

What does the future hold for our children? : Child Trafficking in Cameroon and India.

By Arrey Ojong Eyumeneh

LL.M. LONG THESIS COURSE:
Human Rights Law
PROFESSOR: Petra Bàrd
Central European University
1051 Budapest, Nador Utca 9, Hungary.

Table of Contents

Executive Summary	4
Introduction	5
Chapter 1: An overview of child trafficking	8
1.1. Definitions relevant to the practice of child trafficking	8
Child.....	8
Child Trafficking	9
Forced Labor	11
Slavery	11
Debt Bondage.....	11
Originating, Transit, Destination Country	12
Traffickers.....	12
1.2. Causes and effects of child trafficking in Cameroon and India	13
1.2.1. Causes of Child Trafficking.....	13
Economic Factors:	14
Socio – Cultural Factors:	15
Humanitarian Crisis:	15
1.2.2. Effects of Child trafficking	16
1.3. International and Regional Standards for combatting child trafficking	17
1.3.1. Obligation to prohibit trafficking and related acts	18
1.3.2. Obligation to investigate, prosecute and punish traffickers	19
1.3.3. Obligation to protect the victims of trafficking	20
1.3.4. Obligation to address the causes and effects of trafficking	22
Chapter 2: The Applicability of International and Regional Instruments in Cameroon and India.....	24
2.1. Obligation to Prohibit Child Trafficking and related acts	24
2.1.1. Cameroon	25
2.1.2. India	26
2.2. Obligation to Investigate, Prosecute and Punish	28
2.2.1. Cameroon	28
2.2.2. India	31
2.3. Obligation to protect victims	35
2.3.1. Cameroon	36

2.3.2. India	36
2.4. Obligation to address the causes and effects of trafficking	39
2.4.1. Cameroon	39
2.4.2. India	40
Chapter 3: Barriers to the enforcement of the various frameworks that have been put in place to combat child trafficking in Cameroon and India	42
3.1. Barrier caused by the limitation of existing legal instruments	42
3.2. Institutional barriers.....	48
3.2.1..Institutional barriers to the enforcement of the framework to combat child trafficking in Cameroon	48
3.2.2. Institutional barriers to the enforcement of the framework to combat child trafficking in India	51
3.3. Economic barriers.....	54
3.3.1. Economic barriers to the enforcement of the framework to combat child trafficking in Cameroon.....	54
3.3.2. .Economic barriers to the enforcement of the framework to combat child trafficking in India	55
3.4. Socio-cultural barriers	55
3.4.1. Socio-cultural barriers to the enforcement of the framework to combat child trafficking in Cameroon	56
3.4.2. Socio-cultural barriers to the enforcement of the framework to combat child trafficking in India	57
Chapter 4: Recommendations	59
Conclusion.....	63
Bibliography.....	64
Books ,journals and articles.....	64
Laws.....	66
Other sources	68

Executive Summary

Child trafficking is a practice that undermines the dignity of children, violates their human rights and threatens their security. The United Nations office of drug and crime refers to this practice as a transnational organized crime. With the advent of the Protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations Convention against transnational organized crime often referred to as the Palermo protocol, many states including Cameroon and India have sort to ratify the protocol with the objective to fortify their commitment in the fight against child trafficking.

Transcribing this commitment into their national arena has been an upheaval task that has been subjected to different challenges. Nevertheless with the incorporation of some propositions, reduction of the prevalence of child trafficking could become a reality in Cameroon and India.

Introduction

The trafficking of persons is a very old practice than can be traced as way back to the days of slave trade when people (slaves) were removed from their homes and transported by slave traders to work in the fields and plantations owned by the slave masters, most often from Africa heading to the America known at the time as the new found world.¹ This practice has continued to prevail in recent times and now involves children which has been termed child trafficking, here in the thesis topic.

Child trafficking can be considered as one of those agents that tend to undermine the dignity, enforcement, protection and promotion of the rights of the child, and can be literally defined as the illegal movement of children, typically for the purposes of forced labour or sexual exploitation.²

The 2008 International Labour Organization Action against Human Trafficking revealed that of the 2.4 million persons trafficked worldwide, about 1.2 million of them are minors below 18 with 32 % to be held under forced labour, 43 for sexual exploitation, and 25 % a mixture of both.³

Trafficking in persons generally surrounds financial gains which could be estimated at an annual US\$ 31.0 billion.⁴

Child trafficking is a practice that can be identified within many countries across the globe. However for the purpose of this thesis, the practice will be examined within two jurisdictions herein Cameroon and India.

¹ <http://www.nps.gov/nr/travel/underground/slvtrade.htm>

² <http://www.oxforddictionaries.com/definition/english/child-trafficking?q=child+trafficking+>

³ ILO Action Against Human Trafficking 2008 (International Labour Office , Geneva , 2008)

⁴ P. Belser, *Forced labour and human trafficking: Estimating profits*, Working paper 42(Geneva: International labour office, March 2005), iii.

Cameroon and India are two countries found on two different continents that have for a very long time been subjected to this practice mostly because of poverty. Their geographic positions have further enhanced their roles as originating countries, destination countries and transit countries thereby facilitating cross border flows and intercontinental trafficking.

Cameroon is found in Central Africa and is situated on the Gulf of Guinea, bordered by Nigeria, Chad, the Central African Republic, the Republic of Congo, Equatorial Guinea, and Gabon having a long coastal line that opens it to the Atlantic Ocean.⁵ Meanwhile India is in the South of Asia and is bounded to the northwest by Afghanistan and Pakistan, to the north by China, Bhutan, and Nepal and to the east by Burma and Bangladesh including a long stretching coastal line with the Indian Ocean and the Arabian Sea⁶.

It should be noted that, children are the most vulnerable members of the society due mostly to their limited capacity to make rational decisions and physical stature. This attribute is hugely exploited by others (traffickers) who will leverage on this vulnerability for their personal gains. This is a clear indication that children deserve to be specially protected against any kind of exploitation especially those related to trafficking.

The duty to protect and guarantee the rights of children rest primarily with the state followed by the parents or guardians, which has prompted states(Cameroon and India) to enact an array of legislation and surrounding policies to this effect including child trafficking.⁷ However despite the enormous strides that have been made by states to curb child trafficking in particular, there seem to exist a vacuum within the system that hinders the full realization of this objective.

⁵ <http://www.infoplease.com/country/cameroon.html>

⁶ <http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/India.html>

⁷ Article 18(1) and 32(1) of the Convention on the Rights of the Child. Article 18(1):" [...] [p]arents or, as the case maybe, legal guardians, have the primary responsibility for the upbringing and development of the child". Article 32(1): "States parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".

On this premise, this thesis seeks to unravel and provide answers that address the reason for the presence of the existing vacuum that limits the effective curbing of child trafficking in Cameroon and India respectively.

In order to meet this objective, the thesis has been designed into four chapters. The first chapter provides an overview of child trafficking which consists of several definitions relevant to child trafficking and related acts as well as the causes and effects of child trafficking in Cameroon and India. The second chapter revolves on the efforts that have been made by Cameroon and India so far, relating to the transcription of their international duty to curb child trafficking within their national jurisdictions through the introduction of a framework which includes relevant laws and policies. It also highlights a comparison of the framework existing in both states.

The thesis discourse is heightened in Chapter three which focuses on the barriers that impede the enforcement of the various frameworks that have been put in place to combat child trafficking in Cameroon and India. In this regard this chapter makes a critical analysis which would reveal the limitations of existing legislations, policies and implementing institutions. This is closely followed by recommendations that will permit the fortification of the existing framework, which ends up with a conclusion.

This thesis is limited to the critical analysis of existing international and national legal instruments, policies and implementing institution. Neither field work nor interviews were conducted in the course of its writing.

Although much has been written on child trafficking and related acts, this thesis is a first of its kind that provides a comparative analysis of child trafficking within Cameroon and India.

Chapter 1: An overview of child trafficking

This chapter will outline and overview of child trafficking. It will highlight the definition of some key terms that are relevant to the practice. These definitions will include standard definitions as provided for by International law, as well as adapted definitions provided by the Cameroonian and Indian legislator. I will then proceed to examine the causes and the effects of child trafficking within both jurisdictions, and the various existing standards that have been established by the relevant international and regional instruments pertaining to child trafficking, and the degree of conformity to these standards by the national legislative that has consistently required both states to protect children in general, and curb child trafficking in particular.

1.1. Definitions relevant to the practice of child trafficking

Key terms worth defining will include: child, trafficking, child slavery, child labour, debt bondage, originating country, transit country, and destination country.

Child

The Convention on The Rights of the child (CRC) holds that a child is anyone who has not yet attained 18 years (majority), except otherwise, the law of a particular state has decided to reduce the age at which a child becomes a major.⁸ India maintains a similar view with the CRC with respect to the age at which one can still be considered to be a child.⁹ The Cameroonian legislator seems not to have come up with a clear cut definition of who is a

⁸ Art 1 of the Convention of the Rights of The child: " [f]or the purposes of the present convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier".

⁹ Art 2(K) of the Juvenile Justice (Care and the Protection of Children) Act 2006, amending the Juvenile justice Act 2000: "[j]uvenile or child means a person who has not completed 18th year of age".

child, although it is generally considered that children are dependents between the ages of zero to 18 years.¹⁰

Child Trafficking

Several definitions have been proposed for this term, however, the most convenient and often used definition is the one provided by the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime, here in referred to as the Palermo Protocol. It defines the practice as:

*“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.*¹¹

A breakdown of this definition will portray that, before trafficking can be said to have taken place, three ingredients need to be taken into consideration. There need to be “an action” in the form of recruitment, transportation etc., “the means” which is the use of force, deception

¹⁰ Cameroon: *Are there child protection laws and agencies which adequately protect children's rights in Cameroon?* (16 June 2011, Ireland Refugee Documentation Centre).

¹¹ See Article 3(a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime(Palermo Protocol).

etc., “for the purposes of exploitation” which can be sexual exploitation, slavery, child labour etc.¹²

This definition gives the impression as if one could only talk of child trafficking when the child has been fraudulently removed or transported from his/her usual abode following the exchange of money or use of force, to be later exploited. But this is clarified in its subsequent provisions when it emphasizes that, there will be trafficking irrespective of whether there was any use of force, deceit or the exchange of money i.e. can also occur on consensual bases.¹³

The Cameroonian legislator refers to trafficking as the promoting, or the ensuring of the internal or external movement of persons for the purposes of obtaining some financial or material gain.¹⁴ This working definition is problematic on the basis that, it gives the impression that trafficking is dependent on the victims consent and it does not satisfy the three ingredients of trafficking as mentioned above. It merely reflects a situation of smuggling.

The Immoral Traffic prevention Act 2006 of India, describes trafficking to be the recruiting, transporting, transferring, harbouring, or receiving of a person with the aim of using such a person for prostitution, by the use of threat, force, coercion, abduction, fraud, deception; or the abuse of a person’s vulnerability, or the giving or receiving of payments or benefits to achieve the consent so as to gain control over another person.¹⁵

¹² United Nations Office on Drugs and Crime (UNODC), Trafficking in Persons: Global Patterns (UNODC, April 2006).

¹³ Art 3 (c) of the Palermo Protocol : “ [t]he recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article”.

¹⁴ Section 2(b) of Law No 2011/024 of 14th December 2011 relating to the Fight against Trafficking of Persons and Slavery (The Law against Trafficking in Persons and Slavery in Cameroon) : “the fact of promoting or ensuring the movement of a person inside or outside Cameroon in order to obtain, directly or indirectly, a financial or other material benefit of whatever nature”.

¹⁵ Article 5A of the Immoral Traffic (Prevention) Act of 1956 as amended by the Immoral Traffic (Prevention) Amendment Act of 2006: “[w]hoever recruits, transports, transfers, harbours, or receives a person for the purpose of prostitution by means of, (a) threat or use of force or coercion, abduction, fraud, deception; or (b)

Forced Labour

The Forced Labour Convention defines forced labour as;

*“[A]ll work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.*¹⁶

A similar position has been adopted by the Cameroonian legislator in its labour code.¹⁷

The Indian legislator does not explicitly address forced labour, though it makes reference to bonded labour discussed *infra*.¹⁸

Slavery

The slavery Convention defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.¹⁹ The Cameroonian law prohibiting the traffic in persons adheres to a similar principle, though it has been coined using different wordings.²⁰

Slavery is not addressed by the Indian legislator following its long standing prohibitory laws abolishing slavery since time immemorial.²¹

Debt Bondage

The supplementary slavery convention holds that,

abuse of power or a position of vulnerability; or (c) giving or receiving of payments or benefits to achieve the consent of such person having control over another person, commits the offence of trafficking in persons”.

¹⁶ See Article 2(1) of the Convention concerning Forced or Compulsory Labour (Forced Labour Convention No 29) 1939.

¹⁷ Section 2(4) of Law No. 92/007 of 14 August 1992 relating to the Labour Code: “[f]orced or compulsory labour” shall mean any labour or service demanded of an individual under threat of penalty, being a labour or service which the individual has not freely offered to perform”.

¹⁸ Article 2(e) of the Bonded Labour System (Abolition) Act 1976: “[b]onded Labour Shall mean any labour or service rendered under the bonded labour system”.

¹⁹ See Article 1(1) of the Convention to Suppress the Slave Trade and Slavery (Slavery Convention) 1926.

²⁰ Section 2 (c) of The Law against Trafficking in Persons and Slavery in Cameroon: “[slavery in persons is] the recruitment, transfer, accommodation or reception of persons for exploitation, through threat, the use of force or other forms of coercion, kidnapping, fraud, deception, abuse of authority or taking advantage of a state of vulnerability or through offer or acceptance of benefits to obtain the consent of a person having authority over the victim”.

²¹ See the Slavery Abolition Act 1833 which prohibited slavery all over the British Empire including India.

*“Debt bondage [...] [is] the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.*²²

Cameroon and India are of a similar opinion as to the definition of debt bondage as visualized by the supplementary slavery convention,²³ despite India’s emphasis on its prohibited bonded labour system.²⁴

Originating, Transit, Destination Country

Originating country is referred to as the point of recruitment of the victim or potential victim.

