



## Uganda - Solomy Bossa

### Presentation on the status of human trafficking in Uganda

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##### Introduction

The enormity of the problem of enslavement of fellow humans is a worldwide problem that manifests as forced labour, forced marriage, forced prostitution, organ harvest, human sacrifice and in many other forms. The International Labour Organisation Report 2017 estimates that there are forty million victims of modern slavery in the world. It is most prevalent in Africa, with 7.6 per 1000 people becoming victims. Rampant poverty is one of the drivers of modern slavery.

##### Background

Trafficking in Uganda covers both adults of both sexes and children. It is more unfortunate for children as they may be maimed for life and are often killed. Recently, young women have also been targeted for kidnap, rape and murder. Women and young girls are also trafficked for prostitution. Trafficking is not limited to children and women. Men are trafficked too.

Trafficking is both internal and external and mainly for the same purposes. On the domestic scene, business companies place advertisements of availability of house girls (maids). Some maids are children who have been sent by their parents or guardians to earn an income, after receiving token payments from such businesses. The maids are then deployed to whoever it may concern in domestic servitude, with no follow-up on what happens to them after, and on whether they are properly treated or paid. Some are even sold into prostitution, without due regard to their age.

There is a new twist to the enslavement of children. Parents and guardians, who are on the street as beggars, send their children to beg for stipends amidst dangerous traffic congestion around major cities and towns. Children may also be kidnapped to remove their body parts for ritual sacrifices.

On transnational traffic, reports abound of Ugandans who are lured abroad (mainly in the Middle East) with promises of jobs, only to be trafficked for sexual slavery or become unpaid and mistreated labourers. Some are mistreated to such an extent that they commit suicide. Concerning children, they are adopted after luring their parents with false information, and the parents only realize later that their children have been taken from them for good abroad.

Statistics are hard to come by. The latest figures available are for the year 2016. The Uganda Government availed information to the United States Department of State, which was published in their report of 2017, indicating that: there were 114 trafficking investigations; 32 prosecutions in 20 cases; 16 convictions; and that 270 victims were identified. In 2013 there were 837 registered trafficking victims. These figures are conservative, as not all cases of trafficking are reported. Trafficked persons include nationals of other states trafficked to Uganda, and others who are transited through Uganda to South Africa and other countries.

A Baseline survey has been made in three districts of Kampala, Iganga and Moroto. It shows that nearly 4 out of 10 children who work in the informal sector setting in Kampala are victims of trafficking.

##### What Uganda is doing to address the problem of trafficking in persons

Uganda has ratified and/or acceded to the following relevant international instruments and resolutions:

1. The Convention on the Elimination of all Forms of Discrimination Against Women
2. The Convention of the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
3. The International Covenant on Civil and Political Rights;
4. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons
5. The United Nations Protocol Against Smuggling of Migrants by Land, Sea, and Air
6. The International Convention on the Protection of Rights of All Migrant Workers

## 7. Human Rights Council Resolution 11/3 against trafficking in persons

Uganda has also enacted a law entitled The Prevention of Trafficking in persons Act 2009 (TIP). Its preamble reads:

*“An Act to provide for the prohibition of trafficking in persons, creation of offences, prosecution and punishment of offenders, prevention of the vice of trafficking in persons, protection of victims of trafficking in persons, and other related matters”.*

I should point out that Article 257(1)(c) of the Uganda Constitution provides that “child” means a person under the age of eighteen years. So does the Prevention of Trafficking in Persons Act. The Children Act also defines a Child in similar terms.

### **Punishable crimes within the TIP Act**

#### *Simple trafficking*

A person who recruits, hires, maintains, confines, transports, transfers, harbours or received a person or facilitates the aforementioned acts through force or other forms of coercion for the purpose of engaging that person in prostitution, pornography, sexual exploitation, forced labour, slavery, involuntary servitude, death bondage, forced or arranged marriage also commits the offence of trafficking in persons and is liable to imprisonment for fifteen years. Such an offence would be tried by a magistrate’s Court.

