

**INFORMING THE MALABO PROTOCOL CRIME OF HUMAN TRAFFICKING BY
DETERMINING THE MEANING OF 'APPROPRIATE AND EFFECTIVE MEASURES'
UNDER ARTICLE 4(2)(G) OF THE MAPUTO PROTOCOL**

SANA AYUB HUSSEIN

083768

*Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School*

April 2018

INFORMING THE MALABO PROTOCOL CRIME OF HUMAN TRAFFICKING BY
DETERMINING THE MEANING OF 'APPROPRIATE AND EFFECTIVE MEASURES'
UNDER ARTICLE 4(2)(G) OF THE MAPUTO PROTOCOL

SANA AYUB HUSSEIN

083768

*Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree, Strathmore
University Law School*

April 2018

DECLARATION

I, SANA AYUB HUSSEIN, do hereby declare that this research is my original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:*Hussein*.....

Date:*29/05/2018*.....

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:*[Signature]*.....

Date:*30/06/2018*.....

Humphrey Sipalla

DEDICATION

To my father, Ayub Hussein, who has shown me what hard work is.

ACKNOWLEDGMENTS

The process of writing this dissertation has been one of intense learning and perseverance. I would like to express my sincere gratitude to my supervisor, Mr Humphrey Sipalla, for his guidance, patience, insight and immense knowledge. I would also like to thank my family for their continuous support and encouragement.

TABLE OF CONTENTS

DECLARATION.....	ii
DEDICATION.....	iii
ACKNOWLEDGMENTS.....	iv
LIST OF ABBREVIATIONS.....	viii
LIST OF INSTRUMENTS.....	ix
LIST OF CASES.....	ix
ABSTRACT.....	x
CHAPTER ONE: PEOPLE ARE NOT COMMODITIES!.....	1
1.0 Introduction.....	1
1.1 Background to the problem.....	1
1.2 Justification of the Study.....	4
1.3 Statement of the problem.....	4
1.4 Hypothesis.....	5
1.5 Research Objectives.....	5
1.6 Research Questions.....	5
1.7 Literature Review.....	6
1.8 Research Methodology.....	7
1.8.1 Strategy.....	7
1.8.2 Method.....	8
1.8.3 Approach.....	8
1.9 Limitations to the Study.....	8
1.10 Conclusion.....	9
CHAPTER TWO: HUMAN TRAFFICKING AS ORGANISED CRIME.....	10
2.0 Introduction.....	10
2.1 Traits of human trafficking as organised crime.....	10
2.1.1 Human trafficking as a transnational organised crime.....	10
2.1.2 A low-risk, high-profit and hidden industry.....	11
2.1.3 The relationship between ethnic or community relations and organised crime.....	12
2.1.4 Cultural beliefs as tools of control.....	13
2.2 Models of organisation of organised crime.....	15
2.2.1 The bureaucracy model.....	15

2.2.2 The pyramidal structure.....	16
2.3 What is the “stay in” factor?.....	18
2.3.1 Fear and helplessness.....	18
2.3.2 Stockholm syndrome.....	19
2.4 Conclusion.....	19
CHAPTER THREE: HARMONISING LEGAL INSTRUMENTS ON HUMAN TRAFFICKING	21
3.0 Introduction.....	21
3.1 Organised crime.....	22
3.2 The 3 P’s- human trafficking prevention, offender prosecution and victim protection	23
3.3 Analysis of the international legal instruments.....	23
3.3.1 Prevention	24
3.3.2 Prosecution.....	27
3.3.3 Protection	29
3.4 Analysing a legal instrument under the Municipal system.....	31
3.4.1 Prevention	31
3.4.2 Prosecution.....	32
3.4.3 Protection	32
3.5 Conclusion.....	33
CHAPTER FOUR: MODEL FOR ACTIVATION OF THE MALABO PROTOCOL CRIME OF TRAFFICKING IN PERSONS.....	34
4.0 Introduction.....	34
4.1 The Malabo Protocol and human trafficking in Africa.....	34
4.2 Establishing the suitable model.....	36
4.2.1 Prevention	36
4.2.2 Prosecution.....	37
4.2.3 Protection	38
4.3 Conclusion.....	39
CHAPTER FIVE: PUTTING ALL OUR THOUGHTS IN TO ONE BASKET.....	40
5.0 Introduction.....	40
5.1 Summary of chapters.....	40
5.1.1 Chapter 1.....	40
5.1.2 Chapter 2.....	40

5.1.3 Chapter 3.....	41
5.1.4 Chapter 4.....	41
5.1.5 Chapter 5.....	42
5.2 Recommendations.....	42
BIBLIOGRAPHY	43
BOOKS	43
CONFERENCE PAPER	43
JOURNALS.....	43
DISSERTATIONS.....	44
NEWSPAPER ARTICLES	44
INTERNET ARTICLES	44
REPORTS.....	45
WEBSITES.....	45

LIST OF ABBREVIATIONS

ACJHR	African Court of Justice and Human Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ICC	International Criminal Court
IGO	Inter-Governmental Organisation
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
OHCHR	Office of the High Commissioner for Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organised Crime
US	United States
USDOS	United States Department of State

LIST OF INSTRUMENTS

African Union, *The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa*, 11 July 2003, AHG/Res. 240.

Amnesty International, *Malabo Protocol: Legal and institutional implications of the merged and expanded African Court*, 22 January 2016, AFR 01/3063/2016.

Organisation of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49.

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, 2006.

United Nations, *Convention against Transnational Organised crime*, 15 November 2000, A/RES/55/25.

United Nations Office on Drugs and Crime, *Act against Human Trafficking*, 2008.

United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, 2000, 2237, UNTS, 319.

LIST OF CASES

Manuel Cepada Vargas v Colombia, IACtHR Judgement of 26 May 2010, (Preliminary Objections, Merits, Reparations and Costs), 119.

ABSTRACT

Human trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons for the purpose of exploitation. Exploitation in this regard includes forced prostitution or forms of sexual exploitation, forced labour, slavery or practices similar to slavery, servitude or the removal of organs.¹ Traffickers achieve this by means of intimidation, threat, use of force, coercion, abduction, fraud, deception, abuse of power or fraud through offering promises of marriage, employment, education and/or overall better life to the victims.²

The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol) under Article 4(2g) sets out that 'appropriate and effective measures' are to be taken to prevent human trafficking, protect the victims of human trafficking and to prosecute the offenders, however what are these 'appropriate and effective measures'? This research paper will aim to establish a robust model that stems from the analysis of international and national legal instruments on human trafficking regarding what could be deemed as 'appropriate and effective measures'. This potential model may also be used to inform the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights³ (Malabo Protocol), which extends the jurisdiction of the African Court of Justice and Human Rights (ACJHR) to try transnational crimes which includes the crime of human trafficking.

In 2011, human trafficking represented an estimated \$31.6 billion of international trade per annum.⁴ In 2014 it was estimated that the industry generates profits of roughly \$150 billion per annum.⁵ It has been acknowledged as the fastest growing criminal industry in the world⁶ thus it is time to uphold the claim that slavery is a thing of the past.⁷

¹ Article 3(a), *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, 15 December 2000, 2237 UNTS 319.

² UNODC, 'Human Trafficking' <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> on 5 January 2017.

³ *Malabo Protocol: Legal and institutional implications of the merged and expanded African Court*, 22 January 2016, AFR 01/3063/2016.

⁴ Haken J, 'Transnational crime in the developing world' *Global Financial Integrity*, (2011), 8.

⁵ International Labour Organisation, *Profits and Poverty: The economics of forced labour*, 2014, at 13.

⁶ Shelley L, *Human trafficking: A global perspective*, Cambridge University Press, New York, 2010, 2.

⁷ Kristof N, 'Slavery isn't a thing of the past' *The New York Times*, 6 November 2013.

CHAPTER ONE: PEOPLE ARE NOT COMMODITIES!

“To ignore evil is to become an accomplice to it.”

Martin Luther King Jr.

1.0 Introduction

It is pitiful that human beings are still being traded in the twenty first century. Commodifying a human being undermines their dignity.⁸ Commodities are to be bought and sold, humans are not. The humanity aspect in human trafficking is severely attacked as it diminishes and damages human-kind. No country is immune from the crime of human trafficking regardless of its developmental standing because the country may be a country of origin, a country of transit or a country of destination. This ties almost all countries to the human trafficking network.⁹ People may be victims of trafficking regardless of whether they consented to work for the trafficker, partook in a wrongdoing as an immediate consequence of being trafficked or were transported into the exploitive situation.¹⁰

1.1 Background to the problem

In as much as both men and women are susceptible victims of trafficking, women and girls are primarily the majority of those trafficked and account for 71%¹¹ of the victims.¹² Women are mainly trafficked for sexual exploitation, forced marriage, domestic servitude or forced labour in agriculture and catering.¹³ Majority of the offenders are male, however, the detected involvement of women in the crime has been remarkably high in comparison to other crimes.¹⁴ Female offenders make up 38% of the traffickers, which is distinctively high considering the fact that on average, women suspected for other crimes stands at around 18%.¹⁵ A possible reason for the

⁸ Kleemans E, ‘Theoretical perspectives on organised crime.’ In: Paoli L (ed.). *Oxford handbook on organised crime*. Oxford University Press, 2014, 1.

⁹ Reichel P, Winterdyk J, ‘Introduction to special issue: Human trafficking issues and perspectives’ *European Journal of Criminology* (2010), at 6.

¹⁰ Sigmon J, CdeBaca L, ‘Combatting trafficking in persons: a call to action for global health professionals’ Vol 2(3) *Global Health Science and Practice* (2014).

¹¹ Where women constitute of 50% and girls constitute of 21%.

¹² United Nations News Centre, ‘Report: Majority of trafficking victims are women and girls’, <http://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/> on 28 August 2017.

¹³ UNODC, *Global Report on Trafficking in Persons*, 2016, at 26.

¹⁴ UNODC, *Global Report on Trafficking in Persons*, 2016, at 34.

¹⁵ UNODC, *Trafficking in persons and gender*, 2012, at 4.

increase in female involvement is that women tend to trust other women more easily thus recruiting victims becomes much easier to carry out when using a woman to administer the recruitment role. This is especially noted in the case of sexual exploitation.¹⁶

Trafficking in persons is carried out in various ways. Some women may be lured in to the crime through offers of having a better life, of being provided for a job or educational opportunity or being promised marriage.¹⁷ However, the victims' passport and official documents are normally confiscated from them upon or after arrival in the destination country thus leaving them helpless and dependent on the traffickers.¹⁸

Women and girls are particularly victims to this crime worldwide as discrimination against women plays a role in human trafficking due to the low social status and general lack of investment in girls.¹⁹ A fundamental factor in the multiplication of trafficking is the crucial belief that women and girl's lives are expendable.²⁰ In places where women and girls are undervalued, we note that they stand at a greater risk to pose as victims for trafficking and abuse.²¹ Furthermore, factors such a poverty, illiteracy as well as lack of economic opportunities play a role towards majority of trafficked women being vulnerable to the crime.²² A substantial part of trafficking could be eradicated if women's social status was enhanced.

