

Child Trafficking in SADC Countries. The Need for a Regional Response

Jacqueline Gallinetti

This report forms part of the work of the first phase of the programme Towards the Elimination of the worse forms of Child Labour (TECL). This phase ran from 2004 to 2008, and assisted South Africa in starting implementation of its National Action Plan (NAP) on the elimination of child labour and helped in the preparation for and drafting of NAPs for Botswana, Lesotho, Namibia and Swaziland. For details on this programme and its various outputs go to www.chi-labour.org.za

ILO Sub-Regional Office for Southern Africa

Harare, Zimbabwe

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First published August 2008

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Child Trafficking in SADC Countries. The Need for a Regional Response
ILO Sub-Regional Office for Southern Africa, Harare: ILO, 2008
78 p. (Issue paper No. 32)

ISBN: 978-92-2-121546-2 (print)
ISBN: 978-92-2-121547-9 (web pdf)

International Labour Office

ILO Cataloguing in Publication Data

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Cover design by Myrtle Mallis
Typeset by Fontline Electronic Publishing (Pvt.) Ltd, Harare, Zimbabwe
Printed in Mauritius by Précigraph

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Foreword

This report on child trafficking represents an effort to collate the available information on child trafficking in Southern Africa with a view to highlighting a number of policy options on how to create a regional legislative and policy framework to address the issue.

The report examines information regarding the incidences of trafficking in Southern Africa, while noting that available information is too scarce to allow for substantive conclusions regarding the exact scope and nature of trafficking in the region. Nonetheless, the information available certainly illustrates that trafficking of children is a problem that deserves urgent attention in a manner that ensures a constructive approach to its often transnational nature.

In order to set the discussion in a proper perspective, the report examines the international and regional legal frameworks that inform national responses to trafficking. In addition, it also sets out what national responses in the Southern African region exist to address the issue of child trafficking. On a policy level, the efforts undertaken by West African states to combat child trafficking provide a useful blueprint against which to formulate a Southern African policy response to the problem.

Of importance, the report also examines the available institutional mechanisms that exist to facilitate a regional approach to child trafficking. In this regard, the possibility of using the Africa Union through the NEPAD structures are considered, as well as the SADC legislative and policy frameworks. Ultimately, the report emphasizes that efforts at formulating a regional response to child trafficking should be located within SADC structures, with attention to lessons learned from work done in the West Africa region. In doing so, the paper emphasizes the need to stringently monitor and evaluate SADC protocols and policies in Southern Africa.

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1. Introduction

This report aims to provide an overview of existing legal and institutional frameworks on the issue of human trafficking in the Southern African sub-region. It forms the basis of an analysis on how and where in this institutional framework child trafficking can best be focused as a way in which the ILO Southern African Towards the Elimination of Worst forms of Child Labour Programme (TECL) can target its efforts and develop manuals, agreements and protocols as part of its exit strategy.

Although the focus of the ILO is on *child trafficking*, this report is intended to be a basis for ongoing discussions on assimilating the issue in regional law and policy and will take the form of a broad discussion on *trafficking in persons* in the region, with references to child trafficking where necessary. Any initiative to address child trafficking should necessarily form part of a larger framework on trafficking in persons at both regional and national level. However, it is important not to lose sight of the fact that the ILO specifically concentrates its efforts on combating *child trafficking*.

The report provides a brief synopsis of the extent of the trafficking problem in Southern Africa. It then presents an overview of the relevant institutional frameworks and bodies, including a summary of, and recommendations regarding regional instruments (protocols and bilateral or regional agreements, for example) related to trafficking in the sub-region. It also gives an indication of their status, with specific reference to child trafficking, and examines sub-regional mechanisms addressing that issue.

The report notes that the principal human rights instruments that deal with trafficking are the UN Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography; ILO Convention No. 182 on the Worst Forms of Child Labour; and the Palermo Protocol. In the Southern African context, the African Charter on the Rights and Welfare of the Child (ACRWC) cannot be ignored, it being an important instrument through which steps to combat child trafficking could be strengthened. Likewise, the Committee of Experts to the ACRWC should be considered as a forum that could be supported by the international community.

The report also looks at a number of other regional instruments, the most significant being the ECOWAS Plan of Action. The content of this Plan of Action appears well thought out and contains the necessary substance to activate steps to combat trafficking. However, there is a concern that implementation efforts are lacking.

As far as institutional frameworks are concerned, the AU and SADC (and their various initiatives and committees) are the two main structures examined. Each structure has numerous levels that could be targeted vis-à-vis the issue of child trafficking; these are listed herein. Ultimately, the report concludes that a two-pronged approach is required. First, SADC should include child trafficking on its agenda through a protocol and plan of action. A longer-term goal would be to influence the AU on child trafficking, potentially through the ACRWC and its Committee of Experts. Shortcomings are also identified within both the AU and SADC, particularly in relation to implementing and operationalizing existing protocols. Although this may result in regional and sub-regional

obligations to address child trafficking, given the track record of the various institutions, any efforts must be accompanied by sufficient technical assistance that will ensure that they are sustained.

The report also alludes to other initiatives by UN agencies and notes a proliferation of work related to child trafficking. The report expresses concern about duplication and recommends that such actions be coordinated, even those pertaining to trafficking in general.

2. The Extent of the Problem of Trafficking in Persons in the SADC Region

2.1 Introduction

Fitzgibbon observes that trafficking in persons is one of the greatest human rights challenges of our time and is, as the ILO points out, the ‘underside of globalization’.¹ She also notes that human trafficking continues and appears to be on the increase worldwide – especially in impoverished African countries that are destinations, transit zones or the point of origin of those citizens who are transported to distant lands and enslaved through labour or commercial sexual exploitation.

It is widely agreed that there is an absence of reliable information regarding the extent to which trafficking in persons occurs globally and on the African continent. Its clandestine and transnational nature makes it extremely difficult to apprehend or prosecute offenders or to verify information in terms of the scope and nature of the problem. However, in recent years, some effort has been made to quantify the extent of trafficking on a global scale. According to a US government-sponsored research report completed in 2006, approximately 800 000 people are trafficked *across* national borders every year, of whom 80% are women and girls and 50% are minors.² Notwithstanding these efforts to understand the extent of the problem, UNICEF correctly points out that the oft-cited figure of 700 000 women and children trafficked each year has yet to be tested scientifically.³

Bearing this in mind, the following section will attempt to map the extent of the problem of trafficking in women and children in Southern Africa through an assessment of existing information on trafficking within, and among the countries in the SADC region.⁴ The bulk of this information is contained in the recently released *Trafficking In Persons* (TIP) 2007 Report,⁵ but, where available, information from other verifiable sources is included. Given the dearth of verified data, it is not always possible to disaggregate information to differentiate between women and children.

The ILO has a strong focus on the issue of child trafficking within the context of child labour. A recent study by the ILO provides an indication of the prevalence of child labour in the 21st century, estimating that in 2004, globally, there were 317 million economically active children aged 5-17, of whom 218 million could be regarded as child

¹ Fitzgibbon, K. (2003) ‘Modern-day Slavery? The scope of trafficking in persons in Africa’, *African Security Review*, Vol. 12, No. 1.

² *Trafficking in Persons Report* (2007) United States of America, Department of State, p. 8. Hereafter referred to as the TIP Report 2007.

³ ‘Trafficking in Human Beings, Especially Women and Children, in Africa’ (2005), *Innocenti Insight 2nd edition*, UNICEF, p. 4.

⁴ Countries belonging to the Southern African Development Community (SADC) are Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

⁵ *Trafficking in Persons Report*, note 2. Probably one of the most comprehensive attempts to assess responses by individual governments to the problem of trafficking, the annual TIP Report is released by the US State Department every year and attempts to analyse country responses to trafficking in terms of prosecution, protection and prevention. The 7th TIP report was released on 12 June 2007.

labourers.⁶ The findings from the study also illustrate that more boys are exposed to child labour than girls and that this exposure increases with the age of the child. In addition, 69% of all working children are involved in the agricultural sector, 22% in the services sector and 9% in industry.⁷

Prior to the release of the 2004 statistics, in 2002 the ILO provided a set of statistics based on 2000 data that allowed a reliable assessment of the extent of the child labour problem.⁸ Overall, the statistical analysis from 2000-2004 illustrated that there had been a global reduction in the number of economically active children, child labourers and children involved in hazardous work.⁹ However, the analysis by region revealed a decline in numbers for children aged between 5 and 14 years in all regions *except sub-Saharan Africa*.¹⁰ The 2006 report is at pains to stress that it is premature to speculate on the reasons for this global decline, but does note that there is clearly a growing international commitment to eliminate child labour.¹¹

Child labour today manifests itself in many forms. This is perhaps an indication of the changing nature of the types of work that can be described as child labour in terms of Conventions 138 and 182.¹² Their non-specificity enables instruments to focus on the harmful effects and consequences for children rather than the actual type of activity undertaken. In this manner, the two Conventions cater for new and arising circumstances of work that are harmful to children and constitute child labour.

What follows is an attempt to illustrate the extent of child trafficking and trafficking in women in the SADC region, based on reports by those agencies that have undertaken investigations into the phenomenon.

2.2 Angola

According to the 2007 TIP report, Angola is a source country for a small but significant number of women and children trafficked for the purposes of forced labour and sexual exploitation. Angolan women and girls are also trafficked within the country for domestic

⁶ *The End of Child Labour: Within Reach. Global Report under the Follow-up to the ILO Declaration on Fundamental principles and Rights at Work* (2006), International Labour Organization, Geneva, p. 6. Hereafter referred to as the ILO 2006 Report.

⁷ ILO 2006 Report, note 6, p. 8. This classification of sectors is based on the International Standard Industrial Classification of All Economic Activities, Revisions 2 (1968) and 3 (1989). These state that the agricultural sector comprises activities in agriculture, hunting, forestry and fishing; the services sector comprises the wholesale and retail trade, restaurants, hotels, transport, storage and communications, finance, insurance, real estate and business services and community, social and personal services; and the industry sector consists of mining, quarrying, manufacturing, construction and public utilities such as electricity and water.

⁸ Ibid., note 6, p. 5. The 2000 and 2004 data are fully comparable. The ILO's Statistical Information and Monitoring Programme on Child Labour (SIMPOC) prepared its global estimates using data taken from national SIMPOC surveys on child labour, the World Bank's Living Standards Measurement Study (LSMS) surveys, the Multiple Indicator Cluster Surveys (MICS) conducted by UNICEF, labour force surveys, the United Nations Population Division and the Understanding Children's Work (UCW) Project.

⁹ ILO 2006 Report, note 6, p. 6.

¹⁰ Ibid., p. 8. It also notes that the economic activity rate of children between the age of 5 and 14 had declined, but states that this was due to the extremely high rate of population growth rather than a drop in the number of economically active children.

¹¹ Ibid., note 6, p. 9. The cause of the increase in economically active children in Sub-Saharan Africa is also unclear, and all the more so, given that, as in the other world regions, African countries have ratified the WFCL Convention, have a number of IPEC programmes operating in the fight to eliminate child labour and receive international assistance to combat the worst forms of child labour.

