

**NORTH WEST UNIVERSITY (POTCHEFROOM COMPUS)
FACULTY OF LAW SOUTH AFRICA
PROGRAM: *LLM IN COMPARATIVE CHILD LAW***

**Combating child trafficking: A comparative analysis of applicable law in
Cameroon and South Africa**

A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE NORTH
WEST UNIVERSITY OF POTCHEFROOM-SA IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE DEGREE OF MASTERS OF LAW (LLM
COMPARATIVE CHILD LAW)

SUBMITTED BY
TIMNGUM JULIUS TOH

Prepared under the supervision of

**PROF. DR. IUR. THILO MARAUHN, M. PHIL.
OF THE JUSTUS LIEBIG UNIVERSITY GIESSEN
AND
MS IIZE BOOYSEN
OF THE NORTH WEST UNIVERSITY SOUTH AFRICA**

DATE: 03-12-009

DEDICATION

This dissertation is dedicated to my family for they have been my inspiration for all these years. I always thank them for being there for me. Your moral and financial support has brought me to where I am today.

DECLARATION

I **Timngum Julius Toh**, hereby declare that this dissertation is original and has never been presented in any form by any other researchers. I also declare that any secondary material or information that has been used in the dissertation has been duly acknowledged.

Student: Timngum Julius Toh.

Signature: _____

Date: _____

First supervisor

Signature: _____

Date: _____

Second supervisor.....

Signature:.....

Date:

lii **ACKNOWLEDGMENTS**

I could not have achieved the completion of this dissertation without God's protection and Grace. I remain indebted to my supervisors, Prof, DR Thilo Marauhn M Phil and Ms Ilze Booysen in which they both sacrificed their time and energy day and night by reading through my dissertation as well as the professional guidance which I received from them. My gratitude also goes to my brother, Timngum Genesis N, Heidelberg-Germany, for his endless support towards my career journey. To all the Timngum's family, I equally wish to express my obvious gratitude. I am also grateful to Mr. Fon Eric for his endless encouragements.

I am very thankful to all the professors and tutors of the respective faculties for empowering me with the facts needed in this dissertation. Not forgetting friends who have assisted in one way or the other during the course of my studies. In this regards, special thanks goes to Chwefung Ngongnui of Amity Bank, Bamenda-Cameroon, Mireille Yankam of Montgomery College, US, Der Lusca and Ben Morgan both from the Faculty of Political Science, Giessen-Germany and not living out my all the 2009/2010 batch of the Comparative Child Law course.

TABLE OF CONTENTS

	Contents	pages
	Dedication	i
	Declarations	ii
	Acknowledgments	iii
	List of abbreviations	iv
1	Introduction	1
2	Scope and definition	6
3	General causes of trafficking	16
4	A critical overview of national legislations of South Africa and Cameroon to combat child trafficking	19
5	The role of international law	27
6	Recommendations and Conclusions	29
7	Concluding remark	33
	Bibliography	34

1 Introduction

The issue of human trafficking has undoubtedly become one of the most sensitive and pressing issues in recent times, not only for governments concerned but also for the international community. As a matter of fact, human trafficking has touched almost all the continents of the world since the beginning of the 19th century.¹ The act of trafficking in human beings in general and that of children in particular may constitute a gross violation of human rights. The human rights violation here can be viewed from two main levels: the individual's level as well as the societal level.² At the individual's level, the person's human dignity is infringed; personal liberty, freedom of movement, privacy and the right of self-determination is affected. At the societal level, it violates the right of the prohibition of slavery.

This is because trafficked people more often than not are subjected to slavery like forced labour which may be perceived as cruel and inhuman treatment.³ The act *per se* may be seen as criminal activity. Very often, transnational organized crime is involved and the act often is connected with criminal activities such as drug trafficking and money laundering. Human trafficking has recently assumed tremendous dimensions within and across borders of many states. Prior to the enactment of the recent trafficking protocol, the act of trafficking in persons was seen as an act of prostitution between the victims and the traffickers, thus making it difficult for legal scholars to determine the true nature of trafficking⁴. It was often seen as a private issue which required no

1 See McIntosh, P Trafficking in children: West and Central Africa, report submitted by the US Department of State, Bureau of Africa Affairs 1(2003).

2 See Joanna & Felicia; *Protecting Schemes for victims of Trafficking in Selected European Member countries, Candidates and Third Countries*. By International Organization for Migration (IOM) 2002 p 7.

3 See the provisions of the United Nation Declaration of Human Right of 1948, 10 December, Decision No 217A(III), International Covenant on Civil and Political Rights, 16 December, Decision No 2200A(XXI) as well as the Charter of the Fundamental Right of the European Union, (Official Journal of the European Communities, 2000/C 364/1, 18 December 2000.

4 *Protecting Schemes for victims of Trafficking*, at 9(supra).

judicial interference based on the idea that consent have been given. This may sound misleading if one is to consider child trafficking.

However, despite the uncertainty associated with the definition of human trafficking, there have been improvement in recent years with regards to what constitutes the act of trafficking was well as victim protection. These improvements have been brought by two important protocols supplementing the United Nation Convention Against Organised Crimes of 15th November 2000.⁵ These two protocols include; ⁶ Trafficking Protocol and Smuggling Protocol. The two protocols help to distinguish between trafficking in persons and smuggling of migrants.⁷ Looking at this distinction, the act of trafficking is characterized by the use of threat or other method of coercion, abduction, fraud deception and as well as the abuse of power. The act of smuggling implies some form of consent between the trafficking agent and the smuggled individual. This may sound confusing because in practice, it may be difficult to ascertain the degree of coercion particularly with regards to child trafficking given the fact that the situation may be ambiguous due to their vulnerability. A more proper distinction between the above protocols shall constitute part of this paper. Though the main aim of the Trafficking Protocol is to prevent and combat trafficking in person as well to protect and to render assistance to victims of trafficking, note should be taking of the fact that the Trafficking Protocol is not a human right instrument; it is rather an instrument to combat organized crime.

5 See The UNG, A/RES/55/25 of 8th January 2000.

6 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 2000, G.A. Res. 55/25, UN. GAOR, 55th Sess; Annex II, UN. Doc. A/Res/55/25 (2001) (entered into force Dec, 25, 2003) and the *Protocol Against the Smuggling by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime*, U.N. GAOR; 55th Sess; Annex III, UN Doc. A/55/383; 40 ILM. 335, 384-85 (2001) (entered into force Jan. 28, 2004).

7 See UNICEF report on trafficking in Central Africa, 2003, at 16.

Cameroon and South Africa (Cam and SA) have experienced problems with child trafficking. Countries that have been identified as trafficking countries are grouped into three main categories: the countries of origin (where the act originates), countries of transit (countries used by the perpetrator to facilitate the process) as well as countries of destination (where the purported intention is to be materialised).⁸ It should be noted that a country can be classified into one or more of these categories listed above. Cameroon and South Africa can be included in these three categories. Cameroon, for instance, is a country of origin as well as transit and destination country for the trafficking of children for the purpose of forced labour to and from neighbouring countries such as Benin, the Central Africa Republic, Chad, Gabon and Nigeria. Children between the ages of 10 and 14 from the Central Africa Republic as well as Chad are trafficked to Cameroon for sexual and labor exploitations in the Plantain farms in the South West Region of Cameroon.⁹ Also, Cameroonian and Nigerian children have been trafficked to Chad for the same purpose. Trafficking of persons especially women and children out of Cameroon is very common. Women and children are trafficked to Europe especially to the United Kingdom.¹⁰

Trafficking of women and children for commercial sexual activities and forced labour in Africa is greatly influenced by war, poverty and the flaws of the nonexistent of documentation upon the birth of a child (birth certificate registration). This may be taken from the United Nation Children's Fund (UNICEF) recent report on the root causes of child trafficking in West and Central Africa. Poverty is considered as a motivating factor for the trafficking of women and children given the fact that children are always in desperate situations caused by conflict or intertribal wars, discrimination and repression. Cameroonian children who are most often not registered at birth end up without

8 See UNICEF report on trafficking in Central Africa, 2003, at 16.

9 See UNICEF Report of 2003 on trafficking in West Africa.

10 " Child Abuse in Cameroon " Panafrican News Agency Daily Newswire, 18 February 2008.

any recognised nationality and that's why they can easily be moved from one country to another. The 2004 report published by the UNICEF reveals that amongst the 3.3 million refugees of African children, including its estimated 12 million of internally displaced people, those affected are the most vulnerable group which are left at the mercy of traffickers.¹¹ In the same light, HIV/AIDS has left millions of sub-Saharan African women and children in desperate situations, thus making them potential candidates for trafficking. It has been estimated that by the year 2010, twenty million children under the age of 15 in Africa will lost one or both parents by HIV/AIDS.¹² Consequently, the children are exposed to extremely vulnerable conditions ready to be used by traffickers for their intended purposes such as forced labour and child prostitution.

