Persecution at the Expense of Protection and Prevention?

An analysis of the Sudanese Combating Trafficking in Persons Act 2014

Poursuivre judiciairement aux dépens de la protection et de la prévention ? Une analyse de la loi soudanaise de lutte contre le trafic de personnes (2004)

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PERSECUTION AT THE EXPENSE OF PROTECTION AND PREVENTION?

AN ANALYSIS OF THE SUDANESE COMBATING TRAFFICKING IN PERSONS ACT 2014

ABSTRACT

The paper addresses the Government of Sudan's policy change on trafficking in persons. Despite previous evidence to the contrary, the Government of Sudan only acknowledged the existence of trafficking in persons on Sudanese territory as recently as 2013. Following its position change on trafficking, the Government of Sudan has passed the *Combating Trafficking in Persons Act 2014* and launched the *Strategy to Address Human Trafficking, People Smuggling and Kidnapping* with UN agencies (hereinafter called the Joint Anti-Trafficking Strategy) and aims to persecute traffickers and support victims of trafficking.

Little is known about the survivors of trafficking in persons. The few numbers available from UNHCR indicate that a significant amount of trafficked persons are minors. It is not only the legal underpinnings of trafficking that differ between children and adults; there are also the separate rights and needs of children, including the right to an education and to have their best interests considered. Thus, the research addresses the question: "To what extent do the *Combating Trafficking in Persons Act 2014* and the *Strategy to Address Human Trafficking, People Smuggling and Kidnapping* cover international recommendations dealing with anti-trafficking efforts?"

Departing from a realist viewpoint, paired with a constructivist approach, the subject matter of the research is addressed with a mixed methods approach, using a comparative analysis and qualitative guided expert interviews. Considering the topic of trafficking and the means for achieving support for trafficking survivors through laws and UN interventions, a rights-based approach seems adequate. In order to compare the extent of the trafficking

strategy, criteria were identified by reviewing existing guidelines and recommendations on trafficking in persons that were then compared to the law and the Joint Anti-Trafficking Strategy. This comparative analysis was enriched by guided qualitative interviews with professionals engaged in the field of trafficking in persons and led to the following findings:

Underrepresented in the *Combating Trafficking in Persons Law 2014*, the topics of protection and prevention, are addressed by international organizations, which have cooperated with the government through the Joint Anti-Trafficking Strategy since 2014. While the latter strategy approach addresses a number of protection issues, children's needs have not yet been sufficiently mainstreamed. In order to improve the scope of the measures, coverage of the projects should address the imbalance in the regional focus in the future. Although the connection between trafficking and migration is evident, it is not ideal to address smuggling and trafficking as elements of the same campaign. These phenomena require different approaches, and while one clearly needs to be prevented, it may be that the other provides migrants with their only opportunity.

TRAFFICKING IN SUDAN

For decades Sudan has been a country of transit for further migration through Sinai to Israel, or through Libya towards Europe. Many of the migrants transiting Sudan originate from the Horn of Africa. Along their routes, abductions and torture for ransom present an imminent danger (Abdel Ati 2017: 1, Hamood 2006: 17, Humphris 2013: 5, U.S. Department of State 2016: ch.1). Until 2013, the Government of Sudan denied the existence of trafficking in persons¹ on Sudanese territory and the involvement of any Sudanese in these practices (Abdel Ati 2017: 2; U.S. Department of State 2016: ch.1).

The shipwreck of 274 Eritrean and Somalian refugees in October 2013 awoke the international community to the fate of refugees travelling from the Horn of Africa towards European countries (The Guardian 2013). Within

1 Trafficking, smuggling and migration are interrelated and sometimes barely distinguishable forms of movement of people. While smuggling is one way – and often the only one – of fulfilling a desire to migrate, the act of trafficking in persons by definition lacks full consent, and those affected are often referred to as victims or survivors (Kaye 2003: 11). “*Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*” (UNESCO 2015).

Europe, the incident sparked action plans, projects, and interventions that were allegedly intended to manage migration and address the root causes of emigration. With ever more projects emerging, the European Union's aim to contain migration towards Europe reveals (Abdel Ati 2017: 50; Knoll and De Weijer 2016: 19; Van Reisen et al 2013: 1).

Inside Sudan, the Lampedusa Tragedy caused a shift in the policy towards trafficking in human beings, and the government officially committed itself to combating human trafficking on its territory (Abdel Ati 2017: 40). For the first time, the Government of Sudan acknowledged that human trafficking takes place in Sudan, and initiated measures.

One of the immediate actions taken by the Government of Sudan was the adoption of the national *Combating Trafficking in Persons Act 2014*, which was based on an earlier anti-trafficking law from Kassala State (Babiker 2011: 2, Abdel Ati 2017: 3). The introduction of national anti-trafficking legislation led to the foundation of the *National Committee to Combat Human Trafficking (NCCT)* (UNHCR et al. 2015a: 3). After the government had requested international support, the *2013-2014 UNHCR-IOM Strategy to Address Human Trafficking, People Smuggling and Kidnapping* was initiated (UNHCR et al. 2015a: 3). In 2015, the successor Joint Strategy (2015-2017) included UNFPA, UNOPS and UNICEF (UNHCR et al. 2015b: 4). Both initiatives – the new law as well as the Joint Anti-Trafficking strategy – can be viewed as the principal tools for tackling trafficking in persons in Sudan.