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall constitute “trafficking in persons” even if this does not involve any of the means above mentioned. The consent of the victim of trafficking or, if a child, the consent of his or her parents to the acts of exploitation is irrelevant (Section 3).

#### *Aggravated trafficking*

A person commits the offence of aggravated trafficking involving children where: the victim of the trafficking is a child; where adoption, guardianship, fostering and other orders in relation to children is undertaken for the purpose of exploitation; the offence is committed by a syndicate, or on large scale; the offender is an organization engaged in the activities of organizing, directing or protecting the vulnerable persons in society; the offender is engaged in organizing or directing another person or persons to commit the offence; the offence is committed by a close relative or a person having the parental care, authority or control over the victim or any other person; the offence is committed by a public officer; the offence is committed by military personnel or law enforcement officer; where the person organizes, facilitates or makes preparations for the kidnapping , abduction, buying, selling, vending, bringing from or sending to, receiving, detaining or confining a person for the purposes of harmful rituals or practices, human sacrifice, removal of any body part or organ, or any other act related to witch craft; the victim dies, becomes a person of unsound mind , suffers mutilation, gets infected with HIV/AIDS or any other life threatening illness. The offender is liable to imprisonment for life (section 4).

#### *Trafficking in children*

A person who: does any act referred to under Section 3 in relation to a child; uses a child in any armed conflict; removes any part, organ or tissue from the body of a child for purposes of human sacrifice; uses a child in the commission of a crime; abandons a child outside the country; uses a child or any body part of a child in witchcraft, rituals and related practices commits an offence of aggravated trafficking in children and may be liable to suffer death (Section 5).

For offences that attract imprisonment for life and death, it is the High Court which has jurisdiction to try them under the Criminal Procedure Code Act Cap 116 and the Judicature Act Cap 13.

#### *Engaging the Labour or Services of a Victim of Trafficking in Persons*

A person who, while working or having reason to believe that a person is a victim of trafficking, engages the labour or services of that victim in that status, commits an offence and is liable to imprisonment for ten years (Section 6).

### **Important definitions in the law under Section 2**

Exploitation is defined to include “at a minimum, sexual exploitation, forced marriage, forced labour, harmful child labour, use of a child in armed conflict, use of a person in illegal activities, debt bondage, slavery or practices similar to slavery or servitude, human sacrifice, the removal of organs or body parts for sale or for purposes of witchcraft, harmful rituals or practices”.

“Forced labour” means all work or service which is exacted from any person under the threat of any penalty, and for which the said person has not effected him/herself voluntarily.

“Human sacrifice” means the killing, mutilation, removal of organs or body parts of a person for sale or for purpose of witchcraft, rituals or any harmful human practices.

“Sexual exploitation” means the use of a person in prostitution, sex tourism, pornography, the production of pornographic materials, or the use of a person for sexual intercourse or other lascivious conduct.

“Slave trade” includes all acts involved in the capture, acquisition or disposal of a person with the view to selling or exchanging him or her and with the intention of reducing him or her to slavery.

“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, 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. It is an offence punishable by fifteen years’ imprisonment.

### **Decided Cases**

The law is just developing in this area but I wish to cite three cases. The first and second cases exemplify trafficking of children in Uganda. The third one demonstrates the challenges in investigating and prosecuting transnational crime.