Also, in Cameroon, harassment and intimidation of young girls at work and in institutions of learning is a common phenomenon. Discrimination based on sex is a daily phenomenon. In fact, three-fifth of school girls are victims of violence on daily basis and 65 percent of those infected with HIV/AIDS are women and children.¹³ Also, the dilapidated and deplorable living conditions in the rural areas, large family sizes and the high demand for unskilled labour in and out of Cameroon are factors contributing to child trafficking into and out of Cameroon.

Similarly, South Africa is a Source country, transit as well as destination for traffickers.¹⁴ There are even reports that South Africa minor girls are trafficked domestically for the purpose of commercial sexual exploitation or forced labour within the country. This is due to the rapid growth of the country's industrial sector which has necessitated the demand for cheap labour.¹⁵ Moreover,

11 See Jonathan Fowler, "UNICEF Human Trafficking in Africa Fueled by conflict/war Economic Hardship, lack of Birth Registration." Associated Press, 23 April 2004.

12 See UNICEF, *Africa's Orphaned Generation* (New York: UNICEF 2003).

13 Sylvester T "Report painting Bleak picture of women lives Inter press service; 12 march 2004.

14 See the report submitted by the US State department: *Trafficking of person's report of June 2007 at 184.*

15 The US department of state report (supra).

foreigners trafficked to South Africa are at times re-trafficked to South Africa borders. It should be noted that the trafficking of children in South Africa is not limited to the purpose of commercial sexual exploitation, it is also for the purpose of forced labour, slavery and practices similar to slavery.¹⁶ As far as trafficking of children in South Africa is concerned, there is no clear cut statistics on the number of children trafficked to and from South Africa. The reason for this can be attributed to the fact that the act of trafficking in general and that of children in particular often takes place in the secrecy which makes it difficult to gather statistics on any trafficking activities.¹⁷ Another reason for lack of statistics is the difficulty to make a clear cut distinction between trafficking of persons and smuggling of persons.¹⁸

For the sake of better understanding of the subject matter, this paper focuses on six main issues which are subsequently discussed. An examination of the concept of and a definition of trafficking as developed by international organizations and international law in general as well as pertinent definitions of South Africa and Cameroon to combat child trafficking, the general causes of trafficking and the impact on children, a critical analysis of the various policies put in place by the respective governments and the role of international law. Finally, practical recommendations and brief conclusions related to the issues addressed are provided.

16 Forced labour, slavery and practices similar to slavery in this context has to do with the trafficking of person in general for the purpose of subjecting the victim for nothing but exploitative domestic work in the industrial sector or agricultural sector or even used them for the purpose of drug carries as the case may be.

17 See the report submitted by the South Africa Law Reform Commission: *Report on Trafficking in person April 2008*, at 2.

18 Susan S. *Trafficking in Children in South Africa*; An analysis of the pending legislation, pat 35.

2 Scope and Definition of Trafficking

2.1 General definition

In order to effectively combat trafficking both at national and international level, there is a need for a clearer, broader and even more comprehensive acceptable of the term. But unfortunately, arriving with a concrete definition of human trafficking have been one of the most highly debated issues by legal scholars. It was not until the second half of the 1990s that non inter-governmental organisation formulated a definition of human trafficking.¹⁹ Prior to this period, the international Convention to combat slavery during the first half of the 19th century had formulated a definition for the “white slave traffic”, “traffic in women and children”, “slavery” and “forced labour” as well as traffic in persons. Its definition focused on exploitation for prostitution as the main element of human trafficking. This definition did not cover the whole spectrum of trafficking. The definition left key main issues undefined. This led to various divergent approaches in dealing with the concept of trafficking particularly with the victims of protection

Today, both at national and international levels, a good number of definitions have been provided. For instance, the International Labour Organisation (ILO) has adopted some key conventions which are relevant to trafficking in human being, notably the Forced Labour Convention of 1930 (No, 29) define the term “forced or compulsory labour as all works or services which is exacted from any person under the menace of the penalty and for which the said person has not offered himself voluntary.”²⁰ With regards to trafficking in persons under the age of 18 (which deals with child trafficking), the Worst Forms of Child Labour

19 The 1949 United Nation Convention for the Suppression of Trafficking in person and of exploitation of the Prostitution of others, Dec 2, 19949, 96 UNTS.271, 282 (entered into force July 25, 1952)

20 Also see article 2 which deals with other relevant ILO convention: The Slavery Convention, 1926; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institution and Practices Similar to Slavery, 1956, Abolition pf Forced Labour Convention, 1957.

Convention of 1999 is of great importance. According to the convention, worst form of child labour shall mean:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom for forced or compulsory labour, including forced or compulsory recruitment of children for used in arm conflict;
- (b) the used, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out is likely to harm the health, safety or moral of children.²¹

Moreover the International Human Right Law Group and the Foundation against Trafficking in Women²² has defined human trafficking as;

All acts and attempted act involved in the recruitment, transportation within or across borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception , coercion (including the use or threat of force or abuse of authority) or debt bondage for the purpose of placing or holding such person, whether for pay or not, involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions, in a community other than the one in which such person lived at the time of the original deception, coercion or debt bondage.

However, the coming of the CRC²³ has made a remarkable impact by shaping up a more clearer and broader definition of the term particularly with reference to child trafficking given the fact that the need for the recognition of the children's rights has resulted into an obligation for state parties to the convention to provide a legal basis to combat child trafficking. But their scope seems to be limited due to lack of a clearer and universal definition of child

21 Article 3 of the ILO No 182 concerning the *Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour*, June 17, 1999, 38 ILM 127 (1999) (adopted on June 17, 1999, and entered into force November 19, 2000)

22 Global Alliance Against Trafficking in Women: *Human rights Standard for the Treatment of Trafficked Persons*, January 1999, www.inet.coth/org/ga (accessed September 28, 2009)

23 United Nation Convention on the Right of the Child, November. 20, 1989. G A Res. 14/15, UN. GAOR. 14Th Sess; Supp. No 49, at 1, UN Doc. A/44/736 (1989), 28 ILM 1448 (1989), 1577 UNTS. 3 (1989). (entered into force Nov 2, 1990.

trafficking. This is because the term “trafficking “and “sale of children” as mentioned in the above convention have different meaning in different countries which are adhere to the convention with regard to policy implementation.

