

2011

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Recommended Citation

Sertich, Manda, and Marijn Heemskerk. "Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation." *Human Rights Brief* 19, no. 1 (2011): 2-7.

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Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation

By Manda Sertich* and Marijn Heemskerk**
in collaboration with the Enslavement Prevention Alliance – West Africa***

INTRODUCTION

Ghana's Human Trafficking Act (Act)¹ was enacted on December 5, 2005 to address human trafficking activity within, to, from, and through Ghana. The Act's composition was mainly guided by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol),² which is the primary international legal framework to combat trafficking.

The Act, like the Palermo Protocol, comprises three necessary components of counter-trafficking legislation: (1) prevention of human trafficking; (2) protection of trafficked persons; and (3) prosecution of traffickers. The Act endeavors to achieve its goals by stating a universally accepted definition of human trafficking, mandating a minimum sentence of five years imprisonment for trafficking perpetrators, outlining provisions for victim protection and support, creating a Human Trafficking Fund (Fund) to finance this protection and support, and establishing a Human Trafficking Management Board (Board) to spearhead counter-trafficking efforts.

On paper, the Act appears to address the primary concerns regarding human trafficking. The question remains, however: does the Act adequately address the Ghanaian human trafficking problem, in practice, six years subsequent to the Act's passage into law? A review of the Act's implementation evinces successful execution of the Act's preventive strategies and a limited

number of prosecutions of both domestic and international human trafficking cases, but inadequate protective measures for trafficking survivors.

CONTEXTUAL BACKGROUND: HUMAN TRAFFICKING IN GHANA

Human trafficking has taken root in Ghanaian culture for two primary reasons. First, throughout Ghana's history, parents have sent their children to live with extended family members to strengthen familial ties and enhance their children's education or skills development. For a variety of reasons, including urbanization, poverty, and the breakdown of familial ties, this system is now regularly abused; children living with relatives are often exploited for labor, domestic services, or prevented from attending school. Second, poverty often causes Ghanaians to seek occupational opportunities outside of their communities of origin, leaving them vulnerable to traffickers.³ An estimated 28.5 percent of Ghanaians live off \$1.25 per day, which is below the national poverty line,⁴ and a majority of trafficked persons originate from the poorer areas of Ghana.

Domestic trafficking is believed to be more prevalent than transnational trafficking in Ghana, and most reported victims are children. Girls from the northern regions are regularly trafficked by recruiters to act as head porters (street peddlers), or *kayayee*, in metropolitan areas; estimates from aid organizations place the number of children working in the *kayayo* business in the tens of thousands. Once these girls arrive at their destinations, they are not compensated as promised and are often forced to exchange sexual services for shelter. Girls and women from the north and other poverty-stricken regions are frequently trafficked to metropolitan areas to work as domestic servants. An estimated thousands of children⁵ between the ages of three and seventeen have been and are being trafficked to the Volta Region to work in the fishing industry. The children, mostly boys, are required to work extremely long hours under dangerous conditions, often in exchange for as little as approximately \$25-65 USD paid to their parents in advance for five years of service. The parents of these children frequently do not know where their children are sent to work, making reunification difficult, and often do not recognize the dangerous conditions under which their children work. Girls are also trafficked, though to a lesser extent, to the Volta Region to sell and smoke fish, work in fishing community households, and to be sexually exploited by fishermen and older trafficked boys. There are also reports of domestic child trafficking for purposes of street hawking, work in chop bars (food stands), begging, work in the soccer indus-

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*** During the summers of 2010 and 2011, the authors of this article conducted an assessment of the implementation and efficacy of Ghana's Human Trafficking Act for the Enslavement Prevention Alliance – West Africa (EPAWA). The findings and recommendations are based on the authors' interviews with more than eighty individuals and entities working to combat trafficking in Ghana including government ministries, nongovernmental organizations, legal aid providers, media representatives, and law enforcement officials. A full version of the authors' report, including a review of a majority of the Act's sections and a draft Legislative Instrument, can be found at www.epawa.org.

