

**ADOPTING HUMAN RIGHTS- BASED APPROACH TO COUNTERACT TRAFFICKING
IN WOMEN;**

A CASE STUDY OF UGANDA

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Declaration

I, MOGERE WINNIE MWASITI, do hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

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Approval

This dissertation has been submitted with the approval of Mr. Wandera Ismael as the supervisor.

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Date of approval

24/oct/2013.

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List of Abbreviations

ACHPR	The African Charter on Human and Peoples' Rights
ACRWC	The African Charter on the Rights and Welfare of Child
CAT	The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CATW	The Coalition Against Trafficking in Women
CEDAW	The International Convention on Elimination of all forms of Discrimination Against Women
CERD	The International Convention on Elimination of all forms of Racial Discrimination
CRC	The International Convention on the Rights of Child
FGD	Focus Group Discussion
FIDA	Federation of Women Lawyers (Uganda)
GAATW	Global Alliance Against Trafficking in Women
GSA	Good Samaritan Association
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
ICL	International Criminal Law
IGOs	Inter-Governmental Organizations
IHRLG	International Human Rights Law Group
ILO	International Labour Organization
IOM	International Organization for Migration
MoFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MoLSA	Ministry of Labour and Social Affairs
MoWCYA	Ministry of Women Children and Youth Affairs
MWC	The International Convention on Rights of All Migrants Workers and Members of Their Families
NGOs	Non-Governmental Organizations
PEAs	Private Employment Agencies
TCL	Transnational Criminal Law
UNODC	United Nation Office on Drug and Crime
VoT	Victims of Trafficking

Abstract

Trafficking in persons which is akin to contemporary slavery is highly prevalent across the world. It is affecting thousands of persons in all corners of the globe. While men and boys can be exposed to trafficking, the women and girls constitutes a significant majority of victims of trafficking. Uganda is among source countries of many women and girls exposed to trafficking. Each year thousands of Ugandan women and girls are trafficked across international border to mainly Middle East countries for labor and sexual exploitation purposes. Ugandan women are subjected to multiple human rights abuses in destination countries. Thus, this thesis seeks to examine the violation of women rights and advocacy tools or measures adopted in Uganda to counteract trafficking in women.

The study identifies that there are two dominant approaches to counteract trafficking in persons including women trafficking. These are: criminal justice approach and human rights based approach antitrafficking response. It argues that criminal justice approach which views trafficking as crime and immigration issues resolvable by prosecution of traffickers alone is losing currency. It fails mainly to address the root causes trafficking in persons in addition to lack of protection to victims of trafficking (VoT). As a result, human rights based approach that considers trafficking in women as human rights issues deeming a human rights oriented interventions is gaining ground in anti trafficking discourses. The study addresses not only the process and consequences of trafficking but also it seeks to dismantle the structural root causes such as poverty, lack of education, unemployment and discrimination against women that feed trafficking in women. Accordingly, anti trafficking encompasses prosecution of trafficking cases, protection of VoT and prevention of trafficking in holistic manner. Thus, the purpose of this research is to assess whether anti trafficking adopted in Uganda are in line with human rights based approach standards. The thesis reveals that while there are some positive initiatives and efforts, anti trafficking measures adopted in Uganda fall short of Human Rights Based Approach anti trafficking standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach anti trafficking response in the country to see the effective and meaningful eradication of the trafficking in women.

Key terms; trafficking in persons, women, criminal justice approach, human rights, a human rights based approach, prosecution, protection, prevention, victims of trafficking

Chapter One: Introduction

1.1. Background of the Study

Human trafficking is one of the major current global problems. It is affecting hundreds of thousands of persons every year. According to the estimates of International Labor Organisation (ILO), there are 12.3 million people in forced labor, bonded labor, forced child labor and sexual servitude at any given time.¹The numbers of people trafficked across international borders is increasing from time to time. According to the 2005 US State Department report, 600,000 to 800,000 people are trafficked each year.²

There are certain push factors and corresponding pull factors exacerbating human trafficking. Poverty, drought, conflict, lack of security, unemployment and lack of perspective in the country of origin are the main push factors for exposing people to human trafficking.³ The pull factors are a growing demand for sex and cheap labor in destination countries, specially developed countries, as well as some developing countries such as Middle East countries.⁴ As a result, human trafficking business is thriving and has now become the third largest criminal industry behind drug trafficking and illegal weapons trading.⁵ Traffickers are believed to have been making profit of approximately \$9.5 billion annually from trafficking in persons.⁶ Trafficking victims are subjected to coerced prostitution, or other forms of bonded labor, to generate income for the traffickers involved in the trafficking business. The victims suffer from physical and emotional abuse, including rape, torture, starvation, imprisonment, threats and death.

Among the victims of human trafficking, women share a significant number. According to the US State Department report, 80% of people trafficked are women and girls.⁷ Women are trafficked mostly for sexual exploitation and domestic labor. Amnesty International reported in 2004 that two million girls aged 5-15 have been introduced into the commercial sex market across the world each year.⁸

Trafficking in women is affecting virtually all states either as a source, transit or destination country. Uganda is a source and destination country for women, and children trafficked for the purposes of forced labor and sexual exploitation. Ugandan women are trafficked within the

¹ A Global Alliance against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (International Labour Conference, 93rd Session 2005, Report I (B), Geneva. International Labour Office) as quoted in U.S. Department of the States Trafficking in Person Report of 2010 (hereafter U.S Trafficking Report 2010), p.7.

²U.S. Department of the States Trafficking in Persons Report of 2005 as quoted in USAID Anti-Trafficking In Persons Programs In Africa: A Review, April 2007, p.1

³ GTZ, Study on Trafficking in Women in East Africa, 2003.

⁴ Ibid.

⁵ Trafficking In Person In Ethiopia: Controlling Traffickers and Protecting Victims Hand Book, PCI, 2009 (unpublished).

⁶ Ibid.

⁷ Supra note 2.

⁸ Yoseph Endashew etal, Assessment of Trafficking In Women and Children in and from Ethiopia, IOM (2006).

country, as well as to Canada, Egypt, the United Arab Emirates, and Saudi Arabia for forced labor and commercial sexual exploitation. Karamojong women and children are sold in cattle markets or by intermediaries and forced into situations of domestic servitude, sexual exploitation, herding, and begging. Security companies in Kampala recruit Ugandans to serve as security guards in Iraq where, at times, their travel documents and pay have reportedly been withheld as a means to prevent their departure; these cases may constitute trafficking. Until August 2006, the terrorist rebel organization, Lord's Resistance Army (LRA), abducted children and adults in northern Uganda to serve as soldiers, sex slaves, and porters; while no further abductions of Ugandans have been reported, at least 300 additional people, mostly children and women, were abducted during the reporting period in the Central African Republic and the D.R.C. The Government of Uganda does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.

Uganda women in the Middle East face severe abuses, including physical and sexual assault, denial of salary, sleep deprivation, confinement, incarceration, and murder. Many are driven to despair and mental illness, and some are reportedly commit suicide.

1.2. Statement of the Problem

So far anti-trafficking responses have disproportionately been focused on Criminal Justice Response Approach. This approach focuses on prosecution of traffickers.⁹ Considering human trafficking as law and order (or crime control) issue, most countries and some regional and international intergovernmental organizations (IGOs) have paid greater attention to border and immigration control.¹⁰ Consequently, enacting anti-trafficking laws which concentrate on prosecuting traffickers and condition victims, protection on cooperation with prosecution authorities in testifying against traffickers; and strengthening border control have been adopted as the best anti-trafficking response. While Criminal Justice Response would help to suppress human trafficking in deterring traffickers from engaging in business of human trafficking, it fails to address the root causes of women trafficking such as poverty, unemployment, discrimination, gender based violence, and so forth, that is, the broader socioeconomic conditions that feed the problem.¹¹ As Jordan rightly noted, unless the underlying causes such as unemployment, political instability, gender discrimination in education, employment, the family, and the political arena, and unrealistic immigration laws are addressed, trafficking of women will continue to increase.¹² In a similar vein **Chuang** has argued that Criminal Justice Response which is characterized by adopting a "law and order" approach to the problem has yielded questionable, if not disappointing, results. She further noted that the international community is coming to the growing realization that treating trafficking predominantly, if not solely, as a border and crime control issue is but to respond

⁹ Dina Haynes, *Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers*, *Human Rights Quarterly*, Vol.26, No. 2, (2004), p.239.

¹⁰ Janie Chuang, *Beyond a Snapshot: Preventing Human Trafficking in the Global Economy*, *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1, (2006), p. 138.

¹¹ *Ibid.*

¹² Ann D. Jordan, *Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings*, *Gender and Development*, Vol. 10, No. 1, (2002), p. 30.

only to a snapshot view of a much larger problem.¹³ Haynes also noted the caveat of Criminal Justice Response stating that.¹⁴

As a result, Human Rights Based Approach (a Victim-Centered Approach) is considered as more appropriate strategy to effectively counteract human trafficking including women trafficking.¹⁵ This approach views human trafficking as human rights issue and calls for addressing not only the process and consequence of trafficking, but also the broader socioeconomic causes of human trafficking.¹⁶ It starts from a human rights perspective and makes protection of the victim as its primary aim.¹⁷ Furthermore, a Human Rights Based Approach Response takes a holistic approach to prevent and suppress human trafficking. Thus, a Human rights based approach can be held as effective and viable intervention response to eradicate women trafficking.

This thesis tries to assess anti-trafficking responses adopted in Uganda in light of a human right based approach response. Accordingly, it tries to scrutinize whether anti-trafficking responses adopted in Uganda are in line with a Human Rights Based Approach response or not.

1.3. Objective of the Study

The main objective of this thesis is to explore the prospect of a Human Rights Based Approach anti-trafficking response to reduce and ultimately eradicate women trafficking in Uganda. In addition the thesis has got the following specific objectives. These are:

- a) To elaborate the definition of human trafficking and related issues as developed in international legal rules and policy documents;
- b) To show the interplay of human rights and human trafficking, in other words, to indicate the place of human trafficking in human rights law system;
- c) To identify the rationale for adopting human rights-based approach to combat women trafficking by comparing and contrasting with criminal justice approach response;
- d) To examine the human rights based approach standards imposed under international law including human rights law;
- e) To examine whether anti-trafficking initiatives in place in Uganda are in line with human rights based approach standards or not? If not why so?; and
- f) To suggest the optimum solution to overcome the hindering factors in implementing human rights-based approach anti-trafficking model in Uganda to combat women trafficking.

¹³ Chuang, *supra* note 15, p.163.

¹⁴ Haynes, *supra* note 14, p.245. "while most countries currently have some legislation on the books that could be used to prosecute traffickers, ... these laws have had little impact on restricting traffickers or protecting trafficked persons, and are rarely, if ever, enforced."

¹⁵ *Ibid*, pp.221-272; Chuang, *supra* note 15, pp.137-163; Jordan, *supra* note 17, pp. 28-37; Tom Obokata, *Trafficking of Human Beings From a Human Rights Perspective: Towards a Holistic Approach* (Leiden: Martinus Nijhoff Publishers, 2006) p.35.

¹⁶ Obokata, *ibid*.

¹⁷ Haynes, *supra* note 14, p.247.

1.4. Research Questions

In order to achieve the objective of the study the following research questions are addressed:

- a) What is human trafficking? How it could be distinguished from smuggling of human beings? What are the interplay of human rights and human trafficking?
- b) What is the scale and magnitude of women trafficking in Uganda? What are the causes and consequences of women trafficking?
- c) What is a human right based approach anti-trafficking response to women trafficking? What are the advantages it has over the criminal justice approach response?
- d) What are the essences and contents of human rights based approach standards response?
- e) Have anti-trafficking initiatives in Uganda adopted a human rights based approach? If not, what are the problems hindering the adoption of such approach? And how can those problems be addressed?

1.5. Literature Review

Literatures on human trafficking leave alone women trafficking in Uganda are very scant. Those few researches have concentrated on situational analysis that is the magnitude and character of the problem. Regarding anti trafficking efforts the studies focus on law enforcement or criminal justice approach. The specific interest has been on the prosecution of traffickers. But almost none of them have discussed anti-trafficking framework in human rights law perspective. Thus, this study seeks to fill the gaps in literatures by discussing Human Rights Based Approach anti trafficking response in prosecution, protection and prevention of trafficking in women in Uganda.

1.6. Methodology

Methodologically, the study employs a qualitative research method in data collection and analysis. Accordingly, the research largely relies on survey of literature to solicit conceptual and theoretical discourses. The researcher also employs qualitative content analysis approach in gathering information from legal instruments, policy documents and official (governmental) and IGOs and NGOs reports. In addition, interviews are conducted with different key informants to get first hand information; and to corroborate information gathered from secondary sources.

1.7. Significance of the Study

The study will be significant to all stake holders engaged in anti trafficking initiatives such as: Government institutions, NGOs and UN Agencies in drawing attention towards the relevance of adopting human rights based approach anti-trafficking response. It is also significant to researchers and policy makers who are interested in dealing with the subject matter of women trafficking and related issues as a motivating (inspiring) input and/or source of reference.

1.8. Scope of the Study

1.8.1. Delimitation of the Study

The study is limited to the cases of external women trafficking from Uganda to the Middle East Countries. Accordingly, it does not deal with internal women trafficking cases as a central issues. Any reference made in this regards will be tangential. It is also limited to the assessment of anti-trafficking response adopted by the Government of Uganda. Hence, the data will be collected from Government Institutions alone.

1.8.2. Limitation of the Study

The lack of data regarding measures taken in counter trafficking activities, numbers of victims; and the clandestine nature of trafficking business have had impact on the finding of the research. Limiting the scope of the study to the case of federal government activities also impact the effort to capture a full picture of the problem. Besides, Interview intended to be conducted with experts at IOM that could provide insights to the study is not succeeded due to busy schedule of the experts. Further, the attempt to conduct FGD with some returnees of victims of trafficking was constrained due to time and resources considerations which would have been significantly enriched the study.

1.9. Outline of the Study

The thesis is divided into four chapters. The first chapter deals with introductory remarks such as: background of the study, statement of the problem, objective of the study, methodology and scope of the study. The second chapter tries to explain the concept of human trafficking, the acts, means and purposes of trafficking. It also tries to differentiate between “human trafficking” and “human smuggling”. This chapter additionally tries to elaborate the interplay of human rights and human trafficking. The third chapter is devoted to the study of the case of Uganda. Accordingly, it tries to provide the scale and magnitude of women trafficking, and causes and consequences of problem of women trafficking in Uganda. It also tries to scrutinize anti-trafficking responses adopted in Uganda in lens of human rights based approach standards in detail. The next chapter dwells on anti-trafficking responses. It tries to explain the two common anti-trafficking models, i.e., criminal justice response and human rights based approach. It tries to compare and contrast the pros and cons of the two models. It also provides some standards of human rights based approach response derived from international human rights law regime. The last chapter tries to provide some conclusions and recommendations.

Chapter Two: Understanding Human Trafficking

2.1. Introduction

Before embarking up on a detailed discussion of the main theme of the thesis, i.e., dwelling with human rights based approach to combat women trafficking, it is imperative to lay down introductory notes as a background. Accordingly, this chapter tries to expound the concept of human trafficking and related issues. It provides the definition of trafficking from the perspective of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.¹⁸ Additionally issues such as consent of the victims of trafficking, prostitution and women trafficking which are deemed relevant to shed light on the subject matter of trafficking will be dealt with.

Since human trafficking has been often confused with smuggling in persons, the distinguishing features of the two criminal activities will be identified. In connection to this, the point will also be made that the distinction between victims of trafficking and smuggling is not an easy task.

Furthermore, the interplay of human trafficking and human rights regime will be discussed briefly. Consequently, the fact that human rights violation is both a cause and consequence of trafficking will be noted. Besides, the human rights framework solution to combat human trafficking and the value added in characterizing human trafficking in human rights terms will be scrutinized before some concluding remarks are made.

2.2. Definition of Human Trafficking

Human Trafficking¹⁹ is defined for the first time in international legal instrument in the Trafficking Protocol in 2000.²⁰ Article 3(a) of the Trafficking Protocol provides that Human Rights Quarterly, Vol.23, No.4 (2001), pp.975-1004. See also Janice G. Raymond, The New UN Trafficking Protocol, Women's Studies International Forum, Vol. 25, No. 5, (2002), pp. 491 – 502.

Art.3(c) of Trafficking Protocol states that “the recruitment, transportation, transfer, harboring 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.

“trafficking in person shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over

¹⁸ Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000 and entered into effect in 2003(hereafter Trafficking Protocol).

¹⁹ The terms Human Trafficking, Trafficking –In- Persons and Trafficking of Human Beings are used interchangeably in this piece.

²⁰ Trafficking Protocol. For excellent commentary on the Trafficking Protocol, see Anne Gallagher, Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis

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;²¹

The definition contains three constituent elements. These are:

1. Action (what is done), consisting of: recruitment, transportation, transfer, harboring or receipt of persons;²²
2. The Means (how it is done), consisting of: threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;²³ and
3. Purpose (why it is done), consisting of : Exploitation which includes, 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;²⁴

All three elements must be present to establish the commission of crime of trafficking in persons.²⁵ However, the requirement of means is waived to constitute child trafficking.

The adoption of this broad and comprehensive definition is hailed as an important development because it provides a general guidance to different actors, such as scholars, governments, NGOs and IGOs to examine and respond to trafficking.²⁶ In other words, it creates a global language and legislation to define human trafficking.²⁷ Thus, the Trafficking Protocol becomes a global standard setting instrument which is regarded as a minimum bench mark for national governments to define the crime of trafficking in their domestic laws and policies.

2.3. Consent in Human Trafficking

During the negotiation over Trafficking Protocol the issue of consent has been hotly contested among the participants.²⁸ The debate was whether trafficking could occur irrespective of consent of the person. On one side it was argued that inclusion of the phrase: "irrespective of the consent of the person" would ensure that traffickers could not escape conviction by using the victim's consent as a defense.²⁹ Whereas those contesting this claim pointed out that issues of consent should not arise because trafficking necessarily involves the presence of some kind of consent-nullifying behavior (i.e., use of force, abduction, fraud, deception, etc.).³⁰

²¹ 29 Art.3 (a) of Trafficking Protocol.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ Gallagher, supra note 28, p.987.

²⁶ Tom Obokata, Trafficking of Human Beings From a Human Rights Perspective: Towards a Holistic Approach (Leiden: Martinus Nijhoff Publishers, 2006), p.3; Susan Kneebone, The Refugee–Trafficking Nexus: Making Good (The) Connections, Refugee Survey Quarterly, Vol. 29, No. 1 (2010), p.152.

²⁷ Raymond, supra note 28, p.491

²⁸ Gallagher, supra note 28, p. 985.

²⁹ Ibid.

³⁰ Ibid

Eventually, the Ad-Hoc Committee decided against the inclusion of irrespective of the consent.³¹ Thus the final version contains the phrase which states: The consent of a victim of trafficking in persons to the intended exploitation is irrelevant where any of the stated elements which actually define trafficking (coercion, fraud, abuse of power, etc.) have been used.³² Therefore, by now it is known that the consent of the victim of trafficking cannot be used as a defense to exonerate a person from criminal responsibility.³³

2.4. Women Trafficking: Beyond Prostitution and Sex Industry

The issue of women trafficking (to a certain extent human trafficking) has been often time linked to prostitution and sex industry.³⁴ Thus, the discussion on trafficking had been overtime revolving around trafficking for prostitution, sexual trafficking, trafficking for sexual exploitation, etc, to emphasis the inherent theoretical and conceptual link between (women) trafficking and prostitution and /or sex industry.³⁵ This disproportionate gender focus and linking of trafficking with forced prostitution distracted attention from other potential victims of trafficking.³⁶ Consequently, the scope of trafficking had been limited to women and girls on one hand; and the exploitation purpose to prostitution and sexual exploitation alone on the other hand.³⁷

Without a surprise the negotiation over trafficking definition in Trafficking Protocol is also mired by a heated debate on prostitution.³⁸ The battle line was drawn between those who want to consider prostitution as a legitimate labor for consensual adult women and those who consider prostitution as a violation of women's human rights hence to be proscribed as trafficking crime.³⁹ The former group formed the Human Rights Caucus, led by **International Human Rights Law Group (IHLRG)** saw prostitution as legitimate labour and argued that the trafficking definition should be confined to forced prostitution.⁴⁰ Whereas the latter group spearheaded by the **Coalition Against Trafficking in Women (CATW)**, saw all prostitution as a violation of women's human rights, and argued for proscribing prostitution *per se* as a trafficking crime regardless of consent of the women.⁴¹

³¹ Gallagher, supra note 28, p.986.

³² Trafficking Protocol art.3 (b); Gallagher, supra note 28, p.986.

³³ Inter-Parliamentary Union and UNODC, Combating Trafficking In Persons: A Handbook for Parliamentarians, (A Handbook for Parliamentarians, No.16, 2009), p.14.

³⁴ Conny Rijken and Dagmar Koster, A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice, pp.6-7.

³⁵ It is worth to note that even the earlier draft of Trafficking Protocol was also limited to trafficking in women and children, but soon the objection was raised over the restriction of the scope and amendment was made, see Gallagher supra note 28, p.983.

³⁶ Jordan, supra note 17, p.31.

³⁷ Obokata, supra note 35, p.27.

³⁸ Gallagher, supra note 28, p.984-986.

³⁹ Raymond, supra note 28; Gallagher, supra note 28, p.1002; Jo Doezema, Who gets to choose? Coercion, consent and the UN Trafficking Protocol.

⁴⁰ Raymond, supra note 28, p.494; Doezema, supra note 48.

⁴¹ Gallagher, supra note 28, p.985; Doezema, supra note 48.

