

Examination of the Law Governing the Rights of Children Against Trafficking in Uganda

Kibuuka Ronald

School of Law, Kampala International University, Uganda

ABSTRACT

This article examines the law governing the rights of children against trafficking in Uganda. The article revealed that trafficking primarily occurs for economic reasons, manifesting in various forms. Under the guise of employment, traffickers traffic children and women for sexual exploitation. The traffickers entice their victims with the promise of decent employment, leading them to abandon their homes and, occasionally, their countries in search of a better life. Involuntary domestic servitude, a form of child trafficking, involves the informal recruitment of victims, particularly women and girls, to work as domestic servants and caretakers. Often, the traffickers restrict these victims from communicating with their families back home. On this note, the study calls for the need to identify and address the root cause of child trafficking. The study highlights unemployment as the primary cause of child trafficking. People who are impoverished have now devised ways to survive. The traffickers are taking advantage of the desperate situation of young people to traffic and exploit them under the guise of employment opportunities.

Keywords: Children, Government, Legislation, Regulation, Rights of children

INTRODUCTION

Trafficking in persons, a crime against humanity, is the most dreadful crime in the world, involving violations of human rights. It is the third largest and most profitable business in the world, second only to drug and arms trafficking. Despite various international laws, interventions by the United Nations, and enforced conventions, protocols, and statutes, trafficking in persons has flourished across borders. It is an ever-growing problem that is present in almost all countries worldwide. Not only does it occur across borders, but it also actively takes place within national boundaries [1].

Rebel leaders in Africa began human trafficking women and children of their defeated enemies, just as they sold their captives to slave dealers in earlier centuries [2]. Before colonial rule in the 17th and 18th centuries, slavers operating on the west coast and horn of Africa sold millions of captured Africans for transport to America's Caribbean and the Middle East [3]. More brutal than in Latin America, colonial rule in Africa forced millions of people to work in slave-like conditions in southern Africa's mines and on farms. Historical traditions are key determinants of contemporary trafficking. Today, human traffickers receive captured women and children instead of selling them to slave dealers [4].

Trafficking in persons, especially women and children, is the purchase and sale of human beings as cargo for the purpose of engaging in exploitative forms of labour such as sex work or participation in armed conflict [5]. Victims of human trafficking are exploited in different forms, including sexual exploitation, labour exploitation, the use of persons, including children, in illegal activities, human sacrifice, child marriage, the removal of body organs for sale, harmful child labour, and practices similar to slavery [5].

There are laws in Uganda that protect children's rights. The 1995 Constitution of the Republic of Uganda calls for the protection of children from social and economic exploitation [6]. The Employment Act of 2006 prohibits children from working in hazardous conditions that will interfere with their education [7]. The Penal Code Act equally protects children by creating offences and prescribing heavy penalties [8].

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To provide enhanced protection against human trafficking, Parliament enacted 'The Prevention of Trafficking in Persons Act in 2009, which prohibits trafficking in persons and particularly makes child trafficking an aggravated offence punishable by death [9]. Despite these enactments, trafficking of children persists both within and outside the country. All this not only prevents children from obtaining an education, but also puts them at risk of moral decadence and HIV/AIDS. We should protect children because they are the fundamental building blocks of a nation, and if we fail to secure their future, the world will face extinction. This article examines the law governing the rights of children against trafficking in Uganda.

Understanding the concept of child trafficking

Trafficking of children is a form of human trafficking and is defined as the recruitment, transportation, transfer, harbouring, and/or receipt of a child for the purpose of exploitation [10]. Every region of the world recognises the trafficking of children as a major human rights violation. Yet, it is only within the past decade that the prevalence and ramifications of this practice have risen to international prominence, due to a dramatic increase in research and public action [11].

The demand for cheap, malleable, and docile labour in sectors and among employers where the working conditions and treatment grossly violate the human rights of the children closely links with the internal trafficking of children within countries, across national borders, and across continents [12]. These forms range from bonded labour, camel jockeying, child domestic labour, commercial sexual exploitation and prostitution, and child soldiering to exploitative or slavery-like practices in the informal industrial sector [13].

FORMS OF CHILD TRAFFICKING

Trafficking in women and children for sexual exploitation

This common form of trafficking affects every region in the world, whether it is a source, transit, or destination country. Promises of decent employment lure women and children from developing countries and vulnerable parts of society in developed countries to leave their homes and travel to what they perceive as a better life. Girls and sometimes boys end up in the care of pimps and brothel owners, who profit from their sexual activities with older men. In most cases, the pimps accommodate, feed, and buy "appropriate clothing," as well as find "customers" for them. They receive and manage the payment. Victims are often provided with false travel documents, and an organised network is used to transport them to the destination country, where they find themselves forced into sexual slavery and held in inhumane conditions and constant fear [5].