¹² Article 3 of Convention 138 states that '[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.' Article 3(d) of Convention 182 refers to the worst form of child labour as 'work, which by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children'.

servitude and commercial sexual exploitation. In an attempt to avoid fees for the importation of goods across the border between Namibia and Angola, truck drivers often force children to act as couriers, carrying goods across the border by hand. This usually occurs at remote border crossings, such as Katwitwi, in Kuando Kubango Province. Anecdotal reports point to South Africa as a destination for trafficked Angolan women.¹³

2.3 Botswana

The ILO research undertaken in Botswana identified only two children who had been trafficked.¹⁴ However, the findings did indicate that the traditional movement of children between sections of the family for purposes of care or education, which constitutes child fostering within the framework of the extended family, was widespread. Respondents in the study explained the traditional practice of children being placed with grandparents, aunts, uncles and other close relatives who were in a position to provide certain amenities, particularly access to education. Parents deem this practice to be in the best interest of the child. The child, in return, is expected to perform duties such as child-minding, livestock herding, fetching water, running errands and performing other domestic duties. The Molo Songololo report nevertheless stated that Botswana is a transit country for children being trafficked from other countries into South Africa for child labour, commercial sexual exploitation included.

In a similar vein, a report in the *Mmegi/The Reporter* (Gaborone) noted that while the situation with regard to trafficking in Botswana is not as extreme as in other countries in the sub-region, it is still a problem. Internal trafficking manifests itself in the proactive ‘sale’ of children by parents who cannot support them, or the targeting of poor families by people who take their children away with the promise of food, clothes and education. These children often end up as domestic workers or farm labourers. Trafficking is prevalent in areas adjacent to farms, where there is likely to be an occurrence of child labour, which in Botswana is closely linked with child trafficking.¹⁵

2.4 The Democratic Republic of Congo (DRC)

The 2007 TIP report describes the DRC as a source country for men, women and children trafficked for the purposes of forced labour and sexual exploitation. According to the report, the majority of known trafficking occurs within the country’s unstable eastern provinces, and by armed groups outside government control. The authors note that indigenous and foreign armed groups, notably the FDLR (Rwandan Hutus), continue to abduct and forcibly recruit Congolese men, women and children to serve as labourers, miners, porters, domestic workers, combatants and sex slaves, although at a much reduced rate from previous years. According to the TIP report, Congolese children are also recruited from refugee camps in Rwanda for soldiering and prostitution. Congolese women and children are also reportedly trafficked to South Africa for sexual exploitation.¹⁶

¹³ TIP Report 2007, note 2, p. 53.

¹⁴ IWAN Consultancies (2007) *Rapid Assessment of Child Trafficking in Botswana*. International Labour Organization.

¹⁵ Letsididi, B. ‘Botswana: child trafficking is rife’ in *Africa 2007*, 7th edition, June.

¹⁶ TIP Report 2007, note 2, p. 89.

2.5 Lesotho

The recent SANTAC reports from both IOM¹⁷ and UNESCO¹⁸ stated that Lesotho is a country of origin for the trafficking of women and children, mainly to South Africa. However, both note that Lesotho also serves, to a lesser extent, as a transit and destination country. According to IOM, male and female street children from Maseru are trafficked out of the country by long-distance truck drivers for purposes of sexual exploitation.¹⁹⁻²⁰ This practice seems to be for reasons of power and control rather than financial gain. On arrival in South Africa, these children are often left on the streets in towns in the Eastern Free State and have to make their own way back home.²¹ They are often too afraid to go to the police in because they crossed the border without proper travel documents. Nor do they tell their families, for fear of reprisal and reprimands.²² Children who are trafficked by long-distance truck drivers often become their sex-slaves and end up in countries such as Malawi, Zambia and Zimbabwe.²³

2.6 Madagascar

The 2007 TIP report states that Madagascar is a source country for children trafficked internally for the purposes of forced labour and sexual exploitation. Further, the trafficking of rural children is suspected to be for forced mining, domestic servitude and prostitution. It goes on to say that there is a child sex tourism problem in coastal cities. A significant number of children are prostituted; some have been recruited in the capital under false pretences of employment as waitresses and maids. Child sex trafficking with the complicity of family members, taxi and rickshaw drivers, friends, tour guides and hotel workers was also noted.²⁴

2.7 Malawi

The TIP report categorizes Malawi as a source country for men, women and children trafficked for the purposes of forced labour and sexual exploitation in-country and for South Africa. Children are primarily trafficked internally for agricultural work, cattle herding, domestic servitude, commercial sexual exploitation and small businesses (for menial work). Anecdotal reports indicate that child sex tourism may be occurring along Malawi's lakeshore. As in Madagascar, victims of all ages are often lured by fraudulent job offers.²⁵

¹⁷ Martens et al. (2003) 'Seduction, Sale and Slavery: Trafficking in women and children for sexual exploitation in Southern Africa' in *A situational analysis of the Abuse and Trafficking of Children for Sexual Exploitation (prostitution, labour and crime) purposes in Southern Africa*, Southern African Campaign against the Abuse and Trafficking of Children (SANTAC), p 57. Hereafter referred to as the SANTAC Report.

¹⁸ *Human Trafficking, especially of women and Children: Lesotho* (draft report) (2005), UNESCO. Hereafter UNESCO Lesotho Study. See SANTAC Report, note 17, for more background on this UNESCO study.

¹⁹ SANTAC Report, note 17.

²⁰ Ibid.

²¹ Ibid.

²² UNESCO Lesotho Study, note 18. See also SANTAC Report, note 17, p. 57.

²³ SANTAC Report, note 17, p. 57.

²⁴ TIP Report 2007, note 2, p. 141.

²⁵ Ibid.

Information in the SANTAC report concurs. It would seem that Malawi has three distinct trafficking flows, namely: victims trafficked to Europe; cross-border trafficking to South Africa, and victims trafficked for sex tourism.²⁶ According to the IOM, Europe-bound trafficking in Malawi is linked to Nigerian crime syndicates based in Europe who target Malawian women. Girls and young women are offered jobs in European factories, restaurants and shops. Once they have been recruited, they are taken to transit houses in Lilongwe, where they often stay for a number of weeks. It is believed that traffickers use this time to prepare the false documents required.²⁷

As in the TIP report, SANTAC indicates that there is little information available on the trafficking of children for sex tourism in Malawi. However, it is reported that sex tourists, primarily from Germany, the Netherlands and the United Kingdom, do target young Malawian children.²⁸ These tourists clearly use gifts and money to draw in children and/or their parents, promising them education and employment opportunities in Europe.²⁹

In terms of cross-border trafficking, the SANTAC report indicates that children and young people are targeted in border towns and along the country's major transport routes. Traffickers lure their victims with promises of marriage, employment and education across the border. However, upon arrival in South Africa, female Malawian victims are sold to Johannesburg brothels.³⁰

2.8 Mauritius

According to the 2007 TIP report, Mauritius is a source country for female children trafficked in- country for commercial sexual exploitation. Taxi drivers are known to provide transportation and introductions for the girls and for their clients.³¹

2.9 Mozambique

The TIP report describes Mozambique as a source and possibly a destination country for men, women and children trafficked for the purposes of forced labour and sexual exploitation. It would seem that the use of forced and bonded child labourers is a common practice in Mozambique's rural areas, often with the complicity of family members. Women and girls are trafficked from rural to urban areas of Mozambique, as well as to South Africa, for domestic servitude and commercial sexual exploitation in brothels, while young men and boys are trafficked to South Africa for farm and mining work. In South Africa, trafficked Mozambicans often go for many months without pay before their 'employers' have them arrested and deported as illegal immigrants. Zimbabwean women and girls are likely to be trafficked to Mozambique for sexual exploitation and domestic servitude.³²

Research undertaken by Statistics South Africa corroborates the above. Unlike South Africa, where the problem relating to trafficking is more prevalent in-country than cross-

²⁶ SANTAC Report, note 17, p. 56.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ TIP Report 2007, note 2, p. 147.

³² Ibid., note 2, p. 154.

border, trafficking in Mozambique consists of people being trafficked out of the country.³³ The report notes that Mozambican boys have been trafficked for the purposes of labour on tobacco farms in Mpumalanga (South Africa) and that Mozambican girls are bought and sold as ‘concubines’ and child labourers for local men in South Africa’s border regions, as well as for businessmen in the townships of Gauteng.

The recruitment of Mozambicans can be either passive or active. Some approach taxi drivers in Maputo for transportation to South Africa and then become victims of agents associated with Mozambican traffickers frequenting the taxi ranks. What results is the selling of these victims once they arrive in South Africa.³⁴ Active recruitment targets both sex and non-sex workers; they are offered jobs as waitresses in South Africa but are actually sold to brothels in Gauteng and Kwa-Zulu Natal.³⁵ Statistics South Africa notes that some of these victims are girls as young as twelve. Poverty is the primary factor that makes women and children vulnerable to trafficking; it is often their economic situation that results in them falling prey to (empty) promises of a better life and guaranteed employment.³⁶

The in-country trafficking of children in Mozambique has been linked to the country’s long history of child migration. Some children, when looking for work of any type, and being prepared to relocate to secure such employment, may more readily accept offers of work from strangers, quite oblivious to the attendant dangers. Statistics South Africa revealed that many of those Mozambican children reported missing have in fact migrated across the country’s Southern, Central and Northern zones.³⁷

A consultation with children for the purposes of the Mozambican law reform process was undertaken in 2003.³⁸ Several focus groups dealt with various topics including child justice and orphans and vulnerable children. A focus group discussion was held in Xai-Xai in September 2003, with a select number of parents, children’s rights practitioners and children who have had experiences of child trafficking. The aim was to engage the participants in discussion and debate on the current situation regarding child trafficking and to ascertain their opinions of how and why trafficking is manifest in Mozambique. A relevant extract from the report reads:

The two representatives from DPCAS indicated that they have had contact with several children who were victims of trafficking. These children often approach DPCAS to assist them with money for transport to get back home. Assistance has been offered to children from Inhambane, Lubango and Maputo. One of the representatives from DPCAS shared with the group the experiences of a girl who was repatriated from South Africa to Xai-Xai. According to this girl, she and another girl were lured to South Africa by an unknown woman who allegedly promised them a better life. For reasons that are unclear, the child realized that she was in danger and when she arrived at the Chicualacuala/South Africa border she ran away and was able to escape into South Africa. Soon after her arrival, she was repatriated to Xai-Xai and was received by DPCAS.

³³ Statistics South Africa (2001), *Survey of Activities of Young People in South Africa: Country report on children’s work-related activities*, Republic of South Africa, Department of Labour. Accessed at <http://www.labour.gov.za/download/9499/Research%20report%20%20Survey%20of%20Activities%20of%20Young%20People%20in%20South%20Africa%201999%20-%20Country%20Report.pdf> on 5 October 2007. Hereafter Stats SA Report.

³⁴ Ibid., p. 31.

³⁵ Ibid., note 33, p. 32.

³⁶ Ibid., note 33, p. 33.

³⁷ Stats SA Report, note 33, p. 34.

