

Exploration of International Law and Regulations of Child Trafficking in Togo

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Abstract

Purpose: The purpose of this study was to investigate the International Law and regulations on child trafficking in Togo.

Methodology: The research used exploratory research design. This enabled the collecting of data on several variables which were then examined for recurring patterns using thematic analysis later presented as themes. The study used purposive and snowballing sampling techniques.

Findings: The findings revealed that Togo is amongst the friendliest nations in child protection laws and has been instrumental in promoting regional collaboration in the fight against child trafficking. However, child trafficking cases are still on the rise, and there is a lot to be done to implement laws.

Conclusion: The study concluded that the Togo's implementation of anti-child trafficking laws was lax. Togo is a child friendly nation; however, a lot needs to be done to implement child protection laws and awareness creation.

Recommendation: The study recommends the department of children services should liaise with the media, religious institutions, and the ministry of education to create awareness of child trafficking among children and parents.

Keywords: *International law, child trafficking, compliance, ratification.*

1.0 Introduction

Worldwide, trafficking in people is cited as an exceedingly lucrative transnational organized crime competing with drugs and weapon trafficking (Bales, 2005). An observation made by the International Labour Organization report (2014), indicates that the proceeds from this illegal business are approximated to be US\$ 150 billion annually. Trafficking in persons is unique as the world's greatest somber transnational crimes, which hold very complex human rights challenges of our time globally, regionally, and nationally. According to the United Nations Office on Drugs and Crime (UNODC) Trafficking in Persons global report of 2016, the overall number of humans trafficked worldwide is an estimated 12.3 million. Notably, 25 percent of the trafficked persons are children. Girls are primarily trafficked for use in commercial sexual exploitation and domestic work, while boys are mainly trafficked for agriculture, mining, plantations, and armed conflict (UNODC TIP Report, 2016).

International Law is an influential channel in combating trafficking in persons by setting up a defining, prevention, and protection framework. Trade in humans is a grave rights and dignity violation (Islam & Nicaise, 2017). The universal instrument which provides the definitive framework in the regulation of human trafficking is the United Nations Convention against Transnational Organized Crime (UN TOC). This instrument was agreed upon by the United Nations General Assembly (UNGA) on 15th November 2000, which entered into force on 23rd September 2003. It was adopted to confront the transnational nature of human trafficking. Supplementing the convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, also known as the "Palermo Protocol." It was agreed upon in the year 2000, which conceptualizes the notion of child trafficking (UN TOC, 2000).

The willingness of states to suppress trafficking in human beings is evident through ratification of Palermo Protocol. States made a declaration to enhance efforts through an all-inclusive international approach to address the trafficking in persons in origin, transit, and destination states (Estourgie, 2016). The main focus of the protocol has been for states to detect and prosecute traffickers while identifying, protecting, and assisting those who have already been trafficked while initiating various actions to prevent people from being trafficked (Protocol, 2001). As of 2010, the UNODC is committed to producing annual reports under the name: "UN Global Plan of Action to Combat Trafficking in Persons."

In 2019, 173 states had endorsed the Palermo protocol as of 31st March 2019, to which Togo is a party. Among these states, 168 states have passed domestic legislation to curb Trafficking in human beings (UNODC TIP Report, 2019). Domestication of the international treaties is essential for states to address the particular elements in the treaties at the national level. Domestication of the Palermo protocol criminalizes trade in human beings with a special focus on women and Children. In addition, domestication plays a momentous role in the adoption of new regulations to translate the protocol into action or amend the existing laws. At the same time, they establish institutions and procedures to implement the international law and protect victims towards a victim-centered approach (UNODC TIP Report, 2019).

