

International Co-Operation as a Veritable Tool in Combating Human Trafficking: A Review of the Decision in R V. Josephine Iyamu



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ABSTRACT: The investigation, rescue of victims and effective prosecution of human trafficking offences which occurred in two or more states is a major challenge to stakeholders around the world. This paper examined international cooperation (mutual assistance in criminal matters) as an important tool to contain human trafficking. It briefly demonstrated the informal and formal forms of collaboration available to states and highlighted the bases for cooperation, it adopted the doctrinal research method. It also Reviewed the facts and law of the UK court decision in R v. Josephine Iyamu which represents the global expectation of all countries as it brought to the fore the high level of collaboration exhibited by Germany, the United Kingdom, and Nigeria in bringing the offender to justice. The paper concluded with a clarion call on all nations of the world to activate international collaboration as a useful tool in the fight against human trafficking.

KEYWORDS: Human trafficking, victims, prosecution, international cooperation, letter of request, organized crime

1.0 INTRODUCTION

Human trafficking¹ or modern slavery is one of the organized crimes and it is globally ranked the third most profitable criminal enterprise after drug and arms trafficking.² It is a human right and security threat that affects all nations and if not properly tackled, it will destabilize the corporate existence of the world. Modern slavery is both a cause and a consequence of human rights violations for varying exploitative purposes³. Modern slavery crimes are not limited to any race or state and the exploitative purposes keep evolving as the opportunities present themselves to make more gains using the victims. The traffickers operate within the domestic borders of a state, or their activities cross international boundaries depending on the sophistication of the syndicate.

Several policies⁴ have been put in place to combat the scourge of trafficking in human beings; this paper shall focus on a criminal justice approach in fighting trafficking in persons with emphasis on the deployment of international cooperation in cases that occurred in two or more states. A criminal justice response principally seeks to hold accountable those who violate the state's criminal code to answer for their actions or inactions which constitute a crime.⁵ Thus, the successes or otherwise of this approach squarely rest on the proper investigation, gathering of relevant pieces of evidence, rescue of victims to assist the prosecution in

¹ see article 3 (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime which defines human trafficking as "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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude or the removal of organs.

² "The trafficking of children for sexual purposes: One of the worst manifestations of this crime" <https://ecpat.org/trafficking-the-third-largest-crime-industry-in-the-world/#:~:text=Human%20trafficking%20for%20the%20purposes,are%20estimated%20to%20be%20children>. Accessed 28

August 2021

³ sexual, labour, child abuse, organ harvesting and a host of others

⁴ Prevention, protection, prosecution, Partnership et cetera see art 4 of the Palermo Protocol

⁵ Arlie Loughnan, "Historicizing Criminal Responsibility" in Chad Flanders and Zachary Hoskins (eds), *The New Philosophy of Criminal Law* (Rowman & Littlefield International, Ltd: 2016) 133-151

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court. Investigating or rescuing victims may cut across several international boundaries as a challenging issue for practitioners in responding to this heinous crime. The need to bridge the gap posed to law enforcement and other relevant stakeholders working to end the scourge of human trafficking globally led to the adoption of international cooperation as one of the key policies developed to combat organized crime. International cooperation ensures that there are no safe havens for any trafficker anywhere in the world by empowering states to meet their obligation to criminalize, investigate and prosecute all human trafficking offences to end their impunity by bringing perpetrators to justice⁶.

The resolve for nations to collaborate to end the menace of trafficking in human beings is as old as the move to address trafficking as a global issue⁷. In 1904 some nations gathered in Paris and adopted the first international Legal instrument⁸ aimed at ending the “White slave” traffic of women or girls for immoral purposes abroad and to sharing information in ending the traffic of women or girls⁹. The contracting nations agreed to work together to ensure the safe repatriation of the victims found abroad to their states of origin. Other international legal frame works that followed required state parties to work in close contact with one another in the investigation and prosecution of trafficking offences through the establishment of a centralized system for the sharing of information.¹⁰ Articles 4 and 7 of the Slavery Convention of 1926 impose an obligation on states to assist one another to secure the abolition of slavery and slave trade through constant communications with each other and the office of the Secretary General of the League of Nations. Human trafficking offences were considered extraditable offences amongst parties to the convention and states were to make/execute a letter of request in that regard.¹¹ Trafficking in human beings was made a universal offence and offenders who committed the offences abroad and returned to their home states are to be prosecuted and punished.¹² This approach is aimed at bringing to justice fugitive offenders of human trafficking to account for their actions to end their impunity.¹³

