



Critical Examination of the Effectiveness of the African Anti-Human Trafficking Initiatives

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Abstract

Trafficking in person is an ancient phenomenon that persisted until today with its influence on every country either as a source, transit, destination or a combination of two or all the three. Its impact is worse in African continent due to a multiplicity of push factors such as poverty, persistent unemployment, corruption and armed conflict. Africa has tried to counteract the problem by adopting different international, regional and sub-regional legislative and policy initiatives. This study is aimed to assess the effectiveness of African anti-human trafficking initiatives and thereby to suggest possible measures that should be taken to maximize their success. The writer have used a doctrinal legal research methodology that involve a systematic analysis of statutory provisions, cases, legal principles, official reports, State documents and Records, Official Statistics as a primary sources and books, journal articles etc..as secondary sources. The assessment has revealed that there are some positive measures taken by a limited number of African states, whereas many of the African states seem to be pretending rather than showing a genuine commitment to combat trafficking in person. Thus, initiatives at the international and continental level were not evenly cascaded to many states via ratification. Moreover, there is high enforcement deficit in those countries that have domesticated the legal and policy frameworks. Finally, the writer recommends for an internal political will to effectively combat the problem that can be expressed by way of criminalising the conduct and assigning a commensurate punishment; establishing an independent agency with qualified staffs to coordinate; supervise the implementation of anti-human trafficking initiatives of the country and minimising the pull factors in the country of origin.

Key Words: Trafficking in Person, push-factors, Pull-factors, Anti-human Trafficking Initiatives, Africa

1.1 Introduction and Background to the Study

The history of trafficking in persons (TIP) goes back to the beginning of human civilisation. The sale and exploitation of slaves used to be common ways of life in the ancient

Greece or Rome.¹ The 1815 Vienna Congress Declaration was a precursor initiative to ban slavery and declare it as a crime.² Slavery proceeded to exist despite its prohibition. Its amplification to encapsulate prostitution and sexual exploitation by the time of First World War has fascinated the attention of the global community. Consequently, the first International Convention for the Suppression of the Traffic in Women and Children (ICSTWC) was adopted in 1921.³ Later on, the gross human rights violations during the Second World War again forced a global community to devise a mechanism to protect human rights. In 1948, the Universal Declaration of Human Rights (UDHR) was adopted to eradicate slavery and any other forms of degrading treatments, *inter alia*.⁴ The 1949 Convention for the Suppression of the Trafficking in Persons and of the Exploitation of the Prostitution of Others (CSTPEP) then outlawed any form of TIP and the exploitation of others.⁵ Footing on UDHR, the International Convention on Civil and Political Rights (ICCPR) that prohibit slavery and compulsory labour was adopted in 1966.⁶ ICCPR is legally binding, unlike UDHR. Moreover, different regional human rights instruments such as the European Convention on Human Rights (ECHR),⁷ American Convention on Human Rights (ACHR)⁸ and the African Charter on Human and Peoples' Rights (ACHPR)⁹ have unequivocally proscribed the slavery and related conducts. Though these human rights instruments do not expressly mention the term TIP, the substantive element of the conduct is sufficiently provided.

In the modern day, globalisation has made the frontiers open for the movement of ideas, funds, commodities and people. One of its negative consequences is the organised crime with increased criminal networks and human trafficking.¹⁰ In 2000, the United Nations adopted the Convention against Transnational Organised Crime (UNTOC) aimed at promoting cooperation to prevent and combat transnational organised crimes.¹¹ Subsequently, UNTOC Complementary Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children (the Trafficking Protocol) was adopted.¹²

Despite international, regional and national anti-human trafficking measures, TIP continues to evolve in its form and characteristics with serious social, economic and political consequences. The 2016 Global Slavery Index has reported that approximately 45.8 million people are in some form of modern slavery in 167 countries.¹³ UN revealed TIP as the third

¹ Petrosyan S &Khachatryan H *Human Trafficking Manual for Lecturers and Students* (2013:9)

² Final Act of Vienna Declaration on the Abolition of Slave Trade (1815), available at, https://en.wikisource.org/wiki/Final_Act_of_the_Congress_of_Vienna/Act_XV (accessed on 15 August 2020).