A transit country will represent the various countries that fall along the route used for the transportation of victims, from originating to destination countries. The destination country will refer to the country where the exploitation will take place, often the last stop.²⁵

Traffickers

Traffickers are the people involved in the recruitment and transportation of the victims and potential victims. A profiling of the traffickers will reveal that at times they are family

²² See Article 1(a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.

²³ Article 2(f) of the Law against Trafficking in Persons and Slavery in Cameroon: “[t]he fact of pledging a person as security before a creditor of a loan or a debt for purposes of exploitation”.

²⁴ Article 2(d),(e),(f),(g) of the Bonded Labour System (Abolition) Act 1976: “ ‘bonded debt’ means an advance obtained, or presumed to have been obtained, by a bonded labourer under, or in pursuance of the bonded labour system. (e): “bonded labour” means any labour or service rendered under the bonded labour system. (f) : “bonded labourer” means a labourer who incurs, or has, or is presumed to have, incurred a bonded debt (g): “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that”.

²⁵ UNODC, *Trafficking in Persons*, 58, 60, 63.

members, relatives and friends or they may be agents and brokers. Traffickers may at times be a group of organized criminals or a whole network of individuals spanning across countries.²⁶

1.2. Causes and effects of child trafficking in Cameroon and India

Rafferty points out that child trafficking is more likely to occur in isolated rural communities, where the victims are often young females, coming from ethnic minority and marginalized groups, lacking any reasonable level of education and skills.²⁷ Based on this premise this section of the thesis will provide possible causes of child trafficking and the surrounding effects.

1.2.1. Causes of Child Trafficking

Trafficking is a very complex practice which is caused by different factors, some of which maybe general and others may be specific depending on the country or region where it is practiced.

Salah identifies poverty as the major root cause of child trafficking in West Africa in general and Cameroon in particular, which has often led people to carry it out because of the urge to make some financial benefits for survival. This practice is also facilitated by traditional and cultural beliefs.²⁸ Sarkar shares a similar opinion about the causes of child trafficking in India.²⁹ Obokata will also add that, discrimination on multiple grounds and humanitarian

²⁶ J.Picarelli, *Human Trafficking & Organized Crime in the US & Western Europe, in Strategies against Human Trafficking : The Role of the Security Sector* ed. Cornelius Friensendorf (Vienna and Geneva : National Defence Academy and Austrian Ministry of Defence and Sports in co-operation with Geneva Centre for the Democratic Control of Armed Forces,2009) 128.

²⁷ Y.Rafferty, *The Impact on Children: Psychological and Social Policy Perspectives*, Child Development Perspectives, Volume 2, Number 1, (Pace University, 2008), 13.

²⁸ R.Salah, *Child Trafficking in West and Central Africa: An overview* (UNICEF 2001), 4.

²⁹ S.Sakar, *Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors*, The Round Table Volume 103, No 5(Routledge Taylor and Francis Group, 2014), 486.

crisis may also be regarded as a possible factor that may encourage this practice, based on its interlinked nature with the other causes.³⁰

Due to the complex nature of child trafficking, general causes cannot be mentioned in isolation, there is therefore the need to further examine particular factors which are most likely to increase the exposure and vulnerability of our children to this trade, even though some may be interrelated in nature. These factors may be economic (poverty), socio– cultural or as a result of a humanitarian crisis.

Economic Factors: The lack of economic opportunities such as jobs in most of the areas affected by trafficking has often triggered migration into the bigger cities, breaking away from the niche of care often found in rural areas. The practice of placement of children with close or distant relatives with the intent of creating the possibility for them to further their education and earn a better living has greatly increased the chances of children being trafficked. The high demand for child labour, which is said to be submissive and cheap is another contributor.³¹

With the advent of the transplant tourism both adults and children have often been trafficked for their organs which are later on sold by the traffickers to make huge profits. Similarly due to poverty and desperation such individuals may be lured by money or even coerced to sell their organs.³²

³⁰ T.Obokata, *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach* (Leiden: Martinus Nijhoof Publishers, 2006), 123.

³¹ Salah, *Child Trafficking in West and Central Africa*, 4.

³² N.Scheper-Hughes, *The Ends of the body: Commodity Fetishism and the Global Traffic in Organs*, SAIS Review Vol XXII No 1 (SAIS, winter – spring 2002), 61-62.

Socio – Cultural Factors: This will include amongst others, illiteracy and ignorance of families of the effects of child trafficking and the risk faced by these children has made the families not to see anything wrong with the practice.³³

The existence of a social stratification scheme in some societies such as in India, known as the caste system whereby certain groups of persons are identified and labeled as belonging to a particular caste of underprivileged citizens, genuinely helps fuel the practice of child trafficking. This is because the underprivileged caste is subjected to inequality, discrimination, lack of opportunities and poverty, hence exposing them and their children to the hands of traffickers.³⁴

Certain traditional beliefs and practices within the Indian society such as the *devadasi* or *jogini* whereby girls are given away to serve as a sexual goddess in the temples or concubines usually puts them at great risk of being trafficked. Begging is another practice worth mentioning. In India it is considered as a very lucrative business, as such hundreds of children are often trafficked and forced to beg on the streets.³⁵ A similar practice is also prevalent in Cameroon especially in the northern part of the country.³⁶

Humanitarian Crisis: In the event of a humanitarian crisis which is as a result of natural disasters or conflicts, has often led to the internal and external displacement of persons. Due the vulnerability of such persons, they stand a great chance to be trafficked since they are often in search of a sanctuary.³⁷

³³ Salah, *Child Trafficking in West and Central Africa*, 4-5.

³⁴ The Hindu caste system [...] [is an old] invention [of the Indian society],,,, [...] justified by a few makers of the law [whereby] the upper caste found it convenient to retain and perpetuate their social and religious distinction and political and economic advantage: see http://www.hinduwebsite.com/hinduism/h_caste.asp

³⁵ Sarkar, *Rethinking human trafficking in India*, 486.

³⁶ See 2014 findings on the worst forms of child labour (2014, United states bureau of international labour affairs)

³⁷ E. Mishra on Combating Human Trafficking: A legal perspective with special reference to India, *Sociology and Anthropology* 1(4):172-179 (Horizon Research Publishing, 2013), 175.

Nikolice-Ristanovice holds that during and after conflicts women and the girl children are often the most affected since they can be trafficked into sexual slavery and forced prostitution in camps and brothels.³⁸

1.2.2. Effects of Child trafficking

The effects of child trafficking are better appreciated based on the impact it has on the victim and the society as a whole.

Individually, the effect of child trafficking will often be relative to the type of abuse or exploitation which the victim was subjected to.³⁹ This may range from emotional and psychological manipulation to physical violence and coercion, physical exhaustion and isolation.⁴⁰ This will involve beatings and burning parts of the victims' bodies so as to make them submissive which may end up leaving permanent injuries or, in the worst case scenario, death. The idea of being separated from families for long periods of time and the other aforementioned effects will all have a psychological effect on the victim. Similarly they may be exposed to all sorts of illnesses and diseases such as HIV, AIDS coupled with the fact that they are often deprived of basic health care. Dependency on drugs also plays a huge part on their psychology and emotions.⁴¹

Some of these effects may be short lived or long lasting. Rafferty concludes that they may lead to educational deprivation, physical health problems, emotional imbalance and negative behavioural outcome.⁴²

³⁸ V.Nikolic-Ristanovic, *Sex Trafficking: The Impact of War, Militarism and Globalization in Eastern Europe*, Gender and Globalism vol. 17(Ann Arbor, MI: Publishing, University of Michigan Library, 2003).

³⁹ Rafferty, *Child Development Perspectives*, 14.

⁴⁰ The IOM Handbook on Direct Assistance for the victims of trafficking, (IOM: Geneva, 2007), 191.

⁴¹ *Combatting trafficking for children for Labour Exploitation: A resource kit for policy makers and practitioners* (ILO, 2008), 31-32.

⁴² Rafferty, *Child Development Perspectives*, 14-15

The impact on the society can be severe and devastating. The idea of a family losing a child or not knowing their whereabouts can be devastating and difficult to bear, as well as the economic burden families have to endure in cases where the victims return with diseases. On the other hand, in instances where a victim is capable of assisting their families financially might serve as a motivation for others to subject their children to trafficking.⁴³

At the same time operating child trafficking combatting schemes can be very costly on state governments, they involve the reservation of huge amounts of money for the investigation of perpetrators, their apprehension and prosecution. Similarly, huge cost can be experienced in rescue missions and the rehabilitation of the victims, medical attention, and even repatriations.⁴⁴ Nevertheless, it still remains that, it is the duty of the state to combat child trafficking following the norms that have been created by International Law, no matter the cost involved.

1.3. International and Regional Standards for combatting child trafficking

Child trafficking is a practice that is often carried out by individuals, agents or organized criminals that are considered as non-state actors. These perpetrators lack responsibility and accountability under international Law.⁴⁵ The evolution of International Law over the years has seen the development of an array of obligations on states to curb human right abuses in general and child trafficking in particular, thereby directly invoking their accountability, though often carried out by non-state actors.

As Obokata puts it, state obligations will include the obligation to prohibit trafficking and related acts, to investigate prosecute, punish, protect the victims, and lastly to address the

⁴³ *Combatting trafficking for children for Labour Exploitation*, 33.

⁴⁴ Mishra, *Combatting Human Trafficking*, 176.

⁴⁵ See Para. 8 of General Comment No 31, of The Human Rights Committee on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

causes and effects of trafficking, irrespective of whether they are countries of origin, transit or destination.⁴⁶

1.3.1. Obligation to prohibit trafficking and related acts

This obligation warrants states to formulate national legislations and policies geared towards the curbing of trafficking in persons. Such obligations can be inferred from the wordings and the provisions of a variety of human rights instruments which will include amongst others.

The Palermo Protocol, which specifically stipulates inter alia that the purpose of the protocol is “[t]o prevent and combat trafficking in persons, paying particular attention to women and children”,⁴⁷ and the Convention on the Rights of the Child which reiterates that “[s]tates parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”.⁴⁸

Instructive regional instruments will include the African Charter on the Rights and Welfare of the Child,⁴⁹ the Council of Europe’s Convention on the Action against Trafficking in Human Beings,⁵⁰ the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.⁵¹

International Law has also made it a duty for states to prohibit some indirect acts associated with trafficking, which are often experienced by the victims during the whole ordeal, such as

⁴⁶ Obokata, *Trafficking of Human Beings from a Human Rights Perspective*, 147.

⁴⁷ See Article 2(a) of The Palermo Protocol.

⁴⁸ Article 35 of the Convention on the Rights of the Child: “[s]tate Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form”.

⁴⁹ Article 29 of the African Charter on the Rights and Welfare of the Child 1990: “[s]tates Parties to the present Charter shall take appropriate measures to prevent: (a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child; (b) the use of children in all forms of begging”.

⁵⁰ See Article 5(1) of the European Convention on the Action against Trafficking in Human Beings 2005: “[e]ach Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings”.

⁵¹ Article VIII(1) of the South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution: “[t]he State Parties to the Convention shall provide sufficient means, training and assistance to their respective authorities to enable them to effectively conduct inquiries, investigations and prosecution of offences under this Convention”.

torture, inhumane and degrading treatment and situations amounting to slavery and forced labour.⁵² The said duty can be traced from the Convention against Torture and other cruel, Inhuman and Degrading Treatment or Punishment (CAT) which calls on member states to take all necessary measures to prevent all acts of torture within their territory,⁵³ the Slavery Convention which urges states member states to progressively abolish slavery within their territory⁵⁴ and the Worst Forms of Child Labour Convention respectively which calls on states to take every measure to ensure that all worst form of child labour is stamped out.⁵⁵

The creation and development of a Case Law database for crimes surrounding trafficking in persons by the UNODC has further reaffirmed this obligation.⁵⁶

1.3.2. Obligation to investigate, prosecute and punish traffickers

States are charged with the duty to criminalize the practice of child trafficking within their various jurisdictions. This will require states to take all legislative and administrative measures to ensure that this practice is made an offence in its legal system.⁵⁷ Following the modus operandi of Criminal Justice, this therefore implies that the state has the authority to investigate, prosecute and punish defaulters. As such states are urged to fulfil this duty by incorporating child trafficking as an offence into their penal code, accompanied by a proportionate sanction or penalty that will serve as a deterrent to traffickers.⁵⁸ This also calls for an improvement in intelligence and the standard of investigating child trafficking and

⁵² Obokata, *Trafficking of Human Beings from a Human Perspective*. 148-149.

⁵³ Article 2 of the Convention against Torture and other cruel, Inhuman and Degrading Treatment or punishment (CAT) 1984: "[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction".

⁵⁴ Article 2 of the Slavery Convention: "[t]he High Contracting Parties undertake, each in respect of the territories placed under its [...] protection [...]: (a) [t]o prevent and suppress the slave trade; (b) [t]o bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms".

⁵⁵ See Article 1 of the Worst forms of Child Labour Convention 1999(No. 182) : "[e]ach Member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".

⁵⁶ See UNODC Case Law database, <https://www.unodc.org/cld/index.aspx>

⁵⁷ Obokata, *Trafficking of Human Beings from a Human Perspective*. 148-149.

⁵⁸ See Line 45 of United Nations Global Plan of Action to Combat Trafficking in Persons 2010 : "[member states shall] [e]nhance efforts to investigate alleged cases of trafficking, strengthen means to combat trafficking, prosecute perpetrators[...] and ensure that the penalties are proportionate to the gravity of the crime".

related crimes, which can be achieved through capacity building / training sessions of the law enforcement, immigration and other related officers involved in the fight against trafficking. Similarly, states are also called upon to improve international cooperation so as to help in the identification and tracking down of traffickers,⁵⁹ which will involve the observance of strict border controls⁶⁰ and the intensive scrutiny of travel documents along borders and in airports.⁶¹

1.3.3. Obligation to protect the victims of trafficking

In order to have an efficient scheme for the protection and assistance of victims of child trafficking, states are entitled to put in place an array of measures that are meant for the best interest of the child⁶² while taking cognizance of their age, gender and special needs.⁶³ Such as a mechanism meant for the proper identification of the victims while ensuring that their privacy and identity is safeguarded and the ensuing legal proceedings surrounding the said trafficking incident is carried out in confidentiality as the case maybe.⁶⁴ They also have the duty to implement measures that will facilitate the dissemination of information on existing

⁵⁹ Article 10 of the Palermo protocol: " (1)law enforcement, immigration or other relevant authorities of state parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with domestic law. (2): state parties shall provide or strengthen training for law enforcement, immigration and other relevant officers in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers".