Involuntary domestic servitude

A unique form of forced labour is that of involuntary domestic workers, whose workplace is informal. Such an environment is conducive to exploitation because authorities are unable to inspect private property as easily as they can in formal workplaces. More developed locations recruit foreign migrants, usually women, from all over the world to work as domestic servants and caretakers. But many of these places do not provide domestic servants with the same legal protections that they do for foreign workers in other sectors [14]. When domestic servants find themselves in conditions of involuntary servitude in a home, this high degree of vulnerability necessitates a vigorous law enforcement and victim protection. People sometimes label domestic servants who choose to flee abusive employers as "runaways" and view them as criminals, but it's important to consider them as potential victims of trafficking.

Trafficking for forced labour

Most international organisations and national laws recognise that children may legally engage in light work. However, there is a growing consensus that we should eradicate the worst forms of child labour. The worst forms of child abuse include the sale and trafficking of children, as well as their entrapment in bonded and forced labor [13]. They are recruited and trafficked using deception and coercion, and they find themselves held in slavery in a variety of jobs. Agricultural and construction work, domestic servitude, and other labor-intensive jobs engage men, women, and children.

Commercial Sexual Exploitation of Children (CSEC)

This applies to both child prostitution and child pornography. This is not human trafficking *per se*, as some forms of CSEC such as child pornography are not always a form of human trafficking. The majority of CSEC, however, are forms of human trafficking, such as child sex trafficking [15]. Child sex tourism (CST) is one form of demand for victims of child sex trafficking. It involves people who travel from their own country, often one where child sexual exploitation is illegal or culturally abhorrent, to another country where they engage in commercial sex acts with children. CST is a shameful assault on the dignity of children, as well as a form of violent child abuse [16]. The growth of inexpensive air travel and the relatively low risk of prohibition and prosecution for engaging in sexual relations with minors in these destinations promote the phenomenon.

Trafficking in organs

Human trafficking for the purpose of using their organs, particularly their kidneys, is a rapidly growing field of criminal activity. The sale of child organs is becoming increasingly common. To escape their living conditions, some children are ready to sell their kidneys for money. Organ sales account for between 5% and 10% of kidney transplants performed worldwide each year [17].

In many countries, there are long lists of patients in need of and/or waiting for organ transplants, and as a result, criminals have seized this opportunity to exploit the desperation of patients and potential donors. Criminals may carry out operations under clandestine conditions without proper medical follow-up, putting the health and lives of victims at risk. An ageing population and increased incidence of diabetes in many developed countries are likely to increase the requirement for organ transplants and make this crime even more lucrative [18].

Child Soldiers

Child soldiering is a unique and severe manifestation of people trafficking that involves the unlawful recruitment of children, often through force, fraud, or coercion for labor or sexual exploitation in conflict areas. Perpetrators may be government forces, paramilitary organisations, or rebel groups. While the majority of child soldiers are between the ages of 15 and 18, some of whom may have been unlawfully recruited and used in hostilities, others are as young as 7 or 8, which is unlawful under international law and national laws. Child soldiers exist in all regions of the world [19].

Sex trafficking

Sex trafficking comprises a significant portion of overall human trafficking. When a person is coerced, forced, or deceived into prostitution or maintained in prostitution through coercion, that person is a victim of trafficking. All of those involved in recruiting, transporting, harbouring, receiving, or obtaining the person for that purpose have committed a trafficking crime. Sex trafficking can also occur alongside debt bondage, as women and girls are forced to continue in prostitution through the use of unlawful debt purportedly incurred through their transportation, recruitment, or crude sale, which exploiters insist they must pay off before they can be free [20].

CAUSES OF CHILD TRAFFICKING

Poverty

This is one of the main causes of child trafficking. Poor families sometimes have no choice but to abandon their children, leaving them in the hands of traffickers. Poverty also causes a large increase in the number of street children and orphans. They become the ideal victims for traffickers who do not hesitate in their promise of better living and working conditions in another country [5]. The 2013 annual report on the trend of trafficking in persons in Uganda shows that traffickers commonly recruit their victims through deception with promises of employment, care, and education. They control child victims of internal trafficking through the provision of small financial benefits to their parents and/or guardians to gain their consent, and in some cases, they appeal to religious convictions [21]. Unfortunately, the reality is entirely different.

Humanitarian crisis

Child trafficking is particularly prominent in areas struck by natural disasters. Such was the case after the earthquake in Haiti in 2010. Traffickers took advantage of the situation by kidnapping numerous children. Human rights violations are known to increase the frequency of child trafficking [22].