#### *The first case*

This case concerns an adoption racket targeting children in Uganda. *The East African*, a regional weekly newspaper, in its edition of October 21-27 2017, ran an article on illegal adoptions, entitled: *Kids for sale, my mom was tricked*. It exposes how human traffickers rely on corruption in local courts and leaders’ greed, leaving behind a trail of heartbroken families. It is a heart-rending story of a mother who was tricked into giving away her seven-year-old daughter for adoption. The mother never intended to give daughter away. She had been told that her daughter Mata would be given a great educational opportunity if she was sent away, but that she would one day return. She was promised that she would always be part of her daughter’s life. The adoptive parents, Jessica and her husband Davies, had also been given a false story by an adoption agency in Ohio. The agency had told them that Mata’s father had died and that her mother neglected her and could not afford to feed her. The paperwork said Mata had never attended school. But in the months after she arrived in America, as Mata’s command of English improved, she spoke glowingly about her mother, how they cooked together, how they went to church together and how her mother walked her to school. Jessica realized that she did not participate in an adoption at all, but had unwittingly “participated in taking a child from a loving family”. And she knew that she had to return Mata to her family. The Davises shared their story exclusively with CNN, saying that they believe that Ugandan children like Mata are being trafficked, with American families not knowing the real stories behind their adoptions. An investigation by CNN into this alleged trafficking scheme found that children are being taken from their homes in Uganda on the promise of better schooling, placed in orphanages even though they are not orphans, and sold for as much as \$15,000 each to unsuspecting American families. CNN’s investigation found that multiple families were duped this way. Given the definition of aggravated trafficking under sections 3, 4, and 5, the facts fall squarely within the definition of aggravated trafficking.

#### *The second case*

In the case of Kabi George v. Uganda, Criminal Appeal No. 87 of 2011, the appellant was charged with the offence of aggravated trafficking in children contrary to section 4(a) and 5(c) of the Prevention of Trafficking in Persons Act. The particulars of the offence were that he and others on 16 July 2010, at Nyakatama Village Kikube Parish in Kiryandongo District, removed the penis and testicles from the victim KAL (not his real name), a boy child, for purposes of human sacrifice. The learned trial Judge found that the victim was abducted for the purpose of exploitation. The Court looked at the graphic pictures of the gruesome mutilation the victim went through and found that his bodily parts had been removed. The court also found that the accused participated in the crime and was properly identified. The court convicted him as charged. In sentencing him, the court took into account the fact that the victim’s potential as a human being had been irreparably damaged. It also noted that child sacrifice is widespread in our communities. In sentencing him, the court observed that there was need to send a clear and unambiguous message that there would be no mercy for anyone convicted of this heinous and absolutely inhuman crime. It therefore sentenced him to 50 years’ imprisonment. He appealed to the Court of Appeal but his appeal abated because he died in prison.

These are not the only cases that have been documented in courts of law. The International Crimes Division has so far handled the following cases of aggravated trafficking.

1. Uganda v. Natukunda Faith C. S. No. 1/2012. She was indicted with two offences of aggravated trafficking in persons c/s 3(1) and 4(j) of the Act. She was convicted and sentenced to 8 years on each count.
2. Uganda v. Amrik Singh Nono C. S. No. 006 of 2014. He was accused of trafficking in persons contrary to section 3 (1)(b) of the Act. He was acquitted.
3. Uganda v. Umutoni Annet C. S. No. 3 of 2014

She was charged with aggravated trafficking contrary to section 3(1) of the Act. She was convicted and sentenced to 8 years in count 1 and 5 years on count 2. Both sentences were to run concurrently.

Many others are pending before magistrate's courts.

#### *The third case*

Terrorism is another transnational crime that law enforcement agencies have been grappling with in Uganda. I will cite the case of Omar Awadhi Omar and ten others v. Attorney General Constitutional Petition Number 55 and 56 of 2011 to demonstrate the challenges facing developing countries in investigating and prosecuting terrorism related offences. In that case, revellers were watching the World Football Cup matches of the year 2010 at Lugogo Cricket Ground and at an Ethiopian Restaurant, when terrorist struck. Both venues are situated in the suburbs of the capital city of Kampala. Twin bombings went off, killing at least 70 people and seriously injuring others. The accused were nationals of Kenya, Uganda and Tanzania. They were charged with multiple murders resulting therefrom. Some were arrested from Kenya, and transferred to Uganda, without going through extradition proceedings. Those from Tanzania were extradited to Uganda but were not allowed to exhaust the appeal procedure regarding such proceedings. Some of them therefore challenged before the Constitutional Court their arraignment for the multiple murders as illegal, alleging that the manner in which their respective countries arrested them was unlawful and no criminal proceedings could ensue from such illegal arrests and that their trials had to be stopped. The Constitutional Court did not find any involvement of the Ugandan security forces in the arrest and transfer of the suspects to Uganda. It therefore upheld their arraignment. They were all tried subsequently tried in High Court Criminal Case No. 001 of 2010, Uganda v. Hassan Hussein and 18 others. Some were found guilty of the offences of murder. Others were acquitted. The appeals from convictions are pending before the Court of Appeal.

