

Human Trafficking In Ghana: A Review Of Legislation

Action Programme Against Forced Labour And Trafficking In West Africa

Human Trafficking In Ghana: A Review Of Legislation

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List of Abbreviations

CID	Criminal Investigation Department of the Ghana Police Service
CRC	UN Convention on the Rights of the Child, 1989
CSO	Civil society organizations
DSW	Department of Social Welfare
ECOWAS	Economic Community of West African States
GIS	Ghana Immigration Service
GPS	Ghana Police Service
ILO	International Labour Organization
INTERPOL	International Police Organization
IOM	International Organization for Migration
LRC	Legal Resources Centre
PATWA	Action Programme Against Forced Labour and Trafficking in West Africa
MOWAC	Ministry of Women and Children's Affairs
OAU	Organization of African Unity
R 190	ILO Recommendation 190 on the Worst forms of child labour
SCGLR	Supreme Court of Ghana Law Reports
TOR	Terms of Reference
TIP	Trafficking in Persons
UNICEF	United Nations Children's Fund
WAJU	Women and Juveniles Unit of the Ghana Police Service

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Introduction

In 2005, the Human Trafficking Bill was adopted by the Parliament of Ghana and passed into law on receiving presidential assent at the end of the year. This publication points out the key strengths and weaknesses of the Human Trafficking Act, 2005 (Act 694) and proposes some measures for strengthening the current legislative and policy framework on trafficking in Ghana. It aims to prepare the ground for policy dialogue with the government and social partners towards legislative reform in the area of human trafficking with a view to achieving greater internal coherence in legislation on trafficking, ensuring harmony with international standards, and encouraging Ghana to meet various international obligations she has assumed to combat trafficking and related ills.

The review seeks to:

1. Determine the internal coherence of trafficking and labour legislation by describing the legislative and policy framework related to trafficking;
2. Assess the compatibility of trafficking and labour legislation with the provisions of ILO Conventions 29 (on Forced Labour) and 143 (on Migrant Workers), the Palermo Protocol, the UN Convention on the Protection of the Rights of all Migrant Workers and their Families and the ECOWAS treaties on Free Movement of Persons and Goods and on Trafficking;
3. Identify strengths and weaknesses of investigation and prosecution procedures in cases of trafficking by examining a few case studies;
4. Evaluate the extent to which agreements and policies on labour migration and repatriation with other countries within and outside the region are protective of the human and labour rights of migrant workers;
5. Compare existing or planned systems of licensing and regulation of private recruitment agencies with the provisions of ILO Convention 181;
6. Recommend changes required to enhance consistency of national laws on trafficking in Ghana with international standards and to reduce impunity of perpetrators of trafficking and related crimes.

The research was executed using a simple methodology of library research, key informant interviews and case study analysis. The library research involved the review and analysis of laws and policies (national and international) on trafficking and related matters and of previous studies, position papers, action plans and reports on trafficking and related matters in Ghana. In-depth one-on-one interviews with persons who deal with trafficking and trafficking-related issues in Ghana, including persons who have investigated and prosecuted trafficking cases were also conducted. Finally, a number of case studies on trafficking and related matters were collected and analyzed.

This paper provides:

1. Background information on trafficking;
2. A review and analysis of the current law and policy (national and international) relating to trafficking in persons and related issues in Ghana, including a review of trafficking-related cases, complete with trend analysis; and
3. Recommendations on how to improve policy and legislation on trafficking and trafficking-related issues in Ghana.

By way of recommendations, the research concludes that:

1. Ghana needs to ratify a number of International Conventions related to trafficking.

2. In order to ensure proper implementation of the recently adopted Human Trafficking Act, 2005, a special task force in charge of operationalizing the law should be set up and properly resourced to perform its mandate.
3. Resources, human and material, should be mobilized from international organizations and local institutions for the fight against trafficking.
4. It is well known that the key underlying cause of trafficking in Ghana is poverty, defined as limited political, economic and social opportunities. The poorest regions are the source of the migrants and the richest regions are their destination. Ultimately, we need to address the inequality, inequities and discrimination that are associated with poverty if we are to effectively deal with trafficking.

Background

Trafficking in persons or modern day slavery is widespread with extremely horrifying consequences on the victims, their families and relations and humankind as a whole. Trafficking in persons is both a national and an international phenomenon. It generally affects the most vulnerable segments of society such as women, children, the poor and the unemployed.

There is growing awareness and media reports of the horrors working children, who are victims of trafficking, are exposed to all over the world. This has led to international outrage and a demand for immediate and decisive action to fight the menace.¹

The evidence is that the practice is particularly widespread in some regions. Africa and Asia top the list and clearly established routes involving Benin, Cote d'Ivoire, Gabon, Ghana, Mali, Nigeria, Togo, Cameroon, Burkina Faso, Guinea and Niger have been identified.² Consequently, West African countries are trying to address this within the framework of ECOWAS.

In May, 2001, international attention was drawn to the West African sub region when a ship - the Etireno was reported to have left the port city of Cotonou in Benin carrying over 200 'child slaves' destined to work in Central Africa. After two weeks at sea, during which period the Etireno was refused landing rights by the Gabonese authorities to dock, the ship returned to Cotonou. The authorities in Cotonou then found that it carried about 140 peo-

ple, including 40 children and youth aged between five and twenty four, who had confirmed that they were heading towards the Central African region for work.³

ILO's Action Programme against Forced Labour and Trafficking in West Africa aims to strengthen law and policy frameworks to prevent forced labour and trafficking and ensure that they adequately protect the human and labour rights of workers. The ILO has sponsored policy and legislative reviews in various African countries, to complement the work of the Africa Labour Migration Cooperation Project that aims at enhancing the capacities of government and social partners in managing labour migration as an instrument for development. This review was undertaken for Ghana as part of this work.

There is without doubt, growing and worrying incidence of trafficking in persons in Ghana.⁴ Again, a base-line study conducted by the PATWA project reveals cases of serious abuse of the rights of internal migrant workers that need to be addressed. Ghana is an important sending and receiving country for migrant workers within the ECOWAS region and could derive important benefits for development from good migration management.

As a vibrant democracy, with a continuously improving human rights record, Ghana cannot allow such a state of affairs. Ghana has a responsibility to fight trafficking in persons nationally and internationally.

¹ African Centre for Human Development, Combating the Trafficking in Children for Labour Exploitation in West and Central Africa, A Country Report on a Study Commissioned by ILO-IPEC under a Sub Regional Project. April, 2000, Page 2.

² Eric Green, "U.S. Seeks to help Victims of Modern-Day Slavery, Trafficking in Persons", Amannee (A periodical Published by the Public Affairs Section of the U.S Embassy, Accra, Ghana), January/February 2002, Page 3.

³ "Ship children were slaves", BBC News accessed at <http://news.bbc.co.uk/1/hi/world/africa/1305547.stm>. Austin Bay, 'Rogue Voyage of a 21st Century African Slave Ship', <http://strategypage.com/point/articles/20010419.asp>.. Trevor Johnson, 'African "slave ship" highlights spread of child slavery' <http://www.wsns.org/articles/2001/slav-a19.shtml>. Sites visited on 9th March, 2005.

⁴ Rachel Nyaguthii Irura, "Trafficking of Women and Children in West Africa: Ghana a Case Study, LLM Dissertation, Centre for Human Rights, University of Pretoria, South Africa, October 2002.

Legislative and Policy Review

This chapter examines the legal regime and the policy framework for dealing with the social problem of trafficking in persons in Ghana. In the next chapter, Ghana's international obligations in the fight against trafficking in persons and the extent to which these are being discharged are analysed.

The normative framework in Ghana comprises in the main the following:

1. The Constitution;
2. Acts of Parliament or other legislative body (including international law instruments, agreements etc that have been domesticated by resolution or Act of Parliament);
3. Subsidiary legislation made on the authority of the Constitution or an Act of Parliament;
4. Various Administrative Instructions made under the authority of some legislation;
5. Judge-made law;
6. Customary law;
7. International instruments that are not domesticated and the writings of jurists and publicists.

This publication is limited to the key parts of this wide legislative and policy framework as it relates to trafficking in persons: the Constitution; Acts of Parliament; the most germane pieces of subsidiary legislation; and a number of key international instruments.

Domestic Legislation on Trafficking in Persons

Until December 2005, Ghana did not have a law that specifically addressed trafficking in persons.⁵

⁵ US Department of State, Country Report for Ghana, 2004.

⁶ Most laws contain a "repeals section" which shows the effect of the new law on pre-existing laws.

⁷ Article 33(5) of the 1992 Constitution.

There were, however, various laws on slavery, procurement, soliciting for prostitution, rape, under age or child labour, child stealing, kidnapping, abduction, and procurement of fraudulent documents which could be used to regulate aspects of trafficking and trafficking-related issues. These were the pieces of legislation the law enforcement agencies used to deal with human trafficking matters.

In 2003, the Attorney-General's Department drafted a Bill which aimed to directly criminalize trafficking in persons. The Bill was passed into law in December 2005. This chapter contains, at the very end, an analysis of the Human Trafficking Act, 2005 (Act 694). Before that, it is important to examine the other laws that have a bearing on trafficking and which have been left intact by the Human Trafficking Act. Indeed, the Act does not contain a "repeals section",⁶ and is clearly meant to be in addition to the pre-existing legislative framework for human trafficking in Ghana.

The Constitution, 1992

Ghana is a constitutional democracy and its fundamental law is the 1992 Constitution. The Constitution contains an elaborate Bill of rights in its chapter 5, whilst chapter 6 contains a long list of Directive Principles of State Policy, which are justiciable when read together with provisions in chapter 5. The last provision in the Bill of rights proclaims that the rights contained in the Constitution are not exhaustive and that all other rights inherent in a democracy and intended to secure the freedom and dignity of man may be made part and parcel of the rights provisions in the Constitution.⁷

Trafficking in persons is against the freedom and dignity of man and is thus unacceptable under the Ghanaian Constitution. This is especially so if we take further account of various other provisions in the Constitution that safeguard the rights to movement⁸, personal liberty⁹, dignity of the person¹⁰, and prohibit torture¹¹, inhuman or degrading treatment¹², slavery, servitude, and forced labour¹³.

Trafficking in persons necessarily involves the violation of some or all of the above human rights provisions of the Ghanaian Constitution. The Constitution itself provides that any violation of its fundamental human rights provisions is remediable by the High Court.¹⁴ No direct procedures for accessing such remedies were in place until the 3rd of January 2005.

The new High Court (Civil Procedure) Rules, 2004, (C.I. 47) came into force on the 3rd of January 2005. Order 67 of the Rules provides the procedure for the enforcement of the fundamental human rights under Article 33 of the 1992 Constitution. Before the 3rd day of January, 2004, there were no clear cut rules on how victims of rights violations (including trafficking and related forms of exploitation) could vindicate those rights as Constitutional rights. The only clear exception was a case litigated on this point by the Legal Resources Centre¹⁵, where the Supreme Court held that such constitutional rights were remediable by application to the court in the absence of a

clearly stipulated procedure. The new rules on this point are now being tested in the courts by the Legal Resources Centre.

It is important to note that the constitutional provisions mentioned above will treat trafficking in persons not as a criminal offence, but as a violation of human rights. Order 67 of C.I. 47, which provides for the enforcement of constitutionally guaranteed fundamental human rights only deals with the civil protection of such rights. Again, trafficking in persons, as a violation of constitutionally guaranteed fundamental human rights will have to be subsumed under broader constitutional rights such as the right to human dignity in order to be remediable through that mechanism. This is because the right not to be trafficked is not directly mentioned in the 1992 Constitution. Alternatively, violations of human rights that are incidental to trafficking in persons, such as slavery, forced labour, infringement of personal liberty, and false imprisonment, may be isolated for remedial action. It is clear that a more appropriate legislative framework, that complements the Constitutional provisions, is needed to address issues of trafficking in Ghana.

Trafficking itself will only be considered a crime if it is directly criminalized in a piece of legislation. In that event, the procedure for dealing with alleged offenders will also be provided for by law or be referable to the Criminal Procedure Code.

⁸ Article 21(1) (g) of the 1992 Constitution.

⁹ Article 14 of the 1992 Constitution.

¹⁰ Article 15 of the 1992 Constitution.

¹¹ Article 15(2) (a) of the 1992 Constitution.

¹² *Ibid.*

¹³ Article 16 of the 1992 Constitution.

¹⁴ Article 33 of the 1992 Constitution.

¹⁵ *AWUNI v. West African Examinations Council* [2004] 1 SCGLR, 471.

Acts of Parliament

The Criminal Code, 1960 (Act 29) As Amended.

The crime of trafficking in persons does not exist in the Criminal Code of Ghana. The law enforcement agencies which have the responsibility to fight trafficking in persons in Ghana are constrained to deal with crimes involving trafficking in persons under various other parts of the Criminal Code with some element or other of the offence of trafficking.

One such section is Section 107 of the Criminal Code which deals with the crime of procurement. The section makes the commission of the crime of procurement a misdemeanour. It states that 'whoever-

- (a) Procures any female under twenty one years of age, not being a common prostitute or of known immoral character, to have unlawful carnal connexion, in Ghana or elsewhere, with any other person; or
- (b) Procures any female to become, in Ghana or elsewhere, a common prostitute; or
- (c) Procures any female to leave Ghana, with intent that she may become an inmate of a brothel elsewhere; or
- (d) Procures any female to leave her usual place of abode (not being a brothel) in Ghana with intent that she may, for the purpose of prostitution, become an inmate of a brothel in Ghana or elsewhere; or
- (e) By threat or intimidation procures or attempts to procure any woman or girl to have any unlawful carnal knowledge or connexion in Ghana or elsewhere; or
- (f) By false pretences or false representations procures any woman or girl to have any unlawful carnal connexion in Ghana or elsewhere; or

- (g) Applies, administers to, or causes to be taken by any woman any drug, matter or thing, with intent to stupefy or overpower her so as thereby to enable any person to have unlawful carnal connexion with such woman or girl, shall be guilty of a misdemeanour.'

It will be observed that the crime of procurement only deals with those aspects of trafficking in persons where victims are subjected to one form of sexual abuse or the other.

A critical look at subsection (a) above reveals that the intention of the provision is to protect females who are under the age of 21 and who are not common prostitutes. Under this provision the impression is that whoever engages in the trafficking of persons who are not female, and who are twenty one and above and are common prostitutes will not have committed an offence. As the provision stands, common prostitutes in Ghana, who have the full complement of human rights as guaranteed by the 1992 Constitution, risk having the same diminished by the application of this provision in the Criminal Code. Retention of Section 107(a) of Act 29 will make common prostitutes prey to trafficking for sexual exploitation and other purposes in Ghana or elsewhere.