Despite the problem of a universal definition, the UN Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children which is supplementing the UN Convention against Transnational Organised Crime (CTOC) of 15 Nov 2000 (hereinafter known as the Palermo Protocol) ²⁴ seems to have provided a remedy to the uncertainty nature of the definition although not yet enforce. The Protocol has in fact provided a framework for law reforms and the criminalisation of the perpetrators. According to the protocol’s definition;

Trafficking in person shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the means of threat or used 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 payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitution of others or others forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²⁵

It should noted that for the purpose of this research, the definition may be favaurable because it focuses on children which are the main objective of this research. But other legal scholars who may not be researching on child trafficking may not much welcome the definition. This is because the Protocol does not cover all possible categories of trafficking. The protocol has focused mainly on organized crime involvement in trafficking. Also, from the definition given by the protocol, its seems to have ignored the fact that child trafficking does not always required that children be transported from one location to

24 See Res 15/129 of the UN GA Of Nov 2000.(supra).

25 See article 3 of the Protocol. At 38 (2000){hereinafter Molo}

another or that international border be crossed²⁶ as it may be the case with Cameroon and South Africa in which internal trafficking is common. Therefore, for the purpose of this paper the definition of trafficking as per Article 3 of the protocol shall remain a point of reference to the development of this paper.

2.2 Cameroon national law's definition

The definition of human trafficking in general and child trafficking in particular is contained in the *Cameroon legislation of 2005*.²⁷ It should be noted that the Cameroon legislature seems to have limited its definition of trafficking to child trafficking probably to meet its international obligation under the umbrella of the CRC. Another thing worthy of note in the Cameroon national law's definition is that it covers a series of terms similar to those contained in the Palermo Protocol²⁸. Therefore, one can make a conclusion that law no 2005 of Cameroon derived its roots from the Palermo Protocol. Child trafficking has been defined under the Cameroon national law to mean:

The act of moving or helping to move a child within or outside Cameroon with the view to directly or indirectly reaping any financial or material benefit there from whatsoever.²⁹

Subsection C defined child slavery to mean the act of recruitment, transfer, accommodation or reception of children for exploitation purpose through threat, use force or other forms of duress, through kidnapping, fraud, deceit, abuse of consent of a person having authority over the child. Child exploitation according to Section 2(d) means the use or procurement or offering of a child or any other form of exploitation, exploitation of the child labour or practices similar to slavery, serfdom or organ removal. The law has equally made mentioned of

26 See Molo Songololo. *Trafficking in Children for purposes of exploitation in South Africa*

27 Law no 2005/015 of 29 November 2005 relating to the Fight against Child Trafficking and Slavery.

28 Examples are Child exploitation child slavery and forced labour as per section 2(c-d) infra.

29 See Section 2(b) of law no 2005 (supra).

debt bondage as the act of pledging a child to a creditor as security for a loan or debt or any other exploitative purposes. Apart from the 2005 trafficking law in Cameroon, there is no other piece of legislation that has given a comprehensive definition of child trafficking. The *Cameroon Penal Code* and the *Labour Code* do not treat trafficking as a specific offence. It is treated alongside with other common law offences.

2.3 South Africa national's law definition

At the moment, South Africa has no national legislation that specifically addresses the issue of trafficking in persons. However, the Criminal Law Amendment Act 32 of 2007 as well as the Children's Act 38 of 2005 contained certain transitional provisions which deal with trafficking in person. The Criminal Law Amendment Act³⁰ dealing with sexual offences and related matters criminalises trafficking in persons for the purposes of any form of exploitation against the person or any form of sexual act with the said person. The Children's Act on the other hand criminalises the trafficking of children for the purpose of exploitation.

As mentioned earlier, all these legislations are pending though some sections of the Children Act are already operational. The children's Act³¹ covers issues relating to trafficking in children.³² The main purpose of this act is to protect children from any maltreatment, abuse, neglect as well as degradation. It also seeks to enhance the welfare of children in line with the international obligation expected from the South Africa government by maintaining the developmental, protection and the well being of the children.

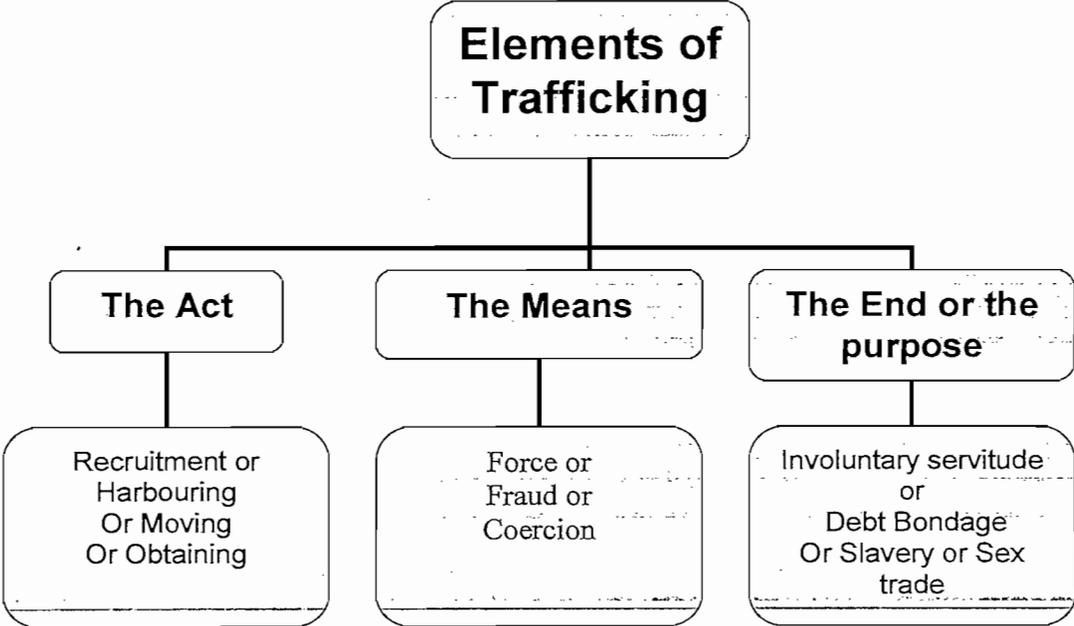
30 2007 (supra).

31 Children's Act, B7OB of 2003, ch 18 {thereafter referred as the Children's Act}.

32 See sec 2(b) (c) (l).

The second legislation worthy of note is the Sexual Offence and Related Matters Amendment Bill of 2006. This Bill contained certain transitional provisions relating to trafficking specifically for the purposes of sexual exploitation.³³ This Bill also seeks to comply with South Africa international obligations. The Bill criminalises trafficking in person only in relation to sexual exploitation including pornography as well as prostitution³⁴ The Bill *per se* does not specifically address child trafficking, but mentioned is made to abuse of power of a position of vulnerability as per section 65 (2) (f) of the SOB.

The definition of trafficking, whether from international law perspective or from the national laws of Cameroon and South Africa, must involve three main distinct elements. These elements include: The Act itself, the Means and the End. This can be summarised as follows.



33 Criminal Law (Sexual Offence and Related Matters) Amendment Bill B50B of 2003, which came into effect 10th November 2006 [thereafter referred to as SOB].

34 See Sec 65 (2) (g).

2.4. Distinction between trafficking and smuggling

It is relatively imperative to make a clear cut distinction between trafficking and smuggling so as to put an end to some misconceptions or difficulties which are often faced by some actors involved in combating the act of trafficking with regard to victim's identification.

The act of trafficking consists of force, fraud, or coercion as seen above. The victim cannot consent to the enslavement. On the contrary, the act of smuggling does not required force, fraud, or coercion. It is carried out with the used of consent. Another distinction is that, those who are trafficked are seen as victims in the eyes of the law; those who are smuggled from one country to another are seen as criminals. The distinction has been well illustrated by the two hypothetical cases as seen below as Case A and case B.