The International Labour Organisation (ILO)²³ estimated that by 2012, around 20.9 million people were living in servitude. From this number, we note that 18.7 million (90%) are exploited by individuals or in the private economy. From the 18.7 million, 4.5 million (22%) are victims of forced sexual exploitation and 14.2 million (68%) are victims of forced labour exploitation.²⁴ Majority of these victims consist of women and girls who comprise of 11.4 million (55%) where as men and boys comprise of 9.5 million (45%).²⁵ As per the statistics gathered in 2016, we note that the number of victims went up to 40.3 out of which 24.9 million

¹⁶ Bindel J, 'Women sex trafficking other women: the problem is getting worse' *The Guardian*, 22 April 2013.

¹⁷ Soroptimist, 'Human trafficking' <http://www.soroptimist.org/trafficking/faq.html> on 27 August 2017.

¹⁸ Hepburn S and Simon R, *Human trafficking around the world: Hidden in plain sight*, Columbia University Press, 2013, 243.

¹⁹ Shelley, *Human trafficking: A global perspective*, 17.

²⁰ Soroptimist, 'Human Trafficking' <http://www.soroptimist.org/trafficking/faq.html> on 27 August 2017.

²¹ Soroptimist, 'Human Trafficking' <http://www.soroptimist.org/trafficking/faq.html> on 27 August 2017.

²² Section 7101(b) (4), 22 U.S Code.

²³ ILO, *ILO Global estimate of forced labour: results and methodology*, 2012, at 13.

²⁴ ILO, *ILO Global estimate of forced labour: results and methodology*, 2012, at 13.

²⁵ ILO, *ILO Global estimate of forced labour: results and methodology*, 2012, at 14.

were exploited for forced labour. 71% of these victims were girls and women and 29% were men and boys.²⁶

The Maputo Protocol speaks specifically to the present problem under Article 4(2g);

“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.”

This is as far as the provision on human trafficking goes in the Maputo Protocol.

We also note that the Malabo Protocol introduces the international criminal law section to the ACJHR.²⁷ This Protocol gives the ACJHR the jurisdiction to try human trafficking crimes however it only makes a single provision for human trafficking under Article 28J which sets out;

“For the purposes of this Statute:

1. “Trafficking in persons” means 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.

2. Exploitation shall include 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;

3. The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (1) of this article shall be irrelevant where any of the means set forth in subparagraph (1) have been used;

²⁶ ILO and Walk Free Foundation, *Global Estimates of modern slavery: Forced labour and forced marriage*, 2017, at 21.

²⁷ *Malabo Protocol: Legal and institutional implications of the merged and expanded African Court*, Amnesty International, 22 January 2016, AFR 01/3063/2016.

4. 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 subparagraph (1) of this article.”

Therefore, in looking at the nature of human trafficking and through determining what these ‘appropriate and effective measures’ under the Maputo Protocol are, the Malabo Protocol crime of human trafficking can borrow from this in order to provide direction on how the Court should handle the crime.

1.2 Justification of the Study

Article 4(2)(g) of the Maputo Protocol proves to be ambiguous as there is no further explanation as to what is an ‘appropriate or effective measure’ in preventing and combatting trafficking in women, prosecuting the perpetrators or protecting the women most at risk. This paper will therefore aim to bridge the gap that arises because of the ambiguity of the provision in regard to what may be deemed an ‘appropriate or effective measure’.

Human trafficking is still a major concern today. The issue has gotten progressively worse over the years.²⁸ Uncovering what constitutes as ‘appropriate and effective measures’ regarding the protection of victims, prosecuting perpetrators as well as preventing and condemning human trafficking will enable one to have a clearer direction on what the Maputo Protocol Article 4(2g) aims to set out. In line with this, having a clear-cut idea as to what constitutes as an ‘appropriate and effective’ measure regarding preventing trafficking and protecting the women at risk may potentially lead to a reduction in the number of trafficking cases. This model may also be used to give the ACJHR direction in regard to how to handle human trafficking.

1.3 Statement of the problem

The overall research problem addressed in this study is that the Maputo Protocol caters for human trafficking under article 4(2g), but the provision is ambiguous. There is lack of clarity regarding what may be considered an ‘appropriate or effective measure’ in regard to prevention of human trafficking, perpetrator prosecution and victim protection. This brings about the question of what exactly should be done regarding attempting to prevent the crime and

²⁸ US Department of State, *Trafficking in persons report*, June 2016, at 8.

prosecuting perpetrators as well as how to hold a state to account for failure to protect victims. There is minimal direction provided within the Protocol thus creating further issues regarding whether the current means being used to prevent, prosecute and prevent are sufficient or not. Thus, it is vital to determine whether the harmonisation of laws within different legal instruments may come in as a direction provider regarding the Maputo Protocol's lack of clarity. This direction that is sought may further be used to guide the Malabo Protocol crime of human trafficking.

1.4 Hypothesis

The hypothesis of this paper is;

A collective reading of all relevant international instruments will lead to the establishment of a model that may answer the question of what constitutes as 'appropriate and effective measures' regarding victim protection, crime prevention and offender prosecution.

1.5 Research Objectives

The study's objectives shall be to:

- i. Determine the meaning of 'appropriate and effective measures' in line with looking at the nature of human trafficking.
- ii. Analyse the international legal instruments in relation to the Maputo Protocol Article 4(2g).
- iii. Propose a suitable model of 'appropriate and effective measures' with special reference to the crime of human trafficking in the Malabo Protocol.

1.6 Research Questions

The study's research questions will be as follows:

- i. What stands as an 'appropriate and effective measure'?
- ii. Can the harmonisation of the laws of the international legal instruments lead to the establishment of a potential model that constitute as a suitable solution for Article 4(2g)?
- iii. How does the proposed model inform the Malabo Protocol?

1.7 Literature Review

The literature review that shall guide this research shall comprise of legal instruments and various scholarly works. Regarding the nature of human trafficking as a transnational organised crime, the United Nations Convention against Transnational Organised Crime²⁹ (Palermo Convention) in line with the Oxford Handbook on organised crime³⁰, shall form as the guiding literature on this. The Convention sets out the elements of what constitutes as transnational crime³¹ which places human trafficking within the transnational crime sphere. The Oxford Handbook on organised crime brings about the bureaucracy model which shall be the focus for the models of organisation of organised crime as it brings about the hierarchical structure of organised crime.

Within the framework of international law, human trafficking is deemed offensive to the right to freedom from slavery. The heinous crime undermines development as well as a person's most fundamental rights.³² The Act against Human Trafficking states that human trafficking is a crime against humanity and virtually every country in the world is affected by trafficking for sexual exploitation or forced labour.³³ It goes further to point out that the international response is uneven and that the UNODC offers practical help in drafting laws and national strategies to aid in combatting human trafficking. This Act shall be read in line with the Ouagadougou Action Plan and the Palermo Protocol in order to determine their approach to victim protection, offender prosecution as well as human trafficking prevention.

The 2006 Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children³⁴ aims at forming mechanisms and practices to prevent and combat human trafficking between the European Union and the African Union. It includes measures to protect

²⁹ United Nations, *Convention against Transnational Organised crime*, 15 November 2000, A/RES/55/25.

³⁰ Kleemans E, 'Theoretical perspectives on organised crime' In: Paoli L (ed.). *Oxford handbook on organised crime*, Oxford University Press.

³¹ Article 2, *Palermo Convention*.

³² UNGA, *Third Committee Considers Criminal Justice, International Drug Control*, GA/SHC/4067 9 October 2013.

³³ UNODC, 'Act against Human Trafficking' (2008) <https://www.unodc.org/documents/human-trafficking/Act-Against-Human-Trafficking.pdf> on 8 August 2017.

³⁴ Adopted by the Ministerial Conference on Migration and Development, 22-23 November 2006.

the victims of human trafficking as well as measures to prosecute the traffickers.³⁵ It recognises that women and children are entitled to all rights and require legal protection in conditions of freedom, dignity and security. This Action Plan gives regard to the reinforcement of the United Nations Convention against Transnational Organised Crime in order to prevent and combat the crime.³⁶ It is therefore pivotal to this research as it one of the core instruments being analysed to establish a robust model which could be used to inform the Malabo protocol crime of human trafficking on what these ‘appropriate and effective measures’ are.

The Palermo Protocol stands as a significant milestone in international efforts to put an end to human trafficking. The statement of purpose of this Protocol pays particular attention to the protection of women.³⁷ Its Part 2³⁸ and Part 3³⁹ expand on the protection of victims of trafficking in persons and the prevention, cooperation and other measures respectively which will be core in determining what the Protocol deems as ‘appropriate and effective measures’.

The Department of State's Office to Monitor and Combat Trafficking in Persons is the foundation for the United States' global engagement against the crime.⁴⁰ A large array of material on attempts to combat human trafficking are published thus this research shall use the United States Department of State Fact Sheet June 2017: ‘The 3Ps: Prevention, Protection, Prosecution’⁴¹ as this fact sheet provides an insight on what this municipal system believes to be ‘appropriate and effective’ means regarding prevention, prosecution and protection are.

1.8 Research Methodology

1.8.1 Strategy

The strategy is to analyse the international and national instruments on human trafficking to determine whether there is a harmonisation of the hard and soft law legal instruments in their

³⁵ European Commission, ‘Together against Trafficking in Human Beings’ https://ec.europa.eu/anti-trafficking/eu-policy/ouagadougou-action-plan-combat-trafficking-human-beings-especially-women-and-children_en on 30 January 2017.

³⁶ General Principles, *Ouagadougou Action Plan*.

³⁷ Article 2, *Palermo Protocol*.

³⁸ Article 6-8, *Palermo Protocol*.

³⁹ Article 9-13, *Palermo Protocol*.

⁴⁰ Official website of the United States Department of State available at <https://www.state.gov/j/tip/rls/fs/2017/272726.htm>

⁴¹ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017.

attempt to combat human trafficking. The instruments that shall be looked at shall be the Palermo Protocol, the Ouagadougou Action Plan, UNODC Act against Human Trafficking and the United States Department of State Fact Sheet on Prevention, Protection and Prosecution. This will be done in order to propose a model that encompasses potential ‘appropriate and effective measures’ to prevent human trafficking, to protect the victims and to prosecute the perpetrators.

1.8.2 Method

The method shall take the form of qualitative research as the international instruments shall be analysed collectively to establish a standard of suitability model which will set out what could potentially be a solution as to what constitutes as ‘appropriate and effective measures’.

1.8.3 Approach

The main approach that shall be taken in this research is discussing data gathered from reports, journal articles as well as books expansively. This shall be done in order to understand the nature of human trafficking, uncover what legal instruments deem as ‘appropriate and effective measures’ as well as establish a model that could potentially be used to inform the Malabo Protocol crime of human trafficking.

1.9 Limitations to the Study

Criminal justice researchers are often confronted with the challenge of estimating the scope of a crime problem or the size of a victim problem especially when it comes to crimes that are hidden such as human trafficking.⁴²

The lack of knowledge or misinformation about human trafficking results in the victims being misidentified and mislabeled.⁴³ This may affect statistics or downplay the magnitude of the crime.

⁴² Institute for security studies, 'National and international perspectives on crime reduction and criminal justice' 2014, 24.

⁴³ Mace S, 'Child trafficking: A case study of the perceptions of Child Welfare Professionals in Colorado', Unpublished PhD Dissertation, Colorado State University, 2013, 2.