Internationally, Sudan signed the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)*, became involved in the first African Union regional conference on human trafficking and smuggling in the Horn of Africa, and became a key member of the *EU-Horn of Africa Migration Route Initiative (Khartoum Process)*.

Sudan's anti-trafficking strategy focuses on the main smuggling routes in the east of the country, which constitute also the trafficking hubs. Among the largest groups entering and crossing Sudan are Eritrean and Ethiopian migrants (Abdel Ati 2017: 13). Escaping from the arbitrary laws of a repressive regime and fleeing lifelong military service, Eritrean refugees depend on smugglers for their journey to Sudan (UNHCR 2015a: 3, Van Reisen et al. 2013: 39, Humphris 2013: 5). Owing to the encampment policy of the Government of Sudan, Eritrean and Ethiopian refugees are officially obliged to remain in the camps in the east, most notably the Shagarab camps (Humphris 2013:16). Many decide to continue their trip, however, and bypass registration in the camps (IOM, UNHCR 2014: 3; King 2012: 20-22; Kaye 2003: 11, Abdel Ati 2017: 13), relying on the services of smugglers not only to travel towards Libya or Egypt, but also to arrive in Khartoum. Their constant reliance on smugglers continuously exposes them to high-risk situations (IOM, UNHCR 2014: 3, Abdel Ati 2017: 13).

Official numbers of trafficking victims in Sudan are scarce. Apart from media reports, available statistics are released by the Joint Anti-Trafficking Strategy of IOM and UNHCR (Abdel Ati 2017: 6). The officially published numbers –taken from the “End of the Year Report 2014” and the “Mid-Year Report 2015” are barely comparable. It is stated that 338 cases were *reported* in 2012, while in 2014, 113 cases were *verified*, many of which did not arise in that year. In the same time period, an improvement in the numbers of trafficking cases was reported in the refugee camps, where only two incidents of trafficking are said to have occurred (IOM, UNHR 2014: 2-3). Between June and December 2015, 99 cases were *verified* (UNHCR et al. 2015 a: 2). Certainly, all the numbers on trafficking in persons need to be viewed with caution (Cyrus et al., 2010: 56-58, Follmar-Otto and Rabe, 2009: 32; Kaye 2003: 4). In the case of the numbers provided by UNHCR, account must be taken of the aspect that due to onward movement, people may not register in the eastern camps or Khartoum, many may not turn to UNHCR for support after they have been trafficked, many may have continued their journey northward, and some may have died during the journey.

Accordingly, the numbers provided by UNHCR and IOM are far from accurate; however, they do provide some indications of trends and the profiles of the victims. The 2014 End of the Year Report noted a shift away from kidnapping from camps towards kidnapping en route (UNHCR, IOM 2014: 2). The observation that abductions were being carried out in various places outside camps, and even in cities far from the migration routes, was supported by Van Reisen et al. (2013: 42-45). Further support for this is offered by other reports that state that people are abducted by Chadians in the tri-border region of Sudan, Chad, and Libya (IGAD 2016: 12), as well as in the U.S. Department of State’s 2016 TIP report, which mentions inner-country trafficking, forced labor, trafficking into armed forces and forced-labor gold mines, in addition to trafficking in the eastern areas. With regard to the profile of trafficking survivors, UNHCR et al. 2015 indicate that the average age was 18. Although the above-discussed numbers need to be treated with some skepticism, many Eritreans flee at an early age in order to avoid conscription, which starts at the age of 16 (Van Reisen et al. 2013: 54). Thus, it can be assumed that a considerable amount of trafficking victims are less than 18 years old, and therefore minors (Van Reisen et al. 2013: 88, Abdel Ati 2017: 16).

MIGRATION, TRAFFICKING, AND CHILDREN

The primary risk factor for becoming a victim of human trafficking is vulnerability. The most affected people are those who have the highest exposure to crises, do not have appropriate coping capacities and have the fewest recovery capabilities (Steinbrink, 2009: 56). The UNODC has examined high risk factors – not determinants – for being trafficked, and has discovered that a high

level of vulnerability is connected with being outside familiar regions, lacking embeddedness in a community, weak informal networks, low socio-economic standing, and being a member of an ethno-linguistic minority (UNODC 2012: 26-28). All these factors apply to migrants. Another factor that considerably worsens the situation is the illegalization of people. A lack of legal migration opportunities forces migrants to embark on illegal journeys as their only remaining option. In turn, this may lead to trafficking (Kiwanuka 2010: 31-49, Van de Glind 2010: 5, Sharma 2003: 54).