³⁸ Ehlers, L. and V. Mathiti (2003) *Children’s Perspectives on Children’s Rights in Mozambique*, Community Law Centre, University of the Western Cape.

Various familial, social and economic reasons were cited as antecedent factors to trafficking. Most of the traffickers recognize and exploit the children's vulnerability. The high level of poverty was cited as the most important "push" factor. In other words, children who come from poor families are considered to be at risk because they are often not having their basic needs met and are therefore more receptive to any means that will help them to satisfy these needs.

The issue of Aids orphans was raised as an emerging factor that contributes to the vulnerability of children to trafficking. According to the representative from DPCAS, these children often have to support their families and are susceptible to trafficking due to the geographical position of Xai-Xai on the transport corridors to the north and south, and to the interior of Massingir. It is believed that some motorists using these transport routes are responsible for luring these children into being trafficked for work purposes.

Regarding the response of the law enforcement agencies such as the police to trafficking, the problem that was highlighted is the non-reporting of missing minors. It seems that most parents do not report that their children as missing. This obviously means no investigations are carried out. The representative from the police indicated that there have been several investigations of suspected traffickers. However there was insufficient evidence for these cases to be brought to court. Reference was made to few similar cases in the local and national media.'

2.10 Namibia

Substantive information regarding the trafficking of persons in Namibia is not readily available. The TIP report provides no information at all. The ILO's study identified, and then interviewed, only a few children (eight in total) who had been trafficked for domestic and agricultural and other types of work or for commercial sexual exploitation.³⁹ However, the ILO researchers did hear of several more cases where trafficking was known or suspected.

According to the SANTAC report, girls as young as 13 and 14 had been trafficked internally, being moved from Keetmanshoop, Okahadja, to Oshikango. In terms of cross-border trafficking, the report quotes an article in which the British Home Office stated that ten Namibian prostitutes were among 188 foreign prostitutes aged between 14 and 25 that had been freed from British brothels, massage parlours and private homes since February 2006.⁴⁰

2.11 South Africa

South Africa is a source, transit and destination country for trafficked men, women and children, says the TIP report. South African girls are trafficked internally for the purposes of commercial sexual exploitation and domestic servitude. Women and girls from other African countries are trafficked to South Africa and, occasionally, onward to Europe for sexual exploitation.⁴¹ The report also notes that Thai, Chinese and Eastern European women are trafficked to South Africa for debt-bonded commercial sexual exploitation. Mozambican and Malawian boys and young men are trafficked to South Africa for

³⁹ Terry, E.M. (2006) *A Rapid Assessment on Child Trafficking Linked to Child Labour and Commercial Sexual Exploitation of Children in Namibia*, International Labour Organization.

⁴⁰ SANTAC Report, note 17, p. 50.

⁴¹ TIP Report 2007, note 2, p. 184.

agricultural labour. Small numbers of Swazi girls are trafficked to Mpumalanga for domestic servitude. Organized criminal groups and local gangs facilitate trafficking into and within South Africa, particularly for the purpose of commercial sexual exploitation.⁴²

Other than the information described above, there appears to be no published research on the trafficking of persons from South Africa to other parts of the world. However, news reports have mentioned the trafficking of children from African countries, including South Africa, to Britain for slave-like use and in the sex industry.⁴³

UNICEF describes South Africa as the major trafficking destination in the southeast sub-region, with women and children being trafficked from more than ten different countries.⁴⁴ Research undertaken by a child rights NGO in Cape Town shows that the causes for increases in the phenomenon in South Africa relate to the country's economic situation, coupled with factors such as the breakdown in extended and nuclear families and changes in cultural attitudes and practices.⁴⁵

Another aspect is the trafficking of refugees, with Cape Town singled out as the principal destination for trafficked victims of refugee-producing countries.⁴⁶ The IOM report notes that war, civil strife and natural disasters have caused the displacement of millions of Africans. For many of them, South Africa is seen as an ideal country in which to seek asylum because of its economic prosperity and its proximity.⁴⁷ It seems that the profile of the average victim of refugee trafficking is someone aged between 25 and 44 who is often widowed, divorced or a single parent. Victims are usually 'recruited' through a male family member who is already a refugee in South Africa and has opted to use women for sexual exploitation as a means of earning income.⁴⁸

The Molo Songololo Report states that the trafficking of South African children is predominantly an in-country phenomenon with girl children being the primary targets and parents and local criminal gangs being the primary traffickers.⁴⁹ The report notes that this trafficking takes place both between and within provinces and that the primary provinces of origin are the Eastern Cape and Kwa-Zulu Natal. The primary provinces of destination are Gauteng and the Western Cape.⁵⁰

It identified the following factors as causing or facilitating in-country sexual exploitation and trafficking of South African children:

- An increase in unemployment and poverty
- High drop-out rates at primary and secondary school level

⁴² Ibid.

⁴³ *Issue Paper 25: Trafficking in persons* (2004), South African Law Reform Commission, Project 131. pp. 11-12. Hereafter referred to as Issue Paper 25.

⁴⁴ 'Trafficking in Human Beings, Especially Women and Children, in Africa' UNICEF, note 3, p. 11.

⁴⁵ *The Trafficking of Children for purposes of Sexual Exploitation – South Africa* (2000), Molo Songololo. Hereafter referred to as the Molo Songololo Report.

⁴⁶ Martens J, Pieczkowski, M and van Vuuren-Smythe, B (2003), 'Trafficking in women and children for sexual exploitation in Southern Africa', International Organization for Migration, p. 13. Hereafter referred to as the IOM Report.

⁴⁷ IOM Report, note 46, p. 13.

⁴⁸ Ibid., pp. 14-15.

⁴⁹ Ibid., p. 2.

⁵⁰ Molo Songololo Report, note 45, p. 38.

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- Inadequate service provision and poor understanding of policy implementation on the part of service providers
 - Inadequate legislation
 - An increased demand for sex with children from South African and foreign men
 - Lack of awareness about the concepts of sexual exploitation and trafficking
 - Lack of arrests and convictions of traffickers and sex offenders.

Besides the trafficking of children for purposes of sexual exploitation, the phenomenon of trafficking children for domestic labour is also prevalent in South Africa. An ILO study has shown that 3 378 000 South African children are engaged in economic activities, 58.6% of whom are working to help support their families.⁵¹ This is the background against which children become involved in domestic labour.

The link with the trafficking of children for this purpose is evidenced by a study undertaken by Terre des Hommes Schweiz (tdh-ch).⁵² The tdh-ch report notes that child domestic workers in the Western Cape are generally recruited from impoverished rural areas by an agent who usually promises them work as shop assistants, office workers or domestic workers. On arrival in Cape Town, the prospective job-seeker finds herself in a situation that is very different to the one she was expecting. She is taken to an agency where she is held until prospective employers arrive to select her as a domestic worker. She is also told that the cost of her travel to Cape Town plus an agent's fee will be deducted from her first month's salary. The report goes on to note that the terms of employment can include slave-like conditions, sexual violence and debt bondage.

According to the Molo Songololo Report, the cross-border trafficking of children in South Africa involves the traffic of children from South East Asia to escort agencies in Cape Town and Gauteng. The main perpetrators of such trafficking have been identified as foreign. It has also been noted that South Africa is a transit point for trafficking operations between developing countries and Europe, the United States and Canada because it has direct flights and shipping routes to most countries in the developed world.⁵³

Despite the existence of these reports, the exact numbers of children being trafficked in and outside South Africa has not been quantified, nor has it been established how much income this illegal activity generates. However, although further study is obviously necessary, the value of the existing research is that it highlights the fact that trafficking is a reality in South Africa and not just a problem faced by other African countries.

2.12 Swaziland

Information on trafficking in persons in Swaziland is extremely limited. The TIP report provides no information. With the exception of the TECL study on trafficking in Swaziland there seems to be no other substantive information on the subject.

⁵¹ Statistics South Africa Report, note 33, p. 8.

⁵² Koen, K. and B. Van Vuuren (2002) *Children in domestic service: A case of the Western Cape*. terre des hommes schweiz. Hereafter referred to as the tdh-ch report.

⁵³ Issue Paper 25, note 43, p. 11.

The TECL study involved the collection of qualitative data from a sample of 110 Swazi children employed as domestic workers, herders, farm workers, vendors and gardeners.⁵⁴ Research findings indicated that the initial contact leading to their employment in distant places was usually made at their homes and often involved family or relatives. Potential employers promised employment, cash payment, and/or care and upkeep. (Most of these promises were kept.) Few children opposed the idea of being employed; they wanted to secure employment, escape poverty and deprivation and improve their standard of living and that of the family as a whole. Most were not related or previously known to their employers. Their working conditions were often characterized by long hours of hard work, without rest, almost throughout the week. This state of affairs left them with little or no time to play, relax and interact with others and much less to do schoolwork. However, some of the findings suggest that not all of children in the sample were trafficked in the sense understood by some of the international legal instruments.

2.13 Tanzania

Tanzania is described in the TIP report as a source, transit and destination country for women and girls trafficked for the purposes of forced labour and sexual exploitation and, to a lesser extent, boys trafficked for the purpose of forced labour.⁵⁵ Girls from rural areas are trafficked to urban centres for domestic servitude and commercial sexual exploitation; some domestics fleeing abusive employers fall prey to exploitation in prostitution. The report also notes unconfirmed reports that Tanzanian girls are lured to resort towns by promises of hotel jobs or trips abroad, but are given work in bars or are sexually exploited instead. Further, small numbers of people are trafficked to South Africa, Oman, the United Kingdom and, quite possibly, other European or Middle Eastern countries for domestic servitude. It indicates too that boys are trafficked within the country for forced labour on farms, in mines and in the informal sector. Additionally, citizens of neighbouring countries may be trafficked through Tanzania for forced domestic labour and sexual exploitation in South Africa, Europe and the Middle East.⁵⁶

2.14 Zambia

Zambia is a source and transit country for women and children trafficked for the purposes of forced labour and sexual exploitation, says the TIP report.⁵⁷ It notes that child prostitution exists in Zambia's urban centres, often encouraged or facilitated by relatives and acquaintances of the victim. It is the view of the report's authors that many Zambian child labourers, particularly those in agriculture and domestic service, are also victims of trafficking. Zambian women, lured by false employment or marriage offers, are trafficked to South Africa via Zimbabwe for sexual exploitation. Zambia is also a transit point for the regional trafficking of women and children, particularly from the DRC to South Africa.⁵⁸

⁵⁴ Keregero, J.B. and M.M. Keregero (2007), *A Rapid Assessment of Child Trafficking and other Migration-Related Child Labour in Swaziland*, International Labour Organization.

⁵⁵ TIP Report 2007, note 2, p. 195.

⁵⁶ Ibid.

⁵⁷ Ibid., p. 210.

⁵⁸ Ibid., p.210.