Although both camps had forwarded their own justification and interpretation as regards adult women prostitution, the Ad-Hoc Committee left the matter open for states parties to deal with it in their domestic legislations.⁴² It did so not by a default but rather by a design as a means to end a yearlong debate over whether or not voluntary adult prostitution should be defined as trafficking.⁴³

As mentioned above the Trafficking Protocol is credited for defining trafficking broadly to encompass all persons: children, men and women. In this regard, it has made departure from previous international legal instruments which were exclusively limited to women and prostitution.⁴⁴ Moreover, it contains a wide array of exploitative purposes which includes but is not limited to, 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. In so doing it emphasizes that exploitation may take a variety of forms which indeed goes beyond traditional end purpose, i.e., prostitution. Thus, the Protocol has widened the scope of trafficking to encompass cases beyond trafficking in women and girls; and prostitution and sexual exploitation purposes.

Having said this, one should not lose sight of the fact that the majority of victims of trafficking crime are still women.⁴⁵ Some studies show that 80% of victims of trafficking are women.⁴⁶ In a similar vein, the majority of trafficked women are engaged in sexual exploitation and prostitution. Hence, the focus of this study on women trafficking is not purported to limit the scope of the definition of human trafficking but to draw attention to the largest victims of human trafficking.⁴⁷

2.5. Human Trafficking Verses Human Smuggling

The terms human trafficking and human smuggling are sometimes used interchangeably in the press and academic literatures, without a clear distinction. This suggests that these acts are regarded as more or less the same, and that there is no major difference in the way in which

⁴² The Travaux Préparatoires should indicate that the protocol addresses the issue of prostitution only in the context of trafficking, which is therefore without prejudice to how States Parties address prostitution in their respective domestic laws, Interpretative Notes for the official records (Travaux Préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the protocols thereto, U.N. Doc. A/55/383/Add.1, at para. 64 as quoted in Gallagher *supra* note 28, p.986.

⁴³ Jordan, *supra* note 17, p.32.

⁴⁴ International Convention for the Suppression of the White Slave Traffic (1910); International Convention for the Suppression of the Traffic in Women and Children (1921); and Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949) are cases in point.

⁴⁵ Joanna Apap et al, Counteracting Human Trafficking: Protecting the Victims of Trafficking, Summary, Centre for European Studies (CEPS), 2002, p.13.

⁴⁶ USAID Anti-Trafficking In Persons Programs in Africa: A Review (April 2007).

⁴⁷ Even though the trafficking problem affects all persons regardless of sex and age; evidences reveals that the women and children constitutes the largest portion of victims. According to the 2005 US Trafficking Report 80% of people trafficked annually are women, *ibid*. Also in Ethiopia the anecdotal evidences show that the majority of victims of trafficking are women.

trafficked and smuggled people are treated.⁴⁸ Nonetheless, the terms have got certain distinctive features as pointed out in UN Protocols and reiterated in literatures.

Human Trafficking is defined in Trafficking Protocol as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”⁴⁹

Whereas smuggling is defined in Smuggling Protocol⁵⁰ as “Smuggling of migrants” shall mean the procurement, in order 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.”

The key differences spelt out as distinguishing features are summarized as follows:

2.5.1. Consent

Trafficking is carried out with the use of coercion and/or deception, whereas smuggling is not, indicating that it can be a voluntary act on the part of those smuggled.⁵¹ Which means the intending migrant is complicit in smuggling, while not in trafficking.⁵²

2.5.2. The Role of Violence

Traffickers employ violence to subdue and force the victims into compliance and keep them controlled.⁵³ Hence trafficking is considered as a violent crime entailing deprivation of liberty. On the contrary, people smugglers have little if any need to use violence. Since they have already made their profit from being paid to facilitate the movement, there is no need for a smuggler to harm his ‘cargo’. Hence, smuggling in persons is not classed as a violent crime, and does not involve deprivation of liberty.

2.5.3. Transnationality

Smuggling necessary involves crossing of borders. However, trafficking does not necessarily require the crossing of international borders; it can be domestic, for example rural to urban,

⁴⁸ Tom Obokata, *Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law*, IJRL, (2005), p.396.

⁴⁹ Trafficking Protocol art.3 (a).

⁵⁰ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 2000, art. 3(a). (Hereafter Smuggling Protocol).

⁵¹ Obokata, supra note 57.

⁵² Brian Iselin and Melanie Adams, *Distinguishing Between Human Trafficking and People Smuggling*, UN Office on Drugs and Crime, Regional Centre for East Asia and The Pacific, Bangkok (2003), p.3 similarly, trafficking is considered as a crime against the person, while smuggling is viewed as a crime against the state, *ibid*.

⁵³ *Ibid*, p.7

north to south etc.⁵⁴ but for the purpose of this thesis, as outlined in its scope, trafficking of women who cross international borders are addressed.

2.5.4. Exploitation

Trafficking entails subsequent exploitation of people, while the services of smugglers end when people reach their destination. While the former has an exploitative purpose the latter has a facilitative purpose.

2.5.5. The Means of Entering Destination Country

While the means of entry into a destination country can both be legal and illegal in the case of trafficking, smuggling in persons is characterized by illegal entry.⁵⁵ As the sole purpose is the illegal entry of an intending migrant into a state in which that person has no lawful right of abode, smuggling necessarily involves illegal entry of destination country.⁵⁶

While in theory seemingly there are identifiable differences between trafficking and smuggling scenarios, practically it is difficult to distinguish the victims of trafficking from those smuggled. To begin with, the traffickers use the same routes, and means such as forged documentation and organizational networks as the smugglers.⁵⁷ In terms of causal factors there are close resemblances between these two criminal activities. Generally, extreme poverty, lack of economic opportunities, civil unrest, and political uncertainty, are factors that all contribute to an environment that encourages human smuggling and human trafficking.⁵⁸ In addition, as **Skeldon** rightly observes, violence, coercion and exploitation are as much an integral part of smuggling as they are of trafficking.⁵⁹ Perhaps at times what is initially started as purely smuggling could quickly end up as trafficking.⁶⁰ It seems appropriate to view smuggling and trafficking as part of a continuum as **Adam Graycar** has indicated.⁶¹ He suggests that smuggling is clearly concerned with the manner in which a person enters a country, and with the involvement of third parties who assist them to achieve entry. Trafficking is a more complicated concept, in that it requires consideration not only of the manner in which a migrant entered the country but also their working conditions and treatment after entry and whether the migrant

⁵⁴ Ibid, p.4

⁵⁵ Obokata, supra note 57, p.397.

⁵⁶ Iselin and Adams, supra note 61, p.4.

⁵⁷ Apap et al supra note 54, p.17.

⁵⁸ For a valuable study on causes of smuggling, see Obokata, supra note 57, pp.399-400; The Human Smuggling and Trafficking Center, Fact Sheet: Distinctions between Human Smuggling and Human Trafficking (April, 2006) (hereafter, The Human Smuggling and Trafficking Center), p.1.

⁵⁹ Ronald Skeldon, Trafficking: A perspective from Asia, International Migration, Vol. 38 (1), SI 1/2000, pp. 7-30, as quoted in Apap et al, supra note 54, p.17. Obokata notes that many people experience coercion during the process of smuggling. He further points out that many of them are placed under conditions and are subjected to torture and other inhumane or degrading treatment during their journey, see Obokata, supra note 35, p.26.

⁶⁰ Gallagher, supra note 28, p.1001; The Human Smuggling and Trafficking Center, supra note 71, p.2.

⁶¹ A. Graycar, Human Smuggling, Paper presented at the Centre for Criminology, The University of Hong Kong, 2000, p.8, as quoted in Apap et al, supra note 54, p. 18.

consented to the irregular entry and/or these working conditions.⁶² It is frequently difficult to establish whether there were elements of deception and/or coercion, and whether these were sufficient to elevate the situation from one of voluntary undocumented migration to trafficking. Thus, it is commendable to treat illegal migrants as a victim of trafficking unless and until the contrary is conclusively proved by a thorough competent investigation.⁶³ Put it differently, it suffices to note that it would be better to err on the side of caution and develop the presumption of victim status unless the contrary is proved.⁶⁴

2.6. Human Trafficking and Human Rights⁶⁵

There is a growing consensus to consider human trafficking as a human rights issue as articulated by several authors and reports.⁶⁶ It has been widely acknowledged that violations of human rights are both a cause and a consequence of human trafficking.⁶⁷ As Special Rapporteur notes that “ in a significant number of situations, the root causes of migration and trafficking can be attributed to the failure of States to guarantee the fundamental human rights of all individuals within their jurisdiction.”⁶⁸ The root causes of trafficking, i.e., poverty, discrimination, violence and general insecurity are emanated from deprivation of human rights.⁶⁹ Furthermore, the phenomenon of trafficking itself also entails a serious violation of

⁶² Ibid.

⁶³ Iselin and Adams, supra note 61, p.9. Unfortunately often time the law enforcement officials treat any illegal immigrant as smuggled criminal for some reasons. One is because it is easy to prove smuggling than trafficking and two to deny protection benefits contemplated under trafficking protocol, Gallagher supra note 28, p.1000. Regarding the importance of investigation the United Nations High Commissioner for Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1 (2002) (hereafter OHCHR Principles and Guidelines) noted that a failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights and States are therefore under an obligation to ensure that such identification can and does take place, *ibid*, guideline 2.

⁶⁴ As some authors correctly note , “ [t]o err on the side of a guilty presumption is not only a deprivation of natural justice, but if it is a trafficked victim we have discovered then we may be continuing the victimization of someone who has already suffered too much”, see Iselin and Adams, supra note 35, p.9.

⁶⁵ This matter will be dealt with in depth in the succeeding chapter; here a modest attempt is made to shed light on the intersection of human trafficking and human rights.

⁶⁶ 80Obokata, supra note 35,p.3; GTZ, Programme Promoting Gender Equality and Women,s Rights, Trafficking in Persons as a Human Rights Issue, 2008(hereafter GTZ 2008),available at <http://www.gtz.de/gender> [last accessed on June 5, 2011]; Marie Segrave, Human Trafficking and Human Rights, *Australian Journal of Human Rights*, Vol.14 No.2 (2009), pp.71-94; Patience Elabor-Idemudia, Migration, Trafficking and the African Woman, *Agenda*, No. 58, African Feminisms Three (2003), pp. 101-116; Elaine Pearson, Human Traffic, *Human Rights: Redefining Victim Protection*, Anti-Slavery International 2002; Jennifer S. Nam, The Case of the Missing Case: Examining the Civil Right of Action for Human Trafficking Victims, *Columbia Law Review*, Vol. 107, No. 7 (2007), pp. 1655-1703; Anne Gallagher , Trafficking, Smuggling and Human rights: Tricks and Treaties, *FMR* 12; Promotion and Protection of All Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development, Report submitted by the Special Rapporteur on Trafficking In Persons, Especially Women and Children, Joy Ngozi Ezeilo, A/HRC/14/32 (4 May 2010); Anne T. Gallagher, Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway *Virginia Journal of International Law* Vol. 49 No. 4(2009) pp.847-848; OHCHR Principles and Guidelines, supra note 77.

⁶⁷ OHCHR Principles and Guidelines, supra note 77, Guideline 1.

⁶⁸ Para.21.

⁶⁹ GTZ 2008, supra note 80.

human rights and human dignity.⁷⁰ The most common rights at stake are: the right to personal autonomy, the right not to be held in slavery or servitude, the right to liberty and security of person, the right to be free from cruel or inhumane treatment, the right to safe and healthy working conditions and the freedom of movement and the right to life.⁷¹

Since human trafficking is a human rights issue, a human rights framework offers a helping hand to supplement and/or complement ongoing anti-trafficking initiatives.⁷² **Obokata** in his book, **Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach** has identified two dimensions of human rights framework to combat trafficking.⁷³

The first one is framework of analysis which explores and identifies relevant human rights norms and principles in relation to human trafficking. The second dimension is a framework of action which tries to articulate legal obligations imposed up on states, such as obligations to prohibit trafficking, prosecute traffickers, protect victims, and address the causes and consequences of trafficking.

In terms of normative framework, there are a plethora of international and regional human rights instruments which are relevant to human trafficking.⁷⁴ For instance, **Art. 6 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**, urges states to suppress all forms of traffic in women and exploitation of prostitution of women.⁷⁵

Art.35 of the Convention on the Rights of the Child (CRC), calls for the prevention of the abduction of, sale of or traffic in children for any purpose or in any form.⁷⁶ The provision of CRC is further strengthened by the adoption of the Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, and Child Pornography (OP CRC on Sale of Child).⁷⁷

At regional level: **the African Charter on Human and Peoples' Rights (ACHPR)**, states that all forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited art.5;⁷⁸ and the **African Charter on the Rights and Welfare of Child (ACRWC)** calls on states parties take appropriate measures to prevent the abduction, the sale of, or trafficking of children for any purpose or in

⁷⁰ Obokata, supra note 35, p.4; Nam, supra note 80. Sadly even trafficked persons who escape their situation are subject to serious human rights violations at the hands of governments. Most governments' traditional policies give priority to detention, prosecution and expulsion of trafficked persons for offences related to their status, including violation of immigration laws, prostitution or begging. Often victims are treated as "disposable witnesses" whose sole value is their ability to assist in trafficking prosecutions, GTZ 2008, supra note 80.

⁷¹ GTZ 2008, supra note 80; Viviana Waisman, "Human Trafficking: State Obligations to Protect Victims' Rights, The Current Framework and A New Due Diligence Standard, Hastings Int'l and Comp.L.Rev., vol.33, No.2(2010), pp.385-386; Rijken and Koster, supra note 17, p.8.

⁷² Pearson, supra note 54, p.4; Segrave, supra note 80; Obokata supra note 35, p.35; the Joy Ngozi Ezeilo's report, supra note 80; Rijken and Koster, supra note 43, p.8.

⁷³ Obokata, supra note 35, p.35.

⁷⁴ A detailed discussion of contents of these instruments will be provided in the next chapter. Here it suffices to hint the overview of instruments which are in one way or the other dealt with trafficking and some components of trafficking as well.

⁷⁵ The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted in 1979.

⁷⁶ The Convention on the Rights of the Child (CRC), adopted in 1989.

⁷⁷ The Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, and Child Pornography (OP CRC on Sale of Child), adopted in 2000, arts.1-3.

⁷⁸ The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981.

any form, by any person including parents or legal guardians of the child.⁷⁹ Moreover, **the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** urges States Parties to take appropriate and effective measures to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.⁸⁰ Apart from these, there are some instruments which touch up on some aspects of human trafficking. For instance, **the International Covenant on Civil and Political Rights (ICCPR)** prohibits slavery, servitude, and forced labor.⁸¹ Similar provision is enshrined in the International Convention on Rights of All Migrants Workers and Members of Their Families (MWC).⁸² Further, the International Covenant on Economic, Social and Cultural Rights (ICESCR) calls for the adoption of special measures to protect children from economic and social exploitation.⁸³

The Trafficking Protocol also touches up on protection of human rights of victims of trafficking.⁸⁴ Its preamble states the need to protect the „internationally recognized human rights“ of those trafficked.⁸⁵ Art.2 also notes that the protection of human rights of victims is one purpose of the protocol.⁸⁶ Importantly, Arts.6-8 provides protection of human rights of victims of trafficking. These include, in particular, temporary resident status and temporary shelter, medical and psychological services, access to justice as well as compensation or restitution.⁸⁷

Finally, the question may arise as to what is the value added by considering human trafficking as human rights issue. There are two main advantages accrued in putting human trafficking in human rights perspective.⁸⁸ First of all considering human trafficking as human rights issue facilitates the understanding of the problem of trafficking.⁸⁹ Consequently, Human rights regime considers those trafficked as victims of human rights abuses and calls for adopting victim-centered approach anti-trafficking response.⁹⁰ Secondly, human rights framework unlike

⁷⁹ The African Charter on the Rights and Welfare of Child (ACRWC) adopted in 1990, art.29.

⁸⁰ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art.4 (2) (g).

⁸¹ The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, art.8.

⁸² The International Convention on Rights of All Migrants Workers and Members of Their Families (MWC), adopted in 1990, art.11.

⁸³ The International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, art.10 (3).

⁸⁴ However, unlike the criminal provisions, which are obligatory on State Parties, the human rights protections remain merely discretionary under the Protocol, GTZ 2008, supra note 80; Pearson, supra note 80, Human Traffic, supra note 80, p.2. Gallagher argues that the Protocol falls short of minimum standards in relation to the protection and assistance of victims of trafficking see Gallagher, supra note 80. In a similar vein some argued that, the Protocol is more of an anti-crime treaty than a human rights treaty, and at times it is a diluted rather than a total commitment to human rights, Vitit Muntarbhorn, Human Rights versus Human Trafficking in the Face of Globalization, p.4.

⁸⁵ Preamble of Trafficking Protocol, para.1.

⁸⁶ Art.2 (b) of Trafficking Protocol.

⁸⁷ See arts.6-8 of Trafficking Protocol.

⁸⁸ Obokata, Trafficking and Smuggling of Human Beings in Europe: Protection of Individual Rights or States' Interests? Web Journal of Current Legal Issues, available at „www.webjcli.ac.uk“ [last accessed on June 7, 2011).

⁸⁹ As Jordan rightly noted, the human rights framework unlike criminal justice approach shifts the focus away from seeing trafficked persons as objects towards understanding them as people bearing human rights. See Jordan, supra note 17, p.30.

⁹⁰ Obokata, supra note 35, p.35; OHCHR Principles and Guidelines, Guideline 1.

criminal justice approach⁹¹ adopts a holistic response to trafficking. Hence it attempts to address not only the process and consequences of trafficking but also the root causes of trafficking.⁹²

2.7. Conclusion

The Trafficking Protocol has broadly and comprehensively defined trafficking in persons for the first time at international level. By so doing it sets minimum common standards of achievements for all concerned actors as regards the issue of human trafficking. Additionally, it declares that the consent of the victim is irrelevant as long as means (use of force, abduction, fraud, deception, etc) of trafficking are present. Hence, it is no longer tenable to invoke the consent of the victims to be exonerated from criminal liability of trafficking crime. Furthermore, the broadening of possible exploitative purposes of human trafficking opens a window of opportunity to look beyond prostitution and sexual exploitation in dealing with issues of women trafficking.

The discussion over the concept of trafficking is not complete without endeavoring to strike the dividing line between trafficking and human smuggling. In this regard, while an attempt is made to draw the distinction between trafficking and smuggling in UN Protocols and scholarly writings by identifying certain distinguishing features, nevertheless it is submitted that there is only a thin line between the two criminal activities. Hence, it is commended that unless a thorough and competent investigation is undertaken to identify the smuggled and trafficked ones, it is in the best interest of protection of human rights to err on the side of caution and to treat all illegal immigrants as potential victims of trafficking crime.

Importantly, in this chapter an attempt has been made to draw a common denominator between human trafficking and human rights system. Accordingly, it has been established that human trafficking squarely falls within the realms of human rights regime. For one thing a violation of human rights is both a cause and consequence of human trafficking. For another a human rights framework offers a holistic response to problems of trafficking by addressing not only the process and consequences of trafficking but also the underlying root causes of trafficking.

⁹¹ Criminal justice approach viewing trafficking as crime and immigration issues focuses on the process and consequence of trafficking. Hence it does not bother to address the underlying root causes of trafficking crime, the next chapter will discuss in detail the pros and cons of criminal justice approach vis-à-vis a human rights approach.

⁹² Obokata, *supra* note 35, p.35.

Chapter Three: Women Trafficking In Uganda

3.1. Dimensions and trends of trafficking in women and girls

A 1997 report indicates women from Uganda are being trafficked to Europe for purposes of prostitution.⁹³ Isolated cases have been identified of women trafficked to Belgium, Lebanon, Netherlands, Switzerland, Thailand and United Kingdom. In some cases, women are recruited through brokers posing as employment agencies and organising travel, documents, visas promising the women they will work as dancers or models.⁹⁴ Upon arrival, the women are forced into prostitution.

Ugandan women do migrate for prostitution, especially to the Gulf States of Saudi Arabia and United Arab Emirates. The Immigration Department stated the Middle East (especially United Arab Emirates), France and Spain are the main destination countries where women are deported from (i.e. women migrating illegally for sex work).⁹⁵ NGOs state that women who go to the Gulf for sex work do not seem to be held in slave-like conditions.⁹⁶ As yet, there is no system in place to interview or record women who return in order to ascertain those who may have been trafficked into exploitative labour conditions. Evidence seems to suggest that women go to the Gulf independently as voluntary sex workers. The movement is not well organised but via informal networks of women. The Immigration Department did state in some cases women are deceived about the nature of the work, and that they have their passports confiscated upon arrival.⁹⁷ There is little known about women trafficked abroad for domestic labour, as occurs in other East African countries.

Uganda Youth Development Link (UYDEL) indicates children are migrating from border areas of Uganda to Kenya and working as domestic workers.⁹⁸ UYDEL's current research⁹⁹ on commercial sexual exploitation of children in border areas of Uganda shows children are migrating from Eastern Uganda to Nairobi, Kenya for prostitution. In terms of internal trafficking, as in Kenya and Tanzania, there is movement from rural to urban centres for employment, especially for child domestic labour and child sexual exploitation.¹⁰⁰

A study by Slum Aid Project (SAP) in slum areas of Kampala found that 71% of children engaged in prostitution were from rural areas outside of Kampala.¹⁰¹ Rural girls trafficked for prostitution are frequently school 'drop outs' in the 12 to 15 age bracket, often recruited by other women with vague promises of 'work', and then find the 'work' is as a *bar girl* or

⁹³ Butegwa, p.9.

⁹⁴ Interview, IOM, Kampala, 16 September 2003.

⁹⁵ Interview, Immigration Department, Kampala, 19 September 2003.

⁹⁶ Interviews with ATGWU, Kampala, 19 September 2003 and SAP, Kampala, 18 September 2003 (who stated they only knew of one case involving forced prostitution in the Gulf).

⁹⁷ Interview, Immigration Department, Kampala, 19 September 2003.

⁹⁸ Interview, ANNPCAN, Nairobi, 20 October 2003.

⁹⁹ Research findings should be available by December 2003.

¹⁰⁰ Interviews with ATGWU and SAP, Kampala, 19 September 2003 and EASSI and Isis WICCE, Kampala, 18 September 2003.

