



**POLICY BRIEF ON HUMAN TRAFFICKING IN UGANDA: LAW, POLICY AND PRACTICE
IRISH CENTRE FOR HUMAN RIGHTS**

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Table of Contents

Abbreviations and Acronyms.....	iii
Legislation.....	iv
Policy Documents.....	iv
Cases.....	iv
EXECUTIVE SUMMARY.....	v
Introductory Overview.....	0
Legal and Policy Framework.....	1
Domestic Legal Framework.....	1
1995 Constitution of Uganda (as amended).....	1
Prevention of Trafficking in Persons Act 2009.....	2
Regional Legal Framework.....	3
Child Trafficking.....	8
Policy Framework.....	12
Practice.....	19
Prevention.....	19
Prosecution.....	21
Protection.....	24
Partnership.....	28
International Human Rights Law and Human Trafficking: Focus on Uganda.....	30
Concluding observations of the CEDAW Committee (22 nd October 2010) CEDAW/C/UGA/CO/7.....	30
Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (22 May 2015) CMW/C/UGA/CO/1.....	31
Human Rights Council Working Group on the Universal Periodic Review on Uganda A/HRC/WG.6/26/UGA/1 (31 October–11 November 2016).....	32
Conclusion.....	33
APPENDIX.....	35
Synopsis of Select Cases.....	35
Ahmed El Termewy v. Awdi and 3 Ors, (Civil Suit No. 95 OF 2012) [2015] UGHCCD 4 (30 January 2015) - Foreigner Trafficked to Uganda, Civil Suit, Adult Trafficking, Restitution and Compensation -.....	35
Uganda v. Alimocan Paska (Criminal Sessions Case No. 0114 OF 2018) [2018] UGHCCRD 181 (6 September 2018) - Child Trafficking, Aggravated Kidnapping, Abduction, guilty pleas -.....	37
Uganda v. Mudeega, (Criminal Session Case No. 166 OF 2011) [2011] UGHCCRD 26 (14 May 2013) - Kidnapping, Aggravated Trafficking, Child selling, Guilty -.....	39
Uganda v. Orwothwun Martin, (Criminal Sessions Case No. 0052 OF 2017) [2017] UGHCCRD 16 (7 August 2017) - Aggravated Child Trafficking, Witchcraft and harmful practices, Acquittal, -.....	42
Uganda v. Umutoni Annet HCT- 00- ICD-CR -SC- NO. 003 of 2014 - Aggravated Trafficking, Child Trafficking, Transnational Trafficking, Guilty, Trafficked into Uganda, Sexual and Labour Exploitation -.....	46

Tables

Abbreviations and Acronyms

ACPMDD	African Common Position on Migration and Development
ADF	Allied Democratic Forces
AMISOM	African Union Mission in Somalia
AU	African Union
AU.COMMIT	African Union Commission Initiative against Trafficking Campaign
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CFPU	Child and Family Protection Unit
COPTIP	Coordination Office for Prevention of Trafficking in Persons
CSO	Civil Society Organization
DPP	Directorate of Public Prosecutions
DRC	Democratic Republic of Congo
EAC	East African Community
EAC-CTIP	East African Community Counter Trafficking in Persons Act
ECOWAS	Economic Community of West African States
EEMS	External Employment Management System
EEU	External Employment Unit
ILO	International Labour Organisation
INTERPOL	International Police
IOM	International Organization for Migration
LRA	Lord's Resistance Army
MDA	Ministries Departments and Agencies
MGLSD	Ministry of Gender Labour and Social Development
MoFA	Ministry of Foreign Affairs
MoIA	Ministry of Internal Affairs
MONUSCO	United Nations Organization Stabilization Mission in the DR Congo
MPF	African Union Migration Policy Framework
NAP – PTIP	National Action Plan for Prevention of Trafficking in Persons
NGO	Non-Governmental Organisation
OAP	Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children
PLA	Platform for Labour Action
PTIP Act	Prevention of Trafficking in Persons Act 2009
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act
UAE	United Arab Emirates
UCATIP	Uganda Coalition of Civil societies against Trafficking in Persons
UPDF	Ugandan People's Defence Force
UPF	Ugandan Police Force
UPR	Universal Periodic Review

Legislation

- African Charter on the Rights and Welfare of the Child 1990.
- African Charter on Human and People's Rights 1986.
- Children (Amendment) Act 2016.
- Constitution of Uganda 1995.
- East African Community Counter trafficking in Persons Bill 2016.
- East African Community Protocol on Peace and Security 2013.
- Prevention of Trafficking in Persons Act 2009.
- Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003.
- United Nations 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.

Policy Documents

- African Common Position on Migration and Development.
- African Union Migration Policy Framework for Africa and Plan of Action (2018 - 2030).
- National Action Plan for the Prevention of Trafficking in Persons (2013 – 2018).
Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children.

Cases

- Ahmed El Termewy v. Awdi and 3 Ors, (Civil Suit No. 95 OF 2012) [2015] UGHCCD 4 (30 January 2015).
- Uganda v. Alimocan Paska (Criminal Sessions Case No. 0114 OF 2018) [2018] UGHCCRD 181 (6 September 2018).
- Uganda v. Mudeega, (Criminal Session Case No. 166 OF 2011) [2011] UGHCCRD 26 (14 May 2013).
- Uganda v. Orwothwun Martin, (Criminal Sessions Case No. 0052 OF 2017) [2017] UGHCCRD 16 (7 August 2017).
- Uganda v. Umutoni Annet HCT- 00- ICD-CR -SC- NO. 003 of 2014

EXECUTIVE SUMMARY

Trafficking is recognised as a serious human rights violation in international and regional human rights law. It is also a serious crime, and one that in recent years has mobilised the attention of a range of international actors and states. The first accepted international legal definition of trafficking in persons is found in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime of 2000 (also known as the Palermo Protocol)

Article 3(a) of the Palermo Protocol sets out the definition of Trafficking

“Trafficking in persons” shall mean 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”

As equally important as setting an internationally accepted definition for Trafficking in Persons (TIP), the Palermo Protocol in Article 5 imposes an obligation on states to criminalize trafficking in their own domestic jurisdiction, holding:

1. *Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.*
2. *Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:*
 - (a) *Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;*
 - (b) *Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and*
 - (c) *Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.*

Since the adoption of the Palermo Protocol, states have developed legal and policy frameworks to combat trafficking in persons and Uganda enacted the Prevention of Trafficking in Persons Act in 2009.

Trafficking is one of the major problems faced by the Ugandan government as Uganda is a source, transit and destination country for victims of trafficking in persons. Significant numbers of Ugandan nationals emigrate for work, due to high levels of unemployment and poverty. This context, combined with high

numbers of internally displaced persons and refugees in Uganda,¹ add to the risks of exploitation, including trafficking.

Trafficking in Uganda occurs both on a transnational and internal level, with states in the Middle East and other Gulf States playing host to most transnational victims of trafficking while internal victims are often located in larger cities like Kampala, and other major cities and tourist towns.² Although the problem posed by trafficking in Uganda is relatively lesser than in other countries in the East and Horn of Africa regions or other countries on the continent known as transit or destination countries for TIP,³ the Ugandan government has undertaken a series of legislative and policy measures to combat trafficking in persons.

Legal Framework

The first real attempt to address trafficking in Uganda is found in the 1995 Ugandan Constitution as amended. The Uganda constitution makes different provisions for the prohibition of slavery and servitude, the protection from social and economic exploitation, and freedom of liberty.

Following from the constitution, the Prevention of Trafficking in Persons (PTIP) Act of 2009 establishes the legal framework directly applicable to counter trafficking in the country. The Act criminalizes trafficking in all its forms and establishes the sanctions to be imposed for the crime of trafficking, commensurate with punishments available for other serious crimes such as rape and murder, and consistent with international standards (the PTIP Act imposes punishments from 15 years' imprisonment to a possible death sentence for different trafficking offences). Apart from the criminalisation of trafficking, the PTIP Act makes provisions for a new category of trafficking in persons called "*aggravated trafficking*" which applies mainly when the victim of trafficking is a child, adoption cases, when a crime syndicate is involved, when the offender is a public, military or law enforcement officer and where acts involve harmful practices.

The PTIP Act not only provides for the criminalisation of trafficking and prosecution of trafficking offenders, but it also makes extensive provisions for the protection of the rights of victim of trafficking as well as the provision of assistance (legal, financial, psychological, medical etc) to victims if trafficking.

¹ As of June 2018, Uganda hosted 1,360,000 Refugees according to UNHCR data (making Uganda the largest refugee receiving country in Africa and the third largest behind Turkey and Pakistan) and according to the Internal Displacement Monitoring Centre (IDMC), Uganda hosts about 32,000 IDPs by December 2018. For further details, see UNHCR, *Uganda Country Refugee Response Plan: The integrated response plan for refugees from South Sudan, Burundi and the Democratic Republic of the Congo January 2019 — December 2020*, 2019, page 5, see also, IDMC, *Global Report on Internal Displacement (GRID 2019)*, 2019, page 120.

² National Action Plan for Prevention of Trafficking in Persons in Uganda, page 4.

³ AMMi, *Uganda Country Statement: Addressing Migrant Smuggling and Human Trafficking in East Africa*, September 2017, page 3.

The PTIP also provides in Article 21 for the establishment of the Coordination Office to Counter Trafficking in Persons (COPTIP).

Although on the international level, the Ugandan government has ratified the United Nations Convention against Transnational Organized Crime of 2000, it has failed to ratify the Palermo Protocol of 2000 on Trafficking in Persons. Nevertheless, Uganda is a party to other regional documents addressing counter trafficking on the East African Regional and African Union level.

Policy Framework

COPTIP in conjunction with the Ministry of Internal Affairs (MIA) is charged with coordinating, monitoring and overseeing of the implementation of the PTIP Act 2009 and the National Action Plan for the Prevention of Trafficking in Persons (NAP). The Office has led the development of a range of policy measures including the NAP 2013-2018. Along with COPTIP and the MIA, the Ministry of Gender Labour and Social Development (MGLSD) have also undertaken several measures including: trainings for government officials; extra screening for would-be labour migrants; establishment of special units within the police and armed forces specialising in TIP; and signing of bilateral labour agreements with destination countries.

At regional level, the Ouagadougou Action Plan⁴, the African Union Migration Policy Framework for Africa and Plan of Action (2018 - 2030)⁵, and the African Common Position on Migration and Development⁶ provide frameworks for regional and domestic counter trafficking policy. These regional policy documents set the standard for best practices in counter trafficking for member states.

Practice

Despite the extensive legal and policy frameworks initiated by the Ugandan government to counter trafficking, the implementation of these legal and policy standards are punctuated with gaps. These are exacerbated by diverse factors, including the lack of human and other resources, and the limited development of specialised skills for prevention of trafficking, identification and protection of victims of trafficking.⁷ Despite the dearth in resources and other exacerbating factors, the Ugandan government has not only carried on conducting counter trafficking activities but has increasingly intensified efforts with varying results. Counter trafficking efforts can be divided into three distinct but equally important

⁴ Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children as adopted by the Ministerial Conference on Migration and Development, Tripoli 22 – 23 November 2006.

⁵ African Union Migration Policy Framework for Africa and Plan of Action (2018 - 2030).

⁶ African Common Position on Migration and Development, EX.CL/277 (IX), 2006.

⁷ This is a recurring theme in the United States of America State Department Trafficking in Persons Reports on Uganda. For example, see United States of America Department of State Trafficking in Persons Report 2019, page 472 and United States of America Department of State Trafficking in Persons Report 2018, page 431.

activities; Prevention of Trafficking, Prosecution of Offenders and Protection of the rights of victims. However, in the case of Uganda, there is one key addition to the practice of counter trafficking, which is absent in most other regions and even in the US State Department Annual TIP Reports - Partnership. Partnership is included as a core element of counter trafficking practice in this policy brief because of the effects of coordinated efforts by diverse stakeholders in Uganda.

Although the Ugandan efforts in counter trafficking take direction from the provisions of the 2009 PTIP Act, the Act does not significantly address obligations of prevention. Part II (Section 3 - 10) and Part III (Section 11 - 20) respectively deal with the prosecution of offenders and protection rights of trafficking victims, but only Section 21 of the Act speaks directly to the prevention of trafficking, with the establishment of a national coordination office. Despite this, the Ugandan Government has undertaken a number of measures aimed at prevention including:

- Public Sensitization;
- Signing bilateral Labour Agreements with selected states;
- Licensing and registration of recruitment agencies;
- 2016 ban on Ugandans travelling to the Middle East and Gulf States to work as domestic servants;
- Organising pre-departure training for workers;
- Intensive pre-departure screening of prospective labour migrants;
- Identification and protection of street children (children forced into street hawking and begging);
- Development of a National Action Plan to Prevent Trafficking in Persons;
- Capacity building and Training of officials;

The Ugandan government has also intensified efforts in the prosecution of offenders of trafficking taking into account the provisions made to that effect in the PTIP Act. However, while the numbers of prosecutions and convictions are on the steady increase, they do not match the number of identified victims or investigated and reported cases of trafficking in persons.

Limited prosecutions for the crime of trafficking is a concern in many jurisdictions, as is the failure to conduct effective investigations. Uganda is no exception, with an evident need to further enhance the technical skills and knowledge of police, prosecutors and the judiciary. Since the adoption of the 2009 PTIP Act, the MIA and MGLSD have increased efforts on capacity building and training for justice sector officials on detection, and investigation of trafficking cases.

Protection of the rights of victims is an important component of counter trafficking efforts. Victims of trafficking are subject to diverse forms of exploitation and abuses, where victims may face more than one form of exploitation (sexual, labour, forced criminality) throughout the trafficking period. The PTIP Act makes significant provision for the protection of victims' rights but the implementation of these

provisions has been limited. The lack of human and financial resources or of formalised victim assistance mechanisms, have made it difficult to ensure effective protection for the large number of identified victims. The Ugandan government has partnered with NGOs and international organisations to provide assistance to victims. IOM, in particular, has been active in financing and supporting the repatriation of victims of transnational trafficking.

Although the PTIP Act makes no direct mention of Partnerships, the formulation of a coordination office to monitor the implementation of the Act and coordinate the activities of different stakeholders in counter trafficking, implies an acknowledgment of the importance of partnerships within the Ugandan counter trafficking framework. Counter trafficking although primarily the responsibility of the government is not left solely to the MDAs to carry out but there is a multiplicity of actors ranging from the government (Police, Judiciary, DPP, MIA, MoFA, MGLSD), to members of civil society and International Organisations (IOM, Interpol, ILO, UNHCR). These different stakeholders do not work within silos but interact with each other in their activities, constantly complementing each other's efforts in counter trafficking.

The nature of trafficking is such that it cuts across different spheres of international human rights and criminal law, including on the rights of migrants, child rights, women's rights and gender equality, refugee protection and criminal justice. This cross-cutting nature of trafficking engages the work of a range of international and regional human rights bodies, including UN human rights treaty monitoring bodies. The UN CEDAW committee and the UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families have, in their Concluding Observations, identified the need for the Ugandan government to intensify its efforts in the implementation of the provisions of the PTIP Act and also to strengthen its prevention, prosecution and protection efforts.

Introductory Overview

Uganda is a source, transit and destination country for victims of Trafficking in Persons (TIP). Human trafficking in Uganda is exacerbated by diverse push (unemployment, poverty, etc.) and pull (demand for body organs, opportunities to work in urban centres, high demand for cheap labour, etc.) factors.⁸ In Uganda, TIP occurs both on the transnational and local fronts, with Saudi Arabia, Oman and the UAE serving as the most frequent destinations for transnational trafficking while persons trafficked domestically are usually brought to large cities such as Kampala.⁹

Victims of TIP in Uganda regularly face exploitation in different forms including but not limited to labour exploitation, sexual exploitation and sometimes, illegal organ harvesting and human sacrifices.¹⁰ Although men, women and children share a general vulnerability to TIP, the majority of victims of TIP especially transnational TIP, are women and girls between the ages of 20 – 30 years who are trafficked mainly for labour exploitation purposes in the Gulf States.¹¹ Individual victims of trafficking are not only subject to a specific type of exploitation but often times face a combination of different forms of cruel, inhuman and degrading treatment including sexual exploitation.¹²

Despite the efforts of the Ugandan Government in developing important legislative and policy frameworks to combat trafficking, legislative and policy implementation remains weak. Gaps in implementation have contributed to Uganda's Tier 2 rating in the United States Department of State Trafficking in Persons Report (a rating reserved for countries that do not meet the minimum requirements set by the United States Trafficking Victims Protection Act (TVPA) 2000, but are making considerable efforts to meet its provisions).¹³

This Report seeks to accurately describe the current situation in Uganda concerning TIP and counter trafficking. Later parts of this work will look at Ugandan Law, Policy and Practice to address TIP with special attention given to trafficking in children. This Report has four main parts:

- a. Legal provisions applicable to Trafficking in Children;
- b. Legal and Policy counter trafficking framework (International, Regional, sub-Regional and National Levels);
- c. the Practice of counter trafficking in Uganda (Prevention, Prosecution, Protection and Partnerships);
- d. Conclusions and recommendations of UN and other human rights bodies

In addition to the above, this Report examines selected trafficking related cases in Uganda, to observe the implementation of the available laws and policies to counter trafficking in the country. Together, this analysis

⁸ National Action Plan for Prevention of Trafficking in Persons in Uganda, page 2.