In her critique of anti-trafficking campaigns, Sharma calls for a clear distinction between anti-smuggling and anti-trafficking campaigns (2003: 58). Anti-trafficking campaigns should raise awareness of dangers and strengthen migrants' resilience, but should not hinder the work of smugglers, who are often seen as the only facilitators of migration in a world in which the legal opportunities to migrate are limited. On the one hand, her criticism seems justified, since legitimate searches for refuge can often only be realized through smugglers, while on the other, most smugglers are connected in some way to trafficking networks in Sudan (Abdel Ati 2017: i). An anti-trafficking campaign for Sudan should therefore aim to facilitate legal means of migration, especially for vulnerable people, but also prevent exploitation. The re-establishment of border regimes is associated with the depiction of migration as undesirable, unnatural, and extraordinary. All anti-trafficking campaigns should therefore be checked for a negative bias towards migration, including tendencies for criminalization, such as the detention of persons who cross a border illegally (Sharma 2003: 58).

The impact is even more marked in the case of children, who have even less access to legal migration than adults do. This increases their dependency on adults, and consequently the risk of exploitation and trafficking. The illegalization of children is not only caused by limited legal migration channels, but is also a result of a lack of birth registrations and children's dependency on the status of their parents (Van de Glind, H. 2010: 5).

Their vulnerability has been addressed in the definition relating specifically to the smuggling and trafficking of minors: as defined in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Palermo Protocol)*, child trafficking is the "recruitment, transportation, transfer, harboring, or receipt of a child for the purpose of exploitation" (Article 3 paragraph c). This definition is broader than the general definition of trafficking in persons used in the Palermo Protocol, as it also includes trafficking within the borders of a country, and does not consider the use of force. Instead a willingness to cause harm is the relevant criterion for determining whether the crime of trafficking has occurred. This definition comes with various ethical questions, in that it denies children agency to the extent that they are not able to consciously consent to being smuggled without the movement being considered to be trafficking (Dottridge 2006: 19).

Furthermore, children are not only vulnerable, but also have rights, which are at times greater than those of adults. The right of children to an education, to have their best interests determined, and to a family should therefore be identified: the agency of the children themselves should not be left unnamed. Minors might have left their families to avoid abuse or insecurity or for better opportunities, and they have the right to do so, including the right to work abroad (Van de Glind, H 2010: 5). This therefore means that despite being trafficked and exploited, their situation may in fact be better than it was before (Sharma 2003: 54).

The short-term policy reforms leave us to doubt whether an absolute change in the government's approach to trafficking can be immediately sufficient and comprehensive, and can measure up to international recommendations. More recent research has shown that as of today, there is still insufficient information on the human trafficking situation in Sudan, as the prevention and response services have not been systematically implemented (Abdel Ati 2017, 58).

It can be presumed that quality implementation is based on flawless legislation. The adoption of the new law therefore offers room for research on loopholes and further options for making improvements in the system, and is of topical interest. Accordingly, this paper seeks to identify the weak spots in the counter-strategy for child trafficking, and concentrates on future interventions in the field.

The research question focuses on this topic: **To what extent do the *Combating Trafficking in Persons Act 2014* and the *Joint Anti-Trafficking Strategy* international recommendations deal with anti-trafficking efforts?**

The paper aims to point out weaknesses in the new law and the joint anti-trafficking strategy in order to alert people in the field and minimize the effects of these weaknesses on potential trafficking victims. It seeks to offer strategic points of involvement for organizations in the field and with regard to implementation of the law.

The paper does not attempt to judge the quality of implementation on the ground, but rather focuses on the quality of the law itself. An analysis of implementation on the ground would be a necessary step in order to judge the effectiveness of the law. For the purposes of this paper, the comprehensiveness of the law in the areas of protection, persecution, and prevention is what is under scrutiny.

METHODOLOGY AND METHODS

In a departure from a somewhat realist epistemological viewpoint (Bryman 2012: 29), the philosophical question of ontology has been approached by constructivism (Castles 2012: 11). This viewpoint assumes that knowledge is shaped by the experiences of persons and by interactions with others. Accordingly, the origin of knowledge is subject to constantly changing

processes (Castles 2012: 33) and applications, if one considers that the mixed methods approach includes accounts of professionals in the field (Bryman 2012: 38) who are shaped by their personal biases and partial experiences, as well as by the positions of the organizations they are working for. The objectivist notion should consider that it can be assumed that individuals act within a set of orders, spoken and unspoken rules and regulations, and hierarchies, and within their organizations and their rules (Bryman 2012: 32).

In view of the paper's topic and the subject under scrutiny, and because the core documents and sources are based in human rights, a rights-based approach is the correct one. In contrast with the needs-based approach, the rights-based approach assumes that the cause of an injustice lies not only with individuals, but also with a broader set of circumstances that includes, state, governance, and international actors. It therefore requires a focus on the duty of States to care for the most vulnerable members of society (Boesen and Martin 2007, 9).

