁵³ Scarpa *op cit* note 8 above at 436.

¹⁵⁴ Network of Sex Work Projects (NSWP) *The Negotiations on the UN Protocols on Trafficking in Persons* (2003) available at www.childtrafficking.com/content/library/ (accessed 10 October 2008) at 80.

¹⁵⁵ TIP report 2008 *op cit* note 2 above at 29. To date, there is no African country that has legalized prostitution.

Under the current circumstances these laws can not produce the expected results, which are the prevention and eradication of demand for trafficked children for sexual exploitation. The abolitionist approach coupled with some good practices followed in North American countries analyzed above can be commendable for African countries. Mostly men need to be targeted if one wants to address effectively the demand side of trafficking in children for sexual purposes. Measures to be taken are: introduction of adult diversion programmes for first time sex offenders similar to johns' schools; development of effective strategies to track down clients of child prostitutes and effective enforcement of laws on commercial sexual exploitation of children so that pimps, bars owners, massage parlor operators and all who are involved in any kind of commercial sexual exploitation of children and related activities have a very narrow margin of operation. In addition, child prostitutes need to be considered victims and accorded appropriate assistance and oriented toward restorative justice.

3.3.2. Child Sex Tourism

Child sex tourism is connected to trafficking in the sense that local criminal gangs recruit children into organized prostitution markets and make contact with potential tourists through the internet, informing them of the availability of young girls and boys in that particular country.¹⁵⁶ The tourists' decisions on their future vacation destinations are based on the way child sex tourism is advertised on the internet in that particular country and on the existence of an organized commercial sexual market.¹⁵⁷ In fact, sex tourists 'are generally men who travel from wealthier developed nations (sending countries) into poor, developing nations (destination countries) with inadequate laws, weak enforcement mechanisms, vulnerable children and a highly commercialized sex industry.'¹⁵⁸

¹⁵⁶ White 'Race, Gender and Sex on the Net: Semantic Networks of Selling and Storytelling Sex Tourism' (2006) 28 (6) *Media, Culture and Society* 883 at 901.

¹⁵⁷ *Ibid.*

¹⁵⁸ NL Svensson 'Extraterritorial Accountability: An Assessment of the Effectiveness of Child Sex Tourism Laws' (2007) 28 (641) *Loyola of Los Angeles International and Comparative Law Review* 641 at 643. Sending countries for sex tourists include countries such as the United States, France, Germany, Japan, Australia and the United Kingdom; while destination countries include the Philippines, Thailand, Cambodia, India and many countries in Africa and South America.

Usually, child sex tourists travel with the aim to engage in sexual acts with girls and boys under 18 years of age.¹⁵⁹ On the African continent, it is reported that child sex tourism is prevalent in the main cities of South Africa, Kenya, Benin, Madagascar and Egypt.¹⁶⁰ A number of international conventions contain provisions protecting children from commercial sexual exploitation and, if translated into national legislation and enforced effectively, these laws could work to protect children and eradicate child sex tourism on the African continent.¹⁶¹ Unfortunately, reasons such as inadequate national legislation, ineffective law enforcement and judicial systems, lack of resources, corruption and evidentiary obstacles frequently enable child sex tourists to escape prosecution in countries where the exploitation takes place.¹⁶²

Given the incapacity of destination countries to prevent child sex tourism, more and more governments of sending countries have taken the responsibility of educating their citizens who are going abroad about the consequences of them sexually abusing children while abroad.¹⁶³ Sending countries like United States, Japan, Australia, England and Canada have enacted extraterritorial or anti-child sex tourism laws (hereinafter ‘ET legislation’) to prevent child sex tourism.¹⁶⁴ Problems faced by these countries include difficulties of obtaining evidence to prosecute a crime committed outside the country’s frontiers, double criminality and lack of political will from some governments to effectively enforce their ET laws.¹⁶⁵ Valdambriini submits that the best solution would be for the offender to be tried in the country where the offence is perpetrated and to serve the prison sentence there.¹⁶⁶ Offenders’ behaviour will be much influenced by the knowledge of the

¹⁵⁹ *Ibid* at 644.

¹⁶⁰ TIP report 2008 *op cit* note 2 above at 52-192.

¹⁶¹ *Ibid*. International Instruments such as the CRC and its Optional Protocols specifically require member states to protect children from all forms of sexual exploitation including taking appropriate domestic and international measures to prevent the exploitative use of children in prostitution or other unlawful sexual practices (article 34 of the CRC).

¹⁶² *Ibid* at 641. It has been found that, in general, child sex tourists are rarely prosecuted in destination countries because of weak enforcement mechanisms and corruption of law enforcement agencies.

¹⁶³ *Ibid*.

¹⁶⁴ *Ibid* at 653. See also The Protection Project *International Child Sex Tourism: Scope of the Problem and Comparative Case Studies* (2007) available at www.childtrafficking.com/content/library/ (accessed 20 August 2008) at 10.

¹⁶⁵ *Ibid*.

¹⁶⁶ J Valdambriini: *Prevention through Awareness: Campaigning on Child Sex Tourism: A Market Research Project* (2004) available at www.childtrafficking.com/content/library/ (accessed 06 August 2008) at 8.

possibility of being arrested in the country of destination and be subjected to a foreign justice system.¹⁶⁷ According to Prideaux et al, communities, tourism industry and governments of destination countries must determine the type of visitors they want to host by taking the correct orientation in future tourism promotion.¹⁶⁸ In the same way, White states that the internet has an impact on the exacerbation and development of child sex tourism.¹⁶⁹

The tourism private sector and the children's rights non-governmental organizations have adopted a Code of Conduct, with the objective of preventing the sexual exploitation of children at tourism destinations.¹⁷⁰ Companies interested in the endorsement of the code have to sign an 'agreement form' and commit themselves to implement the following measures:

To establish a corporate ethical policy against commercial sexual exploitation of children; to train the personnel in the country of origin and travel destinations; to introduce clauses in contracts with suppliers stating a common repudiation of sexual exploitation of children; to provide information to travelers through catalogues, brochures, in-flight films ticket-slips and websites, to provide information to local 'key persons' at destinations; and to report annually.¹⁷¹

Since its adoption in 2004, over 40 tourism and travel agencies around the world have endorsed it and are committed to prevent child sex tourism.¹⁷²

¹⁶⁷ *Ibid.*

¹⁶⁸ B Prideaux, J Agrusa, JG Donlon & C Curran 'Exotic or Erotic Contrasting Images for Defining Destinations' (2004) 9 (11) *Asia Pacific Journal of Tourism Research* 5 at 15. Research confirms that the way the destination county is advertised, for instance, 'when the erotic is used alongside the exotic as part of destination image', this can be problematic. Authors make it clear that understanding and accepting possible consequences of the path taken is an issue that needs to be taken seriously by all those who are managing the tourism industry.

¹⁶⁹ White *op cit* note 156 above at 901.

¹⁷⁰ *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism* (Hereinafter 'the Code') (2004) available at www.childtrafficking.com/content/library/ (accessed 17 December 2008) The code is managed by a steering committee composed of: World Tourism Organization, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) International, Interpol, International Hotel and Restaurants Association, Tourism Authority of Thailand, Embrateur, Tour Operation's Initiative for Sustainable Tourism Development, Federation of International Youth Travel Organization, Japan committee for UNICEF.

¹⁷¹ The Code *op cit* note 170 above at 16.

¹⁷² *Ibid* at 43.

The tour operators and their umbrella organizations, travel agents, hotels, airlines and all those agencies involved in the tourism industry on the African continent should consider endorsing the code and implement the measures contained therein. Furthermore, African nations must not only enact comprehensive criminal legislation protecting children against sexual abuse but sign multilateral and bilateral agreements with sending countries to facilitate the arrest, collection of evidence and if appropriate, the extradition of offenders.¹⁷³

3.3.3. Domestic Work

In most African countries children as young as nine are trafficked for domestic servitude either internally or internationally to other countries where the demand for cheap, low-skilled labour is growing.¹⁷⁴ Studies conducted by the ILO to determine the scope of exploitation of children in domestic labor, estimate that more girls under sixteen are exploited in domestic work than in any other category of child labour on the African continent and most of them could be victims of trafficking.¹⁷⁵ These children are subjected to heinous forms of abuse and exploitation, given that they are confined in private homes hidden from the eye of the public.¹⁷⁶ Abuses against trafficked children for domestic work include: physical, psychological and sexual abuse; forced confinement in the workplace; non-payment of wages and excessively long working hours with no day of rest (the majority work fourteen to eighteen hours per day, without breaks, seven days a week).¹⁷⁷ Other human rights abuses include ‘no access to information about sexual and

¹⁷³ S Jones *The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Court* (2006) available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 68.

¹⁷⁴ B Anderson & JO Davidson *Trafficking: A Demand Led Problem?* (2004) Save the Children available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 30); see also Human Rights Watch: *Swept under the Rug: Abuses against Domestic Workers around the World* (2006) 18 (7 (C)) Human Rights Watch available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 1. See also Human Rights Watch *Inside the Home, Outside the Law: Abuse of Child Domestic Workers in Morocco* (2002) 17 (12 (E)) Human Rights Watch available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 1.

¹⁷⁵ ILO *Child Labour: Tolerate the Intolerable* (1996), cited by Human Rights Watch Ibid at 2.

¹⁷⁶ Human Rights Watch op cit note 166 above at 1.

¹⁷⁷ Several studies confirm these shocking revelations. Human Rights Watch op cit note 168 above at 1. Human Rights Watch: *Always on Call: Abuse and Exploitation of Child Domestic Workers in Indonesia* (2005) 17 (7 (C)). Human Rights Watch op cit note 166 above at 1. Human Rights Watch: *Bottom of the Ladder: Exploitation and Abuse of Girl Domestic Workers in Guinea* (2007) 19 (8 (A)) at 61. Tulir: *Abuse*

reproductive rights, inadequate standard of living, restrictions on freedom of movement and communication and restriction on the right to practice one's faith.¹⁷⁸

The reason behind the trafficking of girls for domestic work in most African countries is their vulnerability to exploitation; children work without contestation, are very obedient, and are afraid to report abuse or to run away.¹⁷⁹ Generally, African governments exclude domestic work from labour laws altogether, or provide weaker, poorly enforced regulations that leave trafficked children undetected and at the mercy of their exploiters.¹⁸⁰ Most governments assume that domestic work is beyond the scope of regulation.¹⁸¹ To prevent child trafficking for domestic labour African countries should regularize domestic work and put it under labour laws so that labour inspectors may be allowed to conduct spontaneous inspections in private households and report to the police any suspected cases of child trafficking. Further, in terms of law employers must register with the appropriate local authority the name and age of each domestic worker working in their homes and must cooperate with labour inspectors.

In summary, point 2.3 analyzed trafficking of children for sexual exploitation, child sex tourism and for domestic work. Dealing with child sexual exploitation first, it has been shown that prostitution and trafficking are inseparable and should be addressed by the same laws. Three legislative perspectives are taken in the world, namely the liberal approach, incriminatory approach and abolitionist approach. Most African countries adhere to the incriminatory approach which is characterized by incrimination of children in prostitution. It is recommended that African countries develop measures aimed at arresting mainly male buyers and treat child prostitutes as victims who need assistance.

Secondly, it has been highlighted that child sex tourism devastates the lives of millions of children on the African continent. It is recommended that African countries enact and

among Child Domestic Workers: A Research Study in West Bengal (2006) Save the Children available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 19.

¹⁷⁸ Amnesty International *Indonesia: Exploitation and Abuse. The Plight of Women Domestic Workers* (2007) at available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 36.

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid* at 1.

¹⁸¹ *Ibid.*

enforce, through bilateral or multilateral cooperation where necessary, legislation incriminating all forms of sexual exploitation of children. Lastly, many children are trafficked for domestic work on the African continent and are subjected to abuse, exploitation and slavery like practices. It is recommended that African countries regulate domestic work and empower labour inspectors to assist the police in the identification of trafficked children. The following point discusses factors that make children vulnerable to trafficking.

3.4 Addressing Factors that make Children Vulnerable to Trafficking

As stated above, child trafficking cannot be prevented without addressing factors that make children vulnerable to trafficking such as poverty, underdevelopment, corruption, illiteracy and lack of equal opportunities.¹⁸² In this dissertation the emphasis is put only on child poverty and corruption, the first being the main cause of child trafficking in Africa and the second the grease that keeps the trafficking machine moving smoothly on the African continent, as it is shown below.

3.4.1 Corruption

3.4.1.1 Definition

Given the complexity of the crime of corruption, the United Nations Convention on Corruption does not define the word ‘corruption’ but establishes the acts that constitute ‘bribery offences’:¹⁸³ offering, promising or giving a bribe to a national public official (article 15(a)); requesting, soliciting, receiving or accepting a bribe by a national public official (article 15(b)); bribery of foreign public officials (article 16 (1)); trading in influence (article 18); embezzlement, misappropriation or other diversion of property by a public official (article 17); abuse of functions, illicit enrichment (respectively Articles

¹⁸² Article 9 (4) of the Palermo Protocol.