Again, the crime of procurement is a misdemeanour, and that is not a sufficient deterrent for those who engage in trafficking in persons.

Criminal acts in Ghana are classified in accordance with the gravity of the punishment that may be imposed for the crime. Crimes are classified into felonies (first and second degrees) and misdemeanours. The highest term of imprisonment that may be imposed on a person guilty of a misdemeanour is three years imprisonment. More often than not, there are options for fines to be imposed on a person guilty of a misdemeanour in lieu of imprisonment. To be an effective deterrent, the crime of trafficking in persons should be a first or second degree felony. This will ensure that it car-

ries a penalty of between three years and twenty-five for a second degree felony, and between twenty-five years and life imprisonment or the death sentence for a first degree felony.

Section 273 of the Criminal Code, as amended by the National Liberation Council Decree No. 398, paragraph 16, makes any parent or guardian who allows a child under the age of fourteen years to reside or frequent a brothel guilty of a misdemeanour. It is also an offence to knowingly live wholly or partly on the earnings of prostitution. This is the provision which may be interpreted to have criminalized prostitution. It is known that women are trafficked for prostitution and are required to pay part of their earnings to those who control them. This, as per the above provisions, is clearly against the law. This offence is also classified as a misdemeanour and the consequential punishment may not be an sufficient deterrent.

Trafficking is akin to slavery in many respects and so trafficking is considered by some as modern day slavery. Slave dealing is prohibited in Section 314 of the Criminal Code, Act 29. Dealing or trading in slaves or treating people like slaves, placing or receiving any person in servitude, conveying any person to become a slave or to be placed in servitude are all considered by the Criminal Code as aspects of slave dealing. Slave dealing is a second degree felony and carries a penalty of between ten and twenty-five years imprisonment.

Slavery forms part of the class of offences which are generally known as crimes against humanity. Under Article 7 of the Rome Statute of the International Criminal Court, 'crimes against humanity' are defined to include enslavement. Enslavement as a crime against humanity is punishable irrespective of where it occurs. It is argued that punishment for enslavement has become part of customary international law. The criminalization

of slavery under Ghana's Criminal Code is therefore in accord with international law. Under Ghana's Human Trafficking Act, slavery or practices similar to slavery and servitude are punishable.

Another crime in the Criminal Code that may be related to trafficking is the offence of exposing a child to harm. Section 71 of the Code provides that:

'Whoever unlawfully exposes or abandons any child, under seven years of age, in such a manner that any harm is likely to be caused to it, shall be guilty of a misdemeanour.'

It follows that children under seven who are trafficked and exposed to all kinds of hazardous conditions of life and work may have their victimizers prosecuted under this section of the Criminal Code. One wonders why the offence of exposing a child to harm does not cover children above seven years, since the age of extreme physical vulnerability exceeds seven years and under the Children's Act, 1998 (Act 560), a child is anyone below the age of eighteen years.

The evidence is that women who are trafficked are often subjected to all kinds of sexual abuse. These include rape and defilement.¹⁶ Section 97 of Act 29 deals with the offence of rape whilst Section 101 deals with the offence of defilement. Both sections have been amended by the Criminal Code (Amendment) Act, 1998, Act 554. Under Act 554, rape is punishable by a minimum sentence of five years imprisonment and a maximum sentence of twenty-five years imprisonment, whilst defilement is punishable by a minimum sentence of seven years imprisonment and a maximum of twenty-five years imprisonment.

Other offences under the Criminal Code under which trafficking-related activities may be pun-

¹⁶ See Sections 97 and 101 (as amended by Act 554 of 1998) for definitions of these offences.

ished are the sections on compulsion of marriage¹⁷, causing or encouraging the seduction or prostitution of a girl under 16¹⁸, child stealing¹⁹, kidnapping²⁰, and prohibition of customary servitude.²¹

The Children's Act, 1998(Act 560)

Ghana's international obligations towards children and the fight against child labour and trafficking in children cannot be underestimated in view of the provisions of the UN Convention on the Rights of the Child and its optional protocol on the sale of children, child prostitution and child pornography; the African Charter on the Rights and Welfare of the Child; and the ILO Worst Forms of Child Labour Convention No. 182.

Under the UN Convention on the Right of the Child, state parties have an obligation to take measures to combat the illicit transfer and non return of children abroad. Ghana is a state party to this Convention. Under the ILO Convention 182, trafficking in children is considered a practice similar to slavery and belongs to the same category as forced labour. Children are particularly vulnerable to trafficking.

It must be noted that Ghana was the first country in the world to ratify the UN Convention on the Rights of the Child. In order to fulfil its international obligations, Ghana enacted a Children's Act in 1998.

Under this Act, every child has the right to grow up with his or her parents and family and in a caring and peaceful environment.²² Trafficking of a child

for any purpose, whether with or without the consent of the parents, is a clear violation of the child's right to live and grow up with the parents in a cordial and harmonious environment. The main purpose of the Act is to consolidate all the various pieces of legislation affecting children and to bring the law on children in line with international standards.

Section 1 of the Act defines a child as a person below the age of eighteen (18) years. Some elements of trafficking in persons may be dealt with under this Act.

Section 8 of the Act protects all children from deprivation in terms of: access to education, immunisation, adequate diet, clothing, shelter, medical attention or any other thing required for her/his development. Children who are trafficked are often deprived access to education (because they spend their time working); and adequate nutrition, medical care and other necessities (because the traffickers endeavour to limit their costs). Depriving working children access to education, health or development definitely falls within the purview of exploitative labour.

Section 12 of the Act protects all children in Ghana from exploitative labour. Exploitative child labour is any form of work which "deprives a child of its health, education or development".²³ These provisions in the Children's Act reflect provisions of the ILO Convention on the Worst forms of Child Labour, 1999, (No. 182).

Under this Convention, the worst forms of child labour comprise, among others, work which, by

¹⁷ Section 109 of the Criminal Code, 1960 (Act 29).

¹⁸ Ibid, Section 108.

¹⁹ Ibid, Section 93.

²⁰ Ibid, Section 89.

²¹ Ibid, Section 314A.

²² Section 5 of the Children's Act, Act 560.

²³ Section 87 of the Children's Act, 1998, (Act 560).

its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Work which affects health, safety or morals of a person is considered to be hazardous under the Children's Act. Under Convention 182, other forms of labour which constitute the worst forms of child labour are: all forms of slavery or practices similar to slavery such as the trafficking of children, forced or compulsory labour, child prostitution or use of children for the purposes of pornography and the use of children for other illicit activities. The prohibition of forced labour, slavery and practices similar to slavery has also been covered under the Forced Labour Convention, 1930 and the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.

Again, The Worst Forms of Child Labour Recommendation 190 (R 190) gives the indicators by which countries legislating against hazardous work may guide themselves. Under Recommendation 190, the factors to be considered in determining whether or not work is likely to harm the health, safety or morals of children under the Worst Forms of Child Labour Convention²⁴ are: exposure of children to physical, psychological and sexual abuse; working underground; working with dangerous machines; working for long hours; night work; and work in which the child is unreasonably confined to the premises of the employer. Since Recommendation 190 deals with these under its hazardous work provisions, the provisions on hazardous work under the Children's Act may be compared with the provisions under Recommendation 190. Section 91(2) of the Children's Act provides that work which poses danger to the health, safety or morals of a person is hazardous. The minimum age at which a person can do hazardous work in Ghana is eighteen years.²⁵ Any employment of a

child for hazardous work in Ghana is therefore against the law.

As indicated under the discussion on the Constitution of Ghana, every person in Ghana is protected against torture or other cruel, inhuman or degrading treatment. A specific reference is made to children in Article 28(3) of the Constitution. That provision protects children from torture or other cruel, inhuman or degrading treatment or punishment. In addition, the Children's Act²⁶ prohibits cultural practices which dehumanise or are injurious to the mental and physical well being of a child. The Act also prohibits meting out corrective measures to a child if the child cannot understand such a corrective measure by virtue of his or her tender age or some other reason.

The Children's Act in its Section 46 also prohibits the unlawful removal of a child from the lawful custody of another. Depending on the particular circumstances of such removal of the child from the lawful custody of another person, this section may have to be read together with Section 59 of the Children's Act or Section 93 of the Criminal Code, Act 29. Section 59 of the Children's Act makes the unlawful removal of a child from the lawful custody of another and the failure to provide necessities of health and life, education and reasonable shelter, offences. Section 93 of Act 29 deals with child stealing. This offence is a second degree felony that is punishable by imprisonment of between three and twenty-five years, with or without a fine.

In addition to the right to grow up with its parents in a conducive environment, a child also has the right to be maintained by the parents. Parents have a duty to supply necessities of health, life, education and shelter to their child. Again, this provision may have to be read together with

²⁴ Convention 182

²⁵ Children's Act, 1998, (Act 560), Section 91(1).

²⁶ *Ibid*, Section 13.

Section 79 of the Criminal Code, which also requires a father to supply the necessities of life and health to his son or daughter. Parents, fathers in particular, may be guilty of criminal offences if they fail to do so. Trafficking in children, as currently practised, and as shown in the case studies in this publication, necessarily occasions a breach of the duty of parents as provided in Section 47 of the Children's Act and Section 79 of the Criminal Code of Ghana.

Part V of the Children's Act²⁷ deals with the employment of children generally and child labour in particular. The minimum age for the admission of a child to employment is fifteen (15) years and if any form of employment deprives a child of his or her education, health or development, that kind of employment or labour is regarded as exploitative and is prohibited by the law.

The Children's Act²⁸ provides a mechanism for the enforcement of provisions relating to child labour. Under this provision, District Labour Officers are to carry out any enquiries they may consider necessary in order to satisfy themselves that the provisions in respect of the employment of children and young persons are being strictly observed. From interviews conducted at the Department of Labour, it is apparent that very little is being done to operationalize this legislative provision and unacceptable forms of child labour are still thriving, particularly in the informal economy. According to the US Department of State, Country Report on Human Rights Practices, 2004, released by the Bureau of Democracy, Human Rights and Labor²⁹, observance of minimum age laws was eroded by local custom and economic circumstances that encouraged children to work to support their families.

The practice of adults using children as fronts, to engage in begging and alms receiving on the streets of Accra and other major cities in Ghana is a common sight. Some of these children are engaged by their parents and relatives and sometimes by private contractors for these assignments. A good number of the children are external and internal migrants to the cities or refugees. Another practice which is of concern is the voluntary or involuntary migration of young girls from Northern Ghana to the south of the country, particularly Accra and Kumasi to work as head porters. They are usually referred to as 'Kayayee'.

It is well known that the underlying cause of this phenomenon is poverty. The poorest regions are the source of the migrants and the richest regions are their destination.

The Children's Rights Regulations, 2002 (L.I 1705)

The Children's Rights Regulations was passed to implement certain provisions relating to the protection of children from exploitation. Part V of the Regulations focuses on Child Labour. It seeks to provide legislative detail for the operationalization of Section 93 of the Children's Act on registration of children and young persons in industrial undertakings. Regulation 33 stipulates that an employer of children engaged in an industrial undertaking shall keep a register of the children employed in the undertaking. The register should contain the details of each child including the date of birth, sex, names of parents or guardian and the date of employment. This is to ensure that children employed satisfy the requirement of the minimum age for employment stipulated in the Children's Act. This is also a measure to protect children between 15 and 17 from engagement in hazardous work. This is because the Act provides that

²⁷ Ibid, Sections 87-96.

²⁸ Ibid, Section 95.

²⁹ Available at www.state.gov

the minimum age for the engagement of a person in hazardous work is eighteen years.

Regulation 34 empowers the district labour officer to summon any person to appear before the officer with respect to an investigation on child labour in the formal sector. Any person who fails to appear before the district labour officer commits an offence and is liable on summary conviction to a fine not exceeding 250 penalty units³⁰ or to a term of imprisonment not exceeding 12 months or to both.

The Regulations empower the District Assembly to oversee issues of child labour in the informal sector. Any person who fails to appear before a member of the District Assembly or the Social Services Sub -Committee of a District Assembly is liable to the same punishment as for the formal sector.

The Immigration Act, 2000 (Act 573)

The Immigration Act was passed in the year 2000 to govern immigration matters in Ghana. In particular, it was to provide for a consolidation of the legislation on immigration; deal with the admission, residence, employment and removal of foreign nationals; and related matters.

Section 8 of the Act deals with prohibited immigrants. The list of persons referred to as prohibited immigrants includes any non-Ghanaian who attempts to bring into Ghana any person for the purpose of prostitution or other immoral purposes. Since trafficking in persons is not only carried out by foreigners, it is necessary to put measures in place in other laws to deter Ghanaians as well from engaging in acts which constitute trafficking or are related to trafficking.

Section 24 of the Act prohibits the employment of foreign nationals in Ghana except in accordance with a permit granted by the Immigration Quota Committee. If this section is strictly construed, foreign nationals who may be victims of trafficking and who have worked in violation of the Immigration Act may not be able to claim any compensation for work done. This is because, there is no specific provision in the Human Trafficking Act on the right of victims of trafficking to unpaid wages, even though they may have a right to continue to stay in Ghana under Section 34 of the Act. There may be a need to review this law in this respect.

Under the Immigration Act, a foreign national who is a prohibited immigrant or who is in Ghana without a valid permit or who has broken any of the conditions upon which his permit was granted, is liable to deportation.³¹ Under the Human Trafficking Act, a trafficked person may remain in Ghana throughout the investigation and prosecution of a trafficker. Such a person may also be allowed to remain in Ghana after the legal process with the permission of the Minister for the Interior, if it is in his or her interest. In that case he or she is entitled to basic material assistance during his or her sojourn until s/he is resettled.³²

The Labour Act, 2003, (Act 651)

Trafficking and Labour issues are closely related as men, women and children are often trafficked for purposes of exploitative labour.

The Labour Act was enacted to amend and consolidate all laws relating to labour, employers, trade unions and industrial relations.³³ It was assented to and came into force in October 2003.

³⁰ Due to high rates of inflation, legislators in Ghana have recently adopted the use of "penalty units" to replace money values for fines. The "penalty units" are calculated to take account of inflationary trends.

³¹ Section 21 and Part III of Immigration Act, 2000 (Act 573).

³² Section 34.

³³ See the Long Title of the Labour Act, 2003 (Act 651).

It applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies.

Part II of the Act deals with employment centres generally. The Act provides for public and fee-charging employment agencies. Public employment centres are to be established by the Minister assigned responsibility for labour to whom all the employment centres so established are answerable. According to Section 7 of the Labour Act, private employment agencies cannot be established or operated by persons other than corporate bodies upon the grant of a licence by the Minister with responsibility for labour.