⁹ Ministry of Internal Affairs, 2016 Report on the Trends of Trafficking in Persons in Uganda and Counter Measures Carried out Against the Crime, 2017, page 6-7.

¹⁰ Ibid, page 6.

¹¹ National Action Plan for Prevention of Trafficking in Persons in Uganda, page 2

¹² Platform for Labour Action (PLA), Assessment on Schemes, Routes and Factors that promote prevalence of Trafficking Across Borders in Uganda, June 2016, page 15.

¹³ United States of America Department of State Trafficking in Persons Report 2019, page 48. See also Ernie Walton, *The Trafficking in Persons Report: Recommendations for Uganda*, 2019, Regent University School of Law Centre for Global Justice, Human Rights, and the Rule of Law, page 3.

will help shed more light on the state of the art of counter trafficking in Uganda, highlighting the gaps in law, policy and effective practice.

Legal and Policy Framework

Uganda has a range of national, regional and international legal frameworks for dealing with TIP. The foundation of the legal response to Trafficking is the **1995 Constitution of Uganda** that enshrines the prohibition of slavery, servitude and forced labour. Although there is no mention of Trafficking in Persons in the text of the Constitution, the provisions mentioned above set the standard for counter trafficking efforts. The **Prevention of Trafficking in Persons Act (PTIP)**, which came into force in 2009 is the national document developed specifically in response to TIP. The PTIP Act provides legal guidance for prevention of TIP, protection of victims of TIP as well as the prosecution and punishment and offenders. Apart from the 2009 PTIP Act, Uganda is a signatory to the **United Nations 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** which it is yet to ratify drawing much criticism. Uganda is also party to other international and regional documents relevant to TIP, including:

African Charter of Human and Peoples Rights 1986;¹⁴

Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa 2003;¹⁵

African Charter on the Rights and Welfare of the Child 1990;¹⁶

East African Community Counter trafficking in Persons Bill 2016;¹⁷ and

East African Community Protocol on Peace and Security 2013.¹⁸

Domestic Legal Framework

1995 Constitution of Uganda (as amended)

Although there is no mention of TIP in the text of the Constitution, the provisions on slavery, servitude and forced labour, protection from social and economic exploitation, and provision for the freedom of liberty can be interpreted as including human trafficking and read through counter trafficking lens.

Section 25 protects against Slavery, Servitude and forced labour holding:

(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this article, "forced labour" does not include

(a) any labour required in consequence of the sentence or order of a court;

¹⁴ African Charter on Human and Peoples Rights, 1986.

¹⁵ Protocol to the African Charter on Human and Peoples Rights on the Rights on Women in Africa, 2003.

¹⁶ African Charter on the Rights and Welfare of the Child 1990.

¹⁷ East African Community Counter trafficking Bill, 2016.

¹⁸ East African Community Protocol and Peace and Security, 2013.

(b) any labour required of any person while that person is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which the person is detained;

(c) any labour required of a member of a disciplined force as part of that member's duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour which that person is required by law to perform in place of that service;

(d) any labour required during any period when Uganda is at war or in case of any emergency or calamity which threatens the life and well-being of the community, to the extent that the requiring of the labour is reasonably justifiable in the circumstances of any situation arising or existing during the period or as a result of the emergency or calamity, for the purpose of dealing with that situation; or

(e) any labour reasonably required as part of reasonable and normal communal or other civic obligations.¹⁹

Section 44(b)

Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following rights and freedoms-

(b) Freedom from slavery or servitude;

Prevention of Trafficking in Persons Act 2009

The 2009 PTIP Act includes significant provisions for the criminalization of TIP but also for the prevention of TIP, as well as the protection of victims. The definition of TIP in Section 2(r) of the PTIP Act 2009 draws from Article 3(a) of the Palermo Protocol.

Some key provision of the PTIP Act 2009

Definition of a child: Section 2(a) of the PTIP Act 2009 defines a child: *“child” means a person below the age of 18 years.*²⁰

Definition of Exploitation: Section 2(d) defines exploitation as:

*[...] sexual exploitation, forced marriage, child marriage, forced labour, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices.*²¹

Definition of Trafficking: Section 2(r) defines TIP as

¹⁹ Section 25, Constitution of the Republic Uganda 1995 (as amended).

²⁰ Section 2 (a) of the 2009 PTIP Act.

²¹ Section 2 (d) of the 2009 PTIP Act.

*...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, 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;*²²

Section 3(1) punishes perpetrators of human trafficking with a prison term of 15 years.²³

Child Trafficking: Section 3(3) defines the

*... “recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation as trafficking in children.”*²⁴

Consent: Section 3(4) makes irrelevant, any consent obtained for TIP purposes:

*“the consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to the act of exploration shall not be relevant.”*²⁵

Protection of Victims of Trafficking: Aside from punishing the perpetrators of TIP, Part III of the 2009 PTIP Act is devoted totally to the provision of certain protections for victims of TIP:

- a. **Section 11** - Non Discrimination of Victims of Trafficking in Persons.
- b. **Section 12** - Protection, Assistance and Support for Victims of Trafficking.
- c. **Section 13** – Confidentiality
- d. **Section 14** - Repatriation of Victims of Trafficking in Persons.
- e. **Section 15** – Provision of restitution to the victims of TIP.
- f. **Section 16** – Provision of Compensation to the victims of TIP.

Coordination Office: Section 21 makes provision for the establishment of a national coordination office to coordinate counter trafficking efforts and oversee the implementation of the Act. Section 21 (1) reads

*“The Minister shall designate an office to be responsible for the coordination, monitoring and overseeing the implementation of this Act.”*²⁶

Examining the PTIP Act, the provisions and protections therein offer a wide range of protections for victims of TIP in line with and even exceeding those offered in the Palermo protocol.

Regional Legal Framework

There are also East African and African regional counter trafficking legal frameworks which Uganda is a party to. The **East African Community Protocol on Peace and Security** makes provisions for cooperation between

²² Section 2 (r) of the 2009 PTIP Act.

²³ Section 3 (1) of the 2009 PTIP Act.

²⁴ Section 3 (3) of the 2009 PTIP Act.

²⁵ Section 3 (4) of the 2009 PTIP Act.

²⁶ Section 21 (1) of the 2009 PTIP Act.

States in the East African Community on issues of peace and security. In respect to counter trafficking, the protocol makes the following provisions:

- a. **Art.3 (i)** for the cooperation among states for
*“combating transnational and cross border crimes; including drug and human trafficking ...”*²⁷
- b. **Art.12 (1)(d)** for state parties to engage in joint operations to control and prevent human trafficking.²⁸

Apart from the Protocol on Peace and Security, there are also ongoing negotiations the EAC for the development of a region wide Act on Trafficking in Persons. The **East African Community Counter trafficking in Persons Bill (EAC-CTIP)** is set to be the most significant regional instrument addressing trafficking in the region. Although the EAC-CTIP Act was adopted by the East African Community Legislative Assembly in 2016, it is yet to come into force as the Heads of State of EAC countries are yet to assent to it. Section 21 of the EAC-CTIP gives it precedence over the counter trafficking laws of member states, stating: *“This Act shall take precedence over other laws in the Partner States to which its provisions relate.”*²⁹ This means that Uganda, although not a State Party to the 2000 Palermo Protocols, will be bound by regional laws that include the requirements of the Palermo Protocol.

Some key provisions of the EAC-CTIP are:

- a. **Child Trafficking:** Section 2(13) defines child trafficking as
*“the 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 the definition for trafficking in persons as provided for under this Act;”*³⁰
- b. **Trafficking Definition:** Section 2(14) defines trafficking in persons as the
*“means recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other form of coercion, abduction, fraud, deception, or 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.”*³¹
- c. **Consent:** Section 4(4) invalidates the consent gotten from victims of TIP stating:
*“It shall not be a defence for a person who commits the offence of trafficking in persons that the offence was committed with the victim’s consent.”*³²
- d. **Profiting from Trafficking:** Section 4(8) imposes liability on anyone knowingly profiting from TIP stating:

²⁷ Article 3 (i) East African Community Protocol on Peace and Security.

²⁸ Article 12 (1)(d) East African Community Protocol on Peace and Security.

²⁹ Section 21 of the East African Community Counter trafficking in Persons Bill of 2016.

³⁰ Section 2(13) of the East African Community Counter trafficking in Persons Bill of 2016.

³¹ Section 2(14) of the East African Community Counter trafficking in Persons Bill of 2016.

³² Section 4 (4) of the East African Community Counter trafficking in Persons Bill of 2016.

“Every person who receives a financial or other benefit knowing that it results from the offence of trafficking in persons commits an offence and is liable on conviction to such fine or term of imprisonment as the laws of the Partner State may prescribe.”³³

- e. **Corporate body Liability:** Section 5(2) extends liability to corporate bodies that knowingly profit from trafficking:

“A director, manager, secretary or other similar officer concerned with the management of a body corporate shall not be liable for an offence against this Act unless the Court is satisfied - (a) that the offence was committed with his or her connivance; or (b) he or she did not exercise all such diligence to prevent the commission of the offence, having regard to the nature of functions in that capacity and to all the circumstances.”³⁴

- f. Section 5(1) further provides that:

“Subject to subsection (2), where a body corporate commits an offence under this Act, every director, manager, secretary or other similar officer concerned with the offence is liable on conviction to such fine or term of imprisonment as the penal laws of the Partner State may prescribe.”³⁵

- g. **Payment of Restitution:** Section 6 (1) provides:

“Where a person is convicted of the offence of trafficking in persons the court may order that person to pay restitution to the victim.”³⁶

- h. **Victim Immunity from Prosecution:** Section (8) provides:

“Where a person provides evidence that he or she is a victim that person shall not be liable to prosecution for any prosecution offence against the laws immigration or prostitution, that is a direct result of the offence of trafficking in persons committed against him or her.”³⁷

- i. **Adoption of National Counter trafficking measures:** Section 9 provides:

“Each Partner State shall adopt such legislative and other measures as may be necessary, to counter the crime of trafficking in persons and related offences in the Community.”³⁸

- j. **State Autonomy for Prosecution of Offences:** Section 18(1) places the prosecuting authority in the hands of the member states providing:

“Prosecution of the offence of trafficking in persons and other related offences shall be executed in accordance with the laws of the respective Partner State.”³⁹

However, Sec. 18(3) provides:

“Without prejudice to the provisions of this section, the offence of trafficking in persons shall, in the Community, be punishable by a minimum of 10 years imprisonment.”⁴⁰

³³ Section 4 (8) of the East African Community Counter trafficking in Persons Bill of 2016.

³⁴ Section 5 (2) of the East African Community Counter trafficking in Persons Bill of 2016.

³⁵ Section 5 (1) of the East African Community Counter trafficking in Persons Bill of 2016.

³⁶ Section 6 (1) of the East African Community Counter trafficking in Persons Bill of 2016.

³⁷ Section 8 of the East African Community Counter trafficking in Persons Bill of 2016.

³⁸ Section 9 of the East African Community Counter trafficking in Persons Bill of 2016.

³⁹ Section 18 (1) of the East African Community Counter trafficking in Persons Bill of 2016.

⁴⁰ Section 18 (3) of the East African Community Counter trafficking in Persons Bill of 2016.

On a wider regional stage, the African Union has several provisions enshrined in its operating documents that seeks not only to address human trafficking on the continent but also to harmonize member states' efforts in counter trafficking. In comparison to the provisions of Ugandan and EAC legislation, the AU does not possess the wide range of legislative instruments available at the national and regional stages. Counter trafficking efforts here start with the African Charter on Human and Peoples Rights (Banjul Charter) 1986. Although there are no specific provisions relating to TIP, there are a number of Charter provisions that could be applied to counter trafficking measures such as:

a. **Article 5** which reads

*“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”;*⁴¹

b. **Article 6**

*“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”*⁴²

c. **Article 18(3)**

*“The State shall ensure the elimination of every discrimination against women and also censure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.”*⁴³

Apart from the Banjul Charter, other regional instruments address TIP directly:

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

Article 24 –

*“State Parties which recognize the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall: (d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;”*⁴⁴

Article 29 –

*“State Parties to the present Charter shall take appropriate measures to prevent: (a) the abduction, sale of, or traffic in 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.”*⁴⁵

b. **2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa**

⁴¹ Article 5 of the African Charter on Human and Peoples Rights (Banjul Charter) 1986

⁴² Article 6 of the African Charter on Human and Peoples Rights (Banjul Charter) 1986

⁴³ Article 18 (3) of the African Charter on Human and Peoples Rights (Banjul Charter) 1986

⁴⁴ Art. 24 (d) of the 1990 African Charter on the Rights and Welfare of a Child.

⁴⁵ Ibid, Art. 29.

Article 2 -

“States Parties shall take appropriate and effective measures to: (g) prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk”⁴⁶

⁴⁶ Art.2 (g) of the 2003 Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa.

Child Trafficking

Children hold a special place in Ugandan law on trafficking and efforts to address child trafficking in Uganda have their its foundations in the 1995 Constitution of Uganda, as amended. As specified earlier, the Constitution makes provisions for the prohibition of slavery, forced labour etc. but generalises these provisions for all Ugandans, adult and children, however, the constitution makes some provisions in terms of child rights that potentially safeguard against trafficking:

Section 17(1)(c) sets out one of the duties of a citizen as *“to protect children and vulnerable persons against any form of abuse, harassment or ill-treatment;”*⁴⁷

Section 34 sets out the rights to be enjoyed by children as **S.34(1)** holds that *“Subject to laws enacted in their best interests, children shall have the right to know and be cared for by their parents or those entitled by law to bring them up.”*⁴⁸

S.34(4) *“Children are entitled to be protected from social or economic exploitation and shall not be employed in or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.”*⁴⁹

S.34(5) *“For the purposes of clause (4) of this article, children shall be persons under the age of sixteen years.”*⁵⁰

S.34(7) *“The law shall accord special protection to orphans and other vulnerable children.”*⁵¹

Section 257 (c) *““child” means a person under the age of eighteen years;”*⁵²

The foregoing puts the 1995 Ugandan Constitution at the foundation of counter child trafficking efforts although it does not make any direct references to and provisions for TIP. The PTIP Act of 2009, however fills the inadequacies of the Ugandan Constitution on this topic as **Section 2(a) of the 2009 PTIP Act** designates anyone under the age of 18 as a child. The seriousness attached to combatting child trafficking in Uganda is shown by the extended provisions of **Section 4 of the 2009 PTIP Act** which qualifies as Aggravated Trafficking where;

(a) *4(a) “the victim of trafficking is a child;”*

(b) *4(b) “adoption, guardianship, fostering and other orders in relation to children is undertaken for the purpose of exploitation;”*⁵³

Section 5 of the PTIP Act also goes further in its provisions for child trafficking by describing Aggravated Trafficking in Children as

“A person who—

(a) does any act referred to under Section 3 in relation to a child;

(b) uses a child in any armed conflict;

(c) removes any part, organ or tissue from the body of a child for purposes of human sacrifice;

⁴⁷ Section 17 (1)(c), Constitution of the Republic Uganda 1995 (as amended).

⁴⁸ Section 34, Constitution of the Republic Uganda 1995 (as amended).

⁴⁹ Section 34 (4), Constitution of the Republic Uganda 1995 (as amended).