2.15 Zimbabwe

According to the SANTAC report, the trafficking of women and children for exploitation purposes in Zimbabwe has not been adequately researched.⁵⁹ It indicates that discussions by researchers with police and immigration officers revealed that no reports had been made concerning any victims of trafficking for sexual exploitation. The police also indicated that, at national level, they have no statistics that might relate to trafficking. Given the absence of any reported cases, it is not possible to verify the extent of the problem.⁶⁰ SANTAC does however note that research in Zambia was able to establish that Zimbabwe does serve as a transit country for children and young people being trafficked from Congo, DRC, Burundi, Rwanda, Tanzania and Zambia to other countries.⁶¹

The TIP Report 2007 sheds a little more light on the subject, describing Zimbabwe as a source, transit and destination country for women and children trafficked for the purposes of forced labour and sexual exploitation.⁶² According to this report, rural Zimbabwean children are trafficked into cities for agricultural labour, domestic servitude and commercial sexual exploitation.⁶³ Zimbabwean women and children are reportedly trafficked for sexual exploitation in border towns. Young women and girls are also lured to South Africa, the People's Republic of China, Egypt, the United Kingdom, Canada and Zambia by false employment offers that result in involuntary domestic servitude or commercial sexual exploitation. Women and children from the DRC, Malawi, Mozambique, and Zambia are trafficked through Zimbabwe en route to South Africa.

⁵⁹ SANTAC Report, note 17.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² TIP Report 2007, note 2, p. 211.

⁶³ Ibid.

3. International Legal Framework

3.1. Introduction

Child trafficking is prohibited under international law and it is widely agreed that the international normative framework governing efforts to counter human trafficking is underpinned by three major international conventions and their protocols. These include the UN Convention on the Rights of the Child and its protocol (OP) on the sale of children, child prostitution and child pornography; the Convention against Transnational Organised Crime (CTOC) (2000) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (the Palermo Protocol) and the ILO Convention No. 182 on the prohibition and immediate action for the Elimination of the Worst Forms of Child Labour (1999). These conventions and their implications and potential for creating a co-ordinated, coherent transnational response to human trafficking are discussed in more detail later on in this section.

A number of international treaties preceded those international instruments that are regarded as the seminal conventions on trafficking in persons, child trafficking in particular. The international concern with trafficking arose in the context of the trafficking of ‘white slaves’ in the early 1900s. In 1910 the International Convention for the Suppression of the White Slave Traffic was adopted, but it only came into force in 1949. Although it called for the ‘punishment’ of those engaged in trafficking, the Convention was problematic. First, it defined trafficking for immoral purposes in terms of the procurement, enticement or ‘leading away’ of women or ‘girls under age’ (Article 1), or in terms of fraud, violence, threats or abuse of authority on women or ‘girls over age’ (Article 2). While its title refers to ‘white slave traffic’, there is no indication in the text that the scope of the Convention applies only to persons of Caucasian race. However, the Convention was supplemented by a Protocol (agreed upon at the same time as the Convention) that gave some guidance on the applicability of Articles 1 and 2.⁶⁴ This Protocol provided that, in respect of Articles 1 and 2, their provisions are the minimum core. In other words, states that are party to the Convention are free to prohibit offences such as the procuring of women over age even where fraud or duress were not an element. In addition, the age of consent for girls was to be twenty. Finally, it gave States discretion to enact more protective laws in this regard, provided that they were the same for women and children of every nationality.

In 1921, a further international instrument dealing with the issue of trafficking was adopted. This was the International Convention for the Suppression of the Traffic in Women and Children, which came into force in 1922 and also aimed at supplementing the 1910 Convention. Instead of merely referring to ‘punish’ as contained in the 1910 Convention, Article 2 of the 1921 Convention required states to ‘take all measures to discover and prosecute’ offenders. Although Article 2 did away with the discriminatory provisions of the 1919 Convention, which did not extend protection to *male* children, it

⁶⁴ This Protocol was amended in 1948 in order to make provision for the fact that the Convention and Protocol now fell under the auspices of the United Nations. It is known as the Protocol Amending the International Agreement for the Suppression of the White Slave Traffic 1949.

still did not extend the protection to all persons of all races. Article 3 of the Convention also prohibited ‘acts preparatory to the commission’ of the offences contained in Article 1 and 2 of Convention 1910. Article 5 of the Convention also raised the age of consent for girls to twenty-one.

As far as procedural measures to address trafficking are concerned, Article 4 required states to extradite or provide for the extradition of offenders in cases where there are no extradition treaties in force. Article 6 required states to take measures to license and supervise employment agencies and offices to ensure the protection of women and children seeking employment in another country and Article 7 required states to adopt legislative and administrative measures for immigration and emigration.

In 1949 the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This Convention came into force in 1951 and its purpose, as stated in the preamble, was to consolidate previous trafficking Conventions,⁶⁵ give effect to a draft Convention prepared by the League of Nations in 1937 and make any necessary amendments thereto.

Articles 1 and 2 of the 1951 Convention required states to punish a person who, in order to ‘gratify the passions of another’:

*‘procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; exploits the prostitution of another person, even with the consent of that person; keeps or manages, or knowingly finances or takes part in the financing of a brothel; knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.’*⁶⁶

Van Bueren notes that the phrase ‘even with the consent of that person’ has important implications for the protection of children, as it recognizes that many children are induced to give their consent in order, for example, to be able to contribute to household income.⁶⁷

Unfortunately, in 1951 the concept of trafficking in persons for forms of exploitation other than sexual exploitation had not yet found a place in international law. However, the Convention did lay a sound basis for procedural mechanisms to combat trafficking. For instance it provides for:

- Extradition where applicable (Articles 8 – 10)
- Requests between States (Article 13), for States to establish or maintain a service to co-ordinate and centralize the results of investigations of offences under the Convention (Article 14)⁶⁸

⁶⁵ Namely, the International Agreement of 18 May 1904 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948; the International Convention of 4 May 1910 for the Suppression of the White Slave Traffic, as amended by the Protocol approved by the General Assembly of the United Nations on 3 December 1948; the International Convention of 30 September 1921 for the Suppression of the Traffic in Women and Children, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947; and the International Convention of 11 October 1933 for the Suppression of the Traffic in Women of Full Age, as amended by the Protocol approved by the General Assembly of the United Nations on 20 October 1947.

⁶⁶ The scope of this Convention extends to cross-border trafficking, as evidenced by the provisions of Article 4, which states: ‘[t]o the extent permitted by domestic law, international participation in the acts referred to in Articles 1 and 2 above shall also be punishable’.

⁶⁷ Van Bueren, G. (1995) *The International Law on the Rights of the Child*, Martinus Nijhoff, p. 278.

⁶⁸ Article 14 also provides that states should compile all information necessary to prevent and ‘punish’ the offences under the Convention, as well as keep in contact with the similar services in other states. This provision illustrates the drafters’ insight into the value of data collection.

- Information exchange between countries relating to, inter alia, particulars of any offence referred to in the Convention, particulars of any search for, prosecution, arrest, conviction, refusal of admission or expulsion of persons guilty of any of the offences referred to in the present Convention
- The latter information to include descriptions of the offenders, their fingerprints, photographs, methods of operation, police records and records of conviction (Article 15)
- States, in the context of immigration and emigration, to adopt measures to ‘check the traffic in persons of either sex for the purpose of prostitution’ (Article 17)⁶⁹
- States to take necessary measures for the supervision of employment agencies in order to prevent persons seeking employment, in particular women and children, from being exposed to the danger of prostitution.

This Convention is an example of the international community’s desire to address the issue of trafficking, both substantively and procedurally, in the context of a reasonable understanding of its transnational nature and victims’ needs. Nevertheless, it does have several shortcomings, particularly in its failure to provide a comprehensive definition of trafficking, as well as the fact that its application is limited to trafficking for the purposes of prostitution.

3.2 The United Nations Convention on the Rights of the Child and its Protocol (OP) on the Sale of Children, Child Prostitution and Child Pornography

3.2.1 The United Nations Convention on the Rights of the Child (CRC)

The CRC is the world’s most universally accepted human rights instrument and has been ratified by every country except Somalia and the United States of America.⁷⁰ Human Rights Watch describes the CRC as promising children around the world the rights to life, liberty, education and health care. Furthermore, the CRC provides children with protection from threats including armed conflict, discrimination, torture or cruel and inhuman or degrading treatment. In addition, it extends protection within the justice system and protection from economic exploitation.⁷¹ By ratifying this instrument, national governments can be said to have committed themselves to protecting and ensuring children’s rights and holding themselves accountable to fulfilling this commitment before the scrutiny of the international community.

In the main, the CRC deals with child labour in Article 32, which states:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to

⁶⁹ Article 17, in a similar manner to the 1921 Convention, requires regulations for the protection of immigrants and emigrants (particularly women and children) at the point of arrival, departure and en route, as well as public awareness on trafficking through ‘appropriate publicity’. It also introduces a provision requiring measures to be taken to oversee ‘railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution’. This last provision is evidence of new transportation methods and a growing understanding of the multi-faceted dimensions of trafficking.

⁷⁰ <http://www.unicef.org/crc/crc.htm>.

⁷¹ <http://www.hrw.org/children/>.

interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present Article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
 - (a) Provide for a minimum age or minimum ages for admission to employment.
 - (b) Provide for appropriate regulation of the hours and conditions of employment.
 - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present Article.

The CRC, while recognising that not all work amounts to exploitation and that children can perform work, also sets out in Article 32(1) what work is not permissible and should be prohibited, namely, work which is hazardous, interferes with the child's education and/or is harmful to the child's health or physical, mental, spiritual, moral or social development.

The CRC deals most directly with child trafficking in Article 35, which holds that 'States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.' Articles 34 and 36 further enhance these safeguards by providing explicitly for the protection of children from exploitation. Article 34 directs State Parties to 'undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
- (b) The exploitative use of children in prostitution or other unlawful sexual practices.
- (c) The exploitative use of children in pornographic performances and materials.

Article 36 provides that 'State Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.' Article 34 is clearly the more limiting of the two clauses pertaining to child trafficking in that it deals only with sexual exploitation, whereas Article 36 provides for the protection of children from all forms of exploitation, thus providing State Parties with a broader spectrum of interpretation.⁷²

The massive number of ratifications of the Convention means that most countries are now obligated to take 'appropriate national, bilateral and multilateral measures' to address the issue of all forms of trafficking, rather than trafficking for the purposes of slavery or sexual exploitation only (1926 and 1951 trafficking Conventions).

Article 35 places the issue of trafficking of children squarely within a global children's rights treaty. However, Dettrick notes that the CRC does not define the terms 'abduction, 'sale' or 'traffic'.⁷³ She cites the debates surrounding the incorporation of 'abduction' in

⁷² While sexual exploitation is probably the most widely documented form of exploitation for children who have been trafficked, it is important to recognize other factors including economic exploitation for other purposes, forced labour and adoption.

⁷³ Dettrick, S. (1999) *A Commentary on the United Nations Convention on the Rights of the Child*, Kluwer Law International, p. 604. In fact, it was not until the adoption of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention Against Transnational Organised Crime (2000), that an internationally acceptable definition of trafficking was developed.

the Article. One view was that ‘abduction’ was too broad in that it also covered controversial issues such as parental child abduction. Another was that ‘abduction’ gave attention to the phenomenon of the disappearance of children, going beyond Article 11, which deals only with international child abduction by parents and not child abduction (in any form) for the purposes of profit and abduction that could occur within a country (as opposed to cross-border abduction).

