Increased Women Trafficking in Uganda; Analyzing the Domestic and International Legal Framework

By

Moses Tukwasiibwe, Dr. George Muganga and Natuhwera Alex.¹

1.0 ABSTRACT
This paper explores the various legal frameworks that deal with issues of women trafficking in Uganda. In recent years, there has been much media attention and increased law reform efforts to address the phenomenon of trafficking of women for mainly purposes of sexual exploitation. The arguments of this paper explore the nexus between lack of a strong legal regime and the increased women trafficking in Uganda. This has culminated into vulnerable young women from developing regions of the world, Uganda inclusive, being traded in open market as if there are no sanctions in the law against this outrageous practice. We also try to navigate through the international Conventions, ratified by Uganda, to ascertain whether or not Uganda has domesticated them into her national laws or ensured their execution as a way of combating the problem of trafficking.

2.0 INTRODUCTION.
The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2001) also known as “Palermo Protocol” is the first international consensus definition of the problem². The Protocol defines "trafficking in persons" as 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 another person, for the purpose of exploitation.

¹ Moses Tukwasiibwe is a Senior Lecturer (Gender Studies) in the Department of Development Studies, Bishop Stuart University, Dr. George Muganga (PhD) is the Dean Faculty of Business and Development Studies, Bishop Stuart University and Natuhwera Alex (LLB) is the Justice and Peace Program Manager at the Institute for Research and Development in Africa, Uganda.

² From http://www.stopvaw.org/Finding_a_Common_Definition_for_Trafficking.html
According to the Palermo protocol, exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Trafficking in women for the purpose of enslaving them in sex work is one of the oldest and most heinous violations of women’s rights.\(^3\) Trafficking of women and children has become a rampant crime. In 2012 alone, it is reported that 600,000 to 800,000 people trafficked across international borders annually and 80 percent of victims were female, and up to 50 percent were minors. This was an increase from 30,000 to 90,000 people in the year 2009.\(^4\)

A number of strategies are being adopted by some governments, including Uganda, to fight trafficking. In Uganda, the government has, with the help of female parliamentarians introduced the Prohibition of Trafficking in Persons Bill in Parliament, a comprehensive draft anti-trafficking law, where it garnered unanimous support from the floor. It received its first reading in December and was referred to the Committee on Defense and Internal Affairs, a National Human Trafficking Task Force was set up in April 2012. In October 2009, the President signed the Anti-Trafficking in Persons Act of 2008 and it was published in the official gazette.\(^5\) On the international level, various organizations have been established to fight human trafficking. These include Polaris Project which is a leading organization in the global fight against human trafficking and modern-day slavery. Named after the North Star "Polaris" that guided slaves to freedom along the Underground Railroad, Polaris Project is transforming the way that individuals and communities respond to human trafficking, in the U.S. and globally.

\(^3\) Susan Tiefenbrun: The Cultural, Political, and Legal Climate behind the Fight to Stop Trafficking in Women: William J. Clinton’s Legacy to Women’s Rights, 12 Cardozo J.L. & Gender 855


The Coalition against Trafficking in Women (CATW) works internationally to combat trafficking and sexual exploitation in its entire forms and help cease child trafficking. Another example is the Florida Coalition against Human Trafficking (FCAHT) which is an entity within The Immigrant Rights Advocacy Center and it works towards elimination of human trafficking. FCAHT has worked throughout the state and has provided the opportunity to victims of human trafficking to contact it by email or phone.