The objective of the research is approached using mixed methods that involve a comparative analysis as well as qualitative guided expert interviews (Flick 2009: 115), and is somewhat inductive. In order to identify the shortcomings, a minimum standards list of policy advice was compiled and as a second step compared with the two main policy documents on combating trafficking in Sudan. Development of the minimum standards list was based on international protocols and conventions chosen according to their relevance to the topic (see Chapter 4). The comprehensiveness of the law and the joint strategy will be judged on the basis of their compliance with international recommendations in the field of protection, persecution, and prevention.

The documentary analysis is supplemented by guided expert interviews (Flick 2009, 115). This allows a partial reality check of the shortcomings identified during the theoretical analysis. Semi-structured interviews have the advantage of reacting flexibly and offering a follow-up with appropriate questions, while also being able to follow a guideline that provide assurances that the relevant topics have been covered (Flick 2009, 115). The interviews were adjusted for the role and knowledge of the selected professionals. Selection was based on their involvement in the subject of trafficking in Sudan, their insights into the joint trafficking strategy, and their monitoring of application of the law. Selection of the professionals was somewhat limited due to the fact that some were unwilling to provide information. In the end, six Sudanese and international professionals from various UN and non-UN organizations were interviewed. Even though most of them were interviewed within their professional capacity, their anonymity needs to be maintained, due to the political sensitivity of the topic (Bryman 2012: 137). The fieldwork was conducted between September and December 2015. The paper was updated in November 2017.

One limitation of the paper come with the approach adopted: since it is not the effectiveness of the law that is being examined but its comprehensiveness,

the paper does not assess the support that victims of trafficking receive on the ground, and does not aim to do so.

Another limitation is a consequence of the available resources, since both the reports and minimum criteria used in the paper and the majority of the interview partners are linked to the UN. The UN is the main actor carrying out data collection on trafficking in Sudan. With almost exclusive access to the main target group for trafficking – refugees – and because it is responsible for coordinating protection measures, the UN is a valuable, but biased, information source. Owing to the restrictive and somewhat secretive manner in which it disseminates data, the UN might be viewed as a gatekeeper with regard to information on trafficking in Sudan. As for the minimum criteria that were developed, one might argue that the UN documents, conventions, and international treaties that provided the foundation for the analysis could be treated as the international legal baseline when it comes to trafficking in persons, as they are signed and ratified by the majority of countries worldwide.

THE LEGAL AND INSTITUTIONAL FRAMEWORK OF CHILD TRAFFICKING

In order to assess the status of the institutional and legislative framework of countries, the minimum standards for protecting the needs of trafficked children need to be identified. The following international provisions represent the essential documents that address the minimum standards for trafficking prevention:

- 1) The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the 'Palermo Protocol').
- 2) The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- 3) The Convention on the Rights of the Child (CRC)
- 4) The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

The Palermo Protocol and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography were agreed in 2000, and tackle the issue of trafficking directly. The two conventions, the CEDAW and the CRC, address the topic less directly, but include provisions regarding trafficking.

The State of Sudan ratified the Convention on the Rights of the Child in 1990, and included the provisions of the convention in its national Child Act of 2010. Sudan also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2004. As mentioned above, Sudan has also ratified the Palermo Protocol and included provisions from it in its 2014 Act Against Trafficking (IOM, UNHCR 2014: 4). Up to now, the Convention on the

Elimination of All Forms of Discrimination against Women has been neither signed nor ratified by Sudan.

The international conventions and protocols serve as a basis for more detailed and tangible documents. Within the ambit of the Trafficking Victims Protection Act of 2000, the U.S. Department of State has developed *Minimum Standards for the Elimination of Trafficking in Persons*. Although these are not binding on other countries, they serve as a blueprint and are already being used on an annual basis for the Trafficking in Persons (TIP) Report.

Starting from these minimum standards, a list was developed for comparison with the comprehensiveness of Sudan's institutional framework on Trafficking in Persons (U.S. Department of State 2000). The Minimum Standards for the Elimination of Trafficking in Persons are not sufficient to cover child trafficking. Since no minimum standards for the elimination of child trafficking are available, the *Guidelines on the Protection of Child Victims of Trafficking* (UNICEF 2006) were used, as they were drafted on the basis of the Convention on the Rights of the Child. They are accompanied by the *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe* (Dottridge 2006) and the report on *Trafficking in Human Beings, especially Women and Children in Africa* (UNICEF Innocenti Research Centre 2005) for comparable criteria. All are based on the international conventions that tackle trafficking issues.

THE COMBATING TRAFFICKING IN PERSONS ACT 2014

After defining its key terms, the Combating Trafficking in Persons Act 2014 addresses the National Committee for Combating Human Trafficking (NCCT) and its functions. In the following chapter, it establishes that human trafficking and the acts connected with it are an offence and determines the penalties. The last two chapters are dedicated to the financial provisions and general provisions, including witness protection.