⁶⁰ Article 11(1) of the Palermo Protocol : "without prejudice to international commitments in relation to the free movement of people, State Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons".

⁶¹ Article 12 of the Palermo Protocol: "[e]ach State Party shall take such measures as may be necessary within available means : (a) [t]o ensure that travel or identity documents issued by it are of such quality that they cannot be easily misused and cannot readily be falsified or unlawfully altered, replicated or issued ; and (b) [t]o ensure the integrity and security of travel or identity documents issued by or on behalf of the [s]tate [p]arty and to prevent their unlawful creation, issuance and use".

⁶² Line 37 of the United Nations Global Plan of Action to Combat Trafficking in Persons: "[states shall] [p]rovide appropriate assistance and protection in the best interest of the child to child victims of trafficking in persons or to those at risk of being trafficked".

⁶³ Article 6(4) of the Palermo protocol : "[e]ach State Party shall take into account in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons in particular the special needs of children, including appropriate housing, education and care".

⁶⁴ Article 6(1) of the Palermo protocol : "[i]n appropriate cases and to the extent possible under its domestic law, each state party shall protect the privacy and identity of the victims of trafficking in persons, including inter alia, by making legal proceedings relating to such trafficking confidential".

legal action against traffickers, while making sure that dispositions have been put in place so that the views of the victims can be heard during legal proceedings and their safety is guaranteed during the entire period when the legal action is going on and the whole period spent by the victim in the country of origin, transit or country of destination after they have been identified.⁶⁵ States are encouraged to allow the victims of child trafficking to live within their territory on a temporal or permanent basis. In any case where the victim is to be repatriated to his/her country of origin or a third country where they had residency, it should preferably be carried out based on the willingness of the said victim and serious consideration should be employed with regards to their safety. They should also ensure that the victim is provided with the necessary travel documents to facilitate their movement and the repatriation process.⁶⁶

It is crucial for states to ensure that children that have fallen prey (victim) to trafficking receive a commensurate compensation for the damages suffered.⁶⁷ The working group on the trafficking in persons during its third session recommended that, victims should be entitled to compensation even if the perpetrator has not been identified or prosecuted, from some fund

⁶⁵ See Article(s) 6(2) & 6(5) of the Palermo Protocol. Article 6(2): “[e]ach state party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in person in the appropriate cases (a) Information on relevant court and administrative proceedings; (b) Assistance to enable the views to and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to their rights of defence”. Article 6(5): “[e]ach Party State shall endeavour to provide for the physical safety of the victims of trafficking in persons while they are within its territory”.

⁶⁶ Article(s) 7(1), 8(2) & 8(3) of the Palermo Protocol. Article 7(1): “[...] each state party shall consider, adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases”. Article 8(2): “[w]hen a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary”. Article 8(4): “[i]n order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory”.

⁶⁷ Article 6(6) of the Palermo protocol: “[e]ach State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damages suffered”.

set aside by the state. Such compensation should take into consideration medical cost, rehabilitation, standard low income wages, legal fees incurred, non-material damages, and any other related cost as a result of the trafficking incident.⁶⁸

In addition, states are expected to work in cooperation with Non-Governmental Organizations (NGO's) and other members of the civil society to in order to realize the physical, psychological, social recovery of the victims. This will entail that victims are provided with appropriate housing facilities, counselling, medical and psychological therapies, employment and vocational training.⁶⁹

1.3.4. Obligation to address the causes and effects of trafficking

This duty requires states to address the root causes of trafficking, especially the push factors encouraging this practice. On this premise, states are encouraged to develop mutual strategies that will permit them to tackle poverty, inequality, gender discrimination, exclusion, marginalization, underdevelopment in order to reduce greatly the vulnerability of victims, and provide equal economic opportunities, regardless of whether they are originating, transit or destination states.⁷⁰

⁶⁸ See Report on the meeting of the Third Session of the Working Group on trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC/COP/WG.4/2010/7).

⁶⁹ Article 6(3) of the Palermo Protocol: "[e]ach State Party shall consider implementing measures to provide for the physical psychological and social recovery of victims of trafficking in persons including in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and in particular, the provision of (a) Appropriate housing (b) Counselling and information in particular as regards their legal rights in a language that the victims of trafficking in persons can understand (c) Medical, psychological and material assistance and (d) Employment, educational and training opportunities".

⁷⁰ See Line 9(4) of the Palermo Protocol and The General Assembly Resolution A/RES/64/293 adopted on the 12 of August 2010 The United Nations Global Plan of Action to Combat Trafficking in Persons.

An extension of this obligation will similarly expect states to take all legislative and administrative measures to discourage and suppress existing factors that have always encouraged the demand for trafficked persons, known as the pull factor.⁷¹

Having outlined the various obligations that have been instituted, following the development and evolution of various international instruments, with the aim to serve as a uniform directive to be observed by states in the fight against child trafficking, it will be of prime importance at this point to have a look at what Cameroon and India have done so far in order to transpose these obligations within their various jurisdictions, which will be discussed in the next chapter.

⁷¹ See Art 9(5) of the Palermo Protocol : “[s]tate Parties shall adopt or strengthen legislative or other measures such as educational, social or cultural measures, including through bilateral and mutual cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking” .

Chapter 2: The Applicability of International and Regional Instruments in Cameroon and India

This chapter will examine the implementation of those obligations that have been created by International Law, in Cameroon and India. I will start of by highlighting a number of International instruments that Cameroon and India are signatories to with respect to combatting child trafficking and related acts, then I will proceed to examine how the aforementioned obligations have been transposed within each national jurisdiction followed by a comparative analysis of the national measures from both jurisdictions.

It is essential to note that when it comes to the application of international treaties and conventions, Cameroon maintains a dualistic system meaning that treaties and conventions can only be invoked following their transposition into a domestic legislation.⁷² The same thing applies in India.⁷³

2.1. Obligation to Prohibit Child Trafficking and related acts

Cameroon is a signatory to several international conventions peculiar to child trafficking which will include The Palermo Protocol, The CRC and its Optional protocol on the involvement of children in armed conflict, The ILO convention No 138 on the Minimum age for employment, Convention 182 on the worst forms of child labour and The African Charter on the Rights and Welfare of the Child. Meanwhile, India is party to The Palermo Protocol, The CRC (1992) and its two optional protocols and the SAARC Convention on combatting and Prevention of Trafficking in Women and Children for Prostitution. Both states have made enormous efforts to domesticate these conventions as is reflected in national laws and

⁷² M.Faure and Willemien du Plessis, Ed. *The balancing of interests in environmental Law in Africa* (Pretoria: Pretoria University Law Press, 2011), 598.

⁷³ S.K. Agarwal , *Implementation of the International Law in India: Role of the Judiciary* (McGill University) : http://oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf

policies, permitting them to conform to the required international standards of human rights and the combatting of child trafficking.

2.1.1. Cameroon

The duty to enact laws in conformity with international standards in order to prohibit child trafficking and related acts, stems from the highest law of the land, the constitution, which is a strong adherent to human rights and its principles, as evident in the preamble which reads that;

*“We, people of Cameroon [...] [a]ffirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples’ Rights and all duly ratified international conventions”.*⁷⁴

The Constitution upholds the principle of equality of rights and obligations and the duty of the state to specifically protect women, young, elderly and disabled persons.⁷⁵

Following this assignment, the Cameroonian legislator has formulated an array of legislation for this purpose, some of which are specific or special and others that are general, but containing peculiar provisions relevant to the prohibition of child trafficking and related acts.

It has specifically enacted a special Law whose mission is aimed at prohibiting Child trafficking and slavery often referred to as the Law against trafficking of persons and slavery in Cameroon.⁷⁶ Prohibition of forced labour can be inferred from provisions found in the law

⁷⁴ See Preamble of Law No 96/06 of 18th January 1996, amending the constitution of 2nd June 1972 here in referred to as the Cameroon Constitution.

⁷⁵ See Preamble of the Cameroon Constitution supra.

⁷⁶ See the Law against trafficking in persons and Slavery in Cameroon.

against trafficking of persons in Cameroon,⁷⁷ the labour code⁷⁸ and the penal code.⁷⁹ The minimum age for work (employment) has been set to 14 years.⁸⁰ Hazardous work has been prohibited by the labour code to the effect that children below 18 years of age are not permitted to work on board ships as a trimmer or a stocker. Similarly children are restricted to engage in any kind of work that is beyond their strength and capacity.⁸¹ Commercializing the sexual exploitation of children has been prohibited by provisions of the Penal Code⁸² and the Law relating to cyber security and criminality.⁸³

2.1.2. India

India is a Union of states, operating on a federal system, as such there is the existence of legislations and policies at the national level and at the level of each state.⁸⁴

Following its non-derogatory clause, the Indian constitution has endowed law makers the duty to make laws that are in conformity with the fundamental rights, which will include

⁷⁷ Section 5 of the Law against trafficking in persons in Cameroon: “whoever engages in trafficking in persons or slavery shall be punished with imprisonment of from 15 to 20 years and with fine of from 100.000 to 10.000.000 CFA francs where : the offence is committed against a minor of 15 years[...]” .

⁷⁸ Section 2(3) of the Cameroon Labour Code: “forced or compulsory labour shall be forbidden”.

⁷⁹ Section 292 of Law n° 67-LF-1 of 12 June 1967 on the Cameroon penal code: “whoever for this personal advantage compels another to do any work or to render any service which he has not offered of his own free will shall be punished with imprisonment of from one to five years or with fine of from ten thousand to five thousand francs, or with such imprisonment and fine”.

⁸⁰ Section 86 (1) of the Cameroon Labour code: “[n]o child shall be employed in an enterprise even as an apprentice before the age of 14 years”.

⁸¹ Section(s) 86(2) (a) and 87(1) of the Cameroon Labour code. Section 86(2) (a): “[...] a young person under 18 years of age may in no case be employed on board ship as a trimmer or stocker”. Section 87(1): “the inspector of labour of the area may order woman and children to be examined by an approved medical practitioner in order to ascertain that the work allotted to them is not beyond their strength”.

⁸² Section 294 (1) read in line with section 343 of the Cameroon penal code : “whoever procures, aids or facilitates another person’s prostitution or shares in the proceeds of another’s prostitution, whether habitual or otherwise or who is subsidized by any person engaging in prostitution shall be punished with imprisonment for from six months to five years and with fine of from 20.000 to 1.000.000 francs [and] [w]here the victim of [...] is under 18 years of age, the penalties prescribed [...] shall be doubled subject to a maximum of ten years imprisonment”.

⁸³ Section 75 of Law No. 2010/12 of 21st December 2012 on Cyber security and Cyber Criminality in Cameroon: “whoever for financial gain, records or publishes images that undermine the bodily integrity of another person through electronic communications or an information system without the consent of the person concerned shall be punished with imprisonment for from two years or a fine of from 1.000.000 to 5.000.000 CFA francs or both such fine and imprisonment”.

⁸⁴ See Article 1 of the Indian Constitution 2007: “India, that is Bharat, shall be a Union of States [...] [t]he States and the territories thereof shall be as specified in the First Schedule”.

prohibiting child trafficking, and its related principles such as equality.⁸⁵ However, the Indian constitution instructively prohibits trafficking in one of its provisions which underlies that;

*“Trafficking in human beings and ‘begar’ and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law”.*⁸⁶

It particularly prohibits the engagement of children in hazardous work especially in factories and mines.⁸⁷ Also embedded in the constitution are the fundamental rights of equality, non-discrimination, security of life and liberty.⁸⁸

Just as their Cameroonian counterpart, the Indian Legislator has also enacted special laws as well as other laws that contain provisions which are relevant in the prohibition of child trafficking and related Acts. Child Trafficking is specifically prohibited by the 2013 Criminal Law Amendment Act. Forced labour is dealt with by the Bonded Labour System (Abolition) Act and the Juvenile Justice (Care and Protection of Children Act). There seem not to be a minimum age to work in India, though some federal laws have set up a minimum age. Children below 14 years of age have been prohibited from engaging in any sort of Hazardous work as spelled out by the 1986 Child Labour (Prohibition and Regulation) ACT.⁸⁹

⁸⁵ See Article 14 of the Indian Constitution: “[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

⁸⁶ See Art 23(1) of the Indian Constitution.

⁸⁷ Art. 24 of the Indian Constitution: “[n]o child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”.

⁸⁸ Article(s) 15(1) & 21 of the Indian Constitution. Article 15(1): “the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”. Article 21: “[n]o person shall be deprived of his life or personal liberty except according to procedure established by law”.

⁸⁹ Article III of the Child Labour (prohibition and regulation) Act 1989: “[n]o child shall be employed or permitted to work in any of the following occupations: [...] (1) Transport of passengers, goods; or mails by railway (2) Cinder picking, clearing of an ash pit or building operation in the railway premise. (3) Work in a catering establishment at a railway station, involving the movement of vendor or any other employee of the establishment from one platform to another or into or out of a moving train. (4) Work relating to the construction of railway station or with any other work where such work is done in close proximity to or between the railway lines. (5) The port authority within the limits of any port. (6) Work relating to selling of [...] (51) Zari Making (all process)”.

The Indian legislator has established the prohibition of the commercialization of the sexual exploitation of children as well as the usage of children in illicit activities.⁹⁰

A comparison of the constitutions from both jurisdictions will reveal that, the Indian Constitution is more proactive in eradicating child trafficking following the inserted provision on trafficking by the drafters than its Cameroonian counterpart.⁹¹ The various existing laws in both countries have shown that India has gone a step further in the prohibition of child trafficking and related acts by adopting specialized legislations adapted for particular human rights violations rather than general laws such as the Bonded Labour system (Abolition) Act and the Juvenile Justice (Care and Protection of Children Act) . One can easily conclude that, India is more committed in the curbing child trafficking as opposed to Cameroon. However this is just one obligation, it is time we look at the others.