¹⁰¹ Gaway, p.15.

prostitute. Girls work in bars, clubs, on the street or in people's houses. Generally girls are not restrained from leaving but stay because of economic desperation; they are able to earn some money from the prostitution, but the majority goes to the bar owner (usually a woman).¹⁰²

3.2. Socio-political and economic framework

Trafficking is not an institutional priority in Uganda. The internal armed conflict in the North, and other conflicts in the East such as in Teso (with the Karamoja tribe) are the priority. Many NGOs are working on issue related to conflict; internally displaced persons and refugee issues related to the high influx of refugees from neighbouring Burundi, Democratic Republic of Congo, Rwanda and Sudan. The other major issue on the Government's agenda is the HIV/AIDS pandemic. Though the rate is declining due to effective interventions, in 2001 approximately 5% of the population were HIV positive.¹⁰³ Trafficking in women and girls is not an important issue for the Government nor for NGOs working on women's and children's rights.

The Ministry of Gender, Labour and Social Development's last National Action Plan on Women (1999) was largely in response to the 1995 Beijing Platform for Action and is for a five-year period up to 2003/4. The four priority areas identified in the Action Plan are:

- Poverty, income generation and economic empowerment
- Reproductive health and rights
- Legal framework and decision-making
- Girl-child and education.

The Action Plan makes no specific reference to trafficking in women or girls, though it does recognise the demand for girl-child labour.¹⁰⁴ The Ministry of Gender, Labour and Social Development has launched a national campaign to raise awareness concerning the worst forms of child labour.¹⁰⁵ The issue of gender-based violence as a whole is lacking in the current action plan.

3.3. Legal framework to counteract trafficking in Uganda

The Ugandan government does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. The government identified five trafficking cases during the year 2012 and prosecuted three of these cases but did not convict any forced labor or sex trafficking offenders under Uganda's 2009 **Prevention of Trafficking in Persons (PTIP) Act**. The government also established a **counter trafficking in persons (CTIP) office** – as mandated by the 2009 PTIP Act – to lead national anti-trafficking efforts and develop a national action plan. The government referred victims who came forward to the care of IOM but did not provide financial or material support for this care. The government's one-person **External Labor Unit (ELU)** continued to monitor the activities of licensed external labor recruiting agencies, provided pre-departure seminars for Ugandans

¹⁰² Interview with TAIFA and ATGWU-URWU, Kampala, 19 September 2003.

¹⁰³ UNAIDS/World Health Organisation (WHO) *Epidemiological Fact Sheet*, 2002 Update at http://www.unaids.org/hiv/aids/info/statistics/fact_sheet/pdfs/Uganda_en.pdf.

¹⁰⁴ Ministry of Gender, Labour and Social Development, *National Action Plan on Gender*, Kampala, 1999, p.24.

¹⁰⁵ US Department of State TIP report.

recruited to work overseas, and conducted an official visit to Iraq to investigate trafficking allegations. However, its efforts to adequately monitor external labor recruiting agencies were hampered by a continued lack of financial and human resources.

Uganda's relevant provisions are in the **Penal Code** for the criminalization of trafficking. However, According to IOM's research, there have been no convictions of traffickers for any of these offences.¹⁰⁶

Immigration law may be a barrier against trafficked women seeking to return home to Uganda. **Article 16 Immigration (Amendment) Act 1984** states that citizens who are repatriated through their own fault or misconduct must pay back the government costs of repatriation within 12 months. This has not been enforced against trafficked women, because so far the government has not paid the costs of women who have been repatriated. There is a need to ensure that this provision expressly does not apply to trafficked women, else women trafficked (especially for prostitution) are likely to be considered returning home 'through their own fault'.¹⁰⁷

3.3.1 Prosecution of Traffickers

The Government of Uganda maintained its anti-trafficking law enforcement efforts in the year 2012¹⁰⁸, acquitting two suspected traffickers, prosecuting two additional suspects, and initiating two additional investigations, though it did not convict forced labor or sex trafficking offenders. The 2009 PTIP Act prohibits all forms of trafficking, prescribing punishments of 15 years to life imprisonment, penalties which are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. During the year, a Ugandan court acquitted two alleged traffickers because the alleged offenses occurred prior to ratification of the act; the government did not retry the offenders for the domestic servitude of a child under other relevant legal provisions. In two of the five investigations that began during the reporting period, the government charged – in August and September 2011 – two suspects with human trafficking for recruiting Ugandan women into forced prostitution in East Asia. The investigation of two additional offenders also allegedly involved in the recruitment of women for forced prostitution in East Asia remains pending from the previous reporting period, as does an April 2010 case involving the trafficking of people from the Karamoja region to urban centers in Uganda. In 2011, the **Uganda Police Force (UPF)** and **Ugandan INTERPOL** cooperated with Malaysian, Thai, Chinese, Kenyan, and Rwandan government counterparts to investigate alleged trafficking cases.

The government prosecuted one internal domestic servitude case during the year which resulted in an acquittal; however, it did not identify cases of children involved in other forms of forced labor or prostitution. In November 2011, the MIA trained 598 police cadets from

¹⁰⁶ Interview IOM, Kampala, 16 September 2003.

¹⁰⁷ Butegwa, p.20 and Opening Remarks of the Minister of Gender, Labour and Social Development in UNAFRI, *Report of Trafficking Workshop held in January 2003*, Kampala, 2003, p.8.

¹⁰⁸ United States Department of State, 2012 Trafficking in Persons Report - Uganda, 19 June 2012, available at: <http://www.refworld.org/docid/4fe30c88a.html> [accessed 26 April 2013]

Uganda, South Sudan, and Somalia on identifying trafficking cases. In December 2011, the MIA also trained 22 immigration officers on victim identification and case investigation. In March 2011, MIA and police officials conducted two sessions as part of a broader ILO training of 35 officials from the MIA, UPF, the MGLSD, and NGOs on human trafficking and the 2009 PTIP Act. **The Ministry of Foreign Affairs (MFA)** did not provide training on victim identification to its consular staff. However, MIA immigration officials working in Ugandan embassies and consulates abroad routinely receive training in victim identification. Additionally, staff within the Uganda Prisons Service is complicit in forced labor for engaging pre-trial detainees in hard labor alongside convicts.

3.3.2 Protection of VoT

The government has made efforts to protect trafficking victims, but it failed to draft implementing regulations or allocate funding for the implementation of the 2009 anti-trafficking law's victim protection provisions.¹⁰⁹ The government identified trafficking victims during the year but did not develop procedures for the systematic identification of victims among high risk groups. The Ugandan military did not provide comprehensive data on persons rescued from the LRA during its operations abroad. During the year 2012, an NGO provided services, including counseling and vocational training, to 104 children removed from domestic servitude and prostitution. The government continued to provide short-term shelter, food, and medical care at police stations, while referring victims on an ad hoc basis to NGOs for long-term care and additional services. The government did not provide support to NGOs offering longer-term care. In Kampala, local police routinely took street children to an under-resourced MGLSD juvenile detention center that provided food, medical treatment, counseling, basic education, and family tracing. Children spent up to three months at the facility; some were returned to their families, but many others returned to the streets again. There were no similar government-funded or operated facilities or services for adult trafficking victims. The law permits foreign trafficking victims to remain in Uganda during investigation of their cases and to apply for residency and work permits, but there were no reported cases involving foreign victims during the year. The government encouraged trafficking victims to testify against their exploiters; however, there was no evidence that victims did so during the year.

During the year 2012, IOM repatriated 13 Ugandan women from Malaysia and two from China; the Ugandan government provided travel documents to several of these trafficking victims, but did not fund their travel costs or provide medical care, shelter, counseling, or other assistance to these or other repatriated trafficking victims. The Ugandan honorary consul to Malaysia played an active role in supporting and assisting in the repatriation of Ugandan trafficking victims in Malaysia. Several Ugandan members of parliament visited Malaysia in March 2012 on a related fact-finding mission.

¹⁰⁹ United States Department of State, 2012 Trafficking in Persons Report - Uganda, 19 June 2012, available at: <http://www.refworld.org/docid/4fe30c88a.html> [accessed 26 April 2013]

3.3.3 Prevention

The Ugandan government made increased efforts to prevent human trafficking during the year 2012¹¹⁰. In February 2012, the Minister of Internal Affairs, the lead ministry on anti-trafficking efforts, appointed a principal immigration officer to coordinate government anti-trafficking efforts and oversee the work of its newly established anti-trafficking office – the CTIP office. The establishment of the office fulfills a long-delayed mandate of the 2009 PTIP Act. In March 2012, the CTIP office established a national 14-member task force including representatives from the CTIP office, the Immigration Department, the UPF's child and family protection unit and special investigations unit, INTERPOL, the MGLSD, the MFA, the Ministry of Education, the Ministry of Justice and Constitutional Affairs, the Directorate of Public Prosecutions, the Internal Security Organization, the External Security Organization, and the Karamoja affairs, disaster preparedness, and refugees offices within the prime minister's office. During the year, the CTIP office required task force members to submit reports on actions to combat trafficking by their respective agencies and began consultations necessary for drafting a national action plan. The government also conducted anti-trafficking educational campaigns through radio programs and community discussions during the year. Following the interception of several buses of children in the previous reporting period and a well-documented problem of forced begging by Karamojong children on Kampala's streets, in 2011 the MGLSD established road blocks along the Karamoja-Kampala corridor to identify potential child victims before they reached Kampala.

The MGLSD's ELU continued application of its 2008 policy prohibiting labor recruitment agencies from recruiting Ugandans to work as domestic servants, and monitored their recruitment of guards, drivers, and manual laborers for overseas employment. In 2011, the ELU visited Iraq to investigate allegations of trafficking of Uganda citizens in these countries and began drafting new guidelines for recruitment agencies. The ELU – with just one staff member – provided pre-departure seminars for 400 Ugandans leaving for work abroad, supplied sample contracts to recruitment agencies, and provided phone numbers for Ugandans to call should they need assistance while abroad. However, the government's oversight of overseas recruitment agencies remains inadequate and under-resourced.

In March 2011, five women repatriated from Iraq in 2009 filed a lawsuit against the attorney general, the inspector general of police (IGP), the director of public prosecution (DPP), and a labor recruitment agency alleging that the agency had trafficked 155 women to Iraq. The women alleged that the IGP knew the women would be exploited and failed to carry out his constitutional duty to protect them, and that the DPP subsequently failed to prosecute the recruitment agency. The case remains pending, and the plaintiffs' claim that many of the women sent to Iraq remain missing. In February 2011, a member of parliament filed a petition on behalf of 16 women repatriated from Iraq tasking parliament's gender and social development committee to investigate recruitment agencies; during the year, parliament took

¹¹⁰ United States Department of State, 2012 Trafficking in Persons Report - Uganda, 19 June 2012, available at: <http://www.refworld.org/docid/4fe30c88a.html> [accessed 26 April 2013]

no action on this petition. The government investigated three cases of child sacrifice, two of which remain pending. In the third case, the government convicted one offender under its PTIP Act and sentenced this suspect to seven years' imprisonment for attempted child sacrifice. In March 2012, the government convicted a foreign national for possession of pornography and sentenced him to two years' imprisonment or a fine of equivalent to \$2,500. The offender paid the fine and was released, but was immediately rearrested for the alleged sexual abuse of Ugandan children. The case was pending at the end of the reporting period. The government provided anti-trafficking training to members of the Ugandan armed forces prior to their deployment abroad on international peacekeeping missions; an estimated 5,000 troops attended such trainings in 2011. Uganda is not a party to the 2000 UN TIP Protocol.

3.4. Impact of conflict on trafficking

The internal armed conflict in Northern Uganda and Eastern Uganda has caused widescale trafficking of a different kind. Large numbers of children in conflict areas are abducted by the rebel force, the Lord's Resistance Army (LRA) and are forced to work as child soldiers or as slaves/ 'wives' to the LRA Commanders. Abductions of children escalated in the past year, as the Ugandan Government increased efforts to flush the LRA rebels out of Southern Sudan. The 'success' of the operation meant that the LRA returned to Northern Uganda and began a new wave of brutality, killing, raping civilians, looting and burning villages and IDP camps and abducting children from homes and schools on a scale never seen before. In the period June 2002 to July 2003, approximately 8400 children were abducted, bringing the total to well over 20,000 since the start of the 17-year conflict.¹¹¹ To date, 6000 children remain missing.¹¹²

Many children and also women are taken across the border to Sudan, where the LRA still has camps. Those who try to escape may be beaten to death. In cases of children, both boys and girls work as porters, carrying heavy loads long distances. They also work as bodyguards to Commanders and as child soldiers, forced to engage in armed battle against the UPDF and in Sudan against the SPLA (Sudan People's Liberation Army). Most girls of puberty age are forced to become 'wives' to commanders. They are raped, beaten and forced to work, carrying out tasks such as cooking, washing, collecting firewood, walking long distances to obtain water and looking after younger children – often their own or other abductees' babies.¹¹³

Abducted children are reportedly younger and younger, with the 5 to 13 age bracket now being targeted as they are deemed more submissive.¹¹⁴ Younger girl-children are also desirable to the LRA as it is felt they are less likely to have contracted HIV. There are some reports that abducted girl-children are being sold as slaves in Sudan and the Middle East.¹¹⁵

¹¹¹ Human Rights Watch, *Abducted and Abused: Renewed Conflict in Northern Uganda*, Volume 15, No. 12 (A), New York, July 2003, p.3 at <http://www.hrw.org/reports/2003/uganda0703/>.

¹¹² UNICEF, quoted in 'UK gives Sh. 3.2 billion to North', *The Monitor*, 2 Sept 2003, p.5.

¹¹³ Human Rights Watch, p.28.

¹¹⁴ Interview, ACORD, Gulu, 9 September 2003.

¹¹⁵ Interview, ACORD, Gulu, 9 September 2003 and UNAFRI Report, p.12.

3.5 Conclusion and recommendations for Uganda

Recommendations for Uganda are to continue to implement comprehensive anti-trafficking legislation and build the capacity of the CTIP office and other governmental and non-governmental stakeholders; increase efforts to prosecute, convict, and punish trafficking offenders; institute a unified system of documenting and collecting data on human trafficking cases for use by law enforcement, labor, and social welfare officials; investigate and punish labor recruiters and criminal entities responsible for knowingly sending Ugandans into forced labor or prostitution abroad; ensure use of a definition of trafficking in persons consistent with the 2009 PTIP Act and 2000 UN TIP Protocol when implementing the act, identifying victims, and combating trafficking generally; finalize regulations to fully implement the protection and prevention provisions of the 2009 PTIP Act; launch a nationwide anti-trafficking public awareness campaign with a particular focus on forced labor; establish policies and procedures for government officials to identify and interview potential trafficking victims proactively and transfer them to the care, when appropriate, of local organizations; train Ugandan officials serving in overseas postings in victim identification techniques; and increase the number of staff and funding dedicated to the anti-trafficking efforts within the ELU, the Ministry of Gender, Labor, and Social Development (MGLSD), and the Ministry of Internal Affairs (MIA).

However while there some positive initiatives and efforts, antitrafficking measures adopted in Uganda as discussed in this chapter fall short of human rights based antitrafficking approach standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach Antitrafficking Response in the country to see the effective and meaningful eradication of trafficking in women. This approach is discussed in the following chapter.

Chapter Four: A Human Rights Based Approach to Counteract Women Trafficking

A. Part One

4.1. Approaches to Counteract Women Trafficking

There are two common approaches¹¹⁶ identified to combat human trafficking including women trafficking.¹¹⁷ These are Criminal Justice Approach and Human Rights Based Approach anti-trafficking responses. While the former favors law enforcement oriented, i.e., crime and border control anti-trafficking interventions, the latter adopts a primacy of protection of human rights in designing and realizing anti-trafficking initiatives. The major distinctions emanate from the way they conceptualize trafficking problem and resultant measures they propose from their vantage points of viewing the trafficking problem. In this part of the chapter an attempt is made to expound these two dominant anti-trafficking approaches. In so doing an attempt is made to outline the main features of both approaches. Furthermore, I try to compare and contrast the two approaches and make a mini-conclusion on the debate of Criminal Justice Approach Versus Human Rights Approach.

4.1.1. Criminal Justice Approach Anti-Trafficking Response

Criminal Justice Approach is perhaps the most common dominant and hitherto accepted framework at national and international level to combat human trafficking.¹¹⁸ It has been in existence since the early periods of 20th Century.¹¹⁹ Most of international anti-trafficking instruments previously adopted have been informed and influenced by Criminal Justice Approach.¹²⁰ As shortly shown below, the Trafficking Protocol, despite the unprecedented lobbying of human rights communities for adopting a Human Rights-Based Approach, it does not make a break from its predecessors in preferring the primacy of Criminal Justice Approach.¹²¹

¹¹⁶ Although there are other approaches identified in literatures, they could be subsumed under the two approaches, Elizabeth Yuko, *Theories, Practices and Promises: Human Trafficking Laws and Policies in Destination States of the Council of Europe*, LLM dissertation submitted to Dublin City University, School of Law and Government, September 2009, p.22.

¹¹⁷ Haynes, *supra* note 14, p.238. See also Anchinesh, *supra* note 25, p.17.

¹¹⁸ Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, *Boston University International Law Journal*, Vol.25, (2007), pp.207-295, at p. 224; Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, *Stanford Journal of International Law*, Vol. 40, No.1, (2004), p.2.

¹¹⁹ Nilanjana Ray, *Looking at Trafficking Through a New Lens*, *Cardozo Journal of Law and Gender*, Vol.12, (2006), pp.909-928, at p.914.

¹²⁰ For a detailed discussion on earlier trafficking specific treaties in light of criminal justice approach see, Alice Edwards, *Traffic In Human Beings: At the Intersection of Criminal Justice, Human Rights, Asylum/Migration and Labor*, *Denver Journal of International Law & Policy*, Vol. 36, No.1 2007, pp.15-18(He notes that "Apart from the 1904 Agreement, all trafficking-specific treaties had and continue to adopt a criminal law focus."), p.15; see Bruch, *supra* note 110, at p.4. See generally *ibid*, pp.2-4.

¹²¹ Bruch, *supra* note 110, p.5.

Criminal Justice Approach considers human trafficking as a crime and immigration (border) issue requiring aggressive criminal law and border enforcements.¹²² And it is characterized by putting emphasis on crime and immigration control responses.¹²³ It prescribes the criminalization of human trafficking and related offences such as breaches of prostitution, immigration and labor law as sole tools to combat human trafficking.¹²⁴ Particularly, it is manifested by paying great attention on the prosecution of the traffickers and curtailing illegal migration and organized crime through stricter law enforcement and border control measures.¹²⁵ It also conditions the victims' protection measures on the willingness or ability of a victim to cooperate the prosecution of traffickers. There is a tendency to consider trafficked persons as tool for facilitation of prosecution of traffickers.¹²⁶ Thus far, protection measures may be granted to trafficked persons as a function of their usefulness to the State as an instrument in the prosecution of those involved in the trafficking process.¹²⁷ As such the principal concern of the Criminal Justice Approach is to stop crime, not violation and exploitation of women, whose interests are thus secondary, or presumed to be generally served, by stopping the criminals.¹²⁸ In short the cardinal components of Criminal Justice Approach are: criminalization, prosecution, and border enforcement.¹²⁹

The proponents of Criminal Justice Approach maintain that adopting stronger legislation could curb trafficking in persons because it would mean more effective detection and prosecution of traffickers and increase the penalties for trafficking.¹³⁰ They further note that harsher punishments will discourage traffickers from operating and stricter border controls will make it more difficult for traffickers to transport persons to the end destination.¹³¹ To be fair, Criminal Justice Approach has the potential to deter traffickers from engaging into women trafficking by portraying trafficking as a low return and a high risk venture.¹³² This is the case through criminalizing trafficking and setting harsher penalties in criminal legislation. It could also be used to increase the likelihood of prosecution of traffickers which in turn serves as preventive measures.¹³³ As such criminal justice approach offers the potential for the direct prosecution of traffickers and a tangible way of enforcing international law.¹³⁴

Further, a Criminal Justice Approach provides benefits by allocating resources to combat trafficking. As Bruch argues generally crime prevention resources at the national and

¹²² Chuang, *supra* note 15, at p.138.

¹²³ Obokata, *supra* note 35, p.4.

¹²⁴ Yuko, *supra* note 108, p.23.

¹²⁵ Haynes, *supra* note 14, p.239; Ray, *supra* note 111, p.915.

¹²⁶ Yuko, *supra* note 108, p. 36.

¹²⁷ *Ibid.*

¹²⁸ Elaine Pearson, *Human Rights and Trafficking in Persons: A Handbook*, (GAATW, Bangkok) (2000), p.62.

¹²⁹ Bravo, *supra* note 110, p. 231.

¹³⁰ Pearson, *supra* note 120.

¹³¹ *Ibid.*, p.62.

¹³² Haynes, *supra* note 14, p. 243; Kristof Van Impe, *People for Sale: The Need for a Multidisciplinary Approach towards Human Trafficking*, *International Migration*, Special Issue 2000/1, pp.113-130, p.122; Bruch, *supra* note 110, p.6.

¹³³ Haynes, *supra* note 14, 243.

¹³⁴ Bruch, *supra* note 110, p.6. This could be contrasted with the weakness of human rights regime vis-a-vis private actors and enforcement of human rights obligations.

international levels not only in financial terms, but also in terms of personnel and enforcement mechanisms are greater than those for human rights concerns.¹³⁵

While the components of this approach can be found in various international and domestic anti-trafficking instruments, here the focus is made on Trafficking Protocol. Thus the following section deals with Trafficking Protocol as instrument of law enforcement. Attempt is made to show that the Protocol has been a typical embodiment of Criminal Justice Approach anti-trafficking model envisaged at international level.

