

Reflections on the Combat against Human Trafficking in Ghana

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Abstract: *December 2015 marked 10 years since Ghana enacted the Human Trafficking Act, 2005 (Act 694) to combat Trafficking in Persons in Ghana. The 2014 U.S. Department of State Report on Trafficking in Persons classifies Ghana as a tier 2 country. In 2003, Ghana was one of the few tier 1 countries from West Africa. Ghana is a source, transit and destination country for Human Trafficking. The 2014 Trafficking in Persons Report notes that in Ghana, internal Trafficking in Persons is more prevalent than trans-national trafficking. The Anti-Human Trafficking Unit of the Ghana Police Service is reputed for being highly motivated. Various Civil Society Organisations have conducted awareness raising campaigns throughout the years. However, Social Welfare structures established decades ago have not seen appreciable improvements. At the time these structures were built, the main concerns were domestic violence against women and children. With pressure mainly from the United States, Act 694 was enacted. But Act 694 appears to be a law enforcement tool to the combat human trafficking. How could the institutional arrangements have been set up for a more efficient combat against trafficking in the face of limited resources? I conclude that the incentive structures for the decisions on Trafficking in Persons must be re-oriented taking cognizance of the interests, powers and motivations of public office holders, victims, traffickers and other key stakeholders. This requires the adoption of a holistic approach to combating Trafficking in Persons.*

Keywords - Trafficking, exploitation, slavery, modern-day, incentives

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1. INTRODUCTION

June 2015 was the 800th anniversary of the Magna Carta. The Magna Carta is considered as one of ‘the greatest constitutional documents of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot.’¹ But the Magna Carta could not stop human rights abuses of the ordinary man. The Magna Carta did not apply to bonded labour. Today, bonded labour is a classic example of Trafficking in Persons. The battle for human freedom has travelled a very long road. There is no doubt that Trafficking in Persons violates a panoply of human rights guaranteed under the 1992 Constitution of Ghana and the normative framework of international human rights law including the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).²

¹ Andrew Caplan, Statement on *the Magna Carta: Foundation of Freedom 1215 to 2015*, by Nicholas Vincent (London: Third Millennium Publishing, 2015). Viewed 11 August 2015, <http://www.magna-cartabook.com/the-law-society.html>.

² The Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), Optional Protocol to the International Covenant on Civil and Political Rights and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the Death Penalty are

The remnants of the age old cannons and their accompanying 25 kilogrammes cannon balls at Elmina Castle, west of Accra, Ghana evoke memories of how structures were created for the flourishing of the Trans-Atlantic slave trade in many West African countries including the then Gold Coast. The cannon ball was a source of strength for the forts and castles along the Gold Coast for the protection of life and property of merchants, slave masters and the colonial authorities. The cannon ball also served the purpose of physically restraining individual slaves who proved difficult for their masters. The methods to subdue slaves today are not necessarily shackles and cannon balls. Today, the shackles and cannon balls come in various forms including fake passports, forgery of other travel documents, swearing of secret oaths and allegiance, seizure of travel documents, non-payment of wages and so forth. These may be achieved through brute force or the use of subtle means including deception, fraud, duress, undue influences and misrepresentations. Trafficking in Persons is the modern-day form of slavery.

Very early in the 21st Century, there was global outrage against Trafficking in Persons. These efforts mainly by the United States Government led to the promulgation of legislation against Trafficking in Persons in Ghana. The Human Trafficking Act, 2005 (Act 694) was enacted in December, 2005 for the prevention, reduction and punishment of human trafficking, for the rehabilitation and reintegration of trafficked persons.³ Enactment of Act 694 was also as a result of increased public awareness of the problem of trafficking in Ghana partly as a result of local media⁴ attention as well as the desire of Ghana to meet its international obligations under certain international instruments such as the International Labour Organization Worst Forms of Child Labour Convention (ILO Convention No. 182) that Ghana had ratified.⁵ The fight against human trafficking is far from over.⁶

The purpose of this paper is to briefly examine Ghana's efforts at combating Trafficking in Persons within 10 years after the promulgation of Act 694, taking into account the relevant structures created and the incentives around the combat against Trafficking in Persons in Ghana.