Lack of education

Illiteracy and a lack of education make families more vulnerable to traffickers. Education is a human right that ought to be accessible to everyone without any discrimination. All children must be able to go to school and thereby benefit from the same opportunities to build a future. Additionally, educational instruction must be equally gratuitous so that children from disadvantaged environments will be able to enjoy their right to education. Education begins with the acquisition of elementary knowledge, or literacy, on the part of the youngest members of society. At this stage, children learn to read and write thanks to primary instruction and parental oversight [23].

Absence of birth registration

Unregistered births pose the greatest threat to children. 40 million children are born each year without official declaration, a violation of their right to identity. This identity will also allow them to receive judicial protection from their parents and the state. They will then be able to benefit from the country's minors' protection programs, specifically designed to protect them from various forms of maltreatment and exploitation. A child will benefit from the program of minors' sentences, which is adapted to their age, their maturity, and their awareness [24].

Insufficient or unenforced legislation

Because laws are insufficient or often unenforced, child traffickers generally face few risks. Many countries' domestic laws also lack criminal provisions against child trafficking [25]. In Uganda, we lack a specific act against child trafficking, but we do have a general provision that prohibits trafficking in person, regardless of the victim's

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age or gender. When a court arrests and indicts traffickers for child trafficking, they often argue that the victim was an adult, not abducted, but consented to the transfer.

INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION CHILDREN AGAINST TRAFFICKING IN PERSONS

The United Nations Convention Against Transnational Organised Crime 2004 (UNTOC/Palermo Convention)

The United Nations Convention against Transnational Organised Crime is a multilateral treaty aimed at promoting cooperation to effectively prevent and combat transnational organised crime. The United Nations General Assembly adopted it in Palenno, Italy, on November 15, 2000, giving it the name 'Palermo Convention'. Centered into force on September 29, 2003, and as of August 2017, it had 188 signatories, including Uganda, but only 147 states had ratified. A crime will be transnational if the crime occurs in more than one state, if a significant portion of its preparation, planning, direction, or control occurs in another state, if it occurs in one state but involves an organised criminal group engaging in criminal activities in multiple states, or if it occurs in one state but significantly impacts another state, it qualifies as a transnational crime [26] structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with the convention, in order to obtain, directly or indirectly, a financial or other material benefit [27].

The protocol to prevent, suppress and punish trafficking in persons, especially women and children

This is one of the three protocols to the 2004 United Convention against Transnational Organised Crime. The protocol supplements the 2004 United Convention against Transnational Organised Crime, enjoining States Parties to cooperate in the prevention and combat of human trafficking, with a particular focus on protecting women and children, as well as protecting and assisting victims of human trafficking with full respect for their human rights. The United Nations General Assembly adopted it under Resolution 55/25 of November 15, 2000, and it came into effect on December 23, 2003 [28].

United Nations Convention on the Rights of the Child (UNCRC) 1989

Almost every country in the world, including Uganda, has ratified the UNCRC, the most universally accepted human rights instrument. According to Article 1, a child is defined as someone under the age of eighteen (18). It makes the welfare of children of paramount importance. The UNCRC specifically guarantees children's right to life, survival, and development, and protects children against child trafficking by asserting a child's right to protection from economic exploitation, especially work that interferes with or otherwise endangers the child's education. Article 35 of the convention prohibits the abduction, sale, or trafficking of children, requiring states parties to implement all necessary national, bilateral, and multilateral measures to prevent such activities for any reason or in any form [29].

UN Convention for the Suppression of Trafficking in Persons and Exploitation of the Prostitution of Other (1989)

This Convention is one of the international human rights instruments that address slavery and slavery-like practices. The convention's preamble states that prostitution and abuse are incompatible with a human being's dignity and worth. The Convention advocates for punishment for anyone who "keeps or manages, or knowingly finances or takes part in the financing of a brothel, or knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others [30].

NATIONAL LAWS PROHIBITING CHILD TRAFFICKING IN UGANDA

There are many instances in which Uganda has made measurable strides towards improvement, development, and the welfare of children, including child trafficking protection. They include signing international treaties and formulating sectoral policies, legislation, and programs.

The Constitution of the Republic of Uganda, 1995

This is the supreme law of the land, and if any other law or custom is contrary to such provisions, then it is null and void. The Constitution defines a child as a person below the age of 18 years. The Constitution prohibits any person in Uganda from being subjected to slavery or servitude, including children [6]. Article 34(5) protects children under the age of 16 from social and economic exploitation. The article further emphasises that employers should not employ or require children to perform work that could be hazardous, interfere with their education, be harmful to their health, or affect their physical, mental, and social development. The constitution further accords special protection to orphans and other vulnerable children [6]. The only way to implement this is by enacting specific acts addressing such rights, and the Constitution does not provide for a way forward in cases of non-adherence.