1.10 Conclusion

This chapter sets out an introduction to the human trafficking phenomenon and raises the legal problem that this paper aims to address. It highlights on the ambiguity that arises under Article 4(2)(g) of the Maputo Protocol regarding the meaning of ‘appropriate and effective measures’ where dealing with crime prevention, victim protection and the offender prosecution is concerned. It looks in to this legal issue in order to inform the Malabo Protocol crime of human trafficking as we note that the ACJHR has been accorded jurisdiction to try the crime. The chapter entails; a background of the study which encapsulates the severity of human trafficking, the statement of the problem which brings out the ambiguity and lack of clarity of the Maputo Protocol provision, a justification of the study which sets out the prevalence of human trafficking and the need to address the legal issue in order to combat human trafficking, the hypothesis, research objectives and questions which help further one’s understanding on what the paper shall cover, the methodology which highlights how the paper shall aim to resolve the research questions that come about and lastly, the limitations to the study which sets out any barriers one faces in the course of the research.

CHAPTER TWO: HUMAN TRAFFICKING AS ORGANISED CRIME

"Our fight against human trafficking is one of the great human rights causes of our time..."

President Barack Obama on human trafficking, 2012

2.0 Introduction

This chapter will focus on the nature of human trafficking as organised crime. It will highlight the traits as well as models of human trafficking as organised crime. Out of six theoretical perspectives set out in the *Oxford handbook on organised crime*⁴⁴, this chapter will focus on the bureaucracy model which sets out a hierarchal approach to organised crime. This model will inform the next part that this chapter will look at, which will be on targeting the upper level management of organisations to destroy the whole chain of command. It will also touch on the factors that bind victims to the crime which shall be referred to as 'stay-in factors'. Looking at human trafficking as an organised crime will pave way to establishing a robust model that caters substantially for the protection of victims, prosecution of perpetrators as well as preventing the crime.

2.1 Traits of human trafficking as organised crime

2.1.1 Human trafficking as a transnational organised crime

The Palermo Convention sets out the definition of an organised criminal group as a:

“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 this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”⁴⁵

Article 3 further sets out that a criminal offence is deemed as transnational if it satisfies one or more of the following conditions;

- a. “It is committed in more than one state

⁴⁴ Kleemans E, ‘Theoretical perspectives on organised crime’, In: Paoli L (ed.), *Oxford handbook on organised crime*, 2014.

⁴⁵ Article 2(a), *Palermo Convention*.

- b. It is committed in one state but a substantial part of its planning, direction or control takes place in another state
- c. It is committed in one state but involves an organised criminal group engaged in criminal activities in more than one state
- d. It is committed in one state but has substantial effects in another state”

Almost always, human trafficking stands as a form of organised crime. Trafficking has become a global phenomenon as organisations that were previously only active in certain regions have begun to explore new markets by expanding the geographical scope of their criminal activities.⁴⁶ This has been done through merging or forming cooperative relationships with other organisations from other regions which expands the geographical range of the criminal activities.⁴⁷ The cooperation of crime groups from other states is a vital aspect where victims are moved over great distances as each subgroup that is part of the human trafficking network focusses on a specific aspect in administering the crime such as one group dealing with the recruitment of the victims and another group handling the transportation.⁴⁸

2.1.2 A low-risk, high-profit and hidden industry

Human trafficking, being a crime that is considerably low in risk and high in remunerations, stands as a highly attractive industry for criminals.⁴⁹ The low risk factor is heightened by the fact that human trafficking is a hidden crime.⁵⁰ Traffickers have changed their strategies to further conceal their crimes which makes it difficult for law enforcement to detect the occurrence of the crime.⁵¹ Previously, sex trafficking would take place in brothels or massage parlours, however, this now occurs in hotel rooms or even private apartments.⁵² Traffickers believe that there is

⁴⁶UNODC, ‘Human Trafficking’<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> on 23 January 2018.

⁴⁷UNODC, ‘Human Trafficking’<https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> on 23 January 2018.

⁴⁸ Shelley L, *Human trafficking: A global perspective*, 84.

⁴⁹ Stoecker S, ‘The rise in human trafficking and the role of organised crime’ *Demokratizatsiya*, (2000), 130.

⁵⁰ Tuttle R, ‘A hidden crime’, *The Guardian*, 14 June 2007.

⁵¹ USDOS, *Trafficking in Persons Report*, 2016, 5.

⁵² USDOS, *Trafficking in Persons Report*, 2016, 5.

minimal risk or deterrence attached to the crime and perceive the substantial profits made to be worth the risk of detection.⁵³

Alongside the hidden nature of the crime, other factors also contribute to the low risk aspect of the crime. Firstly, ineffective or unused law which only strengthens the occurrence of human trafficking.⁵⁴ Secondly, the lack of law enforcement investigation enables traffickers to execute the crime without the fear of being inspected.⁵⁵ Thirdly, the social blaming of victims as well as the insufficient resources provided for victim recovery services makes human trafficking victims fear reporting or speaking out about what they have gone through.⁵⁶

What fuels human trafficking is the demand for cheap labour, services and commercial sex.⁵⁷ Willingness to purchase commercial sex and any good or service from an industry that entertains forced labour is what creates a market for exploiting human beings.⁵⁸ This leads to production costs being minimal which maximises revenue thus making the activity highly profitable.⁵⁹ Left unrestrained, the crime will flourish in surroundings where the perpetrators can earn substantial profits with fairly low risk of crime detection, getting caught or even losing profits.

2.1.3 The relationship between ethnic or community relations and organised crime

In most instances where organised criminal groups are concerned, the prominent factors that arise are racial affiliation and ethnicity based. Organised criminal groups tend to develop and restrict themselves to ethnic or community lines⁶⁰ for instance Sicilian Mafia, Cuntrera-Caruana Cosa Nostra clan and Stidda (Italian), Sio Sam Ong, Luen Group and Snakeshead (Chinese), Anini Gang and the Black Axe Confraternity (Nigerian) and Gurgaon organ trafficking network (India). These groups exist in the community they originate from which links to the low-risk

⁵³ Polaris, 'Human trafficking', *National human trafficking hotline* <https://humantraffickinghotline.org/type-trafficking/human-trafficking> on 20 January 2018.

⁵⁴ Polaris, 'Human trafficking', *National human trafficking hotline*.

⁵⁵ Polaris, 'Human trafficking', *National human trafficking hotline*.

⁵⁶ Polaris, 'Human trafficking', *National human trafficking hotline*.

⁵⁷ Blue Blindfold, 'What is human trafficking' 2012, *Irish Department of Justice and Equality* <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/humantrafficking-overview-en> on 21 January 2018.

⁵⁸ Polaris, 'Human trafficking', *National human trafficking hotline*.

⁵⁹ Polaris, 'Human trafficking', *National human trafficking hotline*.

⁶⁰ Kleemans E, *Theoretical perspectives on organised crime*, 11.

factor of the crime as these groups infiltrate the societies they operate in and tend to control and dominate the region or area.⁶¹

It therefore appears that the low risk enjoyed by organised crime may be linked to cultural trends that make it possible. For purposes of human trafficking as organised crime, such a demonstration would indicate that victims are trafficked from and to places where that community lives or has a substantial population in that region.⁶² Moreover, the aspect of different ethnic groups forming temporary alliances⁶³ arises, especially regarding transnational activity. Therefore, measures to tackle human trafficking need to take into account how to 'break into' the closed nature of such communities, as we shall discuss later.

2.1.4 Cultural beliefs as tools of control

Closely linked to the ethnic base is the role played by cultural beliefs in sustaining organised crime. Religion plays a massive role in the lives of Africans as it is highly influential and intertwines itself into every aspect of their lives. African Traditional Religion encompasses practices and beliefs that are highly diverse and forms as the foundation for many ethnic religions.⁶⁴ Such beliefs and practices include cultural rituals, using magic, reincarnation, the use of traditional medicines and herbs and also believing in making sacrifices to ancestors or spirits for protection from harm. These practices have been passed on from generation to generation and stands as a heritage from the past. They are seen to be the connecting factor between the past and present and the present and eternity.⁶⁵

Traffickers are often devising new ways to lure victims in for exploitation. One way that vulnerable people have been looped in to the perils of this crime is through traffickers abusing the religious and cultural beliefs that are practised. This is particularly true of victims that come from Africa. *Juju* is often utilised as a means to enforce contracts between the trafficker and the victim. In the most general sense, *juju* can be described as the devotion or invocation of any

⁶¹ Kleemans E, *Theoretical perspectives on organised crime*, 11.

⁶² US Federal Research Division, *Transnational activities of Chinese Crime Organisations*, 2003, at 1.

⁶³ Kleemans E, *Theoretical perspectives on organised crime*, 12.

⁶⁴ Awolalu J, 'What is African traditional religion?' 10 *Studies in Comparative Religion* (1976), at 1.

⁶⁵ Awolalu J, 'What is African traditional religion?', 1.

object or being.⁶⁶ It is part of the African traditional belief system that magic, or a supernatural power lies within charms or objects. Placing a curse on one through using *juju* is what gives the trafficker an upper hand in exploiting victims as they are able to threaten them in to believing that tragedy will fall upon them if they fail to comply. Through oath-taking rituals, the victims prescribe to absolute faithfulness to the trafficker. These tactics are used as a control mechanism to bind victims to perpetual oppression. Using *juju* and oath-taking rituals stands as a foundation of security for the trafficker as the victim is then tied hand and foot to them through the belief that the spirits are watching them.⁶⁷

Using *juju* as an element of control gives the trafficker an iron grip hold on the victim. Victims partake in rituals that spiritually bind them to the trafficker. This is clearly brought out in the 2012 case study of Osezua Osolase⁶⁸ where he took advantage of orphans from Nigeria living in poverty. He promised them a better life in the UK, however he sent them there for sexual exploitation and sent them out of UK to different countries in Europe. He carried out *juju* rituals on them which made them fear retribution. Canterbury Crown Court found him guilty on counts of trafficking for sexual exploitation as well as raping the children. The *juju* ritual consisted of using a razor blade to make cuts on their chest then spreading black powder on the open cuts, blood extractions as well as their hair being cut. The investigations carried out had shown that he had been a prime suspect for many offences of trafficking girls from Nigeria to UK. Andy Desmond, who was a former Metropolitan Police detective as well as an expert in *juju* said that "*juju* is a powerful spiritual belief that has been hijacked by the traffickers to control their victims." He stated that although the court case has been concluded, the victims will still believe that they are tied to their contract and it will take them a long time to recover or not feel threatened by the *juju*.

Moreover, in the 2014 case study of Lizzy Idahosa,⁶⁹ she was found guilty by the Cardiff Crown Court for human trafficking offences. She arranged for the trafficking of two Nigerian women to

⁶⁶ Kirsch T and Gratz T, *Domesticating vigilantism in Africa*, James Currey, Woodbridge, 2010, 73.

⁶⁷ Ikeora M, 'The role of African traditional religion and 'Juju' in human trafficking' 17 *Journal of International Women's Studies*, 1 (2016) 7.

⁶⁸ The Telegraph, 'Sex trafficker used African witchcraft to smuggle children for prostitution' 29 October 2012 <http://www.telegraph.co.uk/news/uknews/crime/9640776/Sex-trafficker-used-African-witchcraft-to-smuggle-children-for-prostitution.html> on 28 September 2017.