Van Bueren highlights two of the benefits of Article 35, namely, closing the ‘yawning gaps’ in international legislation that sought to *prevent* the trafficking in children for the purposes of adoption and its requiring State to take measures to prevent trafficking and not merely prohibit it and punish offenders.⁷⁴ Although the Article purported to provide a very broad framework for the potential control of trafficking and the sale of children, he contends that it is weakened by its lack of definition. The Optional Protocol (OP) on the sale of children, child prostitution and child pornography in relation to sale of children but not trafficking dealt with this shortcoming. While the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention Against Transnational Organised Crime, does provide a definition of trafficking, it does not provide a definition for the ‘sale’ of a child. While Article 35 did ‘marry’ the two issues, later international instruments inexplicably ‘divorced’ them.

Ratifying the CRC has direct implications for the signatories in terms of their obligation to enact legislation dealing specifically with the rights of children. Article 4 provides the clearest directives in terms of introducing law reform and implementing the provisions of the Convention⁷⁵ and has been described as the main ‘umbrella’ provision of the Convention regarding implementation. It is stressed that State Parties need to review their legislation and ensure that laws are consistent with the Convention.⁷⁶ The United Nations Children’s Fund (UNICEF) also argues that the CRC establishes clear obligations for signatories: ‘Prior to or shortly after ratifying the Convention on the Rights of the Child, States are required to bring their national legislation into line with its provisions – except where the national standards are already higher. In this way, child rights standards are no longer merely an aspiration but, rather, are nationally binding on States’.⁷⁷

3.2.2 The Protocol (OP) on the sale of children, child prostitution and child pornography and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

The Optional Protocol (OP) to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography came into force in January 2000. Its aim is to reinforce Articles 1, 11, 21, 32, 33, 34, 35 and 36 of the CRC and it also extends the measures that State Parties should undertake in order to guarantee the protection of the child from sale, prostitution and pornography. While the OP deals more particularly

⁷⁴ Van Bueren, B., note 67, pp. 280-1.

⁷⁵ Article 4 states: ‘State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation’.

⁷⁶ Hammarberg, T. (1995) ‘Introduction’, in Hime, J.R. (ed.) *Implementing the Convention on the Rights of the Child – Resource Mobilisation in Low-Income Countries*, Martinus Nijhoff Publishers, p. vii.

⁷⁷ <http://www.unicef.org/crc/monitoring>.

with the reduction of child sexual exploitation, it must be borne in mind that this phenomenon is one of the primary drivers of child trafficking. By legislating for the prevention of sexual exploitation it stands to reason that one would see an immediate decrease in the trafficking of children for this purpose.

The OP makes specific reference to the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with their education. It also refers to the significant and increasing international traffic in children for the purpose of the sale, prostitution and child pornography. It recognizes that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including among others, the trafficking in children. The OP emphasizes the importance of strengthening global partnerships among all actors and of improving law enforcement at national level.

Specific provisions that contribute to the eradication of child trafficking include Article 1, which directs that State Parties prohibit the sale of children, child prostitution and child pornography, a move aimed to weaken the demand for these. Article 2(a) defines the sale of children as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. This definition allows measures to be taken to prevent the trafficking of children for the purposes of sexual exploitation rather than simply exploitation for its own sake. Article 3 directs that State Parties must ensure that, in the context of the sale of children, their sexual exploitation, transfer of organs/body parts for profit and the engagement of the child in forced labour are fully covered under national criminal or penal law, whether such offences are committed domestically or transnationally, or by an individual or an organized group.

The OP further provides measures to regulate inter-country adoption (Article 3(ii))⁷⁸ and directs that where extradition treaties exist between State Parties, extradition procedures be instigated where offences in respect of sexual exploitation of children has occurred transnationally (Article 5). Article 8 deals, and in some depth, with the obligations of States where victims of sexual exploitation are concerned.

Given the geographical complexity associated with child trafficking, a particular strength of the OP lies in its provisions relating to intergovernmental transactional and trans-regional co-operation. Article 10(1) directs that ‘State Parties take all necessary steps to strengthen international co-operation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism’. State Parties are also urged to promote international co-operation and co-ordination between their authorities, national and international non-governmental organizations and international organizations. Article 10(2) goes further, stating that ‘State Parties shall promote international co-operation to assist child victims in their physical and psychological recovery, social reintegration and repatriation’. Article 10(3) considers a different angle: ‘State Parties shall promote the strengthening of international co-operation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism’.

⁷⁸ UNICEF identifies adoption as one of the demand-side drivers of child trafficking.

In December 1995, the 26th International Conference of the Red Cross and Red Crescent passed a recommendation urging parties under conflict to take every feasible step to ensure that children under 18 do not participate in hostilities. In 1999, the African Conference on the Use of Children as Soldiers adopted the Maputo Declaration that sets the minimum age for military recruitment at 18 years. In addition, the CRC contains several Articles that specifically refer to this issue, namely, Article 38 on armed conflict and Article 39 on the rehabilitative care of child victims of armed conflicts. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted and opened for signature, ratification and accession on 25 May 2000.⁷⁹ It came into force on 12 February 2002 and has so far been ratified by 117 states.⁸⁰ The protocol deals with issues such as the participation of children in armed conflict (Article 1), the compulsory recruitment of children into armed forces (Article 2), the prohibition of non-state entities from recruiting and deploying persons under 18 (Article 4) and the rehabilitation and social reintegration of child victims (Article 7).

3.3 The Convention against Transnational Organised Crime (CTOC) (2000) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000) (Palermo Protocol)

3.3.1 The Convention against Transnational Organised Crime (CTOC) (2000)

The UNODC describes the United Nations Convention against Transnational Organised Crime (the Organised Crime Convention) as the international community's response to the need for a truly global approach. Its purpose is to promote co-operation for both prevention and the effective fight against Transnational Organised Crime (Article 1). It seeks to enlarge the number of States that take effective measures against transnational organised crime and to forge and strengthen international co-operation. It respects the differences and specificities of diverse legal traditions and cultures, while at the same time promoting a common language and terminology on the issue of trafficking. In addition, it aims to help remove some of the existing barriers to effective transnational collaboration. The Convention focuses essentially on offences that facilitate the profit-making activities of organized criminal groups.

The Convention is supplemented by two optional protocols: the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol) and the Optional Protocol against the Smuggling of Migrants by Land, Sea and Air. These supplementary protocols target certain specific types of organized criminal activity requiring specialized provisions.⁸¹

The UNODC states that the Organised Crime Convention establishes general measures against transnational organised crime, whereas its two protocols deal with specific crime problems. Each must be read and applied in conjunction with the Convention. The Organised Crime Convention applies to the two protocols *mutatis mutandis* – ‘with such modification as the case requires’. All offences established by the protocols are also considered offences under the Organised Crime Convention itself.

⁷⁹ United Nations General Assembly Resolution A/RES/54/263.

⁸⁰ See http://www.ohchr.org/english/countries/ratification/11_b.htm.

⁸¹ UNODC *Toolkit to Combat Trafficking in Persons* (2006) United Nations Office on Drugs and Crime. Hereafter UNODC Toolkit.

3.3.2 *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) and the Protocol against the Smuggling of Migrants by Land, Sea and Air*

The Palermo Protocol supplements the United Nations Convention against Transnational Organised Crime and has three basic purposes: the prevention and combating of trafficking; the protection and support of victims of trafficking; and the promotion of co-operation between States.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, also supplementing the Organised Crime Convention against Transnational Organised Crime aims at preventing and combating the smuggling of migrants, as well as promoting co-operation among State Parties, while protecting the rights of smuggled migrants.⁸²

Although the Palermo Protocol is the more widely referenced of the two instruments in relation to human trafficking (it will be discussed in detail later), the UNODC urges State Parties to ratify both. It points out that while trafficking in persons and smuggling of migrants are distinct crimes, they represent overlapping criminal problems. Their legal definitions contain common elements, both arguing that many victims of human trafficking begin their journey by consenting to be smuggled from one country to another. Smuggled migrants may later be deceived or coerced into exploitive situations and thus become victims of human trafficking. Protection and assistance services must be offered to victims of human trafficking but are not usually available to migrants who have been smuggled into a country. Thus, there is sometimes a concern that authorities may treat cases of *human trafficking* as cases of *smuggling of migrants* in order to minimize their responsibility to offer victim protection and support. For this and other reasons, UNODC argues, it is important to ensure that States become parties to both Protocols, whenever possible.⁸³

The Palermo Protocol was developed to reinforce the Organised Crime Convention discussed above.⁸⁴ It recognizes that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination. Further, this should include measures to prevent trafficking, punish the traffickers and protect their victims. Its development was premised on the knowledge that at the time of drafting, there was no universal instrument addressing all aspects of trafficking in persons.

The purposes of this Protocol are to:

- (a) Prevent and combat trafficking in persons, paying particular attention to women and children.
- (b) Protect and assist the victims of such trafficking, with full respect of their human rights.
- (c) Promote co-operation among State Parties in order to meet those objectives.

⁸² Ibid., note 81.

⁸³ Ibid.

⁸⁴ All SADC countries have either signed or begun preparing instruments acceding to the Palermo Protocol.

In Article 3, the Palermo Protocol defines ‘trafficking in persons’ as ‘the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs’.

However, for children who are trafficked, Article 3(c) states that ‘the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in sub-paragraph (a) of this Article’. Child trafficking therefore occurs when a child is transferred, recruited, harboured, etc. for the purposes of exploitation alone; proof of threats, force or other forms of coercion, etc. are not necessary to establish the crime of trafficking in children.

It is noted that the initial deliberations did not specifically deal with trafficking in children and that the above definition was only produced after a submission made by the International Organization for Migration, UNICEF, the Office of the UN High Commissioner for Human Rights and the UN High Commissioner for Refugees.⁸⁵ This submission also called for far greater protection for children than that finally included in Article 3(c). However, a further submission to expand the list of end-purposes of trafficking to include the worst forms of child labour as defined in ILO Convention No. 182 was unsuccessful.⁸⁶

It is unfortunate that the Palermo Protocol does not go further vis-à-vis the creation of a special protective environment for children.

Article 4 defines the scope of the document and notes that the Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of a defined set of offences, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5 obligates on State Parties to adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 3 of the Protocol, when committed intentionally.

Article 6 deals extensively with the need to create protection mechanisms for the victims of trafficking Article 6(3). While the provisions in this respect are many, of particular interest here is the directive in Article 6(3) that promotes bilateral and multilateral co-operation in the protection of victims. It states that ‘each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in co-operation with non-governmental organizations, other relevant organizations and other elements of civil society...’ Article 8 provides legislation for the repatriation of victims of trafficking and for the protection of their rights during this process.

⁸⁵ Gallagher, A. (2001) ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’, *Human Rights Quarterly*, Vol. 23, pp. 988-9.

⁸⁶ Ibid., note 85, p. 989.

The Organised Crime Convention seeks to ‘promote co-operation to prevent and combat transnational organised crime more effectively’. The Protocol therefore places strong emphasis on the need for bilateral and multilateral co-operation; reference is made to this throughout the document, thus highlighting the need for a holistic transactional, multi-sectoral approach to combating trafficking.