³ International Convention for the Suppression of the Traffic in Women and Children(1921)

⁴ Article 4 of UDHR

⁵ CSTPEP (1949)

⁶ Article 8 of ICCPR(1966)

⁷ Article 4 of ECHR(1950)

⁸ Article 6(1) of ACHR (1969)

⁹ Article 5 of ACHPR (1981)

¹⁰ Petrosyan S &Khachatryan (2013:6)

¹¹ Article 1 of UNTOC (2000)

¹² Palermo Protocol Signature and Ratification Status, Trafficking Protocol, (2000) available at, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12_a_&chapter=18&lang=en (accessed 19 August 2020).

¹³ Global Slavery Index (2016) available at, <https://www.globalslaveryindex.org/findings/> (accessed 18 August 2020)

most profitable transnational organised crime surpassed by only drug trafficking and smuggling of illicit weapons.¹⁴ It yields an estimated sum of \$32 billion in profits per annum.¹⁵ All countries are affected by TIP either as a source, transit, destination or a combination of two or all three.¹⁶ The problem is still at acute stage as such hundreds of thousands of people in developing continent like Africa fall prey to sophisticated trafficking gangs every year — living and too often dying in harsh conditions on the shadowy margins of societies far from home. They are mostly driven by poverty, conflict, discrimination and injustice according to the UNICEF report.¹⁷ Hence, the combat against TIP requires a cooperative and joint effort as it is mostly transnational and affecting every country.¹⁸ Thus, assessing the effectiveness of African anti-human trafficking initiatives and identifying the factors that hinder their effectiveness require a critical investigation.

1.2 Objectives of this Study

This study is aimed at assessing the effectiveness of African anti-human trafficking initiatives with regard to controlling trafficking of persons within and from Africa and thereby to suggest possible measures that should be taken to maximize the success of those initiatives in Africa.

1.3 Research Questions

To achieve the above stated objective, the writer has framed following research questions:

- a) What are the counter-human trafficking initiatives that are taken in Africa?
- b) How far those anti-human trafficking initiatives are effective in Africa?
- c) What are the feasible measures that should be taken to maximize their effectiveness?

1.3. Methodology

The writer employed a doctrinal legal research methodology that involve a systematic analysis of statutory provisions, cases, legal principles, official reports and the secondary materials such as Books, Journal Articles, Working Papers, State documents and Records, Official Statistics, etc.¹⁹ To ensure proper representation of the Africa, the countries were purposively selected from sub-regions of the continent such as ECOWAS, SADC, IGAD.

2 Definition and Nature of Trafficking in Person

UNTOC Supplementary Protocol to Prevent, Suppress and Punish TIP, Especially Women and Children, (Trafficking Protocol) is the first global legally binding instrument to provide an agreed and comprehensive definition to the TIP.²⁰ It defines TIP as:

¹⁴ UNODC *Background Paper on an Introduction to Human Trafficking: Vulnerability, Impact and Action* (2008:96)

¹⁵ FATF: *Money laundering risks arising from Trafficking in Human beings and Smuggling of Migrants* (2011:16)

¹⁶ Allais C *An Overview of Human Trafficking in Sub-Saharan Africa* (2006:2) available at, https://www.researchgate.net/publication/237769872_AN_OVERVIEW_OF_HUMAN_TRAFFICKING_IN (accessed 16 August 2020).

¹⁷ Africa fights the 'people trade' available at <https://www.un.org/africarenewal/magazine/october-2009/africa-fights-%E2%80%98people-trade%E2%80%99> (accessed on October 08, 2020)

¹⁸ UNODC *Global Report on TIP* (2014:11)

¹⁹ Vijay M. 'Doctrinal legal research method a guiding principle in reforming the law and legal system towards the research development' (2017) 3 *International Journal of Law* 128-130 at 128

²⁰ Trafficking Protocol (2000)

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, of fraud, of deception, of abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having a control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of 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

Generally, the offence of TIP comprises three basic elements, namely, the activity, the means, and the purpose. The activity implies any of the conduct such as recruitment, transportation, transfer, harbouring by a trafficker against a person being trafficked. The means refers to the techniques or methods used to traffic a person. It involves, *inter alia*, threat or use of force or other forms of coercion, abduction, fraud or deception. The purpose implies the reason or motive for trafficking. The purpose in trafficking is always exploitation that may take a form of prostitution or other forms of sexual related, forced labour, slavery or servitude and the removal of organs. The actual exploitation need not be materialised; it suffices to show that exploitation was intended.²² In general, the activity and the means elements form the *actus reus* of the crime of TIP, while the purpose element forms a *mens rea* of the crime.²³ The Trafficking Protocol aims to facilitate a convergence of national approaches in criminalisation and an effective international co-operation for successful investigation and enforcement of laws by providing an agreed definition for TIP.²⁴

