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## Human Trafficking: Trends in Africa

Florence Shu-Acquaye

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# **Human Trafficking: Trends in Africa**

*Florence Shu-Acquaye*

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## I. INTRODUCTION

The gaps in human trafficking laws in Africa in comparison to the West, and its interpretation within a context where perpetrators perceive the practice as an acceptable standard, is alarming. This has spurred my interest to carry out this research and further raise awareness of these and other related issues idiosyncratic of Africa.

The United Nations Convention against Transnational Organized Crime (UNTOC) defines trafficking in persons as:

the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>1</sup>

The trafficking of persons across international borders is a worldwide problem with about 2.5 million people estimated to be in situations of human trafficking.<sup>2</sup> Sexual exploitation is the most common form of human trafficking (79%), followed by forced labor (18%).<sup>3</sup> The statistics regarding the overall number of victims are unknown because forced labor and other forms of exploitation, such as domestic servitude and “the exploitation of children in begging, sex trade, and warfare,” are often go unreported.<sup>4</sup> However, human trafficking has become a very common trend in African countries, where the laws on human trafficking are either virtually nonexistent or, if in existence, weak or inapplicable.<sup>5</sup> For example, national legislation on human trafficking has been passed only recently in many of the West and Central African countries including Ghana, Liberia, Nigeria, Sierra Leone and the Gambia, and Mauritania.<sup>6</sup> Currently, there are no anti-trafficking laws in Chad, Cote d’Ivoire, and Niger.<sup>7</sup>

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1. *Human Trafficking FAQs*, United Nations Office on Drugs and Crime, [www.unodc.org/en/human-trafficking/faqs.html](http://www.unodc.org/en/human-trafficking/faqs.html) (last visited Oct. 18, 2012).

2. *Id.*

3. United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, at 6 (Feb. 2009), available at [http://www.unodc.org/documents/Global\\_Report\\_on\\_TIP.pdf](http://www.unodc.org/documents/Global_Report_on_TIP.pdf) [hereinafter *Global Report*].

4. *Human Trafficking FAQs*, *supra* note 1.

5. U.S. Dep’t of State, *Trafficking in Persons Report* 47, 49 (10th ed 2010), available at <http://www.state.gov/documents/organization/142979.pdf> [hereinafter *Trafficking In Persons Report*].

6. *See id.* at 153-54, 157-58, 212-13, 229-30, 255-56, 291.

7. *See id.* at 108-10, 123, 254.

In February 2009, the United Nations Office on Drugs and Crime (UNODC) launched a Global Report on Trafficking in Persons based on criminal justice and victim assistance data gathered from 155 countries.<sup>8</sup> This Report indicated that of the 155 countries reported, only 91 countries had at least one human trafficking prosecution and only 73 countries reported at least one conviction.<sup>9</sup> In the same vein, the “estimated global annual profits made from the exploitation of all trafficked forced labor are US \$31.6 billion.”<sup>10</sup> Of this \$31.6 billion, “\$1.6 billion (5%) is generated in sub-Saharan Africa;” and “\$1.5 billion (4.7%) is generated in Middle East and North Africa.”<sup>11</sup> A closer look at African countries is necessary, especially when examining the U.S. Department of State *Trafficking in Persons Report*, which has been published annually for the past decade, highlighting global trends in trafficking and how individual countries deal with them.<sup>12</sup> Countries’ performances are measured against a United Nations international standard and the United States Trafficking Victims Protection Act (the “TVPA”).<sup>13</sup>

This paper examines the laws on human trafficking (or lack thereof) in some African countries, the reasons why these laws have not been successfully implemented, and the factors that maintain and propagate this practice within the particular context of Africa. This paper then proposes what should be done to address the matter and how. For example, the cultural values that are an impediment in combating human trafficking are identified along with solutions to change these values. Also included are other effective strategies, and proactive, pragmatic approaches to reduce and prevent human trafficking. Additionally, the challenges likely to be encountered in addressing human trafficking in African cultures are discussed, as well as the role of the African governments and the African Union in addressing issues of human trafficking on the continent.

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8. See *UNODC Report on Human Trafficking Exposes Modern Form of Slavery*, United Nations Office on Drugs and Crime, [www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html](http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html) (last visited Oct. 18, 2012).

9. Global Report, *supra* note 3, at 8.

10. *Human Trafficking: The Facts*, UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING, [http://www.unglobalcompact.org/docs/issues\\_doc/labour/Forced\\_labour/HUMAN\\_TRAFFICKING\\_-\\_THE\\_FACTS\\_-\\_final.pdf](http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf) (last visited Oct. 18, 2012) [hereinafter *Human Trafficking: The Facts*].

11. *Id.* (Most countries in Sub-Saharan Africa are both a source and a destination country for men, women, and children subjected to trafficking for the purpose of forced labor and forced prostitution); see *Trafficking in Persons Report*, *supra* note 5, at 140-41, 144, 153, 157, 162-64, 195, 211-13, 221, 227, 229, 254-55, 290 (examples).

12. See *Trafficking in Persons Report*, *supra* note 5.

13. *Id.* at 5, 20.

## II. HUMAN TRAFFICKING: TRENDS IN AFRICA

According to the U.S. Department of State's 2010 Trafficking in Persons Report, the only Sub-Saharan African countries ranked in Tier One are Nigeria and Mauritius.<sup>14</sup> In Tier Two, there are 19 Sub-Saharan African countries.<sup>15</sup> Tier Two is reserved for those "countries whose governments do not fully comply," but are making efforts to achieve minimum standards.<sup>16</sup> Another 17 countries in Sub-Saharan Africa are on the Tier Two Watch List.<sup>17</sup> This preliminary data indicates that something is hindering progress in dealing with human trafficking. For example, Cote D'Ivoire, which is not atypical of other African countries, demonstrates: (1) the laws on human trafficking need not only to be enacted but also implemented; (2) there needs to be sensitization and education of the African people that human trafficking is wrong, regardless of its form; and (3) its accountability in dealing with this issue coupled with the government's commitment is essential in fostering these values.<sup>18</sup>

## III. FORMS OF HUMAN TRAFFICKING

### A. Definition of Human Trafficking

In 2002, the International Labor Office (ILO) defined trafficking as the "recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion [or] deception. . . for the purpose of exploitation."<sup>19</sup> Further,

[i]n 1994, the United Nations General Assembly defined trafficking as the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries in transition with the end goal of forcing women, girl and children into

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14. *Id.* at 47-49 (Individual countries are ranked in tiers. Countries whose governments fully comply with TVPA's minimum standards are in Tier One).

15. *Id.*

16. *Id.* at 47.

17. *Id.* at 48-49.

18. See U.S. Dep't of State, *Trafficking in Persons Report*, 113-15 (June 2009), available at <http://www.state.gov/documents/organization/123357.pdf> (the United States Department of State's Trafficking in Persons Report, June 2009, lists Cote d'Ivoire as a Tier 2 Watch List for a third consecutive year because the country does not fully comply with the minimum standards for the elimination of trafficking. For example, it has never reported a single prosecution or conviction of human trafficking, there is a lack of understanding of human trafficking by police and officials who have in the past characterized children found in a brothel raid as "voluntary prostitutes," rather than presumptive victims of human trafficking, and it has failed to investigate for a third consecutive year NGO reports that police harass undocumented foreign women in prostitution by demanding sex in exchange for not arresting them).

19. Aderanti Adepoju, *Review of Research and Data on Human Trafficking in Sub-Saharan Africa*, 43 INT'L MIGRATION REV. 75, 77 (2005).

sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers, crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labor.<sup>20</sup>

This definition has been “criticized for its limited focus on force at the point of departure; on females; and in particular situations such as domestic labor and false marriages.”<sup>21</sup> The concept that can be extracted from this definition is that “trafficking is about the purpose as well as the presence of movement,” so movement alone cannot be used as the reference to determine when trafficking occurs.<sup>22</sup>

According to the United Nation’s 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, exploitation refers to “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”<sup>23</sup>

Therefore, considering the above definitions, it is clear that without an exploitative character, the mere movement of persons cannot be considered human trafficking even if the movement is against the person’s will and involves force or other forms of coercion.<sup>24</sup> Accordingly, human trafficking requires the movement of persons across national or international borders for the purpose of exploiting those persons.<sup>25</sup>

### *B. Child Trafficking. Who is a Child?*

In 1990, the United Nations General Assembly ratified the Convention on the Rights of the Child.<sup>26</sup> Article 1 defines a child as “every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier”.<sup>27</sup>

It is not always easy to determine who should be considered a child. However, it is important to know where to draw the line in order to establish what child trafficking entails. The Convention on the Rights of the Child<sup>28</sup>

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20. Rima Salah, *Child Trafficking in West and Central Africa: An Overview* (2001), available at <http://www.unicef.org/media/newsnotes/africachildtraffick.pdf>.