Licences granted by the Minister are valid for a period of twelve months and the employment agency is eligible for a renewal. The Minister is mandated to make regulations providing for the conditions and procedure for granting licences to private recruitment agencies. Ghana has not ratified the ILO Private Employment Agencies Convention 181, which provides useful guidelines for the operation of private employment agencies.

The concept of private recruitment agencies is a new creation under the Labour Act, 2003. Private or fee-charging recruitment agencies were abolished by regulation 61 of the Labour Regulations, 1969. The Labour Regulations, 1969, (L.I. 632) has not been expressly repealed by the Labour Act, 2003. The provisions of the Labour Regulations may be applied *mutatis mutandis* to the Labour Act, 2003. Any provision in the regulations which is inconsistent with the Labour Act is automatically amended to the extent of the inconsistency. The Labour Regulations, L.I. 632, does not have any provision on the procedure for the grant of licences to private recruitment agencies. New regulations have been drafted and will soon be discussed in parliament.

It is noteworthy that under the Labour Act, a private employment agency 'may recruit workers for employment in a country outside Ghana if it is authorized to do so under its licence and if there exists an agreement between the Government and that other country'.³⁴ It is well known that trafficking in persons in Ghana involves the actions of individuals and some organized groups. If private corporate bodies are involved in the recruitment of Ghanaians to work abroad, then the clear bench mark for the measurement of the legality or otherwise of their actions as far as the domestic law of Ghana is concerned is Section 7(5) as quoted above. These companies may have to prove that they are authorized to recruit Ghanaians for employment outside Ghana and that the receiving country has an agreement with Ghana for the recruitment and placement of workers there. Interviews conducted at the Labour Department reveal that no such agreements exist between Ghana and any other country. Private recruitment agencies therefore cannot recruit Ghanaians to work outside Ghana without falling foul of the law.

By way of monitoring, employment agencies are required to furnish the Minister, at a date not later than fourteen days after the end of every three months, with a report in respect of workers recruited in Ghana to work outside Ghana on pain of revocation of their licences. There are a number of private recruitment agencies in Ghana. The evidence is that they are not regulated. The monitoring provisions in the Labour Act have the potential to serve as a very effective tool against the trafficking of persons, and also provide the Government with some form of data on the number of people recruited from Ghana to work abroad. We need to remember that the new Labour Act came into effect in October 2003 and the previous law and its regulations had prohibited the operation of private recruitment agencies. The law is thus yet to be effectively operationalized.

³⁴ Section 7(5) of Act 651.

The Labour Act, 2003 also prohibits forced labour.³⁵ Under the Labour Act, it is an offence for any employer to exact forced labour from any employee. Section 117 of the Act defines forced labour as ‘work or service that is exacted from a person under threat of a penalty and for which that person has not offered himself or herself voluntarily, but does not include:

- “(a) Labour required as a result of a sentence or an order of a court;
- (b) Labour required of a member of a disciplined force or service as his or her duties;
- (c) Labour required during a period when the country is at war or in the event of an emergency or calamity that threatens life and well being of the community, to the extent that the requirement of the labour is reasonably justifiable in circumstances of a situation arising or existing during that period for the purpose of dealing with the situation; or
- (d) Labour reasonably required as part of the normal communal or other civic obligations”.

It is noteworthy that the definition of forced or compulsory labour as quoted above is more or less a reproduction of the definition as appears in the ILO Forced Labour Convention, 1930 (No. 29). Since Ghana adopts a dualist approach to the domestication of its international instruments, it is commendable that the definition of forced or compulsory labour as contained in Convention 29 has been ‘domesticated’.

As noted earlier, forced or compulsory labour is a crime in Ghana. If convicted in Ghana for an offence of forced labour, an employer so convicted could face a fine not exceeding 250 penalty units³⁶. This is woefully inadequate to serve as an effective deterrent for any person or body of persons doing trafficking on a commercial basis.

For the sanctions to play any role at all in the prevention of trafficking, the protection of victims and the rehabilitation of victims, they need to be urgently reviewed. Forced Labour is a serious violation of the fundamental rights and freedoms of the victims. As the law stands, there is no specific variation of the sanctions with respect to whether the victim is a child or an adult. There is the need for the law to be amended to raise the level of the sanctions according to whether the victim is a child or an adult, with trafficking in children carrying a heavier penalty.

A provision for labour inspection has been made in the Act. This is under Part XVI of the Act. No particular guidelines have been provided for the labour inspectors and so it is difficult to know whether they will have the mandate to inspect private homes. This is important because a number of trafficked persons end up as domestic workers. The Minister is mandated to make regulations generally for carrying into effect the provisions of the Act. The guidelines for Labour Inspectors may be included in these regulations. It is possible that these guidelines have not been considered for inclusion in the regulations. It is imperative that this be done.

The Labour Act does not discriminate between Ghanaians and other nationals as far as their rights under the Act are concerned. The Act constantly makes reference to ‘every worker’ or ‘a worker’ in its provisions dealing with the rights and duties of workers, whilst the regulations provide for equal work and equal pay for men and women.

The Labour Act deals with the rights of women under Part IV. Pregnant women may not do night duties and overtime work. Women are entitled to maternity leave and employers are prohibited from assigning either permanently or temporarily, a pregnant woman worker to a post outside her

³⁵ Chapter XIV.

³⁶ Currently, a penalty unit is twenty thousand cedis (c20,000.00) which is the equivalent of a little over two dollars (\$2). 250 penalty units is about 55 United States Dollars (\$50).

place of residence after the completion of the fourth month of pregnancy, if certified by a medical officer or a midwife that such an assignment will be detrimental to her health. These rights do not vary for women whether they are migrants or not.

Part VII of the Labour Act deals with the prohibition of the employment of young persons. The Act defines a young person as a 'person of above 18 years but below 21 years of age. Employers are prohibited from employing young persons in any kind of employment or work which is likely to expose him or her to physical or moral hazard. Employers are also prohibited from employing young persons in underground mine work. A violation of any of these prohibitions of the employment of young persons is a criminal offence and if convicted the offender may face a fine of not more than 100 penalty units. This penalty does not seem to be sufficient as a deterrent.

The Human Trafficking Act, 2005 (Act 694)

By virtue of the ECOWAS Plan of Action against trafficking in persons, all ECOWAS member states undertook to, among other things, promulgate laws to criminalize trafficking in persons by December, 2002. For a long time the gaps in the legislative framework on human trafficking discussed above allowed for traffickers, who are often responsible for the worst forms of exploitative labour, to act with impunity.

Ghana's Human Trafficking Act was meant to be a comprehensive tool in the fight against trafficking in persons. The purpose of the Act is to 'combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and protect their victims.'³⁷ The memorandum to the Human Trafficking Bill indicates that the Bill was prepared as a result of

Ghana's international obligations under certain Conventions. The Act will be analysed taking into consideration the recommended principles and guidelines on human rights and human trafficking as prepared by the Economic and Social Council of the UN in May 2002, the Palermo Protocol and other relevant international instruments.

The Act provides for a definition of trafficking which ostensibly took into consideration the definition of trafficking as contained in the Palermo Protocol and broadened it to some extent. The definition as contained in the Act is as follows:

1. (1) Human Trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by
 - (a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or
 - (b) giving or receiving payments and benefits to achieve consent.
- (2) Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.
- (3) Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking.
- (4) Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

³⁷ Rachel Nyaguthi Irura, *Trafficking of Women and Children In West Africa: Ghana a Case Study*, October 2002 (*supra*)

The definition provided under the Act covers more in terms of the chain of crime than that of the Palermo Protocol as it includes trading in persons. It is also an offence, under the Act, for anyone to use the services of a trafficked person.³⁸ It is unclear if a person can be found guilty of this offence even if (s)he did not know that the person whose services (s)he uses is a trafficked person. In other words, the bill remains silent on whether or not knowledge of the user of the fact that the victim is a trafficked person is a required element of the offence. This provision may have to be subjected to further elaboration to ensure that zero tolerance for trafficking does not lead to the victimisation of innocent and unsuspecting users of the services of trafficked persons. Otherwise, anyone who uses a kayayoo (head porter) to convey his or her wares at the Makola market risks five (5) years in jail if the kayayoo turns out to have been trafficked from Mirigu in the Upper East Region to Accra.

The Act is clear that parental consent is no defence to a charge of trafficking.

In its Section 7 the Act provides for unspecified and undefined “special mitigating factors” or “special circumstances related to the offence or the offender” that may cause the court to reduce the applicable penalties. This provision may have to be subjected to further elaboration. As the provision stands, attempts at fighting the crime of trafficking in persons may be stifled since every incident of trafficking may potentially have mitigating factors. It is important that regulations made under the Act provide criteria that will guide the court in applying this provision.

Ordinarily, offences committed outside the territorial jurisdiction of the courts of Ghana cannot be prosecuted in Ghana. However, the Courts Act³⁹ provides the following exceptions:

- A citizen of Ghana who -
- a. While employed in the service of the

Republic of Ghana or of any statutory corporation does an act outside Ghana which if done in Ghana is punishable as an offence; or

- b. Does an act outside Ghana which if done in Ghana would constitute an offence of murder or an offence under Section 183A of the Criminal Code, 1960 (Act 29); or
- c. Does outside Ghana any act which if done in Ghana constitutes an offence involving or resulting in the misappropriation, dissipation or loss of
 - (i) public funds
 - (ii) government property
 - (iii) property belonging to a statutory corporation
- d. Does any act in the premises of a Ghanaian diplomatic mission which if done in Ghana would be punishable in Ghana

commits an offence as if the offence was done in Ghana and may...be prosecuted and punished in Ghana.

The general rule is that only a citizen of Ghana is subject to the criminal jurisdiction of the Ghanaian Courts.⁴⁰ However, Section 56 of the Courts Act, 1993 provides that a person who is not a citizen of Ghana may be subject to the criminal jurisdiction of the courts of Ghana where he commits any of a number of offences. Of interest to us are those of the offences listed in the section which bear directly on human trafficking. These are: slave trade or trafficking in slaves; trafficking in women and children; falsification or counterfeiting or making use of false copies or counterfeits of any official seal of Ghana or any currency, instrument of credit, stamp, passport or public document issued by the Republic or under its authority; genocide; any offence against the property of the Republic; unlawful traffic in narcotics; and any other offence which is authorised or required by a

³⁸ Section 4.

³⁹ Courts Act, 1993, (Act 459), Section 56.

⁴⁰ Ibid.

convention or treaty to which the Republic is a signatory to be prosecuted and punished in Ghana wherever the offence was committed.

These offences, according to Section 56(4) of Act 459, can be prosecuted in Ghana even if the alleged perpetrator is not a citizen of Ghana. This situation has been retained under the Trafficking Act because citizens and non citizens alike who engage in acts which amount to trafficking in persons are subject to the jurisdiction of the courts in Ghana. What may militate against this progressive step in the fight against trafficking in persons are agreements between Ghana and some other countries not to prosecute such of their citizens who may have committed crimes in Ghana and to surrender such offenders to their home countries. Prosecution in Ghana has the advantage of sending out a strong signal that the country is determined to fight trafficking in persons.

In criminal jurisprudence, sanctions play a vital role in the occurrence or the recurrence of offences. Traffickers engage in all kinds of documentary fraud in furtherance of their trafficking agenda and a convict for any unlawful conduct with respect to documents in furtherance of trafficking may be sentenced to a term of imprisonment of between three and seven years⁴¹ under the Trafficking Act.

Most countries which take action to combat trafficking in persons focus primarily on the prosecution of offenders, border interdiction and cross-border cooperation. Yet, the psychological trauma which victims of trafficking go through requires that proper protective assistance and support be provided for them. The Act deals with rescue, rehabilitation and reintegration of trafficked persons. There is a provision for temporary care and financial support for victims. The Ministry of Women and Children's Affairs is tasked with providing temporary basic material support for the care and protection of rescued victims as well as

equipping them with employable skills. It appears that the Department of Social Welfare (DSW) is better equipped in terms of structure and experience in dealing with issues related to children and physical or mental abuse. It is hoped that the Ministry of Women and Children's Affairs will delegate some of the duties of rehabilitation and reintegration to the DSW and ensure that the Department is resourced to perform those functions.

A victim who has an illegal immigration status may continue to stay in the country notwithstanding the provisions of Section 21 of the Immigration Act which stipulates that any person whose presence in Ghana is unlawful may be repatriated on the orders of the Director of Immigration. Section 34 of the Act actually provides for the continuous stay of victims in Ghana on a temporary or permanent basis depending on the best interest of the victim. More protection will have to be afforded victims of trafficking under the Act. For example, it may be important that victims have a right to claim unpaid wages earned during the period of their illegal residence within Ghana.

Generally, more work needs to be done on the victim protection portion of the Act. Indeed, one of the recommended principles in human rights and human trafficking is the primacy of the human rights of the victims of trafficking. By this, the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. Further, victims of trafficking are protected from detention and prosecution for immigration and related offences and an express provision to this effect in the Trafficking Act will be appropriate.

The Act provides for the setting up of the Human Trafficking Management Board comprising persons from various key ministries and department and to a large extent seems representative of all stakeholders. However, the Act is silent on representation

⁴¹ Punishment same for some second degree felonies

from civil society groups. Section 29 of Act 694 provides, *inter alia*, that the Management Board shall consist of one person from the private sector nominated by the Minister, and three other persons one of whom is a woman. Although it is arguable that civil society organizations can be represented under these two categories, the nominations are at the discretion of the Minister. Explicit provision should have been made for representation of civil society groups and the involvement of international organizations working to combat trafficking. This is because of the sheer amount of intellectual, mobilisation, time and money resources they contribute to trafficking issues in Ghana. Such representation will facilitate cooperation between governmental and non-governmental organisations in the fight against human trafficking.

Finally, the Act is weak on concrete strategies and steps necessary to prevent trafficking in persons. The recommended principles on prevention of trafficking in persons provides that states must put in place measures to address the root causes of trafficking in persons including inequality, poverty and all forms of discrimination.⁴² The Act is very weak on this.

Procedure

The Criminal Procedure Code, 1960, (Act 30) governs criminal procedure in Ghana. This covers making reports to the police on persons suspected of engaging in criminal acts, how such complaints

are investigated, how alleged offenders may be apprehended, the process of trial, if need be, and the mode of executing any penalties imposed after trial.

Our Criminal Procedure Code allows for both Police and citizen's arrest (without warrant) of suspected offenders under various circumstances. If properly used, this power of citizen's arrest can be a wonderful tool for combating trafficking in persons.

Section 9 of the Trafficking Act is in accord with the Criminal Procedure Code when it allows for anybody with information on trafficking to lodge a complaint to the Police or other security services at the place where the offender resides or the victim resides, or where the trafficking occurred or is occurring or where the victim is residing temporarily.