2.2. Obligation to Investigate, Prosecute and Punish

As afore mentioned, this obligation will require Cameroon and India to criminalize the act of child trafficking, ensure that perpetrators are investigated and brought to justice, appropriately sanctioned for the crime they have committed. This will permit me to examine the enforceability of these laws by the members of the various law enforcement organizations, as well as the various institutions existing within both jurisdictions that have been charged with the task to assist in enforcing these laws.

2.2.1. Cameroon

The Cameroon penal code condemns trafficking as a prohibited conduct within the society.⁹²

But the most appropriate and adapted legislation that deals with the subject at hand is the

⁹⁰ See the Protection of Children from Sexual Offence act and Information Technology (Amendment Act) 2012.

⁹¹ See Art.23 (1) of the Indian Constitution *supra*.

⁹² Section 293 (1) (b) of the Cameroon penal code: “whoever engages, whether habitually or otherwise, in any traffic in persons shall be punished with imprisonment for from ten to twenty years”.

2011 law relating to the fight against trafficking in persons and Slavery.⁹³ The said law stipulates that,

*“Whoever engages in trafficking in persons and slavery shall be punished with imprisonment for from 15 (fifteen) to 20 (twenty) years and with fine of from 100 000 (one hundred thousand) to 10 000 000 (ten million) CFA francs where: [t]he offence is committed against a minor of 15 years; [t]he perpetrator is a legitimate, natural or adopted ascendant of the victim; [t]he offender has authority over the victim or is expected to participate by virtue of his duties in the fight against slavery or peace keeping; [t]he offence is committed by an organized gang or an association”.*⁹⁴

The judicial police are the ones charged with the carrying out of criminal investigations in Cameroon. They are permitted make arrests and searches where a crime has been committed or alleged to have been committed. After making their findings which can lead to an arrest, they have to write a report which is then submit to the state prosecutor who will then use it to institute criminal proceedings on behalf of the legal department.⁹⁵ Immigration officers also hail from the police corps and are charged with the checking of travelling documents of all travellers coming in and leaving the country.

The Country has a National Human Rights commission with branches spread out over the national territory. They investigate, monitor, evaluate and intervene in human rights violations nationwide that have been reported to them by individuals, corporate bodies, public

⁹³ See Law against trafficking in persons and slavery in Cameroon *supra*.

⁹⁴ See Section 5 of the Law against trafficking in Persons and Slavery in Cameroon.

⁹⁵ See Section 30 (2) & 60 of the Law No. 2005 of 27 July 2005 on the Criminal Procedure Code. Section 30(2): “[a] judicial police officer, agent of judicial police or any officer of the forces of law and order effecting an arrest shall order the person to be arrested to follow him and, in the event of refusal, he shall use reasonable force, necessary to arrest the person”. Section 60: “[c]riminal proceedings shall be institutes and prosecuted by the Legal Department. They may also be instituted by any government department or by the injured person under the conditions laid down by law”.

authorities or following its own motion and make inventories. They may refer the said cases to the competent authorities such as the police and the judiciary for further action.⁹⁶

As concerns its intelligence capacity and international cooperation, the Cameroonian government in an accord with the INTERPOL has permitted the establishment of a Regional bureau for central Africa which has as objective to provide assistance to the National Central Intelligence Bureau of states within the region in the following areas : maritime piracy, human and drug trafficking and arm robbery.⁹⁷ The regional bureau has successfully organized a series of strategic workshops aimed at building the capacity of law enforcement officers within the region. This will include the training organized in partnership with the International Organization for Migration (IOM) on counter trafficking,⁹⁸ and the training on the prevention of the use of fraudulent documents, which is of prime importance in the combatting of child trafficking.⁹⁹

Related officials that come in contact with trafficked persons in the line of duty have also undergone capacity building sessions such as the first capacity building workshop for criminal justice practitioners on money laundering and the smuggling of migrants held in Cameroon under the auspices of the UNODC Global programme against smuggling of migrants, money

⁹⁶ See Article(s) 1(5) of Law No 2004 of 22nd July 2004 to set up the Organization and Functioning of the National Commission on Human Rights and Freedoms: “[t]he commission may have branches in other localities throughout the country , art 2 : [t]he commission shall [...] receive all denunciations relating to violations of human rights and freedoms, conduct all inquiries and carry out all the necessary investigations on violations of human rights and freedoms[...], art 3 :[...] request the competent authorities to carry out searches and require the production of any document or evidence in accordance with ordinary law, refer any offence noted in matters falling within the remit of this law to the minister in charge of justice, section 5 : [t]he commission may within its remits : entertain a simple request or denunciation from any individual or corporate body, or any public authority; carry out any investigation on its own motion”.

⁹⁷ Cameroon and INTERPOL sign agreement to establish a Sub-Regional Bureau in Yaoundé: www.interpol.int/en/News-and-media/News/2009/PR103/

⁹⁸ IOM, INTERPOL train Central African police in counter trafficking : <https://www.iom.int/news/iom-interpol-train-central-african-police-counter-trafficking>

⁹⁹ Preventing use of fraudulent documents in Central Africa focus of INTERPOL-supported meeting: <http://www.interpol.int/News-and-media/News/2014/N2014-115>

laundering proceeds of crime and the financing of terrorism, in partnership with Cameroon National Agency For Financial Investigation.¹⁰⁰

2.2.2. India

The Criminal law Amendment Act denounces trafficking in general,¹⁰¹ but has a special provision reserved for child trafficking which punishes its violators by reiterating that,

*“Where the offence involves the trafficking of a minor, it shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine, [and] where the offence involves [...] more than one minor [the] imprisonment [...] shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine”.*¹⁰²

Just like every judicial system it is the role of the law enforcement officers to carry out investigations and subsequently submit their findings to the judiciary.

The role played by other relevant officers and actors cannot be left unnoticed. Their presence is noticeable at the national level as well as at the level of the individual states.

¹⁰⁰ First capacity building workshop for criminal justice practitioners on money laundering and the smuggling of migrants held in Cameroon : www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/2012/first-capacity-building-workshop-for-criminal-justice-practitioners-on-money-laundering-and-the-smuggling-of-migrants-held-in-cameroon.html

¹⁰¹ Section 370 (1) of the Indian Penal Code as Amended by the Criminal Law Amendment Act 2013: “whoever, for the purpose of exploitation (a) recruits, (b) transports (c) harbours, (d) transfers or (e) receives a person or persons by [...] using threats or [...] using force or any other form of coercion or [...] by abduction or [...] by practicing fraud or deception or [...] by abuse of power or [...] by inducement, including the giving or receiving of payments or benefits, in order to achieve the consent of any person having control over the person recruited, transported, harboured, transferred or received commits the offence of trafficking”.

¹⁰² See Sections 370(4) & (5) of the Criminal Law Amendment Act 2013. Section 370(4): “[w]here the offence involves the trafficking of a minor. It shall be punishable with rigorous imprisonment for a term which shall not be less than 10 years, but which may extend to imprisonment for life, and shall also be liable to fine”. Section 370(5) : “[w]here the offence involves the trafficking of more than one minor, it shall not be punishable with rigorous imprisonment for a term which shall not be less than fourteen years, but which may extend to imprisonment for life, and shall also be liable to fine”.

At the national level, there is the National Human Rights Commission (NHRC), an independent body which has amongst its duties to investigate and intervene on human rights violations on its motion or based on a denunciation from a victim or from an individual on the victim's behalf or following a direction of the court, carry out researches in human rights issues, intervene in legal proceedings surrounding human rights violations and make legal reviews on the human right safeguards afforded by any national legislation.¹⁰³ In order to facilitate its investigative duties the Commission may make use of other government officers such as the police. Similarly it has been endowed with the powers and authority of a civil court as such they can summon the presence of witnesses and gather evidence through the disclosure of documents etc. (see complete powers relating to inquiry in footnote).¹⁰⁴ Depending on the phase of the inquiry or where a violation of human rights has been ascertained, the commission may make one or more recommendations.¹⁰⁵ There also exists the National Commission for Protection of Child Rights (NCPCR) which has similar

¹⁰³ Article 12 of The Protection of Human Rights Act 1993 as amended by the Protection of Human Rights (Amendment) Act 2006-No. 43 of 2006 : " [t]he Commission shall perform all or any of the following functions, namely:-(a) inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf [or on a direction or order of any court], into complaint of (i) violation of human rights or abetment thereof; or (ii) negligence in the prevention of such violation, by a public servant;(b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.(g) undertake and promote research in the field of human rights".

¹⁰⁴ Article(s) 13(1) and 14(1) of the Protection of Human Rights Act. Article 13(1) : "[t]he commission shall while inquiring into the complaints under this Act have all the powers of a civil court trying a suit under the Code of Civil Procedure 1908, and in particular in respect of the following matters namely : (a) summoning and enforcing the attendance of witnesses and examining them on oath ; (b) discovery and production of documents (c) receiving evidence on affidavits ; (d) requisitioning any public record or copy thereof from any court or office ; (e)issuing commissions for the examination of witnesses and documents, (f) any other matter which may be prescribed". Article 14(1):" [t]he commission may for the purpose conducting any investigation pertaining to the inquiry, utilize the services of any officer or investigation agency of the central government or any state government with the concurrence of the central government or the state government as the case may be".

¹⁰⁵ Article 18 of the Protection of Human Rights Act : "[t]he commission may take any of the following steps during or upon the completion of an inquiry held under this act namely : [...] recommend to the concerned government or authority[...] to make payment of compensation or damages to the complainant or to the victim or the members of his family [...], initiate proceedings for prosecution [...], approach the supreme court or the high court concerned for such directions, orders or writs as that court may deem necessary [...] recommend to the concerned government or authority at any stage of the inquiry for the grant of such immediate interim relief to the victim or the members of his family as the commission may consider necessary".

attributes as the National Human Rights Commission, as such it can carry out inquiries and make recommendations, that are focused on child related issues which is evident from the composition of its staff. The chairperson of the NCPCR has to be any individual who is a great advocate in the promotion of welfare of children and the rest of the six staff members (2 of whom should at least be women) should be outstanding individuals in the society, having a good moral rectitude with experience in child education, health care, welfare and child development, juvenile justice, care of disabled, neglected and marginalized children, experience in the elimination of child labour, child psychology/sociology as well as in laws relating to the protection of children. (see footnotes for attributes of the commission).¹⁰⁶ The commission may urge the government or the relevant authority to initiate legal proceedings, to award an interim relief to the victim (child) or family members or any other necessary action against the perpetrator(s) in instances where a violation of the rights of the child has been found. On the same premise, it may make contacts with the judiciary for the issuance of orders or writs.¹⁰⁷

¹⁰⁶ Article(s) 3&13 of the Commissions for Protection of Child rights Act 2005. Article 3 : (1) "[t]he Central Government shall by notification, constitute a body to be known as the National Commission for Protection of Child Rights to exercise the powers conferred on, and to perform the functions assigned to it, under this Act". (2) "[t]he Commission shall consist of [...] a Chairperson who [...] has done outstanding work for promoting the welfare of children and [...] six members, out of which at least two shall be women, from the following fields, to be appointed [...] amongst persons of eminence, ability, integrity, standing and experience in, (i) education; (ii) child health, care, welfare or child development ; (iii) juvenile justice or care of neglected or marginalized children or children with disabilities (iv) elimination of child labour or children in distress; (v) child psychology or sociology ; and (vi) laws relating to children". Article 13 : "[t]he Commission shall [...] examine and review the safeguards provided by or under any law for the time being in force for the protection of the child rights and recommend measures for their effective implementation; [...] present to the central Government, annually and at such other intervals as the commission may deem fit, reports upon the working of those safeguards; [...] inquire into violation of child rights and recommend initiation of proceedings in such cases [...] examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures".

¹⁰⁷ Article 15 of the Commissions for Protection of Child Rights Act 2005: "[w]here the inquiry discloses, the commission of violation of child rights of a serious nature or contravention [...] it may recommend to the concerned Government or Authority the initiation of proceedings for prosecution [...], approach the supreme court or the high court concerned for such directions, orders or writs [...], recommend the [...] grant of such interim relief to the victim or the members of his family as the commission may consider necessary".

The Indian legislator has replicated these institutions at the level of the state. Hence there is the State Human Rights Commission¹⁰⁸ and the State Commission on the protection of the Child.¹⁰⁹ Though having a limited jurisdiction, they have similar attributes as the national institution. In order to increase accessibility to justice with fast results in human rights in general and child violations in particular, human rights courts¹¹⁰ and children's courts have similarly been instituted at various state jurisdictions.¹¹¹

The Indian Intelligence is made up of several agencies which will include amongst others the Research and Analysis Wing, Intelligence Bureau, Central Bureau of Investigations with a personnel often provided by the Indian Police Service (IPS), versed in the maintenance of maintaining peace and order, smuggling and drug trafficking, border policing, collection of intelligence etc.¹¹² Members of the IPS often receive capacity building trainings to help improve their efficiency in certain areas such as transnational organized crime¹¹³ and criminal investigation.¹¹⁴

An analysis of this obligation reveals that India is way off as compared to Cameroon. This can be illustrated in the fact that they have set up a specialized commission for the protection

¹⁰⁸ Article 21(1) of the Protection of Human Rights Act: "[a] state government may constitute a body to be known as ... (name of the state) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, a state commission under this chapter".

¹⁰⁹ Article 17(1) of the Commission for Protection of Child Rights Act: "[a] state government may constitute a body to be known as the (name of the state) Commission for Protection of Child Rights to exercise the powers conferred upon, and to perform the functions assigned to, a state Commission under this chapter".

¹¹⁰ Article 30 of the Protection of Human Rights Act: "[f]or the purpose of providing speedy trial of offences arising out of violation of human rights, the state government may, with the concurrence of the chief justice of the high court, by the notification, specify for each district a court session to be Human Rights court to try the said offences".

¹¹¹ Article 25 of the Commissions for Protection of Child Rights Act: "[f]or the purpose of providing speedy trial of offences against children or of the violation of child rights, the state government may, with the concurrence of the chief justice of the high court, by the notification, specify at least a court in the state or specify, for each district, a court session to be a children's court to try the said offences".