21. Kate Manzo, *Exploiting West Africa’s Children: Trafficking, Slavery and Uneven Development*, 37 *AREA* 393, 396 (2005).

22. *Id.*

23. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, Art. 3(a), Dec. 15, 2004, 2237 U.N.T.S. 319 [hereinafter Protocol].

24. Manzo, *supra* note 21, at 396.

25. Adepoju, *supra* note 19, at 91.

26. Manzo, *supra* note 21, at 395.

27. *Id.*

28. Convention on the Rights of the Child, UNICEF, <http://www.unicef.org/crc> (last visited Oct. 18, 2012) (“is the first legally binding international instrument to incorporate

“universalized a Western model of childhood as an eighteen year old time period characterized by school, play and freedom from responsibility.”<sup>29</sup> The United Nation’s 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children provides this simple definition of child: “any person under eighteen years of age.”<sup>30</sup>

These definitions have been criticized in a number of African countries because of the inconsistency between the concept of a child and the reality of who is considered a child in Africa.<sup>31</sup> The cultural differences between African and Western countries, from which the definition has been tailored, are numerous. Many African children work from an early age to help support their families. The International Labor Organization’s Minimum Age Convention of 1973 sets 15 years as the universal minimum working age for a child,<sup>32</sup> but it also establishes certain work as acceptable for children as young as 12.<sup>33</sup> There is no bright-line rule that delineates when a child reaches adulthood other than turning 18 years old. This Western standard might not be a perfect fit for African children, but is necessary to be able to clearly distinguish children from adults. Despite criticism, this standard is applied in several discussions of child trafficking and labor.<sup>34</sup>

There are six different types of child trafficking, depending on the method used by traffickers to lure their victims, all of which have been identified in West and Central Africa: abduction; payment of money to the parents; bonded placement; “placement for a token sum for specified duration or for gift items;” “enrolment for a fee by an agent for domestic work at the request of the children’s parents;” and the parents’ “enlisting of children under the guise that they would be enrolled in school, trade, or training.”<sup>35</sup> There are a wide range of situations that go from the most

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the full range of human rights: civil, cultural, economic, political and social rights. In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. [L]eaders also wanted to make sure that the world recognized that children have human rights too.”)

29. Manzo, *supra* note 21, at 395.

30. Protocol, *supra* note 23, at Art. 3(d).

31. Manzo, *supra* note 21, at 395.

32. International Labour Organization, Minimum Age Convention, C138, Art. 2, June 26, 1973, C138, available at <http://www.unhcr.org/refworld/docid/421216a34.html>.

33. *Id.* at Art. 7; see Manzo, *supra* note 21, at 395 (“[establishing] that the 12-year-old resident of a country with an ‘insufficiently developed’ economy and educational system may perform ‘light work; that, by definition, does no harm’ and indicating that there are three variables taken into consideration when establishing the age a child may work: 1) age of completion of compulsory schooling; 2) level of national development; and 3) the nature of work”).

34. Manzo, *supra* note 21, at 395 (stating that the “category of childhood has been applied ... to ‘young boys whose ages range from 12 to 16’ and to ‘boys and girls aged from 6-18 years old” (internal citations omitted)).

35. Adepoju, *supra* note 19, at 77.



active point, where traffickers directly abduct the child, to the most passive, where the parents unknowingly reach out to the traffickers themselves.<sup>36</sup>

### *C. Distinction Between Trafficking and Slavery*

Article 1 of the 1927 Slavery Convention defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”<sup>37</sup> The same article also states:

[t]he slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.<sup>38</sup>

The distinction between these two phenomena must be further explained. Human trafficking and slavery are related, yet different.<sup>39</sup> Because there are different actors, features, and mechanisms, human trafficking cannot be considered a form of slavery although they share a common denominator in exploitation.<sup>40</sup> The two terms are often confused. Trafficking is frequently referred to as a form of slavery, but slavery is a form of exploitation as opposed to trafficking, which is *a means to* exploitation.<sup>41</sup> Taking into consideration the definitions of human trafficking and slavery, it is apparent that human trafficking is similar to slave trade but not to slavery itself. According to these definitions, human trafficking and the slave trade would overlap in the case where the trafficked person ends up in a situation that would be considered slavery.

### *D. Distinction Between Human Trafficking and Smuggling*

In 2000, the UNTOC defined smuggling as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”<sup>42</sup> According to The Human Smuggling and Trafficking Center, human smuggling is often “conducted in order to

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36. *Id.*

37. Convention to Suppress the Slave Trade and Slavery, League of Nations, Art. 1, Sept. 25, 1926, 60 L.N.T.S. 253, available at <http://www.unhcr.org/refworld/docid/3ae6b36fb.html>.

38. *Id.*

39. Manzo, *supra* note 21, at 393.

40. *Id.*

41. *Id.* at 396.

42. John Morrison, *FMO Research Guide: Human Smuggling and Trafficking*, [www.forcedmigration.org/research-resources/expert-guides/human-smuggling-and-trafficking/fmo011.pdf](http://www.forcedmigration.org/research-resources/expert-guides/human-smuggling-and-trafficking/fmo011.pdf) (last visited Oct. 18, 2012).

obtain a financial or other material benefit for the smuggler, [but] financial gain or material benefit are not necessarily elements of the crime.”<sup>43</sup>

The main difference between human trafficking and smuggling is that in trafficking there must be an element of force, fraud, or coercion while in smuggling, the person being smuggled is generally cooperating.<sup>44</sup> Trafficked persons are victims of a crime, where smuggled persons are complicit in the crime.<sup>45</sup> The presence of international borders is another difference between these two terms.<sup>46</sup> In smuggling, it is necessary to cross international borders, whereas there is no such requirement for human trafficking to occur.<sup>47</sup> Accordingly, smuggling is a crime against a state and has been criminalized to protect the state’s sovereignty; human trafficking is a crime against a person and has been criminalized to protect persons against human rights violations.<sup>48</sup>

### E. Forced Labor

According to the International Labour Organization’s estimate on forced labor, this is the most common form of human trafficking in the world.<sup>49</sup> Forced labor, also known as involuntary servitude, often occurs as a result of “unscrupulous employers taking advantage of gaps in law enforcement to exploit vulnerable workers.”<sup>50</sup> High rates of unemployment, poverty, crime, discrimination, corruption, political conflict, and cultural acceptance of the practice are factors that contribute to its existence.<sup>51</sup> Forced labor is a form of human trafficking that is generally harder to identify and estimate than other forms of human trafficking, such as sex trafficking, because often forced labor does not involve criminal networks, instead it involves individuals who subject workers to involuntary servitude.<sup>52</sup> Common examples of forced labor are forced or coerced household or factory work.<sup>53</sup>

One unique form of forced labor which is particularly complex to prevent, stop, or even identify is the labor of involuntary domestic

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43. U.S. Dep’t of State, *Human Smuggling and Trafficking Center, Fact Sheet: Distinctions Between Human Smuggling and Human Trafficking* (Apr. 2006), <http://www.state.gov/m/ds/hstcenter/90434.htm>.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. International Centre for Migration Policy Development, *Difference between Smuggling and Trafficking*, (2012), <http://www.anti-trafficking.net/differencebetween-smugglingand.html>.

49. *See Trafficking in Persons Report*, *supra* note 18, at 14.

50. *Id.* at 14, 16.

51. *Id.* at 16.

52. *Trafficking in Persons Report*, *supra* note 18, at 16.