⁵⁰ Section 34 (5), Constitution of the Republic Uganda 1995 (as amended).

⁵¹ Section 34 (7), Constitution of the Republic Uganda 1995 (as amended).

⁵² Section 257 (c), Constitution of the Republic Uganda 1995 (as amended).

⁵³ Section 4 of the 2009 PTIP Act.

- (d) uses a child in the commission of a crime;
- (e) abandons a child outside the country;
- (f) uses a child or any body part of a child in witchcraft, rituals and related practices;⁵⁴

The Act also makes provision for the invalidation of consent given by either the victim of child trafficking or the parents or guardians of the victim(s) as Section 3(4) of the PTIP Act holds “*The consent of the victim of trafficking or if a child, the consent of his or her parents or guardian to the acts of exploitation shall not be relevant*”.⁵⁵ The PTIP Act not only sets different regimes for different forms of child trafficking but punishes offenders with stiffer penalties with Section 4 handing a life imprisonment term for aggravated trafficking and Section 5 handing a possible death penalty for aggravated child trafficking. When compared to the provisions for 15 years’ imprisonment term as punishment for regular trafficking in adults as set out in S3(1) of the PTIP Act, the PTIP Act sets a much higher punishment for perpetrators of child trafficking.

The provisions of the Section 4(a) and (b), and Section (5) of the 2009 PTIP Act show clearly that exploitation and trafficking of children takes different forms (sexual and labour exploitation, illegal organ harvesting, witchcraft, crime and armed conflict). However, despite the prevalence of these different forms of TIP driven exploitation, the PTIP Act fails to address these issues individually but rather groups them all together as exploitation in aggravated child trafficking.

The gaps created by the PTIP Act in addressing the different forms of exploitation of trafficked children, especially sexual and labour exploitation, is addressed in the Children Act of 2016 (as amended).

Children Act of 2016 (as amended)

- **Section 42A of the 2016 Children Act (as amended)**. Protection of children from all forms of violence:
 - (1) *Every child has a right to be protected against all forms of violence including sexual abuse and exploitation, child sacrifice, child labour, child marriage, **child trafficking**, institutional abuse, female genital mutilation, and any other form of physical or emotional abuse.*⁵⁶

Labour and sexual exploitation have also been addressed to a large extent in the provisions of the Act with:

- **Section 8** making provisions against - Harmful Employment.
 - (1) *A person shall not employ or engage a child in any activity that may be harmful or hazardous to his or her health, or his or her physical, mental, spiritual, moral, or social development.*
 - (2) *Subject to subsection (1), the minimum age of employment of a child shall be 16 years.*
 - (3) *For the purpose of this section, “harmful or hazardous employment” includes work which exposes a child to physical or psychological torture, sexual abuse, work underground, work at*

⁵⁴ Section 5 of the 2009 PTIP Act.

⁵⁵ Section 3(4) of the 2009 PTIP Act.

⁵⁶ Section 42A of The Children Act 1997 as Amended in 2016.

*dangerous heights or in confined spaces, work with dangerous equipment and tools, or manual handling or transportation of heavy loads, work with chemicals and dangerous substances, work under extreme temperatures, high levels of noise, or working for longer hours; or any other form of child labour which includes slavery, trafficking in persons, debt bondage and other forms of forced labour, forced recruitment for use in armed conflict, prostitution, pornography and illicit activities.*⁵⁷

- **Section 8A** addresses sexual exploitation

8A (1) A person shall not engage a child in any work or trade that exposes the child to activities of sexual nature whether paid for or not.

8A (2) For avoidance of doubt, it shall be unlawful for any person to use

- a) Inducement or coercion in the encouragement of a child to engage in any sexual activity;*
- b) Children in prostitution or other unlawful sexual practices; and*
- c) Children in pornographic performances or materials.*

*A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.*⁵⁸

Although the provisions above potentially answer the problem of specific provisions for sexual and labour exploitation of trafficked children, there is a wide gap between the provisions of the 2009 PTIP Act and the 2016 Children Act. The 2009 PTIP Act provides a much higher punishment threshold for any form of child trafficking and exploitation than the 2016 Children Act. While Section 4 and Section 5 of the PTIP Act respectively attach a life sentence and a possible death penalty for different forms of trafficking and exploitation of children, Section 8A of the Children Act punishes child sexual exploitation with only 5 years imprisonment.⁵⁹ The failure to specify punishments for the different forms of exploitation specified in the 2009 PTIP Act potentially creates a situation where offenders could be tried on different or lesser charges than those provided for in the PTIP Act.

Finally, in the protection of the rights of victims of trafficking, the PTIP act makes a wide range of provisions but however is lacking in provisions for the protection of the rights of child victims of trafficking. Section 11 (1) of the PTIP Act which holds that “*Measures for the protection, assistance and support to victims of trafficking in persons shall be interpreted and applied in a way that is not discriminatory to persons on the basis of race, religion, belief, age, family status, culture, language, nationality or gender*”⁶⁰ provides for the non-discrimination of victims of TIP regardless their age but does not go further to specify children as defined in Section 2(a) of the Act. In providing other protections to the victims of TIP, the PTIP Act in Section 12 holds that “*The protection, assistance and support to children shall be provided in accordance with their special needs, especially with regard to*

⁵⁷ Section 8 of The Children Act 1997 as Amended in 2016.

⁵⁸ Section 8A of The Children Act 1997 as Amended in 2016.

⁵⁹ Comparing Section 4 and 5 of the PTIP Act 2009 with Art.8A of the Children Act 1997. See also United States of America Department of State Trafficking in Persons Report 2019, page 472.

⁶⁰ Section 11 (1) of the 2009 PTIP Act.

*accommodation, education and care*⁶¹ provides for child victim tailored care and support and protection systems but fails to specify what those provisions may be or at least set a minimum threshold of protection and support. The only protection laid out in the PTIP Act explicitly for children is found in Section 13(2) with regards to confidentiality: *“For the purpose of (1), proceedings of the court shall be conducted in camera, outside the presence of the media, in cases involving children, sexual exploitation, and other cases where the court considers this appropriate.”*⁶² The effect these absences have on the success of prosecution and investigation of reported cases still remain to be seen.

⁶¹ Section 12 (g) of the 2009 PTIP Act.

⁶² Section 13 (2) of the 2009 PTIP Act.

Policy Framework

In March 2013, the Coordination Office for Prevention of Trafficking in Persons (COPTIP) was established as a way of operationalizing Section 21 of the PTIP Act which empowers the Ministry of Internal Affairs to designate an office responsible for the coordination, monitoring and overseeing the implementation of the Act. Counter trafficking efforts in Uganda are carried out by different government agencies and civil society organisations, hence COPTIP holds the responsibility for coordinating, monitoring and overseeing the implementation of counter human trafficking activities among these different bodies.⁶³ The coordination office oversees an Inter-Ministerial Anti-Trafficking Task Force comprised of 15 officials from MDAs, as well as representatives from the Ugandan Civil Societies Coalition against Trafficking in Persons (UCATIP). Some of the function of the Coordination Office are:

- To formulate comprehensive and integrated programs to prevent and suppress TIP.
- To prepare National Plan of Action on prohibition of TIP.
- To develop measures and policies to protect, assist and support victims of TIP.
- To establish a national data bank on cases of trafficking in persons.
- To engage in consultation, coordination, cooperation and advocacy to advance the objects of the Act.
- To initiate training and awareness of TIP and the counter trafficking measures available.
- To propose rules and regulations for effective implementation of the Act.
- To carry out any other activities as are necessary in support of the implementation of counter human trafficking activities.⁶⁴

In 2012, the Ministry of Internal Affairs (MIA) in conjunction with IOM set out to develop a National Action Plan for Prevention of Trafficking in Persons (NAP). Unofficial implementation of this plan commenced immediately but was officially launched in 2015 by the Minister of Internal Affairs. The NAP focused on five key activities:

- Legal and Policy Framework aspect – to contribute to the improvement in the national policy and legal framework to address the challenges and demands of managing TIP in accordance with the best recommended international standards.
- Prosecution – Contribute to an increase in the number of successful prosecutions and improve access to justice for all victims of trafficking.
- Prevention – To contribute to the reduction of levels of vulnerability that lead to TIP.
- Protection – Contribute to improving access to protection and assistance mechanisms in line with national and international standards.

⁶³ National Action Plan for Prevention of Trafficking in Persons in Uganda, page 5.

⁶⁴ Baguma Benda, Paper on *Challenges and Dilemmas Encountered by the National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms in the Course of Their Work. The Uganda Experience*, presented by a member of the Coordination Office on 21st May 2014, Bangkok, Thailand.

- Partnership - To contribute to a well-coordinated approach to prevent and combat TIP and protect victims of trafficking at the national, regional and international levels.⁶⁵

Since the operationalization of Section 21 of the PTIP Act in COPTIP and the formulation and implementation of a NAP, Ugandan authorities have further intensified their counter trafficking policy development and implementation efforts. Over the past years, Uganda has developed different policies to tackle key problem areas in TIP and to close the structural and operational gaps that existed with previous laws and policies.

- In January 2009, the Ugandan government established an Anti-Trafficking Unit within the Ugandan Police Force's (UPF) Child and Family Protection Unit (CFPU).
- In 2012, the External Employment Unit of the MGLSD (EEU) increased its monitoring and oversight of recruitment agencies from semi-annual to quarterly visits.
- The EEU developed specific operational guidelines for recruitment agencies and also developed an orientation session for Ugandans departing for work abroad.
- In 2014, the MIA through the National Security Information System project initiated a biometric national identification register where Ugandans were encouraged to present themselves for national registration.
- In January 2016, the government banned the recruitment of domestic workers to Saudi Arabia due to reports of poor working conditions.⁶⁶
- Development of national database on TIP
- Promotion of international collaboration in TIP issues,
- Promotion of regional operations and engagements on TIP,
- National awareness campaigns, development of a national awareness strategy to prevent TIP
- Enforcement of regulations for externalization of labour and prosecution of TIP offenders.
- The government also signed a bilateral labour agreement with Jordan, Saudi Arabia and the UAE.⁶⁷
- In 2016, the Children Act was amended to include prohibitions against the unlawful use of “*children in prostitution*” and the “*harmful and hazardous employment*” of children under the age of 16 in Art.8. The amendment also included prohibitions against slavery, debt bondage, TIP, prostitution and other forms of exploitative arrangements.⁶⁸
- In 2017, the MGLSD reported that it mandated labour recruitment agencies to register and undergo a thorough vetting process. Alongside registration and vetting, recruitment agencies are also mandated to maintain a minimum bank deposit and credit line to ensure they had readily available, adequate financial resources to repatriate workers if they became trafficking victims.
- On April 2018 the MGLSD also launched the External Employment Management Information System to streamline and coordinate the labour externalization programme and all the stakeholder.

⁶⁵ National Action Plan for Prevention of Trafficking in Persons in Uganda, page 14 -22.

⁶⁶ Office of the Auditor General of Uganda, Value for Money Audit on the Regulation of Labour Externalization by Ministry of Gender, Labour and Social Development (MoGLSD), A Report by the Auditor General, December 2017, page 3.

⁶⁷ Ibid.

⁶⁸ Section 8 of the Children Act (Amendment) 2016.

- In 2018, the Ugandan Ministry of Justice approved and published the implementing regulations for the 2009 PTIP Act.⁶⁹
- The government in 2017 having signed bilateral labour agreements, lifted the 2016 ban on Ugandans travelling abroad for work with the exception of Oman due to ongoing reports of abuse.

Regional Policy Frameworks

Although the African Union (AU) does not possess a region-wide legal framework dealing with TIP, the AU makes up for this with a wide range of policy documents, which also have bearing on Uganda's counter trafficking efforts. Over the years, the AU has developed a number of policy documents dealing directly and indirectly with TIP.

Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children – The African Union Commission Initiative against Trafficking Campaign (AU.COMMIT)

launched in 2006 is the major regional policy framework addressing TIP.⁷⁰ The AU.COMMIT birthed the Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children (hereinafter referred to as OAP)⁷¹ The OAP shows a joint reaffirmation from African States and the European Union to the development of co-operation, best practices and mechanisms to prevent and combat TIP.⁷² The OAP looks at counter trafficking holistically and reaffirms this in its general principles providing:

- *“Trafficking in human beings, within and between states, is a scourge which states are determined to address.”*
- *“Measures to prevent and combat trafficking in human beings should be based on respect for human rights including protection of victims, and should not adversely affect the rights of victims of trafficking. Special attention should be given to the United Nations Protocol to Prevent, Suppress and Punish trafficking in persons, especially women and children. The best interest of the child, including as recognised in existing international conventions, shall be considered paramount at all times.”*
- *“The empowerment of women and girls through national policies is an important part of combating trafficking. A gender perspective should be applied when adopting and implementing measures to prevent and combat trafficking in human beings.”*
- *“Poverty and vulnerability, an unbalanced distribution of wealth, unemployment, armed conflicts, poor law enforcement system, degraded environment, poor governance, societies under stress as well as non-*

⁶⁹ United States of America Department of State Trafficking in Persons Report 2019, page 473.

⁷⁰ Onuoha Victoria, *Overview of the International Regional Legal Frameworks and Initiatives on the Right to an Effective Remedy*, paper presented at the regional consultation on the right to an effective remedy for trafficked persons pursuant to the mandate of the UN Special Rapporteur on Trafficking in Persons, Especially Women and Children held on Thursday November 21, 2013 at the Transcorp Hilton Hotel, Abuja, Nigeria, page 8.

⁷¹ Ibid.

⁷² https://ec.europa.eu/anti-trafficking/eu-policy/ouagadougou-action-plan-combat-trafficking-human-beings-especially-women-and-children_en

inclusive societies, corruption, lack of education and human rights violations including discrimination, increased demand for sex trade and sex tourism are among the root causes of trafficking in human beings and must be addressed”.⁷³

The OAP in setting out the roadmap for the development of measures for counter trafficking in the continent hinged on four key activities for states to partake in:

- a) Prevention and Awareness Raising.
- b) Victim Protection and Assistance.
- c) Establishment of Legislative Frameworks, Policy Development and Law Enforcement.
- d) Co-operation and co-ordination of efforts.⁷⁴

The holistic nature of the OAP, with its sharp emphasis on taking a human rights approach to protecting the victims of trafficking, prevention of and awareness raising on TIP matters, prosecution of offenders, and gender sensitive intensive approach to TIP, sets the standard for National Action Plans to follow.

African Common Position on Migration and Development (ACPMD) –

Apart from the OAP, there is the African Common Position on Migration and Development (ACPMD) which was adopted at the July 2006 Banjul Summit by the African Union Executive Council through the Executive Council Decision (EX.CL/Dec.305 (IX)).⁷⁵

The ACPMD was adopted in response to address the growing inward and outward migratory flows and trends in the continent. Highlighting the institutional and infrastructural inadequacies of some countries on the continent to deal with emerging trends, the ACPMD looked to make recommendations which will in turn set the standard for dealing with migration on the continent.

The ACPMD addresses migration and development in African with consideration to different priority policy issues and in relation to TIP, it provides:

- a. **Migration and Gender:** Acknowledging the rising number of women on the move either together with spouses, family or individually, the ACPMD provides:
... “Migrant women’s vulnerabilities to exploitation are highlighted by the frequently abusive conditions under which they work, especially in the context of domestic service and sex industries in which migrant trafficking is heavily implicated. It is therefore important to give particular attention to safeguarding the rights (labour, human rights, inter alia) of migrant women in the context of migration management”.⁷⁶
- b. **Children and Youth:** Also acknowledging the increasing number of children in the age composition of migrants, the ACPMD emphasizes the importance of child centric policies holding:

⁷³ Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children as adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006, page 2.

⁷⁴ Ibid.

⁷⁵ African Common Position on Migration and Development, (EX.CL/Dec.305 (IX), page i.

⁷⁶ 3.8 African Common Position on Migration and Development, (EX.CL/Dec.305 (IX), page 7.