2. KEY PROVISIONS OF THE HUMAN TRAFFICKING ACT, 2005 (ACT 694)

A. Introduction

The key provisions of Act 694 cut across the main notable areas necessary for the combat against human trafficking anywhere. These include prevention of trafficking, the prosecution of perpetrators, the protection of and provision for victims or survivors of Trafficking in Persons.⁷ Act 694 attempted rendering a modified version of the universally accepted

collectively referred to as the International Bill of Human Rights. Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 2 (Rev. 1), *The International Bill of Human Rights*. Viewed on 17 August 2015, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>

³ Long Title, Human Trafficking Act, 2005 (Act 694). Viewed on 21 May 2015, http://www.protectionproject.org/wp-content/uploads/2010/09/Ghana_Human-Trafficking-Act_2005.pdf

⁴ Salome Donkor, 'Child trafficking causes general concern', *Daily Graphic*, 30 September 2004, 9. Patrick Baidoo, 'Child Trafficking still widespread in Ghana. NGOs, Government Agencies and Local Leaders await New Bill', *The Chronicle*, 18 August 2004, 5.

⁵ Ghana ratified this Convention on 13 June 2000. List of Conventions Ghana ratified viewed on 17 August 2015 <http://www.ilo.org/ilolex/english/convdisp1.htm>.

⁶ Recent media attention in Ghana on the subject of human trafficking reveals the problem is still persistent. 'Hell made in Kuwait', *Joy Online*. Viewed on 21 May 2015 on <http://www.myjoyonline.com/news/2015/May-8th/hell-made-in-kuwait.php>.

⁷ Long Title, Human Trafficking Act, 2005 (Act 694).

definition of human trafficking,⁸ considers trafficking as a serious offence,⁹ outlines provisions for victim protection and support,¹⁰ creates a Human Trafficking Fund¹¹ to finance protection and support for victims and establishes a Human Trafficking Management Board¹² to lead the anti-trafficking agenda.

B. Definition of Human Trafficking

Act 694 defines human trafficking to cover the doing of a prohibited act through a prohibited means for the purpose of exploitation.¹³ Act 694 originally omitted the purpose for which traffickers engage in their business.¹⁴ This rendered the provision overly broad that it could potentially cover acts which should not ordinarily fall within the scope of what is generally understood as human trafficking. The Act was consequently amended to introduce the important element of the purpose of Trafficking in Persons.¹⁵ Act 694 stipulates acts of trafficking to include recruitment, transfer, harbouring or taking advantage of the vulnerability of a person. Such acts may be committed through various means of trafficking such as fraud, deception, abduction, and kidnapping.

C. Special Mitigation Factors

Act 694 envisages a situation in which it is possible that someone convicted of a trafficking offence may be a beneficiary of factors which should reduce punishment below the minimum penalty of five years imprisonment that the convict could potentially be facing. Such special mitigating factors have not been listed in the law. Neither were there any guidelines for the considerations of the circuit court judges in the exercise of their discretion in the application of the special mitigating factors. However, the law restricts the application of these special mitigating factors to ‘provision and use’¹⁶ of a victim of trafficking.

D. Complaint and Arrest

The police may effect an arrest of a suspect human trafficker either with or without a warrant in accordance with normal criminal procedure in Ghana. Such arrests may be effected where a complaint has been filed by the victim or by anyone such as persons in loco parentis, a social welfare officer, a probation officer or a teacher who has information on human trafficking.¹⁷

E. Rescue, Rehabilitation and Reintegration

An authorized officer may undertake the rescue of a victim in collaboration with an organization. In terms of section 42 of Act 694, an authorised officer means an immigration officer, a police officer or any other officer authorised by the Ministry of Interior to implement any provision of the law. The welfare of a victim of trafficking who has been rescued lies within the mandate of the Ministry with responsibility for Gender, Children and

⁸ Section 1(1), Act 694.