The Combating of Trafficking in Persons Act defines persons committing human trafficking offences under Section 7, paragraphs 1 and 2 as follows:

“whoever kidnaps, transfers, abducts, transports, harbors, receives, detains or equips a natural person, with intent to exploit or use the same in unlawful business, or any acts, as may by nature degrade his dignity, or achieve unlawful aims in consideration of any of the following:

- (a) material return, or promise therewith;
- (b) moral gain, or promise therewith;
- (c) granting any type of advantage

(2) The acts under sub-section (1), shall be deemed human trafficking where they have been accomplished by the use of force, or threat of use of force, or by any other form of coercion, abduction, fraud, deception, or abuse of power and influence, or exploitation of a state of weakness or need, or by granting payments or

advantages, or promise therewith, in order to obtain the consent of a person to traffic in another person upon whom he has control”.

It also distinguishes between “*human trafficking*” and the “*trans-national offence of human trafficking*” (Section 8), and defines severe cases of trafficking. Additionally, it designates tiered punishments to acts of complicity ranging from the provision of sites for captivity (Section 12) to revealing the identity of victims (Section 11) and perjury (Section 12).

The definition is comprehensive: it addresses a variety of means and circumstances under which trafficking in persons may occur and consists of three separate parts: the act, the means, and the intent (UNODC 2012: 16). Unlike the definition of trafficking in persons in the Palermo Protocol, it does not establish forms of trafficking (sexual exploitation, forced labor, removal of organs, etc.) as a minimum threshold, but rather deems trafficking to be cases where the persons committing it intend to benefit from their act.

The range of circumstances covered under Section 7, paragraphs 1 and 2 provides space for the persecution of a variety of cases. Only time will tell if a case in which one person transfers another for money after promising advantages such as an easier life in Khartoum will fall within this condition. So far, this risk appears to be merely theoretical.

As the UN professionals stated, the act was designed specifically for Sudan, bearing in mind the situation in the eastern states, and therefore works effectively around the eastern border. This increasing effectiveness near the border can be attributed to the definition of a severe trafficking case if it is conducted as a “*trans-national offence of trafficking in human beings*” (Section 8) and makes it easier to prosecute traffickers in the east of the country.

Following the new law, the *National Committee to Combat Human Trafficking* (NCCT) was been established. At the time of this research, the establishment of State committees (SCCTs) was ongoing. The proposed composition of the committees was criticized for its lack of transparency, the low hierarchical status of the persons involved, their large workload in other areas, and the prioritization of security personnel. This latter aspect in particular turns the focus away from prevention and protection and towards prosecution. All these aspect indicate a low prioritization of the topic, and might negatively impact the law’s effectiveness.

Another aspect of the foundation of SCCTs relates to their effectiveness along the borders. Since the traffickers act across state and national borders, government bodies are disadvantaged by addressing them with regionally-organized bodies. The interviewees mentioned that it would be an advantage to unite the three eastern States (Gedariief, Red Sea, and Kassala) under one committee or to establish close cooperation among these committees. At the time this article was updated, other researchers, such as Abdel Ati (2017: 58), had arrived at a similar conclusion. The interviewees suggested the unification or cooperation of bodies, accompanied by

collaboration with their counterparts in the border districts of Eritrea and Ethiopia. A number of actions would be conceivable in the context of this cooperation: these include family tracing and reunification, the implementation of a telephone helpline for migrants on the move, and the exchange of information on perpetrators. Clearly, this list of possible joint actions is not exhaustive. A close connection with Eritrea and Ethiopia also raises risks, however. Since a joint strategy like the Combating Trafficking in Persons Act 2014 tackles trafficking and smuggling simultaneously, the law could affect both people smugglers and family members trying to help their relatives and friends escape repressive regimes (Sharma 2003: 54). Care should be taken with the guidance of cooperation such as this, and a line should be drawn to distinguish smuggling to apply for asylum and trafficking in exploitative situations (Sharma 2003: 54).

The next chapters are dedicated to the persecution, protection and prevention aspects of the law in order to address the Combating Trafficking in Persons Act 2014 structurally.

Persecution

Among the three dimensions for combating trafficking – persecution, protection, prevention – the dimension of persecution is the one that is most extensively addressed under the *Combating Trafficking in Persons Act 2014*. The most important aspects of persecution of trafficking in persons must encompass the prohibition, the (appropriate) punishment and the investigation of trafficking in persons, all of which seem to be dealt with in the new law (U.S. Department of State 2000). Punishments are between 3 and 10 years' imprisonment for trafficking in persons and between 5 and 20 years – and including capital punishment – in severe trafficking cases. On the positive side, it should be noted that the offence is differentiated, and that trafficking in children and other vulnerable groups are treated as severe trafficking cases under Article 9 (2) (Dottridge 2006: 14).

With regard to adequacy, the punishments seem to be comparable to other penalties in Sudan: both inducing a person to commit perjury under the anti-trafficking law (Section 11) and providing false testimony and fabricating false evidence under the Criminal Act 1991 (Section 104) can lead to up to five years of imprisonment.