... “In many parts of the world, including certain regions in Africa, child trafficking is a critical challenge that must be addressed from different angles including targeted prevention campaigns, protection and assistance to victims of trafficking, training of relevant authorities on how to address trafficking challenges and prosecution of traffickers and their accomplices. Children born migrants should receive special attention.”⁷⁷

The ACPMD also makes provisions for policy development on both the national, regional and international level to better effectively handle migration on the continent. To combat trafficking on the national stage, the ACPMD makes recommendations for member states to “strengthen the mechanisms to combat smuggling and trafficking in human beings including the elaboration of legal instruments;”⁷⁸. On the regional stage, the common position encourages the AU to “Introduce due process measures including legal frameworks to fight illegal migration and punish those guilty of smuggling or trafficking;”⁷⁹

African Union Migration Policy Framework for Africa and Plan of Action (2018 - 2030).

The Migration Policy Framework (MPF) was adopted as a coordinated response by the AU in light of the development and potential challenges posed by increased migratory trends on the African continent. The overarching aim of the MFPA is the facilitation of better, safer, more orderly and dignified means of migration. The current MPF which is a revision of the previous and first MPF on the African continent (MPF 2006), provides comprehensive policy guidelines to member states and Regional Economic Communities on 9 key thematic areas:

- Migration Governance;
- Labour Migration and Education;
- Diaspora Engagement;
- Border Governance;
- Irregular Migration;
- Forced Displacement;
- Internal Migration;
- Migration and Trade; and
- Other Cross-Cutting issues.

Under the policy guidelines for irregular migration, the MPF makes specific note of the problems posed by migrant smuggling and TIP. Directly referring to TIP, the MPF acknowledges the efforts of the OAP and the AU Horn of Africa Initiative (Khartoum Process) in the region, however goes further to make policy recommendations to bolster counter trafficking efforts on the continent. The MPF recommends cross-cutting

⁷⁷ 3.9 African Common Position on Migration and Development, (EX.CL/Dec.305 (IX), page 7

⁷⁸ 5.1. (e), African Common Position on Migration and Development, (EX.CL/Dec.305 (IX), page 10

⁷⁹ 5.2. (c), African Common Position on Migration and Development, (EX.CL/Dec.305 (IX), page 10

strategies: Legislative and Counter Trafficking Strategies; Prevention Strategies, Protection Strategies; Prosecution and Investigation Strategies and Partnerships.

- **Legislative and Counter Trafficking Strategies:** States are encouraged to ratify the Palermo Protocol and also make their national laws consistent with the provisions of the Palermo Protocol. In doing so, states are further encouraged to ensure that punishment for offenders and accomplices are sufficient to deter and are commensurate with the gravity of the offence of TIP. Besides from prosecution of offenders and accomplices, the protection of the rights of victims should also be guaranteed in their respective TIP legislations, and the further development of strategies should be based on principles of prevention, protection, prosecution and partnership, and in line with international standards.
- **Prevention Strategies:** Prevention of trafficking is highly emphasised in the MPF and states are encouraged to engage in the identification and sensitization of vulnerable and migrant communities of various forms of TIP and exploitation. States are also encouraged to strengthen counter trafficking infrastructure in their respective countries by organising trainings for law enforcement and immigration officers, and researching and identifying prevalent TIP trends in their countries. Lastly, states are encouraged to pay special attention to women, children and forced migrants owing to their specific vulnerabilities, and also put in place safeguards to ensure that the rights of prospective migrant workers are protected.
- **Protection Strategies:** In the development of protection strategies, states are encouraged to put in place special mechanisms for the identification and response to vulnerable groups and also develop referral mechanisms to connect victims with legal, financial, psychosocial, education and medical aid to foster their reintegration to society. With particular focus on children, states are encouraged to prioritise the interest of the child in the provision care and support services to identified and suspected victims of child trafficking. States are also encouraged to pay special attention to unaccompanied and separated migrant children in the provision of care and support victims of trafficking to avoid re-trafficking. Finally, the development of a gender perspective to the provision of support services to victims of trafficking is recommended as states are encouraged to provide gender-responsive and culturally appropriate services to trafficked persons.
- **Prosecution and Investigation Strategies:** States are encouraged to develop guidelines and policies on investigating and prosecuting offenders as well as provide relevant training to law enforcement and judicial officers. The importance of devoting specialised units in law enforcement and prosecution offices dedicated to combating TIP is emphasised. States are also encouraged to develop mutual assistance mechanisms in investigation and prosecution of transnational TIP.
- **Partnerships:** States are encouraged to engage in international cooperation for investigating and prosecution of transnational TIP through bilateral agreements and development of mutual assistance mechanisms, including via the Economic Community of West African States (ECOWAS) Model

Bilateral Agreement on cooperation and mutual legal assistance in protecting children from trans-border trafficking.⁸⁰

⁸⁰ ECOWAS Model Bilateral Agreement on Cooperation and Mutual Legal Assistance in Protecting Children from Trans-Border Trafficking, 2004

Practice

Legal and policy responses to human trafficking hinge on three key activities, i.e. Prevention of Trafficking, Prosecution of Offenders and Protection of Victims. Partnership is also critically important. Since the enactment of the 2009 PTIP Act, the Ugandan government has intensified its efforts in counter trafficking. This section of this document looks at the practice of counter trafficking by the Ugandan authorities in the light of these activities since the inception of the 2009 PTIP Act to date.

Prevention

The PTIP Act does not give much direction on activities to prevent trafficking in the country. The main prevention-related provision is Section 21 which relates to the formulation of the coordination office which was operationalized in 2012. Despite the absence of concrete legislative guidance on the prevention of trafficking, Ugandan authorities have made considerable efforts over the years to reduce the rate of trafficking in the country. Here are some examples of key efforts of the Ugandan government in preventing trafficking:

- **Public sensitization** – Since 2009, the Ugandan government has intensified its anti-trafficking awareness campaigns composed of print and social media outreach programs, and public messaging. The government in joint efforts with NGOs intensified efforts reduce the demand for commercial sex acts by running campaigns discouraging “*sugar daddies*” and the arrest of men procuring females in prostitution on grounds of disorderly conduct.

In 2012, the government increased its anti-trafficking awareness and outreach programs by arranging five radio and television programs, broadcasting in rural and urban areas in both English and local languages.

The MOI in partnership with NGO’s conducted awareness training for CSOs, local leaders, police, immigration officers, labour inspectors, taxi, bus and “*boda boda*” drivers (commercial motorcyclists), hotel operators, and security and probation officers on identification and referral of trafficking victims. The training focused on known recruitment areas along the border and at the international airport.

- **Capacity building and Training of officials** - The government in 2009 provided trainings on human trafficking for Ugandan battalions being deployed to the African Union Mission in Somalia (AMISOM) while forces deployed in the DRC received briefings on children abducted by the LRA as well as inclusion of child protection officer in the ranks. The Ugandan government has sustained its Armed Forces training through 2018.

In 2013, the government carried out 8 capacity building workshops for law enforcement agencies with a total of 350 stakeholder members trained.

- **Signing of Bilateral Labour Agreements** – The Ugandan government signed bilateral labour agreements with the governments of Saudi Arabia and Jordan and the UAE to regulate labour externalisation.⁸¹

⁸¹ Office of the Auditor General of Uganda, Value for Money Audit on the Regulation of Labour Externalization by Ministry of Gender, Labour and Social Development (MoGLSD), A Report by the Auditor General, December 2017, page 3.

- Licensing and registration of recruitment agencies** – In 2009, the MGLSD revoked the licenses of recruitment agencies that were seen to have fraudulently recruited Ugandans for work abroad as well as suspending the recruitment of domestic workers to the Middle Eastern countries.

In 2012, the EEU increased its monitoring and oversight of recruitment agencies from semi-annual to quarterly visits resulting in the shutdown of four unlicensed recruitment agencies and in 2016, recruitment companies were required to undergo a vetting and registration process.

In 2018, the government launched the External Employment Management System (EEMS) which functioned as an internet database where Ugandans could search and apply for all pre-vetted overseas employment opportunities through licensed recruitment firms.
- Ban on labour exports** – In 2009 and 2016, the government officially suspended the sending of domestic workers to Middle East countries on account of reported abuse and exploitation, limiting recruitment to guards, drivers and labourers. In 2017, the government lifted the work travel ban on Middle East countries except Oman due to ongoing reports of abuse.⁸²
- Pre-departure training for workers** – The EEU in 2011 began providing pre-departure training and seminars for Ugandans leaving for work abroad; providing sample contracts to recruitment agencies and providing contact details for Ugandans should they need assistance abroad. The Ugandan government has maintained its pre-departure trainings program.
- Intensive pre-departure Screening** – In 2012, the UPF's special investigation unit introduced additional screening for Ugandans hoping to emigrate for work. Immigration officers are also required to attentively scrutinize travel documents and travel reasons for Ugandans travelling for work abroad. As a result of the intensified screenings, passports have been seized from unlicensed recruitment agencies and foreign embassies.
- Rescue of vulnerable children** - In 2011, following the interception of several buses of children heading from the Karamoja region, the MGLSD established roadblocks along the Karamoja-Kampala corridor to identify potential child victims of TIP before they arrived at Kampala.

In 2012, the MGLSD worked with CSOs to identify and rescue more than 8500 children engaged in illegal child labour and provided them with vocational training, health care and psycho-social support.

In 2015, the government in partnership with CSOs developed victim identification and assistance guidelines for child victims of TIP and distributed these guidelines to immigration officers and also provided training on its implementation.
- National Action Plan to Prevent Trafficking in Persons** – In 2015, the government launched the National Action Plan to combat trafficking, implementation of which had already been ongoing since 2012. The NAP was developed to be implemented between 2013 and 2018, however there is no update on the status or success of the implementation. It is also noteworthy that IOM and COPTIP are in the process of developing a new NAP intended to run from 2019-2023.⁸³

⁸² United States of America Department of State Trafficking in Persons Report 2019, page 471.

⁸³ IOM, IOM Uganda Annual Report, 2018

Prosecution

Prosecution of offenders of TIP is a very integral part of counter trafficking efforts. Prosecution serves as a deterrent for future offenders and provides victims with an opportunity at justice. The 2009 PTIP Act makes extensive provisions for prosecution and punishment of offenders that are consistent with international standards and consistent with punishment allotted for serious crimes like rape.

The Ugandan government had been engaged in anti-trafficking efforts before the enactment of the 2009 PTIP Act, but the lack of the structure that the Act affords, meant that statistics on trafficking prosecutions and convictions were not kept separately, making it difficult to determine exact numbers of trafficking prosecution. However, with the advent of the 2009 PTIP Act, the investigation, prosecution and recording of trafficking cases became easier but despite the considerably high number of investigated and reported cases, the number of prosecutions does not reflect these high numbers.

- In 2009, the Ugandan government reported an overall number of three prosecutions and one conviction. Despite the enactment of the PTIP Act 2009, prosecution of suspected trafficking offenses continued to be carried out under other statutes such as the prohibition on procurement for prostitution, defilement and kidnapping.⁸⁴
- In 2010, the Child and Family Protection Unit (CFPU) did not provide an aggregate number of investigations, prosecutions and convictions for 2010 however, none of the 16 alleged child trafficking cases reported in the Ugandan Police Force's (UPF) 2009 crime report led to prosecutions or convictions.⁸⁵
- In the 2011, the government acquitted two suspected traffickers, initiated prosecution for two additional suspects and started an additional two investigations. In the same year, the government acquitted two alleged traffickers because the alleged offences occurred before the commencement of the 2009 PTIP Act.

The MOI also trained 598 police cadets from Uganda, South Sudan and Somalia on identifying trafficking cases as well as 22 immigration officers on victim identification and case investigation. The stated aim of this expanded training programme was to increase the number of successful investigations and prosecutions.⁸⁶

- In 2012, the number of prosecutions increased from four prosecutions in 2011 to 28 prosecutions, but despite the increase in the number of prosecutions, pending cases in the courts did not progress through the judicial process. Aside from the 28 prosecutions, 58 other cases remained under investigation with four other cases were either dismissed or withdrawn.

During a May 2012 operation in the Central African Republic, the Ugandan military captured a senior LRA commander Caesar Acellam who was accused of recruiting and using children as soldiers and sex slaves. The government also partnered with NGOs to organise trainings for 40 Magistrates and 22 law

⁸⁴ United States of America Department of State Trafficking in Persons Report 2010, page 331.

⁸⁵ United States of America Department of State Trafficking in Persons Report 2011, page 365.

⁸⁶ United States of America Department of State Trafficking in Persons Report 2012, page 352.

enforcement officials to help familiarize them with their roles and responsibilities under the 2009 PTIP Act.⁸⁷

- In 2013, the government intensified its counter trafficking efforts by increasing its prosecutions from 28 in 2012 to 43 with its first convictions since 2009. The total number of investigated cases reported by the government was 159 in the year under review.

In one of the convictions for the year, a judge sentenced two convicted traffickers to an eight-year prison term for trafficking and forgery charges for the sex trafficking of Ugandan women to China and Malaysia in 2011 and 2012. Apart from serving prison time, the convicted individuals were also required to pay compensation totalling the equivalent of \$5500 to the victims. In December of 2013, the government provided training for an additional 100 immigration officers on identification of potential victims of TIP; ensuring that all 300 immigration officials have received TIP training. NGOs also reported that victims were being paid monetary settlements by suspects to withdraw their requests and support for prosecutions; it is reported that five cases were dropped due to this.⁸⁸

- The number of reported case investigations increased again in 2014 from 159 in the 2013 to 293 in 2014 with 23 prosecutions and 4 convictions. In one of the convicted cases, the government sentenced two offenders to 27 and 25 years for aggravated trafficking and selling of two children into labour exploitation.

In the same year, an NGO also reported cases of sexual abuse and exploitation of Somali women and girls including trafficking victims by Ugandan Personnel in AMISOM. Once evidence of the existence of sexual exploitation was discovered by an African Union investigation team, the Ugandan People's Defence Force (UPDF) sent investigators who identified up to 5 suspects for prosecution.⁸⁹ The government also charged a senior manager within the Ministry of Finance with aggravated trafficking for purportedly luring five girls and women to Kampala under false pretences, with intentions of trafficking them.⁹⁰

- In 2015, the government reported 108 trafficking investigations with 15 prosecutions and 3 convictions. One of the convicted offenders was sentenced to one year's imprisonment for labour and sexual exploitation and the other two convicted offenders were sentenced to fines of 800,000 and 200,000 Ugandan Shillings, both for labour trafficking.

Later that year, the Ugandan government declined the request of the US Department of State to waive diplomatic immunity to allow the prosecution of a Ugandan diplomat and his spouse for suspected labour trafficking and other related offences.⁹¹

⁸⁷ United States of America Department of State Trafficking in Persons Report 2013, page 372.

⁸⁸ United States of America Department of State Trafficking in Persons Report 2014, page 388.

⁸⁹ United States of America Department of State Trafficking in Persons Report 2015, page 344.

⁹⁰ Conrad Ahabawe for PML Daily, US report implicates Uganda govt officials in human trafficking, July 3 2018, available at <https://www.pmldaily.com/news/2018/07/us-report-implicates-uganda-govt-officials-in-human-trafficking.html>

⁹¹ United States of America Department of State Trafficking in Persons Report 2016, page 379. See also, Andrew Bagala for All Africa, Uganda: Probe Officials Involved in Human Trafficking – US, 4 JULY 2018, available at <https://allafrica.com/stories/201807040360.html>

- In 2016, the government reported 114 trafficking investigations, prosecution of 32 defendants in 20 cases and the conviction of 16 TIP offenders; the highest conviction rate since the enactment of the PTIP Act. Of the 20 prosecuted cases, nine cases involved transnational trafficking, four of which ended in convictions, and nine cases involved internal child trafficking for labour or sexual exploitation, six of which ended in convictions. Unlike previous years, the government also pursued criminal prosecution of two labour recruitment agencies under the 2009 PTIP Act.⁹²
- In 2017, 145 trafficking investigations, prosecution of 52 defendants in 50 cases and 24 convictions of trafficking offenders under the 2009 PTIP Act were reported. The government also suspended four high-level officials in the Office of the Prime Minister based on allegations of their involvement in illegal activities in the refugee settlements.⁹³

The media also reported that the Police Professional Standards Unit investigated several regional and district police commanders in Busia and Tororo districts for alleged involvement in human trafficking. The government also neglected to report on the status of the prosecution case from 2014 involving a manager at Ministry of Finance on alleged child trafficking offenses.