53. *Id.*

workers.<sup>54</sup> These victims have an informal workplace, connected to off-duty living quarters, and not often shared with other workers.<sup>55</sup> This makes it more difficult for authorities to localize victims because they are generally kept alone on private property, and without any links to criminal networks.<sup>56</sup> In many African countries, it is common for children from less developed, rural areas of the country, to be forced into labor in urban households as domestic servants.<sup>57</sup> Many of these children are vulnerable to conditions of involuntary servitude.<sup>58</sup>

Forced labor has become a worldwide phenomenon as foreign migrants, mostly women, are recruited from less developed countries in Southern Asia, Africa, and Latin America to work as domestic servants and caretakers in more developed locations like Malaysia, Singapore, Taiwan, Europe, and the United States.<sup>59</sup> These foreign migrants are vulnerable; most destination countries do not provide domestic servants with the same legal protections provided for foreign workers in other sectors.<sup>60</sup> Without adequate protections in place, foreign domestic workers may have fewer options for seeking help when faced with threats or the use of force.<sup>61</sup> Foreign workers may find it difficult to reach out to NGOs or other authorities for assistance due to their confinement in a home as a result of physical restraint, confiscation of documents, fear, or lack of knowledge of who to contact for help.<sup>62</sup>

#### *F. Bonded Labor*

The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children, includes bonded labor as a form of exploitation related to human trafficking.<sup>63</sup> Bonded labor, also known as debt bondage, is a form of force or coercion employed by traffickers by using a bond or debt to keep a person overpowered.<sup>64</sup> Traffickers or recruiters lure victims by unlawfully exploiting an initial debt the victim assumed with them.<sup>65</sup> The victim, who is promised a job, education, or other type of benefit in exchange, usually enters into the initial

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54. *Id.* at 18.

55. *Trafficking in Persons Report, supra* note 18, at 18.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Trafficking in Persons Report, supra* note 18, at 16.

64. *Id.*

65. *Id.* at 16-17.

debt voluntarily.<sup>66</sup> When a victim reaches a destination, traffickers use this debt as leverage to exploit the victim.<sup>67</sup> Because the population of migrant workers is so sizable in many regions, they are exceptionally vulnerable to trafficking schemes.<sup>68</sup> There are three contributing factors to bonded labor and human trafficking: “1) abuse of contracts; 2) inadequate local laws governing the recruitment and employment of migrant laborers; and 3) intentional imposition of exploitative and often illegal costs and debts on these laborers in the source country, often with the support of labor agencies and employers in the destination country.”<sup>69</sup>

Situations where there are “abuses of contracts or hazardous conditions of employment do not automatically constitute involuntary servitude.”<sup>70</sup> In order to convert a situation into one of forced labor, the victim must suffer from the use or threat of physical force or restraint to keep the victim working.<sup>71</sup> For example, the costs imposed on laborers for working abroad do not alone constitute debt bondage by itself, but if the cost becomes excessive or involves exploitation by unscrupulous employers in the destination country, it can lead to involuntary servitude.<sup>72</sup>

### G. Sex Trafficking

A person is a victim of sex trafficking when he or she is initially coerced, forced, or deceived into prostitution, or maintained in prostitution through coercion.<sup>73</sup> Accordingly, anyone involved in recruiting, transporting, harboring, receiving, or obtaining a person for that purpose commits a trafficking crime.<sup>74</sup> It is important to note that in this definition there is no mention of movement, meaning it is unnecessary to move the victim across national or international borders for sex trafficking to occur.<sup>75</sup> Furthermore, it is common for sex trafficking to occur alongside debt bondage, as exploiters demand payment of the debt the victims incurred through their transportation, recruitment or sale by forcing a victim into prostitution.<sup>76</sup>

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66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 17-18.

73. *Id.* at 21.

74. *Id.* at 21-22.

75. Heather M. Smith, *Sex Trafficking: Trends, Challenges, and the Limitations of International Law*, 12 HUMAN RIGHTS L. REV. 271, 274 (2010).

76. *Trafficking in Persons Report*, *supra* note 18, at 22.

According to UNICEF's estimations, two million children are subjected to prostitution in the global commercial sex trade.<sup>77</sup> The use of children in the commercial sex trade is prohibited under the UN TIP Protocol, and criminalization by the states of the commercial sexual exploitation of children is mandatory under international covenants and protocols.<sup>78</sup> Sex trafficking has devastating consequences for its victims, especially for minors, "including long-lasting physical and psychological trauma, disease (including HIV/ AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possible death."<sup>79</sup> The Trafficking in Persons Report focuses on child sex trafficking by identifying two phenomena strongly linked to child sex exploitation: Commercial Sexual Exploitation of Children (CSEC) and Child Sex Tourism (CST).<sup>80</sup> The focus of the report on these phenomena is on child sex trafficking, however both can be identified as general sex trafficking, and are strongly linked to it.<sup>81</sup>

The U.S. State Department in the Trafficking in Persons Report defines CSEC as "the sexual exploitation of children for the commercial gain of some person or persons."<sup>82</sup> According to this definition, CSEC encompasses all child prostitution, as well as child pornography.<sup>83</sup> The report concludes that CSEC is not by definition human trafficking because one particular form, child pornography, is not a form of human trafficking.<sup>84</sup> However, most forms of CSEC, such as child sex trafficking, are forms of human trafficking, which is why the reports deals with this phenomenon.<sup>85</sup>

The second phenomenon identified in the report is Child Sex Tourism, which is a form of demand for victims of child sex trafficking.<sup>86</sup> CST occurs when "individuals travel to a foreign country, often because in their own country child sexual exploitation is illegal or culturally abhorrent, to engage in commercial sex acts with children."<sup>87</sup> It is often related to trafficking, as a trafficking crime if typically committed in order to obtain the child for the sex tourist's exploitation.<sup>88</sup>

#### *H. Child Labor*

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77. *Id.*

78. *Trafficking in Persons Report*, *supra* note 18, at 22.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 25.

87. *Trafficking in Persons Report*, *supra* note 18, at 25.

88. *Id.*

Most international organizations and national laws allow children to legally engage in light work.<sup>89</sup> However, the growing consensus is that the worst forms of child labor, such as sale, trafficking, and entrapment in bonded and forced labor, must be eradicated.<sup>90</sup> According to the U.S. State Department, as explained in the Trafficking in Persons Report, “any child who is subject to involuntary servitude, debt bondage, peonage, or slavery through the use of force, fraud, or coercion, is a victim of human trafficking regardless of the location of that exploitation.”<sup>91</sup> In this case, as in sex trafficking, movement is not a necessary element in determining if a child is being trafficked through child labor.<sup>92</sup>

It can be complicated to differentiate between a child who is a victim of human trafficking and a child who is engaging in legal work. Some indicators that to determine when a child is being subject to forced labor include situations in which the child appears to be in the custody of a non-family member, when the child performs work that financially benefits someone outside the child’s family, or when the child does not have the option of leaving.<sup>93</sup>

### *I. Child Soldiering*

Child soldiering involves the “unlawful recruitment of children, often through force, fraud, or coercion, for labor or sexual exploitation in conflict areas.”<sup>94</sup> The groups that traffic children for use as soldiers can be government forces, paramilitary organizations, or rebel groups.<sup>95</sup> Most child soldiers are between the ages of 15 and 18, but children as young as seven or eight years old are also recruited and used in hostilities.<sup>96</sup>

Even though it is virtually impossible to accurately calculate the number of children involved in armed forces and groups, according to the Coalition to Stop the Use of Child Soldiers’ estimations, there are tens of thousands of children exploited in conflicts.<sup>97</sup> Child soldiers can be found in all regions of the world. According to the United Nations, 57 armed groups and forces were using children in 2007, which increased from 40 armed groups that used children in 2006.<sup>98</sup> Approximately one-half of the

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89. *Id.* at 19.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Trafficking in Persons Report*, *supra* note 18, at 20.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

total child soldiers in the world are in Africa,<sup>99</sup> despite the African Charter on the Rights and Welfare of the Child, which is the only regional treaty in the world that prohibits the use of child soldiers.<sup>100</sup> Article 22 of the Charter states: “States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.”<sup>101</sup>

Many children who are abducted are used as combatants, while others are forced to work as porters, cooks, guards, servants, messengers, or spies.<sup>102</sup> Children also join armed groups as volunteers, sometimes even with encouragement from their families.<sup>103</sup>

### *J. Stages of Human Trafficking*

There are four stages identified in the process of human trafficking; the first three are the most commonly identified, but the fourth stage, return and reintegration, is considered a stage of human trafficking although the victim is no longer in contact with the traffickers or under exploitation.<sup>104</sup> The four stages of human trafficking are 1) the origin or pre-departure stage, 2) the transit or travel stage, 3) the destination stage and 4) the return and reintegration stage.<sup>105</sup> In some cases, between the destination and the return stage, there is an additional stage, referred to as the detention, deportation, and criminal evidence stage.<sup>106</sup>

## IV. FACTORS CONTRIBUTING TO HUMAN TRAFFICKING IN AFRICA

### *A. Poverty*

99. *Africa: Too small to be fighting in anyone's war*, IRIN, December 1, 2003, <http://www.irinnews.org/Report/66280/AFRICA-Too-small-to-be-fighting-in-anyone-s-war> (last visited Oct. 21, 2012).