⁶⁹ Arkell H, 'Married couple used African witchcraft to terrify and trick two women into coming to Britain and work as prostitutes, court hears' *Mail online*, 24 September 2014 <http://www.dailymail.co.uk/news/article->

the United Kingdom to work in the sex trade. Before their departure she subjected them to a ritualistic *juju* ceremony in order to instill fear in them so that they would not disobey her. The pair had to consume dirty water, a snake as well as a snail and they were also expected to shave off the hair on their heads. The women were genuinely afraid that the *juju* would cause them infertility, death, mental incapacity or sickness if they went contrary to their oath. This also made them fear running away despite being subjects to sexual exploitation. This case study depicts the binding nature of *juju* rituals and oath taking ceremonies. It shows the extent to which traffickers may toy with helpless victims to ensure compliance.

The fact that *juju* is flourishing as a tactic hints at a combination of illiteracy of the law as well as ignorance.⁷⁰ The victims are uninformed of any other options they have in regard to ensuring their protection. The traffickers use this to their advantage, often targeting individuals from the villages. It is therefore important for the governments of these source countries (especially West African countries) to take it upon themselves to sensitise the citizens on the severity of being trafficked as well as the possible options they have and ensure that they are offered maximum protection from enslavement and any mental torture.

2.2 Models of organisation of organised crime

2.2.1 The bureaucracy model

This theoretical perspective on organised crime can also be referred to as the hierarchical model.⁷¹ Donald Cressey, who was a criminologist and the expounder of the theory, described organised crime as a formal bureaucracy that is pyramid shaped, follows a strict hierarchy, has a clear division and delegation of tasks and labour, has codes of conduct and internal and external sanctions.⁷² This points at a formal structure of organised crime being set out.

Cressey used La Cosa Nostra⁷³ (the branch of the Mafia that operates in the United States of America) as the basis of his work and he claimed that its efficiency lay in its bureaucratic nature

2767833/Married-couple-used-African-witchcraft-terrify-trick-two-women-coming-Britain-work-prostitutes-court-hears.html on 29 January 2018.

⁷⁰ Ikeora M, 'The role of African traditional religion and 'Juju' in human trafficking', 7.

⁷¹ Lampe K, "The use of models in the study of organised crime" European Consortium for Political Research, Marburg, Germany, 19 September 2003, available at <http://www.organized-crime.de/modelsofoc.htm>.

⁷² Kleemans, *Theoretical perspectives on organised crime*, 3.

⁷³ As defined in the Collins Dictionary, HarperCollins Publishers.

as they had a well-defined hierarchy of member and leader roles as well as specific goals and codes of conduct that determined their behaviour.⁷⁴ Looking at the factors such as the code of conduct that governs the behaviour of those within the organisation, the different roles assigned and the division of tasks hints at the model mirroring corporate bureaucracies. He concluded that the organised criminal organisations are 'linked together by understanding, agreements and obedience.'⁷⁵

Applying this model to human trafficking, the task division aspect may be noted where each level of the crime is handled by a different group, such as recruitment of individuals to exploit, transportation of the victims, falsifying documents or even selling the individuals. The upper level management may handle the proceeds of the crime while the lower level management may be responsible for the recruitment of individuals. From this, it appears that the organised criminal groups comprise of syndicates that cooperate to fulfil the goal or objective which in this regard, would be to maximise profits through trafficking individuals.

Joseph Albin, who examined another theoretical approach on organised crime, critiqued Cressey's theory by arguing that criminal organisations have no bureaucratic structure as this stands as a weakness.⁷⁶ This is because the bureaucratic model entails having written rules and procedures that are extensive in nature and that communication trickles down the hierarchy from the top of the structure down to the bottom in written form thus the model paves way for a paper trail and is therefore impractical for organisations that attempt to steer clear of investigation.⁷⁷

2.2.2 The pyramidal structure

In order to work around the ruthlessness of the crime, looking at targeting the upper level management of the operation stands as a pivotal aspect. Authorities should work toward apprehending the criminals at the top of the pyramid structure which will lead to the destruction of the entire chain.

Take for example the phenomenon with Colombia's Pablo Escobar. Being one of the richest men in an entire country by running major drug cartels amongst other businesses, Mr Escobar had

⁷⁴ Roth M, *Global Organised Crime: A 21st Century Approach*, 2ed, Routledge, 2017, 14.

⁷⁵ Roth, *Global Organised Crime*, 15.

⁷⁶ Roth, *Global organised crime*, 16.

⁷⁷ Roth, *Global organised crime*, 16.

recruited hundreds of Colombians to work for him; from men and women to children.⁷⁸ Once the police were involved in trying to capture him, they carefully went up the chain of command, one individual at a time, offering a few of them immunity and protection if they disseminated information.⁷⁹ Towards the end, Mr Escobar had only one accomplice⁸⁰ who later surrendered to the authorities, and Escobar was captured and killed by the police forces.⁸¹ As much as that may have not been the end of drug cartels in Colombia, an end was put to one of the largest illegal operations in the country; Pablo Escobar's entire dynasty came crashing down and crime groups became smaller.⁸² This indicates the structure of Escobar's organisation.

Considering the above, applying the same form of rigorous and extensive searches to catch the main criminal in human trafficking will aid in combatting the crime. If we were to contextualise a trafficking operation, we start with those at the bottom of the chain who could be the ones that scout the victims as well as the ones that falsify the documents, going up to the middle who could be the transporter of the victims then to the top of the chain who could be the brothel owner or the organisation owner that will entertain the victims. If the authorities were to get those at the bottom and middle levels to talk about who they are working under, by treating them as victims too as opposed to offenders by providing them with protection as well as immunity or reduced sentences, then it is through this that the upper level criminals could be caught and prosecuted. It may be a timely process that will require a large amount of resources; however, this could lead to the fall of several trafficking parties and may form as deterrence to other trafficking associations.

In the case of *Manuel Cepeda Vargas v Colombia*,⁸³ it was set out that;

“As part of the obligation to investigate extrajudicial executions such as the one perpetrated in the instant case, the State authorities must determine, by due process of law, the patterns of collaborative action and all the individuals who took part in the said violations in different

⁷⁸ Green P, ‘The syndicate’, *Cocainonomics* <https://www.wsj.com/ad/cocainonomics> on 25 January 2018.

⁷⁹ Green P, ‘The syndicate’, *Cocainonomics* <https://www.wsj.com/ad/cocainonomics> on 25 January 2018.

⁸⁰ Bucktin C, ‘Meet Pablo Escobar's hitman - the world's most dangerous man who organised killing of more than 3,000 people’, *Mirror*, 18 September 2016 <https://www.mirror.co.uk/news/world-news/meet-pablo-escobars-hitman-worlds-8857026> on 28 January 2018.

⁸¹ Green P, ‘The syndicate’, *Cocainonomics* <https://www.wsj.com/ad/cocainonomics> on 25 January 2018.

⁸² UNODC, *The Globalisation of crime: A transnational organised crime threat assessment*, 2010, at 89.

⁸³ *Manuel Cepeda Vargas v Colombia*, IACtHR Judgement of 26 May 2010, (Preliminary Objections, Merits, Reparations and Costs), 119.

ways, together with their corresponding responsibilities. It is not sufficient to be aware of the scene and material circumstances of the crime; rather it is essential to analyze the awareness of the power structures that allowed, designed and executed it, both intellectually and directly, as well as the interested persons or groups and those who benefited from the crime (beneficiaries). This, in turn, can lead to the generation of theories and lines of investigation, the examination of classified or confidential documents and of the scene of the crime, witnesses, and other probative elements, but without trusting entirely in the effectiveness of technical mechanisms such as these to dismantle the complexity of the crime, since they may not be sufficient. Hence, it is not a question of examining the crime in isolation, but rather of inserting it in a context that will provide the necessary elements to understand its operational structure.”

This sets out the duty to investigate as well as the aspect of operational structures of organisations. We note that this case sets out that it is not only the sole act of committing the crime that is looked at, but the understanding of the entire structure of power too. This, in turn speaks to the hierarchal structure of human trafficking organisations which need to be demolished in order to combat the crime.

2.3 What is the “stay in” factor?

2.3.1 Fear and helplessness

Risks are also reduced by the extent to which victims are intimidated by traffickers. Both in destination countries, where they fear deportation or prosecution for offences such as prostitution or illegal immigration, and in their countries of origin, where they are often vulnerable to retaliation or re-victimisation if they cooperate with criminal justice authorities. The support and protection of victims is a critical element in the fight against trafficking to increase their willingness to cooperate with authorities and as a necessary means of rehabilitation.⁸⁴

Due to the human trafficking being low risk in nature as a result of the crime taking place behind closed doors equates to a helpless victim. They may be unable to make contact to the outside

⁸⁴UNODC, ‘Human Trafficking’ <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> on 23 January 2018.

world as the perpetrator maintains an iron grip hold over them through threats or intimidation, often using the victims loved ones lives as leverage.⁸⁵

2.3.2 Stockholm syndrome

The Stockholm Syndrome may be attributed to the lack of willingness of a victim to report the crime.⁸⁶ This is where the victim forms a false emotional or psychological attachment to the captors and could be as a result of that being one of the first relationships they have formed, particularly if the victim has come from a dysfunctional family or has been sexually abused.⁸⁷ Traffickers tend to target those that have a weak emotional or mental foundation as these individuals are easier to psychologically manipulate. This method occurs within the early stages of the offender-victim relationship in order for the offender to gain the victims trust as well as loyalty.⁸⁸

2.4 Conclusion

This chapter focused on the nature of human trafficking as organised crime. It set out four traits of human trafficking as organised crime; firstly, human trafficking as a transnational organised crime which brought out the essential elements of transnational crime and confirmed that human trafficking fits in to this purview. The second trait set out human trafficking as a low-risk, high-profit and hidden industry which hinted at the success of the crime stemming from these three factors. The third trait set out the relationship between ethnic or community relations and organised crime. What arose from the discussion under this trait was that these organised criminal groups exist in the community they originate from and tend to control or dominate that area or region. Lastly, cultural beliefs as a tool of control stood as the last trait which set out how traffickers misuse traditional cultural practices to deceive and bind individuals in to becoming human trafficking victims. This was brought about with a focus on West Africa and the use of *juju* as the tool of control. Two cases studies (the Lizzy Idahosa and the Osezua Osolase case

⁸⁵ Moloney A, 'Fear silences human trafficking victims: Mexico prosecutor', *Reuters*, 27 May 2015.

⁸⁶ Julich S, 'Stockholm Syndrome and sex trafficking: Why don't they do something' *Fair Observer*, 21 August 2013 https://www.fairobserver.com/region/north_america/stockholm-syndrome-sex-trafficking-why-dont-they-do-something/ on 28 January 2018.

⁸⁷ Julich S, 'Stockholm Syndrome and sex trafficking: Why don't they do something' *Fair Observer*, 21 August 2013.

⁸⁸ Bridging Freedom, 'Why they stay: Stockholm syndrome in human trafficking' <https://www.bridgingfreedom.org/why-they-stay-stockholm-syndrome-in-human-trafficking/> on 28 January 2018.

studies) were used in order to address how *juju* is used as a mechanism to bind victims to traffickers.