To strengthen anti-trafficking efforts, the government in conjunction with NGOs facilitated the training of 150 participants on the anti-trafficking law and case management; judges, magistrates, prosecutors, law enforcement officials, and civil society attended the training. The MIA also conducted two training sessions for 63 police officers, three prosecutors, and four probation and social welfare officers in both the Katonga and Wamala regions on trafficking and the anti-trafficking law.⁹⁴

- In 2018, the government reported 286 trafficking investigations with 63 prosecutions under the PTIP Act and 34 for fraudulent recruitment; convicting six traffickers under the PTIP Act and four for fraudulent recruitment. Of the six convictions under the anti-trafficking law, the courts sentenced two traffickers to two years' imprisonment, one to 14 months' imprisonment, two to community service, and one to a fine. For traffickers convicted for fraudulent recruitment, one received three years' imprisonment, one received one year, and two received warnings. The majority of convicted traffickers did not receive sentences considered adequate to deter.

The media reported that the government arrested eight suspected traffickers for transporting vulnerable children from the Karamoja region into Kampala, but the government did not report prosecuting any traffickers who exploit these children in forced begging and child sex trafficking in brothels in Kampala, allowing traffickers of these children to continue with impunity. To further strengthen counter trafficking efforts, the government established a trafficking-specific desk in the Office of the Director of Public Prosecutions (ODPP) responsible for prosecuting trafficking crimes. The Ugandan government through the MOI and other MDAs continued training officials on human trafficking.⁹⁵

⁹² United States of America Department of State Trafficking in Persons Report 2017, pages 404 - 405.

⁹³ United States of America Department of State Trafficking in Persons Report 2018, pages 403 - 404.

⁹⁴ United States of America Department of State Trafficking in Persons Report 2017, page 404.

⁹⁵ United States of America Department of State Trafficking in Persons Report 2019, page 472 -473.

Protection

Protection of victims of TIP is a very integral part of counter trafficking efforts. Section 11 – 17 of the PTIP Act makes extensive provisions for the protection of victims ranging from non-discrimination of victims⁹⁶ to the provision of restitution⁹⁷ and compensation of victims.⁹⁸ Since the enactment of the Act, the Ugandan government has stepped up its efforts in protecting the rights of victims.

- In 2009, the Ugandan government in partnership with IOM and the government of Iraq issued travel documents for the repatriation of 14 Ugandan women from Iraq. The Special Task Force for the Elimination of Human Sacrifice and Trafficking also assisted with the repatriation of three Ugandan girls from a separate case in Iraq and in the same year, the MOI allowed Pakistani victims on a case by case basis to stay back in the country to assist with investigations.

Due to the lack of resources to provide sufficient direct assistance to identified victims, the government typically referred victims to different NGOs on an ad hoc basis. For example, the UPF identified and referred 12 child trafficking victims a local NGO's shelter in Kampala and the Ugandan military's CFPU received and processed 66 children returning from LRA captivity before transporting them to NGO operated rehabilitation centres for long-term care.

The MGLSD also removed Karamojong children in possible trafficking situations from Kampala's streets and transferred 300 of them to two MGLSD-operated shelters in Karamoja that provided food, medical treatment, counselling, and family tracing while also operating a facility in Kampala for the initial intake of street children.⁹⁹

- In 2010 the government assisted in the repatriation of six Ugandan victims, including three from Iraq, two from Malaysia, and one from Oman and the UPF also referred all of its 77 identified child trafficking victims to a local NGOs shelter in Kampala. The Ugandan military CPU in Gulu received and debriefed 83 returned children who had been abducted by the LRA, before referring them to NGO-run rehabilitation centres for six weeks of care.

The MGLSD also continued activities to remove Karamoja children in possible trafficking situations from Kampala's streets and transferred several hundreds to two MGLSD-operated shelters in Karamoja that provided food, medical treatment, counselling, and family tracing. Despite the efforts of the government, victims were sometimes prosecuted for immigration or prostitution violations as children detained during police sweeps were often released without care as a result of the absence of procedures for the systematic identification and referral of victims among high risk groups. There were also no similar government-funded or operated facilities or services for adult trafficking victims as were available for child trafficking victims but one trafficking victim on the encouragement of the government testified against a trafficker during prosecution.¹⁰⁰

⁹⁶ Section 11 of the PTIP Act 2009.

⁹⁷ Section 15 of the PTIP Act 2009.

⁹⁸ Section 17 of the PTIP Act 2009.

⁹⁹ United States of America Department of State Trafficking in Persons Report 2010, page 331.

¹⁰⁰ United States of America Department of State Trafficking in Persons Report 2011, page 366.

- In 2011, the government continued its efforts to protect trafficking victims but the absence of procedures for the systematic identification of high-risk and vulnerable groups hampered results in the year. During the year, NGOs provided services, including counselling and vocational training to 104 children removed from domestic servitude and prostitution. The government continued to provide short-term shelter, food, and medical care at police stations, while referring victims on an ad hoc basis to NGOs for long-term care and additional services. The government did not provide support to NGOs offering longer-term care.

In Kampala, local police routinely took street children to an under-resourced MGLSD juvenile detention centre that provided food, medical treatment, counselling, basic education, and family tracing. Children spent up to three months at the facility; some were returned to their families, but many others returned to the streets again. In the same year, IOM repatriated 13 Ugandan women from Malaysia and two from China with the Ugandan government providing travel documents to several of these trafficking victims, but no funding for travel costs or provision of medical care, shelter, counselling, or other assistance to these or other repatriated trafficking victims.¹⁰¹

- In 2012, the government made intensified efforts in protection of TIP victims. The government provided modest assistance to 57 internal trafficking victims and cooperated with other organizations that provided victim assistance within Uganda during the year, however it failed to provide protection services or support to victims repatriated following their trafficking abroad. The Ugandan military assisted in the rescue of at least 42 individuals, including 10 children associated with the LRA, and coordinated with NGOs and UN personnel to facilitate the transfer of rescued individuals back to their countries of origin. The UPDF also hired two civilian female social workers to support women and children rescued from the LRA before their transfer to NGO and UN partners.

The government also cooperated with foreign governments to repatriate over 19 victims of TIP from 6 countries and the honorary Consul in Malaysia investigated tips and identified nine victims, offering them shelter and assistance at the consulate before their repatriation. The government also maintained its operations on street children in Kampala, transferring 57 street children to an under-resourced MGLSD juvenile detention centre that provided food, medical treatment, counselling, basic education, and family tracing services. NGOs provided counselling and vocational training to 140 children removed by the Ugandan police from domestic servitude and prostitution.¹⁰²

- In 2013 the Ugandan government provided travel documents for an IOM funded and coordinated return of 25 Ugandans from 9 countries. Ugandan government officials also provided counselling and family reunification services to victims following their return from exploitation overseas. The government continued its efforts for street children in Kampala with IOM and the UPF; screening, assisting and identifying 128 Karamojong children as trafficking victims.

NGOs on referral from the government provided counselling and vocational training to 80 children, 69 of whom were exploited in Uganda. The UPDF provided food and medical care as part of immediate

¹⁰¹ United States of America Department of State Trafficking in Persons Report 2012, page 352.

¹⁰² United States of America Department of State Trafficking in Persons Report 2013, page 372.

assistance to rescued trafficking victims and coordinated with NGO and UN personnel to provide longer-term assistance and facilitate their return home. The UPDF also assisted in the rescue of at least 26 children aged 3 to 13 undergoing training to join the Allied Democratic Forces (ADF) and United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) returned three trafficked former ADF combatants to Uganda.¹⁰³

- In 2014, the government reported providing medical treatment to victims through the National Taskforce but also continued to rely heavily on NGOs and international organisations to provide most of the services to victims. The continued reliance on NGOs to provide majority of the services to victims on an ad hoc basis came as a result of the absence of a formal process to refer victims to protective services. Despite the achievements of the government in 2014, the protection efforts of the government still remained lacking.

The government despite providing travel documents to identified victims of transnational TIP, kept the funding of their repatriation and the provision of medical care and shelter out of their plans. Although Section 12(1) of the PTIP Act removes criminal liability from trafficked persons for any crime that might have been committed as a result of their being trafficked, some reports indicated that police and communities treated street children as criminals, arbitrarily arresting, detaining, and beating them, and forcing them to clean detention facilities.¹⁰⁴

- The government in 2015 identified 347 victims of TIP out of which 48 were foreign victims trafficked into or through Uganda. COPTIP also identified and referred to care, 26 potential victims, including 22 Bangladeshis and four Ethiopians being transported through Uganda. In the same year, the government in conjunction with NGOs developed and distributed victim identification and assistance guidelines for child trafficking victims but failed to make the same provisions for victims of adult trafficking. However, the MGLSD and the national taskforce started consultations on the process of developing formal guidelines for victim referral.

The government also reported providing medical treatment, counselling assistance, and transportation through police clinics to victims; however, it continued to rely on NGOs and international organizations to provide most victim services. The reports of arbitrary detention of trafficking victims were sustained through 2015 despite its prohibition in the PTIP Act.¹⁰⁵

- By 2016, the government had developed and began employing identification and assistance guidelines for both adult and child victims of TIP but continued to rely heavily on NGOs and international organisations to provide the vast majority of victim services. Despite the progress made in employing identification and assistance guideline for victims, the government failed to provide adequate shelter for many Ugandan victims of transnational TIP, also continuing its trend of providing only travel documents for Ugandans marked for repatriation. The government did however report providing an unknown number of victims with medical treatment, counselling assistance, emergency shelter, and

¹⁰³ United States of America Department of State Trafficking in Persons Report 2014, page 388.

¹⁰⁴ United States of America Department of State Trafficking in Persons Report 2015, page 345.

¹⁰⁵ United States of America Department of State Trafficking in Persons Report 2016, page 380.

transportation through police clinics however, victim care remained inadequate and available services were primarily for children and women, with few NGOs offering shelter for adult males.

The government continued its campaign for the rehabilitation of street children who were potential trafficking victims by occasionally rounding them up and holding them in rehabilitation centres where family tracing was conducted before eventually reuniting them with their families. Despite these efforts, reports of maltreatment of street children by police continued.¹⁰⁶

- In 2017, the government's protection efforts directly mirrored those of the previous year with its successes and failures. The government also reported cooperating with foreign countries from the East African Community to develop a regional anti-trafficking initiative that focused on victim identification, to ensure that trafficking victims were not arrested or prosecuted for crimes committed as a result of being subjected to trafficking; the initiative was ongoing. There was also no formal policy to provide cooperating victims and witnesses with assistance, support, or safety; however, the government sometimes provided food, transportation, physical protection, or in-kind support.¹⁰⁷
- In 2018, the Ugandan government reported removing nearly all internal child trafficking victims from situations of internal trafficking but did not report providing the children with assistance afterward. The Minister of Justice approved and published the implementing regulations for the 2009 PTIP Act, however, the government did not report allocating funds for the implementation of the victim protection provisions in the regulations. Although the government continued to provide trafficking guidelines and trainings to immigration officers, the government remained without a formal national mechanism used by all front-line officials to systematically identify and refer trafficking victims to appropriate care.

The reliance on NGOs for the provision of the vast majority of victim services and referrals continued in 2018 as several NGOs reported assisting over 214 trafficking victims. The repatriation of Ugandans in 2018 mirrored the efforts in the previous years with the lack of embassies in some of the destination countries hindering identification and assistance efforts. However, in the UAE, the government secured temporary housing and shelter facilities, and also developed an emergency fund in Saudi Arabia for distressed Ugandan nationals, which was used by rescued TIP victims.

The absence of victim and witness protection programs continued to hinder the full participation of victims in prosecutions. The government continued its efforts in rescuing, rehabilitating and returning street children who were potential victims of TIP and reports indicated a reduction in the maltreatment of street children by officials. Despite the efforts in 2018, many NGOs reported that the government did not adequately address or prioritize internal trafficking of children from the Karamoja region, including forced street begging and child sex trafficking in brothels.¹⁰⁸

¹⁰⁶ United States of America Department of State Trafficking in Persons Report 2017, page 405.

¹⁰⁷ United States of America Department of State Trafficking in Persons Report 2018, pages 432 - 433.

¹⁰⁸ United States of America Department of State Trafficking in Persons Report 2019 pages 473 -474.

Partnership

Partnerships are an important but often forgotten aspect of counter trafficking practice. This is seen as assessments of counter trafficking efforts are usually limited to activities of prevention, protection and prosecution and this can be seen in different TIP reports (e.g. the US State Department Annual TIP Reports). The disregard of the partnership aspect of counter trafficking could be seen as a gap in appraising counter trafficking efforts especially for countries like Uganda that have multiple actors in their counter trafficking sphere.

Section 21 of the PTIP Act, which operationalises and sets out the responsibilities for COPTIP indirectly acknowledges the importance of partnerships in Uganda's counter trafficking efforts by providing for a coordinating body to regulate the activities of different stakeholders in counter trafficking. Although the PTIP Act gives the Ugandan government the primary responsibility for counter trafficking through the MIA, civil society organisations and international organisations play a vital role in the fight against TIP in Uganda. The National Taskforce, a multi sector organisation consisting of 13 members of key government MDAs, UCATIP and the IOM as an observer, is an example of the importance of partnerships in Uganda's efforts. The full membership of the National Taskforce is:

- Ministry of Internal Affairs Headquarters;
- Ministry of Foreign Affairs;
- Ministry of Justice & Constitutional Affairs;
- Ministry of Gender, Labour & Social Development;
- Ministry of Education & Sports;
- Ministry of Local Government;
- Uganda Police Force;
- Directorate of Citizenship & Immigration Control;
- INTERPOL;
- Internal Security Organization;
- External Security Organization;
- Directorate of Public Prosecutions;
- Office of Prime Minister;
- Civil Society Organizations;
- Other concerned International and Local Development Partners.

Some of the partnership between the different stakeholders has effects in the following:

- **Trainings:** The Human Trafficking Institute partners with the Office of the DPP and the Ugandan Police Force in the training of government officers in trafficking. This has resulted in the development of specialised trafficking units within the Office of the DPP and the UPF. Willow International has also partnered with Ministry of Justice and Constitutional Affairs in the training of judges and court officials on anti-trafficking laws and victim centred approach to handling court proceedings.

- **Provision of Support Services:** Victims of trafficking are exposed to different forms of abuses which in some cases results in long term damage. This creates the need for psychosocial care and other forms of long term care. These services are regularly provided by CSOs in rehabilitation centres. Organisations like Willow, Dwelling Places, Rahab and Platform for Labour Action (PLA) have partnered with the Ugandan government to provide support services to victims of trafficking. Services provided include empowerment programs, medical and psychosocial services, legal aid, airport pick up and shelters.
- **Sensitization and Awareness raising:** CSOs also contribute to the prevention of TIP through sensitization programs. Pollicy, a civic technology organisation contributes to sensitisation on TIP through the development of WETAASE, a platform where Ugandans can obtain information on; trafficking, safe migration processes, and basic legal aid for victims of trafficking and intending labour migrants. PLA is another NGO involved in sensitization activities focusing on undergraduates in Ugandan universities and recent graduates who are mostly the targeted population for traffickers.
- **Sheltering:** The Ugandan government regularly refers victims of trafficking to NGOs like Willow International and Dwelling Places for sheltering. The government is yet to develop its own shelters to house victims hence the need for partnership with CSOs who have developed shelters to protect the rights of victims where they have been identified and rescued from traffickers. Willow International operates three 25-person capacity shelters to cater for female victims of trafficking between the ages of 7 -17, while Dwelling Places operates 2 shelters for rescued street related children (one for boys and the other for girls).
- **Advocacy and Policy Influencing:** IOM partnered with COPTIP in the development of the first NAP from 2013 -2018, and also in the development of the second NAP (2019 – 2023) which is yet to be adopted by the Ugandan government. Dwelling Places is another NGO that has partnered with the Ugandan government in diverse advocacy programs such as collaborating with the government to ensure the inclusion of trafficking for labour and sexual exploitation in the 2016 amended Children Act.

International Human Rights Law and Human Trafficking: Focus on Uganda

Although Uganda has not ratified the 2000 Palermo Protocol, the counter trafficking Ugandan efforts of the Ugandan government has been subject to scrutiny by international human rights bodies. The nature of TIP means that it crosses different international law sphere like discrimination against women, protection of migrant workers and other human rights provisions. These different human rights and international law frameworks help in some way to bring the anti-trafficking efforts of the Ugandan government under the scrutiny of UN human rights treaty monitoring bodies, and through the Universal Periodic Review.