100. *Id.*

101. Organization of African Unity, *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49, 11-12 (1990), available at <http://www.unhcr.org/refworld/docid/3ae6b38c18.html>.

102. *Trafficking in Persons Report*, *supra* note 18, at 22.

103. Child Soldiers International, *Mai Mai Child Soldier Recruitment and Use: Entrenched and Unending*, February 2010, available at <http://www.unhcr.org/refworld/docid/4b8b7c492.htm>.

104. International Organization for Migration, *Breaking the Cycle of Vulnerability*, 14 (2006), available at [http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published\\_docs/books/Breaking\\_the\\_Cycle2.pdf](http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/books/Breaking_the_Cycle2.pdf).

105. Pioneering in the Fight Against Human Trafficking-Stages of Human Trafficking, JUSTICE IN OUR TIMES (2012) (presentation video), available at <http://www.justiceinourtimes.ca/presentations/payoke-human-trafficking-event/part-6/>.

106. *Breaking the Cycle of Vulnerability*, *supra* note 104, at 14.

The main factor exposing a person to being trafficked is poverty.<sup>107</sup> Other contributing factors are linked in some way to poverty, and most are a direct consequence of it.<sup>108</sup> Poverty itself is not the cause of human trafficking given it is not only the poorest who suffer from trafficking. Other factors include a lack of access to education, unemployment, family disintegration as a result of death, divorce, or orphanage due to AIDS.<sup>109</sup> Armed conflicts are also a major factor.<sup>110</sup>

### B. Culture

The cultural factor is the most important. “In Africa, children are regarded as economic assets, and from the age of six, they are gradually integrated into the family’s productive process, performing various services.”<sup>111</sup> The propensity to migration and the phenomenon of child placement play big roles in human trafficking.<sup>112</sup> Culturally, African families are culturally used to migrating, and positively view the possibility of sending their children away to work, learn a trade or study, a cultural factor traffickers often exploit.<sup>113</sup> Other cultures, where families are less inclined to send their children away, may be more protected against these practices. Additionally, when society as a whole looks down upon a certain practice, it becomes much less common than when it is widely accepted.

### C. Other Factors

Other factors contribute to trafficking in addition to those addressed above.<sup>114</sup> Other factors which have been identified to influence child and human trafficking are:<sup>115</sup>

1. Lack of vocational and economic opportunities for the youth in the rural areas;<sup>116</sup>
2. Insufficient and/or inaccessible educational opportunities;<sup>117</sup>
3. Ignorance on the part of families and children of the risks involved in trafficking, such as risks of serious maltreatment, rape, torture, exposure

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107. Adepoju, *supra* note 19, at 80.

108. *Id.*

109. *Id.* at 80, 81.

110. *Id.*

111. *Id.* at 77.

112. Salah, *supra* note 20.

113. *Id.*

114. *Id.*

115. *Id.* at 4.

116. Salah, *supra* note 20, at 4.

117. *Id.*



to HIV/AIDS and even to psychological risks linked with separation, and emotional isolation;<sup>118</sup>

4. Traditional migration of adults within the framework of economic activities;<sup>119</sup>

5. High demand for cheap and submissive child labor in the informal economic sector;<sup>120</sup>

6. Opportunities to travel provided through easy means of communication and transport;<sup>121</sup>

7. The desire of the youth for emancipation through migration;<sup>122</sup> and

8. Institutional lapses such as inadequate political commitment.<sup>123</sup>

#### *D. True Stories*

“For a South African victim of human trafficking, this was the endgame. On July 2009, Sindiswa, 17, lay in bed No. 7 of a state-run hospice in central Bloemfontein. Sindiswa had full-blown AIDS and tuberculosis, and she was three months pregnant.”<sup>124</sup>

Sindiswa’s family was one of the poorest families in Indwe, the poorest district in Eastern Cape, one of the poorest provinces in South Africa. Ninety-five percent of the residents of her township fall below the poverty line, more than a quarter have HIV, and most survive by clinging to government grants. Orphaned at 16, she had to leave school to support herself. On February 2009, a woman from a neighboring town offered to find work for her and her 15-year-old best friend, who, like Sindiswa, was poor but was also desperate to escape her violent older sister. After driving them eight hours north to Bloemfontein, the recruiter sold them to a Nigerian drug and human-trafficking syndicate in exchange for \$120 and crack cocaine. The buyer forced them into prostitution on the streets of central Bloemfontein for 12 straight hours every night. When she was too sick to stand and thus useless as a slave, she was thrown onto the street. Sindiswa, died on July 22, 2009.<sup>125</sup>

#### Kenya

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118. *Id.*

119. *Id.* at 5.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. E. Benjamin Skinner, *South Africa’s New Slave Trade and the Campaign to Stop It*, TIME MAGAZINE, Jan. 18, 2010, <http://www.time.com/time/magazine/article/0,9171,1952335-1,00.html>.

125. *Id.*

In 1991, a 6-year-old boy was working part time as a house boy for a fisheries officer. The officer was reassigned to a different region and promised the boy an education if he accompanied him. But instead of being enrolled in school, the boy was forced to tend cattle and serve as the homestead's security guard. The officer changed the boy's name to Charles and over time, the boy forgot his native language. Charles, now 26, still works for the fisheries officer but has never received payment and relies on the officer for everything. When Charles requested a piece of land to build a house so he could marry, the man instead forced him to work as a fisherman and turn over the profits. With the help of a local anti-trafficking committee, Charles moved into a rented room in a nearby town but continues to be abused by his trafficker. Charles does not know who or where his family is.<sup>126</sup>

#### The Democratic Republic of the Congo

By 18, Christophe had been abducted by the Congolese army three times and forced to transport their supplies from region to region. Christophe and other abducted civilians, sometimes as many as 100, were forced to walk for days carrying boxes of ammunition, jerry cans of whiskey, cases of beer, and other baggage. Primary school children, some as young as 8, were forced to carry the soldiers' children on their backs. If they got tired or walked slowly, they were beaten or whipped. They were given no food and ate only whatever they could find in the villages they passed through.<sup>127</sup>

#### China-Ghana

Cindy was a poor girl in rural China when a neighbor and her husband offered to give her work at a restaurant their friends opened in Africa. Cindy dropped out of school and went with the couple to Ghana, only to fall victim to a Chinese sex trafficking ring. She was taken to live in a brothel with other Chinese women, and her passport and return tickets were confiscated. Her traffickers forced her to engage in commercial sex and beat her when she refused. They made her peruse casinos to attract white men. The traffickers took Cindy's money, telling her she had to repay them for her travel and accommodation costs. A Ghanaian investigative journalist exposed the ring, and the traffickers were prosecuted in a Ghanaian court. With NGO assistance, Cindy and the other women returned to China and are trying to rebuild their lives.<sup>128</sup>

#### Ethiopia-United Arab Emirates

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126. *Trafficking in Persons Report*, *supra* note 18, at 5.

127. *Id.* at 11.

128. *Id.* at 12.