In a limited number of cases, the law permits searches without warrants. Section 94 of the Criminal Procedure Code permits a police officer not below the rank of Assistant Superintendent of Police or anyone authorised by him to enter into any premises he has reasonable cause to believe contains any property appropriated by some form of crime. It may be prudent to extend this provision in the trafficking Act to searches for trafficking-related offences.

Aside from the many domestic laws that relate to human trafficking, there is a welter of international laws on the subject and we shall now turn our attention to those.

⁴² Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, Addendum, 20 May 2002, E/2002/68/Add.1

International Law On Trafficking In Persons

Ghana's Obligations Under International Law⁴³

Ghana is bound by international instruments which Parliament has ratified and in that regard is obliged to adjust her domestic laws to reflect the principles and norms contained in those instruments. Where Ghana only signs, but has not ratified an instrument, her obligation with respect to that instrument is to desist from conduct that defeats the purpose and objectives of the instrument. Norms and principles contained in international instruments may none the less bind Ghana if they form part of the laws of Ghana. In addition, norms and principles of customary international law and principles of *jus cogens* will bind Ghana since these principles are said to be non-derogable, whether or not Ghana formally ratifies them. With particular respect to the promotion, protection, enforcement and guarantee of fundamental human rights, the 1992 Constitution is sufficiently elastic to extend to such issues, which have not been specifically mentioned in the Constitution or any other law in Ghana.⁴⁴

In the following paragraphs, we examine various international instruments, the purpose of the instruments and the extent to which they apply to Ghana.

Convention on the rights of the child, 1989
and

Optional protocols to the convention on the rights of the child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography

The Convention on the Rights on the Child (CRC) was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. Ghana was the first country to ratify the Convention and is a signatory to the Optional protocol on the sale of children, child prostitution and child pornography. The Convention does not address the problem of trafficking but it provides a rights based approach which seeks to protect the rights of the child and to ensure the development of the child in an atmosphere of peace, dignity, freedom, equality and solidarity. Article 32 of the CRC stipulates that the rights of the child include protection from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or is harmful to the child's health or physical, mental, spiritual, moral or social development. Article 11 calls on State Parties to take measures to combat the illicit transfer and non-return of children abroad. Article 34 calls on State Parties to protect the child from all forms of sexual exploitation and sexual abuse. To this end, State Parties are encouraged to take all appropriate measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials. Article 35 aims at protecting children from being traded and Article 39 calls on State Parties to promote physical and psychological recovery and social reintegration of a child victim.

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography was passed because members believed that the

⁴³ Constitution of Ghana, 1992, Article 75

⁴⁴ Constitution of Ghana, 1992 Article 33(5)

elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children.

Ghana has ratified the CRC and is a signatory to the Protocol.⁴⁵ Ghana is therefore bound by the provisions of the Convention and must desist from conduct that defeats the purpose and objectives of the Protocol.

The enactment of the Human Trafficking Act, 2005 (Act 694) by Ghana emphasizes the country's commitment to the fight against human trafficking particularly of women and children.

The Worst Forms Of Child Labour Convention, 1999, (No. 182)

Article 3 of the Convention stipulates that the term "the worst forms of child labour" comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The Convention, which was adopted together with Recommendation No. 190, seeks to prohibit and eliminate the worst forms of child labour. Member states that have ratified the Convention and registered their ratification with the Director General of the International Labour Office are, therefore, obliged to take immediate and effective measures to prohibit and eliminate the worst forms of child labour as a matter of urgency. The measures so taken should reflect relevant international standards.

Ghana ratified this convention on 13th June, 2000. By virtue of Article 10 of the Convention, Ghana is bound by it. As discussed earlier, the constitution of Ghana and the Children's Act both prohibit the exploitation of child labour and related practices.

The Minimum Age Convention, 1973, (No. 138)

The Minimum Age Convention, although not directly related to child trafficking, deals with child labour, which is often a consequence of trafficking.⁴⁶ The Convention, supplemented by Recommendation No. 146, aims at abolishing child labour and progressively raising the minimum age of employment or work to a level that accords with the fullest physical and mental development of young persons. To this end, the Convention stipulates that the minimum age should not be less than the age for completing compulsory schooling. Member states that have ratified the Convention are obliged to abolish child labour, and to raise the minimum age of work to a level not less than 15 years. Countries whose economies and educational facilities are

⁴⁵ Ghana ratified the Convention of the Rights of the Child on 02 September 1990, becoming the first country to ratify the Convention. The Protocol was signed on 24 September 2003.

⁴⁶ Child Trafficking: The Reasons behind it: The International and Regional Legal Framework against it: Case Studies-Nepal & Sri Lanka available at http://www.sit-edu-geneva.ch/child_trafficking.htm

insufficiently developed may, after consulting organizations of workers and employers concerned, initially specify a minimum age of 14 years. The Convention however explicitly protects children under 18 from hazardous employment. Article 3 of the Convention stipulates that the minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years. The Convention calls on the governments to determine by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, what constitutes hazardous work.

Ghana has not ratified this Convention, and is therefore not bound by the provisions of the Convention. However, both the 1992 Constitution and the Children's Act, 1998 prohibit child exploitation. As indicated above, the Children's Act provides that the minimum age for employment is 15 years and defines a child to mean a person of less than eighteen years of age. In addition, even though Ghana has not ratified this Convention, her obligations in respect of the issues mentioned in the Convention can be invoked under Article 33(5) of the 1992 Constitution. Again, as already noted Article 33(5) of the 1992 Constitution provides that the rights, duties, guarantees and declarations relating to fundamental human rights and freedoms mentioned in chapter five of the Constitution are not exhaustive but include others which are considered to be inherent in a democracy and intended to secure the freedom and dignity of man.

Forced Labour Convention, 1930, (No 29) And Abolition Of Forced Labour Convention, 1957, (No. 105)

ILO Convention 29 aims at suppressing the use of forced or compulsory labour in all forms. The Convention was adopted on 28th June, 1930 and came into force on 1st May, 1932. Article 2 of the Convention stipulates that the term forced or compulsory labour means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Member states that have ratified the Convention are obliged to suppress the use of forced and compulsory labour within their territories within the shortest possible time. ILO Convention 105 on the other hand seeks to prohibit the use of forced labour and compulsory labour, within the meaning of Convention 29, as an instrument of economic development, labour discipline, discrimination, political coercion and punishment for participation in strikes. Member states that have ratified this Convention are obliged to take effective measures to achieve the objectives of the Convention.

Ghana ratified Convention 29 on 20th May, 1957 and Convention 105 on 15th December, 1958. Ghana is therefore bound by the provisions of these Conventions. As discussed earlier, the 1992 Constitution and the Labour Act, 2004 both deal with the issues of slavery and forced labour.

Equal Remuneration Convention, 1951, (No. 100)

This Convention was adopted by the General Conference of the ILO on 29th June, 1951 in Geneva and came into force on 23rd May; 1953. Its purpose is to ensure that men and women are paid equal remuneration for work of equal value. Member states are obliged by the Convention to adopt legislation and other measures that will ensure that wages are determined in a manner

that reflects the principle of equal remuneration for men and women for work of equal value.

Ghana ratified this Convention on 14th March; 1968. Ghana is therefore bound by the obligations which the Convention imposes on member states. The 1992 Constitution of Ghana prohibits discrimination on grounds of sex.⁴⁷

Discrimination (Employment And Occupation) Convention, 1958, (No. 111)

The General Conference of the ILO adopted this Convention on 25th June, 1958 in Geneva and it came into force on 15th June, 1960. The Convention aims at promoting equality of opportunities and treatment in respect of employment and occupation with the view to eliminating discrimination thereof. Member states are obliged to pursue appropriate national policies that will achieve the objectives of the Convention.

Ghana ratified the Convention on 4th May; 1960. Ghana is thus bound by the provisions of this Convention.

Protocol to prevent, suppress and punish trafficking in persons, especially women and children supplementing the United Nations convention against transnational organised crime (the Palermo Protocol)

The Protocol is a direct attempt at comprehensively defining trafficking in international law. It supplements the United Nations Convention against Transnational Organized Crime and emphasizes the structuring of an effective legal and law enforcement framework.⁴⁸

⁴⁷ Article 17 of the 1992 Constitution.

⁴⁸ Trafficking of Children: The Problem and Responses Worldwide available at www.ilo.org/childlabour

⁴⁹ *ibid*

The Protocol aims at preventing and combating trafficking in persons, especially women and children, to protect and assist the victims of such trafficking, and to promote cooperation among states in order to meet those objectives. State parties are obliged to adopt legislative and other measures to achieve the objectives of the Protocol. The Protocol entered into force on December 25, 2003.

Ghana has neither signed nor ratified this Protocol, but her obligations to adopt and implement legislation to prevent and prohibit the practices mentioned in the Protocol are derived from the 1992 Constitution and the Children's Act, 1998. In addition, the Human Trafficking Act was passed in December 2005 to criminalize human trafficking and provide for the welfare of victims. Ghana has also set up a Ministry for Women and Children Affairs (MOWAC), whose mandate is to promote the welfare of women and children.⁴⁹

The Human Trafficking Act which was passed in 2005 takes into consideration the provisions of the Palermo Protocol especially in relation to articles 5, 6 and 7 of the Protocol on criminalization and protection of victims of trafficking in persons. Article 5 of the Protocol requires each state party to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in the definition. Article 6 requires state parties to protect the identity of victims of trafficking by making legal proceedings confidential. Article 7 on status of victims in receiving states is aptly captured in Section 34 of the Human Trafficking Act.

Declaration A/DC12/12/01 on the fight against trafficking in persons

and

ECWAS plan of action against trafficking in persons (2002 - 2003)

In 2001, at Dakar, the Economic Community of West African States, (ECOWAS) by Declaration A/DC12/12/01, adopted the ECOWAS Plan of Action Against Trafficking in Persons and urged member states to take urgent actions against trafficking in persons within the period 2002-2003. There was a focus on criminalizing the practice of human trafficking. This was to be done in line with the relevant international instruments.

Since 2003, Ghana has taken steps towards fulfilling its obligations as spelt out in the Plan of Action. These steps have culminated in the passage of the Human Trafficking Act.

ECOWAS Convention A/P.1/7/92 On Mutual Assistance In Criminal Matters

The ECOWAS Convention on Mutual Assistance in Criminal Matters entered into force on 28 October 2003. As of July 2004, it had been ratified by nine (9) countries: Burkina Faso, Gambia, Ghana, Guinea, Mali, Nigeria, Senegal, Sierra Leone, and Togo. The scope of application of mutual legal assistance, as defined by the ECOWAS Convention in its article 2, includes; taking evidence or statements and assisting in assuring the availability of detained persons or others to give evidence or assist in investigations.

Although the Convention does not apply to extradition, it encourages cooperation among states and seeks to combat trafficking and other offences across borders.

ECOWAS Convention, A/P1/8/94 On Extradition

The ECOWAS Convention A/P.1/8/94 on Extradition has not yet entered into force. According to the Convention on Extradition, extradition means the surrender of all persons within the territory of the requested State who are wanted for prosecution for an offence; or who are wanted by the legal authorities of the requesting State for the carrying out of a sentence.

When this Convention enters into force, it will tighten measures aimed at combatting human trafficking. The Convention defines offence to mean "the fact or facts which constitute a criminal offence or criminal offences under the laws of the Member States".

Bilateral Agreement Between Ghana And Other West African Countries On The Migration Of Labour

A "Multilateral Interregional Cooperation Agreement to combat Trafficking in Persons, especially women and children in West and Central Africa" has been drafted and is expected to be adopted by all the States in these two regions in 2006. Aside from this, Ghana does not, at the moment, have any other agreement, multilateral or bilateral, with any other West African countries or other destination countries on labour migration. However, Ghana and Libya are in the process of developing such a bilateral agreement.⁵⁰

⁵⁰ Interview with Mr. Everest Selby, Assistant State Attorney at Ministry of Justice, who is the officer on the Ghana side in charge of drafting the agreement in March 2005

Case Studies

In Ghana there are a number of agencies that deal with cases of human trafficking. The key institutions are the Ghana Police Service (particularly the International Police Organization (INTERPOL-Ghana), and the Women and Juvenile Unit of the Ghana Police Service (WAJU)), the Ghana Immigration Service, the Ministry of Manpower Development, Youth and Employment (especially its Social Welfare Department), and the Ministry of Women and Children's Affairs (MOWAC).

Although human trafficking has long been going on in Ghana, cases of trafficking have not been consistently recorded. This may be due to the absence of legislation directly criminalizing trafficking in Ghana until the Human Trafficking Act was passed in December 2005, the absence of sufficient and qualified personnel to deal with issues of trafficking and the poor record keeping culture in Ghana's public services.

The following cases were randomly selected from the statistics available for the years 2002-2005 in the following institutions: WAJU, INTERPOL and the Ghana Immigration Service. Cases from each department are preceded by brief comments on the trafficking-related activities of the institution from which the cases are drawn.

The Ghana Police Service

The Women And Juvenile Unit (WAJU)

The Women and Juvenile Unit of the Ghana Police Service was established in October 1998 as a specialized unit of the Ghana Police Service to promote public support for vulnerable groups such as women and children in ensuring that they are protected from all forms of violence and abuse.

In a 2004 Human Rights Report on Ghana⁵¹ WAJU is said to have recorded 190 cases of abduction and 19 cases of child stealing during the year. Currently WAJU prosecutes traffickers under laws against slavery, abduction, procurement, kidnapping, and child stealing. However, the laws under which these offences are created do not adequately provide for victim assistance and rehabilitation, neither do they specifically penalize trafficking in persons.

The following is the main case on trafficking that has been handled by WAJU since its establishment in 1998.

⁵¹ 2004 US State Department Report on the State of Human Rights in Ghana-see www.state.gov.

The Republic vs. A. D.

The victims were four Ghanaian girls who were lured to Nigeria and made to work as prostitutes. The victims were aged between 14 and 18 years.

In their respective statements to Police Officers at WAJU, the victims stated that during the month of February 2002, the traffickers approached them individually at Somanya and Aserene near Amanfrom in the Eastern Region and discussed with them the possibility of securing jobs for them as store attendants at Egbeda in Nigeria. They agreed to go with the plan.

On arrival in Nigeria they were handed over to two Ghanaian ladies in exchange for 50,000 Naira (\$ 390) for each girl.

In Nigeria the victims were forced to engage in prostitution and were molested by their mistress anytime they resisted her demands.

Fortunately for them they met another Ghanaian in Nigeria and reported their plight to him and he in turn reported the case to the Nigerian authorities and the Ghanaian Embassy.