Article 9(1) places an obligation on State parties to establish comprehensive policies, programmes and other measures to (a) prevent and combat trafficking in persons and (b) protect victims of trafficking, especially women and children, from re-victimization. Article 9(4) extends this obligation to include measures, including *through bilateral or multilateral co-operation*, to alleviate those factors that make persons, especially women and children, vulnerable to trafficking, these being poverty, underdevelopment and a lack of equal opportunity, for example. Article 9(5) provides for the development of measures (educational, social or cultural, for example), *including through bilateral and multilateral co-operation*, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

Article 10(1) provides explicitly that ‘law enforcement, immigration or other relevant authorities of State Parties shall, as appropriate, *co-operate with one another by exchanging information, in accordance with their domestic law*’. Similarly, Article 11(6) holds that State Parties shall consider *strengthening co-operation* among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

The Palermo Protocol is unique and is without precedent in that it focuses on all aspects of human trafficking. Critics, however, have issued a number of cautions with regard to this instrument. Hyland notes three distinct shortcomings. The first is that it contains no provisions for protection from prosecution for any acts that victims are forced to perform. Secondly, victim assistance as defined by the Protocol is discretionary; it contains no a definition or qualification for the ‘appropriate cases’ set out in Article 6. Finally, the Protocol does not mention the reintegration or provision of services once a victim is repatriated to their country of origin.⁸⁷

The Protocol is widely viewed as a law-enforcement instrument and many State Parties are of the view that the protection of victims should be linked to a law enforcement imperative such as witness protection. According to Jordan, when negotiations on the development of the Protocol were underway, many State Parties refused to accept an obligation to provide services to victims. Some objected in principle, others cited financial constraints.⁸⁸

Criticisms notwithstanding, the Palermo Protocol is a legally binding instrument that provides a useful template for the development of regional and sub-regional protocols to deal with trafficking in persons.

⁸⁷ Hyland, in L. Futter (2007) *The need for a regional mechanism to protect victims of human trafficking in Southern Africa*, unpublished MA thesis, University of Cape Town, p. 36.

⁸⁸ Jordan, in Futter note 87, p. 36.

3.4 The ILO Convention No. 182 on the prohibition and immediate action for the elimination of the worst forms of child labour (1999)

The move to adopt international treaties and conventions within an international regulatory organization such as the ILO has been said to be remarkable.⁸⁹ The reason given is that labour issues are primarily problems of domestic concern and should reflect the conditions of the society concerned. International labour legislation, on the other hand, deals with issues and problems that countries have in common, and in that respect it sets general norms and standards that should be applicable to all States. The ILO regards the Minimum Age Convention 1973 (No. 138) and the Worst Forms of Child Labour Convention 1999 (No. 182) and their related Recommendations⁹⁰ as the fundamental international conventions on child labour.

On 17 June 1999, the International Labour Conference of the International Labour Organization adopted the Worst Forms of Child Labour Convention No. 182 and Worst Forms of Child Labour Recommendation 190. The preamble to the Convention cites the need to adopt new instruments for the prohibition and elimination of what the Convention terms ‘worst forms of child labour’. It goes on to link their elimination to immediate and comprehensive action; the importance of free basic education; the need to remove the children concerned from all such ‘work’ and the provision of rehabilitation and social integration, while simultaneously addressing the needs of their families.

The preamble notes that the new Convention is meant to *complement* (my emphasis) Convention No. 138⁹¹ and Recommendation 146 and reinforces their position as fundamental instruments on child labour, thereby confirming that the overall ILO approach is still the eradication of child labour. In addition, the preamble also alludes to the UNCRC and other international treaties covering worst forms of child labour, such as the Forced Labour Convention (1930) and the United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

Without defining them more closely, Article 3 sets out the worst forms of child labour, namely:

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

⁸⁹ Shotwell, J.T. (ed.) (1934) *The Origins of the International Labor Organisation*, Columbia University Press, p. xix.

⁹⁰ Minimum Age Recommendation, 1973 (No. 146); Worst Forms of Child Labour, Recommendation, 1999 (No. 190).

⁹¹ This Convention was an effort by the ILO to establish a general instrument applicable to all forms of work and employment under the minimum age and to replace existing applicable ILO treaties which were limited to specific economic sectors. From the outset, Article 1 requires States to ‘pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons’. This not only places the goal of eliminating child labour at the vanguard, but also intimates that despite the Convention setting a minimum age, it is just that: a minimum. States are required to progressively raise the minimum age ‘to the fullest physical and mental development of young persons’.

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

The type of conduct that constitutes worst forms of child labour is broad and far-reaching and represents some of the most reprehensible forms of economic exploitation to which children can be subjected.

Definitions are not provided for other worst forms of child labour, which can be problematic for implementation. For example, the use of children to commit 'illicit' activities is very broad and open to a range of interpretations, especially as the word 'illicit' refers to a broad category of actions that extend beyond what is regarded, by law, as criminal activity. The UN Convention on the Rights of the Child does not take the matter further. Although it provides for the rights of children to be protected from, amongst other things, prostitution, pornography and trafficking (Articles 34 and 35), it provides no definitions of these actions. Nevertheless, definitions can be gleaned from various other international instruments that deal with conduct deemed as being the 'worst forms of child labour'.

In relation to trafficking, the only vaguely comprehensive definitions that were available in 1999 were those contained in Articles 1 and 2 of the International Convention for the Suppression of the 'White Slave Traffic' (1910). Article 1 stated that trafficking was when someone, in order to gratify the passions of another person, procured, enticed or led away, even with her consent, a woman or girl under age, for immoral purposes. Article 2 stated that trafficking occurred when someone, in order to gratify the passions of another person, procured, enticed, or led away a woman or girl over age, for immoral purposes by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion. In 1949, the United Nations adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The definition of trafficking therein was similar to that of the 1910 Convention in defined trafficking only as being for the purposes of prostitution – a very outdated and unsatisfactory definition⁹² It was only when the protocol supplementing the United Nations Convention Against Transnational Organised Crime (2000) was adopted that a comprehensive definition of trafficking in persons was provided (Article 3). This is now the international standard for this particular activity.

While Article 3(a) makes the most explicit reference to trafficking in children, clauses (b), (c) and (d) make reference to activities for which children are most commonly trafficked, namely, for the purposes of sexual exploitation or forced labour.

This Convention articulates a range of obligations for its signatories. Article 1 places an obligation on State Parties to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour. Article 6(1) requires that they design and implement programmes of action to eliminate, as a priority, the worst forms of child labour. Article 7 requires that each signatory takes all necessary measures to ensure the effective implementation and enforcement of the provisions, thus giving effect to the Convention, including the provision and application of penal sanctions or, as appropriate, other sanctions. Article 7(2) requires that they also take effective measures to prevent the engagement of children in the worst forms of child labour, to provide the necessary

⁹² In the intervening years the Convention for the Suppression of the Traffic in Women and Children 1921 was adopted, but did not take the definition of trafficking further.

measures for their removal from these, and for their subsequent rehabilitation and social integration. Article 7(3) allows the designation of a competent authority to be responsible for implementing the provisions that give effect to this Convention. Article 8 emphasizes the need for international co-operation and states that ‘members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international co-operation and/or assistance, including support for social and economic development, poverty eradication programmes and universal education’.

Convention no. 182 has been praised for its concrete attempt to require States to go beyond merely taking legislative and administrative steps to prohibit worst forms of child labour by obligating them to compile time-bound programmes of action to eliminate and prohibit the worst forms of child labour.⁹³

3.5 Other significant international instruments relating to child trafficking

In addition to the three key Conventions described above, and to the broader rights to freedom and dignity contained in human rights instruments such as the International Covenant on Civil and Political Rights and the Convention against Torture and other Cruel, Inhumane and Degrading Treatment, specific references to the prevention of trafficking are to be found in many other international laws. A summary of these is provided below.

3.5.1 *The Universal Declaration of Human Rights, 1948*

The Universal Declaration of Human Rights, 1948, states that all human beings are born free and equal in dignity and rights, that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinctions of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2). Furthermore, no distinction is to be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, that everyone has the right to life, liberty and security of person. Articles 4 and 5 are particularly relevant to this discussion as they direct that no one shall be held in slavery or servitude while slavery and the slave trade shall be prohibited in all their forms and that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Declaration also makes reference to the right of freedom of movement.

3.5.2 *The Slavery, Servitude, Forced Labour and similar Institutions Convention of 1926 (Slavery Convention, 1926) and the UN supplementary Convention on the Abolition of Slavery, 1956*

According to the IOM Report, the African slave trade can be considered as the forerunner to modern human trafficking, as it exploited the relocation of victims from a familiar to an unfamiliar environment.⁹⁴ The 1926 Convention provided for the prevention and suppression of the slave trade and the abolition of slavery in all forms. Further to this, the UN Supplementary Convention on the Abolition of Slavery, 1956, through its various Articles, commits parties to abolishing and abandoning debt bondage, serfdom, servile marriage and child servitude. It further criminalized slave trafficking, enslavement and the putting of others into slavery.

⁹³ See, generally, Noguchi, Y. (2002) ‘ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child’, *The International Journal of Children’s Rights*, Vol. 10, pp. 355-6.

⁹⁴ Futter, note 87, p. 10.

3.5.3 *The ILO Forced Labour Convention, 1930, and the ILO Convention No. 105 on the Abolition of Forced Labour, 1957*

Articles 1 and 2 of the International Labour Organization's Forced Labour Convention, 1930, requires that (1) State Parties undertake to suppress the use of forced or compulsory labour in all its forms within the shortest possible period and that (2) 'forced or compulsory labour' shall mean all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily.

Similarly, the ILO Convention No. 105 on the Abolition of Forced Labour, 1957, requires that 'each member of the International Labour Organization which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilising and using labour for purposes of economic development; as a means of labour discipline; as punishment for having participated in strikes; as a means of racial, social, national or religious discrimination'. The Convention further requires that ratifying members undertake effective measures to secure the immediate and complete abolition of forced or compulsory labour.

3.5.4 *The United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979*⁹⁵

Article 6 of this Convention directs that State Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking in women and their exploitation or prostitution.

3.5.5 *The 1980 Hague Convention on the Civil Aspects of International Child Abduction (The Hague Convention)*

The Hague Convention requires that States take appropriate measures to enable the child to remain in the care of their family of origin, that inter-country adoptions are made in the best interests of the child, and with respect for their fundamental rights, and to prevent the abduction, sale of, or traffic in children. Article 1(b) directs that a system of co-operation be established amongst Contracting States to ensure that these safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children. The Hague Convention further details the parameters with regard to compensation in respect of inter-country adoption. This Convention has particular significance when one considers that, for example, according to UNICEF approximately 1 000 to 1 500 Guatemalan babies and children are trafficked each year for adoption by couples in North America and Europe.⁹⁶

3.5.6 *The Rome Statute of the International Criminal Court*

Bassiouni and Blakesley have argued that 'the need to develop an international criminal code and an International Criminal Court is indispensable in the context of the transient

⁹⁵ Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, came into force Sept. 3, 1981.