Non-compliance with the Palermo Protocol has penalties. Recently United States Trafficking in Persons report evaluated states' compliance by using the three-tier classification system. Penalties follow according to the ranking of the state. The lowest rank a state can earn is tier three, where

sanctions involve the withdrawing of non-humanitarian aid. In addition, the states involved may not obtain aid for the partaking of programs related to cultural exchange or education (US Department of State Report, 2014). Exposure of children to organized transnational crime has been increasingly on top political agendas of the international community. The International Laws addressing child trafficking in the world today include the Palermo protocol, the Convention on the Rights of the Child (CRC) (1989), and its additional protocol on the sale of children, child prostitution, and child pornography (CRC-OP-SC), the ILO Convention No. 182 on the Worst Forms of Child Labor of 1999 (Sigfridsson, 2013).

Regionally, the 2006 Ouagadougou plan of action towards fighting trafficking in humans, particularly women and children, endorses these international instruments to avert trafficking, safeguard victims of trafficking, and the trial of those involved in the crime of trading in persons (Thipanyane, 2015). At the East African level, the East African Community (EAC) trafficking in Persons Bill, 2016 has been presented whose main aim is to counter the trade in human beings with particular attention to children and women (EAC Counter-Trafficking in Persons Bill, 2016). Nationally, according to National Crime Research Center (NCRC) Report on Human Trafficking in Togo 2015, international trafficking prevalence is relatively high, at 60.2%. Child trafficking is the second to trafficking designed for labor. Poverty, unemployment, and corruption are the main factors contributing to child trafficking (NCRC, 2015).

In November 2020, the BBC Africa Eye brought to light a baby stealing syndicate in Togo after a year-long investigation. The syndicate stole children from poor and homeless women, primarily single mothers who lived in informal settlements. The babies were then sold to the highest bidder. This racket constituted community leaders and government officials in public hospitals. This criminal enterprise benefited financially from snatching many children of their mothers. A girl fetched from Xof 276 thousand while a boy fetched from Togo Xof 440 thousand in the market (BBC News Africa, 2020). Until 2010, the felony of trafficking in human beings, especially children, did not specifically exist in the national legislation. Other related legislations addressed Child trafficking. However, Togo had been a party to the CRC sanctioned in July 1990. In 2001 Togo domesticated the CRC inform of the Children's Act 2001 (IOM Rapid Assessment, 2014). The Togo Constitution 2010 has made a provision on identifying and defending constitutional rights to preserve persons and the communities there by upholding impartiality and actualizing human potentiality (Constitution of Togo, 2010). In addition to ratifying the Palermo Protocol, Togo has enacted the Counter-Trafficking in Persons Act 2010 and the National Plan of Action for combatting Human Trafficking and Strategic Framework (2013-2017). Trafficking in children is still prevalent in Togo paradoxically after ratifying universal and regional mechanisms reproving the practice.

1.2 Statement of the Problem

Child trafficking remains an imminent challenge at the international stage, regional, and state levels. This is despite evolution and ratification of international legal norms focusing on the protection of the Togo child from child trafficking such as the United Nations Convention on the Rights of the Child (1989). While there has been a notable increase in the number of intervention strategies towards addressing child trafficking, including initiatives, laws, and accountability mechanisms. This include Togo adopting specific penalties against trafficking in children such as in the Counter-Trafficking in Persons Act 2010 of the laws of Togo. States like Togo have had

little success in addressing child trafficking which is still skyrocketing. An estimated 20,000 children are being trafficked annually in Togo (APPNCAN, 2017). In as much as the government is doing its best there are still gaps when addressing the menace while ensuring the protection of the victims. These prompted the illumination of the specific strategies in place so far while examining the gaps in the regulations of child trafficking in Togo by the international laws. There is a need to illuminate on the specific provisions on the regulations, the awareness among key stakeholders and the complementarity with domestic law with an aim to uncover the gaps that plague this manner of implementation.