Mary left her home in East Africa determined to earn money for her family. But from her second day of work as a maid in a private house in the United Arab Emirates, she was beaten daily. “If she didn’t beat me in the day, she would beat me at night,” Mary says of her employer. The beatings continued for two years. Once, Mary’s employer threw boiling water on her and continued to beat her after she collapsed in pain. She was denied medical attention. Her clothing stuck to her wounds. Her employer ordered Mary to have sex with another maid on video. When Mary refused, the woman put a hot iron on her neck and threatened her with more beatings. After two years, a doctor noted wounds, scars, and blisters all over Mary’s body.<sup>129</sup>

#### Philippines-Nigeria-Togo-Cyprus

Neah was promised a job as a waitress in Germany but found herself forced to work in a Nigerian brothel instead. After some time, she was sold to another brothel in Togo. There, Neah and other women lived in a confined environment. They were allowed to go out only if a customer took them out. They lived and worked in a guarded complex, enclosed by high walls and were accompanied by guards whenever they went to a shop. They used the little money they were given to pay for their monthly provisions. In both Nigeria and Togo, Neah was indentured to her employers and never had enough money to buy a ticket home. Neah decided to go to Cyprus to find a better-paying brothel. After six months, she earned enough money to pay her debts and buy a ticket home.<sup>130</sup>

#### Kenya-Saudi Arabia

Salima was recruited in Kenya to work as a maid in Saudi Arabia. She was promised enough money to support herself and her two children. But when she arrived in Jeddah, she was forced to work 22 hours a day, cleaning 16 rooms daily for several months. She was never let out of the house and was given food only when her employers had leftovers. When there were no leftovers, Salima turned to dog food for sustenance. She suffered verbal and sexual abuse from her employers and their children. One day while Salima was hanging clothes on the line, her employer pushed her out the window, telling her, “You are better off dead.” Salima plunged into a swimming pool three floors down and was rescued by police. After a week

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129. *Id.* at 14.

130. *Id.* at 17.

in the hospital, she was deported. She returned to Kenya with broken legs and hands.<sup>131</sup>

#### V. THE LAW AND HUMAN TRAFFICKING: APPLICATION AND IMPACT

In 2001, the International Labour Organization (ILO) drafted a child trafficking report for West and Central Africa and compiled the results of reports on nine African countries: Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Gabon, Ghana, Mali, Nigeria, and Togo.<sup>132</sup> The report focused on a comparison of national legislation related to trafficking in those countries.<sup>133</sup> According to the report, most countries, with the exception of Mali, do not have specific laws to fight human trafficking.<sup>134</sup> Mali, on the other hand, has adopted specific legislation on trafficking in children for labor exploitation.<sup>135</sup> In Mali traffickers, as well as people exploiting child labor, can be punished on the basis of articles 187, 188 and 189 of the Penal Code.<sup>136</sup>

In the countries without specific laws to fight human trafficking, other bodies of law are used to fight trafficking and forced labor.<sup>137</sup> Benin requires authorization for children under eighteen to leave the country.<sup>138</sup> When an adult leaves the country with a minor, the adult must request permission in writing from the regional authority and indicate the reason of the journey, his or her identity, and the identity of the tutor in the country of

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131. *Id.* at 21.

132. See Int'l Labour Org., *Synthesis Report Based on Studies of Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Gabon, Ghana, Mali, Nigeria, and Togo*, Int'l Programme on the Elimination of Child Labour (2001)[hereinafter ILO].

133. *Id.*

134. *Id.* at 35-36.

135. *Id.*

136. MALI CODE PÉNAL, Arts. 187-89 (Art. 187 refers to the removal of persons and the language of the article states that "Every person who by fraud, violence or threats, will remove an individual from the place where he has been placed by those in authority which it was submitted or assigned, shall be punished by five to twenty years hard labor and optionally one to twenty years of banishment." Art. 188 addresses the removal of persons by deception and says that "When the abduction of persons referred by the preceding article, shall have been committed without fraud, violence or threats, or has been committed to marry a woman without the consent of the latter, the culprit shall be punished by one to five years in prison and, optionally, from five to twenty years of banishment. When the removal referred to in paragraph above shall have been committed against a child under fifteen years, the penalty is five to ten years hard labor, and optionally from five to twenty years of banishment." Art. 189 applies to the slave trade and states that "Whoever has concluded an agreement aimed to alienate, either gratuitously or for consideration, the freedom of another person shall be punished by five years to ten years of hard labor").

137. *Id.*

138. See *Synthesis Report*, *supra* note 132, at 35-36 (for example Benin Decree No. 95-191 (1995) requires that authorization be issued for individuals under age 18 to leave the country).

destination, if traveling for educational purposes.<sup>139</sup> Moreover, Benin requires a security deposit in a special bank account with the Ministry of Foreign Affairs; the deposit is either reimbursed when the child returns to the country or is used for the repatriation of the child.<sup>140</sup> Currently, these rules apply only to transnational movement of minors, but legislation on internal displacement of children, which proposes to protect victims trafficked within the country, is currently being drafted.<sup>141</sup>

Cameroon currently has several legal instruments to protect children, as well as trafficked victims in general, from forced labor.<sup>142</sup> For example, there is a prohibition on women and children working during the night.<sup>143</sup> In accordance with the International Labour Organization Convention No. 138, Cameroon has established the minimum ages for employment as fourteen years of age for non-hazardous work, and eighteen years of age for hazardous work.<sup>144</sup> In addition, protection is given through regular employment regulations.<sup>145</sup> The Labour Act of Cameroon No. 138 further stipulates sanctions for violations and for below-standard working conditions of children.<sup>146</sup> Legislation in Cameroon is based upon the principle of equal pay, thus making the employment of children unattractive because children must have the same salary as adults.<sup>147</sup>

Article 2 of the Constitution in Burkina Faso states: “slavery, slave practices, inhuman and cruel, degrading and humiliating treatment, physical and moral torture, mistreatment inflicted upon children and all forms of deprecation of man are forbidden and punished by law.”<sup>148</sup> There are penal sanctions for the commission of physical or moral violence against children, kidnapping, and child prostitution.<sup>149</sup> Burkina Faso has legislation, resembling Cameroon’s, which prohibits a single male tutor to lodge female apprentices in his house.<sup>150</sup> Further, any tutor who has been condemned to more than three months in prison cannot lodge minor apprentices in his house.<sup>151</sup>

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139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.* (Cameroon decree no. 68/DF/253 (1968) dictates the working conditions for domestic workers; Cameroon decree no. 69/DF/287(1969) governs contracts for apprenticeships, and requires that apprentices be at least 14 years old and forbids any single tutor from housing an apprentice).

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

Other countries that were not addressed in the ILO report have made efforts to combat human trafficking. In 2010, South Africa enacted the Prevention and Combating of Trafficking in Persons Bill.<sup>152</sup> South Africa is a party to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and thus was required to enact conforming domestic legislation.<sup>153</sup> Until the bill was passed, South Africa lacked domestic legislation focusing specifically on trafficking in persons.<sup>154</sup> The bill, therefore, gives effect to the U.N. Protocol.<sup>155</sup> Prior to the enactment, traffickers were prosecuted for general offences such as kidnapping, assault and murder, or under certain Acts such as the Sexual Offences Act of 1957, the Immigration Act of 2002, the Basic Conditions of Employment Act of 1995; or the Domestic Violence Act of 1998.<sup>156</sup>

The goals of the 2010 Bill are to: (a) give effect to the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons; (b) provide for the prosecution of persons involved in trafficking and for appropriate penalties; (c) provide for the prevention of trafficking in persons and for the protection of and assistance to victims of trafficking; (d) provide services to victims of trafficking; (e) provide for effective enforcement measures; (f) establish an Intersectoral Committee on the Prevention and Combating of Trafficking in Persons, which must develop a national policy framework; and (g) combat trafficking of persons in a coordinated manner.<sup>157</sup>

## VI. COMBATING HUMAN TRAFFICKING IN AFRICA

### A. International

The United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) was launched in March 2007 by the ILO, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration

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152. Prevention and Combating of Trafficking in Persons Bill, 2010, Bill 7-2010 (GN) (S. Afr.) [hereinafter Trafficking Bill].

153. *Id.*

154. *Id.*

155. *Id.*

156. Laura Brooks Najemy, South Africa's Approach to the Global Human Trafficking Crisis: An Analysis of the Proposed Legislation and the Prospects of Implementation, 9 WASH. U. GLOB. STUD. L. REV. 171, 180 n.51 (2010).