⁹⁶ http://www.unicef.org/protection/index_exploitation.html.

nature of international society, the sophistication and transnational nature of modern crime, and the ever-increasing interdependency of the new international world order. As the world becomes a smaller place, the various parts and peoples are more interdependent and more concerned with the same problems of international and transnational criminality'.⁹⁷

The purpose of the international criminal court is not, however, to supersede domestic criminal law and procedure. As Bassiouni and Blakesley go on to state, 'the proposed tribunal will not deflect domestic concentration on law enforcement, but will provide a significant incremental benefit to and a facilitator for each domestic criminal justice system ... the initial premise must be that an international criminal court will not be a panacea for all ills in relation to international and transnational crime facing the world community. Rather, the institution will be worthwhile if it really can provide an additional strategy to deal effectively with these problems in a manner that is likely to produce incremental positive results'.⁹⁸

The relevance of this statute is that it criminalizes these serious crimes for the international community as a whole. Of these, crimes against humanity include the act of enslavement, which is in turn defined as the exercise of any or all of the powers attached to the right of ownership, over a *person* and includes the exercise of such power in the course of trafficking in persons, in particular, women and children. However, it must be noted that crimes against humanity and trafficking in this regard do not relate to single instances, but rather to acts committed as part of a widespread or systematic attack directed against any civilian population. It should also be noted that the Rome Statute does not give a definition of trafficking.

3.5.7 *The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking*

The United Nations High Commission for Human Rights (HCHR) provides a useful set of guidelines on human rights and trafficking that locate programmatic and policy intervention within four key focus areas. These are (1) the *primacy of human rights*, (2) the *prevention of trafficking*, (3) the *protection and assistance of victims*, and (4) the *criminalization, punishment and redress*. The HCHR elaborates on these through various guidelines, namely:

1. The promotion and protection of human rights.
2. The identification of trafficked persons and traffickers.
3. Research, analysis, evaluation and dissemination.
4. Ensuring an adequate legal framework.
5. Ensuring an adequate law enforcement response.
6. Protection and support for trafficked persons.
7. Preventing trafficking.

⁹⁷ Bassiouni, M.C. and C.L. Blakesley (1992) 'The need for an International Criminal Court in the New International World Order', *Vanderbilt Journal of Transnational Law*, Vol. 25, 2, pp. 114-5.

⁹⁸ Bassiouni and Blakesley, note 98, pp. 158-9.

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8. Special measures for the protection and support of child victims of trafficking.
 9. Access to remedies.
 10. Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel and co-operation and co-ordination between States and regions.⁹⁹

A detailed discussion of the guidelines is beyond the scope of this report, but it is important to note their existence, their usefulness in the development of regional and sub-regional protocols to combat trafficking, as well as their value to individual countries that are trying to domesticate the provisions in international conventions and protocols.

⁹⁹ United Nations High Commission for Human Rights Principles and Guidelines on Human Rights and Trafficking, E/2002/68/Add.1 (2002).

4. Regional Initiatives to Combat Child Trafficking

4.1 Regional Instruments

4.1.1 *The African Charter on the Rights and Welfare of the Child (ACRWC)*

The African Charter on the Rights and Welfare of the Child (ACRWC) was adopted by the former Organisation of African Unity (OAU), now the African Union (AU), in July 1990 as an endorsement of the CRC. It has been described as the first binding regional instrument that identifies the child as a possessor of certain rights.¹⁰⁰ The need for a specific regional instrument protecting the rights of children in Africa, notwithstanding the existence of the CRC, is articulated in the preamble to the ACRWC. The preamble makes particular reference to the fact that the situation of most African children remains critical, owing to unique factors in their socio-economic, cultural, traditional and developmental circumstances. These include exposure to natural disasters, armed conflicts, exploitation and starvation. In his critique of the ACRWC, Olowu notes that the Charter was developed in tandem, rather than in opposition, to the CRC. The two pieces of legislation are thus complementary, both contributing to a framework in terms of which the rights of children in Africa can be discussed.¹⁰¹

In addition to the general protections afforded to all African children, the ACRWC provides specifically for the protection of the rights of victims of child trafficking in Articles 24 and 29. Article 24 deals with adoption and directs that State Parties provide for the establishment of competent authorities to ensure that the adoption is carried out in conformity with applicable laws and procedures. More specifically, Article 24(d) states that State Parties must ‘take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child’, while Article 24(e) directs that State Parties must ‘promote, where appropriate, the objectives of this Article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs’. Article 29 deals with Sale, Trafficking and Abduction and directs State Parties to ‘take appropriate measures to prevent: (a) the abduction, the sale of, or trafficking in children for any purpose or in any form, by any person including parents or legal guardians of the child’.

In terms of the obligations of signatories to the Charter to domesticate the provisions of the Charter in national law, Article 1 of the ACRWC states that:

1(1) Member States of the Organisation of African Unity Parties to the present Charter shall recognize the rights, freedoms and duties enshrined in this Charter and shall undertake to the necessary steps, in accordance with their constitutional processes and with the provisions of the present Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter.

¹⁰⁰ Kassan, D. (2004) *Children's right to be heard in divorce proceedings*, unpublished MA thesis, University of the Western Cape, p. 19.

¹⁰¹ Olowu, D. (2002) ‘Protecting children's Rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child’, *The International Journal of Children's Rights* (10), Kluwer Law International, pp. 127-36.

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- 1(2) Nothing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State.
- 1(3) Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.¹⁰²

All SADC countries have formally acceded to the ACRWC. They are now, in terms of Article 1, obliged to recognize the rights afforded to children in the Charter and to undertake the necessary legislative and other measures to give effect to its provisions.¹⁰³

4.1.2 *The African Charter on Human and Peoples' Rights (1981)*

The African (Banjul) Charter on Human and Peoples' Rights was adopted in 27 June 1981 and came into effect force in October 1986.

The Banjul charter makes no specific reference to human trafficking, but it does explicitly outlaw slavery and related activities. It further creates a duty on State Parties to protect the human rights of all people, which can be interpreted as including victims of human trafficking. For example, Article 4 states that 'human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'. Likewise, Article 5 holds that 'every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.' Article 6 states that 'every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law...'

The Banjul Charter also makes provision for the protection of the rights of women. Article 18 calls on all State Parties to eliminate discrimination against women and to ensure the protection of their rights as stipulated in international declarations and conventions.

4.2 African governance and oversight structures and institutions

4.2.1 *The African Union (AU)*

The Vision of the AU

The AU is Africa's principal organization and premier institution for the promotion of the continent's accelerated socio-economic integration, which with the aim of fostering greater unity and solidarity among African countries and peoples. The AU is based on the common vision of a united and strong Africa and on the need to build a partnership between governments and all segments of civil society, particularly women, youth and the private sector, in order to strengthen social solidarity and cohesion amongst the peoples of Africa. As a continental organization, it focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of its development and integration agenda.

¹⁰² See the African Charter on the Rights and Welfare of the Child.

¹⁰³ Madotyeni, Z. (2000) A Charter for African Children, *ChildrenFIRST*, Issue 30.

The objectives of the AU include the following:

- To achieve greater unity and solidarity among the African countries and the peoples of Africa
- To defend the sovereignty, territorial integrity and independence of its Member States
- To accelerate the political and socio-economic integration of the continent
- To promote and defend African common positions on issues of interest to the continent and its peoples
- To encourage international co-operation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights
- To promote peace, security and stability on the continent
- To promote democratic principles and institutions, popular participation and good governance
- To promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments
- To establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations
- To promote sustainable development at the economic, social and cultural levels as well as the integration of African economies
- To promote co-operation in all fields of human activity to raise the living standards of African peoples
- To co-ordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union
- To advance the development of the continent by promoting research in all fields, in particular in science and technology
- To work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.

Organs of the AU where synergy can be found with the issue of human trafficking include:

- The Peace and Security Council (PSC)
- The Pan-African Parliament, whose aim it is to ensure full participation of African peoples in the governance, development and economic integration of the continent.¹⁰⁴

¹⁰⁴ At the time of writing, the Protocol relating to the composition, powers, functions and organization of the Pan-African Parliament had been signed by Member States and was in the process of ratification.

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- The Economic, Social and Cultural Council (ECOSOCC), an advisory organ composed of different social and professional groups of the Union's Member States
 - The Court of Justice
 - The following Specialised Technical Committees, whose purpose it is to address sectoral issues:
 - The Committee on Trade, Customs and Immigration Matters
 - The Committee on Health, Labour and Social Affairs
 - The Committee on Education, Culture and Human Resources.

The AU Commission

The Commission plays a central role in the day-to-day management of the African Union. Among other things, it represents the Union and defends its interests; elaborates its draft common positions; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, co-ordinates and harmonizes the Union's programmes and policies; and ensures the mainstreaming of gender in all programmes and activities of the Union.

The following Portfolios of the Commission may have relevance for child trafficking:

- Political Affairs (Human Rights, Democracy, Good Governance, Electoral Institutions, Civil Society Organizations, Humanitarian Affairs, Refugees, Returnees and Internally Displaced Persons)
- Social Affairs (Health, Children, Drug Control, Population, Migration, Labour and Employment, Sports and Culture)
- Human Resources, Science and Technology (Education, Information Technology Communication, Youth, Human Resources, Science and Technology)
- Trade and Industry (Trade, Industry, Customs and Immigration Matters)
- Economic Affairs (Economic Integration, Monetary Affairs, Private Sector Development, Investment and Resource Mobilisation).

4.2.2 The New Partnership for Africa's Development (NEPAD)

A programme of and for the African Union, NEPAD was developed for it to realize its development objectives. This strategic framework arose from a mandate given by the OAU to the five initiating Heads of State (Algeria, Egypt, Nigeria, Senegal and South Africa) to develop an integrated socio-economic development framework for Africa. NEPAD was formally adopted at the 37th Summit of the OAU, which was held in July 2001 in Zambia.

This partnership is designed to address the current challenges facing the African continent, namely, increasing poverty, underdevelopment and the continued marginalization of Africa and African countries. Its primary objectives are thus to a) to eradicate poverty; b) to place African countries, both individually and collectively, on a path of sustainable growth and development; c) to halt the marginalization of Africa in the globalization process and enhance its full and beneficial integration into the global economy; and d) to accelerate the empowerment of women.