TIP is a process. Angelina rightly states that TIP involves three phases, namely, the recruitment, transportation and exploitation.²⁵ The recruitment phase involves a set of methods, actions and means with whose single or mingled usage a person enters the net of TIP.²⁶ The threat or use of force or other forms of coercion, abduction, fraud and deception are some of the means that can be employed to recruit. The transportation phase is all about how the traffickers take the victims from the country of origin through the transit country to the country of destination. Mostly the traffickers use the route where there is a partner criminal network that accepts and distributes the victims.²⁷ Finally, the exploitation phase is a stage where the actual and ultimate human right violations take place through different forms of exploitations. Though not commonly used, some writers add the fourth phase called re-integration.²⁸ In this stage, the victim is no longer in contact with the trafficker or under the exploitation.

²¹ Article 3(a) of the Trafficking Protocol

²² Barasa N.&Ferenandez L. 'Kenya's implementation of the Smuggling Protocol in response to the Irregular movement of migrants from Ethiopia and Somalia' (2015)19 *Law, Democracy and Development* 29 at 34

²³ Gallagher (2010:31).

²⁴ Article 3 and 5 of the Trafficking Protocol

²⁵ Angelina S 'The Process of Trafficking in Human Beings: Phases of Committing a Crime' available at, <https://www.researchgate.net/publication/283121638> *THE PROCESS OF TRAFFICKING IN HUMAN BEINGS PHASES OF COMMITTING THE CRIME* (accessed 17 August 2020).

²⁶ Angelina S. (2014:4).

²⁷ Lee M *Introduction: Understanding Human Trafficking* (2007:25).

²⁸ IOM *Breaking the Cycle of Vulnerability: Responding to the Health Needs have Trafficked Women in East and Southern Africa* (2006:14), available at, http://publications.iom.int/system/files/pdf/iom_breakingthecycleofvulnerability.pdf (accessed 01 August 2020).

'TIP is a major branch of organised crime.'²⁹ The spectrum of traffickers includes:

- a) *amateur traffickers who provide intermittent assistance like for crossing a border; b) small groups of organised criminals who specialise in guiding migrants from one country to another through identified routes; and c) international trafficking networks that involve criminals who provide accommodation and contracts to the trafficked persons.*³⁰

Thus, corruption and money laundering are considered to be key factors in the maintenance and proliferation of criminal network and TIP.³¹ Again, money laundering occurs once the criminals make a profit out of TIP and do not want to reinvest the money in their criminal activities.³²

3 Trafficking in Persons Vs Smuggling of Migrants(SOM)

TIP and SOM are discrete concepts though they overlap notably. It is necessary to see the definition of SOM to clearly understand their differences and areas of overlap. The Protocol against Smugglings of Migrants (the Smuggling Protocol) defines SOM as:

*the procurement, in order to obtain, directly or indirectly, a financial or other material benefits, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident.*³³

A close look into the definitions of TIP and SOM shows the following basic differences: SOM is inevitably transnational, whereas TIP can happen within a single country; SOM does not involve exploitation of a person as an element of a crime, while purpose of exploitation is a core element to the TIP and the consent of migrant is required in the case of SOM, whereas the means employed in TIP such as threat to use force or coercion or deception makes the consent irrelevant.³⁴ The other difference is that SOM amounts to the violation of state sovereignty, whereas TIP violates the human rights of the victim.³⁵

A smuggled migrant may become a victim of trafficking.³⁶ This happens where the smuggler or a third party exploits the smuggled person by using his or her illegal status. For instance, at the border between South Africa and Zimbabwe, there are people smugglers, named *Malaisha*, who pretend to help in crossing to South Africa illicitly, but exploit the migrants persistently to the end.³⁷

4 Trafficking in Persons within and from Africa

²⁹ Stoecker S 'The Rise in Human Trafficking and the Role of Organised Crime' available at, https://www2.gwu.edu/~ieresgwu/assets/docs/demokratizatsiya%20archive/08-1_Stoecker.PDF (accessed 08 August 2020)

³⁰ Wright A. *Organised Crime* (2006:95)

³¹ Sawadogo R 'The Challenges of Transnational Human Trafficking in West Africa' (2012)13 *African Studies Quarterly* 95 at 102. For similar information see also Fletcher C & Herrmann D, *the Internalisation of Corruption Scale, Impact and Countermeasures* (2012:167).

