

Study on trafficking in persons in West Africa: an analysis of the legal and political framework for the protection of victims

Summary

I. Introduction

In the West African sub-region the phenomenon of trafficking in persons is widespread. Initiatives on combating trafficking in persons have been undertaken on a regional level with the adoption of the Economic Community of West African States (ECOWAS) Plans of action (2002-2003 which has since been followed by other action plans such as the Plan of action 2008-2011).

The member States of the ECOWAS and the Economic Community of Central African States (ECCAS) have adopted in 2006 a joint bi-regional Plan of Action to Combat Trafficking in Persons, especially Women and Children.

Moreover, within the sub-region, a multilateral agreement of cooperation on the prevention of human trafficking was signed in July 2005 between nine countries: Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo.

The United Nations has also adopted a series of measures for combating trafficking in persons which have an impact in the region:

- Resolution 53/111 of 9 December 1998;
- The Palermo Convention and Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (also referred to as the Trafficking Protocol), additional to the United Nations Convention on the prevention of organised transnational crime from 2000, entered into force on December 25, 2003.

II. Objectives of the study

- Conduct a comparative study of the different legislations, policies and practices in the prevention of trafficking in persons in West Africa, and determine their compatibility with the international standards;
- Propose guidelines for the elaboration of a model law on combating trafficking in persons;
- Propose a timeline for measures to be taken to combat trafficking in persons.

III. Methodology

The main part of the study has been devoted to the examination of the different legislations, policies and practices in the field of tackling trafficking in persons, and to the analysis of the phenomenon. The study was conducted through a review of existing literature, combined with study visits to a number of countries in the West Africa region.

IV. Definition of human trafficking

Article 3a of the Trafficking Protocol defines “trafficking in persons” as *“the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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... The consent of a victim of trafficking in persons to the intended exploitation set forth [above] shall be irrelevant where any of the means set forth [above] have been used”*.

V. International legal framework for the prevention of trafficking in persons

- The International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, as amended by the Protocol signed at Lake Success, New York, on 12 November 1947.
- Articles 1, 2 and 6 of the ILO Convention on Forced Labour N° C.29 (1930);
- The Universal Declaration of Human Rights (1948);
- The ILO Abolition of Forced Labour Convention (1957);
- Articles 2, 3, 7, 8, 9, 12, 14 and 26 of the International Covenant on Civil and Political Rights (1966);
- Articles 2, 5 and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- Articles 2, 3, 6, 7, 10, 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (1966);
- Articles 2, 6, 9, 11, 12, 14, 15 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) ;
- Articles 2, 5, 15, 18, 60 and 61 of the African Charter on Human and Peoples’ Rights (1981);
- Articles 3, 13 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- Articles 7, 16, 19, 28, 31, 32, 34, 35, 36, 37 and 39 of the United Nations Convention on the Rights of the Child (1989);
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (11 December 1990);
- Articles 3, 15, 16, 21, 24, 25, 27 and 29 of the African Charter on the Rights and Welfare of the Child (1990);
- The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993);
- Articles 2 and 3 of the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993);
- The ILO Convention on the minimum age of admission for employment N° 138 (26 June 1993);
- The ILO Convention on the Worst Forms of Child Labour (1999);

- Articles 1, 2, 3 and 8 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000);
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000);
- The GA Resolution A/61/144 on Trafficking in women and girls;
- Articles 2, 3, 4, 11, 13 and 24 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).

VI. Sub-regional legal and institutional framework

- The ECOWAS Convention relating to the free movement of persons and goods (1975);
- The ECOWAS Community Treaty revised in 1993, and the Protocol relating to the free movement of persons and goods;
- The West African States Convention on Extradition (1994);
- The ECOWAS Declaration on the Fight against Trafficking in Persons (2001);
- The ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003);
- The Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa (2005).
- The African Union Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially women and children, adopted in Tripoli in November (2006);
- The Joint ECOWAS/ECCAS Plan of Action on Trafficking in Persons, especially women and children in West and Central Africa (2006-2009);
- The ECOWAS Plan of Action against Trafficking in Persons (2008-2011);

VII. National legal and institutional framework

Currently, several countries in West Africa have adopted some sort of legislation for the prevention of trafficking in persons, such as Benin, Burkina Faso, Ghana, Liberia, Mali, Mauritania, Nigeria, Senegal, Sierra Leone, The Gambia and Togo , even if the different legislations do not always give the same definition of trafficking in persons and some are limited to child trafficking.

Countries such as Guinea that have not yet adopted national laws against trafficking in persons, use existing legislation related to the exploitation of minors, child prostitution, violence against women and children, torture, involuntary disappearances and other forms of infringement of the physical integrity of the person.

VIII. The principal victims of trafficking in persons in West Africa

Trafficking in persons in West Africa affects mainly three groups of victims: children, women and migrants.

1. Children – exploitation and forced recruitment

In Senegal, Gambia, Guinea Bissau and Mali children are often subject to trafficking for the purposes of labour exploitation, begging, prostitution and pornography, and are mainly trafficked to the touristic areas of the country.

In Ghana, Benin, Nigeria and Togo the principal problem of trafficking in children is related to the exploitation of child labour in the agricultural plantations, or to the use of domestic workers, mainly in Benin.