Non-government groups and Government agencies have taken up several strategies to try and fight off this problem. Among the strategies include passing of anti-trafficking laws, establishment of anti-human trafficking units in countries like Switzerland, Uganda and United Kingdom. It was also reported that on 13 May 2013, policy-makers put human trafficking on center stage at a High Level Meeting of the General Assembly chaired by the President of the GA Vuk Jeremić and in the presence of the Secretary-General Ban Ki-moon. The event was attended by 85 states, UNODC Goodwill Ambassador to Combat Trafficking in Persons, Mira Sorvino, as well as representatives from civil society. On April 3, 2012, the UN General Assembly hosted an interactive dialogue entitled “Fighting Human Trafficking: Partnership and Innovation to End Violence against Women and Girls.” The dialogue was organized by the President of the General Assembly, Group of Friends United against Human Trafficking and the UN Office on Drugs and Crimes (UNODC). Its objective was to unite Member States, the UN system, international organizations, civil society, the private sector and the media in a comprehensive strategy to fight trafficking, with special emphasis on victim protection.  

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7 http://cmsny.org/2012/05/18/global-actors-discuss-comprehensive-strategy-to-fight-human-trafficking/
Unfortunately, the problem of trafficking is on the increase. This paper reviews the legal framework for managing trafficking in persons within and outside Uganda. The subsequent analysis is used to devise ways of sustainably approaching the rampant trafficking especially in women and children.

3.0 THE NEXUS BETWEEN UNSOUND LEGAL REGIME AND INCREASED WOMEN TRAFFICKING.

Trafficking is a core component of gender-based violence and indicators show that Uganda is becoming notorious for human trafficking and more severe for young girls. According to a study done by Forum for Women in Democracy (FOWODE) and Uganda Women's Network (UWONET)\(^8\), for young girls relocating from the post-conflict and poor areas, trafficking is very much a daily reality. For example, girls in Karamoja districts are often brought to Kampala city and turned into sexual slaves, or sent to the streets to beg on behalf of their oppressors. A study done by Forum for Women in Democracy (FOWODE) and Uganda Women's Network (UWONET) revealed that sexual gender based violence was the most common and highest in armed conflict-affected areas like the Karamoja sub-region, or areas that have recently recovered from conflict.\(^9\) On an international level, more young people are reported to be trafficked in countries like Saudi Arabia, United Arab Emirates, and Iraq among others to provide domestic labor and sexual gratification for the employers.

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\(^9\) FOWODE and UWONET 2010, Where is The Money For GBV Initiative in Uganda's National Budget?
In the 2002, the United States Trafficking in Persons Report stated that Ugandan trafficking victims were reported in the UK, Denmark, Iraq, South Sudan, Kenya, China, Thailand and Malaysia. In addition, Interpol reported Ugandan women trafficked to India, Egypt, Afghanistan, Indonesia and the United Arab Emirates. These are young women who are often seeking greater social-economic stability abroad. Women are being trafficked within Uganda’s borders, but also abroad.

Amidst trafficking in the country, there exists a legal framework, within which traffickers can be arrested, prosecuted and punished. Uganda’s approach though, has largely but unsuccessfully been pursued from both a criminal law perspective and a human rights perspective.

4.0 DOMESTIC LEGAL FRAMEWORK IN UGANDA

The UN High Commissioner for Human Right’s report, Recommended Principles and Guidelines on Human Rights and Human Trafficking, specifically cites the lack of adequate legislation on human trafficking as a major obstacle in the fight against trafficking. The Penal Code is the major enactment that could be used to combat human trafficking. The Act however does not specifically use the term or phrase trafficking in Human beings.

This perhaps is one of the factors that weaken controlling trafficking as the act has no direct reference. In the event of a trafficking act, there is a possibility of challenging the penal code on the basis of inadequate definition. It is important to note that within the Code are provisions which prohibit slavery, kidnapping and abduction, which are akin to trafficking.

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11 Supra no.8
13 Cap 120
Chapters XXIV of the Penal Code Act, specifically stipulate that these crimes are categorized as offences against personal liberty. **Section 239-250** bluntly provides for such as kidnapping from Uganda, abduction and slavery. Unfortunately these can happen without the intention of trafficking. In such an event, the existing framework is blind on trafficking. It can be asserted that the Penal Code Act Cap 120 does not precisely outlaw human trafficking (under which women trafficking as an offence is included). This lack of a specific law on human trafficking makes it possible for the perpetrators to continue the seemingly lucrative trade across the borders in the absence of specific enabling law under which the offence could be prosecuted.