In the renewed effort to combat transnational organized crime, the United Nations adopted the United Nations Convention against Transnational Organized Crime (UNTOC) in the year 2000. UNTOC seeks to promote cooperation by nations to prevent and combat transnational organized crime.¹⁴ Synergy by nations in the prevention, investigation, prosecution, and tracing of the proceeds of crime was given due attention under UNTOC as a veritable tool in responding to the crime¹⁵. Soon it was realized that UNTOC did not cover all other criminal enterprises which were of major concern to the world, as a result, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime was adopted. The Palermo Protocol primarily seeks to end human trafficking around the world through prevention, protection of victims and prosecution of offenders. The promotion of cooperation among States was recognized as a key policy in achieving counter-trafficking measures.¹⁶

The hallmark of international cooperation is for nations and stakeholders in the fight against human trafficking to work together towards achieving a common goal of ending human trafficking through the sharing of intelligence and the execution of a letter of request transferring evidence from one jurisdiction to another for the prosecution of offenders¹⁷. This is because of the multifaceted nature of the crime of human trafficking which may occur across two or more international boundaries. International cooperation in criminal matters could be activated based on either an international legal framework or domestic legislation dealing with the subject matter.

Cooperation by nations could be on the bases of national legislation, bilateral or multilateral treaties and at every stage, the practitioner must be guided by the applicable rules in the requesting and requested states. International cooperation could either be informal¹⁸ or formal.¹⁹ Informal or police-to-police cooperation allows law enforcement officers from one nation to share intelligence with their colleagues in another nation in the investigation of crime. The information informally shared can only be used for

⁶A. T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press: 2010), p. 404

⁷UNODC, “Manual on International Cooperation in Criminal Matters related to Terrorism (UN, Newyork, 2009)

https://www.unodc.org/documents/terrorism/Publications/Manual_Int_Coop_Criminal_Matters/English.pdf accessed 8 August 2021

⁸ International Agreement for the Suppression of the White Slave Traffic 1904

⁹ Art. 2 “White Slave Traffic Agreement” 1904

¹⁰ Arts. 14 & 15 1949 Trafficking Convention

¹¹ Art. 8, 13 1949 Trafficking Convention

¹² Art. 9 1949 Trafficking Convention

¹³ A. T. Gallagher, n 7

¹⁴ Art. 1 UNTOC

¹⁵ Arts. 3, 13, 18 and 18 UNTOC

¹⁶ Art 2 Palermo Protocol

¹⁷ “Commonwealth Schemes for International Cooperation in Criminal Matters” Retrieved at

https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf on 8 August 2021

¹⁸ Otherwise known as Police-to-Police cooperation

¹⁹ Popularly referred to as judicial cooperation

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intelligence purposes only and not as evidence in the prosecution of the matter in court. Formal cooperation on the other hand seeks for the official transmission of evidence through the appropriate judicial authority from one country to another for the prosecution of the defendant. The requesting state sends a letter of request to the requested state to execute and transmit specified pieces of evidence for use in the prosecution of defendants found within their jurisdiction. Once executed the evidence is transferred through a formally recognized judicial channel back to the requesting state for use in court.

2.0 THE FACTS AND ISSUES IN R v IYAMU

It is based on the foregoing that we shall now proceed to review the facts, the law and the maximum cooperation exhibited by Germany, the UK, and Nigeria in R. v. Iyamu. The relevant fact of the case is that the offender (Iyamu) was born in Monrovia, Liberia. She later acquired Nigeria and British citizenship. Sometime between 1 May 2016 and 25 August 2017, the offender trafficked victims from Benin City, Edo state, Nigeria to Europe for exploitation. Five of the victims were rescued and styled by the authorities as victims “S, A, K, F and O” accordingly. The five victims also referred to another female victim who was never traced or rescued by the authorities.