The principal forms of trafficking in children are:

- forced marriages;
- traditional placement of young children with their close or distant parents;
- domestic work;
- prostitution;
- servitude;
- forced recruitment of child soldiers;
- begging

2. Trafficking in women and similar practices

Two of the different practices similar to trafficking in women are of particular concern and should be subject to particular attention:

- The practice of forced marriages;
- Prostitution of women and girls. To give an example, according to the estimates of the Nigerian National Agency for the Prohibition of Traffic in Persons (NAPTIP) more than 50 000 girls of Nigerian nationality currently work in the sex industry in Italy, and most of them are victims of trafficking.

3. Exploitation of migrants' labour in Western and Gulf countries

Another form of trafficking in persons may be identified in countries such as Senegal, Mauritania, Guinea and Guinea Bissau, which are the main transit countries for migrants heading to Europe and the Americas. Some of these young people are victims of trafficking for labour exploitation in companies or factories in Western countries.

IX. Challenges in the application of the existing protection mechanisms

1. Internal factors

A number of socio-cultural factors need to be considered.

- i) The religious education of children in the so called “daaras” may be seen as an illustrative example among many.
- ii) The poverty and vulnerability of the population is another factor stimulating human trafficking. Poverty is at the same time the cause and the result of trafficking in persons in Africa. UNDP has shown in one of its recent studies that the highest number of child

- workers is concentrated in countries with a low human development index.
- iii) Armed conflicts: In the West African sub-region armed conflicts have caused the forced displacement of thousands of people, looking for asylum and protection in foreign countries, which has put them in an extremely vulnerable position.
 - iv) The HIV/AIDS pandemic: millions of children in West and Central Africa are orphans because of the pandemic. The most affected countries are Nigeria (995 000), Côte d'Ivoire (420 000) and Burkina Faso (268 000).

2. External factors

Trafficking in persons in West Africa is happening in a context of mobility, freedom of movement of persons guaranteed by existing regional and international instruments, globalization of modern communication technologies (cyber crime), and a proliferation of transnational organised crime networks that are difficult to control in ECOWAS countries.

X. Guidelines for the elaboration of legislation and principles for the protection of human rights in combating trafficking in persons

The provisions that should be included in laws against trafficking in persons are:

- The fundamental human rights of victims should be at the centre of/govern every action undertaken to combat trafficking to protect and assist victims to recover.
- States have the responsibility to act with diligence, investigate traffickers and offer assistance and protection to victims.
- Measures taken to combat trafficking should not bring detriment to the fundamental rights and dignity of persons, particularly to the rights of trafficked persons, migrants, displaced persons, refugees and asylum seekers.
- Victims of trafficking should not be subjected to investigation and prosecution because of their illegal entry or stay in the country, or because of their involvement in illicit activities.
- States need to protect victims from any future exploitation, and need to provide them with physical and psychological care independently of victims' cooperation with the justice system.
- New laws need to take into account all the different aspects of human trafficking, but should not try to address problems of a different nature.

XI. Conclusions and recommendations

In order to reinforce the response to trafficking in persons in the sub-region, and to facilitate cooperation and coordination in this field, ECOWAS should help States to harmonise their national legislations and plans of action.

On the other hand, the cooperation and coordination need to be extended to other countries in Africa and Europe, which represent the principal destination of victims.

It is also necessary to create monitoring committees such as those already existing in Benin and Burkina Faso, established by a ministerial decree giving them more legitimacy. Such committees, established at the principal border-crossings, have succeeded in obtaining positive results in terms of identification of trafficked persons and prevention of trafficking in persons.

1. Recommendations to States

- Reinforcement of the bilateral and multilateral cooperation between States of origin, transit and destination, in the areas of identification, protection and assistance to victims, as well as the prosecution of traffickers.
- Replacement of the existing national follow-up committees by governmental agencies such as NAPTIP. The existence of a governmental agency would facilitate the rationalization of the efforts and the coordination of all aspects of the fight against trafficking.
- Prevention should be guaranteed through an emphasis on the education of vulnerable children. This should be done by identifying the different groups at risk, taking into account the needs of victims' families.
- Reinforcement of the cooperation with the international partners, which in turn would enable the reinforcement of States' capacities.

2. Recommendations to ECOWAS

- Support of member States in the harmonisation of their national legislations and actions in response to trafficking in persons.
- Reinforcement of the anti-trafficking division of ECOWAS, and recruitment of additional personnel.
- Identification, sharing and implementation of best practices in the prevention of trafficking in persons in West Africa.

3. Recommendations to the African Union

It is necessary to designate an expert or Special Rapporteur dealing with the question within the African Commission on Human and Peoples' Rights. The Special Rapporteur would have to harmonise his/her work with the African Committee on the Rights and Welfare of the Child and promote the ratification of the Palermo Convention and Protocol.

4. Recommendations to the United Nations

- Provide the Special Rapporteur on Trafficking in Persons, Especially Women and Children with sufficient means of action, so as to enable her to create working relations with ECOWAS, ECCAS and other sub-regional organisations, as well as with the African Union and particularly the African Committee on the Rights and Welfare of the Child.
- As regards refugees, it is recommended to strengthen the capacity of national authorities responsible for asylum procedures (National Eligibility Committee, etc.). The age and gender of asylum seekers should also be taken into account in the examination of their applications.