2.4.1 Case A (Trafficking)

Batos is a 12 year old boy from a rural community in the North West Region of Cameroon. His mother, Kan, is a widow with six children under her care and custody. As a result of drought affecting their region, finding food to feed the six children has become increasing a difficult task. As the eldest in the family of six, Batos feels responsible for siblings and would like to help his beloved mother to feed them. Prior to the drought, Batos would occasionally do odd jobs for his neighbour. But these days, no one has anything with which to pay him. Fortunately, one day his mother met a man by name Tom, who was looking for some strong boys to work in plantation farm in Nigeria. His mother told Tom about her 12 years old son who was looking for a job. Tom offered her an amount of 100 US dollars for Bathos's services and further promised that Batos would be offer free food as well as accommodation at his place of employment. According to Batos's mother, this amount is very significant because it would enable her to feed her children for sometime and also has the prospect of

having someone to take care of Batos feeding, therefore, reducing her burden, she agreed to the offer

Batos was indeed very sad to leave his family, yet he was pleased to be able to relief his mother from her burden in this way. Batos together with other boys in his community finally left. They walk for several days, often alongside the road, and often in most cases riding in the backs of trucks. As soon as Batos and his traveling companion finally cross the borders into Nigeria, they came into a farming area that has been affected by drought. Tom led the boys along the edges of several large farms, occasional negotiating with other men he found there. After a lengthy conversation with the men, he received a sum of 50 USD and left Batos with a man by name Pata.

Batos was placed under Pata's supervision together with other boys which were of the same age with Batos. Pata made sure that the boys worked very hard in the fields. The work starts every day before the sun rose and end after the sun set. Batos and his working mates were given no payment as promised by Tom. They were often given two meals a day; one in the morning and the other in the night. At night, they were sleeping in a small room with a hard dirt floor, without mats or mattresses; each of them was offered a thin wool blanket that could not sustain the night cold. Batos became hungry all the time, cold and uncomfortable with the situation. He developed a nostalgia feeling which subsequently leads to his frequent illness. He had no idea on how to return home after one year in Nigeria and coupled with his tender age. One day, he decided to leave the farm telling no one about his intention to abandon the work. Unfortunately, after leaving the farm in the middle of the night as others were sleeping, he was apprehended by the Nigeria Police.

From the facts of the hypothetical case above, one thing is clear, though Batos has been apprehended by the Nigeria police; he needs to be protected under international law because he is a victim of circumstances. He gave his consent

as a result of fraud and deception. What he was offered at the end was not what he was agreed to do prior to the contract. Therefore, Batos needs full protection under international law especially under the Palermo Protocol.³⁵

2.4.2 Case B (Smuggling)

Lona is a 21 old girl from Lagos, Nigeria. She is a High school graduate and unemployed. As a result of the high rate of unemployment in her community, she decided to take prostitution as her profession in order to assist her parents from family responsibilities. One day, while Lona was roaming the streets of Lagos, she saw one of her classmate by name Patina. Through their discussion, Lona was told that her classmate was one of the most popular business women in Lagos city. Lona became very curious and wanted to know her classmate's business secret. Patina told her that she is representing her brother's business in which the brother has been living and working illegally in the United Kingdom for so many years. Her classmate promised to introduce her to the brother in the UK if she wants and this will only be possible if Lona accept to pay for the deal. Lona wish to know the expected amount and how it should be paid. Patina told her that for her to find herself in the UK she needs to obtain a South Africa passport and that has to be done by one of their South Africa agent resident in Johannesburg, South Africa. Patina further told Lona that she would not enter South Africa by air. Someone will pick her up between the borders of South Africa and Swaziland. She said as soon as she entered South Africa, she would use her South Africa passport and not her Nigeria passport any longer to fly to the UK. The classmate told Lona that the cost of South Africa passport, and to smuggle her from Swaziland to South Africa and until she flies to the UK would be 8.000 dollars.

After returning home, she recounted the discussion to her family, the parent decided to meet with the smuggler (South African agent.) The smuggler finally came to Nigeria and promises to get Lona through the assistance of Patina's

35 See Articles 6, 7 and 8 of the Palermo Protocol.

brother to the UK if the said sum was to be paid. Her father finally agreed because he sees it as the only means through which his family can sustain economically. Her father decided to sell all family property. After the payment was made, her father immediately applied for Lona, Nigeria passport while the South Africa agent makes her travel arrangement including the purchase of an air ticket to Swaziland.

Finally, Lona leaves Nigeria, with her Nigeria passport, she flies to Swaziland. As soon as she arrive the borders with South Africa, she was received and taken straight by the agent. They both drove to the agent's resident in the city of Johannesburg overnight because Lona never had a South Africa visa. While in the agent's resident, he told Lona that the money her father gave was only enough to procure her a South Africa passport to enter UK as a South African and that additional 3000 dollars was expected from her to get her into the UK. Lona was not in possession of 3000 dollars; consequently the agent locks her up in one of his room and notifies her parents in Nigeria about the expected amount. Lona was under the agent's custody for three month while her parent manages to complete the payment. After making the last payment, her parent became deeply indebted, and believes that their only hope for survival is for Lona to get a job in UK and send back the money .One week after the last payment was made; the agent fraudulently obtains a South African passport for Lona, and buys her plane ticket to London.

From the fact of this case, it is clear that all the constituent elements of smuggling are involved which makes her an illegal immigrant in the UK making her criminally liable in terms of the Protocol against Smuggling of Migrants by land, Sea and by Air, Supplementing the United Nation Convention against Transnational Organised Crime.³⁶

36 See Article 6 of the Protocol (supra).

3 General causes of trafficking

The following factors have been identified to be prevalence and prominent factors responsible for child trafficking.

3.1 Lack of birth registration

Children who are born but not registered into the national birth Certificate registration record of their country are more susceptible to trafficking. According to International Labour Organisation ³⁷ estimate of 41 percent of children born in Africa in 2000 were not officially registered at birth. This makes them to become potential candidates for trafficking and at the same time making it easy for traffickers to 'hide' them due to lack of legal identity. As a result of this, it becomes difficult to trace and monitor the disappearances. Lack of identification can mean that children who are trafficked cannot be easily traced to their country of origin.

3.1.1 Neglect children

A child without a caregiver is extremely vulnerable to trafficking exploitation. It is clear that parent by their nature provide an essential safety for their children. Therefore, children void of such parental protection are targets for traffickers. An assessment by the ILO revealed that, children who are orphans are more likely to be used as domestic servants, commercial sex, and commercial agricultural as well as street vendors than non orphans. ³⁸ Most children in Cameroon and South Africa are orphaned of HIV/AIDS. In such situation, when a caregiver is sick or die, the resultant effect is that one of the older children may be removed from school to take care of their siblings. In the same light, family member who may became unemployment and at the same time needs expensive medication, often put the financial burden of the whole family on the older child. At this junction, the child may be forced to provide the family income and thus become more vulnerable to traffickers.

37 *A Future without child Labour, ILO, 2002, P 29.*

38 *UNICEF, The states of World Children 2004, UNICEF, York, p, 17*

3.1.2 Low school enrolment

It has been estimated that 12 million children are not attending school with whom majority of them are girls. Children who are not in school can easily fall prey to traffickers³⁹ Here education is seen as a crucial factor. This is because an uneducated child is bound to have few opportunities for his/her future and as such become more vulnerable to trafficker so as to get money and a 'better life'. In addition to this, sensitisation messages about trafficking and its ills placed an uneducated child at a disadvantage position given the fact that he/she cannot read. Therefore, putting the child at the mercy of traffickers is a big challenge.

3.1.3 Poverty

The UNICEF's Report of 2005 on the States of World Children revealed that poverty heightens children vulnerability to traffickers. Poverty here can be viewed as a push factor for vulnerable children to get involved in hazardous work. The perpetrator in most cases does not get children in comfortable suburbs. They often go to the poorest shanty towns or the most underprivileged rural areas with promises of employment opportunities in big cities of the same country or abroad. However, this does not in anyway means that only poor children are victims of trafficking, but that they stand a better chance of been traffic than children from richer homes. Their poverty nature makes them to be at risk and in close proximity to an environment where trafficking is pervasive.