⁹ Section 2(2), Act 694 provides that the minimum punishment for a conviction for trafficking in persons is five years imprisonment.

¹⁰ Sections 15 to 18, Act 694.

¹¹ Section 20, Act 694.

¹² Section 28, Act 694.

¹³ Section 1, Act 694 and Section 1, Human Trafficking (Amendment) Act, 2009 (Act 784).

¹⁴ Tuinese Edward Amuzu, *What does Human Trafficking mean in Ghana?*, a Concept Paper written under an ILO Sponsored Project on Fighting Child Trafficking through nation-wide sensitisation on the Human Trafficking Act, 2005 (Act 694), September 2006 (on file with author).

¹⁵ Section 1, Act 694 and Section 1, Act 784.

¹⁶ Section 7, Act 694.

¹⁷ Sections 12 and 13, Act 694.

Social Protection.¹⁸ It is also envisaged that District Assemblies, the local level administrative authority for various districts will take responsibility for the welfare of the victims of trafficking.

F. The Human Trafficking Fund

The prevention of Trafficking in Persons, the protection of victims and the prosecution of perpetrators require financial and human resources to be effective. In view of this, Act 694 establishes the Human Trafficking Fund. The objects of the Fund as captured in section 22 include the provision of basic material support for victims of trafficking; skills training of victims of trafficking and for any matter connected with the rescue, rehabilitation and reintegration of victims of trafficking in the best interest of the victims. The Fund may also be used for the construction of reception shelters for trafficked persons in the districts and for training and capacity building of persons connected with rescue, rehabilitation and reintegration. Resources for the Fund are to come from the consolidated fund,¹⁹ private donations, grants from bilateral sources and proceeds from confiscated assets acquired as a result of Trafficking in Persons.²⁰

G. Human Trafficking Management Board

Act 694 establishes the Human Trafficking Management Board to provide the necessary leadership for the combat against Trafficking in Persons in Ghana.²¹ The functions of the Board include providing recommendations for a National Plan of Action against human trafficking, monitoring and reporting on the progress of a National Plan of Action through the Minister to the Economic Community of West African States (ECOWAS) Secretariat and providing the Minister with advice on policy matters under Act 694. The Board is also responsible for the preparation of guidelines for the disbursement of resources from the Human Trafficking Fund.

3. THE STRUCTURES AND INCENTIVES FOR THE COMBAT AGAINST TRAFFICKING IN PERSONS IN GHANA

To succeed in an action against Trafficking in Persons in Ghana, the necessary institutions and incentives must be created, nurtured and sustained. The main structure created under the Human Trafficking Act is the Human Trafficking Management Board. The mandate of the Board is both policy development and operational. Membership of the Board is mainly ex-officio with the major security agencies such as the police and immigration services heavily represented. It is required of the Board to develop a National Plan of Action to guide the process of combating trafficking in Ghana. It is also required under the law for the Minister to develop the necessary legislative instrument for the operationalisation of the Act.

The Ghana Police Service has in the implementation of its role under the Act set up Regional Anti-Human Trafficking Units (AHTU) in most regions in Ghana. The AHTU continues to undertake more investigations and prosecutions. But, the AHTU lacks the basic material support to discharge upon its mandate.²² The Human Trafficking Fund lacks the resources to support structures such as the AHTU.

¹⁸ Sections 15 to 18, Act 694.

¹⁹ The Consolidated Fund is one of the public funds created under the 1992 Constitution of Ghana. Article 175, 1992 Constitution (Ghana).

²⁰ Section 21, Act 694.

²¹ Sections 28 to 33, Act 694.