³² Stessens G *Money Laundering: A New International Law Enforcement Model* (2008:9).

³³ Article 3(1) of the Smuggling Protocol(2000)

³⁴ UNODC, *Regional Strategy for Combating Trafficking in Persons and Smuggling of Migrants (2015-2020)* available at, http://www.unodc.org/documents/human-trafficking/2016/UNODC_Regional_Strategy_for_Combating_TIP_SOM_West_and_Central_Africa_2015-2020.pdf (accessed on 04 September 2020)

³⁵ Wintery k. *et al* (2012:26)

³⁶ Barasa N & Ferenandez L (2015:33).

³⁷ Aransiola J. and Zarowsky C. 'Human Trafficking and Human Right Violations in South Africa: Stakeholders' Perceptions and the Critical Role of Legislation' (2014)14 *AHRLJ* 509 at 517.

Despite being an old phenomenon, very little was known about TIP, especially in sub-Saharan Africa. It was only in the late 1990s that the activists, media and NGOs began to disclose it.³⁸ The report shows that domestic trafficking accounts for 75 percent in terms of the flows and is the main type in Sub-Saharan Africa.³⁹ In case of transnational trafficking, the flows are mostly between states in the same sub-region i.e. either within western, southern or east southern parts of Africa.⁴⁰ Africa also serves as source continent for Europe and other Middle East continents.

The causes of TIP are complex and often interrelated.⁴¹ They are commonly categorised as the ‘push factors’—on the so called ‘supply side’ and ‘pull factors’—on the demand side. Pushing factors refers to the factual situations that put a person with no choice but to leave his country of origin. While the pull factors imply the prevailing situations in the country of destination that attract a victim and the economic benefit that the trafficker and final exploiters find. Notwithstanding the specific and contextual causes that may prevail in a particular country, poverty, persistent unemployment, corruption, armed conflict, ignorance, family disintegration as a result of divorce or death are mostly indicated as major push factors for TIP in Africa.⁴² The economic differentials in the cities, countries, regions or continents, domestic and sexual services, cheap labour force and the use of organs, *inter alia*, are mostly indicated as pulling factors.⁴³

Trafficking is one of the most profitable organised crimes in Africa.⁴⁴ Out of the estimated US \$32 billion annual profits from TIP in the world, US \$3.3 is generated in Africa.⁴⁵ TIP, by being a low-risk, high-rewarding business,⁴⁶ motivates the traffickers and final exploiters to use any means and techniques at their disposal in the course of trafficking. Moreover, the reports reveal that some trafficking groups are switch their cargo from drugs to human beings, looking at high profits at lower risk.⁴⁷

Though the forms of exploitation vary depending on the context, the most common forms of exploitation in Africa include sexual exploitation, forced labours (domestic work, gold mining sites, agriculture, fishing, construction, manufacturing and livestock), exploitation via begging and removal of organs.⁴⁸ In Africa, the UNODC Global Report of 2014 on TIP revealed that sexual exploitation and forced labour accounts for 53 and 37 percent respectively. Again, the report indicated that women and children are the most affected and vulnerable sections of the society by the TIP in Africa.⁴⁹

5 Counter-Human Trafficking Initiatives in Africa

³⁸ Adepodju (2005:75).

³⁹ UNDOC (2014:37).

⁴⁰ UNDOC (2014:83).

⁴¹ UNICEF *Trafficking in Human Beings, especially Women and Children in Africa* (2005:5), available at, <https://www.unicef-irc.org/publications/pdf/trafficking-gb2ed-2005.pdf> (accessed 08 September 2020)

⁴² Adepoju A 'Review of Research and Data on Human Trafficking in Sub-Saharan Africa' (2005) 43 *International Migration* 75 at 80-81.

⁴³ Allais C (2006:3).