Concluding observations of the CEDAW Committee (22nd October 2010)

CEDAW/C/UGA/CO/7

In 2010, the Committee on the Elimination of Discrimination against Women released its concluding observations on Uganda. In relation to trafficking, the committee welcomed the enactment of the 2009 PTIP Act but made observations relating to trafficking and exploitation of prostitution.

- The committee raised concerns on the absence of segregated data on the number of women and girls who are victims of sexual trafficking for sexual exploitation seeing that prostitution is illegal in Uganda.
- The committee also raised concerns over Uganda's failure to address the root causes of trafficking and prostitution including poverty which also impedes the state's efforts at counter trafficking.
- The committee also found issues with the lack of training related to anti-trafficking work and the high prevalence of HIV/AIDS and other sexually transmitted infections (STIs) among women engaged in prostitution.
- The committee also noted the lack of information on the existence and implementation status of regional and bilateral MOUs and/or agreement with other countries on counter trafficking.
- While noting the draft Action Plan against Child Sacrifice as well as the establishment of the Anti-Human Sacrifice and Trafficking Task Force, the Committee expressed its concern at the increased number of cases of "*child sacrifice*" or abuse which has been identified as a major child protection gap.¹⁰⁹

The committee also made recommendations to the Government of Uganda in relation to the issues raised in the concluding observations.

- The committee urged the Ugandan government to fully implement the provisions of the 2009 PTIP Act which the state is making efforts to achieve and to harmonize regional efforts on counter trafficking measures.
- The committee also recommended that the state party ensure collection and dissemination of disaggregated data on trafficking with specific emphasis on sexual exploitation of women in prostitution.

¹⁰⁹ Para 27, Concluding observations of the Committee on the Elimination of Discrimination against Women, (UN Doc. CEDAW/C/UGA/CO/7), 22 October 2010.

- The committee recommended that Uganda pay full attention to the provision of health services for these women, so as to combat HIV/AIDS and other STIs.
- Finally, the committee recommended State party consider using the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002) as a basis for their implementation. The Committee further calls upon the State party to strengthen its efforts to prevent and investigate cases of “child sacrifice” and to prosecute perpetrators.¹¹⁰

Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (22 May 2015) CMW/C/UGA/CO/1

In 2015, the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families released its concluding observations on Uganda. The Committee noted the efforts of the Government in the enactment of the 2009 PTIP Act and the operationalisation of Section 21 of the Act in COPTIP, but also identified that the Government could do more and made recommendations to that effect.

- The Committee noted that Uganda has not ratified the 2000 Palermo Protocol nor the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and advised them to proceed to ratify the documents.¹¹¹
- The Committee also noted the absence of sufficient information depicting migration flows and on other migration-related issues that would enable the Committee to fully assess the extent and the manner in which the rights set out in the Convention are implemented in the State party. The Committee recommended that the state party proceed to establish systems for compiling disaggregated migration related data both qualitative and quantitative, covering all aspects of the Convention, including migrant workers in an irregular situation, and that detailed data is collected on the status of migrant workers in the State party.¹¹²
- The Committee noted the efforts of the Ugandan government on anti-trafficking training and awareness programs given to officials and other persons working in migration-related areas, but recommended that the government intensify efforts by developing educational and training programmes on the convention.¹¹³
- The Committee also noted reports that some private recruitment agencies facilitate trafficking, sexual exploitation and/or foreign employment in abusive working conditions, inter alia, in domestic work in the Middle East, while charging excessive placement fees. The committee recommended that the State party strengthen the effective regulation and monitoring of recruitment agencies, labour brokers and

¹¹⁰ Para 28, Concluding observations of the Committee on the Elimination of Discrimination against Women, (UN Doc. CEDAW/C/UGA/CO/7), 22 October 2010.

¹¹¹ Para 17 and 18, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

¹¹² Para 22 and 23, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

¹¹³ Para 24 and 25, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

other intermediaries to ensure that the rights of domestic migrant workers are respected, and also impose sanctions steep enough to serve as deterrence for future offenders.¹⁴⁴

- Finally, the Committee noted the Government of Uganda's anti-trafficking efforts but raised concerns over the absence of implementing regulations for the 2009 PTIP Act, insufficient resources dedicated to anti-trafficking and lack of segregated data on trafficking in Uganda.¹⁴⁵ The Committee recommended that the state intensify its efforts to enforce the PTIP Act, increase resource allocation, compile data on TIP, provide assistance to victims and increase training for officials involved in the counter trafficking process.¹⁴⁶

Human Rights Council Working Group on the Universal Periodic Review on Uganda A/HRC/WG.6/26/UGA/1 (31 October–11 November 2016)

The 2016 UPR report highlights progress made in the implementation of the voluntary pledges Uganda made to the Working Group of the First Universal Periodic Review in October 2011 (UPR₁) and the agreed recommendations from the UPR₁. It also provides a synopsis of key human rights developments in Uganda since October 2011.

In the 2011 UPR, "*various recommendations were made relating to the protection of various vulnerable groups such as women, children, persons with disabilities, refugees and internally displaced people, indigenous people and domestic workers*".¹⁴⁷

- In response to the recommendation on the protection of women's rights, Uganda noted the enactment and implementation of the 2009 PTIP Act.¹⁴⁸
- In relation to the recommendation that the government enforce more effectively, the child labour and trafficking laws and improve protection of children against child labour and economic exploitation; the Ugandan government reiterated its commitment to enforcing laws against child labour and anti-trafficking which are also part of NAP.¹⁴⁹
- For the recommendation on domestic workers, the Ugandan government adopted measures to protect domestic workers recruited for work outside Uganda. This was done by engaging receiving countries to take measures to protect Ugandan domestic workers. In some reported cases, the Government worked with overseas missions to bring home abused Ugandan domestic workers. The Government also took

¹⁴⁴ Para 48 and 49, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

¹⁴⁵ Para 52, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

¹⁴⁶ Para 53, Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (UN Doc. CMW/C/UGA/CO/1) 22 May 2015.

¹⁴⁷ Para 69, Human Rights Council Working Group on the Universal Periodic Review on Uganda (UN Doc. A/HRC/WG.6/26/UGA/1) 31 October–11 November 2016.

¹⁴⁸ Para 70, Para 69, Human Rights Council Working Group on the Universal Periodic Review on Uganda (UN Doc. A/HRC/WG.6/26/UGA/1) 31 October–11 November 2016.

¹⁴⁹ Para 76, Para 69, Human Rights Council Working Group on the Universal Periodic Review on Uganda (UN Doc. A/HRC/WG.6/26/UGA/1) 31 October–11 November 2016.

administrative measures through the MGLSD to reduce human trafficking. Additionally, a department to investigate and handle cases of trafficking has been established in the UPF.¹²⁰

Conclusion

The Ugandan government has taken numerous giant strides in the fight against TIP in the country, but there is room for improvement. The birth of the PTIP Act 2009 followed by COPTIP and NAP in 2013 indicated a fresh new commitment countering TIP and a few changes and positives can be observed in the policy and practice of counter trafficking in the country. The registration of victims, interception of potential victims, prosecution and conviction of cases of TIP are clear indicators of the commitment to the fight against trafficking but as said earlier, the efforts need to be increased.

The remarks of treaty monitoring bodies emphasize some of these important steps that need to be taken. The Concluding Observations of CEDAW on Uganda in 2010 commended the country on its fight against trafficking but at the same time frowned at the failure of the state to adopt a holistic approach to combating trafficking. The Committee encouraged the country to address the root causes of trafficking, which is pegged as poverty. The Committee also pointed to the lack of training anti-trafficking training given to government officials a lack of implementation of regional and bilateral MOU and agreements aimed at combating trafficking.¹²¹

Going forward, Uganda has attempted in various ways to address the issues raised by the committee, for example, since 2013, the MOI in its annual TIP report began publishing disaggregated data on registered victims and rescued potential victims of TIP. The report even goes further to address the number of cases in charged to court and sentenced. Although these numbers remain significantly low, this shows some progress. The Ugandan government has already started an extensive training program for government officials on TIP and helping civil society organisations conduct training for their staff and other members of the public on TIP as well. These efforts by the government are commendable but as the report suggested, a holistic approach to combating trafficking will involve addressing the root cause of the problem (poverty). The signing of bilateral labour agreements with Saudi Arabia, Jordan and the UAE is a step in the right direction but schemes that must be accompanied with concrete plans to alleviate poverty especially in the most vulnerable communities.

The presence of established legal standards in national and regional law needs to be supported by executive commitment to carry activities that actually arrest the situation. The operationalised coordination office needs to be given more support in terms of financial and other resources to support its work. The low numbers of prosecution and conviction of trafficking cases does not speak well on the efforts of the Ugandan government.

¹²⁰ Para 103, Para 69, Human Rights Council Working Group on the Universal Periodic Review on Uganda (UN Doc. A/HRC/WG.6/26/UGA/1) 31 October–11 November 2016.

¹²¹ Para 27, Concluding Observations of the Committee on the Elimination of Discrimination against Women on Uganda (UN Doc. CEDAW/C/UGA/CO/7), 22nd October, 2010.

The fact that strong allegations of complicity and connivance of government officials and police officers in child trafficking, sexual exploitation of refugee women and labour trafficking exist and but there has been no prosecution or conviction of government any one of those officials. The relationship between labour recruitment agencies and members of government also compromise the validity of the fight against TIP.

Finally, the Concluding observations on the 2015 report of the Committee for the protection of migrant workers and members of their families show that efforts to combat TIP in Uganda remains weak. The failure to ratify the Palermo Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air raises serious questions of Uganda's commitment to eradicating TIP in the country.¹²² The remarks of the Committee on the inability of the Ugandan government to provide sufficient information on migration flows¹²³ shows that not a lot has changed since the 2010 concluding observation of the CEDAW report on Uganda, and finally the non-enforcement of the PTIP Act shows a lack of thorough commitment to defeating trafficking.¹²⁴ The Ugandan government has taken numerous steps in the past to address the inadequacies in its trafficking law, policy and practice but there is definitely more to be done. The annual reports of the MOI and the US State Department embody recommendations that if implemented could make reasonable and extensive change in the fight against TIP.

¹²² Para 18, Concluding Observations of the Committee on the Protection of the Right of all Migrant Workers and their Families on Uganda (UN Doc. CMW/C/UGA/CO/1), 22nd May 2015.

¹²³ Para 22, Concluding Observations of the Committee on the Protection of the Right of all Migrant Workers and their Families on Uganda (UN Doc. CMW/C/UGA/CO/1), 22nd May 2015.

¹²⁴ Para 55, Concluding Observations of the Committee on the Protection of the Right of all Migrant Workers and their Families on Uganda (UN Doc. CMW/C/UGA/CO/1), 22nd May 2015.

APPENDIX

This section examines some selected cases on human trafficking tried at the Civil Division of the Ugandan High Court (UGHCCD) and the Criminal Division of the Ugandan High Court (UGHCCRD). These cases accessed from the Ugandan Legal Information Institute show implementation levels of the 2009 PTIP Act in Ugandan courts.

Synopsis of Select Cases

Ahmed El Termewy v. Awdi and 3 Ors, (Civil Suit No. 95 OF 2012) [2015] UGHCCD 4 (30

January 2015) – Foreigner Trafficked to Uganda, Civil Suit, Adult Trafficking, Restitution and

Compensation –

TIP specific summary of facts –

On the 6th of May 2011, the plaintiff was contracted from Beirut to work as a manager in Uganda with his emoluments specified in the Board Resolution for salaries of Lebanese nationals dated the 26th of September 2011.¹²⁵ The plaintiff (a Lebanese national) instituted this suit against the respondent jointly and severally seeking to recover special damages, general damages, aggravated damages, punitive damages, interest and costs of the suit for breach of his service contract, unpaid wages arising thereto, exploitation and infringement of rights under The Prevention of Trafficking in person's Act, 2009, the Employment Act No.6 of 2008, the Constitution of the Republic of Uganda, and breach of the plaintiff's service contract.¹²⁶

When the matter came up for hearing, the respondents could not be found by any reasonable means in Uganda thus the plaintiff applied for substituted service, which was allowed by this court and the respondents were served through the Daily Monitor Newspaper of 31st July 2014. The respondents still never entered appearance and thus the plaintiff was allowed to proceed *ex parte*.¹²⁷

Complaints –

- a. The Plaintiff alleged a breach of contract: The plaintiff in his witness statement alleged that he was contracted from Beirut to work as a Manager in Uganda but on arrival in Uganda, he was assigned to different duties amidst inhuman and appalling working conditions. He also alleged that his passport was confiscated from him upon his resignation and that his remuneration was denied him as well. He alleged to have sought help from the MGLSD, MOI and UHRC who attempted to settle the problem but were ignored by the respondents who used various security organs to harass the plaintiff.¹²⁸
- b. The Plaintiff requested the court declare him a trafficked person under the provisions of the 2009 PTIP Act: The plaintiff contended that his initial recruitment as manager but subsequent mandate to perform

¹²⁵ Ahmed El Termewy v. Awdi and 3 Ors, (Civil Suit No. 95 OF 2012) [2015] UGHCCD 4 (30 January 2015), page 2. Available at <https://ulii.org/ug/judgment/high-court-civil-division/2015/4>

¹²⁶ Ibid, page 1.

¹²⁷ Ibid.

¹²⁸ Ibid, page 2.

other tasks was consistent with the *recruitment through fraud or deception for the purpose of exploitation* strain of the definition of Trafficking in Section 2(r) of the 2009 PTIP Act.¹²⁹

- c. The Plaintiff also applied for special damages to the tune of \$3,566 and an additional 2,999,000 Ugandan Shillings. The plaintiff explained that the above figures were arrived at by calculating the outstanding amounts from the plaintiff's contract. He added that since the plaintiff arrived in Uganda in June 2011 and worked for the respondents till 20th January 2012, the plaintiff was entitled to special damages as follows; unpaid salary of \$666, housing allowance of Ug. Shs. 750,000/=, food allowance USD \$300, sustenance allowance of Ug. Shs. 2,000,000/=, overtime pay for eight months USD \$1,000, transport allowance of Ug. Shs. 240,000/=, repatriation fee of USD \$700 and (National Social Security Fund) NSSF refunds of USD \$900.¹³⁰
- d. The plaintiff also requested further damages to a tune of Ug. Shs. 30,000,000: The plaintiff submitted that general damages are those which will be presumed a natural or probable consequence of the wrong complained of, with the result that the plaintiff is required only to assert that such damage has been suffered. He added that the respondents are guilty of dilatory conduct as they deceived the plaintiff, took him to another country miles away from home and subjected him to the appalling conditions. His passport was confiscated for a while thus infringing on his inalienable right to freedom.¹³¹
- e. Finally, the plaintiff requested the court award him punitive damages to the tune of Ug. Shs 20,000,000.: The counsel relied on the precedent set by *Obongo Vs Municipal council of Kisumu [1971] EA 91* which provided that the court in making a general award may take into consideration factors such as malice or arrogance on the part of the respondent which can be regarded as causing more harm (humiliation or distress) to the plaintiff.¹³²

Court Decision –

- a. Breach of contract: The court saw no reason to disbelieve the plaintiff as the alleged claim that the terms of his contract were not upheld by the respondents was never challenged by the respondents as they never turned up for the hearing. Basing on the above evidence therefore, the court answered the 1st issue in the affirmative.¹³³
- b. A declaration that the plaintiff is a trafficked person: From the definition of a trafficked person given under Section 2(r) of the 2009 PTIP Act, the court found that the plaintiff was a trafficked person as “*he entered into the partnership contract with the respondents under the belief that he was hired as a manager which was not the case when he reported for work in Uganda. He was further deceived that he was to be provided with housing, transport and food allowance which according to his witness statement were never availed to him. He was therefore recruited through deceit and this qualifies him a trafficked person under the act.*”¹³⁴

¹²⁹ Ibid, page 3.

¹³⁰ Ibid, page 4.

¹³¹ Ibid.

¹³² Ibid, page 5.

¹³³ Ibid, page 3.

¹³⁴ Ibid, page 4.