Inadequate awareness is one of the issues that plague the sky rocketing number of child trafficking cases that ultimately sought to rethink through the international regulations on child trafficking operational in Togo in terms of the compliance, implementation and the hurdles faced in addressing child trafficking. The shifts in the international regulations and the redefining of the compliance parameters have questionably augmented state duty and widened the parameters of social protection of children against trafficking. This study pursued to make a contribution to promotion of a consistent and well-coordinated protection response among key stakeholders in Togo.

1.3 General Objective

The general objective of the study was to explore International Law and regulations of child trafficking in Togo.

2.0 Literature Review

2.1 Theoretical Framework

2.1.1 Critical Legal Theory

Critical legal theory draws inspiration from Robert W. Gordon, Roberto M. Unger, and Duncan Kennedy. The primary assumption of the critical legal theory is that; Law is a mask that is a manifestation of power. From this expression, the law itself is not neutral, but it is ideologically driven in the form of power that is additionally used to serve the interests of the elite in the society. The rules are flexible, and politics have a very significant influence on the approaches of law and interests. As a result, personal and moral positions impact the law (Tushtet, 1990).

Critical legal theorists stipulate that politics and whoever is in power determines the specific issues that ought to be discussed in the international arena. Trafficking in Persons has made it to prominent international theaters like the United Nations General Assembly with notable achievements, including ‘Palermo’ protocol (2000). The protocol is the key international legal apparatus on which the definitional and the global anti-trafficking policies are anchored. The introduction of the Tier system classification by the USA to Curb trafficking in people and the subsequent classification of countries into three categories (Tier 1, Tier 2, and Tier3) depending on the determinations to curb Trafficking in people. (United States Department of State, 2009). In itself, it’s an expression of power coming into play in influencing the moral position of law.

Critical legal theorists propose that law is indeterminate and is therefore not a doctrine or a precedent that drives the outcomes of the judicial decisions but other factors. The critical legal theorist exposes the hidden political nature of the law and the interpretation of the legal language for that same effect. The other factors that indeed determine the regulation of human Trafficking

largely involve the diversity of actors in the international system with varying interests, whether governments, Inter-Governmental Organizations, and Non-Governmental Organizations. These actors are key players in understanding trafficking in persons as a phenomenon that includes definitional aspects and the international legal formulation (Orakhelashvili, 2011).

2.2 Empirical Review

The International Law on trafficking in human beings has evolved for over a century, as CdeBaca (2011) in his keynote address at Michigan Law School observes. The development of the various conventions, instruments, and institutions is a testament to his observation. These instruments have addressed crucial aspects of trafficking in persons such as slavery, forced labor, enslavement, and servitude. His observation gives a vivid depiction of the history of the International Law of trafficking in humans from the most notable moments in history yet fails to illuminate the issue of child trading.

Morcom and Schleonhardt (2011) explore how the concept of trafficking in humans has evolved in the International Law context. International Law on human trafficking has resulted from antislavery conventions such as the League of Nations anti-slavery convention of 1962. On addressing forced labor and prostitution, the 1957 Abolition of Forced Labour Convention and the UN Convention for the Suppression of the Trafficking in Persons and the Exploitation of Prostitution of Others in 1949 were adopted. It wasn't until 1989 that the issue of child trafficking was highlighted by the United Nations (UN) through the adoption of the UN CRC (1989) to protect children from trafficking in and its additional protocols were adopted. However, the UN did not adequately address the definitive framework of child trafficking until the adoption of the UN TOC (2002) and 'Palermo' protocol which became the focus in suppression trafficking in humans. Togo has made considerable efforts to ratify and domesticate these conventions but there are considerable gaps that hinder their implementation which this study seeks to examine.

In her in-depth analysis of the International Law on trafficking in human beings, Gallagher (2010) links laws with various rules such as the key standards of transnational criminal law, international criminal law, the international human rights law, the refugee law, and the international law on the state responsibility in a bid to identify the process of explaining the major duties of states to define, prevent, protect and act against the offenders. Notably, this observation helps explain the various criminal aspects of the crime of trade in humans in relation to international legislations yet being light on child trafficking. Regrettably, where there are low levels of awareness on the regulations of child trafficking among the key stakeholders in the criminal justice system, many states including Togo use these laws to charge child traffickers with misdemeanors such as child abduction. This has derailed the fight on child trafficking where many traffickers get minimal sentences thus the issue remains unaddressed.