¹⁸³ Organization for Economic Co-operation and Development (hereinafter OECD) *Corruption: A Glossary of International Standards in Criminal Law* (2008) available at www.oecd.org/publishing/corrigenda (accessed 10 December 2008) at 26. United Nations Convention against Corruption, adopted and opened for signature, ratification and accession by General Assembly resolution 58/4 of 31 October 2003, entered into force 14 December, 2005.

19 and 20); bribery in the private sector or ‘private to private bribery’ (article 21), embezzlement of property in the private sector (article 22) and concealment of property resulting from corruption (article 24). The United States Agency for International Development defines corruption as the ‘abuse of public or private office for personal gain.’¹⁸⁴ This definition is comprehensive and useful for policy development, awareness-raising, elaboration of anti-corruption strategies, and implementation of corruption prevention measures.¹⁸⁵

3.4.1.2 How Does Corruption Contribute to Child Trafficking?

Research demonstrates that most foreign children exploited in prostitution in different African countries and in some developed nations are from third world countries in general and African nations in particular.¹⁸⁶ The question that arises then is how trafficked victims manage to cross numerous borders so easily or find their way to developed countries whereas, under normal circumstances, it is very difficult for the average African, for instance, to obtain a visa to travel to Europe or North America.¹⁸⁷ There should possibly be some corruption taking place between the traffickers and certain government institutions; children or girls could not have been successfully crossing the various international borders without being apprehended.¹⁸⁸ The experience in Madagascar has proved clearly that corruption in government officials, police, prosecutors, immigration officials and judges is the main cause of sustainability of child trafficking on the continent.¹⁸⁹ Corruption is an important contributor to flourishing of trafficking.¹⁹⁰ Data suggests that corruption is one of the most important expenses on the

¹⁸⁴ United States Agency for International Development *Anti-corruption Strategy* (2005) available at http://search.sabinet.co.za_web2_authorizesessionid=0&bad=ejour_ejour_badsearch.htm&portal=ejournal&style=ejour&next=images_e (accessed 12 December 2008) at 8.

¹⁸⁵ *Ibid.*

¹⁸⁶ TIP report 2008 *op cit* note 2 above at 52-192. See also O Agbu ‘Corruption and Human Trafficking: the Nigerian Case’ (2003) 4 (1) *West Africa Review* 1 at 7.

¹⁸⁷ *Ibid.* The author reports that in Bosnia, Human Rights Watch found full proof of visa and immigration officials visiting brothels for free sexual services in exchange for keeping a blind eye on the fake documents produced by traffickers to facilitate the transportation of victims through the country.

¹⁸⁸ *Ibid.*

¹⁸⁹ See TIP report *op cit* note 2 above at 171.

¹⁹⁰ PACO *Trafficking in Human Beings and Corruption* (2002) available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 8.

budgets of traffickers.¹⁹¹ Corruption can take place before, during and after the actual trafficking process, which means that ‘corruption is not limited to countries of origin and transit countries, but also facilitates the continued exploitation of trafficking victims once at destination.’¹⁹²

Anti-trafficking efforts and the rule of law are undermined by corruption in many African countries and as a result trafficking in children remains a ‘low – risk, high profit crime.’¹⁹³ Traffickers endeavor to corrupt police, visa officers or embassy staff, border control, immigration services, local officials, intelligence and security services, and armed forces (national and international).¹⁹⁴ The private sector (travel agencies, airlines, transportation sector and financial institutions) and persons, groups and parties with influence, are also targeted.¹⁹⁵ Once bribed, these officers may act passively (turning a blind eye on trafficking), or actively participate in trafficking in human beings.¹⁹⁶ Sometimes high-level servants or government leaders get involved in trafficking or are corrupted mainly due to greed or the desire to accumulate wealth.¹⁹⁷ On the African continent corruption is caused by a diversity of factors, including bad governance, political instability, wars, inadequate legislative system, a malfunctioning judicial system, inefficient and rigid administration system, poverty, greed and moral deficiency.¹⁹⁸ Corruption impacts on the economic development (for example, public officials and civil

¹⁹¹ *Ibid.*

¹⁹² United Nations Global Initiative to Fight Human Trafficking *020 Workshop: Corruption and Human Trafficking: The Grease that Facilitates the Crime* (2008) available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 3.

¹⁹³ *Ibid* at 5. See also PACO *op cit* note 190 above at 8.

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*

¹⁹⁷ H Kyambalesa ‘Corruption: Causes, Effects and Deterrents’ (2006) 36 (2) *Africa Insight* 102 at 104. Research done by PACO confirms that ‘bribes and other advantages do not fully remain with the immediate recipient officials but flow up the command chain to senior officials and decisions makers.’ Furthermore, it has been found, especially in south-eastern Europe, that police officers could make second salaries as ‘security guards’ in clubs and bars; they could warn pimps before raids; they could provide help to traffickers in the course of investigation, for instance, by deporting victims before giving testimony, or they could collaborate with pimps to put victims who have been arrested or are under protection back on the street so that they can be re-trafficked or are prevented from giving testimony.

¹⁹⁸ *Ibid* at 108. See also M Hussein ‘Combating Corruption in Malawi: An Assessment of the Enforcing mechanisms’ (2005) 14 (4) *African Security Review* 91 at 101; see also DM Hughes ‘The Corruption of Civil Society: Maintaining the Flow of Women to the Sex Industries’ (2002) available at www.childtrafficking.com/content/library/ (accessed 20 October 2008) at 4.

servants can engage in ‘self-remunerating activities’ rather than ‘socially productive activities’); leads to violation of human rights and tarnishes the image of most African countries.¹⁹⁹ All these factors that corruption can cause are among the root causes of trafficking in children.²⁰⁰

3.4.1.3 Combating Corruption in African Countries

According to UNGIFT, first actions should be remedial. These include ‘good governance, sustained political will, zero tolerance, stream lessen of cumbersome bureaucratic procedures, provision of adequate remuneration to civil servants and public officials, compulsory ethics education and provision for an anti-graft hotline.’²⁰¹ Furthermore, USAID emphasizes transparency, accountability, fraud awareness training for relevant public services and supervision opportunities for civil society and the media.²⁰² The ratification and implementation of regional and international instruments on corruption can help to combat corruption across national and international boundaries.²⁰³

African countries need to learn some lessons from Botswana’s anti -corruption strategies. Botswana has been ranked the country with the lowest level of corruption on the continent for the past four consecutive years.²⁰⁴ The government prioritized the issue of

¹⁹⁹ Kyambalesa *op cit* note 197 above at 110. See also A Faull: *Corruption and the South African Police Service: A Review and its Implications* (2007) Institute for Security Studies available at [http - search.sabinet.co.za_web2_authorizesessionid=0&bad=ejour_ejour_badsearch.htm&portal=ejournal&style=ejour&next=images_e](http://search.sabinet.co.za_web2_authorizesessionid=0&bad=ejour_ejour_badsearch.htm&portal=ejournal&style=ejour&next=images_e) (accessed 15 December 2008) at 1.

²⁰⁰ UNGIFT *op cit* note 192 above at 5.

²⁰¹ *Ibid* at 112.

²⁰² USAID *op cit* note 184 above at 18.

²⁰³ Regional and international instruments relevant to African countries include: the African Union Convention on Preventing and Combating Corruption (Maputo, Mozambique 11 July, 2003, entered into force 05 August, 2006); the SADC Protocol against Corruption (adopted 14 August, 2001, entered into force 06 July, 2005) It is designed to ‘(a) promote the development of anti-corruption mechanisms at the national level, (b) promote co-operation in the fight against corruption by national governments, and (c) harmonize anti-corruption national legislation in the region’; the Accra Declaration on Collaboration against Corruption (assented to in 2001 by members of the Economic Community of West African States (ECOWAS)) and the United Nations Convention against Corruption.

²⁰⁴ Transparency International Corruption Perception Index (TICPI) has consistently listed Botswana as the least corrupt African country since 2001 available at www.transparency.org/policyresearch/surveys_indices/cpi (accessed 9 January 2009). Wikipedia (the free encyclopedia on line) defines Transparency International as ‘an international non-governmental organization addressing corruption. It is widely known for producing its annual corruptions’ index, a comparative listing of corruption worldwide.’ Available at en.wikipedia.org/wiki/trasparenacyinternational (accessed 10 January 2009).

‘ethics and corruption’ and stressed the importance of a long-term strategy, hence, the establishment of the ‘Directorate on Corruption and Economic Crime’.²⁰⁵ To achieve its objectives the DCEC has adopted and implemented three strategies of combating corruption, which are: ‘public education, corruption prevention and detailed investigation.’²⁰⁶ The DCEC’s investigations are sourced from reports it receives from public (through its hotline telephone number), government departments or collected directly by the directorate itself through its intelligence department.²⁰⁷ Olowu states that the DCEC is a well funded organization and has adequate funds to attract and retain the best personnel.

In spite of its achievements, the DCEC is also faced with a number of challenges. Some of them are manpower problems (shortage of experts to fill in some senior positions) and institutional problems (courts are not able to respond adequately and promptly to cases brought before them). These problems can be overcome by organizing specialized training or academy for the directorate’s personnel and by creating a specialized court dealing only with corruption cases. Some lessons are to be learned from Botswana’s anti-corruption strategies. Anti-corruption efforts need to target both urban and rural populations.²⁰⁸ The institution which co-ordinates the fight against corruption needs to be independent and report to parliament rather than to government.²⁰⁹ Botswana is fortunate in that its civil service is relatively well paid while in many other African countries corruption is institutionalized in various public sectors.²¹⁰ The whole point here is that

²⁰⁵ G Gbadamosi ‘Corruption Perception and Sustainable Development: Sharing Botswana’s Anti-Graft Agency Experiences’ (2006) 9 (2) *SAJENS NS* (not decoded) available at http://search.sabinet.co.za/web2/authorize/sessionid=0&bad=ejour_ejour_badsearch.htm&portal=ejournal&style=ejour&next=images_e (accessed 24 November 2008) 262 at 266. The DCEC was established by act of parliament in 1994 (cited as the Corruption and Economic Crime Act 1994).

²⁰⁶ *Ibid.* It goes without saying that the DCEC has some limitations. It seems that only lower cadre citizens are investigated and tried for corruption offences but not the top civil servants and government officials. This violates the principle of equality of all before the law. If the law is seen as being applied unfairly it soon ceases to be ‘heeded by all’.

²⁰⁷ B Olowu ‘Combating Corruption and Economic Crime in Africa-An Evaluation of the Botswana Directorate of Corruption and Economic Crime’ (1999) 12 (7) *International Journal of Public Sector Management* 604 at 609.

²⁰⁸ *Ibid.* at 270. Different means need to be used ‘including but not limited to brochures, newsletters, promotional press releases, sign posts, public awareness, surveys, talks and presentations, radio and television, trade fairs and moral education.’

²⁰⁹ *Ibid.* at 271.

²¹⁰ Olowu *op cit* note 207 above at 612.

civil servants in many African countries endeavor to secure incomes to supplement the meager salaries offered by the governments.²¹¹ Madagascar, with the effective enforcement of its comprehensive anti-trafficking law, has managed to investigate, suspend and arrest many corrupt public officials involved or facilitating trafficking in children.²¹²

In summary, corruption is one of the explanations of, and the reasons for, the sustainability of trafficking in children. It undermines not only the rule of law but also all efforts to eradicate trafficking in children. African countries should ratify and implement relevant international conventions, follow recommendations of some international organizations specializing on corruption, such as UNGIFT and USAID, and learn some lessons from Madagascar's and the Botswana's anti-corruption agencies.

3.4.2 Child Poverty

3.4.2.1 Defining Child Poverty

One can distinguish between absolute poverty and relative poverty.²¹³ At the World Summit for Social Development, absolute poverty was defined as 'a condition characterized by severe deprivation of basic human needs, including food, safe drinking water, sanitation facilities, health, shelter, education and information.'²¹⁴ Both income and access to social services were considered.²¹⁵ A relative approach to poverty is broader than the absolute approach. It takes in consideration not only the absolute lack of resources necessary for survival, but also inequalities or differences in a society.²¹⁶ Each of the approaches (absolute poverty and relative poverty) has its deficiencies but that

²¹¹ *Ibid.*

²¹² TIP report *op cit* note 2 above at 171.

²¹³ A Leatt 'Child Poverty – its Meaning and Extent' in J Monson, K Hall, C Smith & MS King, ed., *South African Child Gauge* (Cape Town, Children's Institute 2006) available at www.ci.org.za/site/frames.asp?section=gauge (accessed 08 August 2008) 19 at 20.

²¹⁴ World Summit for Social Development. Programme of Action of the World Summit for social development: Youth Development Indicators. Copenhagen (1995) available at www.un.org/isa/socdev/unyin/youthindicators2.htm (accessed 10 January 2009).