⁴⁴ Allais C (2006:1).

⁴⁵ U.S. Department of states *TIP Report*(2010).

⁴⁶ FATF (2011:43).

⁴⁷ Stop the Traffic:UNODC available at, <https://www.stophetraffik.org/the-scale-of-human-trafficking> (accessed 10 August 2020).

⁴⁸ UNODC (2014)

⁴⁹ Shelley (2010:16).

TIP is a matter of concern for all since it is mostly a cross-border crime. The international community is striving to combat TIP at the global, continental and national levels by adopting various anti-human trafficking measures. The measures, inter alia, include adopting international conventions with the minimum standards to combat TIP, domesticating them in the respective member states and following up their implementation. The effective anti-TIP legislative measures primarily require: criminalising all forms of TIP; adopting a clear and comprehensive definition of TIP; allocating commensurate penalties for TIP crime; and setting clear roles and duties for relevant government organs, including cross-government agencies coordination.⁵⁰

At the international level, African states have shown their determination to combat TIP by signing and ratifying the Trafficking Protocol.⁵¹ All the African countries have ratified the Protocol, except Uganda, Somalia, Togo, South Sudan and the Congo Republic. But, as a continent, Africa does not have a single convention fully devoted to TIP.⁵² However, there are a number of legal instruments that proscribe TIP. The ACHPR is a pioneer and foundational instrument of African initiative to combat TIP.⁵³ Amongst others, the Charter prohibits slavery and slave trade in any form. Within a decade since the adoption of the ACHPR, the African Charter on the Rights and Welfare of the Child (ACRWC) that prohibits child labour, abuse and torture was adopted.⁵⁴ In 2003, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (PACHPRW) was adopted. The Protocol requires member states to take appropriate and effective measures to prevent and condemn trafficking in women, prosecute the perpetrators and protect the victims from any risk.⁵⁵

Recently, the Malabo Protocol, the Protocol on the Statute of the African Court of Justice and Human Rights has categorised TIP among 14 international crimes that fall under the jurisdiction of the court.⁵⁶ Thus, the Malabo Protocol sets the tone and emphasise the need to make TIP a transnational crime.

The African commitment to combat TIP is also re-affirmed by some policy documents; for instance, the Ouagadougou Action Plan to Combat TIP, especially Women and Children.⁵⁷ The action plan encourages states parties to: a) take preventive actions; b) adopt victim protection and assistance actions; c) arrange legislative, policy and law enforcement measures; and d) ratify and fully implement UNCTOC and the Trafficking Protocol.⁵⁸

There are also sub-regional endeavours to combat TIP. For example, ECOWAS Declaration on the Fight against TIP (2001), the ECOWAS initial Action Plans against TIP (2002-2003), the joint ECOWAS/ECCAS Regional Action Plan to Combat TIP, especially

⁵⁰ US Report on TIP (2017:2).

⁵¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en (accessed 19 September 2020).

⁵² Mninde-Silungwe F 'Trafficking in Persons (Article 28J) and Trafficking in Drugs (Article 28K)' in Werle G and Vormbaum M. (eds.) *The African Criminal Court: A Commentary of the Malabo Protocol* (2016:115)

⁵³ Article 5 of ACHPR (1981)

⁵⁴ Article 15 and 16 of ACRWC (1990)

⁵⁵ Article 4(g) of PACHPRW in Africa (2003).

⁵⁶ Article 28 of the Malabo Protocol

⁵⁷ The Ouagadougou Action Plan to Combat TIP, Especially Women and Children (2006)

⁵⁸ The preamble of the Ouagadougou Action Plan (2006)

Women and Children (2006-2009), the SADC Regional Action plan on Combating TIP (2009-2019), Khartoum Declaration-the Horn of African Initiative on Human Trafficking and Smuggling of Migrants (2016).

6 Effectiveness of the Anti-Human Trafficking Initiatives in Africa

Africa has adopted a number of counter human trafficking measures. But, it is a simple truth that laws and policy documents are simply means to an end not ends by themselves.⁵⁹ Still, the legislative and policy frameworks can be taken as a half way forward to tackle the problem of TIP if enacted after a deep consideration of the prevailing situation, with a better approach. This part of the study deals with the approaches adopted by Africa in the fight against TIP and assess how far they are effective practically. In course of assessment the continent as a whole, selected sub-region and countries from different sub-regions were used.