Following the report, the Nigerian Police took custody of the victims and subsequently escorted them to Ghana and handed them over to the Police. The victims were sent to the Ghana Immigration Service and were subsequently handed over to WAJU on 5th September, 2002.

A team of Police Investigators accompanied by one of the victims went to Somanya to trace and apprehend the suspects whilst the other victims were sheltered with the DSW. Unfortunately the Police were not able to locate the suspects. The following day, the lead suspect and key architect of the trafficking operation reported to WAJU with a written note from a journalist, introducing the suspect as a relative of the victims. In the course of interrogations, she was identified as one of the suspects and was arrested and detained to assist the police in their investigations.

In her statement to the Police, the lead suspect admitted having "trafficked" the four victims to Nigeria.

On 9th September, 2002, the lead suspect was arraigned before court. Her plea was not taken and she was remanded into Police custody for the Police to complete their investigation. The case was subsequently transferred to a court (in another town) with jurisdiction over the area from where the victims were procured. The suspect was charged with the offence of procuration contrary to Section 107 (1) (d) of the Criminal Code, 1960 (Act 29).

During the prosecution of the case, the victims made only two court appearances and have since failed to turn up in court to testify. According to the Police Investigator in charge of the case, the main problems encountered in prosecuting the case related to resource constraints, especially logistics for transporting the victims to the court in another town to testify, and non-cooperation from the victims. According to him, he suspected from the conduct of the victims that they were disinterested in the case because they saw no value in securing the conviction and punishment of the lead suspect who "trafficked" them to Nigeria.

As a result of the failure of the Police to procure the presence of the victims to testify in court, the case was struck out for want of prosecution. The suspect was asked to report to the police on a regular basis.⁵²

⁵² Information obtained from an interview with Mrs Sophia Amofa Torpey, Commanding Officer, Women and Juvenile Unit of the Ghana Police Service (WAJU) on 17th March 2005.

Ghana Police Service - Upper East Region

In the year 2002 there were several reports of cases of child abduction and human trafficking in the Upper East Region of the Republic of Ghana compelling the Regional Police Commander to issue a public alert in the early part of the year.

According to a narration⁵³ by the Public Relations Officer of the Police Service in the Upper East Region, three persons were arrested in connection with abduction and human trafficking. Two of them were arraigned before the Bolgatanga Circuit Court. Below is a summary of the facts of these cases:

Republic vs. A. M. A.

In this case the trafficker was a seventy-year old trader from Kenyasi in the Brong Ahafo Region of Ghana. On 12th February 2002 she was found on a bus en route to Accra with six children. She and the children were arrested and taken into Police custody. According to the children, the trafficker promised to pay each of them ₵450,000 per year and take care of their minor needs once they got to Accra. The trafficker was charged and arraigned before the Bolgatanga Circuit Court. She pleaded not guilty to charges of attempted child abduction and trafficking and was granted bail for the sum of ₵5,000,000 (US\$ 545) with one surety to reappear on 10th March, 2002.

The case of B. K.

B. K., a 35 year old man was arrested by policemen at Chiana, near Navrongo, on the Tumu-Chiana road. He was travelling on a bus with three juveniles. The victims said he had taken them from Pina, a village in the Sissala District of the Upper West Region. The Police invited the Chief of Pina, who identified the victims and was allowed to take them away. According to B.K., he was taking the boys to Berekum in the Brong Ahafo Region to take care of the livestock of a friend of his.

The Republic vs. P.K.A.

The Police Criminal Investigation Department (CID) on 15th day of February, 2002 arrested P.K.A., a 57 year old man from Bonwire in the Ashanti Region when he was attempting to board a bus in Bolgatanga with five juveniles and four adults, all from Kapungu in the Sissala District. He claimed he had sought permission from their families to hire them to work on his cocoa and orange plantations. The Police were not satisfied with this explanation because there was no documentary proof. After thorough investigations, he was arraigned before the Bolgatanga Circuit Court on a charge of illicit human trafficking. The presiding judge expressed shock that slavery was still being practiced today. He remanded the accused into police custody to reappear on the 18th March, 2002.

The legal basis for the prosecution of a suspect on a charge of illicit human trafficking may be questionable since no such offence existed at the time of these events.

⁵³ Mohammed Issahaq, Ghana News Agency available on website of Accra Daily Mail for Monday, 4th March, 2002. See <http://www.accra-mail.com>. This is a newspaper account and we could not access the docket to do a more thorough case study.

INTERPOL Ghana

INTERPOL-Ghana started work on trafficking in the last quarter of the year 2002.⁵⁴ By their records, in the year 2003, eight cases of trafficking, involving eight victims aged between 3 and 22 years were reported to INTERPOL. In 2004, another eight cases were reported to them, involving 27 victims aged between 2 and 21. All of these cases were cross-border trafficking cases involving the taking of Ghanaians outside the country or the bringing of foreigners into the country for purposes as diverse as prostitution, ritual sacrifice, domestic servitude or as house helps.

In all the cases involving Ghanaian nationals, INTERPOL succeeded in securing the repatriation of the victims from the destination countries to Ghana and handed them over to the DSW. The DSW took care of the victims until their families were traced.

In most cases the approach of INTERPOL-Ghana is to negotiate for the release of the victims from the country of destination back to Ghana after making arrangements to produce the victim(s) to give evidence to secure the successful prosecution of the trafficker in the country of arrest.

The Republic of Nigeria vs. J. Y.

This is a case involving six "Kayayee" (street head porters) girls from the Northern Region aged between 17 and 20 years.

The case was reported on the 24th day of October 2004 to INTERPOL-Ghana in Accra by a Ghanaian trader plying the route between Ghana and Nigeria.

The accused was a Nigerian and the destination of the victims was Nigeria. According to the Police, the facts as narrated by two of the victims were that the victims were engaged by the accused as porters to carry her load for her in Accra. Thereafter the accused lured them to Aflao, the border town between Ghana and Togo, for a similar assignment. While en route to Aflao the victims were given some bread to eat. They all fell into a deep sleep after eating the bread and when they woke up they realized they were in Nigeria.

The woman and the girls were arrested in Nigeria and kept in Police custody for almost three months. After this case was brought to the notice of INTERPOL-Ghana, an arrangement was made for the six girls to be sent to Lome, Togo, where they were received by Ghanaian officers. The accused is still in custody in Nigeria having been charged with the offence of trafficking in persons. The victims were taken to the DSW. The families of the victims were traced and the victims handed over to them. INTERPOL-Ghana is supposed to get the victims to Nigeria to testify against the accused but has not been able to do this because of resource constraints.

⁵⁴ Information obtained from an interview with Mrs. Patience A. Quaye, Assistant Supt. Police, CID Headquarters, INTERPOL Unit on 15th March 2005 and from Document Review at the INTERPOL Unit.

The case of A. A. and 11 others

This case was reported on 20th April 2004 by a staff of UNICEF to INTERPOL. According to the report, the 12 victims, aged between 12 and 18, were rounded up in a joint operation involving child welfare activists and Gambian intelligence and immigration officials.

Both the victims and the alleged trafficker were Ghanaians and the destination of the victims was Gambia. The alleged trafficker lured the victims to the Gambia on the pretext of getting them good jobs.

Whilst in Gambia, the children went through a lot of hardships. They were engaged in forced labour and were fed only once a day. According to the Gambian National Intelligence Agency, the girls were smuggled into the country without official papers to work as sex slaves for their Ghanaian masters. The girls worked as prostitutes within Ghanaian communities in Gambia mostly located in a place called "Ghana town".

The Gambian authorities said that the girls and other female victims of trafficking were also made to work long hours smoking fish and selling gari, a popular Ghanaian staple made from cassava. Some male victims of trafficking are also made to work as fishermen. Both male and female victims also do the chores of their masters and the chores of their master's children who are often in school.

According to the victims, they are strictly forbidden to contact their parents and relatives. The alleged trafficker is still on the run and efforts are still being made to track her down. Meanwhile the children have since been brought back to Ghana and handed over to their parents.⁵⁵

The U.S CASE⁵⁶

This case was reported by the U.S Embassy in June 2003 to INTERPOL. According to INTERPOL-Ghana, the facts of this case are that the trafficker, a naturalized U.S citizen came to Ghana and sought the permission of the victims' parents to take them to the U.S.A to be properly brought up.

The victims were two Ghanaian children aged 5 and 4 years. The trafficker represented to the parents of the victims that she did not have children and needed to take care of the victims who happened to be her nieces.⁵⁷ She succeeded in taking the victims to the U.S where they were kept in the company of other children previously secured by the trafficker from other places.

Unfortunately for her, she was busted by the U.S police. The kids were taken into protective custody. The trafficker, who was known, was charged with the offence of trafficking in persons and was convicted. She is now serving a ten year sentence in the U.S.

After the case was reported to INTERPOL Ghana, an arrangement was made with officers in the U.S and the victims were brought back to Ghana and handed over to their families in Tarkwa. The DSW was tasked to pay regular visits to the victims. The evidence is that the Department is doing this.⁵⁸

⁵⁵ See www.IRINnews.org

⁵⁶ Information obtained from an interview with Patience A. Quaye, Assistant Supt. Police, CID Headquarters, INTERPOL Unit on 15th March 2005 and from Document Review at the INTERPOL Unit.

⁵⁷ Traffickers usually identify themselves with victims either as aunts or uncles or a member of the extended family to which the victim belongs

⁵⁸ Information obtained from an interview with Patience A. Quaye, Assistant Supt. Police, CID Headquarters, INTERPOL Unit on 15th March 2005.

The case of C. B⁵⁹

This case involved a couple in the U. S. who trafficked a Ghanaian woman into the United States illegally and forced her to work as a domestic servant and nanny seven days a week without pay. The trafficker was a Ghanaian resident in the U.S aged 33. The victim is a Ghanaian aged 44 and known as M. O. According to the victim she was taken to the U.S.A by the trafficker on the pretext of getting her a good job. However, from February 2000, when she came to the United States, until July 2001, she was repeatedly abused and made to work seven days a week, cooking, cleaning, doing laundry, raking leaves and caring for a child, without being paid for her work. According to her, the trafficker arranged for her to baby sit the children of five friends and kept almost all the money the said friends paid for the services rendered. The trafficker was arrested and put before a U.S District Court on a charge of forced labour, conspiracy, harboring an illegal alien for financial gain and hiding her victim's passport and visa. The trafficker testified that she did not abuse the victim, whom she called "Auntie", and that she was not a servant, but a visiting family member who volunteered to help with chores. After a three-week trial and jury deliberations for a little over a day, the jury found the trafficker guilty of all the offences charged. The Court also convicted the trafficker's husband of conspiracy to commit the crimes for which his wife was convicted and for the crime of harboring an illegal alien for financial gain.

The verdicts are believed to be the first convictions under laws passed by the United States Congress in 2000 to combat trafficking in immigrants for purposes of exploiting them as workers. The convictions are seen as a reminder that the U.S Justice Department is committed to prosecuting human trafficking and related crimes and to ensuring that those who engage in these crimes are punished.

The Chorkor case⁶⁰

This case was reported to INTERPOL on November 10, 2003. According to the report, the alleged trafficker is a Ghanaian who owns a number of fishing canoes in Nigeria and is in the habit of taking Ghanaian children to work for him in Nigeria.

The parents of the victims were given paltry sums of money and gifts on a regular basis. The impression created is that the gifts are from their children and brought from the proceeds of their employment in Nigeria.

Based on this report, a number of the victims were traced through INTERPOL-Lagos and brought back to Ghana on 19th November, 2003.

The alleged trafficker is still on the run and investigations are on going to track him down. Meanwhile the victims have since been handed over to their families.

⁵⁹ 2003 The Washington Post, Tuesday, June 10, 2003; Page B01

⁶⁰ Information obtained from an interview with Patience A. Quaye, Assistant Supt. Police, CID Headquarters, INTERPOLINTERPOL Unit on 15th March 2005 and from Document Review at the INTERPOL Unit.

Ghana Immigration Service

The Ghana Immigration Service (GIS) is an agency of the Government of Ghana directly responsible to the Ministry of Interior. Its mission is the building of a stronger Ghana by operating a fair but firm immigration system that regulates the movement of people through Ghana's borders as well as their residence and establishment in Ghana to meet the socio-economic and development needs of the country.⁶¹

As the main agency in charge of immigration in Ghana, officers of GIS are usually the first security officers one comes into contact with at the point of exit or entry to Ghana. In view of this strategic position, the GIS is indispensable in the fight against human trafficking.

Over the years, officers of the Ghana Immigration Service (GIS) have had to confront individuals and groups using different modus operandi for human trafficking. According to statistics available at GIS, an estimate of over 3,582 women were trafficked to and from Ghana from 1998 to 2000. Out of this figure, 535 trafficked women were returned to Ghana between 1999 and 2000. These women were trafficked to countries such as Nigeria, Cote d'Ivoire, Lebanon, Libya, the United States, Italy, Belgium and the Netherlands.

The most recent case handled by the GIS is that of a Chinese woman aged 45 apprehended for luring seven Chinese nationals into Ghana in February 2005 on the pretext of securing them jobs in Ghana and later acquiring visas for them to travel to the United States or Europe.⁶²

The case of L. X.G.⁶³

L.X.G. is a Chinese woman who allegedly exploited the Ghana Free Zones programme to engage in human trafficking. She was arrested by officers of the Ghana Immigration Service on 21st February, 2005 together with seven of the victims, all of whom happened to be Chinese nationals.

Before her arrest, the suspect had applied to operate a restaurant in Ghana. Before her application could be approved, she was found to be the link person for a Chinese syndicate which engages in trafficking in persons of Asian origin. Her husband who is based in China recruits the victims in China and sends them to the suspect in Ghana for onward transmission to the United States of America or Europe. The suspect and her syndicate made the victims to pay huge sums of money to cover ticketing, hotel Bills and other expenses in the country of transit on the understanding that they will be assisted to secure jobs in the country of transit worth not less than US\$1000 per month.

According to the Director of GIS, the seven victims will be deported while the suspect will be prosecuted.⁶⁴

⁶¹ Immigration Act, 2002, (Act 573).

⁶² "Chinese Woman arrested for human trafficking" Daily Graphic report, Wednesday 23rd February 2005, Issue Number 149363, page 40.

⁶³ Ibid

⁶⁴ Ibid

More Children Rescued From Forced Labour: IOM Press Briefing Notes of 14 February 2006

The IOM's press briefing notes of 14 February 2006 carried a report on the rescue of thirteen children from forced labour at a fishing community near Yeji on the northern shores of Ghana's Lake Volta by IOM.

According to the report, the children were rescued in collaboration with the Ghanaian non-governmental organization Friends for Human Development (FHD). The 13 children were rescued from eight fishermen in Adakrom and were part of a larger group of 55 children identified by FHD with the help of IOM. The youngest child rescued was 6 years of age; the oldest was 15 and the majority of them had never been to school.