The offender arranges travel for victims, who were all in their twenties from a poor background and some rural areas in Benin City, Edo state, Nigeria. The victims believe travelling to Europe will afford them the opportunity to be financially independent to assist their poor families back in Nigeria. The victims were either introduced to the offender or met them by chance where they expressed their readiness to travel to Europe to work. Except for victim “S”, the offender informed all the other victims that they will be working as prostitutes in Europe. Victim “S” only knew about the purpose of her travel when she arrived in Germany. It is to be noted that none of the victims had worked as prostitutes in Nigeria.

Before the victims were sent to Europe, they were all sent to Juju Priest (voodoo) to take an oath to be loyal to the offender. The victims were bound by the oath, and they strongly believe the curses placed on them at the ceremony; shall come to pass if they do anything contrary to the wishes of the offender. The court summarized the oath ceremony thus, “[Cuts were administered to their backs, chest, shoulders, legs and wrists with a razor blade which caused permanent scarring. Their wounds were then filled with black powder made up of ingredients such as alligator powder. The insertion of ingredients to their bodies further increased the degree of control that the offender would have had over them]”.

The victims arrived in Germany and were taken to brothels to work as prostitutes to pay their rent, buy food and pay the “debt” owed to the offender. The victims paid money to the offender through different channels either the offender travelled to Germany to pick up cash or the cash is delivered to a third party in Germany who sent it to the offender by transfer. Investigations show the nature of the relationship between the offender and the victims was that of exploitation.

The offender was arrested on 27 August 2017 in the United Kingdom while the victims were also “arrested” in Germany. While investigations were ongoing in the two countries intelligence was shared with the Nigerian authorities and the offender’s house in Nigeria was searched. Relevant pieces of evidence were recovered that later aided the prosecution of the offender in court in the UK. The offender was charged and convicted of five offences of arranging or facilitating the travel of another person with a view to exploitation, contrary to relevant sections of the UK Modern Slavery Act 2015.

The victims and witnesses from Germany, the UK and Nigeria all testified before the Crown court. The UK authorities also sent Mutual Legal Assistance to Nigeria requesting the pieces of evidence recovered during a search of the offender’s house in Nigeria. The Nigerian authorities swiftly transmitted the documents that were used in the successful prosecution of the offender.

His Honour Judge Bond and the Jury convicted the offender on 28 June 2018 of the offences charged. The offender was sentenced to a total of 14 years imprisonment. Counts 1-5 carry 13 years imprisonment to run concurrently while count six carried one-year imprisonment to run consecutively.

Dissatisfied with the sentence imposed for being unduly lenient, the Solicitor General obtained leave to challenge the sentence. In a considered judgment delivered on 20 September 2018, the Court of Appeal increased the sentence on counts 1-5 to seventeen (17) years imprisonment and the consecutive sentence of one (1) year on count six was affirmed.

In this case, the level of collaboration demonstrated by the three nations involved represents the global standard best practice expected of all nations of the world to end human trafficking. Both informal and formal cooperation were deployed at different stages. The Germans who first identified the case were able to trace the offender to the UK territory. They shared intelligence and other relevant pieces of evidence with the UK which led to the arrest of the offender for the offence of human trafficking. The victims were rescued by the authorities in Germany and granted protective custody. This led to the building of rapport with the Law enforcement officers and the subsequent participation of the victims in the prosecution of the offender in court.

The UK authorities trusted their Nigerian counterparts and shared intelligence on the case. It led to the commencement of parallel investigations in Nigeria where the house of the offender was searched and relevant pieces of evidence which aided the prosecution in the UK were recovered. The authorities in the UK made a formal request to Nigeria for the official transmission of the evidence recovered during the search of the house of the offender. The request was executed, and the pieces of evidence were timeously transmitted to the UK. Witnesses from Germany, the UK and Nigeria testified in the proceedings in the UK. The various testimonies

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and other pieces of evidence placed before the court established the charge against the offender. This led to her conviction and sentence by the court.

3.0 CONCLUSION

A critical analysis of the cooperation demonstrated in the reviewed case shows that trust amongst nations is central to the sharing of intelligence and formal transmission of evidence. This builds the confidence of nations to deal with one another towards achieving a common target. The timely sharing of intelligence/evidence is also fundamental to synergy to combat human trafficking. Delays in intelligence or evidence transmission can negatively impact the success of the investigation or prosecution of the matter in court.

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