²¹⁵ *Ibid.*

²¹⁶ Leatt *op cit* note 213 above at 20.

discussion is beyond the scope of this analysis.²¹⁷ In this study child poverty is approached in an absolute and multi-dimensional way, based on the World Summit for Social Development definition given above.²¹⁸

3.4.2.2 *Child Poverty and Trafficking*

The main cause of trafficking in children is the extreme lack of resources and high unemployment of caregivers in many African societies.²¹⁹ Families have no valuable resources and incomes are insufficient.²²⁰ In the farm-areas, agriculture which used to be the main occupation is now less profitable and land has become insufficient for all, given the augmentation of the population.²²¹ In some African countries armed conflicts have led to destruction of economic systems resulting in the extreme impoverishment of populations.²²² In many countries in Africa, the spread of HIV/AIDS pandemic has left millions of children orphans, and compelled to support themselves.²²³

Eradicating trafficking in children also implies addressing the causes of poverty, among them 'lack of, or inadequate economic growth, inequitable allocation of resources, lack of social security, and absence of gender equality, democracy and respect for human rights.'²²⁴ From a human rights perspective, it is believed that governments are responsible for ensuring that rights guaranteed to all are respected, enforced and enjoyed in an equal way by all.²²⁵ Child trafficking is a violation of children's rights to protection

²¹⁷ For more information, see Leatt *op cit* note 213 above at 20.

²¹⁸ See also M Noble, G Wright & C Cluver 'Developing a Child Focused and Multi-dimensional Model of Child Poverty for South Africa' (2006) 12 (1) *Journal of Children & Poverty* 39 at 42.

²¹⁹ S Shield *Poverty and Trafficking in Human Beings through Swedish International Development Cooperation* (2003) Department for Global Development available at www.childtrafficking.com/content/library/ (accessed 01 October 2008) at 15.

²²⁰ Human Rights Watch *Charged with Being Children: Egyptian Police Abuse of Children in Need of Protection* (2003) available at www.hrw.org/reports/2003/egypt0203.pdf (accessed 05 June, 2009) at 11.

²²¹ Shield *op cit* note 219 above at 15.

²²² *Ibid.*

²²³ *Ibid.* Child household is such a serious social problem that it has been given legal recognition in some countries like South Africa.

²²⁴ *Ibid* at 35.

²²⁵ *ibid*

and support from public powers.²²⁶ Poverty in all its manifestations (absolute or relative) has, as consequence, leaving children powerless and vulnerable to trafficking.²²⁷

African nations should take some measures to prevent and fight child poverty. These should include introducing free basic education for all children and ensuring that vulnerable groups such as (girls, children with disabilities and refugee children) are given special attention.²²⁸ In addition to primary education, comprehensive education leading to employment is indispensable. Further, promoting gender equality and children's rights (translation of the CRC into domestic legislation) should be a priority.²²⁹ In this regard, the legislative path taken by the government of South Africa is to be saluted. Children's socio-economic rights (which aim at alleviating child poverty) have been incorporated in the South African Constitution. These socio-economic rights are the rights to basic nutrition, shelter, basic healthcare services and social services.²³⁰ The incorporation of socio-economic rights in the Constitution has compelled the State to conjugate efforts to give effect to these rights.²³¹ These steps include adopting and implementing laws; making available services or programmes necessary to give effect to the right; and elucidating which 'sphere of government' is under obligation of funding, regulating and delivering the services or programmes.²³²

In conclusion, child poverty is the main cause of trafficking because it leaves children powerless and vulnerable to trafficking. African nations need to take measures aimed at alleviating child poverty and addressing its causes. Learning from the South African experience, other African countries must enact laws prioritizing alleviation of child poverty. The incorporation of children's socio-economic rights into South African constitution creates an obligation on the government to give effect to these rights.

²²⁶ *Ibid*

²²⁷ *Ibid* at 37.

²²⁸ *Ibid* at 38.

²²⁹ *Ibid*.

²³⁰ Section 28 (1) of the Constitution 1996 Act 108 (hereinafter the Constitution of South Africa).

²³¹ Leatt *op cit* note 213 above at 11.

²³² *Ibid*.

3.5 Conclusion

The above discussion explored the preventive measures against trafficking in children. Part 3.2 dealt with the demand side of trafficking, focusing on sexual exploitation, child sex tourism and child domestic labour. Article 9.5 of the Protocol establishes a rapport between demand and trafficking and urges States to take appropriate measures to prevent and discourage demand.

Part 3.2.1 has discussed the demand of children for sexual exploitation. It has been argued that trafficking and prostitution are interconnected and they should be addressed simultaneously. The three legislative perspectives taken by States on prostitution have been analyzed, namely the abolitionist approach, the prohibitive approach and the liberal approach. Given that most African countries adhere to the prohibitive approach, it is recommended that they develop strategies of arresting males and consider child prostitutes as victims rather than criminals.

Child sex tourism discussed in part 3.2.2. It devastates the lives of millions of children on the African continent. It is sustained by underdevelopment, poverty, corruption and incapacity of States to protect children. Most sending countries have enacted ET legislation aiming at tracking down their nationals who perpetrate sexual crimes against children abroad. Some of these ET laws are reported to be ineffective because they are either defective, the law enforcement agencies are faced with evidentiary challenges or governments are not willing to enforce these laws. African countries are encouraged to adopt and enforce laws protecting children against sexual crimes and to enter into cooperative agreements with sending countries in order to arrest more offenders.

Part 3.2.3 dealt with child domestic work. Many children are trafficked for domestic work on the African continent. African countries need to regulate domestic work and empower labour inspectors to conduct spontaneous inspections in private households and report to the police any suspected cases of child trafficking.

Part 3.3 discussed some factors fostering child trafficking, namely corruption and poverty. Corruption is the factor that keeps the trafficking machine moving. Traffickers are targeting to corrupt not only public services but also the private sector and all people and organizations that can have some influence on their business. African countries should follow the recommendations of USAID and UNGIFT on corruption and learn some lessons from Madagascar's and Botswana's anti-corruption agencies.

The last part discussed child poverty on the African continent. African countries should prioritize addressing the causes of child poverty. Furthermore it is recommended that they follow the path taken by South Africa in the fight against child poverty. It is one of the rare countries in the world to incorporate children's socio-economic rights in the constitution.

Chapter Four: Reactive Solutions after Trafficking for African Countries²³³

4.1 Introduction

It has been mentioned in the previous chapter that the quasi-totality of African countries are simultaneously countries of origin, transit and destination of child victims of trafficking.²³⁴ Among thousands of criminals involved in trafficking internally and internationally, African countries have arrested and prosecuted 123 and only 63 were convicted in 2007/2008.²³⁵ The lack of relevant legislation, poor law enforcement, non usage of appropriate investigative methods, absence of specialized units and lack of relevant training of actors involved in the fight against child trafficking explain the low rate of arrest, prosecution and conviction of traffickers on the African continent.²³⁶ Most African governments rely on the ordinary criminal law to fight trafficking in children.²³⁷

Trafficking is hard to locate precisely and to stop because the traffickers function in illicit, clandestine and cooperative trafficking confederations.²³⁸ Furthermore, the use of modern technology makes it more complicated than ever before to detect traffickers' activities.²³⁹ Trafficking victims, generally, are in contravention of migration laws, labour laws and prostitution laws. The over-reliance on traditional criminal laws lead African governments to consider victims of trafficking as illegal migrants and subject them to

²³³ Reactive solutions means what countries have to do after trafficking has taken place. The second chapter the emphasis was on the possible measures that African countries could take to prevent child trafficking from taking place. This chapter analyses the possible solutions that African countries can use to arrest more traffickers and rescue child victims after the trafficking crime has been perpetrated.

²³⁴ See part 2.2. above.

²³⁵ TIP report *op cit* note 2 above at 45.

²³⁶ *Ibid* at 52-192. See also The United Nations Office on Drugs and Crime *Combating Trafficking in Persons: A 2005 Assessment of the Laws and Measures Relevant to Human Trafficking in Selected SADC Countries Malawi, Mozambique, South Africa, and Zambia* (2007) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009) at 85-87.

²³⁷ *Ibid*. Very few countries have passed a stand alone comprehensive anti-trafficking statute. And those that have passed these laws, such as Cameroon, show minimal efforts to enforce them. The continent is characterized by very low rates of prosecution and conviction of trafficking offenders according to the TIP report.

²³⁸ R Stevens 'The Trafficking of Children: A Modern Form of Slavery, Using the Alien Tort Statute to Provide Legal Recourse' (2006) 5 *Whiter Journal of Child and Family Advocacy* 645 at 647.

²³⁹ See part 1.3 above.

summary deportation or arrest and prosecution as illegal workers and prostitutes.²⁴⁰ Their incarceration or deportation jeopardizes the process of detection of traffickers' activities or of securing the conviction of those arrested.

This chapter presents some solutions to child trafficking on the African continent. Each part starts with an overview of current reactive measures used in most African countries to counterbalance the crime of human trafficking in general and child trafficking in particular. This is followed by the identification of shortcomings in the current practices and the proposal of solutions. Most of the suggested solutions stem from international anti-slavery laws and in particular from the Palermo Protocol and best practices used in other countries around the world engaged in the fight against human trafficking. This chapter begins with the discussion of the importance of enacting anti-trafficking laws by African countries. The training of all the actors involved in the criminal justice system on trafficking issues and the investigation of trafficking cases are discussed. Interviews with trafficked children, prosecution of traffickers and care and support of child victims of trafficking are also analyzed.

4.2 Anti-Trafficking Legislation

This part discusses the content of an anti-trafficking law model suggested by the Palermo Protocol. Guidelines on the elements that such a law must encompass are outlined in the Palermo Protocol. Other elements are to be found in the Transnational Convention and United Nations human rights conventions analyzed in chapter two above. Given that the prevention component has been discussed in the previous chapter, the exploration below stresses only the prosecution and protection measures which should be incorporated in such laws.

Few African countries have enacted legislation prohibiting all forms of child trafficking.²⁴¹ Unfortunately, these countries' anti-trafficking law enforcement efforts are

²⁴⁰ For instance, it is said that South Africa is not developing procedures for victim protection, including screening of undocumented immigrants for signs of victimization before deportation.

modest, resulting in ineffective protection of children.²⁴² The remaining countries do not have anti-trafficking laws. They possess provisions in their respective constitutions and various statutes that can be used to prosecute trafficking cases. Unfortunately, factors such as lack of political will, weak law enforcement and complexity of trafficking impede these countries from producing positive results.²⁴³

The main factor explaining the incapacity of most African countries to fight child trafficking is the lack of comprehensive anti-trafficking legislation and/or weak law enforcement.²⁴⁴ With only few African countries with anti-trafficking laws by 2008, the situation is far from getting better. The situation is different in African countries that have enacted an anti-trafficking legislation. Madagascar, for instance, which has a comprehensive anti-trafficking legislation, is able to crack down on local officials directly or indirectly involved in trafficking and to apprehend more trafficking suspects.²⁴⁵ Government officials, judicial officers and prosecutors are removed, suspended and tried for their participation in trafficking and many traffickers have been arrested.²⁴⁶ Therefore, it is urgent that all African governments enact comprehensive anti-trafficking laws and enforce them. However, lack of specific anti-trafficking legislation cannot justify lack of action. Until specific domestic legislation on trafficking is passed, existing United Nations treaties and African Union laws as well as national provisions

²⁴¹ African countries that do have specific anti-trafficking laws prohibiting all forms of child trafficking are Benin, Burkina Faso, Cameroon, Djibouti, Ghana, Guinea, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Nigeria, Senegal, Sierra Leone, Togo and Zambia.

²⁴² Protection Projects *op cit* note 108 above; United Nations Office on Drugs and Crime *Measures to combat Trafficking in Human Beings in Benin, Nigeria, Togo* (2006) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009), TIP report *op cit* note 2 above at 52-229, TD Truong & MB Angeles *Searching for Best Practices to Counter Human Trafficking in Africa: A Focus on Women and Children* (2005) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009) at 23.

²⁴³ The United Nations Office on Drugs and Crime *Combating Trafficking in Persons: A 2005 Assessment of the Laws and Measures Relevant to Human Trafficking in Selected SADC Countries: Malawi, Mozambique, South Africa and Zambia* (2007) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009); Anti-Slavery International *Report of the Eastern and Horn of Africa Conference on Human Trafficking and Forced Labour* (2005) available at www.childtrafficking.com/content/library/ (accessed 12 June, 2009); TIP report *op cit* note 2 above at 52-229.

²⁴⁴ C Allais *An Overview of Human Trafficking in Sub-Saharan Africa* (2006) available at www.childtrafficking.com/content/library/ (accessed 12 June 2009); see also United Nations Office on Drugs and Crime *op cit* note 238 above.

²⁴⁵ TIP report *op cit* note 2 above at 171.

²⁴⁶ *Ibid.*

concerning slavery and work under slavery like conditions can be used to fight child trafficking on the African continent.²⁴⁷

A model of a comprehensive anti-trafficking law that is to be recommended for African countries is presented below. At national level comprehensive legislation would encompass, in addition to the preventive measures analyzed in chapter two above, prosecution and protection measures. Prosecution strategies include: identification, investigation and conviction of public officials and all actors who are involved in this crime; creation of trafficking as a distinct crime with severe sanctions to discourage any criminal motives; and provision of appropriate training to law enforcement units.²⁴⁸ Extraterritoriality, extradition and mutual legal assistance must be incorporated in the legislation.²⁴⁹ Traffickers' assets must be confiscated in appropriate cases and used to compensate victims of trafficking.²⁵⁰

Protection measures include: protection of victims from 'summary deportation', and from prosecution for crimes committed as a direct consequence of being trafficked.²⁵¹ Reintegration into social life and development of programmes aimed at mental, physical and psychological healing of victims need to be prioritized.²⁵² Furthermore, victims of trafficking are to be protected from further exploitation and accorded legal and social assistance for the duration of any proceedings against traffickers.²⁵³ They must be safely repatriated to their countries of origin and provided with legal alternatives to repatriation if their return would pose a danger to their safety.²⁵⁴

In conclusion, child trafficking is a relatively new phenomenon that cannot be eradicated using ordinary criminal laws. To be able to eradicate trafficking in children African

²⁴⁷ Fischer correctly notes that African countries without anti-trafficking legislation can avail themselves of international standards as a means of interpreting national law, even if these standards are not directly applicable or legally binding.