When all 55 children are rescued, it will bring the number of children freed and reunited with their families under this project to 592.

All rescued children are enrolled in school or in vocational training programmes soon after being reunited with their families. The 537 children released so far are currently receiving reintegration assistance from IOM such as school supplies, psychosocial counseling, medical screening and health care. The parents or guardians of the rescued children also receive income generation support from IOM in order to prevent the children from being re-trafficked.

The Experience Of Victims Of Trafficking Particularly Kayayee And Trokosi

The Kayayee Phenomenon In Ghana

In a study commissioned by the Danish International Development Agency (DANIDA), researchers found that trafficked girls from the northern parts of Ghana are in two categories. Those who work seasonally during the lean farming periods, and those who work for two to three years to save money in order to buy possessions for marriage and to support their families.

Many kayayee are lured to come to Accra by their peers who usually paint a very pretty picture about the kayayo business. Sometimes, because of claims of a good life in Accra, many parents in the rural areas voluntarily give out their children to traffickers and are sometimes given an advance payment or promised regular stipends from the child. Such parents are often told that the children would receive food, shelter, and some sort of training or education.

The reality, however, is that the young girls get to Accra having no shelter. They end up going to places like Sodom and Gomorrah, a slum settlement in Accra, where some form of accommodation is provided for a fee. The rooms are usually temporary wooden structures owned by men who exchange shelter for sexual favours. In many cases, the girls are forced by circumstances to join the sex trade at night.

The effects of this kayayo business are enormous. Besides the psychological trauma and total dependency on each other, these young girls are at the risk of sexual abuse since many of them sleep in the streets. The consequences of this are unwanted pregnancies and the risk of getting infected with the HIV virus.

In addition, many kayayee develop deformed spinal columns and are shorter than average, due to malnutrition and pressure from carrying heavy loads.⁶⁵

⁶⁵ Daily Graphic Report, Tuesday 29th March 2005. No.149389

The Trokosi System

Trokosi is a cultural crime control mechanism used mainly by the people of Southern Eweland and parts of Dangbeland in Ghana. It is a practice where a female child, usually a virgin, is selected by her family to serve in a shrine to atone for crimes committed by other members of the family.

Trokosi is a form of trafficking, whereby victims are handed over to priests in shrines where they physically dwell for a certain number of years and

render various forms of services to the priest. During this period, the victims are in perpetual bondage and are seen as slaves to the shrine.

Although Trokosi has been outlawed in Ghana as an unacceptable cultural practice⁶⁶, it is still practiced in some parts of Ghana due to deep belief in traditional local power, economic gain, and cultural and superstitious factors.

Below is a graphic account of the experience of a victim of Trokosi.

The Experience Of J.D.⁶⁷

"When I was seven years old, my parents took me from our home and sent me to a shrine where I was a slave to a fetish priest for seventeen years. My grandfather, they said, had stolen two dollars. When he was suspected of the crime and asked to return the money, he defended his innocence. The woman who had accused him of the crime went to the shrine and cursed my grandfather's family, at which point members of my family began to die. In order to stop the deaths, a soothsayer told us that my grandfather would have to report to the Trokosi shrine.

The priest told my family that they must bring a young girl to the shrine to appease the gods. A sister was sent to the shrine at Kebenu some six hundred miles away, but she died a few years later. Since I had been born just after my grandfather's death, I became her replacement.

I lived and worked in the priest's fields and kept the compound clean. While doing so, I was raped repeatedly by the priest on torn mats and other times on the cold floor of windowless huts. The other female slaves and I received neither food nor medical care. We had to find time after working on the priest's farm to burn charcoal or to sell firewood in the nearest town in order to make enough money to buy food. There were times we lived on raw peppers or palm kernel nuts to stay alive.

Twelve of us, four women and eight children, lived in a one-room, thatched-roof house. It was built of mud and lacked both windows and doors. The rain got in. The snakes got in. The room was twenty feet long and twelve feet wide. The ceiling was low, just shy of our heads, and we all slept together on a mat on the floor. This is not everything that I can remember, but saying it brings back pains and it is difficult to go back through all those experiences.

A typical day in the shrine was as follows: you wake up at five o'clock in the morning, go to the stream about five kilometers away to get water for the compound, sweep, prepare meals for the priest (not eating any yourself), go to the farm, work until six o'clock, and return to sleep without food or to scrounge for leftovers. At night, the priest would call one of us to his room and would rape us. I was about twelve when I was first raped.

I had to do something that would change my life. I escaped several times. The first time I escaped, I went to my parents, but they were too scared to keep me. They said that if they did, the gods would strike them dead. They brought me back to the priest to suffer the same pain again. The second time I escaped, I went to a nearby village. A young man fed me. He took advantage of me and made me pregnant. When the priest found out, he sent young men around the village to get me. They beat me endlessly and I had lots of cuts on my body. I collapsed and nearly died. The child's father had wanted to take care of us, but the priest threatened him with death. He was asked to pay some bottles of hard liquor and a fowl and warned to stay away from me or die. We have not met each other since.

⁶⁶ Criminal Code Amendment Act, 1998 (Act 554)

⁶⁷ Polaris Project on combating human trafficking available on: http://www.humantrafficking.com/humantrafficking/features_ht3/Testimonies/testimonies_mainframe.htm

The third time I escaped, I resolved that I would never again go back to the shrine. But it was not to be. I was scared and I went back to the shrine again. Yet, that was the turning point. I was about seventeen or eighteen at the time and resolved that I was going to do something to help other people in the shrine.

One day, a man representing a nonprofit organization called International Needs-Ghana came to the shrine to talk to the priest. This was my chance. I do not know where my sudden confidence came from, but all my fear had disappeared. I was no longer afraid of death and was prepared to die for others. I escaped through the bush to the major street where I was given a lift to Adidome and to the site of International Needs-Ghana.

The members of the organization taught me a lot of skills and kept me away from the priest. They trained me in bread baking and other vocations.

The practice of Trokosi is a deliberate attempt by men to subjugate women. A man commits a crime and a woman has to pay for it. That is unacceptable. Likewise, the shrine is a crime against children. The child of a slave shares his mother's plight. When the mother has food to eat, the child eats, if she has no food, the child will starve. If she has clothing, the child will likewise have some, if not, that is it. If she goes to the farm, the child goes along. There are thousands of women Trokosi slaves with children who need to be helped. Those who have been liberated also require help in order to recover from the suffering endured in the shrines."

Trend Analysis

In the next few pages, a trend analysis of the trafficking cases discussed above is provided. It includes the opinions, comments and recommendations gathered from interviews conducted with officials directly involved in the fight against human trafficking in Ghana and beyond.

Profile Of Victims

Majority of the victims of trafficking in Ghana as evidenced in the statistics of the various agencies are girls aged between 10 and 20 years. In other words, more girls than boys are trafficked in Ghana apparently due to the premium placed on girls as sex slaves, prostitutes, house helps and porters. In the fishing areas, however, where children are trafficked to assist in the fishing industry, it appears that the fishermen prefer male children.

Victims of trafficking are mostly Ghanaians from the Northern, Upper East, Upper West and Brong Ahafo Regions. Foreign nationals who are trafficked into Ghana either as a destination or transit point are mostly Nigerian, Korean and Chinese nationals.

Almost all the victims of trafficking in the cases reported so far have had little or no formal education, and come from poor families. As a result of their low level of education, victims are usually unemployed or are engaged in occupations which are poorly paid. The consequence of this is that many victims usually live below the poverty line and as such they are vulnerable to the machinations of traffickers.

Profile Of Perpetrators

From the reported cases of trafficking and opinions of officers involved in the fight against trafficking, it is evident that traffickers are mostly middle aged women and are sometimes victims of trafficking themselves.⁶⁸

At the local level, women who were once kayayees go back to their villages with possessions and use these to entice young children to follow them to the cities where they are made to work as porters or domestic servants. In many other cases, a middle aged man or woman usually lies to convince parents to entrust their children to him or her to be taken to the city or abroad.

⁶⁸ Daily Graphic Report, Tuesday 29th March 2005. No.149389

Much of the recruitment of children is done with the consent of the parents, who are sometimes given an advance payment or promised regular stipends from the recruiter and are told the children will receive food, shelter, and often some form of training or education at their destination.

According to a study done by the African Center for Human Development in Accra, trafficked women and children are usually sold or delivered into servitude by their parents. About 70 % of trafficked women and children are handed over to traffickers by their parents and relatives. Only about 17.7 % of the victims seek out the traffickers themselves. And about 0.3 % of victims are kidnapped by traffickers.

In some cases Ghanaian expatriates return to Ghana under the guise of seeking to marry young girls, promising them good jobs in Europe. Unfortunately after the marriage the girls are taken to Europe where they are made to engage in prostitution.

Country Profile

From the statistics available it is quite clear that Ghana is an origin, transit and destination country for trafficking in persons.

Trafficking in Ghana is both domestic and cross-border. With regard to internal trafficking, certain young boys and girls from the three northern regions and other deprived regions in Ghana are often brought to Accra and other major towns to work as head porters popularly known as "kayayee" in the local parlance. Many of them are also made to work as domestic servants or nannies and are paid very low salaries. The evidence is that most of the female "kayayee" work as prostitutes at night.⁶⁹

As far as cross-border trafficking is concerned, most of the victims who are trafficked into Ghana as a destination or transit country are people of Asian origin who are mostly made to work in restaurants and casinos in the country. In other cases, traffickers from Nigeria and other countries in the sub region use Ghana as a transit country on their way to Europe or the U.S.

Root Causes Of Trafficking

Trafficking is undertaken for different reasons, forced labour and sexual abuse or prostitution being the most frequent. Other reasons for trafficking in Ghana are provision of domestic services, trafficking for marriage, trafficking for begging in cities and trafficking for ritual purposes as evidenced in the Trokosi practice discussed earlier on.

Young persons who are trafficked to work as head porters, domestic servants or nannies, prostitutes etc mainly originate from the three northern regions and other deprived regions in Ghana.. The victims are usually brought to Accra during the dry season when farming activities subside in the rural areas. This is because the regions mentioned above have a single rainy season and very limited irrigation facilities. In the absence of year-round agricultural production opportunities, most rural folks in these regions migrate to the southern parts of the country to work as farm hands or send their children there to work as "kayayee" etc. Poverty is more acute in rural communities especially in the three northern regions of Ghana. This is what has caused many people there to seek livelihoods in places like Accra and Kumasi where they work as porters or kayayees.

Cross-border trafficking in persons also thrives on the same root causes of poverty and the absence of opportunities. About 60% of Ghanaians are living below the poverty line.⁷⁰ Many Ghanaians

⁶⁹ Daily Graphic Report, Tuesday 29th March 2005. No.149389

⁷⁰ "The Little Ghanaian Slaves Cry for Help, a Report on Child Trafficking in Ghana" African Centre for Human Development, February 2002 at p 4.

have thus resorted to traveling abroad, hoping that they will be able to find better jobs and break the vicious cycle of poverty in their families. In their quest to achieve this they usually fall prey to traffickers. Many victims are lured by perpetrators who promise them better and well paid jobs abroad. They are also promised comfortable lives in the destination country. They thus easily become victims of trafficking.

In many cases, socio-cultural factors such as the extended family system and its related and widely practiced system of intra-family foster care have also assisted traffickers in their trade. In Ghana, the placement of children in the care of other relatives is a very common and acceptable practice. This system has, however, been exploited by traffickers and many children have become victims of trafficking through people they regard as their relatives.

Identifying Victims

Cases of human trafficking are usually reported by individuals, non governmental organizations and foreign missions or Embassies in and outside the country. Domestic trafficking is usually reported by individuals and NGOs to WAJU or the Criminal Investigation Department (CID) of the Ghana Police Service. Cross border trafficking on the other hand is usually reported to INTERPOL or the Ghana Immigration Service.

Currently when a report of trafficking is made, the first move of the Police is to trace the victims and the alleged trafficker. Where the trafficker and the victims are successfully traced and arrested, the perpetrator is usually kept in Police custody whilst the victims are taken to shelter homes provided by the DSW pending the completion of investigations.

In most cases of cross-border trafficking involving the taking of Ghanaians abroad, the approach of INTERPOL-Ghana is to negotiate for the release of the victims from the country of destination so that they are brought back to Ghana. Arrangements are normally made to produce the victim(s) to give evidence during the prosecution of the trafficker in the country of arrest. In other words, the work of INTERPOL as far as trafficking is concerned is solely investigatory in nature, since they have never charged anyone for the "offence" of trafficking; apparently due to the absence of a law criminalizing trafficking in Ghana.

Legal And Moral Issues

Trafficking cases raise a number of legal and moral issues. In the first place the traffickers' actions amount to exploitation and are an infringement of the victim's right to freedom and dignity.

The other issue is that the police in some of the cases charge the culprits with 'offences' such as illicit human trafficking which is actually not an offence in Ghana. This creates a situation where the charges are dismissed as irregular and unconstitutional. In other cases, perpetrators are charged with offences such as procurement⁷¹, abduction⁷², kidnapping⁷³, or child stealing⁷⁴, which are recognized offences in Ghana. The components of these offences are different and may not be present in a typical trafficking case. As a result it becomes difficult to convict traffickers for such offences and in cases where they are convicted the sentences imposed are usually not punitive enough to deter others from engaging in such acts. More so, in collating data, such offences are treated as separate offences and not as trafficking cases. All these result from the fact that until December 2005, trafficking in persons was not

⁷¹ Criminal Code 1960, Act 29, Section 107.

⁷² Ibid Section 91.

⁷³ Ibid Section 89.

⁷⁴ Ibid Section 93.

directly criminalized in Ghana. It is hoped that traffickers will now be prosecuted under the new Human Trafficking Act.

Another legal issue associated with trafficking cases is the availability of evidence to be used in securing the successful prosecution of perpetrators. It is a constitutional requirement in Ghana and a general principle within common law countries that an accused person is deemed innocent until he is proven guilty. The onus of proof in every criminal case is ordinarily on the prosecution, and they discharge this by adducing evidence which establishes the guilt of the accused person beyond reasonable doubt. However, in many trafficking cases in Ghana, one major problem prosecutors face is getting victims to testify in court. This makes it very difficult for the prosecution to satisfy the standard of proof required to secure a conviction.

Another issue arises from the voluntary decision of adults to travel with traffickers anywhere to secure jobs. In such cases it becomes extremely difficult to prosecute the perpetrator because of the element of volition and consent. This is especially so where the victim and the perpetrator are related by blood and also in situations of foster care.