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try, mining, labor in stone quarrying and on cocoa farms, other agricultural labor, and certain instances of *trokosi*, a cultural practice where female children are sent by their families to serve in perpetual bondage in a shrine to atone for crimes committed by their family members.⁶

Women and girls throughout the country, and a growing number of boys, are trafficked for sexual exploitation. According to one source, there are more than 120 brothels in Accra alone where young girls are forced into prostitution.⁷ Despite its prevalence, NGOs and other stakeholders pay considerably less attention to sex trafficking and trafficking of adults than to child labor trafficking. The lack of attention to adult victims reflects the prevailing perception that adults should be able to stand up for themselves.

Ghana is also a source, transit, and destination country for international trafficking for the same types of exploitation previously described. As reported by the U.S. Department of State, Ghanaian women and children are recruited and transported to other West African countries, as well as the Middle East, Russia, the United States, and Western Europe, for forced labor and sex trafficking. Ghana is also a source country for children trafficked for forced labor into the agriculture sector in Cote d'Ivoire and Nigeria, including on cocoa farms.⁸

Given the prevalence of various types of human trafficking coupled with a lack of specific criminalization of human trafficking, it became clear approximately ten years ago that legislation was needed to explicitly address the needs of trafficked persons and to institute appropriate penalties for perpetrators of trafficking.

GHANA'S HUMAN TRAFFICKING ACT ON PAPER AND IN PRACTICE

GENERAL

Ghana's Ministry of Women and Children's Affairs (MOWAC) is responsible for administering the Human Trafficking Act. Although the Ministry of Employment and Social Welfare's Department of Social Welfare (DSW) is not tasked with victim protection responsibilities under the Act, DSW partners with MOWAC to perform some of its required protective duties.

In Ghana, legislation is implemented by the passage of regulations, called a Legislative Instrument (LI), which details the procedures to be employed under the law. MOWAC is tasked with developing the LI upon the recommendation of the Board.

As of this writing, the legislature had not enacted an LI for the Act, which weakens the Act because without standardized procedures and agencies designated to follow them, inconsistency in implementation results.

HUMAN TRAFFICKING DEFINITION

Section 1(1) of the Act defines human trafficking as:

the recruitment, transportation, transfer, harbouring, trading or receipt of persons for the purpose of exploitation within and across national borders by

(a) The use of threats, force or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or

(b) Giving or receiving payments and benefits to achieve consent.

Exploitation "shall include at a minimum induced prostitution and other forms of sexual exploitation, forced labor or services, [slavery]⁹ or practices similar to slavery, servitude, or the removal of organs."

In practice, the Act's definition of human trafficking is unclear, most notably due to the use of the conjunctive "or" in Section 1(1). A number of advocates believe any single element listed at the beginning of Section 1(1)—recruitment OR transportation OR transfer OR harboring OR trading OR receipt of a person—combined with exploitation and the elements required in subsections (a) or (b), is sufficient to constitute trafficking. In contrast, others believe each and all of the elements listed at the beginning of Section 1(1), combined with exploitation and the elements required in (a) or (b), must be present to constitute trafficking. In this latter scenario, the "or" would simply apply to "trading or receipt of persons," and all other actions would be required as if they were joined by the word "and."

The lack of definitional clarity causes concern for several reasons. First, adequate awareness about human trafficking cannot be achieved if there is confusion about what behavior constitutes human trafficking. Second, it is more difficult to investigate and prosecute human trafficking if such confusion exists because law enforcement cannot consistently identify cases. Third, it is necessary to distinguish human trafficking from other crimes because laws criminalizing those acts often contain weaker penalties, lack victim protections, and "focus on the perpetrator rather than the person who has had his or her rights violated."¹⁰

A review of the Act's implementation evinces successful execution of the Act's preventive strategies and a limited number of prosecutions of both domestic and international human trafficking cases, but inadequate protective measures for trafficking survivors.