- c. Special damages to a tune of Ug. Shs. 2,999,000= and USD 2,666: The court that the plaintiff is *entitled to the amounts claimed except for the NSSF refund since it has not been proved that it was not remitted to NSSF. He is thus entitled to Ug. Shs. 2,999,000= and USD 2, 666.*¹³⁵
- d. General damages to a tune of Ug. Shs. 20,000,000= to the plaintiff: Here, the court drew inspiration from the damages award precedent set by the decision in *Kampala District Land Board & George Mitala Vs Venansio Babweyana, Civil Appeal No. 2 of 2007* which held that damages are direct probable consequences (such as loss of use, loss of profit, physical and mental pain suffering, and inconvenience) of an act complained of. In this present case, the court awarded damages to a tune of Ug. Shs. 20,000,000= (Twenty Million) for the physical inconvenience, pain and suffering.¹³⁶
- e. Punitive damages to a tune of Ug. Shs. 20,000,000= to the plaintiff: The court held that upon analysis of the facts of the case, it found the actions of the respondents towards the plaintiff to be “*oppressive, more so basing on the fact that they personally recruited him and brought him to Uganda, a country totally foreign to the plaintiff.*” Following this, the court awarded punitive damages to a tune of Ug. Shs. 20,000,000= (Twenty Million) to deter the respondents and such other people from recruiting people from foreign countries and subjecting them to inhuman treatment and callous conditions once they reach Uganda.¹³⁷
- f. Interest on (b) to (d) above, at the court rate from the date of judgment till payment in full.¹³⁸
- g. Costs of the suit to the plaintiff.¹³⁹

**Uganda v. Alimocan Paska (Criminal Sessions Case No. 0114 OF 2018) [2018]
UGHCCRD 181 (6 September 2018) – Child Trafficking, Aggravated Kidnapping,
Abduction, guilty pleas –**

TIP specific summary of facts –

The accused on the 24th of February 2018 went to Koch Goma Health Centre IV and told the nurse on duty that she wanted to be accommodated because she had come from Lacor where she had given birth prematurely. She was given a bed next to that of the complainant who had given birth two days before at the same health unit. The following morning when the complainant was going to buy some items, the accused asked her to buy some airtime which the complainant obliged, leaving her baby on the hospital bed to run the errand. On her return, the accused and the complainant’s child were missing. The matter was reported to the health workers at the facility and then to Koch Goma police station whereupon the police officer mounted a search for the accused.

¹³⁵ Ibid.

¹³⁶ Ibid, page 5.

¹³⁷ Ibid, page 6.

¹³⁸ Ibid.

¹³⁹ Ibid.

At around 1.00 pm the accused was arrested from her home in Pakia village Lii Parish, Lii sub-county in Nwoya District and the baby was recovered. She was charged and the baby handed over to the complainant¹⁴⁰

Charge –

The accused had initially been indicted with the offence of Aggravated Trafficking in Children through Section 4(a) of the 2009 PTIP Act. It was subsequently amended to Abduction section 126 (b) of The Penal Code Act. It was alleged that the accused on 25th February, 2018 at Kochgoma in Nwoya unlawfully took Lakica Irene, a baby aged 3 days old, out of the custody of her mother, Hellen Lakica, without the said mother's consent. ¹⁴¹The accused pleaded guilty to the indictment when it was read to her and was subsequently convicted for the offence of Abduction C/s section 126 (b) of The Penal Code Act.¹⁴²

The prosecution stated the aggravated circumstances of the case as:

- a. The act of the accused taking away a child two days' old risked its life and health.
- b. The intention of the accused as permanently depriving the parents of the child of their child and to make her grow up not knowing her parents which is a fundamental right.
- c. The opportunities that were open to the accused to have her own children owing to her youth (about twenty years old) and marital status (she was married).
- d. The need to strongly condemn the act and for the case to act as a deterrent to others.¹⁴³

Following this, the prosecution requested the court consider a 5-year imprisonment sentence with a deduction of six months spent by the accused on remand.¹⁴⁴ The defence requested the court consider a more lenient one year imprisonment sentence for the accused owing to the following reasons:

- a. The court had previously wrongly charged the accused with aggravated child trafficking which caused a lot of distress to the accused seeing as Aggravated Child Trafficking is a capital offence.
- b. She had pleaded guilty.
- c. She is remorseful, did not harm the baby and had no ill intention of harming the baby.
- d. The accused was a young mother of two who needs more a rehabilitative sentence rather than a punitive one. ¹⁴⁵

Court Decision –

The court held that the offences which the accused were convicted for carried a minimum penalty of seven years' imprisonment under section 129 of the Penal Code Act. The court noted that *“however, the punishment represents the maximum sentence which is usually reserved for the worst of the worst cases of Abduction¹⁴⁶”* which it does not believe qualifies this present case. However, the court considered the aggravating factor to be the infancy of the

¹⁴⁰ Uganda v. Alimocan Paska (Criminal Sessions Case No. 0114 OF 2018) [2018] UGHCCRD 181 (6 September 2018), page 2. Available at <https://ulii.org/ug/judgment/hc-criminal-division-uganda/2018/181>

¹⁴¹ Ibid, page 1.

¹⁴² Ibid, page 2.

¹⁴³ Ibid

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid, page 3.

victim whose life and wellbeing was imperilled by being removed from her mother's care and adopted a sentencing starting point of twenty-three years' imprisonment".¹⁴⁷

The court further considered that the defendant had pleaded guilty and according to *regulation 21 (k) of The Constitution of Uganda (Sentencing Guidelines for Courts of Judicature) (Practice) Directions, 2013*, her sentence was eligible for reduction based on the mitigating factors. Following from the foregoing, the court reduced the sentence by *one third only from the starting point of three years to a period of two years' imprisonment*.¹⁴⁸ The court further considered mitigating factors to the seriousness of the case such as; the fact that the accused was a first time offender, that the accused had no intent of harming the child, that the accused is contrite for her action and is a relatively young mother of two, concluded that she is deserving of a more rehabilitative than a deterrent sentence. The court considering the mitigating factors further reduced the punishment to an imprisonment term of one year. Finally taking into consideration, the mandatory provisions of **Article 23 (8) of the Constitution of the Republic of Uganda, 1995** which requires the court to take into consideration, the amount of time spent by an accused in remand, further reduced the sentence to six months' imprisonment considering the six months the accused had spent on remand.¹⁴⁹

Final sentence – 6 months' imprisonment.

Uganda v. Mudeega, (Criminal Session Case No. 166 OF 2011) [2011] UGHCCRD 26 (14 May 2013) – Kidnapping, Aggravated Trafficking, Child selling, Guilty -

TIP specific summary of facts –

The defendant, Ali Mudeega, a 59-year-old traditional doctor from Bugiri District in Uganda was arrested under a sting operation while allegedly trying to sell a 9-year-old boy (Sadat Maganda) to undercover police officers from Busia District.¹⁵⁰ The defendant was alleged to have fraudulently kidnapped the victim from his step mother with intent to sell the child to buyers from Kenya. The accused was alleged to have claimed that he was taking the victim to live with his aunt in order to continue his education.¹⁵¹

Charges –

The accused was indicted for Kidnapping with intent to murder c/s 243 (1) & 242 of the Penal Code Act; The prosecution contended that the accused person and others on 24.02.10 at Luwero Bulebi village in Bugiri District, unlawfully and fraudulently kidnapped Sadat Maganda from his step mother Aisha Nakabugo with intent to murder the said Sadat Maganda.¹⁵²

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Uganda v. Mudeega, (Criminal Session Case No. 166 OF 2011) [2011] UGHCCRD 26 (14 May 2013) pages 3 – 6. Available at <https://ulii.org/ug/judgment/high-court-international-crimes-division-uganda/2014/1>

¹⁵¹ Ibid, page 8.

¹⁵² Ibid, page 40.

In the alternative he was indicted with Aggravated Trafficking in persons c/s 4 (a) (e) and (i) of the PTIP Act, 2009: Here the prosecution alleged that on the same date and at the same place, the accused and others engaged in organizing and making preparations for selling of Sadat Maganda to Kenya.¹⁵³

Court Decision –

The court held that to prove a kidnapping case, the following criteria has to be met;

- a. there was taking away of a person,
- b. the taking away was accompanied by force or fraud;
- c. the taking away was against the victim's will;
- d. the perpetrators of the offence were motivated by intent to murder the victim, and
- e. The accused was one of the perpetrators of the offence.¹⁵⁴

The court further held that for aggravated TIP the accused has to be a perpetrator of one of the offences enumerated in Section 2(r) of the of the 2009 PTIP Act in conjunction with the following;

- a. transportation, transfer, harbouring or receipt of a person;
- b. such transportation, transfer or receipt was by means of threat, use of or other forms of coercion, of abduction, fraud or deception or of the abuse of power or a position of vulnerability; or
- c. Receiving of payments or benefit to achieve consent of a person having control over another person, for the purposes of exploitation.¹⁵⁵

The court held that it is undisputed that the victim was taken on the pretext that he was being taken to school at his Aunt's home and since this was not the real reason for his being taken away, court finds that there was deception in taking away the victim.¹⁵⁶ Adding to this, the fact that decided cases like *R vs. D [1984] AC 778 at 866 HL* hold that in all cases of kidnap *“It is the absence of consent of that child that is material. This is the case regardless of the age of the child. A young child below 14 years will not have the understanding or intelligence to consent”*.¹⁵⁷ However, it was established by both the prosecution and defense consent was obtained from the father of the victim or in the least he was complicit and involved in the entire kidnapping/trafficking scheme.¹⁵⁸ The factor according to the court hampered the consent ingredient of the kidnapping charge.¹⁵⁹

The court held that although some of the features of the offence of kidnapping like lack of consent and intention to murder were not proved, the accused was still guilty of the offence of Aggravated TIP since the victim of the trafficking was a child – *Section 4 (a) Prevention of Trafficking in Persons Act*. The accused was also judged to have assisted in organizing and helping other persons to commit the offence.

On the second count of kidnapping with the intent to commit murder, the court held that no evidence was adduced by the prosecution to this effect. The court further held that **under Section 43 (2) of the Penal Code Act**, the intent to murder or to put in danger of being murdered can only be presumed to be established “where

¹⁵³ Ibid.

¹⁵⁴ Ibid, page 41.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid, page 43.

¹⁵⁷ Ibid, page 44.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

a person so kidnapped or detained is thereafter not seen or heard of within a period of 6 months or more".¹⁶⁰ The court further stated that perpetrators of the offence were more interested in making money by selling the child to Kenya and none of the items found on the accused upon his arrest were proven to be capable of causing death but were more of materials used in treatment. Following this, the court found the accused not guilty of the offence of kidnapping with intent to murder but found him guilty on the alternative count of Aggravated Trafficking in Persons pursuant to *Section 4 (a) (e) and (i) of the Prevention of Trafficking in Persons Act* and he is convicted of the same.

Summary of verdicts – Court held that

- a. Although some of the ingredients of the offence of kidnapping like lack of consent and intention to murder were not proved, the available evidence proved the alternative charge of Aggravated trafficking in persons.
- b. That as trafficking in persons occurs when there is transportation or receipt of persons by means of deception or abuse of position of vulnerability. The child in the present case was received and transported by the accused person on the pretext that he was being taken to his Auntie where he would go to school.
- c. That victim was a young boy of about 9 years and therefore vulnerable. The evidence of the prosecution was that the father of the victim was paid and gave consent to the victim being taken. The accused was also arrested in the process of receiving the money he had demanded for although he never received it.
- d. The offence was aggravated since the victim of the trafficking was a child – Section 4 (a) Prevention of Trafficking in Persons Act. The accused was assisting in organizing and helping other persons to commit the offence.
- e. The accused is acquitted of the offence of Kidnapping with intent to murder. And find him guilty on the alternative count of Aggravated Trafficking in Persons Act c/s 4 (a) (e) and (i) of the Prevention of Trafficking in Persons Act and he is convicted of the same.
- f. The accused organized, and made preparations for bringing the victim from his parent's home and selling him to people he believed were to take him to Kenya, where any unlawful act could have happened to him.¹⁶¹

Following the guilty verdicts on the above counts, prosecution requested that the court consider a maximum sentence of life imprisonment that the offence carries. This application was made based on the need of deterrence of such offences within this jurisdiction and the country at large and to send a message to other members of the community that children ought to be protected rather than be used as items of trade or for financial benefits.

The court in deciding on punishment considered some mitigating factors;

- a. That the accused was a first time offender,
- b. That the accused was a 3 times widowed family man with 18 children,
- c. That the time the accused had spent on remand (3 years and 8 months);

¹⁶⁰ Ibid.

¹⁶¹ Ibid, page 47 - 48.

- d. The advanced age of the offender (59 years of age);
- e. The remorseful and repentant conduct of the accused throughout the trial;
- f. The need for rehabilitation of the accused and circumstances under which the crime was committed as the father of the victim who handed the victim over to the accused was never brought to book.
- g. No lives were lost in the process.¹⁶²

Considering the applications of the prosecution and defence, the court decided on sentencing the convict to 7 years' imprisonment. The court gave the reasons for arriving at the sentence as;

- a. Though a first time offender who seems repentant, the offence was motivated by greed for money without a thought for the welfare of the child who was the victim.
- b. It was committed against a vulnerable member of society i.e. a child who was then aged about 9 years.
- c. Children and other vulnerable members of society are not safe with people like the convict freely moving about in society. The convict may be of further danger to the community.
- d. That the child was handed over by the father is no lawful excuse because the evidence indicates that the child was sold by the father and bought by the offender to be further sold out of the country.
- e. The accused as a family man with children of his own ought to have known better and exercised restraint before accepting to be part of such abominable actions. The offence is greatly frowned upon and causes apprehension in the public.
- f. Finally, that the sentence would have been 10 years but court has also taken into account that accused has been on remand for 3 years.¹⁶³

Uganda v. Orwothwun Martin, (Criminal Sessions Case No. 0052 OF 2017) [2017] UGHCCRD 16 (7 August 2017) – Aggravated Child Trafficking, Witchcraft and harmful practices, Acquittal, -

TIP specific summary of facts –

The accused Orwothwun Martin was seen proceeding to Nebbi Hill in the company of two children, a girl and a boy. Later in the day the accused was seen standing atop one of the tallest rocks on that hill, wearing a white tunic, with his hands spread out, drawing suspicion from members of the public considering the prevalence of trafficking of children for human sacrifice purposes in the community. A social worker present contacted the police who on arrival ascended the hill with members of the community. On reaching the summit, the mob and police found a girl who was later known as Anirworth Alice and a woman who was later identified to be Pimer Charity outside a dark cave formed by two adjacent rocks. Anirworth Alice was seen holding a shirt and when

¹⁶² Ibid, page 50 – 51.

¹⁶³ Ibid, page 51 -52.

they called the accused out from the cave, he emerged in the company of another man who was identified as Adam and a boy they identified as Sadeni Mungubarak. The boy was bare chested and had some white substance smeared all over his body. They also recovered some of the paraphernalia that the two adults had been using inside the cave. They took all four people to Nebbi Police Station where inquires revealed Adam was a patient of the accused and Pimer Charity had been engaged to prepare them food during the rituals. The rest were released and the accused detained.¹⁶⁴

Charges –

The accused was charged with two counts of Aggravated Trafficking in Children pursuant to the provisions of **Section 5(f) of the 2009 PTIP Act**. It was alleged that the accused used in the first count used Sadeni Mungubarak and in the second count Anirworth Alice, both children in witchcraft, rituals and related practices.¹⁶⁵ The accused pleaded not guilty to the charged levelled against him.¹⁶⁶ Following the not guilty plea, the court held that to decide guilt in Aggravated Trafficking according to Section 5(f) of the PTIP Act, the following must be proven beyond reasonable doubt;

- a. That the victim in each count was a child.
- b. That the victims were used or any parts of their body was used in witchcraft or harmful rituals and related harmful practices.
- c. That it is the accused who used the victims or any body parts of theirs in such practices.¹⁶⁷

Court Decision –

The court in its ruling found the accused not guilty and consequently acquitted him of the offence of Aggravated Trafficking in Children pursuant to Section 5(f) of the 2009 PTIP Act. The court arrived at this decision following the prosecution's failure to prove the following;

- a. **That the victim in each count was a child:** According to Section 2(a) of the 2009 PTIP, a child is anyone below the age of 18 years, and for an offence to constitute Aggravated Trafficking in Children, it has to be proved that the alleged victims are children. The court held that the most accurate way to determine the age of a child is by the production of a birth certificate or the testimony of the parents. Other ways such as the courts own observation and common sense assessment of the age of a child could be acceptable as well.¹⁶⁸

In the present case, the prosecution failed to produce either a birth certificate of the victims and the testimony of victims and parents of victims to attest to the ages of the children. The prosecution rather relied on witness testimonies which put the ages of the children at 10 years of age for the boy and 17 years for the girl which the defence contested.