The overall appreciation of the Trafficking Protocol and various international and regional human rights instruments such as UDHR, ICCPR, ECHR and ACHPR that imposes a duty on member states to protect and promote human rights including freedom from slavery, yields three core responsibilities. They are prevention, prosecution and protection, commonly called 3P paradigms to address the cases of TIP.⁶⁰

The prevention measures comprise, amongst others, public outreach campaigns about the risks of human trafficking and legal consequences for the perpetration of an offence of TIP, border inspection and monitoring, and transnational cooperation and coordination to curb the flow of trafficking of victims.⁶¹ In the case of *Hadijatou Mani Koraou v Republic of Niger*, ECOWAS blamed the state for failing in its responsibility to prevent TIP, by arguing that “the defendant is responsible for the human rights violations of the applicant found on slavery because of tolerance, passivity, inaction and abstention with regard to the practice.”⁶²

The prosecution measures involve, *inter alia*, criminalisation of TIP with commensurate punishment, conducting a vigorous investigation, providing protection to witnesses and equipping police and prosecutors with necessary knowledge and skill in the areas of TIP.⁶³ In the case of *CN v United Kingdom*, the ECHR reasoned that it is a procedural obligation to investigate without waiting for a complaint from the victim or next-of-kin, when there is a credible suspicion that an individual’s right against slavery has been violated.⁶⁴

The victim protection measures in the United States refer to the variety of actions aimed at helping victims to rebuild their life.⁶⁵ For example, the human trafficking victims are considered as ‘victims’, not criminals and given the same extent of support as refugees. They are also given reasonable protection from the suspected traffickers.

⁵⁹ Brian Z Law *as a Means to an End: Threat to the Rule of Law* (2006).

⁶⁰ The 3P Anti-Human Trafficking Policy Index available at, https://en.wikipedia.org/wiki/Human_trafficking#/The_Anti-trafficking_Policy_Index (accessed 28 August 2020).

⁶¹ Hoffman R ‘Effective Counter Measures against the Trafficking in Human Beings and Smuggling of Migrants’ at 88-89 available at, http://www.unafei.or.jp/english/pdf/RS_No62/No62_12VE_Hoffman2.pdf (accessed 11 September 2020).

⁶² *Hadijatou Mani Koraou v Republic of Niger*, ECOWAS (2008) para85

⁶³ Hoffman R at 81-83.

⁶⁴ *CN v United Kingdom*, Decision by ECHR(2012) par 69

⁶⁵ Hoffman R at 85-88.

Generally, combating TIP requires taking all the appropriate measures in prevention, prosecution and protection aspects cumulatively. These cumulative states parties' responsibilities under the Palermo Protocol are re-affirmed by the landmark decision in TIP case of *Rantsev v. Cyprus and Russia* in 2010. In this case, ECHR held that the responsibility of Cyprus state is not limited to enacting legislative measures, but extended to providing protection to the victim of trafficking.⁶⁶

Scholars merge the 3P paradigms and categorise anti-human trafficking measures as a crime control and a social welfare (right-based) approaches.⁶⁷ The crime control approach basically focuses on criminalising TIP and punishing the perpetrators while assuming the victim protection as a consequential effect through effective prosecution by the criminal justice system.⁶⁸ The main concern of the social welfare approach on the other hand, is rescuing, rehabilitating, reintegrating victims of human trafficking, and preventing further victimisation.⁶⁹

In Africa, the combinations of both the crime control and the rights-based anti-human trafficking approaches have been adopted. This can be easily inferred from the fact that 50 African states have ratified the Palermo Protocol. Thus, by default, the approach adopted by the Palermo Protocol is the reflection of its member states' approach and responsibilities. The criminalisation of TIP domestically via specific laws also indicates the crime control approach. And, the rights-based approach can be inferred from the inclusion of the prohibition of TIP under the various human rights instruments of Africa. Taking either the crime control or the rights-based approach alone as a counter human trafficking measure would not be comprehensive enough to address the multi-dimensional impact of TIP. Thus, the adopting the combination of the two approaches at a time, as Africa did, is preferable.