As in the Palermo Protocol, the Act defines trafficking as consisting of three elements: (i) an *act* (recruitment, transportation, transfer, harbouring, trading or receipt of persons); (ii) *means* (the use of threats, force, or other forms of coercion, abduction, fraud, deception, the abuse of power or exploitation of vulnerability, or giving or receiving payments and benefits to achieve consent); and (iii) *purpose* (for the purpose of exploitation). As clarified by the United Nations Office on Drugs and Crime, the UN agency tasked with increasing the level of protection and assistance provided to trafficked persons, the Palermo Protocol definition of trafficking requires one component from each of the three elements. The future LI, or an amendment to the Act, should clarify the Act's definition to facilitate uniform interpretation in order to ensure appropriate and consistent implementation of the law and prosecution of trafficking.

Some advocates are also concerned that the Act is not comprehensive enough to cover all types of trafficking or appropriately address the most prevalent types of trafficking occurring in Ghana. Some common forms of human trafficking have never been prosecuted, such as trafficking of *kayayee*. Following the example of Nigeria, whose law articulates and criminalizes nine distinct forms of trafficking based on the types of exploitation historically prevalent there,¹¹ the LI, or an amendment to the Act, should include a list of the types of exploitation prevalent in Ghana to facilitate their investigation and prosecution. It should nevertheless be clear that the Act is not all-inclusive so as not to preclude new forms of trafficking that develop over time.

THE HUMAN TRAFFICKING MANAGEMENT BOARD

The Act requires the establishment of the Human Trafficking Management Board, comprised of representatives of institutions at the forefront of combating trafficking in Ghana. The Board's primary functions are to execute a national plan of action, to advise the Minister on policy matters, to assist with the investigation and prosecution of trafficking cases, to promote the rehabilitation and reintegration of trafficked persons, to prepare guidelines for disbursements from the Fund, and to conduct research on international and regional developments.

THE THREE P'S: PREVENTION, PROTECTION, AND PROSECUTION

Prevention

Government entities in Ghana have achieved most of the preventive goals and tasks set forth in the Act, making the first "P," prevention, the most successfully implemented component so far. One of the most important preventive measures set forth in the Act is the establishment of the Board, which was formed in 2006 and has since been active and functional. During 2010 and 2011, the Board evaluated and updated the National Plan of Action devised several years earlier and developed an internal action plan for 2011 in cooperation with UNICEF. The Board also advised the Minister on policy matters, including: (1) construction of shelters for trafficked persons in each region; (2) passage of an LI; (3) establishment of a monitoring and evaluation framework; (4) initiation of a national communication plan; and (5) proper maintenance and an audit of the Fund. The Board is also working with UNICEF to establish comprehensive operational procedures for victim support. Finally, MOWAC held consultations with partners to draft an LI. MOWAC plans to submit the draft LI to the Attorney-General's Department during the latter months of 2011, with the hope of LI enactment in early 2012.

A number of government institutions have conducted human trafficking education, both independently and in collaboration with NGOs, to inform law enforcement, immigration officials, judges, and other stakeholders. While trafficking awareness has generally increased in that regard, awareness remains low among potential victims and traffickers, particularly in rural areas. Education and sensitization of those who would potentially facilitate or fall victim to trafficking is one of the most important preventive measures envisioned by the Act. Due to a lack of government resources, NGOs conduct the vast majority of these programs, which does not constitute government compliance with the Act's provisions. To increase education and sensitization, the government should translate the Act's basic provisions into more local dialects and distribute them widely.

Protection

The Act mandates extensive protections for trafficked persons. Government entities in Ghana have made some efforts to protect trafficked persons through rescue, shelter, and other support such as counseling or provision of funding for employable skills training. However, implementation of the second “P,” protection, remains largely unaddressed by the government. As a result, civil society has had to fill in the gaps.