²⁴⁸ Article 5 of the Palermo Protocol.

²⁴⁹ Article 10 *Ibid.*

²⁵⁰ Article 12 and 14 of the Tans-National Convention.

²⁵¹ Article 6 of the Palermo Protocol; see also Kreston *op cit* note 8 above at 42.

²⁵² Article 6 of the Palermo Protocol.

²⁵³ *Ibid.*

²⁵⁴ Article 8 of the Palermo Protocol.

countries should enact anti-trafficking laws. These laws must encompass measures aimed at preventing, prosecuting and protecting child victims of trafficking as recommended in the Palermo Protocol. However, the enactment of laws needs to be accompanied by adequate enforcement. The latter presents a challenge for many African countries in which trafficking phenomenon and laws addressing it are quite foreign. Thus, the training of all the actors involved in the criminal justice system is imperative.

4.3 Improving the Understanding of Child Trafficking Phenomenon by Criminal Justice System Agencies

This part explores the training of criminal justice system agencies on the anti-trafficking laws. Because human trafficking in general and child trafficking in particular are relatively new issues in most African communities the need for training the front line officers and the entire criminal justice system on anti-trafficking laws is indispensable.²⁵⁵ Currently, some African countries provide training on trafficking to relevant agencies on an irregular basis.²⁵⁶ Some others collaborate with non-governmental organizations to provide training to police, prosecutors, immigration agents and judicial officers while in some countries the training of law enforcement agencies is completely the prerogative of international organizations.²⁵⁷ As a result those concerned with detecting and prosecuting trafficking cases are generally less aware of its manifestation or of the existence of anti-trafficking laws.²⁵⁸

From the above, it may be inferred that the training of law enforcement agencies, prosecutors and judicial officers on trafficking is modest on the African continent. When new laws are enacted, police officials, prosecutors and judges need to be informed in detail and trained on how to apply them for positive results. They should have a good

²⁵⁵ HJ Clawson, N Dutch & M Cummings *Law Enforcement Response to Human Trafficking and the Implications for Victims: Current Practices and Lessons Learned* (2006) available at www.childtrafficking.com/content/library (accessed 18 July 2008) at VII.

²⁵⁶ See Protection Projects *op cit* note 108 above. The TIP report mentioned some countries, such as Madagascar who have made efforts to provide training to its agencies on trafficking.

²⁵⁷ See UNESCO *Human Trafficking in Mozambique: Root Causes and Recommendations*; See also UNESCO *Human Trafficking in South Africa: Root Causes and Recommendations*; UNESCO *La Traite des Personnes au Benin: Facteurs and Recommendations*; all available at www.childtrafficking.com/content/library (accessed 12 June 2009).

²⁵⁸ TIP report *op cit* note 2 above at 52-229.

understanding of the human trafficking phenomenon and laws, and be able to distinguish human trafficking from other types of crimes such as smuggling of migrants. The importance of this differentiation is that people who have been trafficked are victims of a serious crime who require special protection and treatment. They cannot be prosecuted for crimes committed directly as a result of being trafficked. However, smuggled persons are generally in violation of immigration laws and subject to deportation. Some of the first aspects which will require clarification through training are the understanding of the definition of trafficking and the difference between trafficking in human beings and smuggling of migrants.²⁵⁹ Elements that help distinguish smuggling from trafficking are:²⁶⁰

	Consent	Exploitation	Trans-national
Trafficking	Trafficked persons are individuals who either never consented or whose consent has been rendered meaningless by the coercive deception or abusive action of traffickers.	Trafficking involves the on going exploitation of the trafficked persons in some manner to generate illicit profits for the traffickers	Trafficking may take place intra-country.
Smuggling	Involves individuals who consent to being smuggled and who agreed to pay to obtain an illegal service. The original agreement of achieving an illegal border crossing in exchange for money is respected.	Smuggling ends with the migrants' arrival at their destination	Smuggling is always trans-national.

²⁵⁹ ICMPD *Awareness Training on Trafficking in Human Beings for EU Member States, Accession and Candidate Countries Development of a European Curriculum* (2005) available at www.childtrafficking.com/content/library (accessed 18 July 2008) at 3. According to the United Nations Protocols against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Trans-national Organized Crime (2000) 'Smuggling of migrants' shall mean 'the procurement to obtain, directly, or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident' (article 3 (a)). The United Nations Protocols make a distinction between the crime of trafficking in human beings and the crime of smuggling of persons. Smuggling of persons entails the facilitation of an illegal border crossing and is therefore a violation of the integrity of the State. Smuggling is a crime against the State. Whereas, trafficking in human beings entails gaining financial profit from the exploitation of other people. It is therefore a violation of the rights of the individual.

²⁶⁰ *Ibid.*

According to ICMPD, police officials, prosecutors and magistrates should be able to connect the crime of trafficking in human beings to the national context (country of origin, transit or destination or else a combination of three) and to know the extent of, and the factors facilitating, child trafficking.²⁶¹ Police officials, judges and prosecutors should know the various forms of trafficking, common practices, the trafficking process (recruitment, transportation, transit and exploitation), and the root causes of trafficking.²⁶² Dowell and Prodamiuk note that trafficking is a very traumatizing event. The knowledge of the causes of trauma and its impact upon child victims, the strategies used by child victims to cope with it and how trauma affects their behaviour and responses can help the judges and prosecutors to handle these cases correctly.²⁶³ The experience of violence and long-term exploitation ruins child victims' trust and confidence in others; therefore, they withdraw from social relations, which explain sometimes their hostility and lack of cooperation with rescuers.²⁶⁴

In summary, the enactment of anti-trafficking laws must be followed by the training of law enforcement agencies, prosecutors and judicial officers on the trafficking phenomenon and relevant legislation. After understanding anti-trafficking laws, law enforcement agencies in African countries must also be trained on the investigative strategies of trafficking cases as discussed under the following point.

4.4 The Investigation of Child Trafficking in Africa

This part focuses on the investigation of child trafficking cases and concludes with recommendations for African countries. Three investigative methods are discussed, namely reactive investigation, proactive investigation and disruptive investigation. Raids and international cooperation are also explored as effective methods for enhancing the detection of trafficked victims.

²⁶¹ ICMPD *op cit* note 259 above at 6.

²⁶² Clawson mentions correctly that when child victims reach the destination they become active assets for the criminal syndicates as they begin to generate profit for their exploiters.

²⁶³ SNC Dowell & Y Prodamiuk *Anti-trafficking Training Material for Judges and Prosecutors: Background Reader (ICMPD)* (2006) at 39.

²⁶⁴ G Fischer, MB Fischer & C Diiching *Neue Wege in der Opferhilfe Ergebnisse und Verfahrensvorschläge aus dem Kölner Opferhilfe Modell* (Köln, 1998) at 42 cited by Dowell & Prodamiuk *op cit* note 262 above at 39.

4.4.1 Analysis of the Investigative Methods Used Around the World

Most African countries are criticized for not following procedures to identify trafficked victims among vulnerable groups, such as girls in prostitution, street children and illegal immigrants subject to deportation.²⁶⁵ The police in most countries lack any mechanism for systematic collection of data concerning arrests, investigations or prosecutions of trafficking offences.²⁶⁶ Victims are inappropriately incarcerated or fined for unlawful acts committed as a direct result of being trafficked and the police, labor inspectors and social welfare officials possess little understanding of the crime or are not viewing it as part of their responsibilities to stop it.²⁶⁷

Investigation of trafficking cases is a challenge for most African countries. According to Newman, ‘carefully analyzing the local problem will help design a more effective response strategy.’²⁶⁸ The problem faced by investigation teams is the hidden nature of the exploitation of trafficked children, which takes place in isolated locations, such as domestic homes and brothels.²⁶⁹ Newman notes that in the case of sexual exploitation, although trafficked children are hidden from public view, the weakness of commercial sexual exploitation is that traffickers must come out of the isolation in order to attract clients, through advertisement for instance.²⁷⁰

Front line officers in different units and functions, namely front-line patrol officers, traffic police and border personnel may come across trafficked children, may patrol areas where exploitation sites are located, may observe, notice and check sites where exploitation takes place. They have been trained, in countries like the US, once in contact

²⁶⁵ See TIP report *op cit* note 2 above at 52-229; see also Protection Projects *op cit* note 108 above.

²⁶⁶ TIP report at 52-229.

²⁶⁷ Human Rights Watch (2007) *Keep your Head Down: Unprotected Migrants in South Africa* available at www.childtrafficking.com/content/library/ (accessed 12 June, 2009) at 5. See TIP report *op cit* note 2 above at 52-229.

²⁶⁸ GR Newman *The Exploitation of Trafficked Women* (2006) available at www.childtrafficking.com/content/library/ (accessed 18 July 2008) at 23.

²⁶⁹ *Ibid.*

²⁷⁰ *Ibid.* Indicators of the presence of trafficked women and venues where they may be found include: ‘buildings with heavy on-premises security, such as barred windows, locked doors and electronic surveillance; and buildings in which women both live and work.’

with suspected trafficked children cases, on how to manage them.²⁷¹ The US have created specialized anti-trafficking units within law enforcement forces.²⁷² The objectives of these specialized units include ‘working collaboratively to identify victims and convict individuals engaged in severe forms of human trafficking, providing for the safety of victims and meeting their needs through quality service provision, and increasing task force presence within the community.’²⁷³ Fruitful results have been reported from this specialization. Depending on the availability of resources, this option can also be commendable for African countries.

The role of police forces in dealing with trafficking cases should consist not only to investigate and produce evidence, but also to assure protection to child victims during the post-identification process.²⁷⁴ Once more, the challenge faced by police officials who come across a trafficked child is that often trafficking cases are not apparent upon first contact. Victims usually provide incomplete or wrong information due to fear and trauma.²⁷⁵ It is necessary to analyze all indicators of trafficking and try to discover if enough signs are present to suspect that the child is a victim of trafficking.²⁷⁶ Effective response to investigation of human trafficking necessitates a collaborative, multi-disciplinary, coordinated and well-planned action. In fact, there are three major

²⁷¹ ICMPD *op cit* note 259 above at 7. Front line officers must know how to identify victims and take appropriate action, such as treating the person as a victim of a serious crime, facilitating the referral of the person to specialized support services, treating the case with confidentiality required by a potential criminal investigation and, if the person is an unaccompanied minor, immediately facilitating the referral to a guardian as prescribed by the CRC.

²⁷² HJ Clawson, N Dutch & M Cummings *op cit* note 255 above at VII.

²⁷³ *Ibid.*

²⁷⁴ ICMPD *op cit* note 259 above at 19.

²⁷⁵ *Ibid.* In accordance with United Nations standards and principles, if some elements indicate that an individual may be the victim of a trafficking scheme, ‘the person should not be detained, charged or prosecuted for the illegality of his/her entry into or residence in countries of transit and destination, or for the involvement in illegal activities, to the extent that such involvement is a direct consequence of their situation as trafficked persons’ (UN OHCHR *Recommended Principles and Guidelines on Human Trafficking* (2007)).

²⁷⁶ *Ibid* at 29. Generic clues are: ‘evidence of persons being controlled, evidence of an inability to move freely or leave the workplace, bruises or other signs of battering and violence, difficulty or inability to communicate in the local language and other languages, transported from other part of the world/State/part of the country, lack of passport, immigration or identification documentation, do not have cash nor access to money, suspicion of fake passport, signs of fear, signs of depression, and insecurity.’

investigative approaches used around the world: reactive investigation, proactive investigation and disruptive investigation.²⁷⁷

Reactive or victim led investigation is used in cases where victims come to the attention of a law enforcement agency. The following responses may be applicable:

immediate intervention against the traffickers in order to rescue other victims, to prevent further potential victims from being entrapped, or to secure evidence that may otherwise be lost or compromised; utilization of the intelligence or statement of the victim or third party as the basis for developing and conducting a proactive or disruptive investigation into the trafficking occurrence; utilization of the intelligence or statement as the basis for an in-depth, intelligence gathering operation into the traffickers.²⁷⁸

Where there is enough evidence to suspect someone of being involved in trafficking, that person should be arrested no matter how marginal his or her role first appears to be.²⁷⁹ In order to maximize the arrest of the suspects and to rescue more victims, the action taken should be quick and well organized.²⁸⁰ Critics to this approach state that reactive investigations are often the least effective option for investigation because of the versatility of victims. For instance, a victim may at first make a statement and promise to testify in judicial proceedings and suddenly withdraws his/her cooperation which can jeopardize the investigation process.²⁸¹

A second approach, namely the proactive approach, consists of initiating the investigation, arrest, and prosecution of traffickers without necessarily relying upon victim's cooperation and testimony.²⁸² Techniques that investigators can use to identify and prosecute traffickers are: 'a combination of intelligence, human and technical surveillance, undercover deployments, even authorized under the law, and standard investigative techniques.'²⁸³ Although the proactive option allows the law enforcement

²⁷⁷ G Gutu *Regional Legal Best Practices in Assistance to Victims of Trafficking in Human Beings* (2007) available at www.childtrafficking.com/content/library (accessed 18 July 2008) at 39-41.