This chapter then dwelled upon the models of organisation of organised crime and set out the bureaucracy model by Donald Cressey which brought out the hierarchal structure of organised crime groups that has a clear division of tasks and labour as well as codes of conduct that these groups abide by. The pyramidal structure was also expounded on under these models. It set out how the management of organised crime follows the structure of a pyramid and highlighted the importance of plea bargains in order to work up the chain of command in order to catch the main perpetrators.

The 'stay in' factors were also brought out in chapter 2 and these encompass the reasons victims do not report the crime. This stems from fear and helplessness as victims are often intimidated by traffickers. They may also fear being deported or prosecuted for illegal immigration or prostitution. Victim protection mechanisms are therefore required to ensure that victims are willing to cooperate with authorities and ensure that victims feel safe enough to report to authorities as well as provide testimonies of what they underwent without fear of prosecution. The Stockholm Syndrome is also a 'stay in' factor as the victim forms a false attachment, that is either emotional or psychological, to the captors as a result of having undergone sexual abuse or having been brought up in a dysfunctional family.

It is thus critical to fight the organisations rather than the criminals as well as attempt to break into these organised crime affiliated communities. Offering plea bargains to the lower level offenders in exchange for information on the organisational structure enables the authorities to catch the main perpetrators behind the crime. Moreover, ensuring that victims are protected from revictimisation and prosecution or deportation are critical as this shows that importance should be placed upon fighting the system rather than the victim.

CHAPTER THREE: HARMONISING LEGAL INSTRUMENTS ON HUMAN TRAFFICKING

“Justice is doing for others what we would want done for ourselves”
Gary Haugen, International Justice Mission

3.0 Introduction

As brought out in Chapter 2, we observe the organised nature of human trafficking as well as the structured and widespread elements of the crime. Applying this knowledge to how legal instruments deal with human trafficking permits for the formation of a full-bodied model which shall be dwelt upon expansively in chapter 4.

Article 4(2g) of the Maputo Protocol obliges states to implement ‘appropriate and effective measures’ to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk. This drafting could stand for a myriad of meanings. Legality demands clear predictability of meaning; thus, it is vital to assess what may constitute as an ‘appropriate and effective measure’ in the attempt to combat human trafficking.

This chapter will aim to analyse the prevention, protection as well as prosecution measures set out under hard and soft law instruments i.e. the Palermo Protocol, the Ouagadougou Action Plan and the UNODC Act against Human Trafficking respectively shall be looked at to note whether in reading together the respective provisions, it may offer us the solution to whether there is harmonisation of the laws regarding dealing with human trafficking. Furthermore, on a municipal level, a fact sheet as provided for by the United States Department of States will also be looked at as it proves to be highly informative. This will aid us to bridge the gap of the ambiguity set out under the Maputo Protocol regarding what could be considered as ‘appropriate and effective measures’. This analysis will further inform the next chapter which establishes a potential standard of ‘appropriate and effective measures’ with the aim of informing the prospective Malabo Protocol crime.

3.1 Organised crime

As noted in the previous chapter, organised criminal networks play a major role in the spread of international human trafficking. In nearly every country human trafficking is illegal, but it is still carried out as a result of greed, deep seated corruption and enabling social factors.⁸⁹ Human trafficking crosses borders thus it is important for law enforcement to mirror this. The Palermo Convention responds to this as it sets the legal framework for transnational organised crime in order to promote cooperation to prevent and combat the transnational organised crimes more effectively.⁹⁰

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children⁹¹ (Palermo Protocol) supplements the Palermo Convention. Its preamble recognises the lack of a universal instrument that addresses all aspects of trafficking in persons despite there being a variety of international instruments that comprise of practical measures as well as rules in attempt to combat the crime.⁹² The Protocol obliges State Parties to criminalise trafficking in persons by adopting the necessary legislation and measures.⁹³ This extends to individuals attempting to commit trafficking in persons, participating as an accomplice and organising or directing other individuals to traffic people.⁹⁴ This Protocol will be one of the core instruments that shall be dwelt upon in this chapter.

The analysis of the legal instruments will be done in line with looking at human trafficking as organised crime. By applying organised crime attributes to human trafficking, a clearer understanding and deeper analysis of the provisions set out in the legal instruments regarding human trafficking arises.

⁸⁹ Soroptimist, 'What is human trafficking' (2012) <http://www.soroptimist.org/trafficking/faq.html> on 27 August 2017.

⁹⁰ Article 1, *Palermo Convention*.

⁹¹ United Nations, *Protocol to Prevent, Suppress and Punish Trafficking in persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, 2000.

⁹² Preamble, *Palermo Protocol*.

⁹³ Article 5(1), *Palermo Protocol*.

⁹⁴ Article 5(2), *Palermo Protocol*.

3.2 The 3 P's- human trafficking prevention, offender prosecution and victim protection

The Maputo Protocol sets out that⁹⁵;

“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.”

Thus, this provision encompasses the 3 P's – prevention, prosecution and protection, which are expected to be fulfilled through ‘appropriate and effective measures’ carried out by States.

The trio serves as a model for anti-trafficking movements as we note that all instruments revolve around encapsulating the 3 P's.⁹⁶ They serve as a vital aspect regarding this paper as the legal instruments set out the three P's. The question at the heart of this research is whether the contents of the related legal instruments bridge the gap formed by the ambiguity in the Maputo Protocol under Article 4(2)(g).

The 3 P's reinforce and complement each other. Their effectiveness thus stems from how intertwined they are. Prosecution will stand as a deterrent. Prevention dwells upon attacking the enabling social factors discussed in chapter 2. Protecting victims may empower them to avoid being re-victimised which also contributes to prosecution as well as provides the victims with the urge to help other victims and attempt to prevent the crime further by raising awareness about it.

3.3 Analysis of the international legal instruments

In an attempt to determine whether there is a harmonisation of the provisions set out in the Palermo Protocol (the Protocol), the Ouagadougou Action Plan (the Action Plan) and the UNODC Act against Human Trafficking (the Act), a collective reading of all the respective provisions shall be done to uncover the emerging themes and trends that arise. The analysis will focus on the 3 P's where each one will be dealt with separately.

⁹⁵ Article 4(2)(g), *Palermo Protocol*.

⁹⁶ Ackerman T, ‘Human Trafficking: Prevention, Prosecution and Protection under International Law’ *Peace Palace Library Blog*, August 7 2015 <https://www.peacepalacelibrary.nl/2015/08/human-trafficking-prevention-prosecution-and-protection-under-international-law/> on 3 February 2018.

Moreover, under the general principles set out in the Action Plan, the root causes or enabling social factors of human trafficking are highlighted. These include; poverty and vulnerability, an unbalanced distribution of wealth, unemployment, armed conflict, poor law enforcement systems, degraded environment, poor governance, societies under stress as well as non-inclusive societies, corruption, lack of education and human rights violations including discrimination, increased demand for sex trade and sex tourism.⁹⁷ Thus, the analysis shall also observe whether means to overcome these root causes have been addressed within the legal instruments.

3.3.1 Prevention

3.3.1.1 National obligations to prevent revictimisation

Part 3 of the Protocol, specifically Article 9, deals with the prevention of human trafficking and it expressly sets out that states obligations to establish policies and programmes are to prevent and combat trafficking as well as to protect victims of human trafficking, specifically women and children from revictimisation.⁹⁸ Revictimisation in this regard may hint at prosecuting the victims for being trafficked or holding them accountable for being in the Country without the required documentation. This is tied to fighting the system as opposed to the victims as discussed in chapter 2 as this leads to the destruction of organisations by virtue of victims feeling safe to testify as well as report incidences of human trafficking.

3.3.1.2 State cooperation

Article 10 of the Protocol highlights on information exchange and training and emphasises on law enforcement, immigration and other relevant authorities of state parties cooperating with one another through the exchange of information. The Action Plan also addresses this by setting out that information on the means and methods used by traffickers is to be collected and exchanged.⁹⁹ Under Part 4 of the Action Plan, cooperation and coordination are expounded upon where it is set out that the exchange of documents of experiences and lessons learnt in relation to the recovery and reintegration of victims so as to develop and provide assistance to other victims

⁹⁷ Part 2, *Ouagadougou Action Plan*.

⁹⁸ Article 9(1), *Palermo Protocol*.

⁹⁹ Part 1, *Ouagadougou Action Plan*.

is carried out. Furthermore, the development of collaborative efforts between the governments, NGO's and IGO's should arise in order to mobilise resources to combat the crime.¹⁰⁰

State cooperation is particularly important where tackling the transnational aspect of organised crime comes about as the exchange of information amongst States permits for the routes and links used between the criminal groups to be uncovered and further prevented from being used.

3.3.1.3 Border control

The Protocol's Article 11 ponders upon border measures and state cooperation regarding border control. These border controls are in order to prevent and detect any activity related to human trafficking. The measures that fall under this Article entail ensuring that each State adopts legislation to prevent any commercial carriers transport means to be used as a means to carry out trafficking in persons. The Action Plan addresses this issue too by setting out that the establishment of joint border patrols should be considered in order to strengthen prevention mechanisms.¹⁰¹ This speaks to the nature of human trafficking as a transnational organised crime. Making it difficult for perpetrators to take the crime across borders will put a cap to the numbers of victims been trafficked across borders due to poor border control measures or lack of enforcement of border control measures. It is thus vital to ensure that border control is given due regard.

3.3.1.4 Efficient birth registration and identity document systems

The Action Plan raises an interesting aspect on improvement of birth registration systems as well as the provision of identity documents¹⁰² which is an obligation under Article 6 of the African Charter on the Rights and Welfare of the Child (ACRWC). It also further states that the economic and living conditions of the victims families should be improved and that rehabilitation centres should be established to assume the safety, protection, recovery and social integration of human trafficking victims.¹⁰³ The Action Plan also sets out that the collection and exchange of information on the means and methods used by traffickers should be done by

¹⁰⁰ Part 4, *Ouagadougou Action Plan*.

¹⁰¹ Part 3, *Ouagadougou Action Plan*.

¹⁰² Part 1, *Ouagadougou Action Plan*.

¹⁰³ Part 1, *Ouagadougou Action Plan*.

states.¹⁰⁴ It also sets out that measures should be taken to eliminate harmful customs and traditional practices to counter cultural stereo types which leads to human trafficking. This can be linked to the element of *juju* brought out in chapter 2 as a traditional practice used to bind individuals to human trafficking.

Travel and identity documents are also brought out under Part 3 of the Protocol.¹⁰⁵ Emphasis is placed upon ensuring the quality of such documents is such that it cannot easily be misused or easily falsified or replicated. This could perhaps be noted through the use of fingerprint biometry where issuance of travel documents arises.

3.3.1.5 Research

In prevention mechanisms, the Protocol sets out that research, information and mass media campaigns as well as social and economic initiatives to prevent and combat the crime should be undertaken by states.¹⁰⁶ The Action Plan also sets this out where it brings out that states should commission further research and information regarding the forms, extent and root causes of human trafficking.¹⁰⁷

In line with this, the Act focuses on vulnerable communities and carrying out research.¹⁰⁸ It stresses upon community-led activities standing as a vital tool of prevention. UNODC supports NGO initiatives that aim to detect and prevent trafficking.¹⁰⁹ It emphasises the vulnerability of individuals that are situated in conflict zones and the importance of raising awareness among policy-makers, law enforcement bodies as well as civil societies.¹¹⁰ It observes the sensitive nature of the issue as well as the lack of systemic action globally which makes gathering information difficult to do. Thus, UNODC publishes reports that entail global research on the national responses to human trafficking.¹¹¹ It is therefore important for individuals to be well informed on the human trafficking epidemic in order to combat the crime. States should also continue to research in to the root causes in order to implement means to combat these causes.