¹¹² See Service Profile for Indian Police service (IPS) : www.mha1.nic.in/pdfs/IPSPProfile_180314.pdf

¹¹³ See SAARC Perspective Training Course on Transnational Organized Crime, Dhaka-India, 27th Jan-14 Feb 2013: www.mha.nic.in/sites/upload_files/mha/files/SAARC-311212.pdf

¹¹⁴ See The Government of Japan's Technical Cooperation Programme, Training on Criminal Investigation, Japan, 18th January 2015-7th February 2015: www.mha.nic.in/sites/upload_files/mha/files/TrainingJapan_161014.pdf

of children, having officers that have been specially trained and are conversant in handling issues with respect to child protection. Additionally, they have also set up a human rights and children's court(s) which better understand violations encountered by children as such making the judicial system to be child friendly. India has also proven that they have more institutions that are well adapted in the fight against trafficking than Cameroon. These states are also required to protect victims of child trafficking

2.3. Obligation to protect victims

Generally states have a duty to secure the rights of persons within their jurisdiction, to ensure that these rights are not violated, restore them where it has been violated and provide remedies for the said violation.¹¹⁵ In this regard, states are not only obliged to investigate, prosecute and punish the perpetrators involved in child trafficking, there is also the need to provide the victims some special protection such as access to information on their legal rights and the relevant court and administrative proceedings with the possibility of their views to be heard, protection of their identity especially in situations where they are invited to testify in court, and ensure their safety etc., and assistance such as medical attention and rehabilitation, employment, employment, educational and training opportunities as well as the possibility of being compensated for the damage suffered as a result of the trafficking.¹¹⁶ This obligation will now be examined in both jurisdictions.

¹¹⁵ Obokata, *Trafficking of Human Beings from a Human Rights Perspective*. 48

¹¹⁶ Art. 6 of the Palermo protocol : (1) "In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential". (2) "Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases: [...] Information on relevant court and administrative proceedings; [...] Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence". (3) *supra* (4) "Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care". (5) "Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory". (6) *Supra*.

2.3.1. Cameroon

The Cameroon authorities rely heavily on the investigative attributes of the judicial police and its judiciary. The courts will use the mainstream procedure for criminal prosecution as aforementioned, when it comes to child trafficking. Hence the relevant due process rights will be enforced in courts and no extra privilege such as ensuring that the views of the victim must be heard nor protection of identity etc. It should be noted that, proceedings can also be instituted by any governmental department or the victim.¹¹⁷

To further fortify this duty, the state has instituted the services of labour inspectors throughout the nation. They have the authority to gain access into any kind of business or establishment to conduct unannounced checks so as to ascertain whether they are keeping to necessary regulations in place, such as not employing children below the ages of 14 as well as ensure that none of such children employed is subjected to hazardous work.¹¹⁸

2.3.2. India

Through The Immoral Traffic (Prevention) Act of 1956, the government of India has come up with several initiatives aimed at attaining the required standards introduced by international law. The Indian legislator relies heavily on the expertise of its magistrate to help handle trafficking cases within its judicial system. It also introduced special police officers and trafficking police officers which it uses concurrently as specialized investigators. The special officer receives advice on issues concerning child trafficking from an advisory body made up of at most five outstanding social workers of both sexes residing within his designated area of

¹¹⁷ See Article(s) 37 and 60 of the Cameroon Criminal Procedure Code. Article 37: “[a]ny person arrested shall be given reasonable facilities in particular to be in contact with his family, obtain legal advice, make arrangements for his defence, consult a doctor and receive medical treatment and take necessary steps to obtain his release on bail”. Article 60: “[c]riminal proceedings shall be instituted and prosecuted by the legal department. They may also be instituted by any government department or by the injured person under the conditions laid down by law”.

¹¹⁸ Article 108(1) of the Cameroon Labour code: “[l]abour Inspectors with the proper credentials shall be empowered: to enter any establishment liable to inspection, freely and without warning at any time of the day or night, for the purpose of inspection ; [...] to carry out any examination, control or inquiry which they consider necessary to ascertain that the laws regulations in force are strictly complied with”.

duty. It also makes mention of a “protective home” which will serve as facilities where rescued victims of child trafficking can be given shelter.¹¹⁹

The special police officer and the trafficking police officer have the authority to search any residence or business place with or without warrant and proceed to round up any individual they find within such premises especially where there is a strong reason to believe beyond reasonable doubt that the persons (children) living in that premises have been trafficked and are being sexually exploited or following a rescue mission that has been ordered by the magistrate. When this happens, the said individual has to be presented before the magistrate, where they will be given a chance to be heard, followed by a medical examination conducted by a registered medical practitioner, in order to eliminate any sexually transmitted diseases, physical injuries as well as to determine the age of the person. The magistrate may subject the child into safe custody in any institution recognized by the state, while pursuing an inquiry into the whole incident. After ascertaining the facts of the case and have come to a conclusion that the said individual needs to be protected and catered for, the magistrate may then order that the rescued child be placed in a protective home which may not be less than a year or more than three years, where they will be subjected to receive education, training, medical and psychiatric care respectively.¹²⁰

¹¹⁹ Article(s) 2(c), (g), (i), (j) of the Immoral Traffic (Prevention) Amendment Act. 2(c): “ ‘magistrate’ means a Magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section”. 2(g): “ ‘protective home’ means an institution [...] in which persons who are in need of care and protection, may be kept under this Act”. 2(i): “ ‘special police officer’ means a police officer appointed by or on behalf of the State Government to be in charge of police duties within a specified area for the purpose of this Act”. 2(j): “ ‘trafficking police officer’ means a police officer appointed by the Central Government under subsection (4) of Section 13”.

¹²⁰ Article 15(1), 16(2), 17(4) of the Immoral (Prevention) Act. Article 15(1): “[...] whenever the special police officer or the trafficking police officer [...], has reasonable grounds for believing that an offence punishable under this Act has been or is being committed [...], and that search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant”. Article 16(2): “[t]he police officer, after removing the person shall forthwith produce her before the Magistrate issuing the order”. Article 17(4): “[w]here the Magistrate is satisfied, after making an inquiry [...] that she is in need of care and protection, he may[...] make an order that such person be detained for such period, being not less than one year and not more than three, [...] in a protective home, or in

This is a measure taken by the state to ensure the safety of victims, however this measure tends to undermine their autonomy looking from the perspective that decisions that concern the welfare of the child ought to be taken in their best interest with their opinion being taken into consideration as well. This does not seem to be the case here especially as they have to stay in the protective home for the entire duration as fixed by the magistrate. .

Following the 1986 child labour act, a procedure has been introduced by the state which permits labour inspectors to investigate whether children working in establishments are actually have attained the required working age, are undergoing forced labour or are not suitable certain kinds of work. On this premise, persons having institutions employing children are required to keep a register of its employees, that can be easily accessed by the labour inspector at any time. This would permit him/her to ascertain the ages of the children employed and whether they have the capacity and strength to undertake such an employment as well as whether they have been trafficked.¹²¹

Victims or members of their families, have the possibility to receive compensation based on the fact that their rights have been violated in one way or the other.¹²²

Though the Indian government seems to meet a couple of the obligations under this head, their Cameroonian counterpart seems to be lacking behind. This leaves us with the last obligation which deserves be examined at this stage. It would highlight the causes and effects of trafficking.

such other custody,[...]based on directions relating to the proper care, guardianship, education, training and medical and psychiatric treatment of the person".

¹²¹ Article IX of the Child Labour (Prohibition and Regulation) Act 1986: "[e]very occupier of an establishment shall maintain a register in respect of children employed or permitted to work at the establishment".

¹²² Article 18(a) (1) The protection of Human Rights Act: "[...] where the inquiry discloses the commission of violation of human rights or negligence in the prevention of violation of human rights or abetment thereof by a public servant, it may recommend to the concerned Government or authority [...] to make payment of compensation or damages to the complainant, or to the victim or the members of his family as the Commission may consider necessary".

2.4. Obligation to address the causes and effects of trafficking

International law demands that, for states to finally circumvent child trafficking, they need to come up with policies and actions that are geared towards the suppression of the pull and push factors that trigger and harbour this practice as well as their associated effects, thereby reducing the vulnerability and exposure of victims and potential victims. The push factor represents any factors that have often exerted pressure on families and children, driving them into the hands of traffickers such as poverty, meanwhile the pull factors will represent that which tends to attract the children to particular destinations such as the media and gossips portraying other countries as an *el dorado* or a hot spot to make money.¹²³

2.4.1. Cameroon

The Ministry of Social Affairs in Cameroon has been endowed with the authority of formulating and implementing of child protection policies concerning social reintegration, combatting social exclusion.¹²⁴

The Cameroon government through its Employment and Growth Paper (GESP) has instituted a number of policies to tackle these push and pull factors. The paper addresses the socio – economic issues facing the Cameroonian Society.¹²⁵ On this premise, the paper looks forward to accelerate growth, create employment and encourage self-employment through the encouragement of small and medium enterprises, thereby reducing poverty. The small enterprises will receive flexible tax rates, and owners will be trained on conventional accounting methods and benefit from any other administrative help, especially when they are located in the rural areas. This is aimed at discouraging rural urban migration.¹²⁶

¹²³ Toolkit to combat trafficking in persons: Global Programme against Trafficking in Human Beings (UNODC, 2008), 424.

¹²⁴ See Decree No 2005/160 of 25th May 2005 on the Organization of The Ministry of Social Affairs.

¹²⁵ See Growth and Employment Strategy Paper 2010 / 2020 :

<https://www.imf.org/external/pubs/ft/scr/2010/cr10257.pdf>

¹²⁶ Article 2.2 and 4.1 of the Growth and Employment Strategy Paper.

The Cameroonian government has embarked on the building of the capacity of its citizens so that they can easily gain employment through the institution of the National Employment Fund as a result of its structural adjustment program Decentralization of authority for the past years has always been the governments' method of empowering local communities especially women to be involved in the management of their resources and fulfil community developmental projects.¹²⁷

The Cameroon government has implemented free education policy for children at primary schools.¹²⁸

2.4.2. India

The Indian government some time in 2012 formalized its twelfth five year plan that was aimed at addressing a range of issues within the society across the economy, development and social sectors. The volume on social sectors addresses social, employment, health, education and issues pertaining to women and children. The government is bent on reducing poverty, by promoting self-employment and subsidizing farming.¹²⁹

Education has been made free at the basic level with special attention in marginalized communities by opening schools in areas that are inhabited by people in rural areas, caste and villages.¹³⁰ Health has also been made affordable for poor people especially with the provision of generic drugs at very cheap prices. Hospitals have also been opened up in rural areas.¹³¹

¹²⁷ Article 4.2 &15 of the Growth and Employment strategy Paper.

¹²⁸ Decree No 2001/041 of the 19th February 2001 on the organization of schools.

¹²⁹ 12th Five Year Plan, Social Sectors, (2012-2017) Volume III (Sage Publications,2013) : http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol3.pdf

¹³⁰ National policy on Education 1986 (Department of Education, Ministry of human resource development, New Delhi, 1998): http://www.ncert.nic.in/oth_anoun/npe86.pdf

¹³¹ See National policy on Health 2002 :

<http://apps.who.int/medicinedocs/documents/s18023en/s18023en.pdf>

Although both states have introduced several measures in the form of laws and policies that criminalize child trafficking, created a series of institutions aimed at fostering the enforcement of these measures so as to protect and assist the victims, the practice remains prevalent within Cameroon and India .A lens view of the situation will reveal that, the practice continues to thrive mainly because of the existence of a handful of barriers that have most often than not weakened the enforcement of the existing measures . This will be examined in the next chapter.

Chapter 3: Barriers to the enforcement of the various frameworks that have been put in place to combat child trafficking in Cameroon and India

Cameroon and India have in the last decade made enormous strides to curb the practice of child trafficking within their various jurisdictions. However, child trafficking continues to be witnessed in different parts of these countries. This is a clear reflection that there still exist a big vacuum within both systems motivated by the existence of a number of barriers. This will include barriers caused by the limitation of existing legal instruments, Institutional barriers, economic barriers and social barriers.

3.1. Barrier caused by the limitation of existing legal instruments

The zeal to curb child trafficking both internationally and nationally has triggered the formalization of several legislations. Despite their existence, child trafficking has continued to prevail due to the fact that some of these legislations are themselves limited which is reflected in a number of provisions that are not clear enough. This has greatly contributed in weakening efforts geared towards the curbing of child trafficking.

Prominent among the existing instruments is the protocol to prevent, suppress and punish trafficking in persons especially women and children, supplementing the United Nations convention against transnational organized crime also known as the Palermo. The protocol urges state parties to take up every measure “as may be necessary “to and criminalize and incorporate child trafficking into their various legal system.¹³² The inclusion of this phrase in the protocol is somehow problematic. It looks like an open letter for states to do whatever they feel as doing under the guise of criminalizing trafficking. It actually lacks a defined measure scheme outlining the particular processes to be followed in order to achieve the aim

¹³² See section 5 of the Palermo protocol on criminalization *supra*

of criminalization. Similarly, member states have to ensure that the punishment given to the traffickers ought to be proportionate to the gravity of the offence.¹³³

In order to understand the context of the said provision one needs to ask oneself a couple of questions -what is proportionality and how can it be attained?

In the Australian high court case of *Hoare v R* (1989 HCA 33,167 CLR 348, 40 A Crim R 391), it was pointed out that,

*“[a] basic principle of sentencing law is that the sentence of imprisonment imposed by a court should never exceed that which can be justified as appropriate or proportionate to the gravity of the crime considered in light of its objective circumstances “ .*¹³⁴

In other words proportionality will be said to have been fulfilled when the offence needs to be equivalent to the severity of the penalty.

On the premise of this principle, it should be noted that Cameroon¹³⁵ and India¹³⁶ have both instituted anti trafficking laws that criminalizes and punishes traffickers on a proportionate basis.

In the case of Cameroon, a child trafficker is likely to receive an imprisonment term of 15 to 20 years with the possibility of a fine from 100.000 Fcfa (\$173.42) to 10.000.000 Fcfa (\$17341.90).¹³⁷ Meanwhile a similar child trafficker in India will attract a prison term of 10 years to life imprisonment and the possibility of a fine.¹³⁸ A reflection on the prison term form

¹³³ See line 45 of the United Nations Global Plan of Action to combat Trafficking in Persons *supra*

¹³⁴ Mirko Bagaric, *Proportionality in sentencing: The need to factor in community Experience, Not Public Opinion* in *Popular Punishment: On the Normative Significance of Public Opinion* ed. J. Ryberg and Julian V. Roberts (Oxford: Oxford Scholarship online, 2014), 3.