In an effort to address the problem of trafficking, Uganda passed the **Anti-Trafficking in Human Persons Act in 2009**. This law prohibits the relocation of human persons for purposes of slavery or other forceful activity. This is one positive step that the government of Uganda has taken in its fight against human trafficking, but like most laws in the country, implementation is lacking. To strengthen, implementation, a National Human Trafficking Task Force was set up in April 2012; however it has been dormant all through. A government inventory showed that everyone working on the issue, from Interpol to immigration, is understaffed, underfunded and operating on adhoc basis and, essentially lacking the very coordination the task force was put in place to address. This has made implementation and monitoring of trafficking elusive even for legally licensed firms. A case in point relates to the labour exporting companies in the country. The government is said to have been monitoring the 22 companies registered by the Labour Ministry to export indigenous labourers. Unfortunately after initial reports of trafficking surfaced the same firm-, Uganda Veterans Development Limited a company’s license was reissued yet it had been implicated in a report that it took over 120 girls to Iraq with a promise of formal jobs and they ended up as sex

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It is also worthy to note that since the Trafficking in Persons Act became law in 2009, no one has been prosecuted to date. Lack of prosecution of the perpetrators is still a decisive factor in the fight against human trafficking in Uganda. As summed up, there is a concerted effort to put the country's dormant Anti-trafficking laws to work by encouraging state prosecution but it is still a long way to go (Rwakafuzi, a senior human rights lawyer in Uganda).

There are also claw back provisions in the laws which make it difficult to prosecute and punish the traffickers. The law on abduction requires that the evidence of the victim has to be corroborated. In most cases, the victims of human trafficking do not have witnesses or exhibits to corroborate the evidence they tender in court. As a result, most perpetrators have walked away free since courts insist on corroboration which most of the victims are unable to do. This, without doubt, increases risk of continued trafficking of women with impunity.

Most of the existing immigration laws and policies are out-dated and thus ineffective in addressing the women trafficking problem, particularly in the case of trafficking perpetrated by transnational crime rings. In the year 1999, it was disheartening when a total number of 32 vehicles robbed from neighboring countries were recovered in Uganda. One would safely say that by the time such organized gangs are able to beat the security at the boarders, it would be a walk over if “human goods” are involved. Combating organized crime at this level requires sophisticated investigation, monitoring and prosecution procedures as well as constant cooperation with colleagues in other countries.

15 Supra no.14 above
16 Ibid no.14
17 Section 46 of Ugandan Evidence Act Cap 6
Likewise, many governments including Uganda have not implemented national policies that coordinate the work of the various branches that deal with trafficking, including law enforcement, immigration and social welfare agencies.

This has often been missing and is probably the reason why trafficked women remain in appalling conditions in foreign countries without them or the domestic country, doing anything even when they are aware. The Uganda parliament has constantly debated about the Uganda citizens being tortured in Iraq, Saudi Arabia and other countries to no avail. In addition, to the lack of legislation, government agencies, especially those involved in law enforcement, border control and immigration do not possess the requisite competences to handle traffickers. The competences relate to interpretation of government's national immigration policy, managing trafficking routes especially where weak border controls make it possible for victims of trafficking to be transported both through transit countries and to destination countries without detection. As noted, authorities must receive specific education and training to effectively work against trafficking. Until this and other legal pitfalls in the country are seriously looked into, the problem of trafficking will remain debilitating for Uganda.

5.0 THE INTERNATIONAL PERSPECTIVE

A wide array of international legal norms apply to the trafficking in women and children for prostitution. On the international perspective, trafficking implicates civil and political rights, including freedom of movement, the right to be free from cruel and degrading treatment, and the right to be free from slavery and slavery-like practices. Trafficking is also deeply connected to the deprivation of economic, social and cultural rights.