4.1.1.1. Trafficking Protocol as Instrument of Law Enforcement

The Vienna process the negotiation to adopt the Trafficking Protocol has been dominated by two highly controversial issues.¹³⁶ The first issue which unfortunately consumed a good portion of the deliberation sessions has been over the legal definition of trafficking.¹³⁷ The second one has been the debate over anti-trafficking framework. The battle has been whether to regard trafficking as a crime and border control issue or the human rights issue of trafficked persons.¹³⁸ Despite the lobbying of human rights communities in the Vienna process for approaching anti-trafficking policy in human rights perspective, it was the crime and immigration control considerations that motivated many states to adopt Criminal Justice Approach as international legal order to combat trafficking.¹³⁹ Consequently, the Trafficking Protocol, as widely acknowledged, is emerged as anti-crime treaty than human rights instrument. There are two main justifications for holding Trafficking Protocol as a typical example of Criminal Justice Approach model. The first is related with the way the instrument has come about. The Protocol was created at the UN Commission on Crime Prevention and Criminal Justice in Vienna rather than at one of the human rights bodies located in Geneva; and made supplementary Protocol to United Nations Convention against Transnational Organized Crime Convention¹⁴⁰ which is exclusively criminal justice treaty.¹⁴¹ Further, the monitoring organ happens to be a law enforcement specialist institution i.e. United Nation Office on Drug and Crime (UNODC).

¹³⁵ Ibid.

¹³⁶ Janie Chuang, *The United States As Global Sheriff: Using Unilateral Sanctions To Combat Human Trafficking*, Michigan Journal of International Law Vol. 27 (Winter 2006), p.442. For excellent discussion on the background issues of Trafficking Protocol see generally, Gallagher, supra note 28.

¹³⁷ This issue has been thoroughly dealt with chapter two. Thus, here the focus is on the second issue, i.e. on anti-trafficking framework debate.

¹³⁸ Chuang, supra note 128.

¹³⁹ Ibid, p.446; Chuang supra note 15, p.147.

¹⁴⁰ United Nations Convention Against Transnational Organized Crime, adopted in 2000 (Organized Crime Convention).

¹⁴¹ Bruch, supra note 110, p.6.

Further, the monitoring organ happens to be a law enforcement specialist institution, i.e., United Nation Office on Drug and Crime (UNODC). More convincingly, the provisions of the instrument are self-evident of the clear prioritization of Criminal Justice framework. While law enforcement provisions are couched in strong language,¹⁴² provisions dealing with protection and prevention are crafted in weak language.¹⁴³ Accordingly, the protections of trafficked persons are made optional not mandatory obligations unlike law enforcement measures.¹⁴⁴ It has been maintained that with respect to protection the trafficking protocol disappointed.¹⁴⁵ Hence, subjecting to “in appropriate cases and to the extent possible under its domestic law” caveats, the Trafficking Protocol requires states only to *consider* implementing measures providing for trafficked persons’ physical and psychological recovery and *endeavor* to provide for their physical safety, among other goals.¹⁴⁶ Regarding prevention, it requires states to *endeavor* to undertake measures such as information campaigns and social and economic initiatives to prevent trafficking,¹⁴⁷ as well as “to alleviate the factors that make persons . . . vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity,” and to discourage demand for trafficking.¹⁴⁸ This apparently ungenerous and unequivocal nature of the protection and prevention related provisions of the Protocol manifests the prioritization of Criminal Justice Approach.

Some are optimistic that the gap left in the Trafficking Protocol regarding protection and prevention of trafficking may be filled by already existing human rights framework, and / or other branches of international law such as Transnational Criminal Law(hereafter TCL) and International Criminal Law(hereafter ICL); and regional anti-trafficking instruments.¹⁴⁹ Be this as it may, the Trafficking Protocol remains as typical law enforcement instrument with little protection guarantees of trafficked persons human rights.

At the end, it is worth to note the accomplishment of Trafficking Protocol that it has so far yielded some gains in influencing international, regional and national standard setting tones. It has significantly transformed the norm setting in international, regional and national levels.¹⁵⁰ In particular the definition of trafficking in persons articulated in the Trafficking Protocol continuous to serve as touchstone for national governments in adopting anti-trafficking legislative and policy frameworks.

In sum, the Trafficking Protocol even though it has been soft and weak on human rights count, it has managed to establish strong criminal justice frame work. As such it could be credited on criminal justice count.¹⁵¹

¹⁴² See for comparison arts.5, 10, 11 of Trafficking Protocol, which states that “Each States Parties shall adopt

¹⁴³ Chuang, supra note 15, pp.148-149.

¹⁴⁴ Gallagher, supra note 28, p.990.

¹⁴⁵ Gallagher, supra note 134, p.2.

¹⁴⁶ Trafficking Protocol, arts.6-8.

¹⁴⁷ Ibid, art.9 (2).

¹⁴⁸ Ibid, art.9 ((4) (5)).

¹⁴⁴ Chuang, supra note 128, p. 448.

¹⁴⁹ Gallagher, supra note 134, p.2; Obokata, supra note 35, p.167. Regarding the interplay of ICL and TCL with human rights law system in combating human trafficking, see generally Obokata supra note 35, pp.165-169.

¹⁵⁰ Gallagher, supra note 134, p.5.

¹⁵¹ Chuang, supra note 128, p. 448.

4.1.1.2. Draw Backs of Criminal Justice Approach

Criminal Justice Approach is widely criticized for its ostensible lack of protection measures for trafficked persons. It offers little protection for victims of trafficking due in part of viewing trafficking as a problem of crime and immigration issues. Evidently the provisions of Trafficking Protocol dealing with protection aspects of trafficked persons have been couched in discretionary languages, while the provisions related to punishment are made mandatory.¹⁵² To make even matters worse Criminal Justice Approach has left little room for victims to assert or protect their rights and interests.¹⁵³

It is also criticized for relegating the protection of victims of trafficking as secondary matter.¹⁵⁴ To put it differently, the Criminal Justice Approach places the safety and protection of victims" of trafficking in a subordinate position to the interests of prosecution and trial. This approach has been influenced by conceiving trafficking as crime against the state not as human rights violations and crime against individuals.¹⁵⁵ Hence, victims of trafficking are seen foremost as witnesses or informants, rather than as victims of a serious crime.¹⁵⁶ To this effect several national governments take measures that objectify trafficked persons worth only for prosecution of traffickers.¹⁵⁷ It subjects victims protection benefits to the ability or willingness of the victims to cooperate prosecution of traffickers. That is to say, the victims are granted protection for the sake of facilitation of prosecution rather than for their dignity and safety. Such an approach fails to help facilitation of prosecution of traffickers and protect the victims either. Because such conditionality of protection measures offers little incentive for trafficked persons to come forward to testify, it fails to sufficiently protect persons who have already been seriously harmed.¹⁵⁸

Moreover Criminal Justice Approach implicates the trafficked persons as offenders of breach of immigration law.¹⁵⁹ Like any other undocumented immigrants, the trafficked persons are placed in detention, prosecuted and then deported.¹⁶⁰

¹⁵² Bruch, supra note 110, p.8.

¹⁵³ Ibid.

¹⁵⁴ Ray, supra note 111, p.918.

¹⁵³Ibid. See also Pearson, supra note 120, p.63.

¹⁵⁵ Mohamed Y. Mattar, Incorporating the Five Basic Elements of a Model Antitrafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention, the protection project, 2006.

¹⁵⁶ Natalia Ollus, The United Nations Protocol to Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children: A Tool For Criminal Justice Personnel, 122nd International Training Course Reports of the Course, Resource Material Series No. 62, p.17; Ray, supra note 5,p.918.

¹⁵⁷ Jordan, supra note 17, p.29.

¹⁵⁸ Haynes, supra note 14, p.247.

¹⁵⁹ Ibid, p.238.

¹⁶⁰ Ibid. See also Pearson, supra note 120, p.63.

There are several studies showing that many countries continue to prosecute trafficked persons despite the existence of international instrument outlawing the prosecution of the latter.¹⁶¹ It has been noted that law enforcement officials tend to prosecute trafficked persons since it is relatively easier to charge them with prostitution, document fraud, or immigration or labor violations than charging the difficult cases of traffickers.¹⁶² As **Wuiling** rightly concludes a purely criminal approach in which victims are perceived as law-breakers revictimizes them and impedes the criminal prosecution of those truly responsible, reinforcing the vicious cycle that characterizes women trafficking.¹⁶³

Finally, owing to its fixation to prosecution, the Criminal Justice Approach model fails to adequately address the structural socio-economic root causes of women trafficking. As UN Special Rapporteur on Trafficking in persons¹⁶⁴ notes, the law enforcement approach should not be exclusively relied upon as a prevention method. In the view of the Special Rapporteur, measures to prevent trafficking will not be effective or sustainable unless the underlying social, economic and political factors that create an environment conducive to trafficking are addressed.¹⁶⁵ As such trafficked women are prone to be re-victimized and re-trafficked. And the vicious cycle of trafficking will not be broken easily. **Obokata** also holds that unlike Human Rights Based Approach the Criminal Justice Approach 'is not necessarily best equipped' to promote a holistic approach to address the causes, process and consequences of women trafficking crime.¹⁶⁶

¹⁶¹ Anne Gallagher and Paul Holmes, Developing an Effective Criminal Justice Response to Human Trafficking: Lessons from the Front Line, *International Criminal Justice Review*, Vol. 18, No. 3, (2008), pp. 318-43 at p. 331; Mattar, *supra* note 148, p.36; Haynes, *supra* note 14, p.239.

¹⁶² Haynes, *supra* note 14, p.239.

¹⁶³ Cheah Wuiling, Assessing Criminal Justice and Human Rights Models in the Fight against Sex Trafficking: A Case Study of the ASEAN Region, *Essex Human Rights Review* Vol. 3 No. 1, pp.46-63, p.62.

¹⁶⁴ Report of the Special Rapporteur on Trafficking In Persons, Especially Women and Children, Joy Ezeilo, submitted to UN General Assembly in accordance with Human Rights Council resolution 8/12.(9 August 2010, A/65/288)(hereafter Joy Ezeilo, Report on the Prevention of Trafficking In Persons).

¹⁶⁵ *Ibid*, para.20. See also Jordan, *supra* note 17, p.30.

¹⁶⁶ Obokata, *supra* note 35, p.36.

4.1.2. A Human Rights-Based Approach Anti trafficking Response

Human Rights Based Approach in light of combating trafficking can be understood as a conceptual framework for dealing with a phenomenon such as trafficking that is normatively based on international human rights standards and that is operationally directed to promoting and protecting human rights. It affirms that such an approach requires analysis of the ways in which human rights violations arise throughout the trafficking cycle, as well as of States obligations under international human rights law. It seeks to both identify and redress the discriminatory practices and unjust distributions of power that underlie trafficking, that maintain impunity for traffickers, and that deny justice to victims of trafficking. Under a human rights-based approach, every aspect of the national, regional and international response to trafficking is anchored in the rights and obligations established by international human rights law.¹⁶⁷

It has to be submitted that the renewed interest in a Human Rights Based Approach response to counteract human trafficking has been immensely influenced by a Human Rights Based Approach to development programming triggered by intergovernmental organizations and NGOs.¹⁶⁸ Accordingly, the principles and standards developed in the area of development and interplay of human rights regime are freely borrowed into Human Rights Based Approach anti-trafficking strategies.¹⁶⁹

Human Rights Based Approach recognizes that trafficking is first and foremost a human rights issue. It holds that trafficking in human beings constitutes both a cause and a consequence of human rights violations. According to the former UN High Commissioner for Human Rights, Mary Robinson, "trafficking is a cause of human rights violation because it violates fundamental human rights, such as the right to life, the right to dignity and security, the right to just and favorable conditions of work, the right to health, the right to equality and the right to be recognized as a person before the law. It is a consequence because it is rooted in poverty, inequality and discrimination."¹⁷⁰

Human Rights Based Approach takes the protection of the human rights of victims of trafficking as the genuine guiding principles for adopting measures, policy, and legislation in the fight against human trafficking.¹⁷¹ It focuses on the victims and promotion and protection of their rights.¹⁷² In this approach, the position of the victims, the violations of their human rights and their vulnerable position are the starting points for taking countermeasures against human

¹⁶⁷ Commentary on Recommended Principles and Guidelines on Human Rights and Human Trafficking, United Nations Office of High Commissioner for Human Rights, (2010) (hereafter Commentary on Trafficking Principles and Guidelines), pp.49-50. For further discussion on human rights based approach anti-trafficking programming, see Marjan Wijers, An Exploration of the Meaning of A Human Rights Based Approach to Trafficking, GAATW Alliance News, Issue 22, (2004), pp.7-14.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

¹⁷⁰ Wijers, supra note 160, p.8.

¹⁶⁹ Yuko, supra note 108, p.29; Jordan, supra note 17, p.30.

¹⁷¹ Rijken and Koster, supra note 43, p.9.

¹⁷² Bravo, supra note 110, p.231.

trafficking.¹⁷³ Accordingly, it requires that anti-trafficking responses have to be centralized on the needs and safety of victims of trafficking.¹⁷⁴ Since it puts victims at the center stage of anti-trafficking, it is also known as victim centered approach.¹⁷⁵

Human Rights Based Approach views trafficked persons as victims of crime and human rights abuses deserving protection and assistance.¹⁷⁶ It shifts the attention from a State's right to control trafficked persons to their obligation to protect them.¹⁷⁷ It provides a new perspective of viewing¹⁷⁸ and responding to the problem of trafficking.¹⁷⁹ It suggests that trafficked persons have to be considered as victims of human rights abuses rather than criminals.¹⁸⁰ **Smith and Mattar** argue that the foundation of the Human Rights Based Approach shifts the notion of criminalization from the trafficked persons to the traffickers through the decriminalization and protection of the trafficked persons in conjunction with the criminalization and prosecution of the traffickers.¹⁸¹

Human Rights Based Approach promotes prosecution of traffickers, but do not condition victim protection on the willingness or ability of the victim to assist with the prosecution.¹⁸² It facilitates the prosecution of traffickers by securing confidence of victims to testify against their abusers. As Haynes observes, Human Rights Based Approach allows victims of trafficking to become better potential witnesses by securing their safety and physical presence and promoting their psychological capacity to testify.¹⁸³

¹⁷³ Rijken and Koster supra note 43; Haynes, supra note 14, p.247.

¹⁷⁴ Obokata, supra note 35, p.35.

¹⁷⁵ Haynes, supra note 14, p.238.

¹⁷⁶ Yuko, supra note 108, p.29; Jordan, supra note 17, p.30.

¹⁷⁷ Yuko, supra note 108, p.30. Regarding states obligation in protection of trafficked persons see generally, Gallagher, supra note 134, chapters 5 and 6; see also Obokata, supra note 35, chapter 5. For analysis of states obligation to uphold due diligence standards in protection of trafficked persons, see generally, Viviana Waisman, Human Trafficking: State Obligations to Protect Victims' Rights, the Current Framework and a New Due Diligence Standard, *Hastings Int'l & Comp.L.Rev.*, Vol.33, No.2(2010), pp.385-430.

¹⁷⁸ This is considered as Framework of analysis which indicates exploring and identifying relevant human rights norms and principles in relation to trafficking in human beings. These include, but are not limited to, the rights to life, work, health as well as prohibition of torture and slavery. Obokata, supra note 35, p.35.

¹⁷⁹ This is considered as Framework of action which attempts to articulate legal obligations imposed up on states, such as obligation to prosecute trafficking cases, protect trafficked persons and prevent trafficking; *ibid.*

¹⁸⁰ *Ibid.*, p.35.

¹⁸¹ Smith, Linda and Mohamed Mattar, *Creating International Consensus on Combating Trafficking in Persons: US Policy, the Role of the UN, and Global Responses and Challenges*, *The Fletcher Forum of World Affairs*, Vol. 28, (2004), pp 1621-162, as quoted in Yuko, supra note 108, p.30.

¹⁸² Haynes, supra note 14, p.247.

¹⁸³ *Ibid.*, p.252.

It takes into account the agency of trafficked person in effecting prosecutorial efforts. As Pearson notes rights based empowering strategies will lead to more effective investigation and successful prosecution of traffickers. Thus women who understand their rights and are protected from retaliation and prosecutions will cooperate in investigations.¹⁸⁴ This means as some authors argue that prosecution is part of the package of the Human Rights Based Approach to fight human trafficking.¹⁸⁵

It also goes beyond the immediate consequences and processes of trafficking phenomena and seeks to dismantle the structural factors causing and sustaining women trafficking.¹⁸⁶

It has been widely established that women trafficking is fueled by structural contexts exposing women and girls to the net of traffickers.¹⁸⁷ As Ray observes trafficking is 'a symptom' of socio-economic disease such as: feminized poverty, discrimination, lack of education, unemployment, lack of access to resource causative root causes feeding trafficking.¹⁸⁸ Unless these underlying root causes are uprooted, there is no way of breaking the vicious cycle of trafficking crime. Adopting Human Rights Based Approach would contribute to eradicate trafficking by addressing underlying ills fostering contemporary slavery.¹⁸⁹

Furthermore, it is also beneficial in addressing smuggling of human beings by providing „a common tool of analysis and action“ in relation to trafficking and smuggling.¹⁹⁰ Human Rights Based Approach framework seeks to protect the human rights of smuggled migrants regardless of their status.¹⁹¹

¹⁸⁴ Pearson, supra note 120, p.66. For analysis of a host protection and assistances in store for trafficked persons in Human Rights Based Approach anti-trafficking response see infra part two, section 3.2.2 of this chapter.

¹⁸⁵ Rijken and Koster, supra note 43. But note that in Human Rights Based Approach prosecution entails twin purposes of ending impunity and securing justice for victims. As such it seeks to establish effective criminal justice administration which include, inter alia, ensuring victims protections and remedies as well granting fair trial for suspects of trafficking crime. On prosecution of trafficking in context of Human Rights Based Approach see infra section 3.2.1 of this chapter. see also generally, Gallagher and Holmes, supra note 154, Anne T. Gallagher and Nicole Karlebach, Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice, Background Paper, July, 2011, Geneva, Available at: http://works.bepress.com/anne_gallagher/18 (last visited on August 12, 2011). See also Gallagher, supra note 134.

¹⁸⁶ Obokata, supra note 35, p.35.

¹⁸⁷ On this point see inter alia, Joy Ezeilo, Report on the Prevention of Trafficking In Persons, supra note 51; Commentary to Trafficking Principles and Guidelines, supra note 160; Jordan, supra note 17.

¹⁸⁸ Ray, supra note 111, p.924.

¹⁸⁹ ¹⁸⁹ On this point see infra part two section 3.2.3 of this chapter, where discussion is made to explore states obligations to address vulnerable root causes of trafficking in women in particular and trafficking in persons in general.

¹⁹⁰ Obokata, supra note 35, p.36; Gallagher, supra note 134, p.3.

¹⁹¹ On this point, see generally Tom Obokata, Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law, IJRL, (2005).

Human Rights Based Approach adopts a holistic anti-trafficking framework encompassing prosecution, protection, and prevention. It suggests that all three Ps¹⁹² must be implemented simultaneously to counteract women trafficking in a „humanized fashion“.¹⁹³ It does not advocate preferences or prioritization among the three Ps; rather all of them are integral part of anti-trafficking package. In other words, Human Rights Based Approach does not require a tradeoff among anti-trafficking strategies.

Unlike Criminal Justice Approach it takes on board the agency of trafficked persons (victims) in designing and executing anti-trafficking strategies. It frames trafficked persons as active participants and beneficiaries of anti-trafficking initiatives. Accordingly, protection of human rights of trafficked persons including, the right to participation in designing, steering and evaluating anti-trafficking initiatives, permeates through all three Ps in Human Rights Based Approach framework.¹⁹⁴ Hence, it takes a full picture of the problem of women trafficking including the worse implications of designing exclusionist intervention strategies.¹⁹⁵ In other words, it attempts to „humanize“ anti-trafficking responses by shifting the perception from viewing trafficked persons as only instrumentalities of facilitating prosecution of traffickers to looking them as bearers of rights claimable against the state. Hence, it seeks to make the trafficked persons more visible as subjects of entitlements than objects of law enforcement.¹⁹⁶ It recognizes the trafficked persons as rights holders who are entitled to protection and assistances as rights per se. It categorically opposes the instrumentalities of trafficked persons to access protection and support.¹⁹⁷

¹⁹² Three Ps stands for shorthand prosecution, protection and prevention strategies. These so called three Ps frequently appear in anti-trafficking literatures and reports; but see also five Ps in Mattar, supra note 148; and Joy Ezeilo, Report on the Prevention of Trafficking In Persons, supra note 157.

¹⁹³ See Conny Rijken and Renée Römkens, Trafficking for Sexual Purposes as a Globalized Shadow Economy: Human Security as the Tool to Facilitate a Human Rights Based Approach, in Rianne Letschert and Jan Van Dijk (eds.), *The New Faces of Victimhood Globalization, Transnational Crimes and Victim Rights*, (2011) pp.73-98.

¹⁹⁴ See Wijers, supra note 160; Joy Ezeilo, Report on the Prevention of Trafficking In Persons on the importance of Human Rights Based Approach in imposing the obligation to participate trafficked persons in designing, implementing and evaluating anti-trafficking initiatives, paras.49-53.

¹⁹² Ibid, p.36.

¹⁹⁵ Wijers, supra note 160.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid, p.12.

4.1.2.1. Draw Backs of Human Rights Based Approach

It has to be admitted upfront that Human Rights Based Approach is not a perfect panacea to cure and eradicate all evils of trafficking. There are some pitfalls in Human Rights Based Approach anti-trafficking response. The first draw backs stems from the weakness of enforcement mechanism in human rights regime.¹⁹⁸ Treaty monitoring organs are reportedly overdue with caseloads and backlogs.¹⁹⁹ In addition, the non-binding nature of the recommendations, opinions, and general comments of these organs hampers the meaningful realization of Human Rights Based Approach.²⁰⁰

In this connection Gallagher notes that the track record of human rights system in combating trafficking has not been promising. She states that there was no comprehensive definition of human trafficking let alone binding obligations of states during the past fifty years when human trafficking had been under the 'sole ownership' of human rights business.²⁰¹ Further, the obvious lack of political will on states parties to promote and protect human rights guarantees could be counted as pitfalls of human rights framework.²⁰² All in all, human rights system being a precious but blunted sword in its own alone will not be able to defeat the battle against trafficking.