¹⁰⁴ Part 1, *Ouagadougou Action Plan*.

¹⁰⁵ Article 12, *Palermo Protocol*.

¹⁰⁶ Article 9(2), *Palermo Protocol*.

¹⁰⁷ Part 1, *Ouagadougou Action Plan*.

¹⁰⁸ UNODC, *Act against Human Trafficking*, 3.

¹⁰⁹ UNODC, *Act against Human Trafficking*, 3.

¹¹⁰ UNODC, *Act against Human Trafficking*, 3.

¹¹¹ UNODC, *Act against Human Trafficking*, 3.

3.3.1.6 Addressing the root causes

Another prevention mechanism that is brought out in the Protocol is to alleviate the factors that make individuals prone to trafficking such as poverty or lack of equal opportunity.¹¹² This shows that the Protocol speaks to the root causes of the crime and attempts to remedy these in order to combat the crime. Perhaps this could be done through providing employment opportunities to those most vulnerable.

In line with tackling the root causes of human trafficking, the Action Plan is quite extensive on prevention.¹¹³ It proposes fourteen measures states should take such as ensuring education and training which includes life-skills, awareness raising and counselling being the key preventive measures to combat human trafficking.¹¹⁴

A prevention method set out under the Action Plan is to provide viable employment or livelihood opportunities for women and youth, especially in areas that are more prone to human trafficking like where poverty levels are high.¹¹⁵ Moreover, raising awareness about human trafficking also stands as a prevention method in the Action Plan and this is through the engagement of the mass media and information campaigns.

Attacking the root causes leads to the combatting of the crime thus this stands as a vital aspect where prevention is concerned.

3.3.2 Prosecution

3.3.2.1 Criminalisation of human trafficking

The Action Plan sets out that States are to adopt legal provisions to punish traffickers.¹¹⁶ Under the scope of application,¹¹⁷ the Palermo Protocol sets out that the Protocol applies to the prosecution of the offences established in accordance with Article 5, which deals with the criminalisation of the crime where the offences are transnational in nature and involve an

¹¹² Article 9(4), *Palermo Protocol*.

¹¹³ Part 1, *Ouagadougou Action Plan*.

¹¹⁴ Part 1, *Ouagadougou Action Plan*.

¹¹⁵ Part 1, *Ouagadougou Action Plan*.

¹¹⁶ Part 3, *Ouagadougou Action Plan*.

¹¹⁷ Article 4, *Palermo Protocol*.

organised criminal group. Therefore, those subject to prosecution as per Article 5 are those that attempt to commit the offence, those that participate as an accomplice in the offence and those that organise or direct other persons to commit an offence. This links to the pyramidal structure that was discussed in chapter 2 as it encompasses the prosecution of all criminals that partake in human trafficking at all levels of the activity. However, in order to fight organised crime as discussed in chapter 2, we note that plea bargains for criminals at the lower level enable authorities to get to those at the upper level thus we note that prosecution mechanisms and the modes of liability of these criminals at different levels will vary.

3.3.2.2 Prosecutorial discretion

The Palermo Protocol does not expressly have a part dedicated to prosecution nor does it set out any specific measures regarding prosecution. This indicates that the prosecution aspect of the Protocol does not speak to the social structure of organised crime or the root causes of human trafficking. This places a burden on municipal systems as in as much as these international instruments form as guiding platforms, it is upon the municipal systems to effectively handle the prosecution aspect.

In the same light, the Action Plan does not expressly have a specific section for prosecution as it does for prevention and protection, however it has a section for legislative framework, policy development and law enforcement.¹¹⁸ There are fourteen points set out under the legislative framework which includes that states should ensure the effective prosecution of those suspected of involvement in trafficking in human beings and deterrent penalties for those found guilty of trafficking. States are urged to introduce an all-inclusive legislative and institutional framework that highlights all aspects of human trafficking that is in line with the Palermo Protocol.¹¹⁹

The UNODC Act against Human Trafficking focuses on strengthening national criminal justice systems so as to achieve more convictions worldwide.¹²⁰ UNODC argues that the success rate of convictions depends on the police and relevant bodies making well informed decisions which means that they need to be well equipped with the capacity and knowledge to respond to the

¹¹⁸ Part 3, *Ouagadougou Action Plan*.

¹¹⁹ Part 3, *Ouagadougou Action Plan*.

¹²⁰ UNODC, *Act against Human Trafficking*, 5.

crime. This means that the criminal justice officials need to receive specialised training in order to increase the numbers of prosecutions that occur.¹²¹

Therefore, we note that prosecutorial discretion is therefore a sensitive topic. The negotiated texts seem to not discuss it expansively, yet it is critical in fighting organised crime.

3.3.3 Protection

3.3.3.1 Confidentiality

Where the protection of human trafficking victims arises, the Protocol sets out that in appropriate cases the privacy and identity of victims should be protected by making the legal proceedings confidential.¹²² We note that this is not the case in most instances as there have been multiple newspaper coverages on human trafficking cases.

3.3.3.2 Non revictimisation or recriminalisation

Under the protection framework accorded under the Protocol, we note that importance is placed upon the status of human trafficking victims in the receiving states.¹²³ This provision sets out that legislation should be adopted to permit human trafficking victims to remain in the territory either temporarily or permanently as the case deems fit. This is in line with the revictimisation provision under prevention set out above which indicates that victims should not be punished for being in the receiving State. The Protocol makes further provision for the repatriation of victims¹²⁴ which provides for victims being returned to their country of residence without undue or unreasonable delay.

Moreover, avoiding criminalisation of trafficking victims as well as avoiding the stigmatisation or re-victimisation occurring is vital for protection as well as prosecution. States should also attempt to provide victims with both short term and long term psychological, medical and social assistance to promote full recovery.¹²⁵

¹²¹ UNODC, *Act against Human Trafficking*, 5.

¹²² Article 6(1), *Palermo Protocol*.

¹²³ Article 7, *Palermo Protocol*.

¹²⁴ Article 8, *Palermo Protocol*.

¹²⁵ Part 2, *Ouagadougou Action Plan*.

3.3.3.3 Reintegration in to society.

The Palermo Protocol goes further to set out that physical, psychological and social recovery of victims should be handled through the provision of appropriate housing, counselling, medical and psychological assistance, employment, education and training opportunities.¹²⁶

In regard to victim protection and assistance, the Action Plan stresses upon states basing their victim protection policies and programmes on international human rights instruments.¹²⁷ It entails encouraging victims of trafficking to testify in the investigation and prosecution of cases of human trafficking, by giving due consideration to safety and security of victims and witnesses at all stages of legal proceedings.¹²⁸ It sets out that states should also provide victims with information on their legal rights as well as any other rights in the country of transit or destination.¹²⁹

The Act recognises that the police and criminal justice staff need standard working procedures to guarantee the physical safety of victims and to protect their privacy so that they feel safe to testify against their abusers.¹³⁰ With respect to protection standards, the Act focuses on identification, referral and reintegration of victims. Rescuers must know how to refer the victims to experts for appropriate support. The Act also addresses that victims require perpetual assistance as even after the end of their exploitation and criminal prosecution, they need to have a smooth integration in to society.

3.3.3.4 Compensation

The Protocol also includes a provision¹³¹ stating that state parties should ensure that the domestic legal system constitutes measures that provide victims with the possibility of obtaining compensation for the damage they have suffered. The Action Plan also states that States should consider legal measures that provide victims the possibility of obtaining compensation for the

¹²⁶ Article 6(3), *Palermo Protocol*.

¹²⁷ Part 2, *Ouagadougou Action Plan*.

¹²⁸ Part 2, *Ouagadougou Action Plan*.

¹²⁹ Part 2, *Ouagadougou Action Plan*.

¹³⁰ UNODC, *Act against Human Trafficking*.

¹³¹ Article 6(6), *Palermo Protocol*.

damage they have suffered.¹³² However, in instances of transnational trafficking, difficulty in establishing who is to provide this compensation may arise.

3.4 Analysing a legal instrument under the Municipal system

In order to observe a States effort to ensure victim protection, offender prosecution and human trafficking prevention, the 2017 USDOS Fact Sheet on the 3 P's shall be used as an example of a municipal system model. This Fact Sheet will be analysed in regard to whether it entails the themes and trends that emerged through the analysis of the international instruments above.

3.4.1 Prevention

The themes and trends that emerged under this branch when analysing the international instruments were; national obligations to prevent revictimisation, state cooperation, border control, efficient birth registration and identity document systems, research and attacking of the root causes. In observing what this section of the Fact Sheet says, noting whether these themes and trends arise shall be done.

In looking at prevention in the Fact Sheet, the effectiveness of the prevention efforts is determined by the extent to which they address the tactics of the traffickers' head on and respond to the organised nature of the crime.¹³³ By ensuring that precise information is circulated, individuals will be in a much better position to respond to the risk of human trafficking. This links to the theme of research.

Emphasis is also placed upon significant partnerships between the general society and the private sector arising as this can increase awareness, leverage skill and expertise and encourage imaginative solutions.¹³⁴ Prevention efforts continue to develop and emerge as the lessons learned by the government and anti-trafficking organisations are put to effect.¹³⁵ The Fact Sheet

¹³² Part 3, *Ouagadougou Action Plan*.

¹³³ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

¹³⁴ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

¹³⁵ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

highlights on implementing measures such as birth registration too.¹³⁶ Thus, this brings out the themes of state cooperation, efficient birth registration systems.

Therefore, out of the six themes and trends we note that state cooperation, efficient birth registration systems and conducting research have been noted.

3.4.2 Prosecution

In looking at prosecution, what is set out is that an effective criminal justice response would be to treat the prosecution of cases as seriously as other grave crimes.¹³⁷ Every single perpetrator of the crime should be held responsible, right from the transporter, the person that scouts the victims or even the one that partakes in falsifying documents or paperwork for the victims.¹³⁸ Imposing stringent sentences upon every one of the perpetrators ensures that the severity of the crime is not downplayed. This will also lead to intermediaries questioning whether they would really want to partake in the process of trafficking people.¹³⁹ This links to the hierarchal structure of organised crime as set out under chapter 2 and places emphasis on ensuring that all the perpetrators to the crime are held liable.

It thus arises that under prosecution, there should be vigorous investigation in to the human trafficking cases and the offenders should face sentences that are adequately stringent to enable deterrence of the crime as well as sufficiently highlight and reflect the outrageous nature of the crime.

3.4.3 Protection

The themes and trends that arose under this branch were; victim information confidentiality, non revictimisation or recriminalisation, reintegration in to society and providing compensation to the victims.

In the Fact Sheet, where protection comes in to play, having a victim-centered approach is vital. Effective victim protection would encompass distinguishing victims, giving referrals for an

¹³⁶ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

¹³⁷ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 1.

¹³⁸ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 1.