Despite the various international, regional and sub-regional initiatives, the Congo Republic, Somalia, Uganda and South Sudan have not yet ratified the Trafficking Protocol.⁷⁰ Again, six out of eight countries blacklisted for recruiting and using child soldiers are from Africa.⁷¹ The US Department of State report on TIP that assesses government's effort to prevent TIP, prosecute the perpetrators and protect the victim, has revealed that not even a single state has got Tier one.⁷² The report has revealed 18, 20, 13 and 2 countries from Africa have got Tier two, Tier two but under watch list, tier three and under acute conditions respectively.⁷³ The overall interpretation of the report shows that more than half of African

⁶⁶ *Rantsev v. Cyprus and Russia*, Decision by ECHR, application No. 25965/2010, par 284.

⁶⁷ Bruckmuller K and Schumann S 'Crime Control versus Social Work Approaches in the Context of the "3P" Paradigm: Prevention, Protection, Prosecution' in Winterdyk J, Peririn B and Reichel P (eds.) *Human Trafficking: Exploring the International Nature, Concerns and Complexities* (2012:104).

⁶⁸ Bruckmuller K and Schumann S (2012:107).

⁶⁹ Bruckmuller K and Schumann S (2012:115).

⁷⁰ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en (accessed 22 September 2020).

⁷¹ US Report on TIP (2017:20).

⁷² US Report on TIP (2017:46).

⁷³ According to Tier Placement Guide, Tier 1 refers governments of countries that fully meet minimum standards (3Ps paradigms) for combating TIP. Tier 2 refers governments of countries that do not fully meet minimum standards (3P paradigm) for combating TIP, but making significant efforts to comply. Tier 2 watch lists are similar with Tier 2, but there are still an increasing number of victims with no evidence indicating increasing efforts to combat TIP such as increased investigation, prosecution and convictions of trafficking crimes. While Tier 3 refers the country is not meeting minimum criteria as well as not making a significant effort.

countries are either in good position or making progress in the fight against TIP. However, more than one-fourth of the African countries are lagging behind.

A baseline report conducted in the SADC sub-region has indicated that the level of achievement by the anti-human trafficking initiatives in the region is unsatisfactory. Accordingly, some of SADC member states have not yet criminalised TIP.⁷⁴ The majority of its member states prosecuted less than 15 cases only per annum since 2008 to 2015 due to a limited capacity to detect, investigate and prosecute cases of TIP.⁷⁵ The data recording and collecting on TIP cases by the member states are at an even more nascent stage.⁷⁶ Such absence of properly recorded data negatively influence government's political will to combat TIP since the magnitude of the problem is not clearly known.⁷⁷ However, some of SADC member states are showing a tangible progress in the fight against TIP. For example, South Africa, apart from enacting specific anti-human trafficking laws, has adopted strong cross-agency coordination, particularly between police and prosecutors.⁷⁸ Moreover, South Africa has established a dedicated anti-human trafficking police unit.⁷⁹ Finally, South Africa has also introduced a 'biometric capturing' at the ports of entry since 2015 to prevent the use of fraudulent documents.⁸⁰ Again, Botswana has also made a positive progress in the area of avoiding delays in prosecution by designating a prosecutor to specialise in prosecuting trafficking cases.⁸¹

Nigeria has been at the forefront in the fight against TIP and can be taken as the role model for the whole Africa. It was the first country in Africa to enact an anti-trafficking law and to establish a specialised anti-trafficking agency (NATIP) as a focal point for all anti-trafficking efforts in Nigeria.⁸² Nigeria has also created a Victim Trust Fund to serve as a repository of assets confiscated from the traffickers.⁸³ Besides the legal and institutional frameworks, Nigeria has made notable achievements in practice. For example, in 2011, there were 279 investigations, 15 prosecutions and 23 convictions on cases of TIP.⁸⁴ Again, in 2009, it established eight shelters in different parts of the country and has assisted 1,109 victims of trafficking.⁸⁵ In 2010, Nigeria attained Tier one level by satisfying all the minimum requirements set by the US State Department on TIP.⁸⁶

Recently, Ethiopia has also shown some improvements in the fight against TIP. The criminalisation of TIP in Ethiopia goes back to the enactment of the 1957 Penal Code.⁸⁷ In 2015, the anti-human trafficking law specifically governing TIP and SOM was enacted to adequately tune the law with the gravity of the problem.⁸⁸ This law basically aimed at