²² This was revealed in an interview with the Director of the Anti-Human Trafficking Unit of the Ghana Police Service conducted on 10 August 2015. The basic material support includes Computers, Scanners, Cameras and

4. Key Lessons Learned

A. Understand what You Legislate

When States understand phenomenon they fight, the response through legislation is more likely to succeed. The difficulties around the original definition of the offence of Trafficking in Persons in Ghana necessitating a re-definition of human trafficking in the Human Trafficking (Amendment), 2009 (Act 784) did not evince a solution to a problem well understood. This view is buttressed with a review of some other provisions of Act 694. One of such provisions is section 1(4). Section 1(4) eliminates consent as a defence when children are trafficked. But, when does a child become trafficked? As far as children are concerned, it does not matter whether any of the means of trafficking, such as fraud or deception, exists. Once the act is carried out for the purpose of exploitation, the offence of trafficking should be complete. What section 1(4) takes account of is the irrelevance of consent regardless of whether the prohibited means are present in the prohibited acts for exploitation. This provision does not mean that a child is trafficked once there is a prohibited act for the purpose of exploitation. This loophole in the law reinforces the point that a good technical appreciation of the peculiar subject area for legislation by policy makers is more likely to provide the most appropriate legislation to combat a menace such as Trafficking in Persons.

B. Taking into Account the Cultural Setting of the Phenomenon

Culture is pervasive and can make the understanding of an otherwise easy phenomenon complex. The traditional extended family system mostly practiced in African countries has been noted as one which may lend itself easily to trafficking of persons who would otherwise have been well taken care of by extended family persons into whose care they are entrusted. In such a situation, even parents may fall foul of the law as they may unknowingly hand over their children to persons who are considered to be extended family members who may end up exploiting the children put into their care. It is the need to take into account these cultural nuances in the fight against Trafficking in Persons which informed the provision on special mitigation factors as captured in section 7 of Act 694.

Other cultural factors which should have informed legislation on Trafficking in Persons in Ghana is the age old mass movement of school children from the south of Ghana, for instance, the Ada area to places such as Yeji during periods immediately after end of the basic school academic year. In recent times, police efforts at combating trafficking of children have led to the interception of bus – loads of children embarking on these journeys. Whiles it is commendable to take the fight against Trafficking in Persons, particularly children to a level which removes incentives for traffickers to engage in this crime, without care and good understanding of the cultural settings of the movements of these children particularly between July and August, such interceptions only unfortunately lead to the detention of children on lawful trips, sometimes to their parents. The interception of these children rather traumatises the children and young adults who are unable to appreciate the real reasons for the curtailment of their freedom of movement.

C. Plan that you will Need Resources

Prevention of trafficking is the first of the objectives of the Trafficking Act. Section 41 of Act 694 is the only provision which deals albeit indirectly with the prevention of trafficking. It permits the Minister on recommendation of the Management Board to make regulations on preventive measures for District Assemblies. In general, preventive measures must aim at

so forth. The AHTU is unable to retrieve basic information on cases being handled in the absence of the infrastructure and know-how for the storage of such data.

removing the vulnerabilities of persons prone to trafficking. But such preventive measure will require a lot of resources to be committed by central government. This may just well amount to implementing the country's development agenda. In addition, the Rescue, Rehabilitation and Reintegration of the victims of the trafficking like other aspects of the fight against Trafficking in Persons require resources, financial and non-financial. However, the Human Trafficking Fund does not appear to have attracted the necessary attention for financial allocations. Funding the combat against trafficking does not appear to be a priority for public office holders keeping watch over public resources.