¹³⁹ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 1.

extensive multitude of services, directly financing NGOs to give those services, and supporting these victims as they reconstruct their lives as well as ensure that victims do not face deportation or detention for lack of legal status or for committing crimes the traffickers forced them to carry out.¹⁴⁰ This hints at ensuring that victims do not get revictimised or face any criminal sanctions for being trafficked as they are victims. Moreover, ensuring that they can reintegrate back in to society has also been hinted at.

Victim identification is a vital aspect on the path to ensuring that they obtain the support and resources they require. After identification, it is important for the victims' rights and needs to be prioritised to ensure that the protection efforts are provided in ways that treat the victim with dignity and provide them each the opportunity to return to a life of their choosing.¹⁴¹

3.5 Conclusion

In analysing the international legal instruments on human trafficking, we note that a general harmonisation of the laws was noted as there were several themes and trends that arose. Under prevention, we note that the instruments aim to ensure that revictimisation does not occur. State cooperation is also heavily emphasised upon as we note that due to the transnational nature of the crime, it is vital to have States coordinating in order to combat the crime. Ensuring that border control measures are in place as well as efficient birth registration systems arise are also vital aspects under prevention. Conducting research on human trafficking stands as a crucial aspect to learn more about the modes of trafficking as well as ensure that means to curb the crime arise. Under prosecution, we note that municipal systems tend to have prosecutorial discretion but international instruments place emphasis on criminalisation of the crime. This is vital to ensure that the perpetrators to the crime are effectively punished to deter others from committing the crime. Under victim protection we note that confidentiality of victim information, non revictimisation as well as a smooth reintegration in to society are key features that arose. We further note that most of these themes and trends arose under a municipal system instrument too. Thus, it appears that there is a general view on what 'appropriate and effective measures' are to ensure victim protection, crime prevention and offender prosecution.

¹⁴⁰ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

¹⁴¹ USDOS, *The 3 P's: prevention, protection, prosecution*, June 2017 at 2.

CHAPTER FOUR: MODEL FOR ACTIVATION OF THE MALABO PROTOCOL CRIME OF TRAFFICKING IN PERSONS

"For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others."

Nelson Mandela

4.0 Introduction

In chapter 3, an analysis of national and international legal instruments was carried out to perceive what constitutes as 'appropriate and effective measures' within these instruments. This chapter is heavily informed by chapter 3 as it aims to establish a potential model that can serve as providing the 'appropriate and effective' measures for victim protection, crime prevention and offender prosecution. This will be done by combining all the common elements that were noted across the board as this hints at the harmonisation of the laws. This model could also be used to inform the Malabo Protocol as we note that human trafficking is a crime that is under the jurisdiction of the ACJHR.

4.1 The Malabo Protocol and human trafficking in Africa

The Malabo Protocol includes an additional list of crimes that fall under the jurisdiction of the ACJHR which essentially stands as a regional International Criminal Court (ICC).

In Africa, regions have rapidly growing populations, high rates of unemployment as well as high levels of corruption. All these factors are highly conducive to trafficking in persons.¹⁴² As set out in the 2014 Global Slavery Index report, many African countries are amongst the top worldwide when it comes to modern day slavery. Mauritania, Democratic Republic of Congo and Sudan are amongst these countries.¹⁴³ Lack of effective and good governance as well as low levels of education contribute heavily towards human trafficking as many victims tend to move to other affluent areas in hopes of having a better life thus posing as vulnerable and easy to recruit.¹⁴⁴

The Transnational Trafficking and the Rule of Law in West Africa Report sets out that trafficking of thousands of women occurs each year from West Africa to Europe for sexual

¹⁴² Shelley, *Human trafficking: A global perspective*, 265-266.

¹⁴³Thipanyane T, 'Human trafficking: African perspective' *Jurist*, 23 March 2015 <http://www.jurist.org/forum/2015/03/tseliso-thipanyane-trafficking-africa.php> on 28 August 2017.

¹⁴⁴Thipanyane T, 'Human trafficking: African perspective' *Jurist*, 23 March 2015.

exploitation.¹⁴⁵ The estimate on West African trafficked victims comprises of about 10% of forced sex workers in Western Europe.¹⁴⁶

The social phenomenon prompted the African Union (AU) to launch the ‘AU.COMMIT’ which is an initiative to fight human trafficking in Africa.¹⁴⁷ This campaign aims to prioritise the fight against human trafficking on the continent.¹⁴⁸ Moreover, the AU called upon the African states to use the Ouagadougou Action Plan in the fight against human trafficking as it came about with the intention of guiding the AU member states in developing and reforming their policies and laws on human trafficking.¹⁴⁹

Africa stands as the third in the world of victims of trafficking.¹⁵⁰ The implications of human trafficking on the continent regarding human rights violations as well as deprivation are more damaging on the continent in comparison to other continents.¹⁵¹ This is mainly as a result of the overall poverty as well as the lack of capacity and poor governance associated with the African countries.¹⁵² Moreover, inadequate legislation as well as enforcement issues coupled with ridiculously high levels of corruption encourage trafficking in persons.

There have been a number of countries such as South Africa, Kenya, Tanzania, Zambia, Uganda, Mozambique and most of the West African countries that have enacted relevant legislation towards combatting the crime which has resulted to a number of successful cases of convictions.¹⁵³ However, implementation of the laws still stands as an issue as they are limited and fragmented.¹⁵⁴

The severity of human trafficking in Africa can therefore be noted from the above thus it is vital for the Malabo Protocol to attain direction on how to deal with this crime.

¹⁴⁵ UNODC, *Transnational Trafficking and the Rule of Law in West Africa: Threat Assessment*, June 2009, at 41.

¹⁴⁶ UNODC, *Transnational trafficking and the Rule of Law in West Africa: A Threat Assessment*, June 2009, at 41.

¹⁴⁷ Onuoha B, ‘Human trafficking in Africa: The role of universities in teaching and research’ 34 *Journal of Social Sciences* 1, (2013), at 61.

¹⁴⁸ Onuoha B, ‘Human trafficking in Africa’, 61.

¹⁴⁹ Onuoha B, ‘Human trafficking in Africa’, 61.

¹⁵⁰ Onuoha B, ‘Human trafficking in Africa’, 63.

¹⁵¹ Onuoha B, ‘Human trafficking in Africa’, 63.

¹⁵² Onuoha B, ‘Human trafficking in Africa’, 63.

¹⁵³ Onuoha B, ‘Human trafficking in Africa’, 64.

¹⁵⁴ Onuoha B, ‘Human trafficking in Africa’, 64.

4.2 Establishing the suitable model

Based on the analysis of the international and national legal instruments done in chapter three, we note that general themes and trends arose regarding dealing with victim protection, offender prosecution as well as crime prevention. This model will therefore comprise of these themes and trends that arose within the analysed instruments which could stand as ‘appropriate and effective measures’ in dealing with human trafficking because this hints at a harmonisation of the laws within these legal instruments.

It is important to note that the list could be non-exhaustive as there may be other possible measures that could be taken to combat the crime, however this model shall consist of aspects that are seen to fit with the organised nature of human trafficking as well as in line with the themes and trends that emerged in chapter 3. In order to set out the model, each part shall have a summary on what the themes and trends within the instruments are, then the structure of the model which will set out the points expansively.

4.2.1 Prevention

Prevention is an important aspect where human trafficking is concerned as it aims to stop the occurrence of the crime. From the statistics provided in chapter 1, we note that human trafficking occurs at a high rate and the incidences are rapidly growing. The themes and trends that arose under this branch were prevention from revictimisation, having States cooperating and coordinating with each other to curb the crime, tightening border control measures, ensuring efficient birth registration and identity document systems, conducting of research and attacking the root causes or the enabling social factors of the crime.

Model:

States should:

- i. Ensure that training and education programmes are implemented in order to enhance awareness. These programmes should dwell upon the nature of the crime as well as where to report any suspicious activity that one reasonably believes will amount to human trafficking.

- ii. Improve the economic conditions of citizens through the providing employment opportunities to ensure that individuals are not left helpless and vulnerable to be susceptible to human trafficking.
- iii. Establish rehabilitation centres to assist victims of human trafficking as well as prevent the revictimisation of victims.
- iv. Research, collect and exchange any information related to the nature of the crime, the root causes and forms of trafficking and the modes or methods used by traffickers.
- v. Improve the birth registration systems as well as the provision of identity documents which will make it difficult to forge documents or attain such documents easily.
- vi. Empower women and girls in the policies made and programmes set out in order to reduce the number of female victims.
- vii. Raise awareness about human trafficking by means of information camps or through media engagement.
- viii. Ensure that border control measures are implemented and enforced in order to avoid trafficking of individuals across borders.

4.2.2 Prosecution

Prosecuting of offenders stands as a means to attain justice. Human trafficking goes against ones right to freedom from slavery thus those that interfere with other individuals right to enjoy this freedom should be punished. All the instruments deal with the criminalisation of human trafficking as well as ensure that comprehensive legislative framework is in place. Strengthening of the criminal justice systems is also a vital aspect where prosecution is concerned.

Model:

States should:

- i. Implement and enforce comprehensive legislative framework that criminalises the crime of human trafficking.
- ii. Treat human trafficking as seriously as other grave crimes are treated.
- iii. Carry out vigorous investigations in to the cases of human trafficking organisations.
- iv. Adopt legal measures that provide for the possibility of compensation by the offender to the victim.

- v. Adopt legal provisions to severely punish offenders and those suspected of involvement of the crime.

4.2.3 Protection

Protection of human trafficking victims is an essential component in combatting the crime in order to avoid revictimisation from arising. All victim protection elements aim to ensure that assistance, guidance and protection is given to the victims. Victims of the crime often undergo traumatic experiences and it is vital to handle them with due care and acknowledge the sensitivity of the matter. The themes and trends that emerged under protection was that confidentiality of the victim's information should be maintained. This is especially for their identity so as to ensure they feel safe to testify or report the incidents. Non revictimisation and non criminalisation are also important as prosecuting a victim does not lead to combatting the crime. Reintegration into society is important for victims thus providing them with the means to attain this is vital.

Model:

States should:

- i. Identify the victims of trafficking and provide them with the assistance, safety, security and guidance they need.
- ii. Adopt policies and programmes that provide for victim protection and assistance as well as any information they may need.
- iii. Establish victim protection centres where victims are guided on how to reintegrate in to society.
- iv. Establish rehabilitation centres or counselling centres that victims feel safe to approach and share their stories.
- v. Ensure that the victims are not prosecuted for matters such as illegally being in a country or not possessing the required documents as this may lead to revictimisation.
- vi. Provide any psychological, medical as well as social assistance to the victims.
- vii. Promote the aspect of confidentiality of cases.

4.3 Conclusion

In light of the above, we note that having a comprehensive model that sets out the ‘appropriate and effective measures’ is a crucial aspect where combatting human trafficking arises. Implementation and enforcement are vital aspects in this regard as there could be an array of legal instruments that dwell upon human trafficking, however, a gap in implementation leads to an increase in the number of human trafficking cases. Having a model that the Malabo Protocol crime of human trafficking could be informed by is important as the prevalence of human trafficking in Africa is alarming and needs to be curbed.