Secondly, the human rights regime has not developed a viable binding system of holding Non-State Actors accountable for human rights violations. It has been widely held that the principal perpetrators of human trafficking crime are Non-State Actors, such as organized crime group, individuals, brokers, and so forth.²⁰³ Paradoxically, there are no human rights frameworks yet devised to hold these actors directly accountable for human rights violations.²⁰⁴

Further, human rights system lack a specialized treaty addressing human trafficking in human rights perspectives.²⁰⁵ While some instruments have provisions dealing with trafficking and related acts, they are scattered lacking a comprehensive specialized hard law instrument.²⁰⁶

¹⁹⁸Some authors argue that the weakness exhibited in human rights regime can be compensated by applying other branches of international law such as ICL and TCL in trafficking cases. See for instance, Obokata, *supra* note 35, p.37.

¹⁹⁹*Ibid*, p.36.

²⁰⁰*Ibid*; Bravo, *supra* note 110, p.234.

²⁰¹ Gallagher, *supra* note 134, p.4.

²⁰² Bruch, *supra* note 110, p.12.

²⁰³ Rijken and Römkens, *supra* note 186, p.87. see note 63, (stating in case of Trafficking in Human Beings the violator is usually not a state but an individual or a group of individuals. Even though nowadays the view has been adopted that non-state actors also have responsibility to protect individuals against human rights violations, this does not mean that human rights obligations automatically have their effect in horizontal relations between citizens, *ibid*).

²⁰⁴ *Ibid*; Yuko, *supra* note 108, p.31.

²⁰⁵ Bruch, *supra* note 110, p.15.

²⁰⁶ It is worth to recall that there specialized human rights soft law instrument dealing with trafficking in human rights lens, See for instance, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human

In the face of these weaknesses in human rights system- spring board of Human Rights Based Approach response- some trafficking specialists call for cross fertilization of principles of international law branches.²⁰⁷ Both Gallagher and Obokata argue for the possibility of compensating deficiencies of human rights regime through applying principles and norms of TCL and ICL. Further, Gallagher contends that we have to take note of regional anti-trafficking instruments such as Council of Europe Convention on Action against Trafficking in Human Beings²⁰⁸ and South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution²⁰⁹ to rectify the ills of both Criminal Justice Approach and Human rights frameworks.²¹⁰

4.1.3. Mini-Conclusion: The Way Forward

Given the ineffectiveness perhaps counterproductive nature of Criminal Justice Approach response to eradicate women trafficking, it is high time to shift the focus from it. Human Rights Based Approach stands as a viable and sustainable alternative model to Criminal Justice Approach to counteract women trafficking effectively. As thoroughly discussed in the preceding section Human Rights Based Approach integrates all three Ps without requiring either tradeoff or prioritization among them with protection of human rights as common thread. It simultaneously requires the closing of circle of justice to fight the impunity of traffickers and expansion of circumference of freedoms and rights of trafficked persons. Putting the rights of trafficked persons at the center of anti-trafficking initiatives, it has prospect of reducing and ultimately eradicating women trafficking. Due its inclusive nature it takes the agency of trafficked persons to develop and implement anti-trafficking initiatives. Further it seeks to go to dry the roots of women trafficking by calling for dismantling underlying structural factors causing and sustaining contemporary slavery. While there are some bottle necks that would hamper the effectiveness of Human Rights Based Approach response, relatively speaking there is a better future in Human Rights Based Approach to counteract women trafficking. Although a golden opportunity to adopt a human rights based instrument at international level has been lost in Vienna process, the same opportunity does exist at national level especially for those countries that did not legislate a comprehensive anti-trafficking law such as Uganda.

Rights (E/2002/68/Add. 1) (hereafter Trafficking Principles and Guidelines). But the obvious caveat is it is not binding instrument.

²⁰⁷ Gallagher, supra note 134; Obokata, supra note 35, p. 37.

²⁰³ Gallagher, supra note 134.

²⁰⁸ Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005 (hereafter European Trafficking Convention).

²⁰⁹ South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, adopted in 2002 (hereafter SAARC Convention).

²¹⁰ Gallagher, supra note 134.

At this historic junction it is thus far imperative to contemplate about adopting Human Rights Based Approach anti-trafficking initiatives in domestic arena.

Having said this, part two of this chapter seeks to flesh out the standards (key indicators) of a Human Rights Based Approach in prosecuting traffickers, protection of the rights of trafficked persons and prevention of trafficking. After laying down the parameters to measure anti-trafficking initiatives whether they have adopted a Human Rights Based Approach or otherwise, in view of Uganda anti-trafficking initiatives seen against these standards to assess whether they are in line with Human Rights Based Approach or not.

B. Part Two

4.2. A Human Rights Based Approach Anti-Trafficking Response 'Standards'

A Human Rights Based Approach requires that anti-trafficking initiatives have to be adopted in line with some underlying standards identified as benchmarks. Accordingly, there are some Human Rights Based Approach standards that have to be complied with in prosecution, protection and prevention anti-trafficking strategies. All three Ps anti-trafficking strategies must be informed by promotion and protection of human rights of victims of trafficking. Protection of human rights should be a common golden thread connecting all anti-trafficking strategies in Human Rights Based Approach. Thus, Human Rights Based Approach integrates human rights norms, principles and standards in designing and implementing anti-trafficking response at international, regional and national level. National governments are required to observe their obligations derived from international human rights law in devising and executing anti-trafficking response informed by Human Rights Based Approach. If a country's anti-trafficking initiatives are in compliance with these Standards, then it is said that the country in question has adopted a Human Rights Based Approach anti-trafficking response. Hence, before putting Uganda's anti-trafficking initiatives on the test, it is logical to flesh out at the outset the Human Rights Based Approach standards in prosecution, protection and prevention anti-trafficking strategies.

4.2.1. Prosecution of Trafficking Cases

Some authors tend to limit a Human Rights Based Approach to protection and prevention aspects of anti-trafficking response.²¹¹ There are tendencies to draw a demarcation between Criminal Justice Approach and Human Rights Based Approach in a way that the former specializes in prosecution while the latter specializes in protection and prevention. But the fact remains that Human Rights Based Approach does take the effective prosecution aspect on board as essential perhaps the starting point in comprehensive anti-trafficking initiatives. Hence Human Rights Based Approach does not rule out prosecution aspects rather consider as essential component of anti trafficking response. As some emphasize a Human Rights Based Approach is as important for the prosecution aspect of the trafficking response as it is for every other aspect including protection and prevention.²¹² Effective criminal justice response is essential component of Human Rights Based Approach anti-trafficking response.²¹³

²¹¹ Wijers, *supra* note 160, p.7.

²¹² Gallagher and Karlebach, *supra* note 178, p.5.

²¹³ Obokata, *supra* note 35, p.151.

It is so because criminalization of trafficking coupled with severe punishment can deter traffickers from abusing human rights.²¹⁴ But it should be noted that criminal justice response must be facilitated in accordance with human rights law. Thus far, human rights framework and effective criminal justice response can coexist.²¹⁵ It is in this understanding that this section discusses the Human Rights Based Approach standards in prosecution of trafficking cases.

The prosecution aspect of anti-trafficking responses is a very broad category that encompasses the investigatory, prosecutorial and adjudicatory phases of a trafficking case; as well as issues related to the applicable legal framework; international legal cooperation and asset confiscation. The following analysis seeks to expound the elements and standards of prosecution in light of Human Rights Based Approach response. Specifically, the thesis focuses on: criminalization, investigation, prosecution, punishment, rights of suspects, asset recovery (confiscation and seizure), and international cooperation components of prosecution aspect of anti-trafficking strategies.

4.2.1.1. Criminalization of Trafficking and Related Conducts

Criminalization of trafficking and related conducts in national legislative framework is essential to enhance the prosecution of suspects of women trafficking. It also serves as prevention of trafficking offence through deterring the contemplation of engaging in trafficking crime. The obligation to criminalize human trafficking is well established in international legal laws including human rights law instruments. The obligation can be discharged through enacting special anti trafficking law or amending existing laws, usually criminal code.²¹⁶ There is a growing understanding that states must criminalizing trafficking as it has been defined in international law.²¹⁷ This entails that trafficking should be criminalized in all its forms.²¹⁸ Accordingly, criminalization should include acts, means and purpose elements of trafficking as provided in the Trafficking Protocol.²¹⁹ Trafficking law must also recognize the possibility of women, men and children becoming victims of trafficking; and that the trafficking in children must be defined differently from trafficking in adults.²²⁰ Hence, a trafficking law that covers only trafficking into sexual exploitation, or only trafficking in women and children, would fall short of this standard.²²¹ Further, trafficking law must declare that the consent²²² of the victim does not exonerate the criminal liability of the culprit.²²³

²¹⁴ Ibid.

²¹⁵ Ibid p.153; Gallagher, supra note 134, p.376.

²¹⁶ Gallagher and Holmes, supra note 154, p.322. But the preference is given to enacting a comprehensive anti-trafficking law, *ibid*.

²¹⁷ Trafficking Protocol, art.3. See also Gallagher and Karlebach, supra note 178, p.6.

²¹⁸ Gallagher and Holmes, supra note 154, p.320.

²¹⁹ On definition of trafficking in persons, see chapter two of this thesis.

²²⁰ Gallagher and Karlebach, supra note 178, p.7.

²²¹ *ibid*; Gallagher, supra note 28, p.374; Gallagher and Holmes, supra note 154, p.322.

²²² On issue of consent, see chapter two of this thesis.

²²³ Trafficking Protocol, art.3 (b).

It has been also noted that the scope of criminalization should include not only the actual commission, but also attempt and being accomplice in the commission of crime of trafficking.²²⁴ Similarly, states are required to ensure in their legislative framework that criminal liability can be extended to natural as well as legal persons.²²⁵

Apart from these, Human Rights Based Approach requires states to criminalize offences related to trafficking.²²⁶ As such states are required to ensure that their national laws criminalize forced labor, exploitative labor, exploitation of prostitution; slavery; and practices similar to slavery including child labor, forced marriage, debt bondage and illegal removal of organs and torture (inhumane and degrading treatment). There are plethora of international and regional human rights instruments imposing obligations on the state parties to prohibit related offences of human trafficking.²²⁷

Another important element of criminalization of trafficking offence is establishing criminal jurisdiction. In this regard while there are no hard rules obliging states, it has been noted that establishing as broad a jurisdictional reach as possible promotes an effective criminal justice response to trafficking.²²⁸ Hence, establishing not only territorial but also extra-territorial jurisdiction in cases concerning human trafficking enhances prosecution of traffickers through denying them safe havens. Mattar recognizes that anti trafficking legislation should also have extraterritorial jurisdiction which means the application of domestic laws regardless of the place where the act was committed.²²⁹ Moreover, another essential aspect of the obligation to criminalization is non-criminalization of trafficked persons. In many cases trafficked persons have been prosecuted for status related crimes: illegal migrant, prostitute, lack of valid residence and working papers and so forth. As discussed elsewhere this has been held as one of the major pitfalls of traditional Criminal Justice Approach.²³⁰ Criminalization and detention of trafficked persons are incompatible with Human Rights Based Approach response since they re-victimize trafficked persons and deprive them of their fundamental rights.²³¹ As such Human Rights Based Approach entails the obligation of non-criminalization of victims of trafficking for status related offences.²³²

²²⁴ Trafficking Protocol art.5 (2).

²²⁵ Gallaher and Karlebach, *supra* note 178, p.7.

²²⁶ Trafficking Principles and Guidelines, Principle 12.

²²⁷ The Convention on Elimination all forms of Discrimination Against Women (CEDAW), adopted in 1979, art.6; the Convention on Rights of the Child(CRC) adopted in 1989, art.35; the Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, and Child Pornography (CRC OPS), adopted in 2000, arts. 1-3; the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, art.8; the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted in 1966, art.10 (3); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Adopted in 1984, art.2; The International Convention on Rights of All Migrants Workers and Members of Their Families (MWC), adopted in 1990, art.11. At regional level: The African Charter on Human and Peoples" Rights (African Charter), adopted in 1986, art.5; The African Charter on Rights and Welfare Child (ACRWC), adopted in 1990, art.29.

²²⁸ UNODC, *Combating Trafficking In Persons: A Handbook for Parliamentarians* (UNODC Handbook), (2009), pp.88-90.

²²⁹ Mattar, *supra* note 148, p.60.

²³⁰ Further see drawbacks of Criminal Justice Approach, part one, section 3.1.1.3 of this chapter.

²³¹ Gallaher and Karlebach, *supra* note 178, p. 8.

²³² See Trafficking Principles and Guidelines, Guideline 5, para.5 and Principle 7.

Various international policy bodies have confirmed non-prosecution of trafficked persons as the standard. The UNODC, for example, request States Parties to consider, in line with their domestic legislation, not punishing or prosecuting trafficked persons for unlawful acts committed by them as a direct consequence of their situation as trafficked persons, or where they were compelled to commit such unlawful acts.²³³ Further, both the Human Rights Council²³⁴ and the General Assembly²³⁵ have made similar recommendations.

4.2.1.2. Due diligence in Investigations and Prosecutions of Trafficking Cases

Prescribing the criminalization of trafficking and related conducts in legislative framework remains toothless dog unless coupled with investigation and prosecutorial measures and procedures. In this regard states are required to put in place means and ways of facilitating effective investigation and prosecution of trafficking cases. Accordingly, the international law including human rights law regime impose the obligation to investigate and prosecute trafficking cases with due diligence.²³⁶ The Due diligence standard generally requires states to undertake investigations and prosecutions seriously. Interestingly, the duty extends to cases involving private (non-state) perpetrators.²³⁷ Generally, it consists: rapid and accurate victim identification, specialization of investigatory functions and prosecutorial process.

Another key element in conducting effective investigation of trafficking and related offences is the duty to build the technical capacity of law enforcement agencies. In this connection international law recognizes that effective criminal justice response requires trained and competent officials.²³⁸ Thus capacity building training should be given to law enforcement agencies. In addition establishing specialized investigatory units;²³⁹ strengthening coordination between various criminal justice agencies;²⁴⁰ and establishing close cooperation between specialist criminal justice agencies and victim support agencies²⁴¹ to ensure that the rights of victims are upheld and that they receive protection and support appropriate to their needs are considered as essentials of adopting effective criminal justice response.

²³³ Recommendations adopted by the meeting of the Open-ended Interim Working Group on Trafficking in Persons held in Vienna on 14 and 15 April 2009, annexed to Trafficking in Women and Girls, Report of the Secretary-General, UN Doc. A/63/215 (4 August 2008), para. 11; as quoted in Gallagher and Karlebach, *supra* note 178, pp.8-9.

²³⁴ Trafficking in Persons, Especially Women and Children, Human Rights Council Resolution 11/3, UN Doc. A/HRC/RES/11/3 (17 June 2009), para. 3.

²³⁵ General Assembly Resolution 63/156 (30 January 2009), para. 12.

²³⁶ Obokata, *supra* note 35, p.150.

²³⁷ Gallagher and Karlebach, *supra* note 178, p.15.

²³⁸ Gallagher and Holmes, *supra* note 154, p.328.

²³⁹ Art.20 of Organized Crime Convention; art.10 Trafficking Protocol.

²⁴⁰ Gallagher and Karlebach, *supra* note 178, p.17.

²⁴¹ Trafficking Protocol, arts. 6(3), 9(3).

Further, effective criminal justice responses call for taking into account gender perspective in investigation and prosecution of trafficking cases. Trafficking Protocol, for example, highlights the importance of ensuring the integration of a gender perspective into responses to trafficking.²⁴² Hence, integrating an appropriate gender perspective in the fields of investigations and prosecution will ensure that criminal justice responses do not discriminate against any person on any of the prohibited grounds and that such responses do not result in a violation of any other established right.²⁴³ Conversely, failure of national criminal justice agencies to integrate a gender perspective into their work may aggravate the harm done to victims and render responses less effective in terms of ending impunity and securing justice.

4.2.1.3. Rights of the Suspects

Human Rights Based Approach also worries about the human rights of suspects of trafficking crime. Human Rights Based Approach provides that the pursuit of traffickers can never be at the expense of international human rights rules governing the administration of justice.²⁴⁴ In this respect human rights law guarantee to all persons, the right to receive a fair and public hearing by a competent, independent and impartial tribunal established by law.²⁴⁵ Thus states are required to observe the fundamental rights of suspects in trafficking cases importantly the right to fair trial.²⁴⁶

4.2.1.4. Proportionality in Sanctions

International law requires states to impose effective and proportionate sanctions for trafficking and related offences. This entails recognizing trafficking in anti trafficking legislation as a serious crime which warrants penalties applicable to other serious offence such as rape and drug trafficking.²⁴⁷ For instance, the Organized Crime Convention requires that offences established under the Trafficking Protocol should be liable to sanctions that take into account the gravity of the offences and that discretionary sentencing powers take into account the need to deter the commission of trafficking-related offences.²⁴⁸

²⁴² Trafficking protocol art.10(2).

²⁴³ Gallagher and Karlebach, supra note 178, p.17.

²⁴⁴ Obokata, supra note 35, p.151.

²⁴⁵ See ICCPR, arts, 9 &14; African Charter, art.6& 7.

²⁴⁶ Basic fair trial principles include the principle that all persons are considered equal; that everyone is entitled to and receives a fair and public hearing by a competent, independent and impartial tribunal established by law; and that all accused persons are presumed innocent until proven guilty according to law. International law also grants a range of procedural and other rights to suspects. These rights are extensive and include: the right to be informed promptly and in detail of the nature and cause of the charges; and the right of accused persons to examine or have examined the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions, ICCPR, art.14 (3); See Obokata, supra note 35, pp.152-153; Gallagher and Karlebach, supra note 178, p. 18.

²⁴⁷ Mattar, supra note 148, p.17.

²⁴⁸ Organized Crime Convention, Article 11. A State that is party to the Organized Crime Convention and not the Trafficking Protocol would be required to establish that trafficking is, under its law, a "serious crime" as defined in the Convention for these provisions to apply to trafficking offences: Organized Crime Convention, Article 2(9) (b).

The Convention also requires in cases of trafficking involving legal persons that such legal persons be made subject to effective, proportionate and dissuasive criminal or non-criminal sanctions including monetary sanctions.²⁴⁹

The Organized Crime Convention requires penalties that take into account the gravity of the offence and that give due regard to deterrence.²⁵⁰ Sanctions must be generally consistent with the harm caused and the benefits derived from trafficking and related exploitation. In other words sanctions must 'clearly outweigh the benefits of the crime'.²⁵¹ Proportionality of sanctions also calls for making trafficking crime aggravated offence under certain circumstances.²⁵² For example, the Trafficking Principles and Guidelines, request States to consider making legislative provision for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.²⁵³

4.2.1.5. Asset Recovery (Confiscation and Seizures)

Effective criminal justice requires breaking the economic back of traffickers so that they feel the harm of their acts and be deterred from engaging in the same acts again. As such asset recovery significantly enhances preventive measures besides helping effective criminal justice response. In some ways it could also be beneficial to remedy victims of trafficking.²⁵⁴ Accordingly, international law requires states to take action to recover the assets²⁵⁵ of trafficking related crimes.²⁵⁶ For example, The Organized Crime Convention sets out rules and procedures for identification, tracing, freezing and seizure of assets and confiscation of proceeds of designated crimes including trafficking.²⁵⁷ States Parties to the Convention and the Trafficking Protocol are required to create adequate powers (relating to both substantive and procedural law) to enable and support confiscation and seizure.²⁵⁸ This could include providing forfeiture (confiscation) of assets in anti trafficking law as punishment for traffickers in addition to imprisonment sentence.²⁵⁹ Other international instruments also identify obligation state parties to confiscate the asset and proceeds of relevant crimes.²⁶⁰

²⁴⁹ Organized Crime Convention, art.10 (4).

²⁵⁰ Organized Crime Convention, art.11.

²⁵¹ Gallagher and Karlebach, supra note 178, p.19.

²⁵² UNODC Handbook, supra note 224, p. 28.

²⁵³ Trafficking Principles and Guidelines, Guideline 4.3; see also UNODC Handbook, supra note 224, p.28.

²⁵⁴ See further access to remedies, see infra section 3.2.2.6 of this chapter (noting the importance of utilizing assets confiscated of traffickers to compensate victims).

²⁵⁵ The assets of a trafficking crime include profits or proceeds of trafficking as well as instrumentalities such as factories, brothels, boats and farms where the exploitation took place, Gallagher and Karlebach, supra note 178, p.22.

²⁵⁶ Asset recovery is usually a three-step process: (i) investigative measures to trace the assets in question; (ii) preventive measures to immobilize the assets identified as related to the crime in question (freezing, seizing); and (iii) confiscation, return and disposal, *ibid*.

²⁵⁷ Organized Crime Convention, Arts.12-14.

²⁵⁸ *Ibid*, art.12.

²⁵⁹ Mattar, supra note 1428 p.22.

²⁶⁰ CRC OPS art.7; see also Trafficking Principles and Guidelines, Guideline 16.