⁷⁴ SADC *TIP in the SADC Region: A Baseline Report* (2016:5)

⁷⁵ SADC (2016:55)

⁷⁶ SADC (2016:61)

⁷⁷ Aransiola J and Zarowsky C (2014)14 *AHRLJ* 509 at 516

⁷⁸ US Report on TIP (2017:6)

⁷⁹ US Report on TIP Persons (2017:10)

⁸⁰ SADC (2016:57)

⁸¹ US Report on TIP (2017:7)

⁸² TIP Prohibition Law Enforcement Act (2003) amended (2005)

⁸³ Bowers M 'Room for Improvement: Nigeria's Approach to Trafficking' available at, <http://www.impowr.org/sites/default/files/vjrn/IMPOWR - Room for Improvement.pdf> (accessed 03 August 2020).

⁸⁴ U.S. Report on TIP (2012:271).

⁸⁵ U.S. Report on TIP (2010).

⁸⁶ U.S. Report on TIP (2010).

⁸⁷ Article 565 and 605 of the Penal Code of Ethiopia

⁸⁸ Prevention and Suppression of TIP and SOM Proclamation No 909 of 2015

preventing the crime of TIP, prosecuting the traffickers and giving necessary protection to the victims of the trafficking.⁸⁹ It provides rigorous imprisonment term of 15 to 25 years and fine from 150,000 to 300,000ETB.⁹⁰ In 2016 alone, Ethiopia assisted in intercepting more than 30,000 individuals vulnerable to trafficking; investigated 1,392 potential trafficking cases and convicted 640 traffickers.⁹¹

In general, there are some scattered achievements and progress in the crusade against TIP in Africa. The adoption of various regional and sub-regional anti-human trafficking legal and policy frameworks are primary indications. However, there is a high level of unevenness in the commitment by the different countries to cascade down those initiatives by way of ratification or domestication. A failure to give due attention by one state to the problem of TIP directly affects the effectiveness of anti-humans trafficking measures by the other states since TIP is mostly a cross-border crime. These loopholes allow the criminals to escape from the punishment. On the other hand, the countries seemingly progressive in domesticating the initiatives have also an enforcement deficit in some areas. For instance, Ethiopia is openly criticised for neglecting TIP within the country by the 2017 US Report on TIP.

7 Conclusion and Recommendations

TIP is an ancient phenomenon that has persisted until today. The international initiatives only managed to stop slavery used to be conducted in the public as a normal way of life. However, the modern clandestine form of slavery is still alive and well. TIP is a complex, multi-faceted, mostly transnational issue, involving organised crime, corruption, money laundering, human rights, economics, migration, labour, public and individual health, social services, *inter alia*. It affects every country either as a source, transit, destination or a combination of two or all the three. Hence, the crusade against TIP requires a cooperative and joint effort of every country.

From an early stage of TIP, the international community has taken a number of anti-human trafficking initiatives involving criminalisation of the conduct or recognition of the fundamental human rights of a victim of TIP and any other form of slavery. All those initiatives are categorised as the crime control and the rights-based (social welfare) approaches to combat TIP. The states parties to both human rights instruments and the Palermo Protocol have the cumulative responsibilities of prevention, prosecution and protection.

Africa is also not immune from the evil impact of TIP. In the war against TIP, Africa has shown its determination by adopting different international, regional and sub-regional legislative and policy initiatives. However, those positive measures taken by a limited number of African states and in the contrary many of the African states seem to be pretending rather than showing a genuine commitment to combat TIP.

Therefore, the writer argues that those dozens of anti-human trafficking initiatives at the regional and sub-regional level were not evenly cascaded to the domestic level through ratification. Again, there is high enforcement deficit in those countries that have domesticated the legal and policy frameworks. Finally, the writer recommends for internal political will to

⁸⁹ The Preamble of the Proclamation No 909 of 2015

⁹⁰ Article 3(1)(c) of the Proclamation No 909 of 2015

⁹¹ U.S. TIP Report (2017)

effectively combat TIP. That political volition can be expressed by way of criminalising the conduct and assigning a commensurate punishment; establishing an independent agency with qualified staffs to coordinate and supervise the implementation of anti-human trafficking initiatives of the country in one hand and by minimising the pull factors in the country of origin on the other hand.

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