The Children Act, Cap. 59

The Act defines a child as any person below the age of 18 years. Under S.3, the Act states that the child's best interests are paramount. Sections 4 to 9 provides outline children's rights, including the right to live with their custody-granting parents and protection from discrimination, violence, and abuse. Furthermore, the Act prohibits the employment of children or their participation in any activity that may be detrimental to their lives, health, education, or physical or moral development [31].

The Prevention of Trafficking in Persons Act, 2009

Trafficking in persons is defined by the Act as the illegal hiring, transporting, transferring, harbouring, or receiving of people through threats of violence or other forms of coercion, kidnapping, fraud, deception, abuse of power or a position of weakness, or the giving or receiving of money or benefits to get someone in control to agree to anything [9]. If a child is the victim of trafficking, and if individuals undertake adoption, guardianship, fostering, or other child-related orders for the purpose of exploitation, it becomes an aggravated offence under the Act. S.5 provides that any person who:

1. Does any act referred to under Section 3 (the offence of trafficking in person) relate to the child?
2. Any armed conflict involves the use of a child;
3. The act involves removing any part, organ, or tissue from the child's body for the purpose of child sacrifice.
4. A child is used in the commission of a crime;
5. Abandons a child outside the country;
6. Witchcraft, rituals, and related practices involve the use of a child or a child's body part.

The individual engages in the crime of aggravated child trafficking and could potentially face death [9].

The Employment Act, 2006

The Act defines a child as a person below the age of eighteen years. Section 32 sets the employment age for children to be twelve years and older. No business, undertaking, or workplace shall employ a child under the age of 12 years. No business undertaking or work place shall employ a child under the age of 14 years, except for light work under the supervision of an adult over 18 years, which does not impact the child's education [7].

The Act further stipulates that a person cannot continue to employ a child under the age of 14 years if the labour officer notifies them in writing that the work is not light. If a labour officer notifies an employer in writing that an employment or work is injurious to a child's health, dangerous, hazardous, or unsuitable, the employer cannot continue to employ a child. The Act further stipulates that a child cannot work between the hours of 7 p.m. and 7 a.m. Any individual, including a labour union or employer's organization, has the right to lodge a complaint with the labour officer if they believe a child is working in violation of this section [7]. The section concludes by saying that a person who is aggrieved by a labor officer's decision under this section may appeal to the Industrial Court.

When it comes to the maximum and minimum age for child employment, the Act contradicts the provisions of the 1995 Constitution. The Constitution stipulates that children sixteen years of age and older can engage in any work that does not pose a risk to their health or education. The Employment Act prohibits the employment of children under the age of twelve. The Employment Act also prohibits employment for children under the age of fourteen. An amendment should reconcile these Constitutional and Employment Act discrepancies.

The Penal Code Act, Cap. 120

The Penal Code Act also protects children by creating offences and imposing heavy penalties. For example, it makes child abduction and kidnapping crimes. Secondly, a misdemeanor is committed by any person who, as a parent, guardian, or other person legally responsible for a child under the age of fourteen, deserts the child and leaves them without any means of support, willfully and without lawful or reasonable cause [8].

CONCLUSION

Economic factors primarily drive the trafficking of children, manifesting in various forms. Under the guise of employment, traffickers traffic children and women for sexual exploitation. The traffickers entice their victims with the promise of decent employment, leading them to abandon their homes and, occasionally, their countries in search of a better life. Involuntary domestic servitude, a form of child trafficking, involves the informal recruitment of victims, particularly women and girls, to work as domestic servants and caretakers. Often, the traffickers restrict these victims from communicating with their families back home.

Recommendations

The study calls for the need to identify and address the root cause of child trafficking. The study highlights unemployment as the primary cause of child trafficking. People who are impoverished have now devised ways to survive. The traffickers are taking advantage of the desperate situation of young people to traffic and exploit them under the guise of employment opportunities. To fully combat this crime, the government must address its root causes. This is consistent with the spirit of the Palermo Convention and the Trafficking Protocol. Secondly, it is

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crucial to allocate sufficient funds to the Directorate of Public Prosecution, INTERPOL, and police, enabling them to conduct comprehensive investigations that lead to convictions and suitable penalties for the offenders. Third, in order to effectively implement the Prevention of Trafficking in Persons Act, 2009, Uganda needs to ratify the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women, to the Palermo Convention. This is due to Uganda's Tier 2 ranking, which indicates that it falls short of meeting the minimum standards required to eradicate trafficking in persons. Finally, there is a need to train police, government lawyers, and civil servants in MDAs on the legal framework so that they can identify victims and/or perpetrators of trafficking in persons and have them assisted and/or effectively prosecuted in courts of law.

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