¹³⁵ See Law against trafficking in persons and slavery in Cameroon *supra*

¹³⁶ See The Criminal Law (Amendment) Act 2013 *supra*

¹³⁷ See Section 5 of the Law against trafficking in persons and slavery *supra*

¹³⁸ See Section 370 (4) of the Criminal Law (Amendment) Act.

both countries will reveal that India tends to be stricter on child traffickers than Cameroon.

This brings into play the idea that different societies have different ways of condemning crimes. Some might take it seriously while others might be lenient. It calls for further questioning of the principle of proportionality since it will seem it instead encourages an atmosphere of disparity in punishment. Indian legislators consider child trafficking to be severe the reason why its laws makes provision for a maximum sentence of life imprisonment, meanwhile Cameroon will compromise for a 20 year jail term. This disparity in punishment is clearly visible when we turn to other jurisdictions .The United Kingdom for instance calls for a maximum sentence of 14 years in prison¹³⁹ and Ghana stands for a maximum of 5 years.¹⁴⁰ This reaffirms the idea that there is the need for a well-defined common guideline on how to criminalize child trafficking and instituting its punishment especially as it is a practice that has attracted international condemnation, hence a disparity in punishment should not exist on its radar.

Additional, mainstreaming child trafficking into the criminal system implies that perpetrators as any other ordinary criminal is subjected to benefit from mitigating circumstances on the grounds of ill health. This therefore implies that a trafficker may only a serve a portion of their sentences or may not serve it at all, permitting them the possibility to get back to the streets and resume the business of child trafficking.

Examining subsequent articles of the protocol will reveal that the content of some provisions actually create no actual binding obligations on the part of states nor any mandatory

¹³⁹ Section 4(5) of the Asylum and Immigration (Treatment of Claimants, etc.) Bill of 2004: “[a] person guilty of [trafficking][...] shall be liable,(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or(b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both”.

¹⁴⁰ Section 2(2) of the Human Trafficking Act 2005 : “[any] person who [is involved in the][...][...][recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by (a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or (b) giving or receiving payments and benefits to achieve consent [...] commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years” .

entitlement on the part of the victim, leaving every action to be dependent on the discretion of the state. This has helped in weakening the applicability of the protocol in the fight against child trafficking. One of such provisions is article 6(3) which emphasizes that “[e]ach State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons”. The inclusion of the word “consider” weakens the duty of the state, relegating it to one of discretion. The same can be said of other words such as “take into account” as well as “endeavour to provide” found in article 6(4) which urges member states “[...] to take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons” and article 6(5) which is of the opinion that, member states “[...] shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory”.¹⁴¹

Additionally, the protocol encourages member states to ensure that their legal and administrative system should operate in such a way that information concerning court or administrative proceedings is readily made available to the victim as well as ensuring that their views and concerns are taken into consideration when needed during criminal proceedings.¹⁴² This provision gives the impression that, the protocol is more concerned on guaranteeing the due process rights of the victim during court proceedings rather than guaranteeing a right to protection.

Meanwhile the introduction of the United Nations global plan of action in 2010 which was aimed at facilitating and reinforcing the implementation of the Palermo protocol has not really helped the situation. Although the global plan action can be celebrated for shedding light on several issues notably the mainstreaming of trafficking into different UN agenda(s) with

¹⁴¹ See Article 6(3), 6(4) and 6(5) of the Palermo Protocol *supra*

¹⁴² Article 6(2) of the Palermo Protocol *supra*.

respect to development, human rights, rule and good governance,¹⁴³ the establishment of the United Nations voluntary trust fund aimed at providing financial, humanitarian and legal aid to victims of trafficking with emphasis on women and children¹⁴⁴ as well as the confiscation of assets belonging to perpetrators of trafficking,¹⁴⁵ it is great wonder that the plan has no provision that seem to oblige member states to respect their obligations arising from the Palermo protocol and any consequences that will follow should these obligations not be respected. This position may be related to the fact that it is merely a protocol which is supplementing a convention – the United Nations Convention against Transnational Organized Crime.¹⁴⁶

The fact that Cameroon and India have not yet ratified some conventions that are vital in the fight against child trafficking and related acts is something of great concern. Cameroon has not yet ratified the United Nations CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography¹⁴⁷ as well as the Optional Protocol on the Convention against Torture.¹⁴⁸ India is yet to ratify the International Labour Organization (ILO) Convention on Minimum Age, the Convention on the Worst Forms of Child Labour¹⁴⁹ as well

¹⁴³ Line 14 of the United Nations Global Plan of Action to combat trafficking in persons : “[m]ainstream the issue of trafficking in persons into the broader policies and programmes of the United Nations aimed at addressing economic and societal development, human rights, the rule of law, good governance, education and natural disaster and post conflict reconstruction”.

¹⁴⁴ Line 38 of the United Nations Global Plan of Action to combat trafficking in persons: “[e]stablish the United Nations Voluntary Trust fund for victims of trafficking in persons especially women and children, to provide humanitarian, legal and financial aid to victims of trafficking in persons”.

¹⁴⁵ Line 45 United Nations Global Plan of Action to combat trafficking in persons *supra*

¹⁴⁶ L. L. Shoaps, *Room for improvement: Palermo protocol and the Trafficking Victims Protection Act* (Lewis & Clark Review, 2013), 951.

¹⁴⁷ See Country status of United Nations CRC Optional protocol on the sale of children, child prostitution and Child Pornography, 2000 , accessed on October, 29,2015, http://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en

¹⁴⁸ See Country status on the optional protocol on the convention against torture accessed on October,29,2015,

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CMR&Lang=EN

¹⁴⁹ See Country Status of ILO convention 138 on Minimum age and ILO convention 182 on worst forms of child labour accessed on October,29,2015, http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691

as the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.¹⁵⁰

Though the Cameroon government has enacted an anti-trafficking law that criminalizes and sanctions traffickers, a comprehensive appraisal of the said law will reveal that it is a far cry from the spirit of the protocol. To begin with it does not provide any definition whatsoever of who should be referred to as child for the purposes of child trafficking. Similarly, the law is very quiet when it comes to the protection and assistance of the victims. It does not make any provision for the compensation of the victims of child trafficking, nor does it ensure that the opinion of the victim is heard in court as well as their safety and protection. No reference is made as to the assistance of victims either medically, psychologically, nor any counselling, rehabilitation and training opportunities. It would seem the Cameroonian legislator is only concerned about the criminalization of the child trafficking, and little or no consideration is given to the protection of the rights of the child. In a nutshell, one can be forced to say that the Cameroonian anti trafficking law was not formulated in the best interest of the child who is the victim. It is a mere window dressing which suggests that it was only enacted to prove to entire international community that they respect their international duty by enacting an anti-trafficking law. Following this revelation, one can easily argue that, the legislation does not fit the purpose

The Cameroonian labour code can be lauded for providing an age restriction for gaining employment and the prohibition of hazardous work for children below 18. But it would seem this prohibition is limited only to work carried out on board ships either as a trimmer or a stocker.¹⁵¹ Instead of providing an encompassing list of jobs that may be hazardous to the

¹⁵⁰ See Country status on the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, accessed on October,29,2015,

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN

¹⁵¹ See Section 86(1) and 86(2)(a) of the Cameroon Labour code *supra*

health children, it leaves it at the discretion of the minister in charge of labour to come up with such a list which till date does not seem to exist.¹⁵² This suggests that children can be engaged in any kind of hazardous work so long as it is not on board a ship in the capacity of a trimmer or a stocker. This can be very fatal blunder considering the fact that Cameroon is trying to curb child trafficking and related acts

The barriers caused by the existing legislations cannot be examined in isolation, as such it will also be good enough to examine others, especially the institutional barriers.

3.2. Institutional barriers

Cameroon and India have set up a variety of Institutions across different sectors of the government to facilitate the enforcement of the regime to combat child trafficking. This institution consists of the judiciary (courts) that have as prime duty to prosecute traffickers, the law enforcement officers other relevant officers such as labour inspectors who carry out investigations on child trafficking, immigration officers as well as the human rights commissions.

Despite their presence across different communities, enforcement clearly remains something that needs more to be desired. This has been caused largely by corruption, partiality, incompetence of the personnel, lack of funds and resources as well as some the laws that created the institutions.

3.2.1. Institutional barriers to the enforcement of the framework to combat child trafficking in Cameroon

Cameroon is a country that has been under the spell of corruption for a very long time. The 2014 corruption index developed by Transparency International ranked Cameroon 136th

¹⁵² Section 86(3) of the Cameroon Labour code :” [a]n order of the minister in charge of labour shall specify the types of work and categories of enterprises in which young people shall not be employed, and the age-limit to which the prohibition shall apply”.

amongst 174 nations.¹⁵³ This already gives us an inkling of how corruption is wide spread within the Cameroonian society.

Reports have revealed that members of the judiciary have time without number accepted bribes from offenders or from their family members in order to benefit for a reduction of their sentences or procure their premature release from prisons as well as introduce unnecessary delays so as to frustrate the victim or the family's effort in their quest for justice.¹⁵⁴

Transparency International rightly acknowledges that, "corruption undermines justice, human rights and human dignity".¹⁵⁵ The fact that the Cameroonian judiciary is not independent is another impeding factor which affects the manner in which it pronounces justice.¹⁵⁶ Their modus operandi is at times being influenced by the executive or other influential individuals such as rich business people, causing them to indefinitely stay proceedings in some cases or not to try other cases on the basis of a lack of political will.¹⁵⁷ This and the other factors have definitely shaped the way justice is meted out in criminal cases in general and cases of child trafficking in particular, which is often to the disadvantage of the victim. Furthermore, there are no indications that the curriculum employed in the training of judges empowers them to muster a working psyche or special interrogation techniques that would assist them to easily appreciate child protection talk less of child trafficking. There are also indications that most of the judges are not familiar with the 2011 anti-trafficking law making them at times to

¹⁵³ See Corruption Index 2014 in http://www.transparency.org/cpi2014/in_detail

¹⁵⁴ Gender Empowerment and Development (GeED): *Cameroon NGO REPORT On the implementation of the ICCPR (Replies to the List of Issues CCPR/C/CMR/Q4)*, (The Centre for Civil and Political rights, Bamenda, Douala, Geneva 2010), 33.

¹⁵⁵ *Corruption and Human Trafficking* (Transparency International Working paper #3, 2011), 2.

¹⁵⁶ Article 37(3) of the Cameroonian Constitution: "[t]he President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and for the legal department".

¹⁵⁷ Cameroon 2012 Human Rights Reports (U.S. Department of States, Bureau of Democracy Human Rights and Labour 2012), 24.

arraign and convict perpetrators on different criminal charges that will attract a lesser sentence rather than child trafficking.¹⁵⁸

Corruption has also made its marks within the ambit of the police force and immigration officers. It has been tipped off several times that members of police have accepted bribes on several instances aimed at securing the release of arrested individuals suspected of committing crimes such as child trafficking or bribes received at check points and borders precluding them from implementing appropriate searches and identification procedures.¹⁵⁹ Other police officers go as far as blocking investigations on child trafficking.¹⁶⁰ Also the trainings that are meant to improve the capacity of the police and immigration officers, seem to be reserved only for a selected few or some special branch thereby limiting the impact of the acquired skills to just a selected few which is not good enough if the state really wishes to deter child traffickers and thereby curb child trafficking in the long run. (See capacity building and training sessions *infra*)

The existence of the Cameroonian custodian of human rights – the National Commission on Human Rights and freedoms has not helped matters when it comes to the enforcement of the child trafficking regime. First and foremost, this institution is often subjected to political interference and also suffers from a lack of resources.¹⁶¹ This is noticeable on the grounds that the head of the commission and his/her subordinates are the product of a presidential appointment following a presidential decree hence jeopardizing their sense of independence.¹⁶² The remuneration they receive for their services offered is solely reliant on

¹⁵⁸ *Cameroon Moderate Advancement: 2014 findings on the worst forms of child labour* (United States Department of Labour, Bureau of International Affairs, 2014), 4.

¹⁵⁹ *Cameroon 2012 Human Rights Report*, 23.

¹⁶⁰ *Corruption and Human Trafficking*, 2.

¹⁶¹ S. Metha: *Human Rights Commissions and Oversight of Police* (CHRI), 9.

¹⁶² Section 6(1) of the Law on the organization and the functioning of the National Commission on Human rights and freedoms: “[t]he Commission shall comprise 30 (thirty) commissioners, as follows: President, [a]n independent personality, assisted by a Vice-Chairperson. Both shall be appointed by decree of the President of the Republic”.

an executive decisions i.e. it must be recommended by the prime minister who is the head of the government and then approved by the president who is the head of state, through a presidential decree. It should be noted that, the financial resources of the NCHRF forms part of the annual state budget and can only be authorized upon the approval of the prime minister.¹⁶³ In carrying out its duties, the commission can only make recommendations which at times may not be taken into consideration by the government. They can also make advisory opinions, write reports but cannot initiate any kind of judicial review which is very sacrosanct for an entity charged with the protection and guarantee of human rights in general and children rights in particular.¹⁶⁴

Labour inspectors also have a role to play when it comes to the protection of the rights of children. This role is hugely felt when it comes to the identification of children that have entrapped in a situations of exploitative and hazardous labour. That notwithstanding, their work is hampered by shortage of resources such as vehicles and fuel in order to carry out their unannounced visits on sites where children are said to be working, more to this, very few of the labour inspectors have actually received some form of training on child labour.¹⁶⁵

3.2.2. Institutional barriers to the enforcement of the framework to combat child trafficking in India

India has over years instituted a number of institutions in order to discharge its international duty to curb child trafficking, herein guaranteeing and protecting the rights of children. This would include the judiciary which comprises of the regular courts, the Human rights and child

¹⁶³ Section(s) 12(2) & 20 & of the Law on the organization and the functioning of the National Commission on Human rights and freedoms.12 (2): “[t]he amount of the monthly remuneration of the Chairperson, Vice-Chairperson and Secretary-General of the Commission, and the nature of special benefits referred to in Section 12 (1) shall be determined by decree of the President of the Republic, on the recommendation of the Prime Minister”. Section 20: “[t]he Commission's resources shall be derived from: annual State budget allocations; support from national and international partners; donations and legacies”.