The punishments move away from the corporal punishment that is otherwise customarily imposed in Sudan, such as whipping, and do not include other customary practices such as the payment of compensation ("*dia*") or retribution ("*quisas*"). In Section 9 paragraph 2, however, the death penalty is considered as a possible punishment for severe cases of trafficking. As stated in the Criminal Act 1991, a death sentence can be imposed, *inter alia*, in cases of homicide (Section 131) or if a person is convicted of *waging war against the state* (Section 51). Accordingly, the gravity of the punishment

seems comparable to other punishments in Sudan, but it must be noted that inclusion of the death sentence is ostracized under international law, and should be condemned.

Positive signs of increased prosecution became visible (UNHCR 2015: 6) after the new law was signed. The positive trend of prosecuting both traffickers and people smugglers was reported in newspapers (Sudan Tribune 2016), confirmed through the interviews, and mentioned positively by the TIP (U.S. Department of State 2016). While this text was being updated, other sources also confirmed the findings (IGAD 2016: 44, Abdel Ati 2017: 42). Efforts in the field of persecution have also led to a number of releases of groups of victims by traffickers.

Despite the positive developments, convictions are reported to be very rare, and the prison sentences are not commensurate with the minimum penalty of three years' prison, as stipulated in Section 9 of the Combating of Human Trafficking Act 2014 (U.S. Department of State 2016).

Professionals in the field raised the concern that the persecution of traffickers might harm survivors' situation. The testimonies of witnesses are crucial for prosecuting traffickers. Even though their identity is supposed to be protected under the law (Section 11) one professional in the field stated that their identities were repeatedly revealed, which enabled parties close to the alleged perpetrators to threaten victims and witnesses. At this time, there is no effective system in place that can provide witnesses with specific care and support; instead, the interviewees reported that survivors and witnesses were often held in police stations under prison-like conditions without a defined maximum term, so that they could not leave the place until they reported their story to the judge. Abdel Ati (2017:19) explained this procedure by the tendency of the Sudanese government to view crimes of trafficking and smuggling from a security angle. A similar criticism was raised by another respondent, who explained that the entry procedure for migrants at border points starts with a security check and a military check, after which individuals are sent to the police and then to the COR's reception center, which then sends them to the refugee camps. The arrival of a new migrant only becomes known to international agencies when the individual goes to the police or the COR. The length of stays at security and the military check is unknown, and is not monitored if people are sent to the police directly or vanish in the meantime. Again, the perspective of migration as mainly security-related relevant stands in the way of protection considerations.

Protection

Despite robust provisions on prosecution and punishment in the law, the protection of victims is almost completely absent from it. The only provision on the protection of victims is Section 11, which provides for punishment of a person who publicizes the personal information of victims and witnesses.

Apart from that, implementing protection measures for trafficking victims is left to the NCCT to. The law does not acknowledge previously-existing rights such as the right to seek refuge, and nor does it specifically address the protection issues of trafficking victims, such as the need for shelter, compensation, health support, psychosocial support, and safety. It contains no guarantee that victims of trafficking in persons will not be charged with crimes relating to their own involvement in trafficking in persons. Additionally, victims of trafficking are clearly targeted by Section 5 of the law, and again by Section 27, which provide for removal from the country and repatriation – an act that places trafficking victims at the immediate risk of incarceration or worse on their arrival in Eritrea. Instead of promoting victim protection, the law may even cause more harm than if the Eritrean trafficking victims were to be handled as refugees or asylum-seekers, who are allowed stay in the refugee camps. Even though the law is very clear that trafficking victims must be deported, in actual fact the courts decide otherwise for social reasons (like family reunification), and allow them to stay in the country, as one professional reported. As we have shown above, the connection between a lack of legal migration opportunities and trafficking is a strong one, and leaves room for vulnerability. In order to close this loophole, the law should provide an official way for people to stay in the country, thus avoid making people dependent on the kindness of judges (Department of State 2015). Notwithstanding the lack of provisions referring to victims of trafficking in the Combating Trafficking in Persons Act 2014, Section 47 of the Child Act 2010 addresses children who became victims of torture, exploitation, abuse, and implicitly also trafficking (Section 45), and orders “*appropriate measures to achieve physical and psychological rehabilitation*”.

Prevention

Even fewer prevention measures are included in the law. Only the raising of awareness has been identified in Section 5 as one of the tasks of the National Committee for Combating Trafficking. In the same section, the law assigns the responsibility to ensure that only people with valid papers are transported to travel agencies. This most serious omission provides plenty of opportunity for improvement, including effective reception systems within Sudan, as was suggested by one interviewee, or more radical solutions like the termination of travel restrictions and the encampment policy for refugees, as was suggested by another.