3.1.4 Cultural values and traditional beliefs

The act of child trafficking can at times be attributed to certain traditional role of some extended families in the name of care givers to children. The act of traditional placement of children into the families of distant relatives in the name of care givers has resorted into a system of economic objective. This is because in most cases, the so called care givers used the children for exploitative purposes like begging in the streets, selling the children into the

39 UNICEF, *The State of Worlds Children 2004*, UNICEF, New York, p, 31

commercial sex industry, in most cases, the so called care givers turns to exploit the children sexually.

3.1.5 The impact of trafficking on children

It must be bear in mind that the impact of trafficking on children as examined in this paper is not only peculiar to Cameroon and South Africa, but runs across all the children in the world who are victims of trafficking. One cannot dispute the fact that a child who is been trafficked is not subjugated to abused by the perpetrators, traffickers themselves, employers, pims and even the so called customer as with the case with those in the sex industry. The trafficking cycle takes away the natural healthy childhood, a productive and dignified life of the child. All of these have given rise to three main distinct types of impact in the life of a child (physical, emotional and psychosocial impact). All of these shall be worthy of examination in this paper.

Firstly, in terms of physical impact, it is clear that a child who has been trafficked into a sex industry become an inevitable candidate for sexual transmissible diseases like HIV/AIDS. The impact may be further aggravated due to some misconceptions beliefs in some tradition that having sex with a virgin is a right cure for HIV/AIDS infected persons. These misconceptions beliefs have necessitated the demand for young girl for sex. There are even reports from women and young girls who are victims of trafficking that, the so called 'customers' often pay higher amount of money to have sex without the use of condoms and in most cases the victims are rarely in the position to insist the use of condoms. A child infected with HIV./AIDS is bound to deteriorate health wise.

Secondly, emotional impact has to do with the feeling of guilt, shame, low self esteem thus leading to social stigmatization in the child's life. In the same light, children who are victims mostly feel as been betrayed especially if they have once known the perpetrator. As a result of this, the child is subjected to

frequent nightmares, sleeplessness night, and even depression. That is why counseling services become inevitable to a child who has been identified as a victim of trafficking by reintegrating the child into the society. Some children as a result of hopeless, and depression have resulted into suicide.⁴⁰

Thirdly, the psychological impact is inevitable in the life of a child who is a victim of trafficking. This is because a trafficked child often suffered from numerous adverse effects which affect their social as well as educational upbringing. Also, as earlier indicated on the root causes of trafficking, most of these children got no family and the only hope for them is to work at very young age so as to carter for themselves This makes them to abandon their educational life and cutoff from the normal social life expected of a child . All their dreams are buried into frustration. They have no contact with the outside world as a result of constant restrictions and lack of any possibility to seek help. In fact, the whole life of a trafficked child is full of pessimism leading to long term effects on the child.⁴¹

4. A critical overview of national legislations of South Africa and Cameroon to combat child trafficking

4.1 Cameroon's national implementation measures

To better analysis the national legislations put in place so far by Cameroon and South Africa, it would be imperative to focus on prosecution, protection and prevention legislative measures. This is because, during the drafting of the UN Trafficking Protocol, the international community agreed to hold government accountable and to undertake a three prolonged approach to combat trafficking such as prevention, protection, and prosecution. The three "Ps" delineate what government in cooperation with the civil society should do in order to address

40 See End Child Prostitution, Child Pornography and trafficking of children for sexual Purposes (ECPAT). International, site at www.ecpat.net. Last accessed, 11 November 2009.

41 See the Hand book for Parliamentarian, 2005 by UNICEF, supra.

the problem of trafficking person in general and that of children in particular, in a comprehensive manner. These three “Ps” shall be our measuring instrument so as to be able to evaluate their level of national implementation as well as international obligation to combat the act of trafficking.

In terms of prosecution, as earlier mentioned, it should be noted that Cameroon does not prosecute all types of trafficking. The national law to combat trafficking focuses on child trafficking and slavery practices through its national law⁴² The *Penal code* also frown on the kidnappers of minors especially if it involved the use of force and violence on the person of the minor.⁴³ The Cameroon penal code (CPC) also prohibit the act of procuring, causing, aiding or facilitating the prostitution of another or sharing in the proceeds of the prostitution of another, receiving subsidies from a person engaging in prostitution of another. The code prescribed penalties of 5 to 6 years imprisonment which may be increase to 10 years in cases of aggravated circumstances such as coercion or in cases which involved the used of deceit, when the victim is under the age of 21⁴⁴ or when the perpetrator is arm or is the parent, guardian as well as the custodian of the victim.⁴⁵ The Cameroon constitution (CC)⁴⁶ as well as the labour code⁴⁷ prohibits compulsory labour but moves ahead to prescribe just a minimal punishment or penalty for the perpetrators. For instance, the code provides a fine of 100 to 3000 US dollars for the perpetrators. The amount is far less and lack proportionality if compared to the harm caused on the child *perse*. Though the 2005 trafficking law do exist in Cameroon, this law remain to be a window dressing given the fact that most of the law enforcement official as well as the main actors are ignorance of the existing of such laws due to lack of sufficient

42 Section 2 of Law no 2005 (supra).

43 See article 353 and 354 of the Cameroon Penal code.

44 See “The Protection Project, *Cameroon in 2005 ” Human Rights Report on Trafficking in Persons, especially Women and Children* , Washington, Dc, 2005, See www.protectionproject.org. Last accessed date, 19 November 2009.

45 Id, article 294.

46 See The Constitution pf law no 96/06 of 18 January 1996 amending the constitution of 2 June 1972.

47 Law No 92/007 of 14 August 1992, part I, section 2(3).

sensitisation or public awareness. In fact, there is no specialised training for judges and lawyers with regards to evidence gathering and the final prosecution of trafficking offences.⁴⁸ The 2005 trafficking law lack procedural provisions with regards to investigation and arrest, and final prosecution and the corruption of the youth and child abuse as well.⁴⁹

In terms of victim protection, the Cameroon national law to an extent has provided minimal efforts to protect trafficking victims. The 2005 trafficking law is a positive step to that effect but lacks a strong enforcement mechanism to protect victims. In the same light, the government does not provide sufficient shelters for children who are victims of trafficking. In most cases, the government referred victims rather to Non Governmental Organisations who in most situations do not have enough resources to protect the victims.⁵⁰ The Cameroon national law on trafficking has provided no alternative to the removal of foreign victims of trafficking. This further makes the current Cameroon trafficking laws to be a window dressing.

With regards to prevention measures, the Cameroon government through it labour laws has prohibited all kinds of slavery and servitude in its entirety⁵¹ and has further set the minimum age for employment of minors to be 14 year including any work carried at by an apprentice.⁵² The labour law has equally prohibit children from working at night⁵³ and children less than 18 are prohibited from any activities heavier than their normal weight, the performance of any dangerous work as well as working in any confirmed areas⁵⁴ The above law further places an obligation on the labour inspector to require child

48 See The Constitution of law no 96/06 of 18 January 1996 Trafficking in Person

49 See article 344 and 350 of the Penal code.

50 Id, at page 2.

51 See The Constitution of the Republic of Cameroon, Law no, 96-06, (January 18, 1996), Article 4. See also The Cameroon Labour Article 2(3), Also look at the U S Embassy- Yaoundé, reporting, December 13, 2006.

52 See the Cameroon Labour Code, Article 86 (1).

53 See Ibid, Article 82(2).

54 See the US Department of State "Country Report of 2006", Section 6d.

labourers to a medical examination so as to determine if such above mentioned situation has occurred.⁵⁵ The law equally makes it impossible for a minor to perform any work on ships and required a medical certificate in certain cases to verify their capacity for the type of work they are doing.⁵⁶ Defaulters of such law are punishable with a fine which is proportionate to the damage caused on the person of the child.⁵⁷

The Cameroon government has raised some awareness though much still need to be done. For instance, during the commemoration of the World Day Against Child Labour which takes place every year, the minister of Social Affairs made an address in which he emphasizes on the importance of protecting children from labour exploitation paying particular attention to children in the agricultural sectors⁵⁸ Also, marking the Day of the African Child in June 16th 2007, the government organized Children Nation Assembly Session under the theme “ Lets Say No to Child Trafficking ”⁵⁹ In Cameroon, though they exist an inter-ministerial anti-trafficking group, this group do not meet on regular basis. This has further weakened the government commitment to eradicate child trafficking.