CHAPTER FIVE: PUTTING ALL OUR THOUGHTS IN TO ONE BASKET

“Slavery and freedom cannot exist together”

Ernestine Rose

5.0 Introduction

Chapter 4 established a potential model that could inform the Malabo Protocol crime of human trafficking on what may be deemed as ‘appropriate and effective measures’ regarding victim protection, offender prosecution and human trafficking prevention as per Article 4(2)(g) of the Maputo Protocol. This chapter will set out a summary of all the chapters and plausible recommendations.

5.1 Summary of chapters

5.1.1 Chapter 1

This chapter set out the legal issue that this paper would address. This was to determine the meaning of ‘appropriate and effective measures’ as set out under Article 4(2)(g) of the Maputo Protocol. The aim was to establish a robust model derived from uncovering the meaning of ‘appropriate and effectiveness measures’ to inform the Malabo Protocol crime of human trafficking. This chapter brought the crime of human trafficking to light and placed emphasis upon the magnitude of the crime by providing statistics on just how widespread and prevalent human trafficking is. The research objectives and questions set out under chapter 1 set the basis for the discussions in chapter two to four.

5.1.2 Chapter 2

Chapter 2 brought out how human trafficking constitutes as a transnational organised crime by virtue of fulfilling the elements set out under Article 3 of the Palermo Convention. The traits and models of human trafficking were set out under this chapter and it was noted that human trafficking is a low-risk and hidden crime that yields high profits thus making it an attractive industry for criminals. It was brought out how organised criminal groups tend to be from one ethnic or social community thus dominating the region they come from. Moreover, the use of cultural beliefs as a tool of control was also highlighted as it was set out how traffickers (mostly from West Africa) use *juju* as a means of controlling the victims.

Human trafficking as organised crime follows a hierarchal structure of command as the bureaucracy model places emphasis on organisations having a clear division and delegation of tasks and labour. This is apparent within a human trafficking organisation as there are different activities that are carried out in order to fully execute the crime i.e. scouting for the victims, falsifying documents for victims if need be, transporting the victims, receiving the victims and so on. ‘Stay-in’ factors were also discussed in this chapter which are what compels victims to traffickers or stops them from reporting the incidents and these factors were fear and helplessness and the Stockholm Syndrome.

5.1.3 Chapter 3

This chapter covered a comprehensive analysis of victim protection, crime prevention and offender prosecution under the Palermo Protocol, Ouagadougou Action Plan, UNODC Act against Human Trafficking and a USDOS Fact sheet on the 3 P’s. This was done in order to determine what each instrument deems ‘appropriate and effective’ when it comes to combatting human trafficking. It brought out the themes and trends that were uncovered through a collective reading of the respective provisions within the legal instruments. The major themes and trends that emerged under Prevention were revictimisation, state cooperation, border control, efficient birth registration and identity document systems, research and addressing of the root causes. Under Prosecution, criminalisation of the crime as well as prosecutorial discretion arise. Under Protection, confidentiality, non revictimisation and recriminalisation, reintegration in to society and compensation are the emerging themes and trends that emerged.

5.1.4 Chapter 4

Chapter 4 dwelled upon the prevalence of human trafficking in Africa in order to understand why establishing a model to inform the Malabo Protocol crime of human trafficking is vital. The ACJHR has the jurisdiction to try the crime of human trafficking thus it is important that this is done to the best of their capability in order to ensure that human trafficking is curbed. The establishment of the model was thus the focal aspect of this chapter. The model was informed by the analysis of the international instruments done in chapter 3. The themes and trends that arose formed as the basis of establishing the suitable provisions under each of the 3 P’s.

5.1.5 Chapter 5

This final chapter gives a full outline of the paper by setting out a summary of each chapter then setting out plausible recommendations.

5.2 Recommendations

Partnership and state cooperation are key aspects where combatting human trafficking arises. Heavy emphasis should be placed upon working together in order to combat the crime. This requires having as many hands working together to prevent the crime from happening, prosecuting those that commit the crime as well as protecting those that have undergone the cruelty of the crime. Ensuring that all divisions of society unite in the fight against human trafficking strengthens the anti-trafficking movement thus leading to reduced incidences then progressively filtering the crime out as a whole.

Prevention is an important factor in the attempt to reduce the human trafficking incidences. It may prove to be difficult to manifest as detection of the crime is usually tricky, especially where the incident is domestic, however, prevention efforts may become more effective if they are supported by resilient political will and sufficient resources.

BIBLIOGRAPHY

BOOKS

- Hepburn S and Simon R, *Human trafficking around the world: Hidden in plain sight*, Columbia University Press, 2013.
- Kirsch T and Gratz T, *Domesticating vigilantism in Africa*, James Currey, Woodbridge, 2010.
- Kleemans E, 'Theoretical perspectives on organised crime.' In: Paoli L (ed.). *Oxford handbook on organised crime*. Oxford University Press, 2014.
- Roth M, *Global Organised Crime: A 21st Century Approach*, 2ed, Routledge, 2017.
- Shelley L, *Human Trafficking; A Global Perspective*, Cambridge University Press, New York, 2010.

CONFERENCE PAPER

- Lampe K, "The use of models in the study of organised crime" European Consortium for Political Research, Marburg, Germany, 19 September 2003.

JOURNALS

- Awolalu J, 'What is African traditional religion?' 10 *Studies in Comparative Religion* (1976).
- Forster B, Human Trafficking: A Transnational Organised Criminal Activity, 3 *American International Journal of Contemporary Research* 1, (January 2013).
- Haken J, 'Transnational crime in the developing world' *Global Financial Integrity*, (2011).
- Ikeora M, 'The role of African traditional religion and 'Juju' in human trafficking' 17 *Journal of International Women's Studies*, 1 (2016)
- Onuoha B, 'Human trafficking in Africa: The role of universities in teaching and research' 34 *Journal of Social Sciences* 1, (2013).
- Reichel P, Winterdyk J, 'Introduction to special issue: Human trafficking issues and perspectives' *European Journal of Criminology* (2010).
- United States Department of State, 'The 3Ps: Prevention, Protection, Prosecution' *Office to Monitor and Combat Trafficking in Persons* (2017).
- Viljoen F, *An introduction to the protocol to the African charter on human and people's rights on the rights of women in Africa*.

DISSERTATIONS

Mace S, 'Child trafficking: A case study of the perceptions of Child Welfare Professionals in Colorado', Unpublished PhD Dissertation, Colorado State University, 2013.

NEWSPAPER ARTICLES

Bindel J, 'Women sex trafficking other women: the problem is getting worse' *The Guardian*, 22 April 2013.

Bucktin C, 'Meet Pablo Escobar's hitman - the world's most dangerous man who organised killing of more than 3,000 people', *Mirror*, 18 September 2016.

Kristof N, 'Slavery isn't a thing of the past' *The New York Times*, 6 November 2013.

Tuttle R, 'A hidden crime', *The Guardian*, 14 June 2007.

INTERNET ARTICLES

Ackerman T, 'Human Trafficking: Prevention, Prosecution and Protection under International Law' *Peace Palace Library Blog*, August 7 2015 <https://www.peacepalacelibrary.nl/2015/08/human-trafficking-prevention-prosecution-and-protection-under-international-law/>

CdeBaca L, Sigmon J, 'Combatting trafficking in persons: a call to action for global health professionals' Vol 2(3) *Global Health Science and Practice*, 2014 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4168638/>.

Institute for security studies, 'National and international perspectives on crime reduction and criminal justice' 2014 <https://issafrica.s3.amazonaws.com/site/uploads/5th-crime-conference-Booklet-FINAL.pdf>

Moloney A, 'Fear silences human trafficking victims: Mexico prosecutor', *Reuters*, 27 May 2015 <https://www.reuters.com/article/us-mexico-human-trafficking/fear-silences-human-trafficking-victims-mexico-prosecutor-idUSKBN0OC02820150527>

Stoecker S, 'The rise in human trafficking and the role of organised crime' *Demokratizatsiya*, 2000.

United Nations News Centre, 'Report: Majority of trafficking victims are women and girls', <http://www.un.org/sustainabledevelopment/blog/2016/12/report-majority-of-trafficking-victims-are-women-and-girls-one-third-children/>

REPORTS

ILO and Walk Free Foundation, *Global Estimates of modern slavery: Forced labour and forced marriage*, 2017.

ILO, *ILO Global estimate of forced labour: results and methodology*, 2012.

ILO, *Profits and Poverty: The economics of forced labour*, 2014.

UNGA, *Third Committee Considers Criminal Justice, International Drug Control*, GA/SHC/4067 9 October 2013.

UNODC, *Global Report on Trafficking in Persons*, 2016.

UNODC, *The Globalisation of crime; A Transnational organised crime threat assessment*, 2010.

UNODC, *Trafficking in persons and gender*, 2012.

UNODC, *Transnational trafficking and the Rule of Law in West Africa: A Threat Assessment*, June 2009.

US Federal Research Division, *Transnational activities of Chinese Crime Organisations*, 2003.

USDOS, *Trafficking in Persons Report*, 2016.

WEBSITES

Arkell H, 'Married couple used African witchcraft to terrify and trick two women into coming to Britain and work as prostitutes, court hears' *Mail online*, 24 September 2014 <http://www.dailymail.co.uk/news/article-2767833/Married-couple-used-African-witchcraft-terrify-trick-two-women-coming-Britain-work-prostitutes-court-hears.html>

Blue Blindfold, 'What is human trafficking' 2012, *Irish Department of Justice and Equality* <http://www.blueblindfold.gov.ie/website/bbf/bbfweb.nsf/page/humantrafficking-overview-en>

Bridging Freedom, 'Why they stay: Stockholm syndrome in human trafficking' <https://www.bridgingfreedom.org/why-they-stay-stockholm-syndrome-in-human-trafficking/>

European Commission, 'Together against Trafficking in Human Beings' https://ec.europa.eu/anti-trafficking/eu-policy/ouagadougou-action-plan-combat-trafficking-human-beings-especially-women-and-children_en

Green P, 'The syndicate', *Cocainenomics* <https://www.wsj.com/ad/cocainenomics>

Julich S, 'Stockholm Syndrome and sex trafficking: Why don't they do something' *Fair Observer*, 21 August 2013 https://www.fairobserver.com/region/north_america/stockholm-syndrome-sex-trafficking-why-dont-they-do-something/

Polaris, Human trafficking, *National Human Trafficking Hotline*

<https://humantraffickinghotline.org/type-trafficking/human-trafficking>

Soroptimist, What is human trafficking (2012) <http://www.soroptimist.org/trafficking/faq.html>

The Telegraph, 'Sex trafficker used African witchcraft to smuggle children for prostitution'²⁹

October 2012 [http://www.telegraph.co.uk/news/uknews/crime/9640776/Sex-trafficker-used-](http://www.telegraph.co.uk/news/uknews/crime/9640776/Sex-trafficker-used-African-witchcraft-to-smuggle-children-for-prostitution.html)

[African-witchcraft-to-smuggle-children-for-prostitution.html](http://www.telegraph.co.uk/news/uknews/crime/9640776/Sex-trafficker-used-African-witchcraft-to-smuggle-children-for-prostitution.html)

Thipanyane T, 'Human trafficking: African perspective' *Jurist*, 23 March 2015

<http://www.jurist.org/forum/2015/03/tseliso-thipanyane-trafficking-africa.php>

UNODC, 'Human Trafficking' [https://www.unodc.org/unodc/en/human-trafficking/what-is-](https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html)

[human-trafficking.html](https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html)