It is relevant here to pose the question whether there is international legal obligation requiring States to use confiscated assets to remedy victims of trafficking? Undoubtedly, the linking of a criminal justice measure, such as confiscation of proceeds, to victim support is an important step forward in integrating a human rights approach to trafficking.²⁶¹ Currently however, as **Gallagher** states the relevant international law on this point is advisory rather than mandatory.²⁶² For example, the Organized Crime Convention requires States parties to consider specific disposal options including victim compensation *as a priority option*.²⁶³ It is interesting to note nonetheless that the Special Rapporteur has made, in her report to the Human Rights Council on remedies, recommendation that States: “establish legislative provisions for the confiscation of assets and proceeds of trafficking offences, and for the use of such assets and proceeds to compensate trafficked persons”.²⁶⁴ Moreover, she recommended that States ensure law enforcement officials are adequately trained in identifying, tracing, freezing and confiscating assets connected to the crime of trafficking.”²⁶⁵

4.2.1.6. International Cooperation in Investigation and Prosecution of Trafficking Cases

The transnational nature of trafficking crime warrants the need for strengthening international cooperation in law enforcement to deny traffickers and their assets any safe havens. Accordingly, international law and policy strongly call for more effective international cooperation in the investigation and prosecution of traffickers. The Organized Crime Convention and Trafficking Protocol, for example, both contain many provisions aimed at ensuring states have an adequate legal basis and appropriate tools to undertake such cooperation.²⁶⁶ In this section attempt is made to discuss extradition, mutual legal assistance and information exchange of international cooperation aspects in light of Human Rights Based Approach standards.

a) Extradition²⁶⁷

The obligation to make trafficking an extraditable offence has been dully confirmed in international trafficking specific instruments. The Organized Crime Convention, for instance, requires states to make trafficking an extraditable offence under their national law and extradition treaties.²⁶⁸ This obligation is also echoed in other international legal instruments.²⁶⁹

²⁶¹ Gallagher and Karlebach, *supra* note 178, p.23.

²⁶² *Ibid.*

²⁶³ Organized Crime Convention, art.14 (2).

²⁶⁴ Human Rights Council, Report of the Special Rapporteur on Trafficking in Persons Especially Women and Children, Joy Ngozi Ezeilo, Un Doc. A/HRC/17/35 (2011), para. 70.

²⁶⁵ Further see, Trafficking Principles and Guidelines, Principle 16, Guideline 4.4; reverberating similar position; see also Mattar, *supra* note 148, describing some domestic laws which incorporated similar concept.

²⁶⁶ Gallagher and Karlebach, *supra* note 178, p.24.

²⁶⁷ Extradition is the formal process whereby one State (the Requesting State) asks another State (the Requested State) to return an individual to face criminal charges or punishment in the Requesting State, *ibid.*

²⁶⁸ Organized Crime Convention, art.16.

Protection of human rights occupies a key place in extradition procedure. That is why the importance of fair treatment and human rights in extradition is emphasized in the Organized Crime Convention.²⁷⁰ The relevant international rules require States to deny requests for extradition that may result in the suspect being treated unfairly (e.g. being tried for conduct that has already been the subject of acquittal or punishment or that is not an offence in the requested State).²⁷¹ These rules also prevent persons from being extradited on grounds that the request is discriminatory in purpose or effect, or that the person may be subject to the death penalty, torture or cruel, inhuman or degrading treatment or punishment.²⁷² States can also refuse extradition when the Requesting State is not able to assure that the suspect will receive the minimum procedural guarantees that are essential to a fair trial.

b) Mutual Legal Assistance

Mutual legal assistance is the process countries use to formally ask other countries to provide information and evidence for the purpose of an investigation or prosecution.²⁷³ While mutual legal assistance regimes are often established through a bilateral or multilateral treaty,²⁷⁴ states can also deal with mutual legal assistance matters through their domestic law.

International legal rules related to trafficking confirm the importance of mutual legal assistance²⁷⁵ in trafficking and related cases. The Organized Crime Convention, for example, calls on States Parties to afford one another the widest measure of such assistance in investigations, prosecutions and judicial proceedings in relation to offences covered by that instrument, including trafficking.²⁷⁶ It also sets out a detailed legal and procedural framework for mutual legal assistance between States Parties.²⁷⁷ Other international instruments have also affirmed the importance of mutual legal assistance.²⁷⁸

Ensuring protection of human rights apply also in mutual legal assistance as they do to extradition. Thus, states are required to make sure that nothing in the terms of a mutual legal assistance request would constitute an actual or potential infringement of human rights, in relation to both the subject of the request and any third parties.²⁷⁹ Cooperation may be turned down when requesting States do not respect basic rights and procedural guarantees as set out

²⁶⁹ CRC OPS art.5.

²⁷⁰ Arts. 16(13), 16(14) of Organized Crime Convention.

²⁷¹ Gallagher and Karlebach, *supra* note 178, p.25.

²⁷² *Ibid.*

²⁷³ *Ibid.*, p.26.

²⁷⁴ Those treaties generally indicate: the kinds of assistance to be provided; the rights of the requesting and requested States; the rights of alleged offenders; and the procedures to be followed in making, receiving and executing requests, *ibid.*

²⁷⁵ Common types of mutual legal assistance include: taking evidence or statements from persons; locating and identifying witnesses and suspects; effecting service of judicial documents; executing searches and seizures; freezing assets; providing originals or certified copies of relevant documents and records; identifying or tracing proceeds of crime; facilitating the voluntary appearance of persons in the Requesting State; transfer of proceedings/investigation/prisoners; transfer of prisoners to give evidence; and video recording of testimony, *ibid.*

²⁷⁶ Organized Crime Convention, art.18.

²⁷⁷ Organized Crime Convention, art.18.

²⁷⁸ CRC OPS, arts.6 & 10; Trafficking Principles and Guidelines, Guideline 11.8.

²⁷⁹ Gallagher and Karlebach, *supra* note 178, p.27.

in major human rights instruments such as the international bill of rights.²⁸⁰

c) Informal cooperation

Informal cooperation is a separate, less rule-bound international criminal cooperation tool, which is available outside the formal mutual assistance regime. Informal cooperation enables law enforcement agencies to share information and intelligence directly with their foreign counterparts without any requirement to make a formal mutual assistance request. Hence, informal cooperation complements mutual legal assistance regimes. In the trafficking context, informal cooperation might be used to conduct surveillance, locate victims, or take voluntary witness statements.

The importance of law enforcement cooperation in the investigation of trafficking-related crimes has been recognized widely in international legal instruments. The Organized Crime Convention and the Trafficking Protocol both recognize informal cooperation between police agencies of different States. The convention encourages States Parties to enter into bilateral or multilateral agreements or arrangements with a view to enhancing cooperation between law enforcement agencies including through joint investigations.²⁸¹ Further, the Protocol highlights cooperation through information exchange for purposes such as victim/perpetrator identification in transit, document verification and proactive intelligence gathering.²⁸²

4.2.2. Protection of Trafficked Persons

Protection of trafficked persons is another obligations imposed on states to implement a Human Rights Based Approach anti-trafficking responses. Trafficked persons as victims of crime and human rights violations deserve a wide range protective guarantees and support to recover from horrors of trafficking and to lead safe and secured life. As failure to extend rights-based approach protection schemes leave victims to further revictimization, effective protection could be also served as prevention strategies. This section seeks to examine the markers of Human Rights Based Approach required in protection of victims of trafficking.

²⁸⁰ Ibid

²⁸¹ Organized Crime Convention, arts.19, 27(2).

²⁸² Trafficking Protocol, art.10 (1).

4.2.2.1. Rapid and Accurate Victim Identification

The obligation of identifying victims of trafficking lies at the heart of protection of rights of trafficked persons. As such any rights accorded to trafficked persons are meaningless without corresponding obligation on states to identify the victims of trafficking.²⁸³ Victims' identification should be conducted immediately, accurately and backed by multifaceted victim-centered support and assistance packages.²⁸⁴ A human rights based approach requires early identification of and assistance to trafficking victims. It is also relevant to emphasize that identification is a prerequisite to secure other protection measures.²⁸⁵ For example the Trafficking Principles and Guidelines recognize the link between identification and access to protection rights.²⁸⁶

Identification processes require the development of checklists, guidelines and procedures aimed at ensuring the rapid and accurate identification of trafficked persons.²⁸⁷ It also entails offering training to relevant officials in the appropriate use of identification tools as well as provision for regular review to ensure their currency, accuracy, and correct application.²⁸⁸

The identification also contemplates the view of assuming presumption of victim status. Put simply, if there is reason to believe someone has been trafficked, then that person should be treated as a victim unless and until another determination is made.

Regarding the content of obligation to identify the victims of trafficking, the trafficking protocol kept silent. But some policy instruments note the requirement to give training to law enforcement in victim identification.²⁸⁹ And collaboration has to be made among victim support and law enforcement agencies.

4.2.2.2. Non-prosecution of VoT for Status Related Offences

The trafficked persons are often detained, arrested and prosecuted in transit and destination countries for status related offences. The law enforcement agencies rushed into marking trafficked persons as illegal immigrants (smuggled immigrants) and consequently prosecute them with charges of violation of immigration law or lack of proper documentation, and so forth. Countries of origin also prosecute trafficked persons for unlawful departure and engaging in illegal activities such as prostitution.

It has been made clear that criminalization of trafficked persons for status related offence is the antithesis of a Human Rights Based Approach.²⁹⁰ It does also inevitably contribute to deny

²⁸³ Gallagher, supra note 134, p.282; Mattar, supra note 148, p.34.

²⁸⁴ Gallagher and Holmes, supra note 154, p.328-329.

²⁸⁵ Mattar, supra note 148, p.34.

²⁸⁶ Trafficking Principles and Guidelines, Guideline 2; see UNODC Toolkit to Combat Trafficking In Persons, 2008, p.251.

²⁸⁷ Gallagher and Holmes, supra 154, p.329.

²⁸⁸ Ibid.

²⁸⁹ UNODC Toolkit, supra note 288.

²⁹⁰ Further See section 3.2.1.1 above.

trafficked persons the rights to which they are entitled under international law.²⁹¹ Essentially, a Human Rights Based Approach requires non-prosecution (non-criminalization) of trafficked persons. Hence, the need not to criminalize (prosecute) the victims of trafficking is getting recognition as normative standard.²⁹² While the Trafficking Protocol is silent on this point, international human rights policy instruments declares the requirement of non-criminalization of trafficked persons for status related offences. For example, The Trafficking Principles and Guidelines provide that

“Trafficked persons shall not be detained charged or prosecuted for their illegal entry into or residence in countries of transit or destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.”²⁹³ Further, detaining victims of trafficking is inappropriate and it is antithesis of Human Rights Based Approach. States are encouraged to ensure that trafficked persons, are not in any circumstances, held in immigration detention or other form of custody.²⁹⁴

4.2.2.3. Protection and Support for Victims

a) Separating Protection and Support from Cooperation

A typical flaw of Criminal Justice Approach is conditioning the protection and support of victims of trafficking on their cooperation in prosecution of traffickers. There are several problems arise from conditional assistance of victims of trafficking. Primarily, it indicates denial of the rights of victims to receive protection and state obligation to provide protection.²⁹⁵ To put it differently, conditional assistance sanctions the instrumentalities of trafficked persons to prosecution, while rejecting the fact that they are entitled to protection as a matter of right.²⁹⁶ As **Gallagher** argues the compelled victim is unlikely to make a strong witness, particularly in the likely event that this person is still suffering from physical or psychological trauma or fears retaliation.²⁹⁷ These leave us to contemplate to turn the table, i.e., seeking to disassociate protection from cooperation of with prosecutorial efforts.

Given the problematic traits of conditional assistance there is a growing acceptance to detach protection and assistance from cooperation of victims of trafficking with prosecution of traffickers. While Trafficking Protocol is silent on this issue, some human rights law and policy documents affirm the need to separate support and assistance from victims’ cooperation.²⁹⁸ The Legislative Guide also states that “support and protection shall ... not be made conditional

²⁹¹ Gallagher, supra note 134, p.283.

²⁹² Ibid, p.285.

²⁹³ Trafficking Principles and Guidelines, Guideline 7.

²⁹⁴ Ibid, Guideline 2, para. 6 & Guideline 6, para. 1.

²⁹⁵ Gallagher, supra note 134, p.298.

³⁰² Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, part 2, para. 62.

²⁹⁶ Wijers, supra note:160.

²⁹⁷ Gallagher, supra note 134, p.298.

²⁹⁸ Ibid, pp.299-300; Trafficking Principles and Guidelines, at Guideline 6, para.1.

upon the victim's capacity or willingness to cooperate in legal proceedings".²⁹⁹ Thus, a Human Rights Based Approach requires that the protection and assistance must be made available as a right *per se* not to be conditional on victims' cooperation with criminal justice agencies.

b) Protection from Further Harm

Trafficking crime invariably entails violence to the life and limbs of trafficked persons. The exercise of threats of violence remains throughout the phenomenon of trafficking. Such threats do not abate up on escaping the physical trap of traffickers. In the face of this grim reality of victims of trafficking, there exists a need to break the circle of violence. In this respect States are placed under an international legal obligation to protect victims of trafficking from further harm. The Trafficking Protocol requires each State Party to "endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory."³⁰⁰

In a similar vein, the Organized Crime Convention requires States Parties to provide witnesses (including those who are victims) with protection from potential retaliation or intimidation.³⁰¹ The Convention also requires States Parties to take appropriate measures, within their means, "to provide assistance and protection to victims, in particular in cases of threats of retaliation or intimidation".³⁰² Measures of protection may include physical protection, domestic or foreign relocation, and special arrangements for giving evidence.³⁰³ The CRC OPS also contains specific provisions on protection from further harm that would be applicable to certain child victims of trafficking.³⁰⁴ The Trafficking Principles and Guidelines also refer to the responsibility of States to "protect trafficked persons from further exploitation and harm" as well as the need for States and others to "ensure that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons."³⁰⁵ Protection from further harm includes, *inter alia*, the relocating of victims in to safety place, providing medical support, undertaking risk assessment to determine whether victims are under a particular risk of intimidation or retaliation.³⁰⁶

c) Protection of Privacy and Identity of VoT

Protection from further harm is inherently linked to protection of the trafficked person's privacy. Failure to protect privacy can increase the danger of intimidation and retaliation.³⁰⁷ It may also cause humiliation and hurt to victims and compromise their recovery. Thus, states

²⁹⁹ Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, part 2, para. 62.

³⁰⁰ Trafficking Protocol, art.6 (5).

³⁰¹ Organized Crime Convention, art.24.

³⁰² *Ibid*, art.25 (1).

³⁰³ Legislative Guideline, part1, para.350.

³⁰⁴ CRC OPS, art.8 (1) f, & 8(5).

³⁰⁵ Trafficking Principles and Guidelines, Principle 6.6.

³⁰⁶ Gallagher, *supra* note 134, p.303.

³⁰⁷ *Ibid*.

should work towards protecting the privacy of trafficked persons to enable them to leave behind the effects of trafficking.

In this respect, the Trafficking Protocol requires States Parties to protect the privacy and identity of victims of trafficking “in appropriate cases and to the extent possible under its domestic law.”³⁰⁸ Further, the Trafficking Principles and Guidelines link the right to privacy to the need to ensure that trafficked persons are protected from their exploiters. The relevant provision states that “there should be no public disclosure of the identity of trafficking victims and their privacy should be respected to the extent possible, while taking into account the right of an accused person to a fair trial.”³⁰⁹

d) Physical and Psychological Care and Support

The victims of trafficking are entitled to care and support including physical and psychological care and support. Trafficking Protocol requires that: states parties to consider implementing measures to provide for the physical, psychological and social recovery of victims in particular the provision of (a) appropriate housing; (b) counseling and information in particular as regards their legal rights in a language that the victims can understand; (c) medical, psychological and material assistance; and (d) employment, education and training opportunities”³¹⁰ States Parties are required to take into account the age, gender, and special needs of victims of trafficking, particularly the special needs of children in applying these provisions to victims.³¹¹

Legislative guide notes that, while not obligatory, implementation of these provisions can provide important practical benefits including increasing the likelihood of victim cooperation in investigations and prosecutions, and avoid further harm including revictimization.³¹²

Apart from these, other non-treaty instruments reiterate the same obligation. The Trafficking Principles and Guidelines, for example, require States to ensure that victims of trafficking have access to adequate physical and psychological care.³¹³ It further notes that States and others are requested to consider ensuring, along with NGOs, the availability of “safe and adequate shelter that meets the needs of trafficked persons” and “access to primary health care and counseling”.³¹⁴ Furthermore, several resolutions of the UN General Assembly and Human Rights Council call for the provision of physical and psychological care to victims of trafficking.³¹⁵

³⁰⁸ Trafficking Protocol, art.6 (1).

³⁰⁹ Trafficking Principles and Guidelines, Guideline 6, para.6.

³¹⁰ Trafficking Protocol, art.6(3).

³¹¹ Ibid, art.6 (4).

³¹² Legislative Guide, part2, para.62.

³¹³ Trafficking Principles and Guidelines, Principle 8.

³¹⁴ Ibid, Guideline 6 para.1 and Guideline 6 para.2.

³¹⁵ See, for example, UN General Assembly, “Trafficking in Women and Girls,” UN Doc. A/RES/63/156, Jan. 30, 2009, at para.15; and UN Human Rights Council, “Trafficking in Persons, Especially Women and Children,” UN Doc. A/HRC/RES/11/3, June 17, 2009, at paras. 3(c), 3(d).

e) Consular Access and Support

The fact that trafficked persons have been detained, arrested and charged with criminal offenses as repeatedly noted in this thesis is a commonplace. Since these persons lack the resources of citizenship in destination or transit countries some kinds of support and assistance must be obtained from their countries of origin. Hence, it is important to emphasize that the right to consular assistance for arrested and /or detained victims of trafficking is crucial to ensure the protection of their rights in this regards.

The existence of the right to consular assistance has been contemplated in human rights instruments.³¹⁶ The Trafficking Principles and Guidelines, for example, request States and others to consider “ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality.”³¹⁷ Further, it recommends that staff working in consulates and embassies be provided with appropriate training in responding to requests for information and assistance for trafficked persons.³¹⁸

Regarding the importance of consular assistance and concomitant legal implication, Gallagher a leading international expert on human trafficking concludes that “Trafficked persons who have been arrested and/or detained by (or indeed, in) the country of destination for any reason have the right to be informed of the availability of consular assistance from their country of origin”.³¹⁹ They have the right to choose whether or not to utilize such access, to communicate freely with the consular post, and to obtain or decline consular protection and support. She adds that failure of a State to meet its international legal obligations in this regard bears the international responsibility of that State.³²⁰

4.2.2.4. Legal Assistance and Participation in Legal Proceedings

The victims of trafficking crime are rarely in a position to be aware of their rights and available Legal Avenue to vindicate their cases. The obvious knowledge gap coupled with their precarious position in terms of status; leave them in a desperate need of obtaining legal assistance. Plus the provision of legal assistance to trafficked persons paves the way for the realization of other important rights such as: the right to protection, the right not to be prosecuted for status-related offenses, and the right to participate in legal proceedings against their exploiters.³²¹ In the following subsections attempts is made to flesh out the contents of the right to receive legal assistance and the corresponding obligations placed on states. Further, the victims’ right to participation in legal proceedings instituted against culprits is also discussed.

³¹⁶ CAT, art. 6; MWC, Art. 23. See the Trafficking Principles and Guidelines, Guideline 6 para.3.

³¹⁷ Ibid, Guideline 6 para.3.

³¹⁸ Ibid.

³¹⁹ Gallagher, supra note 134, p.313.

³²⁰ Ibid.

³²¹ Ibid, p.315.

a) Legal Information, Support and Participation

The victims' right to receive information on legal measures available in the state is enshrined in trafficking-specialist instruments. The Trafficking Protocol, for instance, states that trafficked persons have to be provided with information on relevant court and administrative proceedings.³²² This should include information on the timing and progress of relevant proceedings as well as the disposition of any case in which the victim has an interest.³²³ The trafficking protocol also places a duty on states to ensure that victims can be present and to have their concerns and views considered during criminal proceeding against traffickers in a manner not prejudicial to the rights of the defense.³²⁴ Here it would be worth to know that these two provisions are mandatory.³²⁵

Furthermore, the Trafficking Principles and Guidelines affirm the right of victims of trafficking to receive legal information as well as legal and other assistance for the duration of any criminal proceedings against their exploiters, and the corresponding obligation on States to facilitate the provision of such assistance.³²⁶ Additional support for a right of trafficked persons to legal information and assistance can be found in a key General Assembly resolution on criminal justice measures to eliminate violence against women which calls on States to:

make available to women who have been subjected to violence information on rights and remedies and on how to obtain them, in addition to information about participating in criminal proceedings and the scheduling, progress and ultimate disposition of the proceedings.³²⁷

b) Protection and Support for Victim-Witnesses

The importance of the role of victim witnesses in legal proceedings initiated against traffickers is beyond dispute. Similarly, the victims' rights to participate safely in legal proceeding and concomitant states obligations to ensure the same are also not debatable. Accordingly, the obligation to protect victim witnesses is affirmed in international law.³²⁸ The Organized Crime Convention, understanding the fact that victims can be at risk of retaliation and intimidation, requires state parties to take a wide range of "appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony...and as appropriate for their relatives and other persons close

³²² Trafficking Protocol, art.6 (2) (a).

³²³ Gallagher, supra note 134, p.315.

³²⁴ Trafficking Protocol, art.6(2)(b); Organized Crime Convention also contains similar provision which reads: "[e]ach State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defense", art. 25(3).

³²⁵ Gallagher, supra note 134, p.315.

³²⁶ Trafficking Principles and Guidelines, Principle 9, Guideline 4 para.8, Guideline 6 para.5.

³²⁷ UN General Assembly, "Crime Prevention and Criminal Justice Measures to Eliminate Violence Against Women," UN Doc.A/RES/52/86, Dec. 12, 1997, Annex, para. 10(a).