4.1.1 The South African’s national legislative measures

Just like the Cameroon national law, the South Africa national laws to combat child trafficking are also preventive, protective as well as prosecutive in nature. To begin with, in 2005, the South Africa National Assembly and the National Council of Provinces passed the Children’s Act⁶⁰. The main objective of chapter 18 of this act in particular is to give effect to the UN Protocol to Prevent Trafficking in Persons in general and to combat trafficking in children in

55 See the Cameroon Labour Code, Article 87(1).

56 Ibid, Article 86(2).

57 See Ibid, Article 167.

58 See “The Survey Exposes Child Abuse in Cameroon”, *Panafrican News Agency Daily Newswire*, dated 18/02/2004.

59 See The Post (Cameroon News Paper) of June 2007, page 8. Also www.antitrafficking messages in Cameroon. Last accessed 25/10/2009.

60 See Act 38 of 2005.

particular⁶¹. For instance, it expands the child protection network to affect street children, children involved in child labour, trafficked children, refugee children and children headed households by social workers intervention and social worker investigation into the circumstances of these children. In terms of the act, trafficking has been defined in relation to:

- (a) the recruitment, sale, supply, transportation, transfer, harbouring, or the receipt of the children within or across the borders of the republic;
- (i) by any means; including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payment or benefits to achieve the consent of a person having control of a child, or,
- (ii) due to a person of vulnerability for the purpose of exploitation,
- (b) includes the adoption of a child facilitated or secured through illegal means.⁶²

Trafficking in children is prohibited and no person whether natural or juristic may traffic a child or allow a child to be trafficked. It is no defense to a charge of trafficked to claim that a child who is a victim of trafficking or a person having control over the child has consented to the intended exploitation, or that the adoption of the child facilitated or secured through illegal means ⁶³ The Act seeks to prohibit behavior which facilitate trafficking in children such as leasing or accepting to lease premises to be used for the purpose of trafficking, harbouring a child who is a victim of trafficking in children, advertising, publishing or distributing information that motivate or fascinate trafficking. Also, any internet provider operating in the Republic of south has a duty to report to the police services any site on its server that contain information in contravention to the above mentioned law or Act.⁶⁴.

Moreover, according to the act, assistance must be provided to a child who is a victim of trafficking with due regard to the safety of that child and without any

61 See Article 289 of the Act (supra).

62 Ibid 1

63 Ibid 284.

64 Ibid 285.

delay. It is solely the responsible of the Director General of Home Affairs to facilitate the return to South Africa if a child who is a citizen or a permanent resident of the South Africa and who is a victim of trafficking. In fact, this falls in line with the provisions of the Palermo Protocol⁶⁵ The said director is obliged to issue such travel documents or their authorization as may be necessary to enable such a child to travel and to enter the Republic of South Africa as the case may be. After the return of the child, he/she needs to be referred to a designated social worker upon his or her entry into South Africa. If it is in the best interest of the child, an adult must be authorised at the expense of the state to escort the child from the place where the child was found to the place from which the child was trafficked.⁶⁶

Also, if the court has sound convincing evidence to believe that the parents of the child or guardian of the child has trafficked that child or allowed the child to be trafficked, it may suspend all parental responsibilities and rights of that parent or guardian and, may place the child in temporary safe care, pending an enquiry by the children's court. The act has also imposed a duty on the medical officers, police officers, and any social worker who come across or come into contact with any child who is a victim of trafficking, to always refer the child to a designated social worker for proper investigation.⁶⁷ In the same light, if an illegal foreign child is brought before the children's court, the court may order that the child be assisted to apply for an asylum in terms of the Refugee Act of 130 of 1998.⁶⁸

Though the Children Act has registered a good number of accreditations, the act has a good number of flaws which makes its credibility questionable. To begin with, the act has not recognized the importance of a specialization for members of the multi-disciplinary team to be charged with national implementation nor is

65 See Article 6 of the UN Protocol (Palermo Protocol).

66 Ibid 286.

67 Ibid 287.

68 Ibid 289.

there any provision for any special provision provided any where in the act to deal with trafficking cases and final prosecution. Therefore, any provision in the act void of such provision makes it practically impossible for the best interest of the child principle to be served. Another great flaw worthy of criticism is that, the act has failed to provide long term measures for integration though it has provided many victim services. The provision of victim services void of long term integration process has qualified the act to be more or less a window dressing measure to combat child trafficking. The absence of the services of psychologist as well as a medical assistance makes it impossible for the unique needs of children to be given proper care.

Combating of Trafficking in Persons Bill (hereafter referred to as “the Discussion Paper”) is another legislative measure adopted by South Africa government to address child trafficking related matters.⁶⁹In fact, one cannot denied the fact that the discussion paper to a larger extend does not fall in line with the Palermo Protocol and other international law as well as regional instruments dealing with trafficking which is expected of south Africa upon its ratification. The Bill commences by identifying poverty and unemployment as the root causes of trafficking. The paper further set to define trafficking as the act of recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of persons, within or across the borders of the republic by any means including the use of threat, force, intimidation or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payment or benefit to achieve the consent of a person having control or authority over another person or by abusing vulnerability , for the purpose of exploitation. Though the Bill seeks to address all demands which foster the exploitation of the victims of trafficking, it failed completely to provide any special provision to the treatment of children who are victims of trafficking. One can expected the Bill to provide a special place for children given their

⁶⁹ South African Law Reform Commission (Discussion Paper): *Trafficking in Persons* (Project 131 of June 2006.).

vulnerability nature. Also, the sanctions contained in the Bill are similar to those found in the children Act of 2005 (*infra*).⁷⁰. This sounds more like a repetition, thus “putting new wine in an old bottle”.

The last legislative measure that has been adopted by the South Africa government is the Sexual Offence Amendment Bill of 2007. The Bill criminalises the act of trafficking in person for the purposes of sexual exploitation. The Bill has stated *inter alia* that a person who trafficked any person with the consent of the person is guilty of the offence of trafficking in person for sexual purposes. The act does in any way make the act of trafficking to be a crime, nor does the act in any way provides specific sanctions for the violation. However, this does not mean that the perpetrators shall be exonerated from their criminal responsibilities. As earlier mentioned in the introductory part of this paper, a person guilty of trafficking is charged in line with the common law offences such as rape as well as abduction.

This means that the offence of trafficking carries the same punishment like that of rape and abduction. Just like any other national measures, the Act lack credibility. Firstly, no mentioned is made to a specialized investigation or special training to all actors who are involved in the fight for human trafficking. Furthermore, there is no proviso as concern possible repatriation of the victims or any possibility to determine as to whether the act of repatriating the child is of his or her best interest. One striking criticism to the Sexual Offence Act is that, the act has not only failed to provide prevention to child trafficking, it has failed completely to provide special training to the personnel or the actors who are involved in the fight. In the same light, the act can be qualified as a discriminatory act in terms of child protection. This can be justified on grounds that the act provides different treatment to victims of 12 years by stated *inter alia* that children under 12 years cannot consent. This in other words means

⁷⁰ For more details on similarities, see paragraph 1.9 of the Discussion which clearly outlines the background information to the children's Act.

that, children between 12 and 18 can consent. This is not only a gross violation to children's right to equal protection; it has not respected the proviso of the Palermo Protocol as well as the South African's constitutional definition of a child⁷¹

5 The role of international law in combating child trafficking

Cameroon and South Africa are signatories to a good number of international instruments. By virtue of their ratification, there are under an international obligation to succumb to the convention's obligation. Cameroon and South Africa have signed most of these instruments without any reservation. Below are some of international law convention signed and ratified by the Cameroon and South Africa. They include:

5.1 The Protocol to prevent, suppress and punish trafficking in persons especially women and children know as the Palermo protocol as well as the protocol against the smuggling of migrants by land, sea and Air supplementing the united nation convention on the transnational organized crime (2000)⁷².