Henkins (1968) argues that states behave largely in compliance with International Law in reference to his famous aphorism, which affirms that the majority of nations observe nearly all values of universal law. However, he is less clear on why the states comply, but he lists a set of factors that favor compliance, such as the state's reputation and domestic politics of state's reciprocity. International regulations still have a grip-like influence on both the workings and the structures of the national constitutions (Maluwa, 1999). While International Law regulating human trafficking has had various successes, such as coming up with a solid definition, the law has similarly been

beleaguered with failure on several grounds. Birdsall (2009) observes that one problem concerning the International Law relevant in the children's rights context is the weak enforcement mechanisms. Under the UN treaty law, international law is only legally binding upon the state's ratification. However, when the state breaks the agreement, there are no forceful consequences in terms of a sovereign body above the states. It is upon this backdrop that this study seeks to assess Togo's the enforcement mechanisms to its international legal obligations to regulate child trafficking.

As Nyataya et al. (2017) observe, the cost factor accrued when investigating transnational cases is high. This is because trafficking in persons, in particular, carries many crimes with it. It is time and resource-consuming for countries with limited resources. However, it should not be an excuse for the states involved not to put in endeavors to pursue trafficking across borders. While trafficking in people has lately been termed a national security issue, criminal jurisdiction issue, and a human rights violation. Davidson (2016) observes the United States of America (USA) and the European Union (EU) spending a vast amount of resources aimed at erecting barriers to this movement of people. The barriers involve both traditional barring methods: building walls, fences, and checkpoints to modern and sophisticated use of high technology surveillance systems. The externalization of the European Union's effort on border control through funding the establishment of migration detention facilities, bilateral agreements, visa regimes, and military training has further helped reduce the transnational traffic flow within the European Union member states. Togo, however, as a developing state plagued with a resource shortage has limited workforce and finances necessary to erect barriers to the movement of people though being a member of EU transnational agreements. This study sought to uncover the challenges the Togo government faces in limiting child trafficking across borders as an origin, transit and destination point.

Mendelson (2014) observes that it's largely that the benefactor community has not placed combatting human Trafficking as a high priority issue as with eradication of poverty or improving maternal health. Both were top of the list of the United Nation's Millennium Development Goals (MDGs). Notwithstanding, having both bilateral development institutions like the U.S Agency for International Development and numerous private philanthropies working relentlessly to curb Trafficking in persons thus there has been a slow rate in addressing the aspects of child trafficking.

As Salihu et al. (2016) note, it's the essence of every government to prioritize safety actions to safeguard the life and properties of the citizens. While establishing partnerships with international non-governmental organizations like the United Nations Children's Fund (UNICEF) may be deemed necessary, the domestication of the international treaties, subsequent enforcement, and public awareness on the vice is of utmost importance in addressing child trafficking. This study sought to unravel the challenges faced by the Togo government in its endeavors to domesticate international laws and enforce regulations on child trafficking.

3.0 Methodology

The study employed exploratory research design due to existence of scanty research on the regulations of child trafficking in Togo in relation to international law necessitating the use of qualitative research method approach. The study area was Lomé, Togo. The justification being Lomé was a destination point of child trafficking in addition to its strategic position in holding the

regional offices of international and local organizations. The researcher used thematic analysis to data collected.

4.0 Data Analysis, Findings and Discussion

4.1 Demographic Characteristics

The study's participants were 46% male and 54% female. This indicated that women were more involved in child protection spheres and, in particular, child trafficking.