Strengths, Challenges, And Recommendations In Investigating And Prosecuting Trafficking Cases

Until December 2005, the police charged alleged traffickers under offences such as procurement, kidnapping, abduction or child stealing. The problem with this alternative approach is that, not only are such cases not counted in computing the statistics on trafficking cases, the sentences that are passed on offenders are not punitive enough or commensurate with the offence of trafficking. Again, all the attendant issues related to trafficking as a systemic problem in Ghana will remain unaddressed as long as the offence remains nameless and is consistently subsumed under other offences. As noted above, it is hoped that

this will change with the passage of the Human Trafficking Act.

Another major challenge is getting victims to testify against traffickers. Often, the cost implications of going to court and a general and pervasive attitude of the Ghanaian not to get mixed up with Police and court affairs for fear of reprisals, ensures that victims are not very cooperative in assisting the Police and the courts to investigate and prosecute persons charged with trafficking-related offences. The result is that most cases are left pending or are struck out for want of evidence. This problem is made worse by issues relating to the jurisdiction of various courts. In practical terms, this often creates a situation where the locations for investigating the case, for prosecuting the case and for securing witnesses may all be different. This is the main problem faced by officers of WAJU in prosecuting trafficking-related cases.

Another constraint in the fight against trafficking is the context of the Ghanaian family system and family practices. Law enforcement authorities often have a difficult time identifying persons who are being trafficked because of the fluid nature of family relations in the country. For example, children are often trafficked into the custody of someone referred to as a "cousin" or an "aunt" even if there is no blood relationship. Again, much of the recruitment of children is done with the consent of the parents, who sometimes are given an advance payment or promised regular stipends from the recruiter and are told that the children would receive food, shelter, and often some sort of training or education. Some parents send their children to work for extended family members in urban areas under the same conditions and are willing to do the same with traffickers.

The law enforcement agencies in Ghana also do not have the necessary capacity to deal effectively with the problem of trafficking. INTERPOL-Ghana, the unit that is responsible for international crime in Ghana, does not have the necessary logistics to

help them do their work well. They often do not have the resources to reach traffickers and mostly end up arresting only the victims with the hope that they might give evidence leading to the arrest of the perpetrators. Such devastated victims are usually taken to shelter homes that cannot feed them adequately. As a result when they are released to their families, they rarely turn up to assist the police in their investigations.

One key issue which must be addressed is the problem of jurisdiction of state agencies over trafficking. All the major agencies like INTERPOL, GIS, the Ministry of Manpower Development and Employment and the Ministry of Women and Children's Affairs all wish to be directly in charge of the fight against trafficking and this makes collaboration very difficult. The Human Trafficking Act has assigned ministerial responsibility for matters under the Act to the Minister responsible for Women and Children. Yet, it is clear that the ministry will have to draw heavily on the resources of other ministries (Interior, Manpower, Youth and Employment etc) if it is to be effective in executing its mandate under that Act.

The problem of trafficking can be properly addressed by first of all educating the people to appreciate the fact that it is a menace which must be addressed. If the people themselves do not see anything wrong with it, it will be very difficult to deal with the problem. Such education must include issues relating to the criminalization of the act of trafficking; the various dimensions of the offence; the human rights dimensions of the phenomenon; and the role of the victim in preventing the crime and in assisting in the apprehension of offenders, the investigation of the crime, the prosecution of offenders and the rehabilitation of victims.

As far as rehabilitation is concerned, the only facility that is currently available is the shelter home provided by the DSW. This home was, however, specifically designed for children and the

inmates are mostly children. As a result of this, victims of trafficking who are above 18 years of age often find it very difficult to stay there. In view of this, after spending two or three days at the shelter home, they often pressurize officers to release them to their families. This normally puts them out of touch with the Police Officers who are in the process of investigating the case. It is clear that there is a need to provide better facilities to house victims of trafficking where they can be given some form of training to facilitate their integration into the job market. The state is primarily responsible for this and it may create an endowment fund for victims of human trafficking in conjunction with the private for profit and not-for-profit sectors. It is heartwarming that a fund has been created under the Human Trafficking Act for various purposes including the rehabilitation and settlement of victims of trafficking. It only remains to fill and properly manage the fund.

It is also necessary to properly resource our security agencies by providing them with the necessary facilities to enable them to discharge their functions effectively. The nature of trafficking requires constant monitoring and correspondence with other agencies around the world and this can only be possible if agencies like INTERPOL-Ghana and WAJU are provided with the necessary communication facilities such as International Direct Dial telephones and internet facilities.

The recruitment of labour from the North should also be regulated to ensure that only adults are engaged. The reality is that, inequalities and inequities between the southern and northern parts of the country will always act as the push and pull factors. The absence of job opportunities in the north has aggravated poverty levels to the extent that some parents are only too glad to give their children away to strangers-traffickers and potential traffickers-for a price. Only a concerted effort to reduce rural unemployment and under-employment will effectively deal with this menace.

Recommendations

Regulations For The Human Trafficking Act

There is a serious need to pass subsidiary legislation to provide for all the issues that have been raised in the legislative review of trafficking in Ghana in the previous chapters. It is important that the regulations address all the shortcomings identified in the analysis of the law and policy on trafficking in Ghana as contained in this publication.

Before the regulations are passed, there should be targeted workshops - in the real sense of the word - at which participants, drawn from institutions that deal directly with issues of trafficking will lay bear the challenges they face in their trafficking-related activities. These challenges will then be thought through and various options developed for remedying them. It is the consensus options that should go to the Attorney-General's office as drafting instructions.

The Regulations should be detailed, though not over bulky and complex. They should also be reviewed by the stakeholders before they are laid before Parliament.

Under the Act, it is the Minister, on the recommendation of the Management Board, who should make the regulations. All the above activities will therefore have to be done on her behalf and with her active support.

It is imperative that the regulations address issues related to the prevention of trafficking, dealing with perpetrators, the protection of victims, and a general improvement in the human rights content of the Act. In response to demands from European governments, the ILO has developed guidelines for

drafting legislation on Forced Labour and Human Trafficking on the basis of ILO Convention 29 and the Palermo Protocol. These guidelines should continue to guide the making of the regulations.

It needs to be remembered that the law requires that subsidiary legislation (such as regulations) be in accord with the parent Act, that is, the Act under which they are made.⁷⁵ Thus matters that should have been dealt with in the Act may not be included instead in the regulations. It appears, however, that the matters for which the Minister has been empowered to make regulations under the Human Trafficking Act are sufficiently elastic to provide for all the matters that are being suggested here for inclusion in the regulations.⁷⁶

Composition Of The Human Trafficking Management Board

Action must follow the passage of the law. The Human Trafficking Management Board that is set up under the Act comprises officers from all the key government institutions that deal with trafficking issues. There is therefore a preponderance of government officials in the Board. It is common knowledge that many civil society organizations (CSOs) do a lot of work on trafficking issues. It is also clear that within the parameters of our new constitutional democracy, civil society groups will be with us for a long time to come. It is imperative that this recognition be formalized by ensuring that key CSOs fill the vacancy for "three other persons one of whom is a woman".⁷⁷ The International Labour Organization (ILO), the International Organization for Migration (IOM), the International Police

⁷⁵ Orders 166 and 167 of the Standing Orders of Parliament, 1995.

⁷⁶ See Section 41 of the Human Trafficking Act, 2005 (Act 694).

⁷⁷ Ibid, Section 29(1) (m).

Organization (INTERPOL), the Women and Juvenile Unit (WAJU) of the Ghana Police Service (GPS), should be considered for inclusion on the board.

A task force so constituted will have both a policy and an operational role according to the terms of Section 30 of the Act.

Operationalization Of The Law

Flowing from the above, the board must lead in policy development and the operationalization of the Act. This must include the following:

1. Educate and work in collaboration with the Ministry of Manpower, Youth and Employment, Ministry of Women and Children's Affairs, Ministry of Justice and Attorney-General's Department and agencies directly responsible for enforcing and implementing the laws on trafficking;
2. Create public education and social marketing campaigns on the provisions of the laws on trafficking that targets areas where trafficking is prevalent;
3. Conduct training of trainer programmes for representatives of government agencies, including Ministry Officials, Police, Immigration Officials, Customs Excise and Preventive Service Officials, relevant Committees of Parliament, Judges, Prosecutors, Lawyers, etc on the provisions of the law on trafficking;
4. Prepare government representatives to serve as trafficking law trainers within their respective agencies;
5. Develop, implement and then monitor and evaluate processes for achieving the objectives of the law;
6. Initiate research on the implementation of the laws on trafficking in order to advise on legislative and administrative changes;
7. Continue to serve as a readily available resource to the community and government on trafficking issues.

Ratification Of International Conventions On Trafficking

Ghana has ratified the following relevant Conventions which are key to this study: The Worst Forms of Child Labour Convention, 1999 (No. 182), Forced labour Convention, 1930, (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951 (No. 100). Ghana has also ratified the UN Convention on the Rights of All Migrant Workers and Their Families, 1990.

Ghana has not ratified the ILO Conventions 97, 143 and 181. It is advisable that Ghana considers ratifying those Conventions and incorporating them into her domestic legislation. In addition to the above mentioned ILO Conventions which are not yet ratified, the Minimum Age Convention, 1973 (ILO Convention 138), and the Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children supplementing The United Nations Convention Against Transnational Organized Crime (The Palermo Protocol) are essential for ratification. As part of the objectives of the ECOWAS Initial Plan of Action, States that have not yet done so are required to sign, ratify and fully implement the Palermo Protocol. This is vital if we are to have a comprehensive framework for making a major onslaught on the phenomenon of trafficking in persons.

An alternative method is to ensure that all the Conventions on trafficking that are not ratified are taken account of in any revision of the Trafficking Act or in the Regulations to be passed. The disadvantage of this second option is that Ghana will still be on record as not having ratified the relevant international Conventions and this will not be good public relations. Again, various international punitive options for traffickers and remedial options for victims may not be open to Ghana if she does not ratify the said Conventions. It is significant that Section 1 of the ECOWAS Plan of Action against trafficking in persons also stipulates that states that have not yet

ratified the ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters and ECOWAS Convention A/P1/8/94 on Extradition shall ratify and implement these Conventions.

Dealing With Root Causes

It is well known that the key underlying cause of trafficking in Ghana is the lack of economic,

social and political opportunities that leads to poverty. The poorest regions in Ghana are the source of the victims of human trafficking and the richest regions are their destination. Children from poor families, communities and regions are more likely to migrate in order to escape poverty. To effectively deal with trafficking (and many other social evils) we need to think seriously about dealing with the inequalities, inequities and discrimination that create poverty.

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The Six Hundred And Ninety-Fourth Act Of The Parliament Of The Republic Of Ghana Entitled Human Trafficking Act, 2005

AN ACT for the prevention, reduction and punishment of human trafficking, for the rehabilitation and reintegration of trafficked persons and for related matters.

Date Of Assent: 5th December, 2005

Enacted by the President and Parliament:
Prohibition and offences relating to trafficking

SECTION 1 MEANING OF TRAFFICKING

(1) Human trafficking means the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by

- (a) the use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or
- (b) giving or receiving payments and benefits to achieve consent.

(2) Exploitation shall include at the minimum, induced prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(3) Placement for sale, bonded placement, temporary placement, placement as service where exploitation by someone else is the motivating factor shall also constitute trafficking.

(4) Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

SECTION 2 PROHIBITION OF TRAFFICKING

(1) A person shall not traffic another person within the meaning of section 1 or act as an intermediary for the trafficking of a person.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to imprisonment for a term of not less than five years.

(3) For purposes of this section, an intermediary is someone who participates in or is concerned with any aspect of trafficking under this Act who may or may not be known to the family of the trafficked person.

(4) To be concerned with an aspect of trafficking in this Act means

- (a) to send to, take to, consent to the taking to or to receive at any place any person for the purposes of trafficking, or
- (b) to enter into an agreement whether written or oral, to subject any party to the agreement or subject any other person to trafficking.

SECTION 3 PROVISION OF TRAFFICKED PERSON PROHIBITED

(1) A person who provides another person for purposes of trafficking commits an offence even where the person is a parent.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years.

SECTION 4 USE OF TRAFFICKED PERSONS PROHIBITED

A person who uses a trafficked person commits an offence and is liable on summary conviction to a term of imprisonment of not less than five years.

SECTION 5 CONVEYANCE IN TRAFFICKING

Means of conveyance in trafficking includes use of public transport and other forms of transport such as conveyance by land, water or air.

SECTION 6 DUTY TO INFORM

- (1) A person with information about trafficking
- (a) shall inform the police, or
 - (b) may inform
 - (i) the Commission of Human Rights and Administrative Justice,
 - (ii) the Department of Social Welfare,
 - (iii) the Legal Aid Board, or
 - (iv) a reputable Civil Society Organisation.

(2) A person who fails to inform the police commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units or a term of imprisonment not less than twelve months or to both.

SECTION 7 SPECIAL MITIGATING FACTORS

Where a court in sentencing a person convicted under section 3 or 4 finds that there are special circumstances related to the offence or the offender, and that the imposition of the minimum sentence in respect of the offence is harsh, it may sentence the accused to a lesser term of imprisonment in addition to a fine of not less than five hundred penalty units.

SECTION 8 APPLICATION

A person is liable to be tried and punished in Ghana for trafficking if the person does an act which if done within the jurisdiction of the courts in this country would have constituted the offence of trafficking.

Complaint and arrest

SECTION 9 FILING OF COMPLAINT TO POLICE

(1) A victim of trafficking or a person with information about trafficking may file a complaint with the

police or other security services at the place where

- (a) the offender resides,
- (b) the victim resides,
- (c) the trafficking occurred or is occurring, or
- (d) the victim is residing temporarily, if the victim has left his or her normal place of abode.

(2) A child may be assisted by a next friend to file a complaint on trafficking.

(3) Despite subsection (1), a complaint about trafficking shall be filed by a social welfare officer, probation officer, health care provider, teacher, district labour officer or any other person where the intervention is in the best interest of the victim.

(4) Where a victim is for any reason unable to file a complaint personally, a member of the victim's family or any person with knowledge of the offence may file a complaint on behalf of the victim.

(5) Where a person who could have been a complainant under this Act has died, the complaint may be made by the next of kin or a person with knowledge of the offence.

SECTION 10 POLICE ASSISTANCE

(1) A police officer shall respond to a request by any person for assistance from trafficking and shall offer protection in a case of alleged trafficking even where the person reporting is not the victim of the trafficking.

(2) A police officer who fails to respond to a request for assistance shall on a report filed by the complainant to a superior officer be subject to Police Service disciplinary procedure.