These two conventions were adopted by the United Nations General Assembly on the 15th of November 2000 and they entered into force in December 2003 three years after. The Palermo protocol has celebrated its first ever definition of trafficking in international law though not universally accepted, it remain one of the landmark definition under international law. The protocol calls for a comprehensive policies and programmes to combat trafficking in person in general and women and children in particular. The protocols also enact

71 See Section 28(3) of the south African's constitution of 1996 in which a child has been define as a person below the age of 18.

72 Cameroon signed the protocol against the smuggling of migrant by land Air on 13th December 2000 and ratified it on the 6th of February 2006, the Palermo protocol on the 13th December 2000 and ratified it on the 6th of February 2006 and south Africa signed the Palermo Protocol 14th December 2000, ratified it on the 20th February 2000 and the Protocol on against the smuggling of migrant by land, Air on the 14th of December 2000 and ratified it on the 20th of February 2004.

trafficking laws dealing with law enforcement and treatment of victims. One cannot dispute the fact that Cameroon and South Africa has not respected its international obligation though much still need to be done. This can be justified from the 2005 Trafficking Law of Cameroon and the Prevention and the Combating of Trafficking in Person Bill pending the final promulgation that has been adopted by South Africa government.

5.1.2 The International Labour Organization Convention concerning the Prohibition of Immediate Action for the Elimination of the Worst Forms of Child Labour. (1999)

This convention has called for the prohibition and the immediate elimination of the worst form of child labour. According to the convention, worst forms of child labour has to do with all forms of slavery or any activities similar to slavery. For instance, the sale of and trafficking of children, debt bondage, forced or compulsory labour practices which has to do with the forceful recruitment of minors into the armed conflict, offering of children for prostitution or pornographic activities as well as any other work which by its nature is likely to harm the health, safety and even the child's moral.⁷³ The government of Cameroon has responded to this convention by castigating any enterprise which indulges in the employment of minors.⁷⁴

5.1.3 The convention on the Right of the child.

This instrument came into force in the 1989. It is basically a children oriented human right instrument. It is the most widely ratified human right instrument dealing with children in recent time in terms international law. The convention places a mandate on state parties to protect children from trafficking through the enactment of laws which castigates the act of trafficking of children. Cameroon and South Africa are both parties to this convention.⁷⁵

73 See article 3 of the Convention, *supra*.

74 Section 86(1-4) of the Cameroon Labour code of 1992, page 48-49.

75 Cameroon ratified the CRC in 1993 and South Africa on the 16th of June 1995.

5.1.4 The optional protocol to the convention of the right of the child on the sale of children, child prostitution and child pornography of 2000

The UN General Assembly adopted this optional protocol in 2000 and it went operational two years later on 18 January 2002. The protocol deals with the sale of children for the purposes of sexual exploitation, child labour practices, the prohibition and provision of assistance to victims of trafficking. Unlike the CRC, the primary motive of this protocol is to prevent sexual exploitation of the children. The protocol goes further to highlight the criminalisation of the perpetrators. The Cameroon *penal code* and the south Africa *Sexual Offence Act* (supra) falls in line with the objectives of this protocol as seen above.

To conclude the role of international law, one thing is clear that international law often focused on compatibility and national implementation. This means that the national standard set forth in the conventions must have a clear reflection in the domestic law of the contracted states parties to the convention. Consequently leading to national implementation mechanism for proper enforcement. For more details on the inevitable role of these international instruments can be view on the website of the office of the UN High commissioner for Human Rights as well as the International Labour Organisation.⁷⁶

6. Recommendations and Conclusions

Based on the level of national implementation put in place so far by the Cameroon and South Africa with regards to combating child trafficking, I therefore proceed with the following recommendations to the respective government. To begin with, any effective law to combat child trafficking should be back by the need for a clearer definition of the term trafficking in the national laws. Although there is no general or universal definition of trafficking, the

76 See, www.unhchr.ch, www.ilo.org. Last accessed, 14th November 2009.

Palermo's protocol should be referred. A reasonable definition of trafficking should make trafficking a criminal offence. In this regards, the definition needs to be incorporated into the country's criminal code of law. The law should be able to prohibit the illegal sale of children in any form for what ever purpose. Even if the Law maker decides to formulate their own definition of trafficking, the definition should fall in line with that of the Palermo protocol. Any activities in connection to the act of trafficking should be castigated under the criminal law. For instance, activities such as instigating, aiding, abetting, attempting, omitted to act against and conspiracy to traffic a child must be answerable under the country's criminal law. South and Cameroon is in line with this recommendation but much still need to be done by blandishing theories into practice.

In the second count, all the perpetrators such as employers, facilitators, procurers, brothel owners, as well as the so called customers need to be punished severely. Public official such as air port controllers, school teachers, humanitarian workers who sometime masterminded the act of trafficking should not go unpunished. It is therefore the responsibility of the parliamentarian as the law makers to make a clear review on the existing criminal laws of the country by identifying the provisions that are relevant to trafficking in general and children in particular. The task lies on them to slam appropriate punishment such as the long term imprisonment, fine, confiscation of property, closure of establishments, exclusion from the state benefits, and even disqualification from commercial activities as the case may be brothels owners as the case may be. The punishment may be aggravated in situations where public official, institutions or persons entrusted with authority such as school teachers, person charged with the protection of children.

In the third count, law makers should be able to make trafficking to be an extraditable offence. For this approach to be possible there is a need to enter into bilateral and multilateral treaties which treat trafficking as an extraditable

offence. When that might have been done, the next step should be to extend the territorial jurisdiction of their state to nationals who commit crimes related to trafficking in abroad. In this regard, the law makers of the respective countries should be able to ensure that child sex tourism should be a criminal offence as to extend their state jurisdiction to their home national who commit any sexual exploitation abroad. The prosecution need not only be limited to those who perform the sexual exploitative act, but also to those who assist tourists or are involved in the sex tourism with children.

In the fourth count, labour law legislation can be seen as another possible area that can be revisit by lawmakers. This is because strong labour laws of the country have the power to discourage the act of trafficking of children for labour practices. To realise this objective effectively, there is a need for the parliamentarian and the law makers to state clearly the minimum age which may discourage traffickers from getting involved with children. This is because traffickers often lured these innocent children with false promises of employment either internally (mostly in big cities) or externally (foreigner countries.)

Moreover, another recommendation is that the act of trafficking is a complex issue which requires a collective or coordinated approach to handle it effectively. It therefore becomes very essential for the government to promote open dialogue between the relevant sectors of the country or organization .In this regards; seeking partnership with civil society organization can effectively boast national implementation of trafficking laws. It is therefore the responsibility of the law maker or government to provide technical as well as financial assistance to home based civil society organisational actors whose goals is to implement anti-trafficking law or programmes. The government should be able to support programmes that raise awareness specifically within the private sector including the tourism industry. The tourism industry can

educate its staff as well the tourist on the local laws governing trafficking and exploitation

Further, collaborating with the media is another recommendation for Cameroon and South Africa through which child trafficking can be combated. Media is one of the most important medium through which information concerning trafficking can be channel to the citizens, both in rural area as well as urban area. One thing worthy of note is that, for this tool to be effective, there is the need for the media to ensure that the identities of the children who are victims of trafficking be treated with a lot of confidentiality. Also, institutions of learning can also be seen as valuable avenues for raising awareness about the dangers of child trafficking by warning the children about the risk of trafficking and its related consequences. In this regards, there is the need for the government to incorporate anti-trafficking educational messages into all children institutions of learning curriculum so that children may be informed as well as empowered to protect themselves as much as possible from being trafficked.