Section 14 of the Act tasks police and immigration officers with victim rescue. The subsequent sections delineate MOWAC’s responsibilities with respect to trafficking victims, including: provision of temporary basic material support, counseling, and start-up capital; identification and location of families; and funding development of employable skills and employment opportunities. The Act tasks MOWAC with management of the Fund, the monies of which are intended to support those goals. Additionally, the Act offers enhanced protections to undocumented foreign national trafficked persons such as those temporary or permanent immigration status, protects the identities of trafficking survivors, preserves a survivor’s right to pursue civil claims for damages, and orders traffickers to compensate victims in criminal matters. However, in practice, most of the above-mentioned tasks are conducted by NGOs due to a lack of government resources. Though the Ghanaian government has assisted several rescue operations, the vast majority of victim rescues are performed by NGOs, sometimes with police and DSW involvement.

Additionally, the government, through DSW, operates only three shelters for trafficked persons, two of which are located in the Greater Accra region and house only children. DSW provides only housing at one of the three shelters, while NGOs provide food, clothing, and other basic material support. Despite plans to construct two shelters dedicated to trafficked persons by the end of 2010, no new shelters were constructed as of November 2011 due to lack of funding. To best meet the victim protection provisions envisioned by the Act, MOWAC should operate or fund at least one shelter dedicated to trafficked persons in each region of Ghana.

The government offers little support in terms of family tracing, funding skills development and employment opportunities, and providing start-up capital. Instead, NGOs provide

family tracing and rehabilitation services or form partnerships to that effect. DSW officials do provide counseling at existing shelters and police stations. At one of the three shelters, however, government-provided security is lax or nonexistent. For example, in one instance where sixty trafficked girls who had been sexually exploited were brought to a government shelter, 46 of them were gone by the next day, either alone or with their pimps.

Adequate funding continues to be one of the main protection challenges despite the Fund’s establishment in 2008. Since its inception, the Fund has experienced a number of problems with seed money, the commingling of monies with other MOWAC funds, a lack of disbursement accounting, and a lack of audits.

MOWAC indicates that it allocated approximately \$6,500 USD in seed money to the Fund, while other sources report that up to \$75,000 USD was initially contributed by a conglomerate of governmental and intergovernmental organizations. Unfortunately, the Fund was commingled with the general MOWAC account, leading to potential misappropriation and a lack of transparency.

In addition to funding level discrepancies, accounting problems also impede the full utilization of resources. In 2009, EPAWA received approximately \$9,235 USD to shelter seven trafficking victims for six months. Since that time, the Fund has been deemed completely depleted by MOWAC despite the fact that the amount disbursed is drastically lower than the amount of seed money alleged. Although the Board has requested a Fund audit from MOWAC, it has yet to be conducted as of this writing. Consequently, it appears the commingled funds were misallocated, leaving the Fund effectively nonoperational.

The Board has since opened an independent account for the Fund. However, the Board has prepared, but not yet adopted, guidelines for Fund disbursements in accordance with Section 30(f) of the Act, leading to a lack of clarity about how funds would be distributed if there were monies to distribute.

To remedy the resource challenges, MOWAC should make public the Fund accounts and expenditures, and the Board should adopt disbursement guidelines. The government should endeavor to actively acquire Fund monies by seeking government allocations or private donations, as suggested by the Act. These steps will ensure trafficked persons receive the benefits of the Fund to which they are entitled.

Education and sensitization of those who would potentially facilitate or fall victim to trafficking is one of the most important preventive measures envisioned by the Act.

Prosecution

Ghanaian law enforcement agencies and the judiciary have arrested and prosecuted some human traffickers, but based on the significant discrepancy between the limited success and the extensive and pervasive nature of human trafficking countrywide, implementation of the third “P,” prosecution, has not reached its full potential.

The Act has facially impressive prosecution provisions, including a minimum five-year prison sentence for convicted traffickers. The Act criminalizes the actions of a recruiter or other actor who trafficks a person to be exploited by a third party and also negates parental consent as a defense in child trafficking cases. Additionally, the Act describes various steps in the trafficking process that constitute violations, including provision, use, and conveyance of a trafficked person. Finally, the Act states that courts shall confiscate the property of traffickers obtained as a result of their human trafficking activity.