Violence against women which includes women trafficking is recognized in international law as a violation of human rights. The past two decades have seen numerous resolutions from the UN General Assembly on violence against women. Hereunder is a review of the international treaties (which Uganda has ratified) and resolutions impacting violence against women, with a focus on three primary ways that violence against women violates human rights: as a violation of basic freedoms such as the right to life and security of person, as a violation of the right to equality, and as a violation of the prohibition against torture.

5.1 The Right to Life, Liberty and Security of Person

Early human rights law enacted by the United Nations did not specially mention violence against women, although they are still relevant. In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly.20 Although this document was not originally binding on member states, it has received such wide acceptance as an outline of foundational human rights principles that it has been recognized as a binding expression of customary law and an authoritative interpretation of the UN Charter itself.21

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Article 3 of the UDHR states: “Everyone has the right to life, liberty and security of person.”22 This right was reaffirmed by the International Covenant on Civil and Political Rights of 1966 (ICCPR), which protects the right to life (Article 6) and the right to liberty and security of person (Article 9).23 These rights, as well as others in the UDHR, ICCPR, and the International Covenant on Social, Economic, and Cultural Rights (ICESCR),24 such as the right to equal protection under the law and the right to the highest standard of physical and mental health are binding in cases of violence against women in Uganda. Therefore, States, like Uganda, that are parties to these instruments have an implicit obligation to protect women from violence in form of women trafficking as part of their responsibilities.

5.2 The Right to Equality and Freedom from Discrimination
Like the earlier human rights instruments, the main text of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), entered into force in 1981, did not explicitly include language on violence against women.25 However, CEDAW’s primary focuses, in which State Parties agreed to “condemn discrimination against women in all its forms were interpreted as covering violence against women which would also include women trafficking.”26

United Nations itself, heralding the transformation of the social and international order to secure the enjoyment of the proclaimed rights.”

22 Universal Declaration of Human Rights, supra note 1, Art. 3


As described by Rashida Manjoo, the current UN Special Rapporteur on Violence against Women, “States must acknowledge that violence against women is not the root problem, but that violence occurs because other forms of discrimination are allowed to flourish.” This means that Uganda also has an obligation to promote equality and freedom from discrimination that has made women the most probable victims of trafficking.

4.3 The Right to Be Free from Torture

CEDAW Recommendation 19 also states that violence against women is a violation of the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment, as protected by UDHR Article 5 and ICCPR Article 7. In recent years, the view has been affirmed by the Committee Against Torture, which is the monitoring body of the Convention Against Torture (CAT). The Convention Against Torture, which has been ratified by 151 states including Uganda, strictly prohibits torture of any kind, with torture defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted” for purposes such as obtaining information, punishment, intimidation or coercion, or any reason based on discrimination. Although such acts generally must be inflicted by a public official, the State can also be responsible if it acquiesces to the act. In clarifying State responsibility for torture by non-state actors, the Committee specifically cited “States parties’ failure to prevent

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and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking” as a violation of CAT.\textsuperscript{31} It is apparent from the existing international legal framework, that trafficking is a serious problem. Luckily, Uganda is a signatory to most of the international trafficking-related laws. Though a number of treaties and UN resolutions to address trafficking have been made, it is apparent that there is a wealth of words on paper but a glaring lack of enforcement especially at domestic level.\textsuperscript{32} This situation is due in large part to substantive and structural weaknesses in the relevant instruments, as well as to powerful economic and social forces and a corresponding lack of political will both within and outside Uganda.

5.0 CONCLUSION

The phenomenon of trafficking women is a human rights issue which usually occurs in backward countries where it involves the poor women exploited by those who promise them “heaven on earth” if they accept the “job offers.” The poor women usually have complex financial problems, and this makes them willing to face any risk without investigating the background information about what will be their job. Furthermore, they are also ignorant about their rights and incapable of defending themselves when they finally encounter danger. Thus, measures to be adopted are comprehensive, especially the involvement of government in formulating and drafting laws that can protect her people from falling prey to this modern slavery. The government should therefore ratify various treaties and also domesticate them in her national laws if women are to be protected.


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