The Combating Trafficking in Persons Act 2014 is a good starting point for the recognition of trafficking, but it needs to be underpinned with substantial provisions on victim protection and prevention that should include a separate section for children. In addition, the NCCT needs to clarify the details of what the protection measures aimed at survivors of major and minor trafficking in persons should look like.

An analysis of the persecution, protection and prevention aspects of the Combating Trafficking in Persons Law 2014 reveals that the law is mainly

aimed at tackling the perpetrators of trafficking, but does not serve its survivors. The notion behind this may be that there are other organizations that protect refugees, such as the Commissioner for Refugees (COR); however, the COR can only act on the basis of the law, and if the law states that survivors should be deported, it is bound by it unless otherwise ruled in trials. The Government of Sudan should enshrine prevention and protection rights in the law so as to leave no doubt that it stands behind victims. Only by guaranteeing security and protection to survivors and implementing prevention measures will the anti-trafficking law be sustainable.

JOINT STRATEGY ANALYSIS

In a second step, the 2015-2017 *Joint Strategy to Address Human Trafficking, People Smuggling and Kidnapping in Sudan* developed by UNHCR, IOM, UNICEF, UNFPA and UNODC was analyzed for the shortcomings it reveals, when looking at the previously developed minimum standards and listening to the views of professionals.

In many respects, the Joint Strategy compensates for the shortcomings in the law with regard to protection and prevention strategies. For example, as in the previously described case of the entry of refugees into Sudan, the Joint Strategy seeks to enhance the border entry system.

In some cases when the COR cannot or does not wish to act, a number of the tasks described in the Joint Strategy would be carried out by UN agencies anyway, in particular the registration of victims of trafficking from outside Khartoum, the determination of refugee status, the provision of protection to the most vulnerable (all the responsibility of UNHCR), and the determination of best interest and the provision of alternative family care (both the responsibility of UNICEF). In other cases, the Joint Strategy aims to balance the shortcomings of the law directly and to implement a cohesive, protection-based registration system once a refugee has been detected at the border.

The 2015-2017 Joint Strategy included members of UNICEF, UNFPA, and UNODC after the first version of the 2013-2014 Joint Strategy of IOM and UNHCR had been concluded. The inclusion of other UN organizations can be viewed as a consequent development, and reflects the fact that trafficking in persons takes place within Sudan and with Sudanese citizens as a target. The previous focus on UNHCR and IOM had imposed restrictions, due to the UNHCR and IOM mandates on refugees, asylum seekers, and migrants in Sudan. This is also significant if one considers the increase in the numbers of Sudanese refugees leaving Sudan (IGAD 2016: 12). In order to prevent a mere shift from trafficking to other areas if persecution becomes more common in the east, it should be clarified whether the aim is to combat trafficking in general comprehensively or to tackle the trafficking hub among the migrant population in Sudan (which is in the east). In order to preventively target new

movements, it should also include Khartoum and the Northern Nile states, possibly together with the migration routes across Darfur towards Libya (Abdel Ati 2017: 33). When this is taken together with the current state of insecurity in Libya, it is most likely that new cases of trafficking will continue to appear. While it is widely known that the Rashaida tribe is involved in trafficking, other (especially cross-border) tribes are also active, serving as interpreters or middlemen (Abdel Ati 2017: 17, 52). Because they are traditionally nomadic tribes, they can be expected to expand their trafficking network further towards Libya, as has been reported in eastern Sudan and in certain areas of in Eritrea that are not necessarily associated with trafficking (Van Reisen et al 2013: 44).

It is unlikely that the traffickers will give up the trafficking business, since the revenues are too high and would be difficult to attain anywhere else (Van Reisen et al 2013: 44). A shift of strategy, which has already been reported in research (Abdel Ati 2017: 52), can therefore be expected. This change has already been observed by the interviewees through the lower numbers of trafficking cases reported in the camps and the higher numbers on migration routes and towards Khartoum (IOM, UNHR 2014: 2-3). As one professional explained, if the strategies to prevent traffickers from finding targets among incoming migrants are successful, other vulnerable groups will become potential targets, first and foremost among them exposed groups such as street children, South Sudanese, Darfurians, or people living in poverty, (Van de Glind 2010: 5; Van Reisen et al. 2013: 44).

A Sudanese professional from the east of Sudan noted an increased fear of trafficking among Sudanese communities in the east, mentioning the specific risk to border tribes like the Beni Amer, who are partly Eritrean and partly Sudanese. This observation concurs with, and possibly reciprocally influences recurring media depictions of the region referring to the increasing insecurity there (Dabanga 2014, 2016a, 2016b, Abdel Ati 2017: 54).

Implementation of the Joint Strategy depends largely on the availability of funds, and therefore on donors. The orientation of donors' wishes is a topic that is subject to widespread criticism in the area of development aid, but is even more so in areas like trafficking in persons, where not enough research has been done to provide indications of the needs of affected persons. In the case of migration, the agenda of donors such as the European Union or other States may divert the focus of attention from actions against trafficking towards actions against all kinds of international migration in the region, and may lead to attempts to make the border area secure, which in turn may hinder the legitimate claims of asylum seekers for protection. The discussion on European-African cooperation in the Khartoum process is proof of the timely nature of this topic (Knoll and de Weijer 2016: 19, Abdel Ati 2017: 50).