²⁷⁸ *Ibid* at 21.

²⁷⁹ According to Gutu, experience has shown that the major players in any network usually take every precaution to conceal their part in the crime.

²⁸⁰ *Ibid*.

²⁸¹ *Ibid*.

²⁸² Dowell & Prodamiuk *op cit* note 263 above at 96.

²⁸³ Clawson, Dutch & Cummings *op cit* note 255 above at 23.

agencies to take steps to combat human trafficking without the complaints and evidence of the victims, the testimony of the victims will always remain indispensable for a successful prosecution of traffickers.²⁸⁴

A third approach, the disruptive approach is used where the reactive or the proactive approach is impossible. Circumstances allowing the use of the disruptive approach are:

- Where the level of risk to the victims demands an immediate response;
- Where the proactive approach is not viable for operational reasons, such as where geographical and /or topographical features make surveillance on target premises impracticable, or where it is impossible to achieve undercover penetration of the network;
- Where legislative, procedural or resource implications preclude the rise of a proactive approach; and
- Where the disruptive approach provides a faster response to specific complaints from local residents or other affected groups.²⁸⁵

The disruptive approach is criticized for being simply a disruption. It might provide temporarily relief of the situation in that few victims might be rescued, but usually does not solve the problem and often only displaces the problem to another location.²⁸⁶ The success in the use of the disruptive intervention requires more resources and the creation of new multi-agency techniques to cause many daily problems for traffickers and to make it impossible for them carry on with their operations.²⁸⁷

²⁸⁴ *Ibid.* Authors note that ‘Joint investigation team: joint proactive operations tend to be the most effective counter-trafficking approach for law enforcement. Subject to extradition laws and the circumstances of the case, investigators from the origin and destination States can implement a pre-agreed, proactive joint operation whereby the evidence is simultaneously collected in each State with the objective of mounting the prosecution of the traffickers in one of the two countries.’

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.* When dealing with sophisticated transnational organized crimes, article 20 of the Trans-National Convention specifically endorses the investigative techniques of controlled delivery, electronic surveillance and undercover operations if permitted by the basic principles of a State’s domestic legal system. According to Clawson, Dutch & Cummings, these techniques are particularly useful in dealing with sophisticated organized criminal groups because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence.

²⁸⁷ According to Clawson, Dutch & Cummings disruptive activity may also disrupt existing criminal plans and quickly render some previously useful information and intelligence useless. Under certain circumstances, some accused persons may be encouraged to collaborate with law enforcement, as informants, through the use of such things as monetary rewards, immunity from prosecution or a reduction of sentence. Article 26 of the Trans-National Convention recognizes this and requires States parties to consider providing for these possibilities. The specific steps to be taken are left to the discretion of the States.

Dowell and Prodamiuk note that successful prosecution must be based on a combination of proactive, reactive and disruptive investigations.²⁸⁸ Relying only on one of these approaches can be detrimental for the investigation process.²⁸⁹ The use of proactive investigation is commendable in cases where trafficked victims are not willing to report or testify, and thus, it is necessary to corroborate the process with indications resulting from searches, raids in brothels, labour inspections or other investigations.²⁹⁰ The testimony of the victims is vital to the entire investigation, as the victims can provide important details of the trafficking process: traveling details from the country of origin, through countries of transit, to the country of destination, and the role played by different criminal groups.²⁹¹

The use of disruptive methods requires more resources and specialized units; so far it has been used only in developed countries like the US, Canada and Australia and appears expensive for African countries. A combination of the reactive approach and proactive approach has produced positive results in countries like Madagascar. The fight against trafficking in children for sexual exploitation, labour servitude and child sex tourism has been a success for the Malagasy police thanks to the combination of the two above mentioned methods.²⁹² Combining the reactive approach and proactive approach can be recommended for other African countries. Although victims can be rescued and come forward to testify, the State will have overwhelming evidence against potential suspects if corroborated by some material elements.

4.4.2 Raids

Given the clandestine nature of the crime of trafficking in human beings, raids are also recommended to rescue victims and detect trafficking activities. According to the United

²⁸⁸ Dowell & Prodamiuk *op cit* note 263 above at 96.

²⁸⁹ *Ibid.*

²⁹⁰ *Ibid.*

²⁹¹ Effective prosecution requires other sources of evidence. The testimony of the victim may be stronger if prosecution can prove the facts also through other means, such as use of threats by traffickers against victim's family, the abuse of a situation of extreme poverty and the existence of debt bondage.

²⁹² TIP report *op cit* note 2 above at 170.

Nations Inter-Agency Project on Human Trafficking, once a location is suspected to be hosting trafficking activities, raids need to be planned as follows:

The location and property where the victims are believed to be should be mapped out in as much detail as possible to ensure no escape routes are missed. Hiding places for confining victims should be identified in pre-raid investigations; information gathering on potential number of victims and others involved should be gathered as completely as possible prior to rescue; quick follow through is necessary once the search warrants have been obtained, in order to limit the time that information could be leaked; roles and responsibilities of each of the authorities and organizations should be clearly defined and cover all needs.²⁹³

After the raid and depending on the quality of information obtained, the police have to determine what possible charges might be applied.²⁹⁴ Gathering appropriate evidence during a raid is decisive to the success of the case, in order to avoid relying on victims' testimony only.²⁹⁵ Elements of evidence could be 'any documentation, work permits, pay slips, account books, weapons, and taking photographs, as well as witness accounts.'²⁹⁶ To gain the cooperation of victims, the investigation team (which has to be multidisciplinary) must have people able to speak the victim's language and explain to them their rights and the importance of telling the truth.²⁹⁷ Fear of the traffickers and authorities can make it difficult for the child victims to trust even the organizations and people trying to rescue them.²⁹⁸

²⁹³ United Nations Inter-Agency Project on Human Trafficking *Strategic Information Response Network: What Do Lawyers Require to Prosecute Trafficking and Slavery in Thailand? Guidelines from Lawyers to front-line Agencies* (2008) available at www.childtrafficking.com/content/library (accessed 18 July 2008) at 2.

²⁹⁴ *Ibid* at 3.

²⁹⁵ *Ibid*.

²⁹⁶ *Ibid*. Other documents could be tickets, conclusions of the medical assistance body concerning the treatment provided, copies of the contract or of the advertising announcement and the victim's diary of letters.

²⁹⁷ *Ibid*. The obtained answers should be compared with the existent materials and should contribute to the final decision making, which will determine whether the person is a victim of trafficking, a migrant or a subject of the smuggling in migrants.

²⁹⁸ *Ibid*. Trust needs to be gained quickly, requiring skilled professionals with the understanding to gather the required information from the witnesses and potential victims, and the ability to communicate with victims in their own language. See also Gutu *op cit* note 273 above at 36. According to M Wijers & R Haveman *Guidelines on Trafficking in Human Beings for the Criminal Justice Chain in Ukraine* (2006) at 20, several barriers inhibit victims of trafficking from turning to the police and pressing charges especially if they were trafficked for prostitution: 'stigma, fear of reprisals and the criminal justice itself.'

In the light of the prevailing attitudes towards prostitutes, victims do not feel confident that their complaints will be taken seriously and that they will be treated respectfully. They fear that pressing charges or acting

Beside the police, labour inspectors also play an important role in the detection of trafficked children.²⁹⁹ Labour inspectors have the power to enter freely in a work place to carry out inquiries freely, to interrogate persons alone, to examine documents, take samples, make orders with a view to remedying defects and to decide whether it is appropriate to give warnings and advice or to institute or recommend proceedings.³⁰⁰ Cooperation between police and labour inspectors can be fruitful and can lead to the arrest of traffickers.³⁰¹

4.4.3 International Cooperation on Combating Trafficking in Children

Some positive actions are taken by African countries on international cooperation to fight trans-national trafficking. Some of them are mentioned below. A joint anti-trafficking agreement exists between Benin and Nigeria; Burkina Faso, Mali, Togo and Cote D'Ivoire.³⁰² Police chiefs from member States of the Southern African Development Community decided in 2004 to take strong action against child trafficking in the region. The problem with these agreements is that they tend to facilitate the repatriation of trafficked children to the country of origin but do not aim at arresting, repatriating traffickers or confiscating their assets to serve proceedings taking place in another country.

Due to the trans-national element of trafficking in children, international cooperation is vital.³⁰³ Article 19 of the Transnational Convention provides the possibility for States parties to conclude bilateral or multilateral agreements or arrangements in order to set up joint investigation bodies in relation to matters that are the subject of investigations,

as a witness will worsen their existing problems or even create new problems, rather than contributing to a solution.'

²⁹⁹ ILO *Human Trafficking and Forced Labour Exploitation: Guidance for Legislation and Law Enforcement* (2005) available at www.childtrafficking.com/content/library (accessed 18 July 2008) at 49. Actors such as legislative bodies, law enforcement (e.g. police and labour inspectors), the judiciary, independent commissions, employers' and workers' organizations, and NGOs have different expertise in relation to trafficking and forced labour, as well as different abilities to combat these problems. Their cooperation is required in the investigation process.

³⁰⁰ ILO Convention 81: Labour Inspectors Convention, 1947 (No 81).

³⁰¹ ILO *op cit* note 299 above at 50.

³⁰² *Ibid* at 72 and 79.

³⁰³ Gutu *op cit* note 277 above at 25.

prosecutions or judicial proceedings in one or more States.³⁰⁴ Article 10 of the Palermo Protocol provides for the co-operation between law enforcement, immigration and other relevant authorities of States parties. These authorities must co-operate with one another by exchanging information to enable them to determine whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documentation are perpetrators or victims of trafficking in persons.³⁰⁵

States parties must determine 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.³⁰⁶ The international cooperation mechanisms can lead towards detection of organized crimes, of criminal networks, prosecution of offenders, as well as protection of victims.³⁰⁷ According to Gutu, five areas of cooperation are emphasized in bilateral agreements:

1. Request on evidence, setup prior to the rogatory letter submission;
2. Request on performance of certain operative investigation activities such as supervision and interception;
3. Request on rogatory letter enforcement;
4. Arrest and transfer procedures;
5. Extradition process.³⁰⁸

Successful prosecution of traffickers requires exchange of data gathered between the relevant authorities.³⁰⁹ In fact, the commercial characteristics of the crime of trafficking

³⁰⁴ Joint investigation can also be undertaken by agreement on a case-by-case basis when such agreements or arrangements are not available.

³⁰⁵ Article 10 (a) of the Palermo Protocol.

³⁰⁶ Article 10 (c) of the Palermo Protocol. Furthermore, articles 8 and 9 of the Protocol against Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (2000) provide for concrete measures to be taken by States parties in co-operation with other States parties against vessels which the State has reasonable grounds to suspect are engaged in the smuggling of migrants by sea.

³⁰⁷ Gutu *op cit* note 277 above at 25.

³⁰⁸ *Ibid* at 27. Rogatory letter is a form of international cooperation in criminal matters, whereby 'a judiciary authority from another State is requested to carry out on behalf of the first State judiciary activities for a criminal process.' Rogatory letter is enforced on the basis of the legislation of the soliciting State, and may comprise: searches, seizure of objects or written registration, handing of objects or files.

in human beings means that the traffickers are compelled to become involved in one or more of the following: advertising (in the recruitment or exploitation process); signing of lease agreements (safe houses or brothels); transportation; communication, and financial transactions.³¹⁰ All this information can not be available in one country, thus, the importance of international cooperation.

4.4.4 Interviews with Child Victims of Trafficking

Interviews help to determine whether the child is a victim of trafficking or not. Most countries are making inadequate efforts to identify child victims of trafficking among vulnerable groups subject to deportation and other sanctions.³¹¹ The lack of experience in conducting interviews with trafficked children can also result in the low rate of convictions. Interviews with child victims of trafficking must be conducted by personnel trained in trafficking and in conducting interviews with abused children.³¹² Preferably or on the request of the victim, the interviewer should be of the same sex as the victim and the interview must take place in a non confrontational, non-judgmental and professional environment to avoid re-victimization.³¹³ Before starting the interview, the interviewer must ensure that the child victim is willing to participate; questions touching upon the child's privacy, for example, regarding intimate relationships and experiences in prostitution should be avoided.³¹⁴

Questioning of traumatized children should begin only after their stabilization.³¹⁵ Law enforcement officers and persons conducting interviews should be aware of the impact of

³⁰⁹ *Ibid* at 30. According to Wijers & Haveman *op cit* note 298 above at 21, methods of detention, investigation, gathering and interpretation of evidence should minimize interference with victim dignity.

³¹⁰ *Ibid*. According to the author, the data gathering process must comprise both strategic and operational levels.

³¹¹ See point 4.4.1 above.

³¹² Wijers & Haveman *op cit* note 298 above at 29.