Human trafficking is a second-degree felony in Ghana, and such cases can be tried in either the High Court or the circuit courts. Many, if not most, trafficking cases are handled in the circuit courts by police prosecutors who are police officers with some training in prosecution, but usually no formal legal background. Before prosecuting, a police prosecutor must submit the case to the Attorney-General's Department to receive authorization to proceed. The Attorney-General's Department will either confirm the offense contemplated by the investigator or direct the investigator to charge the suspect with a different offense.

In and of itself, police prosecution is not problematic. However, the frequent reluctance of police prosecutors to bring dockets for review by the Attorney-General's Department after arrest and investigation is problematic. Given the requirement that all indictments be reviewed and confirmed by the Attorney-General's Department, it is troubling that trafficking cases could proceed without state attorney authorization, resulting in improperly charged crimes by police prosecutors with little formal legal training.

Exact statistics regarding the number of trafficking arrests are difficult, if not impossible, to collect. A MOWAC database containing data collected from some stakeholders documents 1,500 trafficking cases and only 63 arrested traffickers. One reason the arrest statistics may be so low is the sheer quantity of traffickers, which hinders the ability of law enforcement to make arrests; for example, it is virtually impossible to go to the Volta Region and arrest everyone in the fishing industry using child labor given the volume of the practice. Furthermore, Ghanaian law enforcement officials often lack the resources necessary to carry out their basic duties under the Act such as fueling vehicles to travel to rescue sites. One law enforcement official explained that officers are afraid to take action in trafficking cases because they know the responsibility of providing shelter for the trafficked person will fall to them. Additionally, a number of law enforcement and NGO interviewees indicated they had taken trafficked persons into their homes when no shelters were available. Beyond these very basic resource constraints, law enforcement likely lacks

the funding to conduct numerous comprehensive trafficking investigations sufficient to result in successful prosecutions.

The number of trafficking prosecutions in Ghana's courts is also difficult to estimate because cases are not searchable by topic at courthouses. Consequently, it is virtually impossible to ascertain whether trafficking cases have been tried at a particular courthouse without the case name and reference number. According to MOWAC's database, of nineteen recorded trafficking prosecutions, seven resulted in prison sentences, while three traffickers received mere warnings and four cases remained pending.

Perhaps the most troublesome gap in trafficking prosecutions in Ghana relates to parents who traffic or facilitate the trafficking of their own children. Many such parents traffic their children due to extreme poverty and a lack of education, and sometimes re-traffic their children after rescue and rehabilitation due to continued poverty. Under the Act, a parent can commit the crime of human trafficking. Nonetheless, the authors of this report uncovered only one case where parents were charged for trafficking their own child, and two cases where charges were dropped against parents who trafficked their children because the parents were unable to pay the high fine mandated by the Act. Despite the Act's clear language indicating that parental consent is not a defense to child trafficking,¹² there are also instances where law enforcement officials have not prosecuted because they believe parental consent invalidates the trafficking charge.

In these scenarios, parents who traffic their own children often fall within the Act's “special circumstances” provision that affords discretionary, lesser penalties rather than the minimum five-year prison term if the term would be “harsh.”¹³ Because the children would be left without guardians or parental support and Section 2 of Ghana's Children's Act requires a court to consider the best interest of the child in any matter concerning a child,¹⁴ parental imprisonment is thought to be contrary to the best interest of minor victims.

Advocates have disparate views regarding the appropriate treatment of parent traffickers. Some believe parents who traffic their children should be prosecuted to decrease instances of re-trafficking. Other advocates suggest uneducated, poverty-stricken parents do not deserve the Act-mandated prison sentence; these advocates propose addressing the underlying causes of trafficking, mainly poverty, instead of using the Act to punish parent traffickers.