4.2 Descriptive Analysis

4.2.1 The International Legal Framework Relating to Child Trafficking in Togo

The findings under this study were gathered from key informant interviews and content analysis of relevant documents. Twenty key informants were interviewed based on their positions and involvement in child protection in Togo. Most of the respondents held senior positions in both the government and non-governmental sectors. The study identified thirty key documents that were analyzed were based on the content, which was purely on the international legal framework addressing child trafficking. The findings will therefore be presented based on four major themes; The existence of an international legal framework in addressing child trafficking in Togo, a high level of awareness among stakeholders of the international legal framework ratified by Togo to address child trafficking, existence of complementarity of the international legal framework and domestic law, and existence of gaps in implementation of international law. According to treaty law, the study established a treaty can only be applicable in a state after it has been ratified or acceded by a country. Article 11 (1) of the Vienna Convention on the Law of Treaties state that; *"...The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed...."*

Table 1: Treaties ratified or acceded by Togo that address child trafficking

Name of the Treaty	Year of Adoption	Year Togo Acceded to
International Labour Organization (ILO) Conventions.	1964	2001
Forced Labour Convention	1979	
The Minimum Age Convention		
The United Nations Convention on the Rights of the Child (UNCRC)	1989	1990
The African Charter on the Rights and Welfare of the Child (ACRWC)	1990	2000
United Nations Convention against Transnational Organized Crime (UNTOC) (Palermo protocol)	2000	2005

Trafficking in human beings' despite being a modern-day legal issue, has a lengthy political and legal history and has evolved over time (Gallagher, 2010). Allain (2017) separates the international legal framework aimed at addressing trafficking in persons into three distinct categories dating

from the before establishment of the League of Nations era, then to League of Nations period, and lastly, the United Nations.

4.2.2 Awareness among Stakeholders of the International Legal Framework Ratified by Togo to Address Child Trafficking

When the respondents were asked about the international legal framework ratified by Togo to address child trafficking that they knew of, out of 20 Key informants, 17 key informants had a prior knowledge of the main international legal framework that Togo has ratified in efforts to address child trafficking. The question aimed at assessing the awareness of the international legal instruments among key stakeholders, and here is what some of the respondents said;

“...I know of several international legal instruments that address the prohibition of trafficking in Children case in point the United Nations Convention on the Rights of the Child (UNCRC) and the United Nations Convention against the Transnational Organized Crime (UNTOC) supplemented by the Palermo protocol....” (Key Informant R8: Senior officer Child helpline Togo on 21st October 2020).

“...I know of a lot of laws that address child trafficking internationally and, in the region.... We have the ACRWC, which protects the African child, also the Ouagadougou action plan (2006) to combat trafficking on women and children in Africa. Then there is the EAC bill 2016 close home, which has not been passed yet, but it’s a close replica of the Togo counter trafficking in persons Act 2010....” (Key Informant R10: Senior Officer at KAACR 15th October 2020).

“...I have an idea of these laws, the Palermo protocol just to mention and the most important and most overlooked to address illegal adoption is The Hague Convention on inter country adoption rights....” (Key Informant R25: Principal Immigration Officer, 20th Oct 2020).

“...Togo is a party to various conventions and protocols addressing child trafficking...although the Palermo protocol is the most cited, we have the UNCRC, the Universal Declaration on Human Rights 1948, and in Africa, we have the ACWRC, which have been domesticated into the children’s Act 2001....” (Key Informant R2: KNCHR Officer, 19th Nov 2020).

The above responses were an illustration that the knowledge of the international legal framework aimed at addressing child trafficking in Togo was in existence among key stakeholders in the child protection spheres. The demonstration of the domestication of these laws ultimately gives a funnel approach application of the International Law down to the local context.

4.2.3 Establishing Complementarity of the International Legal Framework and Domestic Law on Child Trafficking

During the field work, 20 key informants were asked the link between the international legal framework and domestic law addressing child trafficking. Fifteen of the key informants cited there were aware of a high degree of complementarity between International Laws and domestic laws in addressing child trafficking. The aim of the question was to gain an understanding of the relationship between the laws in question, as the following statements illustrate.