³¹³ *Ibid*. If a victim expresses the wish to have a companion, for example a friend or a social worker present during the interview, this wish should be granted. See also Gutu *op cit* note 50 above at 33. The interviewer must ensure the victim is comfortable, and use the obtained information to assess the victim's needs and to determine what form of assistance is appropriate for him/her.

³¹⁴ OSCE *National Referral Mechanisms – Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (2004) available at www.osce.org/documents/odchr/2004/05/2903_en.pdf (accessed 18 July 2008).

³¹⁵ Dowell & Prodamiuk *op cit* note 263 above at 44.

trauma on trafficked children and acknowledge that symptoms such as lack of co-operation, hostility, and incapacity to recall events in detail, errors or subsequent corrections in statements or inventions concerning specific events are likely to happen as a result of the trauma, rather than deliberate decision not to co-operate or to lie.³¹⁶ Research confirms that traumatized children may initially show agitated behaviour, intense fear, helplessness, anger, sadness, horror, denial and they might appear less responsive emotionally, depressed, withdrawn and more detached from their feelings.³¹⁷ Once more, those interviewing them have to take all these factors into considerations to achieve successful results.

In conclusion, the discussion above reveals that the investigation of child trafficking remains a great challenge for most African countries. After having examined three main investigative methods used around the world - reactive investigation, proactive investigation and disruptive investigation - it is concluded that a combination of the proactive method and reactive method is commendable for African countries. Furthermore, it is mentioned that the international cooperation is important for African countries in order to set up joint investigation teams given the trans-national component of some child trafficking cases. Interviews with child victims of trafficking or suspected victims of trafficking should be conducted by personnel trained in trafficking issues and in conducting interviews with children. To achieve this, an investment in human and material resources is necessary. The next point explores the prosecution of traffickers in African countries.

³¹⁶ *Ibid* at 45. Reactions to traumatic events are: Post-Traumatic Stress Syndrome (PTSD) and Dissociation. PTSD occurs when a victim is going through an experience or a series of experiences that is/are so extreme that she/he is unable to comprehend the nature of it/them or accept that it has happened to him/her. Whereas, Dissociation: in the traumatic situation, the elementary senses of the victims are not able to process the experience as an entirety and a reality of her/his life.

³¹⁷ *Ibid* at 45. A child with PTSD may also re-experience the traumatic event by 'having frequent memories of the event, having upsetting and frightening dreams, acting or feeling as if the experience is happening again, developing repeated physical or emotional symptoms when she/he is reminded of the event.'

4.5 The Prosecution of Traffickers on the African Continent

Prosecution aims at convicting the accused and applying the most appropriate sentence taking into consideration the need to combat and eradicate trafficking. Further, it serves as a signal to potential criminals that trafficking is a high risk and low profit business. The discussion below focuses on the prosecution of traffickers.

The continent is characterized by a general lack of transparency in conducting judicial proceedings, low rate of conviction of traffickers and inadequate sentences imposed on traffickers.³¹⁸ Some other countries are doing well in the prosecution of traffickers on the continent.³¹⁹ The criminal justice systems are so designed that if one element is defective the entire system will be unable to produce the expected result.³²⁰ Problems faced by most African countries are the credibility and transparency of criminal justice systems, light punishments for trafficking crimes and the incapacity to protect victims and to encourage them to testify against their traffickers.³²¹ Furthermore, the lack of relevant laws on trafficking, lack of training for prosecutors and judges and inefficient law enforcement agencies can only result in minimal arrest of criminals, poor quality of evidence, and low rate of prosecutions and convictions as it is the case with African countries.³²²

An important basis for efficient prosecution of trafficking suspects is a ‘credible judicial system’.³²³ Credibility is linked to two factors, namely jurisdictional clarity and effective enforcement of sanctions against traffickers.³²⁴ However, judicial authorities need to be

³¹⁸ The United Nations Office on Drugs and Crime (2007) *op cit* note 236 above at 85-87, see also Pearson (2003) Study on Trafficking in Women in East Africa available at www.childtrafficking.com/content/library (accessed 12 June, 2009) at 3. See further United Nations Office on Drugs and Crime (2006) Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo available at www.childtrafficking.com/content/library (accessed 18 July 2008) at 13.

³¹⁹ See TIP report *op cit* note 2 above at 107. Madagascar is mentioned as a country with outstanding results.

³²⁰ Wijers & Haveman *op cit* note 298 above at 11.

³²¹ See Protection Projects *op cit* note 108 above, see also TIP report *op cit* note 2 above at 52-229.

³²² TIP report *ibid*.

³²³ ILO *op cit* note 14 above at 53.

³²⁴ *Ibid*. According to Wijers & Haveman *op cit* note 298 above at 19, the willingness of victims to report to the police and cooperate in criminal proceedings is strongly dependant on their general treatment by the police and judicial authorities, their safety, protection of their privacy and the availability of assistance.

trained, sensitive to trafficking issues and must have appropriate legislative tools to prosecute and pass judgments.³²⁵ The effectiveness of legislation is assessed through the review of the law in the books and the law in action (everyday practice).³²⁶

After establishment of judicial credibility, the following step is to consider the role of the child victim in criminal proceedings.³²⁷ Measures designed to encourage the victims to turn to the authorities should be put in place, such as:

- (i) permission to stay in the country at least for the duration of court proceedings, and possibly permanently, (ii) efficient protection of victims willing to testify and of their families from reprisals by the exploiters both in the country of destination and country of origin of the victim, (iii) measures designed to inform victims and potential victims of measures under (i) and (ii), with due regard to any barriers of language and circumstances of physical confinement of victims.³²⁸

To testify against the perpetrators, the child victim should be in the country where proceedings are conducted.³²⁹ Article 7 of the Palermo Protocol provides that States parties ‘shall consider adopting measures that permit the victim of trafficking to remain on their territory, temporarily or permanently in appropriate cases.’³³⁰ In some States victims receive temporary residence permits only if they are willing to testify against their traffickers in criminal proceedings.³³¹ Some countries give victims a reflection time to decide whether they are willing to testify or not. The victim who does decide to go ahead with the testimony is given a temporary residence permit and the one deciding the contrary is repatriated.³³²

This approach is criticized for not taking into consideration the humanitarian and compassionate factors and the needs of victims.³³³ Indeed, return to the country of origin may not be in the best interest of the child victim and may result in re-trafficking due to

³²⁵ *Ibid.* Other factors associated with judicial credibility are corruption and obstruction of justice.

³²⁶ Wijers & Haveman *op cit* note 298 above at 11.

³²⁷ *Ibid.*

³²⁸ *Ibid* at 40.

³²⁹ *Ibid.*

³³⁰ Palermo Protocol.

³³¹ *Ibid.*

³³² *Ibid.*

³³³ ILO *op cit* note 14 above at 40.

the high vulnerability of the victims. Thus, States parties should consider providing more durable protection to victims.³³⁴ It is the responsibility of the criminal justice system to protect witnesses from possible retaliation by traffickers.³³⁵ Protection measures include ‘police protection, temporary relocation in safe areas, evidentiary rules of protection measures when testifying in court (anonymity, shielding, videoconferencing), moderate financial assistance’.³³⁶ The court may also decide procedural protection, such as: use of child’s pretrial statement instead of in-court testimony; presence of an expert for psychological support; testimony via closed-circuit television or videoconferencing; voice and face distortion; removal of the defendant or the public from the court room and anonymous testimony.³³⁷

The wording of the Palermo Protocol concerning protective measures is weak because it has been drafted as criminal law rather than human rights law.³³⁸ The criminal law provisions in the Protocol contain mandatory language, such as ‘States parties shall’, while the protection and assistance provisions contain weaker terms, such as ‘in appropriate cases’ and ‘to the extent possible’.³³⁹ Despite the weakness of the protection language, governments can rely upon other international documents and regional human rights instruments that obligate them to protect the rights of trafficked persons.³⁴⁰ A law enforcement response may expose victims of trafficking to risk of being deported or else

³³⁴ *Ibid.* By the same token article 8 of the Palermo Protocol provides that ‘1. 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.’

³³⁵ United Nations Office on Drugs and Crime *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (2008) available at www.childtrafficking.com/content/library/ (accessed 12 August 2008) at 9.

³³⁶ Article 6 and 7 of the Palermo Protocol.

³³⁷ *Ibid* at 31. Assistance and protection measures yield positive results, instilling confidence in witnesses to come forward and testify.

³³⁸ Jordan *op cit* note 102 above at 2. The drafters created a strong law enforcement tool with comparatively weak language on human rights protection and victim assistance.

³³⁹ *Ibid.* See Articles 6 and 7 of the Protocol and Articles 24 and 25 of the Convention. The United Nations Crime Commission, which developed the Palermo Protocol, is not a human rights body but a law enforcement body.

³⁴⁰ *Ibid.* Article 14 ensures that nothing in the Palermo Protocol or the Transnational Convention can undermine international obligations to protect human rights. Anti-trafficking NGOs have developed a document containing measures nations can take to meet their international human rights obligations. These measures are contained in the ‘Human Rights Standards for the Treatment of Trafficked Persons’ available at www.hrlawgroup.org/initiatives/traffickingpersons/ and at wagner.inet.co.th/org/gaatw/index.html.

arrested and imprisoned while a human right-based approach allows trafficked persons to become witnesses.³⁴¹ Credible justice systems and efficient child witness protection plans can help African countries to obtain successful prosecutions and high percentage of convictions.

The Palermo Protocol requires that child victims of trafficking need to be afforded the opportunity to claim civil compensations from traffickers during criminal proceedings.³⁴² Factors such as lack of evidence to support a claim, non-existence of laws allowing the seizure of traffickers' crime proceeds, and the fact that the prosecution of a case is taking place in a country different from the country where traffickers' assets are located, make it difficult for victims to be compensated on the African continent.³⁴³ Accordingly, article 12 of the Transnational Convention provides that States parties shall adopt measures enabling them to confiscate the proceeds of crime, property, equipment or other instrumentalities used in or derived from the commission of the crime. Article 14 of the same Convention states that confiscated assets should be used to pay compensation, restitution and damages awards to trafficked victims and support services to trafficked children. In this regard article 13 of the above mentioned Convention urges States parties, to the extent permitted by domestic law and if so requested, to consider returning the confiscated proceeds of crime or property to the requesting State party so that it can give compensation to the victims of the crime.³⁴⁴

In summary, prosecution of traffickers remains a challenge to many African countries. It is not always easy to say at which level of the chain the criminal systems lack effectiveness. Few trafficking cases reach the stage of criminal trials and of those taken to court few result in convictions. Sentences imposed on those convicted are generally

³⁴¹ *Ibid* at 4.

³⁴² The right to compensation mainly consists of a right to claim compensation from the trafficker. Profits made by traffickers through their exploitative activities should be used to benefit trafficked victims.

³⁴³ TIP report *opcit* note 2 above at 52-192.

³⁴⁴ This section recognizes the need for governments holding confiscated assets to return them to another country to pay compensation to victims. It allows the destination country or country holding criminal proceedings to ask another country in which traffickers have assets to return the confiscated assets. The requesting government would then use the money to pay compensation, restitution and damages for the harms suffered.

light. African countries need to restore the credibility of their criminal justice systems which entails jurisdictional clarity and effective enforcement of sanctions. Furthermore, child victims of trafficking need to be properly protected during the criminal proceedings against possible retaliation and menace from traffickers. This can help the State to have reliable witnesses to support its cases. In trafficking cases, according to the Palermo Protocol, damages need to be awarded to victims by the same court that adjudicates on the main charge of trafficking. After children have been rescued from traffickers' enslavement, they need to be cared for to ensure their reintegration into society and protection from re-trafficking. Thus, the last point discusses care and support of child victims of trafficking.

4.6 Care and Support of Child Victims of Trafficking on the African Continent

This part explores the quality of care and support afforded to child victims of trafficking in most African countries. The good care and support of trafficked children helps to prevent them from being re-trafficked and to reduce their vulnerability to trafficking and allows them to grow up in a conducive environment that will help them succeed in their lives.

The care and support of trafficked children is a challenge for many African countries due to factors such as resource constraints, the lack of appropriate legislation, political will on the part of governments to provide the necessary resources and the limited number of qualified social workers.³⁴⁵ Frederick correctly notes that African countries must have National Plans of Action regarding trafficked children and these plans must include provisions for establishing mechanisms to monitor care-giving practices.³⁴⁶ Some African countries do have these Plans such as South Africa, Malawi, Zambia and Mozambique but they are not functional because of the complexity of trafficking and a

³⁴⁵ *Ibid* at 52-192.