157. Trafficking Bill, *supra* note 152.

(IOM), and the Organization for Security and Cooperation in Europe (OSCE).<sup>158</sup> UN.GIFT was created to promote the global fight on human trafficking, on the basis of international agreements reached at the United Nations and, to this date, 140 parties have signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, which supplements the Palermo Convention against transnational organized crime.<sup>159</sup>

“The Global Initiative is based on a simple principle: human trafficking is a crime of such magnitude and atrocity that it cannot be dealt with successfully by any government alone.”<sup>160</sup> “This global problem requires a global, multi-stakeholder strategy that builds on national efforts throughout the world.”<sup>161</sup> The UN.GIFT mission statement is:

to mobilize state and non-state actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms; ensuring adequate protection and support to those who fall victim; and supporting the efficient prosecution of the criminals involved, while respecting the fundamental human rights of all persons.<sup>162</sup>

“In carrying out its mission, UN.GIFT will increase the knowledge and awareness on human trafficking; promote effective rights-based responses; build capacity of state and non-state actors; and foster partnerships for joint action against human trafficking.”<sup>163</sup> Currently UN.GIFT is running two programmes in Africa, one in Rwanda and the other in Togo.<sup>164</sup>

Both the IOM and the UNODC are participating in the Joint Programme in Rwanda.<sup>165</sup> In Rwanda, limited awareness of the problems associated with trafficking, and incomplete implementation of anti-trafficking legislation provide for an inadequate criminal justice response.<sup>166</sup> Though trafficking offenses have been prosecuted in Rwanda, no convictions have been recorded.<sup>167</sup> The Joint Programme is expected to

158. UN.GIFT.HUB, <http://www.ungift.org/knowledgehub/en/about/index.html> (last visited Oct. 15, 2012).

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. UN.GIFT.HUB, <http://www.ungift.org/knowledgehub/programmes-database/> (last visited Oct. 22, 2012).

165. “The Programme, which was created in October 2011, consists of two phases, one first phase of six months and a second phase of one year. The budget for Phase One is US \$302,226 and for Phase Two is US \$460,000.” UN.GIFT.HUB, <http://www.ungift.org/knowledgehub/programmes-database/jp-detail.jsp?vf=/programmes-database/summary-rwanda.html> (last visited Oct. 22, 2012).

166. *Id.*

167. *Id.*

enhance the capacity of the Government in Rwanda to effectively address trafficking in persons through improved knowledge and awareness, capacity-building of relevant personnel, and better protection of and assistance to victims.<sup>168</sup> Specifically, the programme's objectives are: 1) to increase the knowledge and understanding of human trafficking amongst key stakeholders from the government and civil society; 2) to build capacity of law enforcement officials and immigration officers to identify and respond to cases of human trafficking; 3) to sensitize the Rwandan public and local leadership to the different forms of human trafficking and the risks associated; and 4) to establish victim referral and assistance mechanisms through training and support.<sup>169</sup>

In Togo, another Programme is currently developing: The Small Grants Facility Project: Togo.<sup>170</sup> In order to support Civil Society Organizations (CSO) in their counter-trafficking activities, UN.GIFT established a Small Grants Facility.<sup>171</sup> Those CSOs were awarded amounts between USD \$30,000 and \$50,000 each for their projects and Bice Togo (Bureau International Catholique de l'Enfance - Togo) Proposal, The Small Grants Facility Project: Togo was one of the selected.<sup>172</sup>

### B. The Role of the African Union

The African Union Commission Initiative against Trafficking Campaign (AU.COMMIT) "is part of the overall Program of Activities of the Department of Social Affairs of the African Union Commission on Migration and Development for 2009-2012."<sup>173</sup> "The general objective of the launch of AU.COMMIT Campaign is to set the pace for the fight against trafficking in human beings as a priority on the development agenda of the continent."<sup>174</sup> "In line with these three strategies, the AU.COMMIT

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168. *Id.*

169. *Id.*

170. UN.GIFT.HUB, [http://www.ungift.org/knowledgehub/programmes-database/jp-detail.jsp?vf=/programmes-database/SGF/small-grants-facility-project\\_-togo.html](http://www.ungift.org/knowledgehub/programmes-database/jp-detail.jsp?vf=/programmes-database/SGF/small-grants-facility-project_-togo.html) (last visited Oct. 22, 2012).

171. UN.GIFT.HUB, <http://www.ungift.org/knowledgehub/en/civil-society/small-grants-facility.html> (last visited Oct. 22, 2012) ("This initiative was launched on 1 March 2010 and a Call for Proposals was issued inviting eligible CSOs to submit their project ideas to UN.GIFT. When the Call closed on 5 April 2010, 815 organizations from 76 countries had registered with the Small Grants Facility and more than 440 proposals had been submitted. According to the guidelines for the Call for Proposals, the first 300 proposals received were evaluated and a final 12 projects were selected for funding by a multi-agency Board of Experts composed of representatives of IOM, OSCE, UNODC).

172. *Id.*

173. African Union, *AU.COMMIT Campaign on Combating Human Trafficking 2009-2012*, at 1 (October 29, 2010), available for download at <http://au.int/en/dp/sa/content/au-commit-campaign-combating-human-trafficking-2009-2012> [hereinafter AU.COMMIT].

174. *Id.* at 5.



Campaign has a total of 5 strategic actions with a total budget of \$600,000 USD, which has been in effect since 2009, and will continue through 2012. The three phases of AU.COMMIT, which will reinforce each other, are:

2009-2010: The AU. COMMIT Campaign on Prevention of, and, Response to Trafficking;

2010 -2011: The AU.COMMIT Campaign on Protection of Victims of Trafficking; and

2011-2012: The AU. COMMIT Campaign on Prosecution of Criminals involved in Trafficking and Related Crimes.”<sup>175</sup>

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children is a declaration of the will and joint intent of the African Union and the European Union to enhance efforts to fight trafficking.<sup>176</sup> The Ouagadougou Action Plan reaffirms international instruments<sup>177</sup> on trafficking and also provides specific measures and recommendations to more effectively combat trafficking in persons, specifically African women and children.<sup>178</sup> The Plan provides justification as to why special focus is granted to African women and children.<sup>179</sup> The Plan was created in 2006 by the European Union and African States.<sup>180</sup> The objective was to manage, through effective cooperation, all facets of the problem of human trafficking, especially with women and children.<sup>181</sup> The Plan has four main objectives: Prevention and Awareness, Victim Protection and Assistance, Legislative Framework, Policy Development and Law Enforcement, and Co-Operation and Co-Ordination.<sup>182</sup> The Ouagadougou Action Plan specifically proposes a three-pronged strategy: 1) prevention of trafficking; 2) protection of victims of trafficking; and 3) prosecution of those involved in the crime of trafficking and related forms of abuse.<sup>183</sup>

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175. *Id.* at 4-5.

176. *Id.* at 3.

177. Among these international instruments were: The Universal Declaration of Human Rights (1948); The UN convention on the Rights of the Child (1989); The UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000); and ILO Convention on worst form of child labour (1999). African Union, *Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children As adopted by the Ministerial Conference on Migration and Development*, at 1 (November 22-23, 2006), [http://ec.europa.eu/anti-trafficking/download.action?nodeId=2e8b2503-6b83-498d-95f0-3acc85f9449f&fileName=Ouagadougou+Action+Plan+to+combat+trafficking\\_en.pdf&fileType=pdf](http://ec.europa.eu/anti-trafficking/download.action?nodeId=2e8b2503-6b83-498d-95f0-3acc85f9449f&fileName=Ouagadougou+Action+Plan+to+combat+trafficking_en.pdf&fileType=pdf) [hereinafter *Ouagadougou Action Plan*].

178. *Id.* at 3.

179. *See id.* at 3.

180. *See id.* at 7.

181. *See id.*

182. *See id.* at 3-7.

183. *AU.COMMIT*, *supra* note 173, at 4.