³²⁸ See Mattar, supra note 148, he notes that "protection of witnesses is an internationally recognized principle," p.35.

to them.”³²⁹ The Convention also requires State Parties to “take appropriate measures within its means to provide assistance and protection to victims” of trafficking in persons, “in particular in cases of threat of retaliation or intimidation.”³³⁰ Furthermore, various non-treaty instruments have reiterated the obligation to afford protection to victim witnesses in criminal justice administration.³³¹ In devising and applying victims-witnesses protection measures, the fact that the states should be mindful of the special need and vulnerability of women and girls has also been noted.³³²

Perhaps the essential component of ensuring protection of victim witnesses is the need to guarantee the privacy of trafficked persons involved in legal proceeding. Obviously, victims of trafficking will be reluctant to give evidence if this means being identified by the media or standing up in a public courtroom, often in view of their exploiter, and talking about traumatic personal experiences.³³³ The problem can be more acute for women and girls who have suffered sexual and other forms of violence at the hands of their exploiters. Thus it goes without saying that national criminal justice systems should find ways to assist victims of trafficking to participate, safely and meaningfully, in legal proceeding.³³⁴ To this end states are required (rather requested) to employ alternative measures to physical appearance and public testimony which aimed at protecting the witness’s identity, privacy, and dignity of victim witness in criminal proceeding such as: video, closed hearings and witness concealment, preliminary or accelerated hearings, and the provision of free legal counsel.³³⁵

4.2.2.5. Repatriation of Victims

Facilitating safe and supported voluntary repatriation of trafficked women ensures the protection of human rights of victims and contributes to end the cycle of re trafficking. International law declares the rights and corresponding states obligations in areas of repatriation of victims of trafficking. Here an attempt is made to expound the Human Rights Based Approach standards derived from international legal and policy developments with regard to repatriation of victims of trafficking.

a) Safe and Voluntary Return of Victims

The international law imposes on states the obligation to facilitate a safe and voluntary return of victims.³³⁶ The Trafficking Protocol, for instance, places obligations on both countries of

³²⁹ Organized Crime Convention, art.24.

³³⁰ *Ibid*, art.25.

³³¹ See, for example, Trafficking Principles and Guidelines, Guideline 4 para.10, and Guideline 5 para.8.

³³² See, Trafficking Protocol, art.6 (4); The UN General Assembly, “Crime Prevention and Criminal Justice Measures to Eliminate Violence against Women,” UN Doc. A/RES/52/86, Dec. 12, 1997, Annex, at paras. 8(c), 9(h).

³³³ Gallagher, *supra* note 134, p.319.

³³⁴ *Ibid*, p.320.

³³⁵ See, for example, UNODC Anti-Trafficking Practitioners’ Manual (2009), Module 12; UNODC Model Law, paras.49–50.

³³⁶ Mattar, *supra* note 148, p.48.

destinations and origins to ensure a safe and preferably voluntary repatriation of victims of trafficking. Regarding the obligations of the former category it requires that repatriation to “preferably be voluntary” and to be conducted “with due regard for the safety of the person and for the status of any related legal proceedings.”³³⁷ On the other hand, it calls on countries of origin to accept the return of a trafficked national or resident without undue delay and with due regard for their safety.³³⁸ Countries of origin are further required to cooperate in return, including through verifying victim nationality or residence and issuing necessary travel documents.³³⁹ Further, Legislative Guide to the Protocol reiterates the Protocol’s requirement that repatriation must be made with due regard to the safety of the victim.³⁴⁰ Interestingly, the Protocol also made some saving clause in a bid to expand the scope of protection in this respect, by stating that the repatriation provisions outlined above are without prejudice to any right afforded to victims of trafficking by any domestic law of the receiving State Party, or to any agreement governing the return of trafficked persons, including obligations under customary international law regarding the return of migrants.³⁴¹ The standard of safe and preferably voluntary return, along with many of the related guarantees is affirmed in a wide array of international and regional legal and policy documents.³⁴²

b) Reintegration of Victims

Naturally, the victims of trafficking face psychological, psychosocial and economic difficulties in attempt of re-entry into social life.³⁴³ They need a supported reintegration so that they will be able to leave behind trauma and fears of stigmatization.³⁴⁴ As a result, they may, depending on the nature and quality of support provided, be less vulnerable to intimidation, retaliation, social isolation, and stigmatization. Further, supported reintegration is a critical aspect of safe

³³⁷ Trafficking Protocol, art.8 (2).

³³⁸ Ibid, art.8 (1).

³³⁹ Ibid, art.8 (3) & (4).

³⁴⁰ Legislative Guide, part 2, para.61(c).

³⁴¹ Trafficking Protocol, art.8 (5) & (6).

³⁴² See, for example, Trafficking Principles and Guidelines, Principle 11 and Guidelines 4. para6, Guideline 6 para.7; African States, “Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children,” adopted by the Ministerial Conference on Migration and Development, Nov. 22–23, 2006 (Ouagadougou Action Plan), arts.4 and 5.

³⁴³ As Mattar notes the victims of trafficking can face both threats of reprisals by the trafficker and the societal shame for having worked in prostitution, Mattar, supra note 148, p.47.

³⁴⁴ While the Trafficking Protocol does not explicitly specify reintegration measures, the regional trafficking specialist instruments identify certain measures to be adopted in facilitating safe repatriation of victims. See, European Convention on Trafficking, Requiring members states to establish repatriation programmes ... [that] aim at avoiding re-victimization it further notes that Each party should make its best effort to favor the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures, art.16(6); (SAARC) Convention also identifies a range of “rehabilitation” measures such as legal advice, counseling, job training, and health care, art.IX(3), as quoted in Gallagher, supra note 28, p.353.

repatriation as victims of trafficking who are provided with reintegration assistance are much less likely to be re trafficked.³⁴⁵ In this regard, the need for repatriation that avoids re victimization is emphasized in key international and regional policy instruments.³⁴⁶ Further, it is becoming clearer that successful reintegration requires active cooperation between repatriating and receiving countries.³⁴⁷ The importance of such cooperation is recognised in relevant regional treaties as well as in key international and regional policy documents.³⁴⁸

4.2.2.6. Access to Remedies

Remedies confirm the status of trafficked persons as victims of crime and victims of human rights abuse. They are a practical means by which victims can both access and receive justice.³⁴⁹ It has been stated that “trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies”.³⁵⁰

It has been confirmed that trafficking invariably entails multiple violations of human rights guarantees and entitlements. Similarly, it is well established in international human rights law that States have a duty to provide a domestic legal remedy to victims of human rights violations committed in their jurisdiction. There are myriads of international and regional human rights instruments which affirm the obligation to remedy violations of human rights.³⁵¹ Further it has been maintained that the right to seek remedy and concomitant state obligation is established as customary international law.³⁵²

In specific context of trafficking, the obligation to provide remedy for victims of trafficking has been declared in trafficking specific hard and soft-law instruments. The Organized Crime Convention, for example, requires States Parties to “establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by the Convention.”³⁵³ The Trafficking Protocol also requires States Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered.³⁵⁴

³⁴⁵ Ibid, p.352.

³⁴⁶ Trafficking Principles and Guidelines, Guideline 6 par.8; See also the Ouagadougou Action Plan, at 4 (“[a]dopt appropriate measures for the protection of victims of trafficking and provide them with information on their legal and other rights in the country of destination as well as the country of origin in case of repatriation ... Adopt specific measures to avoid criminalisation of victims of trafficking, as well as stigmatisation and the risk of re-victimisation”).

³⁴⁷ Gallagher, supra note 134, p.354.

³⁴⁸ See, for example, Trafficking Principles and Guidelines, Guidelines 11 para.11, Guideline 11 para.12; Ouagadougou Action Plan, at 3, 7.

³⁴⁹ Gallagher, supra note 134, p.355.

³⁵⁰ The Trafficking Protocol, art.6 (6).

³⁵¹ Trafficking Principles and Guidelines, Guideline 9.

³⁵² See, UDHR(art.8) ; ICCPR,(Art.2(3)); CERD (Art.6); CAT(Art.14); CRC(Art.39); MWC(Arts.83, 16(9)); Rome Statute(art.73) ;At regional level African Charter (Art.7(1)(a)).

³⁵³ See, inter alia, Gallagher, supra note 134, p.357.

³⁵⁴ The Organized Crime Convention, art.25 (2).

³⁵⁵ The Trafficking Protocol, art.6 (6).

According to the Legislative Guide, the compensation requirement under both the Organized Crime Convention and the Trafficking Protocol would be satisfied by the State establishing one or more of three options:³⁵⁵ provisions allowing victims to sue offenders for civil damages; provisions allowing criminal courts to award criminal damages (paid by offenders) or to impose orders for compensation or restitution against persons convicted of trafficking offenses; or provisions establishing dedicated funds or schemes to allow victims to claim compensation from the State for injuries or damages.³⁵⁶ The offense of trafficking should be capable of forming the basis of a claim under at least one of these options.³⁵⁷

It is also worth to note the importance of establishing that assets recovered from traffickers should be used as a compensation for the victims. Facilitating confiscation of assets in the context of trafficking in persons should also assist in the enforcement of criminal or civil compensation claims against their exploiters.³⁵⁸ This is particularly the case through ensuring that confiscated assets are made available for the purposes of victim support and compensation.

Further, the obligation to provide an effective and appropriate remedy to victims of trafficking is confirmed by UN organs,³⁵⁹ and human rights bodies.³⁶⁰ The Trafficking Principles and Guidelines are particularly specific on this point, declaring that “States should ensure that trafficked persons are given access to effective and appropriate remedies.”³⁶¹

One a final note, it is worth to reiterate that a right to access to effective remedies is of twofold obligations. That is making such remedies available under criminal or civil law; and that States should ensure that victims are provided with information and assistance that will enable them to actually secure the remedies (such as: compensation or restitution) to which they are entitled.³⁶² This latter type of the right to information regarding access to remedies can be born into mind taking note of the legal illiteracy of vast majority of victims.³⁶³ Since people cannot claim their rights if they do not know about them, the obligation to provide information regarding access to remedies must be highlighted. The Trafficking Principles and Guidelines, for instance, affirm that states should consider “providing information as well as legal and other

³⁵⁵ Gallagher, *supra* note 134, p.362.

³⁵⁶ Legislative Guide, part 1, at 170, and part 2, at 285–286.

³⁵⁷ *Ibid*, part 1, para.170.

³⁵⁸ Gallagher, *supra* note 134, p.369; Mattar, *supra* note 148, p.38–40, discussing in detail states practices in utilizing assets for compensation of victims of trafficking crime; he notes that some laws provide for paying the damages to victims of trafficking out of the property of traffickers. See footnote 178 for examples of domestic laws providing paying compensation out of assets of traffickers; *ibid* p.38.

³⁵⁹ See, *inter alia*, UN General Assembly, “Trafficking in Women and Girls,” UN Doc. A/RES/63/156, Jan. 30, 2009, at para. 19; and UN Human Rights Council, “Trafficking in Persons, Especially Women and Children,” UN Doc. A/HRC/RES/11/3, June 17, 2009, at para. 1.

³⁶⁰ Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report submitted by the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo,” UN Doc. A/HRC/10/16, Feb. 20, 2009, at para. 44.

³⁶¹ The Trafficking Principles and Guidelines, Principle 17. See also Guideline 9: “trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies”.

³⁶² Gallagher, *supra* note 134, p.365. This can be articulated as the obligation to provide information regarding access to remedies, *ibid*.

³⁶³ Often victims of trafficking will be denied their rights to access remedies due to lack information on the possibilities and processes for accessing remedies.

assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.”³⁶⁴

4.2.3. Prevention of Trafficking

Prevention of trafficking invariably tied to other anti-trafficking responses. Both prosecution of trafficking cases and protection of trafficked persons contribute positively in prevention of trafficking. Therefore, effective anti-trafficking responses require a concerted and holistic approach aimed at eradication of trafficking through addressing the underlying causes fostering trafficking.

As repeatedly noted in this thesis, trafficking is caused and sustained due to the social and economic structural factors. Economic factors such as poverty, unemployment lack of access to opportunities are root causes feeding trafficking. Social exclusion including gender based discrimination in accessing social facility compounded with cultural practices tolerating (condoning) early marriage and forced marriage also counted as underlying causes of trafficking crime. Having said this, it is beyond a dispute to sustain that addressing the root causes of trafficking crime is a starting point to prevent trafficking including women trafficking effectively. But prevention oriented programs and policies have to be complied with human rights standards. Thus this section seeks to examine the contents and contours of Human Rights Based Approach standards in prevention and anti trafficking response.

4.2.3.1. Prevention through Addressing Root Causes

Prevention refers to positive measures to stop future acts of trafficking from occurring.³⁶⁵ Hence, policies and activities identified as prevention are generally those considered to be addressing the underlying causes of trafficking. It has been noted that trafficking is caused by structural problems which stem from deprivation of human rights. Specifically, poverty, inequality in opportunities, discrimination against women, and violence against women are principal factors causing and sustaining women trafficking.³⁶⁶ Therefore, any effective and meaningful anti-trafficking strategies should address these underlying causes in order to see eradication of crime of women trafficking.

a) Poverty Reduction

Poverty has been noted as principal causative factors feeding human trafficking. The obligation to address poverty as requirement to prevent human trafficking is generally imposed under trafficking specialist instruments. The Trafficking Protocol, for example, calls on states to take measures to alleviate root causes of trafficking such as poverty, underdevelopment and lack of opportunities.³⁶⁷ Such measures include, but are not limited to, “research, information and

³⁶⁴ The Trafficking Principles and Guidelines, Guideline 9 para.2.

³⁶⁵ Gallagher, supra note 134, p.414.

³⁶⁶ Ibid, p.415.

³⁶⁷ Trafficking Protocol, art.9 (4).

mass media campaigns and social and economic initiatives to combat and prevent trafficking in persons”³⁶⁸ The Trafficking Principles and Guidelines, for its part, request states to insert addressing poverty in prevention of trafficking strategies.³⁶⁹ It also notes that States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.³⁷⁰ The **Ouagadougou Action Plan** also contemplates the importance of addressing poverty in context of trafficking phenomenon.³⁷¹ It further requests member states to include human trafficking in poverty reduction strategies.³⁷² Finally CRC OPS call on states to promote strengthening international cooperation to address the root cause of sale of children (trafficking) such as poverty.³⁷³

It is gatherable from these legal and policy instruments that measures required in the respect of addressing poverty to combat trafficking include, inter alia, adopting development policies and programs aimed at addressing poverty and underdevelopment, and strengthening international cooperation for development (technical) assistance.

It must be stressed that poverty disproportionately and differently affects women and girls thereby exposing them to prey of traffickers. Thus, the obligation to address poverty inherently entails the measures aimed at addressing the feminization of poverty. In respect of gender dimension and link between poverty and trafficking, the CEDAW Committee noted in General Recommendation No. 19 that poverty and unemployment increase opportunities for trafficking in women and force many women, including young girls, into prostitution.³⁷⁴ The CEDAW Committee has repeatedly identified a link between poverty and gendered forms of trafficking in its Concluding Observations on State reports.³⁷⁵ The responsibility on States to review and change laws and practices that fuel gender-based discrimination and inequalities leading to or exacerbating trafficking has also been extensively acknowledged.³⁷⁶

³⁶⁸ Ibid, art. 9(2).

³⁶⁹ Trafficking Principles and Guidelines, Guideline 7, para.5.

³⁷⁰ Ibid, Principle 5.

³⁷¹ Ouagadougou Action Plan, at art.3.

³⁷² Ibid.

³⁷³ CRC OPS art.10 (3).

³⁷⁴ UN Committee on the Elimination of Discrimination against Women, “General Recommendation No. 19: Violence against Women,” UN Doc. A/47/38, Jan. 29, 1992 (CEDAW General Recommendation No. 19), at paras. 14–15; see Joy Ezeilo, Report on the Prevention of Trafficking In Persons.

³⁷⁵ Gallagher, supra note 134, p.420.

³⁷⁶ See, for example, the Trafficking Principles and Guidelines, Guideline 7 par.6; UN Commission on Human Rights, “Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women,” UN Doc. E/CN.4/2000/68, Feb. 29, 2000, paras. 42–48, 54–60.

The obligation to address poverty in more general perspective has been established in human rights law regime. Accordingly, there are several international and regional human rights treaties of particular importance in addressing the link between poverty and vulnerability to trafficking. These are: the **ICESCR**, the **CEDAW**, the **CRC**, and **CRC OPS**. **At the regional level, African Charter, Women's Protocol** and **ACRWC** are also highly relevant.

b) Promoting Education Opportunities

The lack of education has been noted as one of the prime factors causing the trafficking crime. Accordingly, promoting the education opportunities in general and to those of potential victims in particular contributes in the fight to prevent trafficking. In this regard the obligation to provide education opportunities have been reiterated in trafficking specific instruments. The Trafficking Principles and Guidelines, for instance, request states to develop programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.³⁷⁷ Particularly it has been emphasized that the states are obligated to ensure improved education opportunities, especially for women and children.³⁷⁸

Further the obligation to provide access to education is established in international and regional human rights law instruments. For example, **ICESCR (art.13)**, **CRC (art.28)**, and **CEDAW (art.10)** are relevant international human rights instruments in establishing states obligation to provide access to education. At regional level **African Charter (17)**, **ACRWC (art.11)**, and **Women's Protocol (art.12)** impose similar obligation. While the obligation to ensure access to education applies to all persons, special attention should be given to women and girls who are vulnerable to the trafficking crime.³⁷⁹

c) Enhancing Employment Opportunities

As consistently maintained in this thesis, the lack of employment opportunities is among the principal causative factors exposing women and girls to the prey of traffickers. Thus, the prevention strategies should aim at addressing the lack of employment in order to see eradication of women trafficking. In this respect the international law provides the rights to access employment opportunities and the concomitant states obligation. For instance, the Ouagadougou Action plan, calls on member states to endeavor to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk.³⁸⁰ Further, the **UNODC Model Law**, requests states to undertake measures to alleviate underlying factors exposing people to trafficking such as unemployment.³⁸¹

³⁷⁷ The Trafficking Principles and Guidelines, Guideline 7, para.2, it also urges states to improve children's access to educational opportunities and increasing the level of school attendance, in particular by girl children, *ibid* guideline 7, para.3.

³⁷⁸ Gallagher, *supra* note 134, p.42.

³⁷⁹ Obokata, *supra* note 35, p.163.

³⁸⁰ Ouagadougou Action Plan, art.3.

³⁸¹ UNODC Model Law, art.35, p.68.

The obligation to ensure access to employment opportunities entails undertaking programs and policies to expand job opportunities. It also includes undertaking elimination of any *de jure* or *de facto* barriers to employment for vulnerable groups, including women.³⁸² Further, it imposes taking legal and social measures to ensure rights in employment including a minimum wage that enables an adequate standard of living.³⁸³ Moreover, the obligation to provide access to employment opportunities includes facilitating legal, gainful and non-exploitative migration.³⁸⁴ The prevention strategies in this regard must take into account the demand for labor in abroad and the fundamental rights of migrants to earn safe and gainful means employment. The complete blanket ban of migration has been noted as counterproductive from human rights perspective.³⁸⁵ Rather states are required to furnish adequate information about the rights of migrants and practical advice how to avoid the risk of trafficking for prospective migrant workers.³⁸⁶ It has also been noted that the promotion of labor migration by the State requires the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.³⁸⁷ Further, the obligation to ensure access to employment opportunities requires facilitating improved access to credit, finance, and productive resources, especially for women.³⁸⁸

It is worth to reiterate that the obligation to provide access to employment also requires ensuring equal opportunities for women alongside their men counterparts. Accordingly, it imposes the obligation to undertake elimination of any *de jure* or *de facto* barriers to employment for women and girls.³⁸⁹ In this connection the efforts to guarantee temporary affirmative action for women in access to employment opportunities are welcome development in the eyes of human rights system.

In more general level, the right to access employment opportunities and the corresponding states obligations has been affirmed in human rights law regime. Just to mention few, ICESCR

³⁸² See, for example, UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, at para. 4: "[t]he failure of existing economic, political and social structures to provide equal and just opportunities for women to work has contributed to the feminisation of poverty, which in turn has led to the feminisation of migration as women leave homes in search of viable options." See further, Ouagadougou Action Plan, at 3.

³⁸³ See, for example, "Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, Sigma Huda, Addendum: Mission to Bahrain, Oman and Qatar," UN Doc. A/HRC/4/23/Add.2, Apr. 25, 2007, esp. at paras. 69–82.

³⁸⁴ The Trafficking Principles and Guidelines, Guideline 7, para.7; Joy Ezeilo, Report on the Prevention of Trafficking In Persons special Rapporteur report prevention, para.39-43.

³⁸⁵ Ibid, para.40.

³⁸⁶ Ibid, para.43; this include pre-departure training for prospective migrants.

³⁸⁷ The Trafficking Principles and Guidelines, Guideline 7, para.7.

³⁸⁸ Gallagher, supra note 134, p. 421.

³⁸⁹ See, for example, UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, at para. 4. See further, Ouagadougou Action Plan, at 3 ("States should endeavour to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk, especially in regions prone to trafficking").

(art.6), CEDAW (art.11), and at regional level African charter (art.16) and Women's Protocol (art.13) are relevant instruments.

d) Addressing Gender Based Discrimination

Women and girls have been disproportionately exposed to trafficking, by and large, due to gender based discrimination in accessing socio-economic facilities and opportunities. Women and girls have been marginalized from mainstream socio-economic life and relegated to invisible position. As a result they are often more prone to risk of trafficking than their male counterparts. Put it differently, it is the lack of genuine choice resulted from discrimination that, in turn, renders women and girls more vulnerable than men to trafficking.³⁹⁰

Regarding the role of gender based discrimination in women trafficking the Special Rapporteur notes that "the failure to provide equal and just opportunities for women to education and work encourages the feminization of poverty. This, in turn, compels women to leave their homes in search of better opportunities, resulting in the feminization of migration."³⁹¹

The importance of uprooting discrimination against women as preventive measures of anti-trafficking response is beyond a dispute. It is submitted that the primary requirement in addressing discrimination in this context is enacting legislation which prohibits discrimination on ground of gender or any other irrelevant grounds.³⁹² Gallagher notes that States are placed under a clear legal obligation to ensure that their laws, systems, and practices do not promote, reward, or tolerate discrimination.³⁹³ In a similar vein, the responsibility on States to review and change laws and practices that fuel gender based discrimination and inequalities leading to or exacerbating trafficking has also been extensively acknowledged.³⁹⁴ Further, it also entails implementing education initiatives aimed at educating the public about violence against women and removing negative attitudes toward women.³⁹⁵

³⁹⁰ Gallagher, supra note 134, p.423.