³⁴⁶ J Frederick *Standards and Guidelines for the Care of the Sexually Abused and Sexually Exploited* (2002) available at www.childtrafficking.com/content/library/ (accessed 12 August 2008) at 9. Types of facilities in which trafficked children can be cared for include center-based facilities, community-based facilities, drop-in centers, crisis intervention units, and counseling and support units.

lack of political will to provide the necessary resources.³⁴⁷ Some other countries such as Burkina Faso, Madagascar and Benin have clear National Plans of Action for the care and assistance of child victims of trafficking and are mentioned as having outstanding achievements.³⁴⁸

National Plans of Action should be based on Quality of Care Standards and should aim 'to provide the most effective and compassionate care to survivors; to develop and maintain professional, transparent and accountable care practices; and to help and support caregivers in their difficult task.'³⁴⁹ The principal role of Quality Care Standards is to increase child protection mechanisms and to speed up the recovery and social reintegration of trafficked children.³⁵⁰ Thompstone states that there is no universally standardized Quality Care Standards given the diversity of cultural norms applied to child care services and the disparity in availability of financial and human resources across countries.³⁵¹ However, Quality Care Standards should be developed in every country precisely because they are founded upon human rights principles.³⁵² Quality of Care Standards must be child-centered and developed with the input of everyone concerned with the care of the child: the government, funding organizations, non-government organizations, facility leaders and managers, on the-ground caregivers (experts in psychology, counseling, medicine, law and social work), and of course children themselves.³⁵³ It is a process that requires time, expertise and a focus on the well-being and best interests of the child.³⁵⁴

³⁴⁷ R Pharoah (2006) *Getting to Grips with Trafficking: Reflexion on Human Trafficking Research in South Africa* available at www.childtrafficking.com/content/library/ (accessed 12 August 2008) at 59; Amnesty International (2007) *Central Africa Republic: War against Children in the Wild North* available at www.childtrafficking.com/content/library/ (accessed 12 August 2008); UNESCO *Human Trafficking in South Africa, Mozambique, Togo, Benin* *op cit* note 257 above.

³⁴⁸ TIP report *op cit* note 2 above at 72, 79 and 171.

³⁴⁹ Frederick *op cit* note 346 above at 8.

³⁵⁰ G Thompstone *The Development of Quality of Care Standards in Welfare Services for Child Victims of Commercial Sexual Exploitation* (2002) available at www.childtrafficking.com/content/library/ (accessed 12 September 2008) at 73.

³⁵¹ *Ibid.*

³⁵² *Ibid.* According to Frederick, such standards might provide that: 'all children trafficked shall have equal access to education programmes, regardless of citizenship; care plans shall be developed and case records shall be maintained in care homes for all children; repatriation schemes will include child protection mechanisms to ensure that child victims of trafficking are returned to a place of safety.'

³⁵³ Frederick *op cit* note 346 above at 12. According to IOM *Combating Child Trafficking: Rehabilitation of the Victims of Child Trafficking: A Multidisciplinary Approach* (2006), the content of plans should be

Following the development of care standards for South Asian countries, IOM has found that the application of the standards presented challenges in those countries. The IOM came to the conclusion that material and human resources are required for the development of quality care standards.³⁵⁵ It is the responsibility of governments, educational and training institutions and fund-givers to ensure that trafficked children are cared for by multi-disciplinary teams composed of well-trained and experienced psychologists, counselors, social workers, medical doctors and lawyers.³⁵⁶ The monitoring system of quality care standards must be developed by each country and should be done by an independent organ to ensure impartiality.³⁵⁷

The United Nations High Commissioner for Human Rights requires that child victims be dealt with separately from adult trafficked victims in terms of laws, policies, programmes and interventions. Hosting countries must take steps towards identifying and locating family members of trafficked children and where the best interests of the child is justified, facilitate the reunion of the trafficked children with their families.³⁵⁸ After assessment, as said above, if the reunion is not in the best interest of children then other alternatives to repatriation must be put in place with respect to the rights and dignity of trafficked children.

based on the five steps for protecting child victims of abuse and exploitation, as stated in articles 19 and 39 of the CRC, namely fact-finding or investigation, immediate and short term protection, rehabilitation, reintegration and prevention of the revictimization of the child.

³⁵⁴ L Bjerkan *A life of One's Own: Rehabilitation of Victims of Trafficking for Sexual Exploitation* (2005) available at www.childtrafficking.com/content/library/ (accessed 12 September 2008) at 28.

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.* Experienced professionals are not just academically trained but are also professional who have had extensive experience working with trafficked and sexually abused children; this requires both resources and time. Training and educational institutions must develop relevant courses and human resources must be expanded. Training workshops for caregivers of abused children need to be regularly organized to improve their working skills.

³⁵⁷ *Ibid.* Because the process of developing care standards is a collaborative process between the government, caregivers, experts and children, it might be appropriate that the monitoring institution be similarly composed to avoid corruption and influence. See also *The Asian Foundation: Reintegration, Assistance for Trafficked Women and Children in Cambodia* available at www.childtrafficking.com/content/library/ (accessed 12 September 2008) at 20. Research reveals that reintegration and assistance initiatives have seven common areas of intervention: preventing stigmatization, the provision of job training, legal assistance, health care, social services, and medical and psychological care.

³⁵⁸ United Nations High Commissioner for Human Rights *Recommended Principles and Guidelines 8 on Human Rights and Human Trafficking* (2002).

According to international standards, decisions concerning the repatriation of a child must be based on a number of factors, such as the danger that repatriation may have on the child, extensive investigations of the family situation and any other factors that impact on child development.³⁵⁹ The child's best interest should be the most important element in the decision on whether or not to repatriate him/her.³⁶⁰ According to UNICEF, the hosting country must appoint a guardian who must accompany the trafficked child during the repatriation process until the care of the child is taken over by their parents or appointed guardian in the country of origin.³⁶¹ When an unaccompanied child is found in the territory of a State other than its own, according to Articles 2, 20 and 22 of the CRC, this State too becomes responsible for the protection of the rights of the child concerned. In its guidelines on foreign unaccompanied and separated children, the Committee on the Rights of the Child states that 'following a right based approach, the search for a durable solution commences with analyzing the possibility of family reunification.'³⁶² However, if it is established that parents constitute a danger to the child's life or were involved in trafficking of the child, the reunification with the parents in the latter case is not in the best interests of the child and the hosting country should provide alternative measures to the return of the child to the country of origin.³⁶³ The return of the child should be an option where the situation in the country of origin, rather than the reunification with the parents represents a danger to the life, well-being and development of the child.³⁶⁴ Terre des Hommes correctly concludes that in deciding on whether reunification with the family serves the best interest of the child, it is necessary to consider whether: the parents' will take care of the child upon potential return (article 9 CRC); the child's

³⁵⁹ Bjerkan *op cit* note 354 above at 38.

³⁶⁰ *Ibid.* This evaluation should be done in accordance with provisions of the CRC, especially respecting the rights to participation, family unity, and the economic and social rights of a child.

³⁶¹ See UNICEF *Guidelines for the Protection of the Rights of Children Victims of Trafficking in South East Europe* (2003) available at www.childtrafficking.com/content/library/ (accessed 12 September 2008).

³⁶² *Committee on the Rights of the Child, General Comment no 6, Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6.*

³⁶³ Terre des Hommes *Return of Foreign Unaccompanied Minors* (2007) available at www.childtrafficking.com/content/library/ (accessed 12 September 2008) at 4. Article 7 of the CRC recognizes that the right of the child to be cared for by parents is limited by the term 'as far as possible'; Article 9 too conditions the family reunification on the will of the parents and the child together and the best interest of the child (Article 3 CRC).

³⁶⁴ *Ibid* at 5.

opinion on the best option (article 12 CRC); and the child's best interests (article 3 and 9 CRC).

In conclusion, most African countries have poor care and support systems to manage child survivors of trafficking in human beings. Factors such as limited resources, lack of political will on behalf of governments to invest in care and support services and the shortage of professionals contribute to the inadequacy of services on the African continent. African countries must, at their respective national level, elaborate a national plan of action which must be based on Quality Care Standards. The government of Burkina Faso has done so and is making financial and human resources available for the continuity of these services. Countries should provide an alternative measure to repatriation for child victims of trafficking. Those deciding to repatriate child victims of trafficking are advised to base their decision on the best interests of the child. The return decision must be based on a number of factors, such as the danger that repatriation may have on the child, extensive investigations of the family situation, and any other factors that can impact on child development.

4.7 Conclusion

This chapter explored the importance of enacting anti-trafficking legislation by African countries in part 4.2. The majority of African countries do not have laws prohibiting all forms of trafficking in general and child trafficking in particular. However, they do have provisions in different pieces of legislation that prohibit some forms of human trafficking and child trafficking in particular. The main factor explaining the incapacity of most African countries to fight child trafficking is the lack of comprehensive anti-trafficking legislation. Therefore, it is recommended that African governments enact anti-trafficking laws based on the Palermo Protocol. Thus, at national level a comprehensive legislation shall encompass prevention measures, prosecution measures and protection measures. African countries that are not parties to the Palermo Protocol are encouraged to ratify it and/or enact anti-trafficking laws based on the provisions of the Palermo Protocol.

Part 4.3 dealt with the training of law enforcement agencies, prosecutors and judicial officers on trafficking issues on the African continent. Indeed, few African countries provide training on trafficking to relevant agencies. When new laws are enacted, police officials, prosecutors and judges need to be informed in detail and trained on how to apply them for positive results. The criminal justice system should have a good understanding of the human trafficking phenomenon and laws and be able to distinguish human trafficking from other similar crimes.

It was shown in part 4.4 that there are inadequate efforts on the continent to investigate trafficking cases. The main challenge faced by police officials who suspect to have come across trafficked children is that often trafficking cases are rarely apparent upon first contact, especially because the victims are traumatized and usually provide incomplete or wrong information. The combination of the reactive approach and proactive approach has produced positive results in countries like Madagascar and is recommended for other African countries as well. This has to be coupled with raids and international cooperation due to the trans-national element of some trafficking cases. Governments must invest some resources in the scrutinizing process of trafficked children among vulnerable groups and interviews with child victims of trafficking or suspected victims of trafficking should be conducted by personnel trained in trafficking issues and in conducting interviews with children.

It is clear from the analysis in part 4.5 that the prosecution of trafficking suspects remains a challenge for many African countries. Problems faced by most African countries are the credibility and transparency of criminal justice systems, light punishments for trafficking crimes and the incapacity to protect victims and to encourage them to testify against their traffickers. Furthermore, the lack of relevant laws on trafficking, lack of training for prosecutors and judges and inefficient law enforcement agencies also worsen the problem. African countries are recommended to restore the credibility of their criminal justice systems which entails jurisdictional clarity and effective enforcement of sanctions. Furthermore, child victims of trafficking need to be properly protected during the criminal proceedings against possible retaliation and menace from traffickers. This can

help the State to have reliable witnesses to support its cases. Criminal courts need to be empowered to adjudicate on both criminal sanctions and civil damages in same judgments.

Care and support of trafficked children have been explored in part 4.6 Resource constraints in some African countries, the lack of appropriate legislation, lack of political will on the part of governments to provide the necessary resources and the limited number of qualified social workers explain the poor child victims' protection and support systems in Africa. It is recommended that African countries must, at their respective national level elaborate a National Plan of Action which must be based on Quality Care Standards. Countries deciding to repatriate child victims of trafficking are advised to base their decision on the best interests of the child. Child victims of trafficking should be allowed to stay in the hosting country if their return is not in their best interests.

Reacting against child trafficking remains a great challenge for most African countries. This lamentable situation is due to many factors, such as the lack of relevant laws, inadequate investigation methods, ignorance of trafficking phenomenon among those involved in the criminal justice system and incapacity to care for child victims who have been rescued. African governments should enact comprehensive anti-trafficking laws, provide adequate training to border officials, migration agencies, law enforcement officers, judicial officers and prosecutors; ensure the credibility of judicial systems and develop National Plans of Action to care and assist child victims of trafficking.

Chapter Five: Conclusion and Summary of Recommendations

5.1 Conclusion

Trafficking in persons in general and in children in particular is a phenomenon that affects each and every country in the world either as a country of origin, transit or destination. Most African countries are simultaneously countries of origin, transit and destination of trafficked children for different types of exploitations, such as sexual exploitation and labour exploitation. Trafficking in children on the continent is exacerbated by many factors, such as poverty, war, corruption, discrimination, political instability, financial motives and under-development.

As early as 1904, the international community has shown its opposition to and determination to end, trafficking in children. A number of international conventions have been adopted, some protecting both adults and children and some others handling children's issues only. Although there have been some achievements, most of those conventions have serious shortcomings rendering them ineffective in addressing trafficking in this era of globalization. They have been criticized for not defining trafficking in children, not addressing all forms of trafficking and for not specifying means by which trafficking could be prevented and eradicated.

Given the complexity of the trafficking phenomenon in the 21st century, the international community has adopted the Palermo Protocol supplementing the Transnational Convention. The Palermo Protocol is a comprehensive tool in fighting trafficking in human beings in general and in children in particular. It gives a basic definition of trafficking that needs to be supplemented and improved in domestic legislations.

The Palermo Protocol provides three main types of measures that must be used to fight child trafficking, namely prevention, prosecution and protection. In this dissertation these measures were divided into two parts, namely preventive measures and reactive

measures. The former stressed the importance of ratifying anti-trafficking conventions, demand side of trafficking and factors making children vulnerable to trafficking. The latter emphasized the enactment, at a domestic level, of comprehensive anti-trafficking legislation, training of relevant agencies on trafficking issues, investigation of trafficking cases, interviews with child victims of trafficking, prosecution of traffickers, and care and support of rescued children.

Article 9.5 of the Palermo Protocol establishes a rapport between demand and trafficking and urges States to take appropriate measures to prevent and discourage demand. In the African context, children are mostly demanded for commercial sexual exploitation, child sex tourism and domestic servitude. Trafficking and prostitution are interconnected and they should be addressed simultaneously. Three legislative approaches are taken by States to address the demand of children for prostitution, which are the abolitionist approach, prohibitive approach and liberal approach. Given that most African countries adhere to the prohibitive approach, it is recommended that they develop strategies of arresting male buyers of commercial sex and consider child prostitutes as victims rather than criminals.