First, the Plan encourages the African states to take Prevention and Awareness measures including: ensuring education and training, life-skills training, awareness raising and counseling because such measures are key measures in the prevention of trafficking.<sup>184</sup> The Plan further encourages African states to provide viable employment or other livelihood opportunities for the youth and young women at risk, especially in regions prone to trafficking.<sup>185</sup> Promoting the child's rights and protecting children from trafficking by adopting specific measures, raising awareness about trafficking in human beings through engagement of the mass media and information campaigns, and promoting training for persons in key positions, in particular the police authorities in African countries, are other examples of the measures recommended by the Plan.<sup>186</sup> Moreover, the plan encourages the collection and exchange of information on the means and methods used by traffickers and urges the States to take measures to improve the registration of births and the provision of identity documents.<sup>187</sup>

Under its second objective, the Victim Protection and Assistance portion of the Plan, specific emphasis is put on African states adopting legislative or other appropriate measures permitting victims to remain in their territory, temporarily or permanently, and give appropriate consideration to humanitarian and compassionate factors.<sup>188</sup> Other proposed measures include: the adoption of specific measures to avoid criminalization, stigmatization or the risk of re-victimization of the victim; finding successful measures to ensure protection and assistance to victims; and providing victims with short and long-term psychological medical and social assistance in order to promote their full recovery.<sup>189</sup> Furthermore, the Plan encourages States to promote an HIV/AIDS sensitive approach and protect the dignity and human rights of victims of HIV/AIDS, taking the special needs of children into account.<sup>190</sup>

The Plan provides specific measures in four areas: Legislative Framework, Policy Development, Law Enforcement, and Co-Operation and Co-Ordination, which African states should follow in order to fight human trafficking.<sup>191</sup>

### 1. Legislative Framework

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184. *Ouagadougou Action Plan*, *supra* note 177, at 3.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.* at 4.

189. *Id.*

190. *Id.*

191. *See generally Ouagadougou Action Plan*, *supra* note 177, at 4.

The Plan urges states to “sign, ratify and fully implement the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention, as well as other relevant regional and international legal instruments.”<sup>192</sup> Also, the Plan considers it necessary to “ensure the effective prosecution of those suspected of involvement in trafficking in human beings, and deterrent penalties for those found guilty of trafficking,”<sup>193</sup> as well as “introduc[ing], where it does not exist, a comprehensive legislative and institutional framework that cover all aspects of trafficking in human beings in line with the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.”<sup>194</sup> The Plan recommends further that states “[a]mend or adopt national legislation in accordance with regional and international legal instruments so that the crime of trafficking is precisely defined in national law and ensure that all practices covered by the definition of trafficking are also criminalized [sic].”<sup>195</sup> In addition, the Plan encourages States to “consider legal measures which would provide victims of trafficking the possibility of obtaining compensation for the damage they suffered.”<sup>196</sup>

## 2. Policy Development

With regard to Policy Development, the Plan encourages states to “consider developing a National Action Plan which, in a comprehensive manner, outlines all necessary measures to combat trafficking in human beings.”<sup>197</sup> States should “initiate or expand efforts to gather and analyze data on trafficking in human beings, including on the means and methods used, on the situation, magnitude, nature, and economics of trafficking in human beings, particularly of women and children.”<sup>198</sup> Moreover, states are advised to consider establishing a multi-disciplinary National Task Force on trafficking in human beings, to formulate and implement National Action Plans. The National Task Force should bring together relevant ministries and agencies to formulate policy and take action against trafficking, and in

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192. *Id.*

193. *Id.* at 5.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Onagadougou Action Plan, supra* note 177, at 6.

198. *Id.*

this regard involve Inter-Governmental Organizations, Non-Governmental Organizations, and other representatives of civil society, as appropriate.<sup>199</sup>

“Including trafficking in human beings in the poverty reduction strategies at national level and allocating the necessary budget for combating this crime,” is another measure recommended by the Plan.<sup>200</sup>

### 3. Law Enforcement

In Law Enforcement, states should “consider creating special units, within existing law enforcement structures, with a specific mandate to develop and effectively target operational activities to combat trafficking in human beings, as well as establishing special national focal points.”<sup>201</sup> In addition, states should “consider establishing direct channels of communication between their competent authorities, agencies and services, including special units and focal points, [and, where appropriate,] establish joint border patrols trained in the prevention of trafficking in human beings and strengthen existing ones.”<sup>202</sup> The Plan encourages States to “consider the establishment of joint investigation units and enact laws for the extradition of the traffickers;”<sup>203</sup> and to “provide and strengthen training for law enforcement personnel, customs and immigration officials, prosecutors and judges, and other relevant officials, on the prevention of trafficking in human beings.”<sup>204</sup> “The training should focus on the methods used in preventing such trafficking, prosecuting the traffickers, and protecting the rights of victims, including protecting the victims from the traffickers, and this training should also encourage co-operation with non-governmental organizations and other elements of civil society.”<sup>205</sup>

### 4. Cooperation and Coordination

Finally, in Cooperation and Coordination, the Plan recommends States “enhance multi-disciplinary co-ordination and co-operation at the national and regional level with a view to ensure an integrated approach to victims of trafficking, taking into account the specific needs of adult and children victims.”<sup>206</sup> Further, it is recommended states “enhanc[e] and exchang[e] documentation of experiences and lessons learned regarding recovery, repatriation and reintegration, in order to develop and provide appropriate

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199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id. at 7.*

short and long-term assistance to the victims of trafficking.”<sup>207</sup> Moreover, the Plan encourages States to “enhance bilateral and multilateral co-operation between European and African countries, countries of origin, countries of transit and countries of destination, regarding identification, assistance, protection, repatriation and reintegration of victims,”<sup>208</sup> as well as “develop and facilitate co-operation at bilateral, regional and sub-regional levels on all aspects of trafficking in human beings, including prevention, investigation, prosecution and protection of and assistance to victims, fully reflecting the important role of inter-governmental organizations, NGOs and other members of civil society.”<sup>209</sup>

### *C. Individual Efforts by Countries*

Nigeria: “In only five years [from 2004 to 2009], Nigeria advanced from the State Department’s human-trafficking “watch list” to its top tier of countries fully complying with standards to eliminate servitude.”<sup>210</sup> Nigeria moved into the top-tier rank due to law enforcement resolution to fight trafficking.<sup>211</sup> During 2008, Nigeria investigated 209 trafficking cases, which resulted in 23 convictions, more than double the number of convictions from the year before.<sup>212</sup> “Nigeria is a source and a destination for coerced labor, where boys are forced to work as street vendors and beggars, in stone quarries and as domestics while women and girls are trafficked mostly for the commercial sex trade and as servants.”<sup>213</sup> “But Nigeria’s anti-trafficking trajectory is moving in the right direction because the government is making a concerted effort to train its law enforcement and cooperate internationally.”<sup>214</sup> “In 2008, the government assisted in the arrest of [sixty] Nigerian trafficking suspects in Europe.”<sup>215</sup> “The government has increased funding for its anti-trafficking program and is assisting victims by working with NGOs to provide shelter, counseling, and vocational training.”<sup>216</sup> “It’s not enough to pass laws banning human trafficking.”<sup>217</sup> “Cases must be investigated, suspects prosecuted, and

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207. *Id.*

208. *Id.*

209. *Id.*

210. Monitor’s Editorial Board, *The Monitor’s View A Stop Sign For Human Trafficking*, THE CHRISTIAN SCI. MONITOR (June 19, 2009), <http://www.csmonitor.com/Commentary/the-monitors-view/2009/0619/p08s01-comv.html>.

211. *Id.*

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

traffickers convicted and Nigeria has shown the political will to follow through.”<sup>218</sup>

Egypt: In 2010, Egypt adopted the National Plan of Action Against Human Trafficking, effective until January 2013.<sup>219</sup> Egypt is a transitory country for human trafficking due to its located between the continents of Africa and Asia and the Mediterranean and Red Seas.<sup>220</sup> “The Egypt Plan reflects the comprehensive approach adopted by Egypt to combat human trafficking, and is based on four elements: Prevention, Protection, Prosecution, and Participation.”<sup>221</sup> “The purpose of the Egypt Plan is: a) to prevent human trafficking; b) to protect society and protect and assist the victims of trafficking; c) to ensure serious and effective punishment of traffickers; and d) to promote and facilitate national and international cooperation in order to meet these objectives.”<sup>222</sup> “The Plan is based on four guiding principles to fight human trafficking: Rule of Law<sup>223</sup>; Full Respect of the Human Rights of Victims; Non-Discrimination and Gender-Equality; and Regional and International Cooperation.”<sup>224</sup> The adoption of this Plan shows that Egypt has a strong political will to effectively implement national anti-trafficking legislation.<sup>225</sup>

## VII. CHALLENGES AND RECOMMENDATIONS

### A. Obstacles to Enforcement of National Legislation

Many obstacles stand in the way of enforcing existing legislation. Legislation has little if it is not implemented and enforced. Many African countries, such as Nigeria, have implementation and/or enforcement problems; a study in Nigeria revealed that when interviewed about child trafficking legislation, 22 policy makers answered that such legislation did not exist, when in fact it did, while only 12 surveyed knew of its

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218. *Id.*

219. National Coordinating Committee on Preventing and Combating Human Trafficking, *National Plan of Action Against Human Trafficking (January 2011 - January 2013)*, 1 (Dec. 2, 2010), [http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Egypt\\_National\\_Action\\_Plan\\_2011-2013-en.pdf](http://www.ungift.org/doc/knowledgehub/resource-centre/Governments/Egypt_National_Action_Plan_2011-2013-en.pdf).