“...most of these laws are in agreement with the current domesticated laws in the country. We have the Counter-Trafficking in Persons Act 2010, which illustrates this....” (Key Informant R15: Senior Officer at NCCS on 26th October 2020).

“...these laws showcase complementarity with each other for instance, the domestication of Children’s Act 2001 is a testament to this as it is a domestication of the UNCRC....” (Key Informant R6: Senior Coordinator, Salvation Army 14th October 2020).

A total of 3 of the respondents looked at the complementarity aspect in terms of the content of our preexisting laws in contrast with the International Laws.

“...when you look at the Counter-Trafficking in Persons Act (2010), we have copied the definition of trafficking in persons from the Palermo protocol word for word hence we intend to fully implement what Palermo protocol entails....” (Key Informant R12 and R13: Senior Officers at Department of Children Services 16th October 2020).

4.2.4 Existence of Gaps in the Implementation of International Law

When the key informants were asked about factors that challenge the application of the international legal framework in addressing child trafficking in Togo; they cited challenges in implementation of international legal framework and criminal prosecution of perpetrators with other related crimes as the main weaknesses due to lack of awareness on child trafficking laws among the criminal justice personnel. The respondents identified that one of the major challenges that plague the enforcement of the international legal framework in Togo is the gaps that lie in the implementation framework, as evident from the responses illustrated below;

“...no single document addresses the various aspects of child trafficking; they are too scattered. This makes the perpetrators to be charged with other crimes such as employment act violations, child labor, sexual offences....” (Key Informant R10: Senior Officer at Togo Alliance for the Advancement of Children 15th October 2020).

Another respondent lamented on the failure of implementation although Togo has ratified a lot of laws,

“...Togo is rated one of the most child-friendly countries in Africa due to the large number of laws that it has ratified and domesticated to protect children from vices, including child trafficking. The number of policy documents, the National Plans of Action are many, but they remain to gather dust on a shelf somewhere. Perpetrators of Child trafficking are charged with other related crimes since there is disconnect in having to prove the case in court as a case of child trafficking....” (Key Informant R 17: Senior officer at the NCCS 14th October 2020).

“...you know the punishment for trafficking is thirty years’ imprisonment, having this in mind traffickers bribe law enforcement officers who in turn charge them with other related crimes which attract fewer penalties also most police offices are not aware of child trafficking laws which makes them charge perpetrators with other related crimes....” (Key Informant R 27: Officer at National Police Service 6th November 2020).

5.0 Conclusions and Recommendations

5.1 Conclusion

International law has been instrumental in regulating child trafficking in Togo. It has been the genesis of a lot of domestic laws that address child trafficking. Togo has made significant efforts to curb child trafficking, such as promoting regional collaboration and complying with international reporting mechanisms by sending periodic reports, coming up with the National Plan

of Action, and legislations such as the CTiP Act 2010. To this end, international law has emerged as a powerful conduit in the regulation of child trafficking in Togo by obligating Togo to formulate laws, policies, and guidelines. Togo is amongst the friendliest nations in child protection laws and has been instrumental in promoting regional collaboration in the fight against child trafficking. However, child trafficking cases are still on the rise, and there is a lot to be done to implement laws.

5.2 Recommendations

The department of children services should liaise with the media, religious institutions, and the ministry of education to create awareness of child trafficking among children and parents. The awareness should encompass the components of child trafficking, victim identification, reporting mechanisms, and victim protection procedures. Policymakers should develop a multi-agency approach that will include all key stakeholders such as the department of children services, the National Police Service, Immigration department, and NGOs. This will help in the mapping of the rescue centers and enhance multiagency collaboration, which will reduce child trafficking cases.

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Conflict of Interest

Authors declares no conflict of interest.

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