The expiry of the Joint Strategy in 2017 offers an opportunity for a new approach that includes actions targeting laws and policy changes, which are currently lacking. While the Joint Strategy seems to be fairly extensive at first sight, and tackles many of the minimum standards, it takes a top to bottom

approach, and considers the needs and requests of the affected persons only once in the entire paper. The new phase of the Joint Strategy in 2017 could provide a new impetus.

CHILD TRAFFICKING

As an inter-agency approach, the Joint Strategy, through the involvement of UNICEF and its mandate, includes the topic of child trafficking. owing to the lack of a comprehensive strategy on the topic of child trafficking within UNICEF at the time of the research, however, children's issues need to be mainstreamed in the Joint Strategy. As one responder explained, one option for promoting children's concerns and rights would be through the NCCT. One member of the *National Council for Child Welfare* (NCCW) could be delegated to the NCCT, or else a key person could be appointed to the NCCT to consider children's needs.

Many children's needs are taken into consideration in the Child Act 2010, which offers sound protection for children, including the need to hear their voices, to act in their best interests, and to consider their specific needs. The distinction between the punishable crime of trafficking in persons and trafficking in children is reflected in Section 4 of the Child Act 2010, in which child trafficking *"means any act, or transaction by which a child is transferred, on the part of any person, or group of persons, to one person, or another group, for recompense, or any of the forms of consideration"*. Here, smuggling can be considered to be an element of the crime. The Child Act 2010 also criminalizes kidnapping, rape, the removal of organs (Section 45), forced child labor (Section 46), and the recruitment of children into armed forces (Section 43).

The *Reference guide on protecting the rights of child victims of trafficking in Europe* mentioned including parents as one of its fundamental points. This has not been incorporated into either the Combating Trafficking in Persons Act 2014 or the Joint Strategy. Collaboration with parents in the areas of information sharing and awareness raising can be effective not only for prevention, but also for the rehabilitation process, and parents should therefore be included in the process where possible and where it is in the best interests of the child (Dottridge 2006: 33).

While the rights of perpetrators have broadly been left out of both the strategy and the law, it must also be considered that underage minors might become perpetrators, especially since among the Rashaida and the Beni Amir, it appears that tendency is to define children as adults once they reach puberty.

Another specific problem that has not been addressed or even mentioned in the Joint Strategy is the age identification of children. While the definition of children as being under 18 is clear, the means of verification, which should be in the best interests of the child and be performed without causing harm, are important for the purposes of providing services to the right individuals

(Dottridge 2006: 46). Additionally, the strategy lacks any protective clarification, such as identification of children as victims of trafficking independently from any expectations that they will collaborate in the persecution of the perpetrators. Children should have the right not only to refuse to appear as witnesses, but also to refuse to participate in criminal trials or decisions relating to them.

So far, the joint strategy focuses too little on needs specific to children in general, and also fails to address the needs of other vulnerable groups like people with disabilities, people with mental health issues, and women. It is therefore incumbent upon all members of the joint strategy to call for protective provisions in the procedural law following the Combating Trafficking in Persons Act 2014.

CONCLUSION

Ratification of the *Combating Trafficking in Persons Act 2014* is a milestone for the human rights of migrants in Sudan. Based on a comprehensive definition of trafficking in persons, the sections relating to persecution have been addressed to a large extent and have begun to come into effect. Nonetheless, the anti-trafficking strategy could become more efficient in the area of persecution with closer collaboration along the borders. The focus on security in the area of persecution harms survivors and witnesses and adversely affects the prevention of trafficking. The system for registering new arrivals in Sudan and the housing of witnesses should therefore be reconsidered.

Unlike the case of persecution, protection and prevention aspects have been neglected. The law does not address any protection issues except witness and victim identity – which are not yet given in practice – instead weakening survivors' positions by threatening them with deportation after they have testified. No measures seem to be in place to address the fact that the overall increase in persecution threatens to affect the opportunities for potential refugees to claim asylum.

The Joint Anti-Trafficking Strategy addresses the weaknesses in the law, and through the inclusion of UNFPA, UNICEF and UNODC, identifies the extension of the definition of target groups by including groups other than refugees and migrants. A further regional deviation towards the migration routes to Libya and in Khartoum State could address the changing strategies of traffickers.

While child trafficking has been addressed under the Child Act 2014, the needs of children have not been streamlined in the joint strategy, and cooperation with parents and a clarification of the age determination procedure are not included in it.

Tackling both smuggling and trafficking as part of the same campaign is a conceptual challenge, as both phenomena require different approaches: while

one clearly needs to be prevented, the other might provide the only opportunity for migrants. A Sudanese law on migration and foreigners might help enable legal migration routes – including for those seeking refuge.

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