¹⁶⁴ Section 19(1) of the Law on the organization and the functioning of the National Commission on Human rights and Freedoms: “[w]ithin the framework of its activities, the Commission shall hold deliberation, make recommendations, give its opinions and draw up reports”.

¹⁶⁵ *Cameroon Moderate Advancement*, 4.

courts, the police and relevant officers, National and State Human rights Commissions, the National and state Commission(s) for Protection of Child Rights (NCPCR). These institutions just like those in Cameroon are also plagued by corruption, incompetence of staff, lack of resources as well as certain operating limitations.

The Indian judiciary faces challenges to render justice due to corruption practices that have infiltrated its system. The personnel is made up of corrupt judicial officials and judges who often indulge themselves in practices such as the delay of legal proceedings, assigning of cases to corrupt judges, manipulation and concealment of court documents.¹⁶⁶ On the other hand, the courts are backlogged and overburdened with cases due to shortage of judges causing child trafficking cases to be left unattended for over long periods of time and as the famous maxim will hold it, “justice delay is justice denied”.¹⁶⁷

The law enforcement officers are not better off. They are equally involved in corrupt practices such as receiving bribes and sexual favours from perpetrators aimed at avoiding their arrest or tipping them off in the eventuality of an imminent raid on their business premises.¹⁶⁸

Likewise, some officers have a low priority for child trafficking and related cases which they consider not to be misconduct worthy of being charged under the necessary sections of the law. This has encouraged them not to efficiently investigate nor register such cases, coupled with the fact that they do not have a mastery of the various existing laws and statutes that

¹⁶⁶ S.Hameed, S.Hlatshwayo, E. Tanner, M. Türker and J.Yang, *Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities for The Asia Foundation* (March 2012), 20.

¹⁶⁷ United States department of labour Bureau of International Affairs, India *Moderate Advancement: 2014 findings on the worst forms of child labor* (2014), 4.

¹⁶⁸ M. B. Uddin, *Human Trafficking in South Asia: Issues of Corruption and Human Security*, International Journal of Social Work and Human Services Practice Vol.2. No.1 (Horizon Research Publishing, 2011), 23.

address child trafficking and related acts.¹⁶⁹ There are even reports that in some areas, police officers are actually running human trafficking cartels.¹⁷⁰

The afore mentioned human rights commissions in carrying out their work are subject to a variety of challenges often imposed on them by the same legislations that created them. For instance, the law that created the National human rights commission restrains it from making inquiries into any matter that is being considered by any fact finding commission that has been set up by the state.¹⁷¹ The commission for protection of child rights also suffers a similar fate.¹⁷²

As Mehta rightly suggests, this provision can be used as a tool by the Indian government to sabotage the efforts of the national human rights commission in the sense that, it may set up a special commission in instances where it does not want a certain matter to be investigated by them.¹⁷³ Similarly, the government may also decide to classify certain matters as relating to issues of national policy, removing such a matter from the jurisdiction of the commission.¹⁷⁴ It is worth noting that the national human right commission can only investigate human rights violations that were committed within a year.¹⁷⁵

After having examined the first barrier, it will be just and right to now proceed to the second herein the economic barrier(s).

¹⁶⁹ Hameed, Hlatshwayo, Tanner, Türker and Yang, *Human Trafficking in India*, 20-21.

¹⁷⁰ Asian Human Rights Commission, India : Police officers run human trafficking cartel on <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-036-2013>

¹⁷¹ Article 36(1) of the Protection of Human Rights Act: “[t]he commission shall not inquire into any matter which is pending before a state commission or any other commission duly constituted under any law for the time being in force”.

¹⁷² Article 13 (2) of the Commissions for Protection of Child Rights Act: “[t]he commission shall not inquire into any matter which is pending before a state commission or any other commission duly constituted under any law for the time being in force”.

¹⁷³ Metha, *Human Rights Commissions and Oversight of Police*, 7.

¹⁷⁴ Article 33(2) of the Commissions for Protection of Child Rights : “[i]f any dispute arises between the central government and the commission as to whether a question is or not a question of policy relating to national purposes, the decision of the central government shall be final”.

¹⁷⁵ Article 36(2) of the Protection of Human Rights Act: “[t]he commission or the state commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed”.

3.3. Economic barriers

The economic ability of individuals is very important in every country, because it prevents them from indulging in certain kind of practices and crime. Poverty due to lack of jobs and opportunities has been the major contributing factor to that nourishes of the practice of child trafficking herein beating the government's effort to curb child trafficking both in Cameroon and India.

3.3.1: Economic barriers to the enforcement of the framework to combat child trafficking in Cameroon

Since the economic depression some years ago, many countries have witnessed a fall in their economies and a rise in unemployment rates of which Cameroon is no exception. Poverty has, and continues to lurk within the society .The Mundi Index holds that 48% of the Cameroons population is living below the poverty line.¹⁷⁶ This has greatly weakened the financial position of some parents and children, increasing the vulnerability of the kids to traffickers. Some of the parents cannot even afford to educate their children even at elementary (primary) education so that they can be empowered. The search for jobs has also been one of those aspects that have drawn children closer to traffickers despite the government's effort to curb trafficking. This has been worsened with the advent of the internet and the social media wherein attractive opportunities are often brandished and advertised such as modeling, hotel jobs, babysitting in countries with better economies, often makes them more vulnerable and easy to fall into the hands of traffickers.¹⁷⁷

Poverty may also contribute to the difficulties of victims or their parents to pursue legal proceedings especially where it is associated with legal fees and associated cost which they cannot afford such as transportation, food and accommodation if they live in a different city.

¹⁷⁶ Mundi Index: <http://www.indexmundi.com/g/r.aspx?v=69>

¹⁷⁷ *Campaign against child trafficking for sexual exploitation: stop child trafficking and sexual exploitation!* ("Lets protect our children coalition", May 2010), 12.

Poverty has a very bad influence because it can even push the rescued victim of child trafficking to be re-trafficked or re-victimized.

3.3.2. Economic barriers to the enforcement of the framework to combat child trafficking in India

The lack of economic opportunities and low economic strength are also the main ingredients that have permitted the practice of child trafficking to overrule the government's effort to have it checked in India. This makes children and their parents susceptible to the claws of the traffickers. It is reported that child trafficking is more prevalent in areas where people live below the poverty line in India.¹⁷⁸ Parents go to the extreme of selling their children, just to have money to take care of basic amenities such as food.¹⁷⁹

Looking at both countries, there is a strong indication that there exist a correlation between poverty and vulnerability. Hence where there is a high rate of poverty the vulnerability of the children is very high and vice versa. This must have triggered the following, quoting the words from Eira Mishra: “[e]conomic strength of persons is an important factor in deciding their vulnerability”.¹⁸⁰

Nothing more will be vital at this point than to examine the socio-cultural barriers that hinder the state of Cameroon and India's effort to clamp down on child trafficking.

3.4. Socio-cultural barriers

The prevalence of some socio-cultural ingredients within the Cameroon and Indian societies, have helped to water down the enforcement regimes that have been put in place to combat child trafficking. This will include among others illiteracy and cultural practices which will be highlighted right away.

¹⁷⁸ Hameed, Hlatshwayo, Tanner, Türker and Yang, *Human trafficking in India*, 12.

¹⁷⁹ Mishra, *combatting human trafficking*, 174.

¹⁸⁰ Mishra, *combatting human trafficking*, 174

3.4.1: Socio-cultural barriers to the enforcement of the framework to combat child trafficking in Cameroon

Illiteracy is one of the greatest causes of letting child trafficking prevail within the society despite the government's effort to deter traffickers. A cross section of the populace is not aware of the harmful consequences of this practice and sees nothing wrong in it, hence they continuously carry out activities that increase the vulnerability and exposure of the children such as "child placements".

The willingness of some parents to offer their children a better life or education has helped in encouraging the practice of placing of children with well to do relatives in faraway cities and towns. Once they get to the big cities, these children are exposed to all sorts of exploitation ranging from child labour to sexual exploitation often used to the advantage of the traffickers.¹⁸¹

Primary education in Cameroon has been made free by the government, it seems not to be the case especially as the government's responsibility ends at covering tuition fee, parents are continuously subjected to pay certain levies such as the parents teachers association fee (PTA) which is said to be used to run certain costs in the schools and pay some teachers. The parents equally have to provide books, food and uniforms for the children. Evidently the burden of assuring that a child attends school falls back on the parents, consequently where the parents cannot afford such fees, the children are forced to drop out of school. Such children are often seen carrying out petty trades to sustain their families. There is the lack of schools in some rural areas. This really takes them closer to the traffickers. There are still places in Cameroon

¹⁸¹ *Campaign against child trafficking for sexual exploitation*, 12.

where child illiteracy is still high which is the situation in most rural areas due to fact that there are no schools.¹⁸²

In the northern part of the country, there are higher levels of illiteracy among girls than boys. Most parents in this region will prefer the male child to attend school than the females who are reserved to be married. This has contributed in fuelling the common practice wherein girls in their teens are often sent into early marriages. These young females are very vulnerable and live at the mercy of their husbands who will treat them in the manner they think is necessary, which increases their chances of being trafficked.¹⁸³

3.4.2. Socio-cultural barriers to the enforcement of the framework to combat child trafficking in India

India is a society that is embedded in strong cultural practices that has been in existence since time immemorial. Their presence have aided in the fuelling of the practice of child trafficking due to the fact that it increases their vulnerability and exposure to traffickers, thereby weakening the efforts that have been instituted by the government.

One of such practices is the dowry system wherein the bride has certain financial obligations to fulfil her marriage to the bride. This is often considered as a financial burden to some families, as such, traffickers tend to use this to their advantage, promising to arrange dowry free marriages for these girls. This often makes them fall for such promises since they hail from very poor families. Another such practice is the *devadasi* and *jogini* not forgetting begging which is looked upon as a lucrative business by the traffickers often used to enrich them at the detriment of the victim. Additionally a great section of people hailing from the areas where trafficking is prevalent in India are illiterate people who have little or no

¹⁸² *Cameroon moderate advancement*, 2.

¹⁸³ E. Kongnyuy, A. Kongnyuy and E. Richter: *Child labour in Cameroon*. , The Internet Journal of World Health and Societal Politics, Volume 5, Number 1(2007), 2.

knowledge of the ills of trafficking, coupled with fact that they are often members of the under privileged castes and tribes with little education, job opportunities that has assisted in increasing the degree of their ignorance and poverty.¹⁸⁴

Educating their children is also a huge task especially as the children from these marginalized tribes and caste face severe discrimination from their teachers and classmates, or are even refused admission into some of the schools.¹⁸⁵ Additionally some of these marginalized localities have no schools and even where there are schools they lack certain basic amenities such as running water and functioning toilets or the teachers have a high rate of absenteeism that has discouraged some of this kids from attending school which has led to a high rates of child illiteracy.¹⁸⁶

Despite the efforts put in place by the governments of Cameroon and India to curb on child trafficking, it has just been revealed that the practice is still prevalent within the society largely caused by a number of barriers that have been raised so far. This therefore suggests that the efforts are plagued with flaws, hence the need to introduce a number of proposed reforms which would be highlighted in the next chapter.

¹⁸⁴ Hameed, Hlatshwayo, Tanner, Türker and Yang, *Human Trafficking in India*, 14

¹⁸⁵ Asian Human Rights Commission, India : Marginalized Children Denied Education on <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-029-2014/?searchterm=>

¹⁸⁶ India 2013 Human Rights Report (U.S. Department of States, Bureau of Democracy Human Rights and Labour 2013), 48-49.

Chapter 4: Recommendations

A part of this thesis has brought to the limelight what has been transpiring in Cameroon and India as far as the fight against child trafficking and related acts is concerned. Another part has revealed that irrespective of the framework work that has been put in place, this practice seems to be persistent as a result of certain barriers. The last chapter is going to be addressing issues that need to be improved in order to fortify the existing anti-trafficking regime.

Some improvements will be directed at the Palermo protocol and others will be directed at the governments of Cameroon and India respectively.

The Palermo protocol has laid out the blue print for governments to follow that will permit them reduce child trafficking within their jurisdictions. But in many instances the protocol uses a language that creates little or no binding obligation on member states. I would recommend a change of language to that of which creates binding and mandatory obligations just as the provision that makes criminalization mandatory. Although this might discourage states from ratifying the treaty, it will however provide an arena for those who have ratified to fully adhere to their commitments as well as those that will subsequently ratify, but this could still be problematic since the aim of the international fora is to have as many member states as possible for every treaty and convention.

Additionally, since the practice of child trafficking has been internationally condemned and international cooperation is consistently being invoked so as to oversee this practice, a comprehensive guideline should be introduced that outlines how to go about the criminalization process especially on the fixing of its penalties, circumstances to be taken into consideration during the sentencing process. While this might be difficult to achieve since every state has its own peculiar legal system and may affect the foundations of criminal justice, but it at least tries to provide some sort of uniformity.

Lastly, there is a great need for a mechanism that will ensure that states eventually get to fulfil their obligations under the Palermo which can be achieved by giving it status of a convention rather than a protocol supplementing a convention .Similarly, the non-cooperative states may be sanctioned by the General assembly of the United nations such as imposing embargoes on such states and travel bans on their leaders.

At the level of states, both Cameroon and India have to implement a couple of issues to address which will enable them to improve on the situation on the ground as far as child trafficking is concerned.

To begin with the state of Cameroon needs to upgrade its anti-trafficking law to reflect the spirit of the Palermo protocol.as such it would need to adapt its working definition on trafficking, include provisions for the effective protection and assistance of victims and a functioning compensation scheme.

They both have to organize massive sensitization campaigns to improve the people's awareness on the dangers of child trafficking, especially in the areas where child trafficking is prevalent. Such campaigns may include consistent airing of anti-trafficking messages on state television, national and urban radio stations, text messages on phones. These messages should be disseminated in a language that is easily understood by the persons most affected.

An effective witness protection scheme should be established, since as this will boost up victims and witnesses to denounce crimes without fear of reprisals or being re-victimized.

More and frequent capacity building exercises should be organized to empower the judiciary, law enforcement and other relevant officers on the existing legislations in various states.