220. *Id.*

221. *Id.*

222. *Id.* at 2.

223. *Id.* (“Which consists of three elements: Effective implementation of relevant national legislations; respect of international legally binding instruments; and assurance that national legislation and the provisions of the international legally binding instruments are invoked before the courts.”).

224. *Id.*

225. *Id.* at 1.

existence.<sup>226</sup> The main problems are the extensive ignorance on the existence of this legislation and the underlying lack of implementation.<sup>227</sup>

The complexity and length of judicial procedures is another obstacle to effective enforcement of legislation.<sup>228</sup> In Mali, for example, the Penal Code of Mali can be used against perpetrators of human trafficking to obtain sentences and incarcerate such traffickers.<sup>229</sup> However, on average, the time required for these cases ranges from five to seven years,<sup>230</sup> thus discouraging victims from bringing lawsuits.

A main problem with judicial enforcement is the low number of trafficking cases that reach the courts. There are many reasons people do not file complaints or go to authorities.<sup>231</sup> One primary reason is fear. A large number of people are discouraged from bringing charges against offenders out of fear of what the accused or accomplices might do to the victim or the victim's family.<sup>232</sup> Another reason for not reporting is a lack of financial means to file a complaint or go to court.<sup>233</sup> As discussed, one main factor contributing to human trafficking is poverty, thus it is not surprising many victims of human trafficking do not have the means or the resources to gain access to the courts.<sup>234</sup> Ignorance may be another reason why victims of trafficking do not report incidents to the authorities.<sup>235</sup> Many victims are not aware of their rights and do not report to the authorities because they do not know they were victims of a crime punishable by law.<sup>236</sup>

### *B. Recommendations*

Many entities have made a broad range of recommendations to stop human trafficking. A widespread consensus suggests that the solution requires a multi-branched approach to human trafficking focusing on all root causes.<sup>237</sup> A popular solution adopted by the U.S. State Department, denominated the "3P Paradigm," is explained in the Trafficking in Persons Report.<sup>238</sup> The policy focuses on the Prosecution, Protection, and

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226. ILO, *supra* note 132, at 37.

227. *Id.*

228. *Id.*

229. *Id.* at 37-38.

230. *Id.*

231. *See id.* at 37.

232. *Id.*

233. *Id.*

234. *See id.* at 44.

235. *Id.* at 37.

236. *Id.* at 27.

237. *Trafficking in Persons Report 2010, supra* note 5, at 13.

238. *Id.* at 12.

Prevention of human trafficking; a fourth element focusing on partnership has also been added.<sup>239</sup>

Countries must also be able to prosecute traffickers effectively, which requires specific legislation establishing penalties for human trafficking to serve as a deterrent to traffickers; this legislation has to be adequately enforced to procure the conviction of traffickers.<sup>240</sup> Although criminalization is mandatory for all parties to the Palermo Protocol, the number of prosecutions each year is low in comparison to the scope of the problem.<sup>241</sup> In 2006, the total number of prosecutions for human trafficking was 5,808, with just 3,160 of them resulting in convictions.<sup>242</sup> According to these statistics and estimations of human trafficking victims, only one person for every 800 people trafficked was convicted in 2006.<sup>243</sup> It is thus clear states must make an effort to increase the number of convictions; this is essential to the fight against human trafficking.

Protecting victims is another crucial aspect of the overall problem that needs to be addressed.<sup>244</sup> It is not enough to protect a victim when he or she is participating as witnesses in a criminal trial.<sup>245</sup> Protection must extend to all victims throughout the entire process of recovery.<sup>246</sup> Victims must be provided with both physiological and medical treatment.<sup>247</sup> It is also necessary to provide mechanisms to help victims reintegrate into society; without such mechanisms, there is a high risk of victims falling prey again.

Prevention is an important goal; it is, of course, more desirable to stop a person from being trafficked initially, than it is to help a trafficked victim or effectively convict the trafficker. Public awareness is key. In many African countries human trafficking is not viewed as a serious crime.<sup>248</sup> Governments, NGOs, the media, religious and community leaders, as well as any other organizations willing to help must help create public awareness about the problem.<sup>249</sup> Education promotes prevention.<sup>250</sup> Education helps in two ways: children who are in school have less risk falling prey to traffickers; and generally, education is likely the most effective long-term weapon against trafficking.<sup>251</sup> Providing education to today's children is the

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239. *Id.* at 5.

240. Salah, *supra* note 20, at 7.

241. *Trafficking in Persons Report 2010*, *supra* note 5, at 13.

242. *Human Trafficking: The Facts*, *supra* note 10.

243. *Id.*

244. *See Trafficking in Persons Report 2010*, *supra* note 5, at 13.

245. *Id.*

246. *Id.*

247. *Id.* at 14.

248. *See Trafficking in Persons Report 2010*, *supra* note 5, at 14; *See also* Salah, *supra* note 20, at 6.

249. Salah, *supra* note 20, at 5.

250. *Id.* at 6.

251. *Id.*



best way to fight the trafficking of tomorrow's adults. Alongside these general prevention strategies, more specific initiatives must be implemented, such as initiatives that "both combat the demand for commercial sex and ensure that the demand for low prices is balanced by a demand for traceability, transparency, and worker protections throughout the supply chain," "increas[e] criminal or civil penalties for companies that directly rely on forced labor in the production of goods or services," or address "key vulnerabilities in legal systems."<sup>252</sup>

Finally, effective partnerships between government and nongovernment entities must be created.<sup>253</sup> Generally, "partnerships augment efforts by bringing together diverse experience, amplifying messages, and leveraging resources, thereby accomplishing more together than any one entity or sector would be able to alone."<sup>254</sup> Therefore, it is important to encourage partnerships between different governments, as well as between different entities within a country. It is important for the states to cooperate with NGOs; NGOs are important in the fight against human trafficking but are often under constraints that limit effectiveness—constraints that can be removed with the support of states.<sup>255</sup> Moreover, cooperation between NGOs is also necessary because through the exchange of information and experiences, these organizations will be able to further help victims in rehabilitation and counseling.<sup>256</sup>

## VIII. CONCLUSION

Human trafficking is a widespread problem in Africa that can only be resolved through intense, coordinated efforts by all actors involved. The number of trafficked persons and the amount of money trafficking generates is overwhelming. States must pursue measures in prevention and awareness, such as ensuring education and training, "including life-skills, awareness raising and counseling, as key preventive measures" to combat trafficking.<sup>257</sup> States must provide "viable employment or other livelihood opportunities for youth in general and in particular for young women at risk, especially in regions prone to trafficking," is another important measure that the States must implement.<sup>258</sup> Promoting the rights of children and protecting children from trafficking by adopting specific measures, increasing awareness through the use of mass media and information campaigns, and training for persons in key positions, in particular the police

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252. See *Trafficking in Persons Report 2010*, *supra* note 5, at 14.

253. *Id.* at 15.

254. *Id.*

255. Salah, *supra* note 20, at 7.

256. *Id.*

257. *Onagadougou Action Plan*, *supra* note 177, at 3.

258. *Id.*

authorities in African countries, are all examples of effective measures.<sup>259</sup> Likewise, the collection and exchange of information on the “means and methods used by the traffickers” would be helpful in combating human trafficking.<sup>260</sup> Furthermore, countries need to protect the victims of human trafficking, ensuring victim’s safety and developing a support system that makes victims partners in “catching” their perpetrators, preventing a victim from being re-victimized.<sup>261</sup> Finally, cooperation between states and nongovernmental organizations is a key aspect of the solution. Ultimately, the goal should be to completely eradicate human trafficking. The first steps towards that goal must be taken now.

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259. *Id.*

260. *Id.*

261. *Id.* at 4.