D. Absence of Infrastructure for Victims and Witness Protection

Several provisions of the Trafficking Act deal with the usual criminal procedural issues such as filing and receipt of complaint by the police, arrest by the police with or without warrant and arrest by the private citizen.²³ Procedural issues of concern at this point include protection for both the victims of trafficking and witnesses. This is essential since traffickers are usually violent and can intimidate the victim and witnesses during the court process.²⁴ Victims and witnesses are likely not to cooperate with prosecutorial teams and investigators for fear of reprisals from traffickers.²⁵ The use of video tape testimony, video conferences and other ways to prevent intimidation by accused and counsel, and the public may have to be implored by the courts in Ghana.²⁶ These methods of testimony are rarely used in Ghana. However, the judiciary in Ghana is increasingly becoming receptive to new ways of doing things including acceptance of affidavit evidence and written witness statements. The rules of procedure on testimony should be adopted or modified to take account of the special needs of victims and children.²⁷ Witnesses who are children should be allowed to testify outside of court or in court without the presence of the offender. These procedures must be very carefully used in view of the need to strike a very delicate balance between securing the rights of the victims and the due process rights of a fair trial for the accused person.²⁸ It is pertinent to note that the absence of victim's protection system have led to situations in which sometimes victims were housed in police cells and the perpetrators or suspect traffickers granted court bail.

E. Taking Modern Trends into Account

When prevention of Trafficking in Persons fails, there is the need to protect the victims. At the heart of the protection prong of the objectives of fighting trafficking is the principle of the non - criminalisation of the victims. While traffickers must face the full rigours of the law, victims of trafficking should be immune from liability each time the victim engages in

²³ Sections 9-13, Act 694.

²⁴ Raymond Atuguba, *Human Trafficking in Ghana, a Review of Legislation*, Action Programme Against Forced Labour and Trafficking in West Africa, International Labour Office, International Labour Organisation, Geneva 2005, 48.

²⁵ Ibid.

²⁶ John R. Miller, 'Prepared Statement to the Secretary, Director of the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State, June 25, 2003' (statement presented before the Sub-Committee on International Terrorism, Non-Proliferation and Human Rights of the Committee on International Relations House of Representatives, One Hundred and Eighth Congress, First Session, June 25, 2003).

²⁷ Mohamed Y. Mattar, 'A Comparative Analysis of the Anti-Trafficking Legislation in Foreign Countries: Towards a Comprehensive and Effective Legal Response to Combating Trafficking in Persons' (statement presented to the Sub-Committee on International Terrorism, Non-Proliferation and Human Rights of the Committee on International Relations, House of Representatives, One Hundred and Eighth Congress, June 25, 2003).

²⁸ 1992 Constitution (Ghana), article 19(2) (3).

criminal acts so long as such acts are ‘caused by or incidental to the trafficking.’²⁹ In civil suits against traffickers, non-criminalization should extend to no fault on the part of the victim. It is essential that Judges and lawyers in Ghana are conversant with the non-criminalization and no fault liability principles.³⁰ These principles should lead judges to award recovery by victims of remuneration earned but which are not paid by their employers while the victims are in illegal statuses. Ghanaian jurisprudence does not reveal the use of these principles in any of the cases heard so far. The Trafficking Act does not provide for non-criminalization of the victim. However, under the Act, a victim may institute a civil action against the trafficker for damages.³¹ Beyond recognising the right of the victim to institute civil actions against traffickers, the Act does not provide for the application of the no fault and liability principles.

5. CONCLUSION

Trafficking in Persons remains a problem for most countries including Ghana. To effectively combat the designs of traffickers, developing countries must get all the incentives right and develop the appropriate structures. Understanding the trafficking phenomenon well before developing a law to fight it will be the right way to start. In the absence of such an understanding, it is possible to criminalise an otherwise legitimate action. International pressure can be helpful to galvanise States into action. But it is useful to bear in mind that even the most sophisticated frontline institutions or States can mislead everyone. As trafficking is a multi-dimensional problem, States should not adopt only a criminal law approach to the combat against Trafficking in Persons but rather deal with the phenomenon comprehensively. This requires taking the interests of the victims or survivors of trafficking into account. It is important to get all the incentives right and put the necessary structures in place so as to avoid victimizing innocent citizens, sometimes children and young adults for whose sake the law against Trafficking in Persons was enacted.

²⁹ Such acts may include falsification of travel documents, illegal entry or working without authorization. John R. Miller, Prepared Statement to the Secretary, Director of the Office to Monitor and Combat Trafficking in Persons, U.S. Department of State.

³⁰ Ibid at 48.

³¹ Section 19, Act 694.

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