SECTION 11 RECEIPT OF COMPLAINT BY POLICE

(1) Where a police officer receives a complaint, the officer shall

- (a) take a statement from the parties and witnesses,
- (b) record the complaint in detail and provide a copy of the written report to the victim,
- (c) assist the victim to obtain medical treatment where necessary,
- (d) assist the victim to a place of safety if the victim expresses concern about safety, and
- (e) inform the victim of his or her rights and any basic material support which may be available to assist the victim.

(2) A police officer shall take a statement from a child in the presence of a next friend or a guardian.

SECTION 12 ARREST BY POLICE

(1) A police officer may arrest a person for trafficking with a warrant issued in pursuance of this Act.

(2) A police officer may arrest a person for trafficking without a warrant where

- (a) an act of trafficking is committed in the presence of the officer,
- (b) the police officer is obstructed by the person in the execution of police duties, or
- (c) the person has escaped or attempts to escape from lawful custody.

(3) A police officer may arrest without warrant upon reasonable grounds of suspicion where a person

- (a) has committed an offence of trafficking,
- (b) is about to commit an offence of trafficking and there is no other way to prevent the commission of the offence, or
- (c) is wilfully obstructing the police officer in the execution of police duties.

SECTION 13 ARREST BY PRIVATE PERSON WITHOUT WARRANT

(1) A private person may arrest a person without warrant if the person commits an act of trafficking in the presence of the private person.

(2) A private person may arrest a person without warrant where the private person has reasonable suspicion that the person has committed an offence of trafficking.

(3) A private person who effects an arrest shall immediately hand over the person to the police.

Rescue, rehabilitation and reintegration

SECTION 14 RESCUE OF TRAFFICKED PERSONS

(1) An authorised officer shall be responsible for the rescue of a trafficked person which may be carried out in collaboration with an Organisation.

(2) Despite subsection (1) any government agency may rescue a trafficked person.

SECTION 15 TEMPORARY CARE OF TRAFFICKED PERSON

(1) The Ministry shall provide temporary basic material support for the care and protection of a rescued victim of trafficking.

(2) Despite subsection (1), a District Assembly shall be resourced from the Fund to protect the welfare of a trafficked person within its area of authority in consultation with the relevant government agencies and Organisations in the District.

SECTION 16 COUNSELLING OF TRAFFICKED PERSON

The Ministry shall ensure the provision of counselling services for the victim of trafficking to assist with the rehabilitation and reintegration of a trafficked person.

SECTION 17 TRACING OF FAMILY OF TRAFFICKED PERSON

(1) The Ministry shall be assisted by the police, an Organisation and any other person to trace the family of a trafficked person.

(2) The views of the trafficked person shall be taken into consideration in connection with family reunification.

(3) A person who has information which may assist with the tracing of the family of a trafficked person shall provide the information to the Department, the police or an Organisation.

(4) The Ministry may be assisted by an Organisation or any other person to trace the family of a trafficked person.

SECTION 18 REHABILITATION OF TRAFFICKED PERSON

(1) The Ministry shall assist to provide a rescued victim of trafficking with employable skills and employment opportunities.

(2) The Ministry shall assist the victim with start up capital to ensure the survival of the trafficked person.

(3) Trafficked victims may receive financial assistance from the Fund.

(4) The best interest of the child shall be paramount in assistance given to the rescue, rehabilitation and re-integration of a trafficked child.

SECTION 19 COMPENSATION

(1) A person convicted of the offence of trafficking shall be ordered by the court to pay compensation to the victim of the trafficking.

(2) A person who causes injury to a person in pursuit of trafficking shall be ordered by the court to pay compensation to the injured person.

(3) The payment of compensation shall be in addition to any other punishment.

Human Trafficking Fund

SECTION 20 ESTABLISHMENT OF FUND

There is established by this Act a Human Trafficking Fund.

SECTION 21 SOURCES OF MONEY FOR THE FUND

The moneys for the Fund include

- (a) voluntary contributions to the Fund from individuals, Organisations and the private sector,
- (b) the amount of money that Parliament may approve for payment into the Fund,
- (c) grants from bilateral and multilateral sources,
- (d) proceeds from the confiscation of property connected with trafficking, and
- (e) money from any other source approved by the Minister responsible for Finance.

SECTION 22 OBJECTIVE OF THE FUND

The moneys of the Fund shall be applied as follows:

- (a) towards the basic material support of victims of trafficking;
- (b) for the skills training of victims of trafficking;
- (c) for tracing the families of victims of trafficking;
- (d) for any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in their best interest;
- (e) towards the construction of reception shelters for trafficked persons in the districts; and
- (f) for training and capacity building to persons connected with rescue, rehabilitation and reintegration.

SECTION 23 MANAGEMENT OF THE FUND

(1) The Fund shall be managed by the Ministry.

(2) Moneys for the Fund shall be paid into a bank account opened for the purpose by the Ministry with the approval of the Minister for Finance.

SECTION 24 PAYMENT FROM THE FUND

(1) Moneys issued from the Fund shall be by cheque signed by the accountant of the Ministry and any two

of the following:

- (a) the Chief Director of the Ministry;
- (b) the secretary of the Management Board established under section 28, and
- (c) one other member of the Management Board nominated by the members of the Management Board.

(2) The Management Board shall develop guidelines for disbursements from the Fund.

SECTION 25 ACCOUNTS AND AUDIT

(1) The Ministry shall keep books of account of the Fund and proper records in relation to them, in the form approved by the Auditor-General.

(2) The Ministry shall submit the accounts of the Fund to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

SECTION 26 FINANCIAL YEAR

The financial year for the Fund shall be the same as the financial year of the Government.

SECTION 27 ANNUAL REPORT

(1) The Minister shall within one month after the receipt of the audit report submit an annual report covering the activities and the operations of the Fund for the year to which the report relates.

(2) The annual report shall include

- (a) the audited accounts of the Fund and the Auditor-General's report on the accounts of the Fund, and
- (b) other information that the Minister may consider necessary.

(3) The Minister shall within one month after the

receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

Human Trafficking Management Board

SECTION 28 ESTABLISHMENT OF THE HUMAN TRAFFICKING MANAGEMENT BOARD

There is established by this Act a Human Trafficking Management Board.

SECTION 29 COMPOSITION OF THE MANAGEMENT BOARD

- (1) The Management Board shall consist of
- (a) the chairperson who shall be the Minister or Deputy Minister,
 - (b) one representative of the Attorney-General not below the level of Principal State Attorney,
 - (c) one representative of the Ministry of Local Government not below the level of a Deputy Director,
 - (d) one representative of the Ministry of Interior not below the level of a Deputy Director,
 - (e) one representative of the Ministry of Health not below the level of a Deputy Director,
 - (f) one representative of the Ministry of Education not below the level of a Deputy Director,
 - (g) one representative of the Ministry who shall be the secretary,
 - (h) one representative of the Ghana Journalists Association,
 - (i) one representative each from the
 - (i) Police Service,
 - (ii) Immigration Service,
 - (iii) Customs, Excise and Preventive Service, and
 - (iv) the Office of the National Security Co-ordinator.
 - (j) the Director of Social Welfare,
 - (k) one representative of the Labour Department not below the level of a deputy chief labour officer,
 - (l) one person from the private sector nominated by the Minister, and
 - (m) three other persons one of whom is a woman

(2) The members of the Management Board other than the ex-officio members shall be nominated by the institution concerned.

(3) The members of the Management Board shall be appointed by the Minister with the authority of the President and shall be committed to combating human trafficking.

SECTION 30 FUNCTIONS OF THE MANAGEMENT BOARD

The Management Board shall

- (a) make recommendations for a national plan of action against human trafficking, monitor and report on the progress of the national plan of action through the Minister to the Economic Community of West African States Secretariat,
- (b) advise the Minister on policy matters under this Act,
- (c) provide assistance on the investigation and prosecution of trafficking cases,
- (d) propose and promote strategies to prevent and combat trafficking in persons,
- (e) liaise with government agencies and Organisations to promote the rehabilitation and reintegration of victims of trafficking,
- (f) prepare guidelines for disbursements from the Fund,
- (g) conduct research on international and regional developments and standards on trafficking in persons, and
- (h) deal with any matter concerned with human trafficking.

SECTION 31 MEETINGS OF THE MANAGEMENT BOARD

(1) The Management Board shall meet at the Ministry at least once every three months.

(2) The quorum at a meeting of the Management Board is five members.

(3) The chairperson shall convene and preside at meetings of the Management Board and in the absence of the chairperson a member of the

Management Board elected by the members present from among their number shall preside.

(4) Matters before the Management Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(5) The Management Board may co-opt a person to attend its meeting but the co-opted person may not vote on a matter for decision of the Management Board.

(6) Subject to this section, the Management Board may determine the procedure for its meetings.

SECTION 32 SECRETARIAT OF THE MANAGEMENT BOARD

(1) The Management Board shall have a secretariat.

(2) The secretariat of the Management Board shall be at the Ministry which shall provide the facilities and personnel for the performance of the functions of the Management Board.

SECTION 33 ALLOWANCES

Members of the Management Board shall be paid the allowances approved by the Minister in consultation with the Minister responsible for finance.

Miscellaneous

SECTION 34 CONTINUED STAY OF ILLEGAL IMMIGRANTS

(1) Despite the provisions in section 21 of the Immigration Act, 2000 (Act 573), on the removal of an illegal immigrant, a trafficked person who is in this country unlawfully, may remain in this country throughout the period of a legal investigation and prosecution of a trafficker and the Management Board shall make arrangements for the repatriation of the trafficked person upon completion of the legal process.

(2) If it is in the best interest of the trafficked person, the trafficked person may be allowed to remain in this country after the legal process with the approval of the Minister of Interior and the person shall stay in a shelter provided by the Ministry where the person shall receive basic material support until resettled in this country.

(3) A trafficked person may be repatriated to the country of origin of the trafficked person upon the conviction of a trafficker and shall stay in a reception centre provided by the Ministry where basic material support shall be provided until the repatriation.

SECTION 35 EXTRADITION OF TRAFFICKING OFFENDER

Subject to the Extradition Act, 1960 (Act 22), a non-citizen convicted of trafficking in persons under a provision of this Act shall be extradited from the Republic.

SECTION 36 POWER OF POLICE UNDER ACT 30 AND ACT 560

The provisions of this Act in so far as they relate to the powers of a police officer, shall be in addition to the powers of a police officer under the Criminal Procedure Code, 1960 (Act 30) and the Children's Act, 1998 (Act 560).

SECTION 37 REFERENCE TO FAMILY TRIBUNAL

(1) Where there is a need for care and protection for a child victim of trafficking, the court dealing with an offence committed under this Act, may refer matters concerned with temporary custody of the trafficked child to a Family Tribunal.

(2) A matter connected with trafficking that relates to a child and the rights of the child shall be referred to a Family Tribunal under the Children's Act, 1998 (Act 560).

SECTION 38 NO PUBLICATION ON HUMAN TRAFFICKING

(1) A person shall not publish a report of human trafficking proceedings under this Act which may reveal the identity of the trafficked person except with the leave of the court.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or a term of imprisonment not exceeding twelve months or to both.

SECTION 39 CRIMINAL CHARGES AND CIVIL CLAIM

The institution of a criminal charge arising from acts of trafficking is in addition to and does not affect the rights of a victim to pursue a civil claim for damages.

SECTION 40 CONFISCATION OF PROPERTY

(1) Where there is evidence that movable or immovable property has been acquired by a trafficker as a result of gains from human trafficking activity, the court shall order the confiscation of the property.

(2) The court may make an order that it considers appropriate in connection with the confiscated property and may direct that the proceeds of the confiscated property be paid into the Fund.

SECTION 41 REGULATIONS

The Minister may, on the recommendation of the Management Board, by legislative instrument make Regulations on

- (a) preventive measures to be taken by District Assemblies against human trafficking;
- (b) the training for the personnel of the security services to combat trafficking;
- (c) the skills training, care and protection of victims of trafficking;
- (d) the collection of data and exchange of information on trafficking in persons;

- (e) the rescue, rehabilitation and reintegration of trafficked persons;
- (f) any other matter for the effective implementation of this Act;
- (g) special mitigating guidelines provided in respect of the provisions of section 7; and
- (h) skills training to include formal education for young victims.

SECTION 42 INTERPRETATION

In this Act unless the context otherwise requires

"abduction" has the meaning attributed to it in the Criminal Code, 1960 (Act 29);

"authorised officer" means an immigration officer, a police officer or any other public officer authorised by the Ministry of Interior to implement any provision of this Act;

"basic material support" includes education, health care, shelter, counselling and nutritional requirements;

"bonded placement" includes placement by a trafficker of a person for exploitative purposes with a promise of subsequent payment to the trafficker for the placement of the trafficked person by the user of the trafficked person and the placement of a trafficked person to offset a debt already owed by the trafficker or another person;

"care and protection" has the same meaning as basic material support;

"child" means a person below eighteen years;

"coercion" means a threat of serious injury to or physical restraint against a person, a scheme, plan or pattern intended to cause a person to believe that failure to perform an act will result in serious injury to or physical restraint of a person;

"court" means court of competent jurisdiction;

"District Assembly" includes a Metropolitan Assembly and Municipal Assembly;

"foreign authority" means a person designated by a foreign government as a competent authority to act on behalf of a foreign government for purposes of this Act;

"Fund" means the Human Trafficking Fund established under section 20;

"government" means the authority by which the executive authority of Ghana is duly exercised;

"government agency" means an establishment in this country by virtue of an enactment and an establishment approved by the Ministry;

"guardian" means a social welfare officer, probation officer, health care provider, leader, district labour officer, or any other person who intervenes in the best interest of a child;

"injury" includes physical, emotional and psychological hurt;

"Organisation" means Civil Society Organisation which includes community based organisation, Non-Governmental Organisations, Traditional Authorities, religious bodies and associations;

"Management Board" means Human Trafficking Management Board;

"Minister" means Minister responsible for Women and Children's Affairs;

"Ministry" means the Ministry responsible for Women and Children's Affairs;

"next friend" means a person who intervenes to assist a child in a legal action;

"organs" include a part of the human body which can be removed and used to sustain life for any purpose;

"place of safety" means premises where the welfare of a victim of trafficking is assured;

"placement as service" means the placement of a person by a trafficker for exploitative purposes where the service of that person is not remunerated;

"police officer" includes an officer from another security service;

"private sector" means the part of the economy which is not funded by the Government or from moneys provided by Parliament;

"security services" includes the Police, Customs, Excise and Preventive Service, the Immigration Service and Bureau of National Investigation;

"servitude" means involuntary bondage;

"social welfare officer" includes a probation officer;

"temporary placement" means the transfer of a trafficked person for a limited period for exploitative purposes;

"trafficked person" means a victim of trafficking; and

"trafficking" has the meaning provided under section 1;

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