Additionally human rights and specifically children rights should be included in the training curriculum of subsequent judges and law enforcement officers, labour inspectors so as to permit them to have a mastery of human rights which they will integrate into their work.

Corruption should be kicked out from the different institutions that are charged with the implementation of the anti-trafficking frame work such as the judiciary and law enforcement officers. Personnel should be investigated, sanctioned with their names published on newspapers and read over the national radio and on the television.

Both governments should try as much as possible to alleviate poverty within this areas where trafficking often takes place. This can be achieved by introducing capacity building trainings that will empower individuals living in such areas with lifelong skills such as in animal husbandry, fish farming, rice cultivation etc. At the completion of such a training, provisions for small micro finance loans with very little interest rates should be made available to such individuals wherein they can now start of small businesses of their and in the long run they will be able make money for themselves.

Serious efforts should also be made at wiping away those social practices that have the tendency of making children vulnerable to traffickers. On this note, stringent laws should be enacted as well as a local task force that has access within the said communities where such social practices are a common place, who will play the role of whistle blowers to the administration and law enforcement officers in particular. Social exclusion and stigmatization should also be discouraged especially in India by a change of state policy that will make room for more inclusion of marginalized people coupled with more social and economic developmental projects carried out in such areas.

Cameroon and India should come up with a data base where statistics are kept for crimes of this nature. Hot lines should also be created so that individuals can easily report cases of child trafficking.

Border and airport controls should be reinforced and strict identification procedures should be implemented on persons traveling with children. In this regard new measures should be

implemented during passport and visa applications for instance, the finger print of children should be collected at every stage of process, so that this will grant immigration officers the possibility to easily identify whether children are travelling with their real parents.

Conclusion

Child trafficking is a practice that undermines the rights and dignity of children. Its prevalence is tremendously sustained by the vulnerability of children. The said practice has been strongly disapproved by the international community. Following efforts to contain this practice a blue print instrument was drafted to be followed by states, known as the Palermo protocol. Following their international obligations, member states have the duty to implement this protocol in its entirety so as to protect the rights of children. However, due to the vulnerability of children traffickers have consistently devised means to keep their trade flying herein evading restraints that have been put in place by the state. In other instances, the states have failed time without number in fulfilling the protocol in its entirety thereby jeopardizing the protection of the rights of the child. This particular situation seems to awaken the discourse that has been going on for a long time now in the international fora calling for the establishment of an international tribunal that will oversee the protection and enforcement of human rights in situations where the state has failed to guarantee these rights. Hence an international court of human rights with a universal jurisdiction and binding judgments will be the answer to the cry of every human right violation in general and the rights of the child in particular since as it will compel states to ensure that children enjoy their rights in the long run curbing child trafficking.

Bibliography

Books, journals and articles.

Agarwal, Sunik Kurma. *Implementation of the International Law in India: Role of the Judiciary* .McGill University, available on:

http://oppenheimer.mcgill.ca/IMG/pdf/SK_Agarwal.pdf

Bagaric, Mirko. *Proportionality in sentencing: The need to factor in community Experience, Not Public Opinion*. In *Popular Punishment: On the Normative Significance of Public Opinion* edited by J. Ryberg and Julian V. Roberts .Oxford: Oxford Scholarship online, 2014.

Belser, Patrick. *Forced Labour and Human Trafficking: Estimating profits*, working paper 42. Geneva: International Labour Office, March 2005.

Faure, Michael and Du Plessis, Willemien .ed. *The balancing of interests in environmental Law in Africa*. Pretoria: Pretoria University Law Press, 2011.

Metha, Swathi. *Human Rights Commissions and Oversight of Police (CHRI)*:

http://www.humanrightsinitiative.org/programs/aj/police/res_mat/hrc_oversight_of_police.pdf

Mishra, Eira. *Combating Human Trafficking: A legal perspective with special reference to India*, *Sociology and Anthropology* 1(4):172-179 .Horizon Research Publishing, 2013.

Nikolic-Ristanovic, Vesna. *Sex Trafficking: The Impact of War, Militarism and Globalization in Eastern Europe*, *Gender and Globalism*, vol. 17. Ann Arbor, MI: MPublishing, University of Michigan Library 2003.

Obokota, Thomas. *Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach*. Leiden: Martinus Nijhoof Publishers, 2006.

Picarelli, John. *Human Trafficking & Organized Crime in the US & Western Europe*. In *Strategies against Human Trafficking : The Role of the Security Sector* edited by Cornelius Friensendorf .Vienna and Geneva : National Defence Academy and Austrian Ministry of Defence and Sports in co-operation with Geneva Centre for the Democratic Control of Armed Forces ,2009.

Rafferty, Yvonne. *The Impact on Children: Psychological and Social Policy Perspectives*, Child Development Perspectives. Volume 2, Number 1.Pace University, 2008.

Sadika Hameed, Sandile Hlatshwayo, Evan Tanner, Meltem Türker and Jungwon Yang. *Human Trafficking in India: Dynamics, Current Efforts, and Intervention Opportunities for The Asia Foundation* .Stanford University, March 2012.

Salah, Rima. *Child Trafficking in West and Central Africa: An overview* .UNICEF, 2001.

Sakar, Siddahartha. *Rethinking Human Trafficking in India: Nature, Extent and Identification of Survivors*, The Round Table Volume 103, No 5.Routledge Taylor and Francis Group, 2014.

Scheper-Hughes, Nancy. *The Ends of the body: Commodity Fetishism and the Global Traffic in Organs*, SAIS Review Vol XXII No 1 .Winter – spring 2002.

Shoaps, Laura L. *Room for improvement: Palermo protocol and the Trafficking Victims Protection Act*, Volume 17:3.Lewis & Clark Review, 2013.

Uddin, M. Bashir. *Human Trafficking in South Asia: Issues of Corruption and Human Security*, International Journal of Social Work and Human Services Practice Vol.2. No.1 .Horizon Research Publishing, 2011.

E. Kongnyuy, A. Kongnyuy and E. Richter: *Child labour in Cameroon*, The Internet Journal of World Health and Societal Politics, Volume 5, Number 1.2007.

Laws

International

Convention against Torture and other cruel, Inhuman and Degrading Treatment or punishment (CAT) 1984.

Convention concerning Forced or Compulsory Labour (Forced Labour Convention No 29) 1939.

Convention on the Rights of the Child 1989.

Convention to Suppress the Slave Trade and Slavery (Slavery Convention) 1926

Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) 2000.

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956.

Regional

African Charter on the Rights and Welfare of the Child 1990.

European Convention on the Action against Trafficking in Human Beings 2005.

South Asian Association for Regional Cooperation (SAARC) Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution 2002.

National

Cameroon

Decree No 2001/041 of the 19th February 2001 on the organization of schools.

Decree No 2005/160 of 25th May 2005 on the Organization of the Ministry of Social Affairs.

Law No. 67-LF-1 of 12 June 1967 on the Cameroon penal code.

Law No. 92/007 of 14 August 1992 relating to the Cameroon Labour Code.

Law No 96/06 of 18th January 1996, amending the constitution of 2nd June 1972 referred to as the Cameroon Constitution.

Law No 2004 of 22nd July 2004 to set up the Organization and Functioning of the National Commission on Human Rights and Freedoms.

Law No. 2005 of 27 July 2005 on the Criminal Procedure Code.

Law No 2011/024 of 14th December 2011 relating to the Fight against Trafficking of Persons and Slavery (The Law against Trafficking in Persons and Slavery in Cameroon).

Law No. 2010/12 of 21st December 2012 on Cyber security and Cyber Criminality in Cameroon.

Ghana

Human Trafficking Act 2005.

India

Bonded Labour System (Abolition) Act 1976.

Child Labour (prohibition and regulation) Act of 1989.

Commissions for Protection of Child Rights Act 2005.

Immoral Traffic (Prevention) Act of 1956 as amended by the Immoral Traffic (Prevention) Amendment Act of 2006.

Indian Constitution of 2007.

Indian Penal Code as Amended by the Criminal Law Amendment Act 2013.

Juvenile Justice (Care and the Protection of Children) Act 2006, amending The Juvenile justice Act 2000.

Protection of Children from Sexual Offence act and Information Technology (Amendment Act) 2012.

Protection of Human Rights Act 1993 as amended by the Protection of Human Rights (Amendment) Act 2006-No. 43 of 2006.

Slavery Abolition Act of 1833.

United Kingdom

Asylum and Immigration (Treatment of Claimants, etc.) Bill of 2004.

Other sources

Asian Human Rights Commission, India: Police officers run human trafficking cartel, accessed, November, 2, 2015, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-036-2013>

Asian Human Rights Commission, India: Marginalized Children Denied Education, accessed November, 1, 2015, <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-029-2014/?searchterm=>

Cameroon and INTERPOL sign agreement to establish a Sub-Regional Bureau in Yaoundé, available at www.interpol.int/en/News-and-media/News/2009/PR103/

Cameroon's status of United Nations CRC Optional protocol on the sale of children, child prostitution and Child Pornography, 2000: [http:](http://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en)

[//treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en)

Cameroon's status on the optional protocol on the convention against torture:

[http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CMR](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=CMR&Lang=EN)
&Lang=EN

Cameroon Growth and Employment Strategy Paper 2010 / 2020 available at

<https://www.imf.org/external/pubs/ft/scr/2010/cr10257.pdf>

Combatting trafficking for children for Labour Exploitation: A resource kit for policy makers and practitioners .ILO, 2008.

Corruption Index 2014, accessed, November, 2015,

http://www.transparency.org/cpi2014/in_detail

First capacity building workshop for criminal justice practitioners on money laundering and the smuggling of migrants held in Cameroon available at www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/2012/first-capacity-building-workshop-for-criminal-justice-practitioners-on-money-laundering-and-the-smuggling-of-migrants-held-in-cameroon.html

Gender Empowerment and Development (GeED): Cameroon NGO REPORT on the implementation of the ICCPR (Replies to the List of Issues CCPR/C/CMR/Q4. The Centre for Civil and Political rights, Bamenda, Douala, Geneva 2010 available at

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED_Cameroon_HRC99.pdf

Information on Cameroon available at <http://www.infoplease.com/country/cameroon.html>

Information on India, available at <http://www.nationsencyclopedia.com/economies/Asia-and-the-Pacific/India.html>

ILO Action against Human Trafficking 2008 .Geneva: International Labour Office, 2008.

Indian National policy on Health 2002 available at

<http://apps.who.int/medicinedocs/documents/s18023en/s18023en.pdf>

www.mha.nic.in/sites/upload_files/mha/files/TrainingJapan_161014.pdf

India's Status of ILO convention 138 on Minimum age and ILO convention 182 on worst forms of child labour, accessed October,30,2015

http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102691

India's status on the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, accessed, October, 30, 2015

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=IND&Lang=EN

Indian 12th Five Year Plan, Social Sectors, (2012-2017) Volume III (Sage Publications, 2013) available at

http://planningcommission.gov.in/plans/planrel/12thplan/pdf/12fyp_vol3.pdf

IOM, INTERPOL train Central African police in counter trafficking available at

<https://www.iom.int/news/iom-interpol-train-central-african-police-counter-trafficking>

Preventing use of fraudulent documents in Central Africa focus of INTERPOL-supported meeting available at www.interpol.int/en/News/2014/N2014-115/

Ireland Refugee Documentation Centre: Are there child protection laws and agencies which adequately protect children's rights in Cameroon? .16 June 2011. Available at <http://www.refworld.org/docid/4e3a948e2.html>

Let's protect our children coalition. Campaign against child trafficking for sexual exploitation: stop child trafficking and sexual exploitation! .May 2010 available at <http://lwfyouth.org/wp-content/uploads/2010/10/livret-tefes-angl.pdf>

Mundi Index, accessed November 1, 2015, <http://www.indexmundi.com/g/r.aspx?v=69>

Oxford dictionary definition of child trafficking, available at <http://www.oxforddictionaries.com/definition/english/child-trafficking?q=child+trafficking+>

National policy on Education 1986 (Department of Education, Ministry of human resource development, New Delhi, 1998) available at http://www.ncert.nic.in/oth_anoun/npe86.pdf

Report on the meeting of the Third Session of the Working Group on trafficking in Persons of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC/COP/WG.4/2010/7) available at https://www.unodc.org/documents/treaties/organized_crime/3rd_Trafficking_Protocol_2010/CTOC_COP_WG4_2010_7_E.pdf

SAARC Perspective Training Course on Transnational Organized Crime, Dhaka-India ,27th Jan-14 Feb 2013: www.mha.nic.in/sites/upload_files/mha/files/SAARC-311212.pdf

Service Profile for Indian Police service IPS): www.mha1.nic.in/pdfs/IPSPProfile_180314.pdf

The Government of Japan's Technical Cooperation Programme, Training on Criminal Investigation, Japan, 18th January 2015-7th February 2015:

The IOM Handbook on Direct Assistance for the victims of trafficking, (IOM: Geneva, 2007)

Toolkit to combat trafficking in persons: Global Programme against Trafficking in Human Beings (UNODC, 2008),

Transparency International. Corruption and Human Trafficking, Working paper #3.2011
available at

[http://www.transparency.org/whatwedo/publication/working_paper_corruption_and_human_t
rafficking](http://www.transparency.org/whatwedo/publication/working_paper_corruption_and_human_trafficking)

UNODC Case Law database, available on <https://www.unodc.org/cld/index.jsp>

United Nations Global Plan of Action to Combat Trafficking in Persons 2010

United Nations Office on Drugs and Crime (UNODC). Trafficking in Persons: Global Patterns (UNODC, April 2006)

U.S. Department of States, Bureau of Democracy Human Rights and Labour. India 2013
Human Rights Report, available at <http://www.state.gov/documents/organization/220604.pdf>

United States Department of Labour, Bureau of International Affair. India Moderate
Advancement: 2014 findings on the worst forms of child labour, available at
<http://www.dol.gov/ilab/reports/child-labor/india.htm>

U.S. Department of States, Bureau of Democracy Human Rights and Labour. Cameroon 2012
Human Rights Reports, available at <http://www.state.gov/documents/organization/204309.pdf>

United States Department of Labour, Bureau of International Affairs. Cameroon Moderate
Advancement: 2014 findings on the worst forms of Child Labour, available at
<http://www.dol.gov/ilab/reports/child-labor/cameroon.htm>