One viable solution is an LI regulation mandating a two-step prosecution process of parent traffickers. When children are rescued from trafficking involving their parents, the parents should be arrested in every instance. Under this proposal, parents should not be imprisoned pursuant to the Act's provision for special mitigating circumstances; instead, they should be required to enroll in an educational program on trafficking. If they subsequently reoffend, parental custody can no longer be advocated as in the best interest of the children given the likelihood of re-trafficking. In such instances, the minimum five-year prison sentence should be enforced without exception. If the trafficked child is left without a parent guardian, the provisions of the Children's Act relating to the care of children without

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parents should control. This proposed solution provides a second chance to parents who traffic their children as a result of poverty or a lack of education, reduces the likelihood of re-trafficking, and complies with the requirement set forth in Section 2 of the Children's Act.

CONCLUSION

Ghanaian government entities have had success in implementing the Act's preventive strategies such as establishing a capable and motivated Board and conducting training sessions for law enforcement, immigration officials, and the citizenry. The government has also demonstrated the ability to successfully prosecute both domestic and international human trafficking cases, though the number of such prosecutions should be increased dramatically. However, the Ghanaian government has not, for the most part, fulfilled its protective duties mandated by the Act, in particular through its failure to provide shelter and other rehabilitation for trafficked persons, especially adults.

The overarching problem appears to be one of resources; preventive measures such as education are less costly, while protective measures such as shelters involve great expense, with prosecution falling somewhere in between. Consequently, it is paramount that the Fund be the primary concern of the Board. The Board should endeavor to operationalize the Fund by seeking financial support from every source possible. Because the will to eradicate human trafficking is strong amongst stakeholders in Ghana, as evidenced by the implementation of many of the Act's provisions over the past six years, sufficient funding will enable government actors to fill the remaining gaps in implementation.

Aside from these steps, stakeholders should take immediate action to rectify the major implementation challenges facing Ghana, such as the enactment of an LI, clarification of the definition of human trafficking, and adoption of guidelines for disbursements from the Fund. This action will enable the government and civil society to continue down the path towards eliminating human trafficking in Ghana.

Endnotes: Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation

¹ Human Trafficking Act, 2005 (Act 694) (Ghana).

² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children. Supplementing the United Nations Convention against Transnational Organized Crime, U.N. Doc. A/53/383 (2000) [hereinafter Palermo Protocol], available at <http://www2.ohchr.org/english/law/protocoltraffic.htm>.

³ Raymond A. Atuguba, International Labour Organization, *Human Trafficking in Ghana: A Review of Legislation* (2005) at 34.

⁴ *The World Factbook*, U.S. Central Intelligence Agency, <https://www.cia.gov/library/publications/the-world-factbook/fields/2046.html> (percentage estimated in 2007) (last visited Nov. 14, 2011); *2008 Ghana Millennium Development Goals Report*, National Development Planning Commission (NDPC)/ Government of Ghana and the United Nations Development Programme (UNDP) Ghana, at 96 (April 2010), available at <http://www.undp-gha.org/docs/GhanaGhanaMDGReport-2010.pdf>.

⁵ U.S. Department of State, *Trafficking in Persons Report* (2006), at 126, available at <http://www.state.gov/g/tip/rls/tiprpt/2006/>.

⁶ *Trokosi* is separately penalized in the Criminal Code, and many anti-human trafficking advocates believe it does not constitute trafficking because it is a cultural practice and does not necessarily require movement, even though movement is not required to meet the definition of human trafficking.

⁷ Donna M. Hughes et. al., *Factbook on Global Exploitation, Coalition Against Trafficking in Women*, <http://www.uri.edu/artsci/wms/hughes/ghana.htm> (last visited Nov. 8, 2011).

⁸ *Report on Children's Involvement in Cocoa Farming Practices in Ghana*, Ministry of Women and Children's Affairs 3 (2005).

⁹ The text of the Act mistakenly includes the term "salary" instead of "slavery."

¹⁰ Human Trafficking Bill Memorandum at 2 (on file with author).

¹¹ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2003) Cap. (24), §§ 11-18, 21 (Nigeria).

¹² Human Trafficking Act § 1(4).

¹³ *Id.* § 7.

¹⁴ The Children's Act, 1998 (Act 560) § 2 (Ghana).