¹⁶⁴ Uganda v. Orwothwun Martin, (Criminal Sessions Case No. 0052 OF 2017) [2017] UGHCCRD 16 (7 August 2017), page 1. Available at <https://ulii.org/ug/judgment/hc-criminal-division-uganda/2017/16>

¹⁶⁵ Ibid.

¹⁶⁶ Ibid, page 2.

¹⁶⁷ Ibid.

¹⁶⁸ Ibid, page 3.

The court decided that *“The question of age can be a matter of fact as well as a matter of opinion”*¹⁶⁹ further referring to the testimony of the prosecution’s witnesses as *“opinion evidence”*.¹⁷⁰ The court further held that the prosecution’s witnesses had *“the experience and expertise to rely on their observation and common sense assessment to form an opinion as to the age of the two victims”*.¹⁷¹ Despite acknowledging the expertise and experience of the witnesses to rightly determine the age of the victims, the court decided that *“such opinion may, if considered alongside other evidence be sufficient to support a finding on age, in a trial requiring proof beyond reasonable doubt, I am hesitant to rely on such evidence standing alone, most especially since the grounds upon which they held that opinion were not disclosed in their testimony”*.¹⁷² Hence the court found that the child component was not proved beyond reasonable doubt.

- b. **That the victims were used or any parts of their body was used in witchcraft or harmful rituals and related harmful practices:** Here the court sought to draw distinction between legitimate or bona fide spirit worship or the bona fide manufacture, supply or sale of native medicines and witchcraft. According to *Section 1 of the Witchcraft Act*, “witchcraft” does not include bona fide spirit worship which is protected *Article 37 (Right to culture and similar rights) of the 1995 Ugandan Constitution* which guarantees to every citizen the right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.¹⁷³ The court also held that, *Section 5(f) of the 2009 PTIP Act* only prohibits the practice of witchcraft, harmful rituals and related harmful human practices but does not prohibit bona fide spirit worship or the bona fide manufacture, supply, sale or the practice of native medicine. In an attempt to differentiate between both acts, the court held

*“Witchcraft is a complex concept that varies culturally and at societal level and therefore, it is difficult to define with precision. It is not defined under either The Prevention of Trafficking in Persons Act or The Witchcraft Act but it can be deduced from the letter and spirit of the latter Act as including threatening others, their livestock or property with death or harm by supernatural means. It entails magical beliefs, practices and the use of magical or supernatural powers obtained from an evil source and in an evil way, such as sorcery. Witchcraft is generally evil and often associated with the devil and devil worship. It is therefore distinct from bona fide spirit worship, bona fide manufacture of native medicine, supply or sale of native medicine or the practice of native medicine.”*¹⁷⁴

The court also went further to set out the requirements for proving witchcraft as

“being in possession of articles which by common repute or belief are used for the purposes of witchcraft other than bona fide for scientific purposes or as a curio. According to section 5 of that Act, evidence may be adduced to show the reputation of a person as a witch or to establish that

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid, page 4.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid, page 5.

*by common repute any substance, means, process or ceremony proved to have been administered, used or performed, or attempted or caused or advised to be administered, used or performed, is commonly administered, used or performed in the practice of witchcraft”.*¹⁷⁵

Furthermore, to prove the witchcraft component under Section 5f of the 2009 PTIP Act, the court held that “It must be proved that the child or the body parts of the child were subjected to rituals, i.e. an established or prescribed procedure or order of performing a ceremony characteristic of witchcraft or related harmful human practices. Once it is proved that what the children were engaged in was witchcraft or harmful rituals and related harmful human practices that were performed in accordance with an established or prescribed procedure characteristic of witchcraft, the consent of the victim or the consent of his or her parents or guardian to the acts is not relevant.”¹⁷⁶

In this case, the accused denied having engaged in any witchcraft or harmful practices claiming to only be a native medicine practitioner and the alleged victim was his patient. The accused further claimed that the effects found in his possession were items used in traditional healing and not witchcraft or harmful traditional practices as the prosecution had claimed.¹⁷⁷ The court in examining the merits of the argument held that

*“The distinction between witchcraft or the determination of common repute of a substance, means, process or ceremonies commonly administered, used or performed in the practice of witchcraft on the one hand and the practice of native medicine on the other, may be a matter of science or art. Persons specially skilled in that determination could have been called as experts. Since none was called, the evidence adduced in court on its own is devoid of proof that the items tendered in evidence are used in the practice of witchcraft. Apart from the fact that the accused emerged from the cave with an already slaughtered chicken and that Sadeni Mungubarak was bare chest and his body was smeared with a white substance, there is absolutely no evidence that those rituals are harmful or that by common repute, any of the paraphernalia recovered, or the white substance seen on Sadeni’s body, is used or the slaughtered chicken is a ritual peculiarly performed, in the practice of witchcraft. Therefore, in agreement with the opinion of the assessors, I find that this ingredient has not been proved beyond reasonable doubt.”*¹⁷⁸

As the prosecution was unable to prove that the instruments found in possession of the accused during his arrest were materials used for witchcraft, and not bona fide spirit worship and that any body parts of the victims were used in any form of human sacrifice, the court found that it was not proved beyond all reasonable doubt that the victims were used or any body parts of theirs were used in witchcraft and related harmful practices.

- c. **That it is the accused who used the victims or any body parts of theirs in such practices:** To prove this, the prosecution has to produce evidence showing that the accused used the victims or body parts of the victims for witchcraft and other related harmful purposes. The prosecution held that being inside

¹⁷⁵ Ibid.

¹⁷⁶ Ibid

¹⁷⁷ Ibid.

¹⁷⁸ Ibid, page 6.

a dark cave alone with the male victim Sadeni Mungubarak who was bare chested with his body smeared with a white substance, while the second victims was outside the cave holding the shirt of the male victim, was enough proof that the accused used the victims for witchcraft and other harmful practices. The court held that the argument of the prosecution did not prove the fact beyond all reasonable doubt. **Note:** The court held “*that although the defence of the accused against this element lacks credibility, I find that since the age of the victims has not been proved and the prosecution has failed to prove that the accused engaged in any witchcraft or harmful rituals and related practices, whether or not Sadeni Mungubarak or Anirworth Alice were participants in whatever he was doing, becomes moot.*”¹⁷⁹

Uganda v. Umutoni Annet HCT- 00- ICD-CR -SC- NO. 003 of 2014 – Aggravated Trafficking, Child Trafficking, Transnational Trafficking, Guilty, Trafficked into Uganda, Sexual and Labour Exploitation -

TIP specific summary of facts –

The accused, Umutoni Annet a 30-year-old student of Cavendish University and resident of Bweyogerere in Kira Town Council in Uganda was arrested in January 2012 for allegedly abducting and transferring two girls; Phiona Umubyeyi and Angella Mahirwe from Gahanga, Rwanda without the knowledge or authorisation of their parents. The accused who was a nursing mother with her baby was in Rwanda to sell a piece of land and was housed by Furaha Miriam, the other of Phiona Umubyeyi, one of the alleged victims. The accused was alleged to have; promised the girls jobs in Uganda in a supermarket with wages of 100,000¹⁸⁰ Ugandan Shillings and also made provisions for transferring them from Rwanda to Uganda through unofficial border crossings.¹⁸¹

Charges –

The accused was charged on two counts of

- a. Aggravated Child Trafficking contrary to **4 (a) and 5 (a) of the 2009 PTIP Act** and
- b. Human Trafficking contrary to sections **3(1) (a) of the 2009 PTIP Act.**¹⁸²

The accused pleaded not guilty to the charged levelled against her. Following the not guilty plea, the court held that to decide guilt of the offences levelled against the accused pursuant to **Section 5 of the PTIP Act**, the following must be proven beyond reasonable doubt;

- c. The victim was a child;
- d. Transportation and transfer

¹⁷⁹ Ibid page 7.

¹⁸⁰ Uganda v. Umutoni Annet HCT- 00- ICD-CR -SC- NO. 003 of 2014, page 10. Available at <https://ulii.org/ug/judgment/high-court-international-crimes-division-uganda/2014/1>

¹⁸¹ Ibid, page 11.

¹⁸² Ibid, page 1.

- e. By means of the use of threat or use of force or other forms of coercion, of abduction, of fraud, of deception.... or of giving or receiving of payments or benefits....
- f. For purposes of exploitation.
- g. Accused's participation.¹⁸³

Court Decision –

After hearing both parties, the court came to the conclusion that the prosecution proved beyond reasonable doubt all the essential ingredients of the offence in count No.1 of the indictment (). The court further found and held that on the second count of aggravated trafficking in children, that the prosecution did not prove beyond all reasonable doubt the essential element in the age of one of the victims though all other factors were proved. Drawing from its findings the court held the accused guilty on count No.1 as charged but acquitted the accused of the offence she was indicted for in count No.2 of the indictment. The court arrived at this decision on the following reasons:

- a. **The victim was a child:** The prosecution in attempt to prove that both victims were children by the definition of the Section 2(a) 2009 PTIP (under the age of 18) as at the time of trafficking, called upon one Dr Bernard who tendered medical examination report as evidence of age for both victims. The victims and the mothers of the victims also testified to the age of the children as well.¹⁸⁴
For one of the victims Mahriwe Angella, the court found the testimonies of the doctors, mother and victim to be consistent that she was aged 14 years of age when she was trafficked by the accused. For the other victim, Phiona, the court found inconsistencies in the evidence presented by the medical examination report and the testimonies of both the mother of the victim and the victim as well. The doctor adjudged the victim to below the age of 18, where the victim testified to be born in 1996 putting her at 16 at the time of trafficking which was corroborated by the mother of the victim during examination in chief. However, under cross examination, the mother of the victim claimed that the victim was born in 1992 at home her home and her birth was not registered, neither did she possess the official registration document of all Rwandans called “endangamuntu”. Faced with the contradictions between the testimonies of the doctor, victim and victim’s mother which put the age of the victim between 16 – 19. Following the inconsistencies present in the testimonies of the victim, the victim’s mother and doctor on the aged of the victim, the court decided to rule the contradiction in favour of the accused. Drawing from this, the court found the accused guilty on only one count of Aggravated Child Trafficking under Section 5 of the 2009 PTIP Act.¹⁸⁵
- b. **Transportation and transfer:** In making a decision on this aspect, the court noticed that the testimony of one of the victims showed inconsistencies; Mahriwe Angella first claimed during examination in chief that the accused transported her all the way from Rwanda to Uganda but during cross examination she refuted that claim. Under cross examination, she claimed that she was she left home on her own,

¹⁸³ Ibid, page 21 -22.

¹⁸⁴ Ibid, page 24 – 25.

¹⁸⁵ Ibid, page 29 – 30.

meeting up with the accused somewhere else in Rwanda who then transported and transferred her the rest of the way to Uganda. The court however, disregarded the contradictions holding that

At any rate whether she left her home with the accused or left that home alone and met the accused at Inyanza where she met the accused and travelled with her from Inyanza in Rwanda through Rwentobo in Uganda and finally to Kampala, the essence of being transported and transferred from Rwanda to Kampala has been proved and conceded by the accused¹⁸⁶

Drawing this conclusion, the court accepted that the prosecution proved the transfer and transport ingredient beyond all reasonable doubt.¹⁸⁷

- c. **By means of the use of threat or use of force or other forms of coercion, of abduction, of fraud, of deception.... or of giving or receiving of payments or benefits....:** The court in deciding on this feature of the offence noted that the victims left their homes voluntarily and without the knowledge or consent of their parents, especially when one of the victims (Mahriwe Angella) was, without any dispute still aged below 18 years (a minor). The court also noted that the victims left on promises of employment in a supermarket in Uganda but were instead made to do basic household chores without pay at all. The accused in denying all these, claimed that she brought them to Uganda on holiday and housed them at her residence.

The court considering both submissions held *that the taking away of the two girls by the accused without the knowledge or the consent of their parents amounted to abduction¹⁸⁸*. The court also faulted the claims of bringing the victim to Uganda for holiday purposes seeing as the victims had only briefly met the accused in Rwanda for a few days and as she bore no familial or otherwise close relation to any of the victims. Following these findings, the court affirmed that the prosecution proved beyond reasonable doubt the essential ingredient of abduction and deception in respect of each of the two victims in counts No.1 and 2 of the indictment.¹⁸⁹

- d. **For purposes of exploitation:** Here the court held *that engaging both girls in taking care of the baby of the accused as well as doing other household chores that the girls did, according to their evidence, without any pay amounts to exploitation, in my considered view.¹⁹⁰* Furthermore, the court noted that both victims were placed in situations where they were sexually exploited and abused with one of the victims contracting a Sexually Transmitted Infection (STI). On the sexual exploitation of both victims the court held that the act *“amounted to exploitation even if it was not to the advantage or benefit of or in the knowledge and with the consent of the accused, all of which are not necessary to prove exploitation as defined in section 2(d) of the Act”¹⁹¹*. The court following this found that the prosecution proved beyond reasonable doubt the essential ingredient of exploitation in counts No.1 and 2 of the indictment, in respect of both victims of the offence.¹⁹²

¹⁸⁶ Ibid., page 26.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid, page 27.

¹⁸⁹ Ibid, page 28.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Ibid.

- e. **Accused's participation:** Finally, drawing on earlier conclusions that the accused transported and transferred both of the victims from Rwanda to Uganda through unofficial borders, the court concluded that the accused brought the victims in Uganda illegally. Also drawing on the fraudulent and deceitful means the actions of the accused were committed, the exploitation through unpaid labour means and forceful sexual exploitation, the court found that the accused did participate fully in the commission of the offences in both counts as charged.¹⁹³

In sentencing the accused, the court considered the plea by the prosecution for a sentencing to the full extent of the 2009 PTIP Act on the charges (death for Aggravated Trafficking in Children and 15 years imprisonment for Trafficking) following the aggravating factors enumerated below:

- a. The tender age of one of the victims at the time of trafficking (14).
- b. The victims were sexually violated leaving one of the victims infected with an STI and another showing injuries in her sexual organs inflicted on her by a blunt object.
- c. The malnourished physical appearance of one of the victims.
- d. Labour exploitation of the victims without pay.
- e. The distance the victims and their parents had to travel during the investigation and prosecution.
- f. Interruption of the education of the victims.
- g. Mental and physical strain experienced by the victims and their mothers resulting from the case.¹⁹⁴

The defence requested leniency from the court and a sentence of a fine and/or caution instead of a custodial sentence due to the following mitigating factors:

- a. The convict was a first offender.
- b. Her age and status as a student.
- c. That she suffered from peptic ulcers and high blood pressure (but provided no evidence to support).
- d. That the convict had been on remand for 20 months.
- e. That the victims left their homes voluntarily.
- f. The absence of violence in the entire process.
- g. That the victims did not contract the STD from the convict.
- h. That the victims stay in Uganda for 2 or 3 weeks was during holidays and could not have caused their disruption or loss of study opportunities.
- i. That payment for work done in Uganda for the 2 or three weeks could not have been made as the period was less than a month.
- j. That there has not been any other conviction before this one.
- k. that the victims did not lose their chastity at the instance of the convict or during the period in issue.
- l. That the convict, being a primary care giver who looks after her three (3) children including one aged three (3) years while their father works far away from their home, is the best person to look after her children.

¹⁹³ Ibid, page 31.

¹⁹⁴ Ibid, page 34 - 35.

m. that the convict was not personally responsible for the sexual assault of the victims.¹⁹⁵

The court after serious consideration decided on balancing the aggravating and mitigating factors. Considering the seriousness of the offences and the maximum sentences of death for aggravated trafficking in children and fifteen years prison term for trafficking in persons, and finally considering that the convict has spent a total of twenty (20) months on remand, the court sentenced the convict to prison terms of eight (8) years on the count of aggravated child trafficking and five (5) years on the count of trafficking in persons. Both prison terms were slated to run concurrently.¹⁹⁶

¹⁹⁵ Ibid, page 35 – 36.

¹⁹⁶ Ibid, page 36 - 37.