Other rampant cases of transnational crime include drug smuggling and smuggling of plants, animals and animal parts. Uganda is a transit point for some of these illegal activities.

### **Challenges**

The country is grappling with the problem of transnational crime. Investigation and prosecution under the TIP Act have not been easy. The reasons for this include; contradictory statements given by victims, lack of knowledge of trafficking law amongst investigators, prosecutors and judicial officers, lack of resources and delay in securing sanction of the Attorney General with regard to transnational trafficking and international crime. They are discussed below:

#### *Human and financial resources*

The challenge is allocating enough human and financial resources to the players in the justice, law and order sector to intensify a coordinated the fight against all forms of transnational crime. Apart from a few rotten apples, these players are committed to justice. What they need is sensitization and training about the seriousness of the situation and about the legal provisions they need to apply. Sharing comparative jurisprudence in this regard requires co-ordination and collaboration between prosecutors and judiciaries of the world.

#### *Existence of penal provisions that promote trafficking*

There are penal provisions that promote trafficking in that they punish the victims rather than offenders. They include: penalizing a person living on earnings of prostitution and prohibition of prostitution. Section 136 of the Penal Code Act provides that any person who knowingly lives wholly or in part on the earnings of prostitution and any person who in any place solicits or importunes for immoral purposes commits an offence and is liable to imprisonment for seven years. Section 139 of the Penal Code Act provides that any person who practices or engages in prostitution commits an offence and is liable to imprisonment for seven years. Prostitute means a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain.

#### *Poverty, illiteracy and ignorance*

Rampant poverty multiplies the enormity of the problem. Poor parents are susceptible to lures of money from traffickers, for whatever reason.

#### *Greed and corruption*

Greed and corruption of law enforcement officers fuel the evil trade in humans and without a committed policy to fight it, human trafficking will continue to thrive. By passing the Prevention of Trafficking in Persons Act, the Government of Uganda has signified its commitment to fighting the vice. But it must root out corruption, and avail more resources for the implementation of the Act to be effective.

#### *Awareness-raising*

Society needs to be informed and alerted of the existence of the evil and its various manifestations. This way, community policing will help prevent human trafficking from happening as society will be on the look out for traffickers and report them.

#### *State co-operation*

This is absolutely necessary if the tide is to be turned against traffickers. States are equally vulnerable to all the threat of human trafficking and transnational crime. There is need for them to deepen co-operation at all levels including on all stages of prevention, monitoring, investigation and prosecuting the crimes associated with human trafficking.

#### **Conclusion**

Uganda has crafted a strategy to deal with trafficking in persons. Actions envisaged include: development of a national awareness strategy and prevention; development of a sensitization program on trafficking in persons; a national awareness raising campaign; control of outflow of potential victims of trafficking, and enforcement of regulations for externalization of labour.

However, implementation of the TIP Act has a bearing on the United Nations Sustainable Development Goals (SDGs) to which all states have subscribed. They include: Goal 1: End poverty in all its forms; Goal 3: Ensure healthy lives and promote well being for all at all ages; Goal 5: Achieve gender equality and empower women and girls; Goal 16: Promote just, peaceful and inclusive societies for sustainable development; Goal 17: Strengthen the means of implementation and revitalize the global partnerships.

To prevent trafficking in persons, Uganda and all other African States are required to earnestly endeavour to achieve the above SDGs by lifting millions out of poverty, ensuring social justice and social inclusion, and free and quality education for all. It also requires the countries of the world to collectively and singularly address all the above goals and co-operate in the prevention of trafficking in persons and in the investigation and prosecution of offenders. It is the surest way of preventing and addressing human trafficking.

I thank you for listening to me.