Child sex tourism is prevalent on the continent and devastates the lives of millions of children. It is sustained by underdevelopment, poverty, corruption and incapacity of States to protect children. Some sending countries have enacted ET legislation aimed at arresting their nationals who perpetrate sexual crimes against children abroad. Some of these ET laws are ineffective because they are defective, the law enforcement agencies are faced with evidentiary challenges or else governments are not willing to enforce them. African countries are encouraged to adopt and enforce laws protecting children against sexual crimes and to enter into cooperative agreements with sending countries in order to arrest more offenders.

Children are trafficked for domestic work on the African continent more than for any other of labor servitude. These children are confined in private households where they are systematically abused and exploited. African governments must regulate domestic work

so that labour inspectors can be allowed to conduct unexpected inspections in private households and report to the police any suspected case of child trafficking.

Among factors exacerbating child trafficking in Africa, corruption and child poverty are analyzed. Corruption is the factor that keeps the trafficking machine moving. It occupies an important part of traffickers' budgets. Traffickers are targeting to corrupt not only public services but also the private sector and all people and organizations with some influence on their business. African countries must follow recommendations of USAID and UNGIFT on corruption and learn some lessons from Botswana's anti-corruption agency. Child poverty is caused by a diversity of factors, namely: high rate of unemployment of caregivers, lack of decent incomes, general context of underdevelopment, illiteracy, armed conflicts and HIV/AIDS. African countries must prioritize addressing the causes of child poverty. Furthermore they are recommended to follow the legislative path taken by South Africa in the fight against child poverty. It is one of the rare countries in the world to incorporate children's socio-economic rights in the constitution.

Most African countries do not have comprehensive laws prohibiting all forms of trafficking in general and child trafficking in particular. This lack of legislation is the main factor explaining their incapacity to fight child trafficking. Therefore, it is recommended that all African governments enact anti-trafficking laws based on the Palermo Protocol, thus, the importance of its ratification. At national level comprehensive legislation should encompass prevention measures, prosecution measures and protection measures. African countries that have not yet ratified the Palermo Protocol are encouraged to use provisions in their different pieces of legislation that prohibit some forms of human trafficking and child trafficking in particular to fight and eradicate this crime.

The training of law enforcements agencies, prosecutors and judicial officers on trafficking issues on the African continent is pertinent. Indeed, few African countries provide training on trafficking to relevant agencies. When new laws are enacted police

officials, prosecutors and judges need to be informed in detail and trained on how to apply them for positive results. The criminal justice system should have a good understanding of human trafficking phenomenon and laws.

Most African countries are making inadequate efforts to investigate trafficking cases. The main challenge faced by police officials who come across trafficked children is that often trafficking cases are rarely apparent upon first contact, especially because the victims are traumatized and usually provide incomplete or wrong information. The combination of the reactive approach and proactive approach has produced positive results in countries like Madagascar and is recommended for other African countries as well. This has to be coupled with raids and international cooperation due to the transnational nature of some trafficking cases.

In most African countries interviews with child victims of trafficking are either non-existent, inappropriate or conducted by people without relevant qualifications and experience. It is recommended that governments invest some resources in the scrutinizing process of trafficked children among vulnerable groups and that interviews with child victims of trafficking or suspected victims of trafficking be conducted by personnel trained in trafficking issues and in conducting interviews with children.

The prosecution of trafficking suspects remains a challenge to many African countries. Problems faced with most African countries are the credibility and transparency of criminal justice systems, light punishments for trafficking crimes and the incapacity to protect victims and to encourage them to testify against their traffickers. Furthermore, the lack of relevant laws on trafficking, lack of training for prosecutors and judges and inefficient law enforcement mechanisms are also among problems facing African countries. It is recommended that African countries restore the credibility of their criminal justice systems which entails jurisdictional clarity and effective enforcement of sanctions. Furthermore, child victims of trafficking need to be properly protected during the criminal proceedings against possible retaliation and menace from traffickers. This can help the State to have reliable witnesses to support its cases. Criminal courts need to

be empowered to adjudicate on both criminal sanctions and civil damages in same judgments.

Factors, such as resource constraints in some African countries, the lack of appropriate legislation, lack of political will on the part of governments to provide the necessary resources and the limited number of qualified social workers explain the poor child victims' protection and support systems in Africa. It is recommended that African countries must, at their respective national levels elaborate a National Plan of Action which must be based on Quality Care Standards. Countries deciding to repatriate child victims of trafficking are advised to base their decision on the best interests of the child otherwise the child should be allowed to stay in the hosting country if the return is not in his/her best interests.

If solutions proposed in this dissertation are implemented, African countries will fulfill their international obligation to protect children against all forms of abuse and exploitation. These children will grow up in an environment conducive to their development and full realization to become responsible adults of tomorrow and contribute to the development of the African continent.

5.2 Recommendations

This dissertation was motivated by two main problems. Firstly, trafficking in human beings in general and in particular in children is a serious crime that requires effective solutions. Traffickers are versatile; they change their strategies and forms of exploitation so that they stay ahead of law enforcement mechanisms. Trafficking ruins and devastates the lives of millions of children on the African continent. It is hard to locate precisely and to stop because the traffickers function in illicit, clandestine and cooperative trafficking confederations. There is no African country that is immune from child trafficking. Most of them are simultaneously countries of origin, transit and destination of trafficked children for all types of exploitations.

TIP reports, which are the most comprehensive reports on the efforts of all countries to fight trafficking published by the United States Department of State, reveal that more than 80% of the countries in the world have not yet found appropriate solutions to trafficking in persons and in particular in children. The situation is more alarming on the African continent where the quasi-totality of countries do not comply with the minimum standards for the eradication of this crime. Although some drastic measures have been instituted at the international, regional and national level to combat this crime, recent evaluations reveal that they are ineffective. The research done so far indicates that in Africa there is an over-reliance on the ordinary criminal law means for combating trafficking. However, as the experience in other countries indicates, trafficking is a modern day form of slavery and cannot be eradicated using ordinary criminal law. By identifying good practices in preventing and combating trafficking, this study aims to contribute to a change in the approach used on the African continent by stressing the need to enact comprehensive anti-trafficking legislation in all African countries.

Secondly, the vulnerability of children to trafficking and its devastating psychological, health and social consequences motivated this dissertation. Factors such as physical, sexual, and psychological abuse, forced use of drugs and alcohol, social restrictions and manipulation, economic exploitation and poor living conditions rob these children of their childhood and any chance of success in their lives. Furthermore, trafficked children experience reproductive and mental deterioration, hopelessness, trauma and feeling of rejection by the society. Children are tomorrow's adults and any society minded of its own future has to prioritize children's issues and has to be very sensitive to any situation endangering their well-being, such as trafficking. Thus, the focus of this dissertation was on child trafficking and the effectiveness of current solutions.

Furthermore, the literature review for the purpose of this dissertation showed a lack of writings focusing on solutions to human trafficking in general and child trafficking in particular. This dissertation aimed to fill this gap in literature.

With the above issues of concern in mind the following recommendations are made:

(1). A major proposal for the dissertation is that each African country should enact comprehensive anti-trafficking legislation based on the Palermo Protocol, thus the importance of its ratification. Over reliance on the ordinary criminal law induces African countries in particular to consider child victims of trafficking as criminals in contravention of immigration laws, prostitution laws and labour laws while an appropriate anti-trafficking law helps to consider trafficked children as victims of serious crime to whom special protection, care and assistance need to be accorded. But the lack of legislation shall not justify the lack of action. Until comprehensive anti-trafficking legislation is passed African countries without these laws should use provisions in their respective domestic laws criminalizing some aspects of trafficking, such as slavery, forced labour and assaults to fight child trafficking.

(2). African countries should not rely only on awareness raising as method of prevention of child trafficking but should also tress on others methods provided in the article 6 of the Palermo Protocol. These measures are: addressing the demand side of trafficking, that is to say demand of children for sexual exploitation, child sex tourism and demand of children for domestic servitude and addressing factors that foster trafficking in children on the African continent, such as poverty and corruption.

(3). Concerning the demand of children for sexual exploitation African countries should take and enforce measures aimed at arresting more traffickers and male clients of children exploited in prostitution, without whom the commercial sexual exploitation of children could be highly unprofitable. Further, all actors involved in the commercial sexual exploitation of children and related activities such as pimps, bars owners, massage parlors operators should have a very narrow margin of operation. Accordingly, children in prostitution should be considered victims in need of care and protection rather than criminals in contravention of prostitution laws.

(4). African countries should enact and enforce laws aimed at protecting children against child sex tourism so that offenders are arrested and tried in the country where the offence occurs and if convicted serve the sentence there. The police in each African country

affected by child sex tourism should keep a watchful eye on tourists and show zero tolerance to the sexual abuse of children. Governments of most affected African countries, such as South African, Kenya, Egypt should, where necessary, conclude criminal cooperative agreements with some sending countries in order to prevent child sex tourism. Actors involved in the tourism sector on the African continent should, like those operating on other continents, endorse the Code of Conduct in order to assist governments in the prevention of child sex tourism in Africa.

(5) African countries should regularize domestic work and put it under labour laws so that labour inspectors may be allowed to conduct spontaneous inspections in private households and report to the police any suspected cases of child trafficking. Further, employers must register with the appropriate local authority the name and age of each domestic worker working in their homes and must cooperate with labour inspectors.

(6). To combat corruption African countries should take first remedial actions such as good governance, sustained political will to combat corruption, zero tolerance, lessening of cumbersome bureaucratic procedures, provision of adequate remuneration to civil servants and public officials, compulsory ethics education and provision for an anti-graft hotline. Furthermore, they should emphasize transparency and reporting requirements, accountability, fraud awareness training for relevant public services and supervision opportunities for civil society and the media. They should ratify and implement regional and international instruments on corruption. African countries should also learn some lessons from Botswana's anti-corruption strategies, which consist in the creation of an independent anti-corruption body with a specific mandate and strategies for combating corruption.

(7). African nations should take measures to prevent and fight child poverty, such as introducing free basic education for all children and ensuring that vulnerable groups, such as girls, children with disabilities and refugee children are given special attention. In addition to primary education, comprehensive education leading to employment is indispensable. Further promoting gender equality and children's rights (translation of the

CRC into domestic legislation) should be a priority. Other African countries should follow the legislative path taken by the government of South Africa of incorporating children's socio-economic rights (which aim to alleviate child poverty) into their respective Constitutions. These socio-economic rights are basic nutrition, shelter, basic healthcare services and social services. The incorporation of socio-economic rights in the Constitution creates a legal obligation on governments to conjugate efforts to give effect to these rights.

(8). Law enforcement and criminal justice agencies should be properly trained on the anti-trafficking laws and on how to apply them. Police officials, judges and prosecutors should know the description of the phenomenon of trafficking in human beings, various forms of trafficking and common practices, the trafficking process, the root causes of trafficking, and the impact of trafficking on child victims of this crime.

(9). The investigation of trafficking cases should involve a multi-disciplinary team, that is to say, the investigations should involve law enforcement agencies and experts from other fields such as law, medical science and social science. Successful prosecution should be based on a combination of proactive and reactive investigations. It is necessary that indications resulting from searches, raids in brothels, labour inspections or other investigations be corroborated with the victims' testimonies. Given the trans-national nature of trafficking in human beings, African countries should conclude bilateral or multilateral agreements in order to set up joint investigation bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States.

(10). To ensure that the State has reliable witnesses to support its cases, interviews with suspected child victims of trafficking should be conducted by personnel trained in trafficking and in conducting interviews with children. Preferably or on the request of the victim, the interviewer should be of the same sex as the victim and the interview must take place in a non confrontational, non-judgmental and professional environment.

(11). For an efficient prosecution of trafficking suspects African countries should ensure that their criminal justice systems are credible. This entails two factors, namely jurisdictional clarity and effective enforcement of sanctions against traffickers. Judicial authorities need to be trained, sensitive to trafficking issues and must have appropriate legislative tools to prosecute and pass judgments. States should ensure that child victims of trafficking who are State witnesses are protected against possible retaliation and intimidation from traffickers' rings. States parties to the Palermo Protocol should enact laws enabling them to confiscate the proceeds of crime and assets that should be used to pay compensation, restitution and damages awards to trafficked victims and support services to trafficked children. They should consider providing more durable protection to child victims of trafficking, such as organizing the permanent stay of the child in the hosting country if, after the assessment of the situation in the country of origin, it appears that the return is not in the best interests of the child.

(12). For good care and support of child victims of trafficking, African countries must develop National Plans of Action and these plans must include provisions on the establishment of mechanisms to monitor care-giving practices. National Plans of Action should be based on Quality of Care Standards that aim at providing effective and compassionate care to survivors; developing and maintaining professional, transparent and accountable care practices and supporting caregivers in their difficult tasks. The principle role of Quality of Care Standards is to increase child protection mechanisms and to facilitate the recovery and social reintegration of trafficked children. Quality of Care Standards should be child centered and developed with the input of everyone concerned with the care of children.

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