³⁹¹ Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.22.

³⁹² Obokata, supra note 35, p.163.

³⁹³ Gallagher, supra note 134, p.424.

³⁹⁴ See, for example, the Trafficking Principles and Guidelines, Guideline 7para.6; UN Commission on Human Rights, "Report of the Special Rapporteur, Ms. Radhika Coomaraswamy, on Violence against Women, Its Causes and Consequences, on Trafficking in Women, Women's Migration and Violence against Women," UN Doc. E/CN.4/2000/68, Feb. 29, 2000, paras. 42-48, 54-60.

³⁹⁵ Gallagher, supra note 134, p.426.

On the other hand the obligation to address gender based discrimination in context of counteracting women trafficking, entails ensuring equal access of opportunities to women and men alike.³⁹⁶ For example, the Trafficking Protocol calls on States to take or strengthen measures to offset *lack of equal opportunity*.³⁹⁷ The Trafficking Principles and Guidelines, for its part, request states to take particular care to ensure that the issue of gender based discrimination is addressed systematically when anti-trafficking measures are proposed.³⁹⁸ In particular it requests states to develop programs that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.³⁹⁹ In a similar vein, the Ouagadougou Action Plan urges member states to endeavor to provide viable employment or other livelihood opportunities for youth in general and in particular for young women at risk.⁴⁰⁰ It also requests member states to promote the empowerment of girls and women in their national policies.⁴⁰¹ Moreover it notes that a gender perspective should be applied when adopting and implementing measures to prevent and combat trafficking in human beings.

Finally, the obligation to address gender based discrimination has been duly established under human rights law regime. There are several human rights law instruments calling on states to dismantle gender based discrimination. These are: the ICCPR (art.2), ICESCR (art.2), CEDAW (art, 2), CERD (arts.2and 4), CMW (art.7), and CRC (art.2). At regional level, African Charter (art.2), ACRWC (art.3) and Women's Protocol (art.2) are worth mentioning.

4.2.3.2. Public Awareness Raising Campaigns

Public awareness raising regarding the risk of trafficking is essential component of anti-trafficking strategies since vast majority of victims lured into trafficking owing to lack of information and knowledge. The obligation to undertake public awareness raising in the fight against trafficking is affirmed in several trafficking instruments. Trafficking Protocol, for instance, calls on States Parties to endeavor to undertake measures such as information and mass media campaigns to prevent and combat trafficking in persons.⁴⁰² In a similar vein, the Trafficking Principles and Guidelines request states to develop information to raise public awareness.⁴⁰³ The CRC OPS also requires promoting awareness about preventive measures and harmful effects of the offences such as sale of children.⁴⁰⁴ The importance of raising public awareness is also reiterated in Organized Crime Convention.⁴⁰⁵ Moreover, Ouagadougou Action Plan requests states to ensure awareness raising and counseling, as key preventive measures to

³⁹⁶ Obokata, supra note 35, p.163.

³⁹⁷ Trafficking Protocol, art.9 (4).

³⁹⁸ The Trafficking Principles and Guidelines, Guideline 1, para.4.

³⁹⁹ Ibid, Guideline 7, para.2.

⁴⁰⁰ Ouagadougou Action Plan, art.1.

⁴⁰¹ Ibid.

⁴⁰² Trafficking Protocol, art.9 (2).

⁴⁰³ Trafficking Principles and Guidelines, Guideline 7 para.5.

⁴⁰⁴ CRC OPS, art.9 (2).

⁴⁰⁵ Organized Crime Convention, art.31 (5).

combat trafficking in human beings.⁴⁰⁶ The Special Rapporteur in her recent report also reaffirms the importance of awareness raising to prevent trafficking in women and children.⁴⁰⁷

Public awareness should be given to general public at large on the causes and consequences of trafficking. Particularly, the awareness raising should target the people at risk of trafficking such as women and girls.⁴⁰⁸ It also should be given to the agencies dealing with anti-trafficking responses.

Regarding the content of obligation of raising public awareness, the following measures could be identified. These are: Raising awareness in forms education i.e., incorporating trafficking into school curriculum,⁴⁰⁹ conducting anti-trafficking Media campaigns,⁴¹⁰ engaging civil society in awareness raising,⁴¹¹ and targeting the potential victims of trafficking in awareness raising.⁴¹² It is interesting to note that a care must be made in awareness raising not employ counterproductive means such scare tactics or distorted information.⁴¹³

What are the indicators of effective awareness raising? In this respect Special Rapporteur identifies the three key elements of effective awareness-raising. These are: First, awareness-raising campaigns must be based on accurate and adequate information. Before embarking on such campaigns, it is important to acquire a solid understanding of the manifestations of trafficking in a given context. Awareness-raising based on inaccurate or insufficient information may leave potential victims off-guard. It is desirable to conduct a needs assessment or study to identify what the target audience already knows and does not know in order to ensure the maximum impact. It is simply not useful or effective to implement broad-brush campaigns to “stop human trafficking” if the populations do not even know what human trafficking really is.⁴¹⁴

Second, it is important to recognize that awareness-raising is never enough in itself to prevent trafficking and needs to be complemented by programmes that reduce the vulnerability of potential victims and provide them with viable alternatives. Awareness-raising campaigns implemented alone as a preventive measure are based on the assumption that increased awareness of trafficking issues will encourage people to make alternative decisions that minimize their risk of being trafficked. While this may work well in some circumstances, it

⁴⁰⁶ Ouagadougou Action Plan, art.1.

⁴⁰⁷ See Joy Ezeilo, Report on the Prevention of Trafficking In Persons, paras.44-48.

⁴¹⁴ For example, the model law provides that states should include trafficking in persons in human rights curricula in schools and universities; see UNODC Model Law, art.35, p.68.

⁴⁰⁸ Ibid.

⁴⁰⁹ For example, the model law provides that states should include trafficking in persons in human rights curricula in schools and universities; see UNODC Model Law, art.35, p.68.

⁴¹⁰ Organized Crime Convention, art.31 (5); Ouagadougou Action Plan; Trafficking Protocol, art.9 (2); UNODC Model Law, art.35, p.68.

⁴¹¹ Trafficking Protocol, art.9 (3); Ouagadougou Action Plan, art.1. See also Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.77.

⁴¹² CRC OPS art.9 (2); Trafficking Principles and Guidelines, Guideline 7, para.4.

⁴¹³ Joy Ezeilo, Report on the Prevention of Trafficking In Persons , para.45.

⁴¹⁴ Ibid, para.46;

disregards the dynamic “push” factors that compel people to leave home despite their knowledge of the risks.⁴¹⁵

Third, the powerful role of the media should be fully acknowledged and exploited in awareness-raising campaigns. The media has tended to sensationalize stories of trafficked persons and highlight their “victimhood” rather than educating the public about the underlying social and economic factors that led to the violation of their human rights. Given its influential role and ability to reach wider audiences, however, the innovative use of media should be built into awareness-raising activities.⁴¹⁶

4.2.3.3. Research and Data Collection

Research is an essential component of prevention strategies in improving understanding about the nature, causes, magnitude, trend and consequences of trafficking. Research also serves to mobilize persons and resources necessary to combat human trafficking. In this regard, the obligation to conduct research and data collection on the antitrafficking issues that are considered areas of most concern is contemplated in various trafficking specific instruments.⁴¹⁷

Primarily it is critical to collect the accurate data regarding the incidence of trafficking prior to devising anti-trafficking measures so that such measures are based on a realistic understanding about why particular groups of people are being trafficked and how traffickers operate.⁴¹⁸

Secondly, the monitoring and evaluation of effectiveness of prevention measures should be conducted in order to ensure that preventive measures achieve the desired effect while enhancing the human rights of trafficked persons. For example, the Trafficking Protocol requires states to undertake to endeavor to take measures such as conducting research to prevent human trafficking.⁴¹⁹ The Trafficking Principles and Guidelines also requests states to undertake research as measures to prevent human trafficking.⁴²⁰ Further, the model law contemplates the importance of conducting research regarding the nature and scale of trafficking problem and to mark anti-trafficking best practices.⁴²¹ The Ouagadougou Action Plan also provides the requirement of conducting research.⁴²²

In a similar vein it has been confirmed that statistical data collection should also be made in a bid to enhance the understanding of trafficking problem. In this respect the emphasis has been made on the methods of data collection and disaggregated data on basis of sex, age, etc relevant categories instead of providing aggregated and general numbers.⁴²³

⁴¹⁵ Trafficking Principles and Guidelines, Guideline 3, para.6. See also Joy Ezeilo, Report on the Prevention of Trafficking In Persons, para.47.

⁴¹⁶ Ibid, para.48.

⁴¹⁷ Ibid, paras.79-80; Mattar, supra note 148, p.51.

⁴¹⁸ Ibid, para.60.

⁴¹⁹ Trafficking Protocol, art.9 (2).

⁴²⁰ Trafficking Principles and Guidelines, Guideline 3, para.4.

⁴²¹ UNODC Model law, art.35, p.69.

⁴²² Ouagadougou Action Plan, art. 3.

⁴²³ Trafficking Principles and Guidelines, Guideline 3, para.3. See also Ouagadougou Action Plan, art. 3.

4.3. Conclusion

The ineffectiveness of Criminal Justice Approach response to eradicate women trafficking for various reasons noted in this chapter, necessitates examining closely what are in store in human rights regime. Firstly, Human Rights Based Approach which calls for primacy of human rights in anti-trafficking intervention fundamentally shifts the framework of analysis of the problem of contemporary slavery. It views women trafficking as first and foremost a matter of human rights issues. Indeed as discussed in this chapter and previous one women trafficking stem from the deprivation of human rights protection. Women trafficking is caused and sustained by structural causative factors bred from human rights violations. Further, the phenomenon of trafficking in women entails violations of a wide array of human rights guarantees accorded due protection in human rights law system. Such reframing of the causes, processes and consequences of women trafficking leads us to contemplate that any durable, effective and meaningful anti-trafficking response has to be shaped in human rights perspectives. Admittedly, while human rights brand anti-trafficking intervention is not perfect panacea to eradicate women trafficking, it should be made clear that in relative terms it is far better than the traditional Criminal Justice Approach response.

Further, in this chapter an attempt is made to outline the indicators of a Human Rights Based Approach response which could serve as touchstone to scrutinize anti-trafficking initiatives. Accordingly, the main markers of states obligations derived from international legal and policy frameworks including human rights regime have been fleshed out in detail. These standards though some of them do not impose binding obligations strictly speaking, the prosecution, protection and prevention of women trafficking interventions ought to be informed and inspired by these standards in order to implement Human Rights Based Approach anti-trafficking national response. This leaves us to explore whether national anti-trafficking initiatives in place in Uganda are line with these standards or not. Hence, the previous chapter tries to respond to this issue.

Chapter Five: Conclusion and Recommendations

5.1. Conclusion

Human trafficking, which is considered as a contemporary form of slavery, is affecting thousands of persons across the entire world. While boys and men can be exposed to trafficking, the majority of victims of modern day slavery happen to be women and girls. After many false starts, the international community has managed to come up with comprehensive international legal rules to address the problem of trafficking in persons in 2000. Accordingly, the Trafficking Protocol, *inter alia*, has broadly and comprehensively defined trafficking in persons for the first time at the international level. The definition consists three constituent elements: action, means and purposes which have to be established to prove the commission of trafficking in persons. Importantly, it expands the scope of the definition to encompass all victims regardless of age and sex by proscribing trafficking in persons in general. In other words, it prohibits not only trafficking in children and women but also trafficking in men as well. Further, it declares that the consent of the victim is irrelevant as long as means (use of force, abduction, fraud, deception, etc) of trafficking are present. So it is no longer tenable to invoke the consent of the victims to be exonerated from criminal liability of the crime of trafficking crime as stipulated under the Trafficking Protocol.

Overtime the conceptual discussion on human trafficking has been to strike the distinction between trafficking and smuggling in human beings. It is shown in this study that while an attempt is made to draw the distinction between trafficking and smuggling in UN Protocols and scholarly writings by identifying certain distinguishing features, it is argued in this thesis that there is only a thin line between the two criminal activities. Hence, it is commended that unless a thorough and competent investigation is undertaken to identify the smuggled and trafficked persons, it is in the best interest of the protection of human rights to err on the side of caution and to presume all illegal immigrants as potential victims of trafficking crime.

The most important issue discussed in this thesis is how to approach counter-trafficking measures in general, and in Uganda in particular. The two main approaches identified to combat trafficking in persons are: criminal justice approach and human rights based approach. While the former approach considers human trafficking predominantly as crime and immigration issue that should be addressed by tightening law enforcement measures, the latter views human trafficking as first and foremost a human rights issue requiring responses anchored on protection and promotion of human rights.

A criminal justice approach fails to effectively address trafficking in persons for various reasons. While it can be essential to address the process and consequences of human trafficking, it is not best equipped to up root the structural causative factors responsible for perpetuation of human trafficking. Contrary to this, A Human Rights Based Approach by underscoring the primacy of human rights has the potential of eradicating human trafficking through addressing both the consequences and causes of human trafficking. In the first place A Human Rights Based Approach conceptualizes human trafficking as consequence and causes of human rights

violations. It provides that anti trafficking measures have to be informed and inspired by the promotion and protection of human rights. Accordingly, the human rights norms and principles should guide the prosecution, protection and prevention anti trafficking strategies.

A Human Rights Based Approach Anti trafficking Response is largely drawn from international human rights norms and principles. As such under a human rights-based approach, every aspect of the national, regional and international response to trafficking is anchored in the rights and obligations established by international human rights law. Thus, national governments are required to observe their obligations derived from international human rights law in devising and executing anti-trafficking response informed by A Human Rights Based Approach. Henceforth, Human Rights Based Approach anti trafficking standards requires effective prosecution of trafficking cases, proper protection services to victims of trafficking, prevention root causes of trafficking in persons.

It is argued in this thesis that A Human Rights Based Approach anti trafficking which meet the standards discussed in chapter four of the thesis is essential to combat trafficking in women for any country. This thesis thoroughly analyzed anti trafficking measures adopted in Uganda to counteract trafficking in women. It showed that while trafficking in women is widespread and causing multiple human rights violations, the anti trafficking measures are not adequately devised to address the problem effectively. While there is no comprehensive legislative framework enacted to deal with the trafficking in persons, the crime is proscribed by the existing scattered various provisions of the laws, including the Constitution, Criminal Code and Employment Exchange Proclamation. But the lack of comprehensive legal definition of trafficking in persons and the narrow scope of criminalization of trafficking particularly in criminal law can be cited as draw backs in legislative frameworks in the prosecution of trafficking cases.

Regarding the investigation and prosecution of trafficking cases, it is shown that, while there is no specialized institution established to deal with trafficking in all its aspects, there are specialized investigation and prosecution (adjudication) units in federal judiciary and federal police commission.

Contrary to this, it is shown that there is low rate of prosecuting those involved in the trafficking of persons. The responsible factors are: the low rate of reporting the commission of offence, lack of evidence to hold offenders responsible, work load on law enforcement agencies and judiciary, low level of victim cooperation, lack of coordination with regional law enforcement agencies, and less attention given to internal trafficking in persons. Moreover, while the punishments set by law are more or less sufficiently stringent, in practice, often, the lesser penalties are handed down. This is due in part of relatively strong financial capacity of the majority of suspects who are able to evade from criminal liability. While the penal code contemplates about confiscation of proceeds and instrumentalities of criminal activities, nonetheless the practice shows no record of asset confiscation with regard to trafficking cases. Further, law enforcement officials are given capacity building training in a piecemeal and limited manner. In general, measures for the effective prosecution of trafficking cases that seek to end impunity and deliver justice to the victims are not yet established.

It is also discussed that limited and infrequent protection services are provided to VoT. In particular, although identification of VoT is considered as a starting point to provide protection services, it is argued that in Uganda there exists no proactive and coordinated identification mechanism. Besides, there is low level coordination between criminal justice agencies and victim support agencies in the process of identification of VoT. Consequently, the referral mechanism between criminal justice and victim support agencies (mainly NGOs) is of negligible significance.

In terms of actual protection services a limited psychological, medical, material and legal assistance is provided to VoT. The MoFA provides temporary shelter for VoT in Kuwait and Lebanon via its embassies. But it has been noted that the resources of running the shelters is very scarce. Besides, the Ugandan government provides limited legal assistance to VoT in destination countries unlike some labor sending countries. This could partly be attributed to the lack of bilateral labor agreements with most of destination countries. But the situation is relatively better at home as far as providing legal information to VoT is concerned. Although on limited level some government institution and NGOs provide legal aid to VoT to vindicate their cases in court of law.

Further, it is noted that the MoFA in collaboration with IOM and UN Refugee agencies undertakes to facilitate the repatriation of VoT from destination countries including mainly Middle East countries. But it is mentioned that there are complaints raised from PEAs and victims that the assistance provided by Ugandan missions is minimal and staff members are not necessarily caring and understanding. Regarding reintegration of VoT, while some NGOs offer rehabilitation and reintegration protective services, the CSO proclamation negatively impacts their operation. On top of this, the lack of repatriation fund and protection center for VoT leave several trafficked persons to the risk of re trafficking. As far access to remedies is concerned , while there is no separate law meant to deal with access to remedies of VoT in Uganda, some provisions of the existing laws provide framework for victims of any crime to claim remedies from criminals that are also relevant for VoT.

Moreover, this thesis has discussed that the prevention is perhaps at the lowest level of all the three Ps namely prosecution, protection and prevention antitrafficking strategies implemented in Uganda. The lack of comprehensive policy or national action plan on trafficking in persons and the absence of institution specifically mandated to deal with trafficking in persons is cited as an indication of less attention given to prevention aspects of antitrafficking measures. In addition, even the existing policy frameworks do not entertain the prevention of trafficking in persons as policy objectives. It is also argued that while the Constitution stipulates certain obligations and policy guidelines that are relevant to address the root causes of trafficking, there remains a lot to be done to realize constitutional aspirations and entitlements.

Further, it is shown that there are some commendable measures taken to promote the right to movement for employment and protect the rights and dignity of Ugandan prospective migrant workers. For example, the Employment Exchange Proclamation is passed to enhance the protection of the rights, safety and dignity of Ugandan workers going abroad for employment, and to strengthen the mechanism for monitoring and regulating the employment exchange services. Although boring and one way traffic, predeparture orientation is given for prospective

migrant workers regarding causes, process and consequences of trafficking in persons. And how to avoid risk of human trafficking and labor exploitation.

However, there exists still significant draw backs in monitoring the operation of PEAs and ensuring the protection of migrants workers rights in destination countries. The irregularities and loopholes in operation of PEAs, reluctance of engaging with destination countries to protect the rights and dignity of Ugandan migrant workers, and the failure of appointing labor attaché in overseas embassies are discussed as the main factors behind perpetuation of trafficking and exploitation of many Ugandan women and girls.

Finally, the lack of data and research on the scale of the problem and anti trafficking measures available, as well as the low level of awareness raising campaign to alert potential victims of trafficking call for reinvigorating anti trafficking measures in this respect.

In sum, it is fair to say that, while there are some positive initiatives and efforts, anti trafficking measures adopted in Uganda as discussed in this thesis fall short of Human Rights Based Approach anti trafficking standards. The lack of legislative, policy and institutional frameworks coupled with deficiencies in prosecution, protection and prevention strategies prove this assertion. Therefore, it is a high time to adopt A Human Rights Based Approach anti trafficking response in the country to see the effective and meaningful eradication of the trafficking in women.

5.2. Recommendations

After having discussed above that anti trafficking measures adopted in Uganda fall short of human rights based approach anti trafficking response, the following recommendations, with no particular order of priority, are made.

- Adopting comprehensive anti trafficking law that is based on a human rights approach providing for the primacy of human rights in prosecution, protection and prevention of trafficking is necessary.
- Adopting a comprehensive anti trafficking national policy framework to guide the overall effort to combat trafficking in women in a coordinated and holistic manner is called for.
- Establishing institution mandated exclusively to deal with the combating of trafficking in persons.
- Concluding bilateral labour agreements with at least major destination countries.
- Strengthening coordination between criminal justice agencies and victim support agencies to enhance the prosecution of traffickers and protection of victims of trafficking.
- Facilitating alternative employment opportunities available at home to women and girls so that they are not forced to fall prey of traffickers.
- Providing regular and systematic capacity building training to law enforcement agencies to enhance understanding on trafficking in persons.
- Improving the quality of investigation, and prosecution of trafficking cases.
- Appointing labor attaché in Ugandan embassies.
- Strengthening the monitoring and inspection of PEAs.
- Improving the cooperation with destination countries in combating of Trafficking in Persons and protection of the rights of migrant workers.

- Undertaking data collection and nationwide research on the scale, causes, and consequence of trafficking, and measures to combat trafficking in women.
- Strengthening coordination between federal and regional law enforcement agencies to enhance the prosecution of trafficking cases.
- Ratifying international legal instruments relevant to combat trafficking in women including Organized Crime Convention and Trafficking Protocol.
- Taking proactive measures against traffickers by law enforcement agencies.
- Paying due attention to combat internal trafficking which feeds transnational trafficking in women.
- Establishing protection center that facilitate the effective physical, psychological, social and economic recovery of victims and allocating fund for rehabilitation and reintegration of VoT to avoid re trafficking.
- Creating favorable environment for NGOs to enhance their participation in prevention and protection of trafficking in women including amending charity and civil society proclamation.
- Enhancing awareness raising particularly to the potential victims of trafficking regarding the risk of trafficking.
- Improving penalty handed to traffickers, making it commensurable with the gravity of the crime and harm caused.
- Ensuring the provision of temporary shelter for victims of trafficking and exploited migrant workers both in countries of destination and Uganda.
- Undertaking comprehensive effort to promote the rights of vulnerable groups, inter alia, access to education, information, employment and other social services, the right to equality and to be protected against gender based discrimination.
- Establishing coordination and cooperation with neighboring countries to enhance the effective eradication of trafficking in women.

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