Finally, registration at birth should be encouraged as much as possible. The government can promote or facilitate this process by removing all lengthy administrative requirements which are often associated in the establishment of a birth certificate. Moreover; lawmakers should ensure that children who are involved in any trafficking prosecuting proceedings against the traffickers should be well protected from any further re-victimization by the perpetrators. The child should be treated with respect to his/her dignity as well special need guided by his or her best interest. For instance, by appointing a legal representative should be the responsibility of the government so as to avoid the child from having any direct contact with the offender. In this regard, there is the need to provide a special witness or the child's statement via audio or video facilities or camera.

7. Concluding remark

The act of trafficking in the 21 century is an abhorrent abuse of human rights. This is one of the most complex issue in which its elimination depend upon a multi-faceted approach as well as collaboration among multiple actors and actions within and across borders. As seen from the above analysis, the supply side of child trafficking depends upon the existence of millions of children who are made vulnerable and susceptible to the tricks and force of traffickers. This is associated with developmental problems such as poverty, lack of adequate education as well as cultural norms which are mostly repugnant. The other side of child trafficking is as a result of global demand for cheap labour as well as sex industry. The demand side and supply is greatly facilitated by porous borders control, low public awareness and lack of political will to eliminate the act through adequate law enforcement mechanism.

Cameroon and South Africa have demonstrated through their national implementation strategic policies to combat child trafficking. The two countries have equally respected to some extent their international obligations in terms of international law standards. However, despite their commitments, much still need to be done given the complex nature of the problem. This is because in as much as traffickers can operate in an environment of official complicity or neglect, the act will continue to exist. The need for an adequate legislation and a strong political will to enforce the laws put in place by the government, through the prosecution of traffickers are imperative so as to end the environment of impunity, within which these criminals will continue to function. In this regards, parliament of the respective countries has a great role to play in combating child trafficking. To wind up with, Jessica Lange's speech in Mexico:

...there can be no better measure of our government than the way we treat our children, and no greater failing in our part than to allow them to be subjected to violence, abuse and exploitation.....parliamentarian have the power to alleviate the sufferings of million of children around the world, if only they would use it ⁷⁷

⁷⁷ UNICEF Ambassador, at the inter-parliamentary Union's 11th Assembly in Mexico City,

Bibliography

C

Contributions at conferences.

Published contribution

J

Jessica Lange, UNICEF Ambassador, at the Inter-Parliamentary Union's 110th Assembly in Mexico City, page 8. 20 April 2004.

Unpublished papers

S

Stuurman L "Trafficking in Children"

(Unpublished paper delivered at the conference on Aspects of Children's Act 38 of 2005 24/10/2007 Pretoria

End Child Prostitution, Child Pornography and trafficking of children for sexual Purposes (ECPAT)/

International, site at www.ecpat.net. Last accessed, 11 November 2009

Internet sources

P

Proudlock P and Jamieson L 2008 Guide to the Children Act 38 of 2005

(as amended by the Children's Amendment Act 41 of 2007) at http://www.mg.co.za/articledirect.aspx.php?option=com_content&task=9482&Itemid=389 {date of accessed 10/09/2009

SAPA 2006 Human Trafficking to be criminalized

. http://www.polity.org.za/article.php?a_id=45941{accessed on 17/09/2009.

UNESCO 2007 Human trafficking in South Africa: Root causes and recommendations.

<http://unesdoc.org/images/0015/001528/152823 E.pdf> {accessed on the 02/11/2009/}

U

UNESCO 2007 Countering human trafficking in Lesotho and in South Africa

[Http://portal.unesco.org/she/en/ev.php-url_id=11357&url_print Page&url_section=201.html](Http://portal.unesco.org/she/en/ev.php-url_id=11357&url_print_Page&url_section=201.html).{accessed on 01/09/2009/.

UNICEF 2001 Profiting from abuse: An investigation into the sexual exploitation of our children <http://www.unicef.org/eng/publication>. {Date of accessed is 10./10./2009.}

UNICEF 2003 trafficking in human beings, especially women and children in Africa. <http://www.unicef.icr.org.publications/pdf.insight9e.pdf>. {Accessed on 11/10/2009.}.

UNICEF 2006 Reference guide on Protection the rights of child victims of trafficking in Europe <http://www.childtrafficking.org>. {Accessed on 11/11/2009.}.

United States Department of State 2006 Trafficking in persons report <http://www..state.gov/g/tip/rls/tiprpt/2006/659883/htm>. {Accessed on 19/11/2009}.

Journal articles.

Journal 836-872

M

Molo Songololo. *Trafficking in Children for purposes of exploitation in South Africa* 2009, page 1-6

League of Nations instruments.

International Agreement for the Suppression of the White Slave Traffic.

International Agreement for the Suppression of the White Slave Traffic,
May 18, 1908, 92, U N T S 19, 35 Stat 1979 1 I N T S 83.

International Convention for the Suppression of the White Traffic.

International Convention for the Suppression of the White Traffic Slave Traffic, May 4, 1910, 98 U N T S. 101; 211 Consol. T S 45, 103 B F S P 244.

United Nations instruments.

Convention on the right of the child.

Convention on the Rights of the child, Nov.20, 1989, G A Res 14/25 UN G A O R 44th Sess; Supp No 49, at 1, U N Doc. A/44/736 (1989), 28 I L M 1448 (1989), 1577 U N T S 3 (1989) (entered into force Nov 2 1990).

Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

Convention for the Suppression of the Traffic in Person and of the Exploitation of Others. Dec 2, 1949. 96, U N T S.271, 282 (entered into force July 25, 1951)

Protocol Against the Smuggling by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime.

Protocol Against the Smuggling by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime, 2000, G A Res. 55/25, U N GAOR, 55th Sess, Annex II, U.N Doc, A/Res/55/25 (2001) (entered into force Dec 25, 2003).

Supplementary convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery.

Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries, sept 7, 1956, 18 U S T 3201, 266 U N T S 40 (entered into force Apr 30, 1957).

United Nation Convention Against Transnational Organised Crime.

United Nations Convention Against Transnational Organised Crime, G A Res, 25, Annex I, U N GAOR, 55th Sess, Supp No 49, at 44, U N Doc. A/45/49 (Vol I) (2001) (entered into force Sept 29, 2003.)

Baker KL “ Don’t forget the family: A proposal for expanding immediate protection to families of human trafficking survivors” 2006-2007.
Fordham International Law

Legislation.

Cameroon Trafficking law, 2005.

Cameroon Labour Law Legislation, 1992

Cameroon Penal code, 1967.

Child Care Act 74 of 1983.

Child Care Amendment Act 13 of 199.

Children’s Act 38 of 2005

Children Amendment Act 41 of 2007.

Combating of Trafficking in Persons Bill of 2006.

Constitution of the Republic of South Africa, 1996.

Constitution of the Republic of Cameroon.

Criminal Law (Sexual Offence and Related Matter) Amendment Act 32 of 2007

Refugee Act 130 of 1998.

Sexual Offence Act 23 of 1957.

List of Abbreviations

CA: Cameroon.

CC: Cameroon Constitution.

CPC: Cameroon Penal Code.

CRC: Convention on the Rights of the Child.

ILO: International Labour Organisation.

UN: United Nation.

UNGA: United Nations General Assembly.

UK; United Kingdom.

UNICEF: United Nation's Children's Fund.

US: United States.

SA: South Africa

News papers reports.

"The Survey Exposes child Abuses in Cameroon".

Panafrican News Agency Daily Newswire, 18/02/004.

The Post, Cameroon News Paper, page 8, www.anti-trafficking messages in Cameroon. 25/10.2009

Martens T and Attwood V "Women and Children at SA borders"

Daily News 18/09/2007 at 5.