NEPAD has identified the following priorities:

- a) Establishing conditions for sustainable development by ensuring peace and security; democracy and good political, economic and corporate governance; regional co-operation and integration; and capacity-building.
- b) Policy reforms and increased investment in the following priority sectors: agriculture; human development; building and improving infrastructure, promoting the diversification of production and exports, accelerating intra-African trade and improving access to markets of developed countries; and the environment.
- c) Mobilising resources by increasing domestic savings and investments; improving management of public revenue and expenditure; improving Africa's share in global trade; attracting foreign direct investment; and increasing capital flows.¹⁰⁵

UNICEF views the formulation of NEPAD and the related commitments entered into by the G8 Governments in 2002 as having considerable significance in the fight against human trafficking. It views NEPAD as providing an opportunity to overcome obstacles to development in Africa through the objectives outlined above. UNICEF notes that, in support of the NEPAD objectives, the G8 leadership undertook, in 2002, to establish and enhance partnerships with African countries whose performance reflects NEPAD's commitments. UNICEF further views these dimensions as being of relevance for effective combating of trafficking in human beings.¹⁰⁶

4.2.3 *The African Commission on Human Rights*

The African Commission on Human and Peoples' Rights was established by the African Charter on Human and Peoples' Rights, one which came into force in October 1986 after its adoption in Nairobi (Kenya) in 1981. The Commission itself was officially inaugurated on 2 November 1987 in Addis Ababa and was charged with ensuring the promotion and protection of human and peoples' rights throughout the continent. In addition to performing any other tasks entrusted to it, the Commission has three major functions:

1. The protection of human and peoples' rights.
2. The promotion of human and peoples' rights.
3. The interpretation of the African Charter on Human and Peoples' Rights.

Within the framework of its promotional role, the Commission's functions are to:

- Collect documents, undertake research on African problems in the field of human and peoples' rights, organize conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to governments
- Formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms

¹⁰⁵ <http://www.nepad.org/2005/files/inbrief.php>.

¹⁰⁶ 'Trafficking in human beings, especially women and children in Africa' UNICEF, note 3, p. 25.

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- Co-operate with other institutions concerned with the promotion and protection of human and peoples' rights
 - Consider the periodic reports of states on the legislative or other measures adopted to give effect to the rights and freedoms recognized and guaranteed in the African Charter.

Within the framework of its protective role, the Commission is charged with ensuring the protection of human and peoples' rights under the conditions laid down by the Charter and according to the rules set down in the Rules of Procedure of the Commission.

Within the framework of its role of interpreting the African Charter on Human and Peoples' Rights, the Commission is further charged with interpreting all provisions of the Charter.¹⁰⁷

4.2.4 *The African Committee of Experts*

An African Committee of Experts on the Rights and Welfare of the Child (the Committee) was established within the former OAU to promote and protect the rights and welfare of the child as articulated in the African Charter on the Rights and Welfare of the Child. This could potentially provide a useful oversight and accountability mechanism for ensuring that States Parties meet their obligations in respect of the prevention of trafficking of children, as articulated in Articles 24 and 29.

The Committee consists of 11 members of 'high moral standing, integrity, impartiality and competence in matters of the rights and welfare of the child' who serve in a personal capacity.

Its function is, among other things, to promote and protect the rights enshrined in the African Charter on the Rights and Welfare of the Child (ACRWC), particularly to:

- Collect and document information, commission assessments of the rights and welfare of African children and give its views and make recommendations to governments
- Formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa
- Co-operate with other African, international and regional institutions and organizations concerned with the promotion and protection of the rights and welfare of the child
- Monitor the implementation and ensure protection of the rights enshrined in this Charter
- Interpret the provisions of the present Charter.

In terms of the reporting procedure, State Parties to the Charter submit reports to the Committee on the measures they have adopted that give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights. The initial report must be submitted within the first two years of ratification and every three years

¹⁰⁷ See http://www.achpr.org/english/_info/mandate_en.html.

thereafter. These reports are expected to contain sufficient information to leave the Committee with a comprehensive understanding of its implementation in the country concerned. It should also indicate factors and difficulties, if any, that are affecting the fulfilling of the obligations contained in the Charter.

In terms of its investigative powers, the Committee may a) resort to any appropriate method of examining any matter falling within the ambit of the Charter; b) request from State Parties any information relevant to the implementation of the Charter, and c) also resort to any appropriate method of investigating the measures a State Party has adopted to implement the Charter.

The Committee itself is expected to submit a report on its activities to each Ordinary Session of the Assembly of Heads of State and Government.

It has been said that ‘in theory, the ACRWC is a stronger instrument than its mother-Charter and has the prospect of enhancing children’s rights in Africa and providing effective monitoring and enforcement mechanisms. However, it is too early to detail the effects in practice, but it is hoped it will have a more influential and successful impact than the ACHPR. However, if the practice of the ACHPR is anything to go by, the enforcement mechanisms will be problematic and the Committee is likely to have a slow start to have any significant impact on the promotion and/or protection of children’s rights’.¹⁰⁸

4.3 Regional Protocols, Bilateral and Multilateral Agreements and Action Plans

4.3.1 The ECOWAS Declaration and Plan of Action against Trafficking in Persons

The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries. Founded in 1975, its Member States are Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Guinea, Ghana, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Its mission is to promote economic integration in ‘all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters’. ECOWAS institutions include the ECOWAS Commission, the Community Parliament, the Community Court of Justice and the ECOWAS Bank for Investment and development (EBID).

The original ECOWAS Plan of Action against Trafficking in Persons outlined the most urgent actions against trafficking in persons that ECOWAS Member States should take in the period 2002-03. The actions had a special focus on criminal justice responses. At the time of drafting, it was envisaged that, in 2003, a more detailed and far-reaching action plan should be developed on the basis of an in-depth evaluation of the implementation of the Initial Plan of Action.

The Plan provides useful details that are unfortunately absent in the Ouagadougou Action Plan (2006) (see 5.2.1). For example, it specifies which government department or official is responsible for carrying out each directive and what the indicator/s of success would be, as well as providing a timeframe for completion. This is a useful way of setting up a monitoring and evaluation system from the outset and is a practice that would be helpful in the development of future action plans.

¹⁰⁸ Lloyd, A. (2001) ‘The African Charter on the Rights and Welfare of Children and the Reality for Africa’s Children: An Evaluation of the ACRWC through a Cultural Perspective’, masters thesis, University of the West of England, Bristol.

It is structured in terms of seven *key pillars*, namely:

- I. Legal Framework and Policy Development
- II. Protection and Support of Victims of Trafficking in Persons
- III. Prevention, Awareness-Raising; IV. Collection, Exchange and Analysis of Information
- IV. Specialization and Training
- V. Travel and Identity Documents
- VI. Monitoring and Evaluation of the initial Plan of Action.

I. Legal Framework and Policy Development

The first part of this ‘pillar’ deals with the various Conventions, Treaties and Protocols that Member States would need to sign, ratify and implement in order to bring their individual legislative and policy frameworks in line with current developments regarding the combating of human trafficking.¹⁰⁹ Member States are further directed to adopt laws criminalising 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, and to adopt and implement the laws and create the administrative structures needed to support the provisions of that Convention.

Its framework also deals with the responsibility of Member States toward the victims of human trafficking, instructing them to make domestic legal provisions for the protection and compensation of victims and to ensure that victims are provided with information regarding their role and status in criminal proceedings. It also instructs Member States to manage the issues of the eligibility of trafficked persons to remain in their territory or to be received back into their country of origin. This might require amendments to immigration, emigration and repatriation regulations.

The Plan of Action moots the idea of the establishment of a National Task Force on Trafficking in Persons that brings together relevant ministries and agencies in developing policy and taking action against trafficking in persons, and calling on inter-government and non-governmental organizations and other representatives of civil society, as necessary. It further recommends that each National Task Force develop recommendations for a national plan of action against trafficking in persons. A National Task Force should also monitor and report through its government to the ECOWAS Secretariat on the progress of the implementation of this initial Plan of Action. Regarding oversight, it is proposed that a unit for the co-ordination of efforts to combat trafficking in persons be established within the ECOWAS Secretariat.

¹⁰⁹ Instruments listed include the ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters; the ECOWAS Convention A/P1/8/94 on Extradition; the African Charter on the Rights and Welfare of the Child; the United Nations Convention Against Transnational Organised Crime; and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children.

II. Protection and Support of Victims of Trafficking in Persons

This section deals specifically with the imperative for Member States to provide direct services to victims of human trafficking. It directs that States, in co-operation with other representatives of civil society, take measures to develop the capacity of the reception centres where victims of trafficking in persons can be sheltered and the quality and type of care they should receive there. The Plan also makes specific reference to the duty of Member States to encourage victims of trafficking to testify in cases of trafficking in persons by ensuring the safety and security of victims and witnesses during investigations and trials. ECOWAS, through the Plan of Action, tables its intention of creating a fund for victims of trafficking to be used to provide support to states for the repatriation of victims.

III. Prevention and Awareness-Raising

This pillar highlights the need for increased awareness and training in order to prevent and reduce trafficking. It calls for States, in partnership with civil society groups and public and private media, to develop and disseminate materials focusing on, among other things, the fact that trafficking in persons is a crime and discouraging the demand that leads to trafficking. It further calls for States and their civil society partners to implement public awareness campaigns aimed at the potential victims of trafficking, the aim being to alert them to the types of enticements and recruitment methods traffickers use.

IV. Collection, Exchange and Analysis of Information

Pillar four addresses the urgent need to improve the collection and analysis of data in respect of trafficking in persons. It directs States to establish direct channels of communication between their border control agencies and to expand efforts to gather and analyse data on trafficking in persons. It also promotes the sharing of information between Member States and with law enforcement agencies and other agencies of countries of origin, transit and destination, including the United Nations Centre for International Crime Prevention. It also proposes the setting-up of joint border patrols trained in the prevention of trafficking in persons.

V. Specialization and Training

This part recognizes the complex nature of trafficking and the need for specialization in the agencies working to combat it. The Plan of Action provides for the creation of special units within existing law enforcement structures that have a specific mandate to combat and investigate trafficking of persons. It provides a specific framework for improving the training given to police, customs and immigration officials, prosecutors and judges, and other relevant officials on the prevention of trafficking in persons. States are also tasked with preparing training materials concerning trafficking in persons for embassy and consulate staff who deal with immigration and visas.

VI. Travel and Identity Documents

This section outlines the roles and responsibilities of Member States in relation to the legal status of victims of trafficking. This includes the verification of nationality, right of permanent residence and status of nationality in the country of origin as well as the provision of travel documents or authorization to victims to travel to and re-enter their country of origin. States are also expected to verify the validity of travel and identity documents issued in the name of a possible victim of trafficking and are also urged to take measures to ensure that travel documents cannot be easily falsified, copied or altered.

VII. Monitoring and Evaluation of the Initial Plan of Action

ECOWAS created a ‘two-tier’ monitoring and evaluation plan in order to measure its progress. Member States, through their individual Task Forces, are expected to co-ordinate and monitor the ongoing implementation of the Plan of Action at national level and report, on a bi-annual basis, to the ECOWAS Secretariat. The ECOWAS Secretariat has undertaken to co-ordinate and monitor the Plan’s implementation and report, every six months, on the progress achieved at the Ministerial Meeting of the ECOWAS Mediation and Security Council. At the time of drafting, the Secretariat further undertook to organize an Expert Group Meeting for 2003 to evaluate the implementation of the Plan and make recommendations for further actions to be taken against trafficking in persons.

General comments

A regional Meeting of Experts was held in Togo in December 2002 to assess the progress of the ECOWAS Plan of Action. During this meeting they identified three priority areas as being critical in the combating of trafficking in persons. These are 1) the need for more effective legal systems; 2) a better understanding of the situation of victims of human trafficking; and 3) awareness-raising campaigns to counter the phenomenon. UNICEF notes further the emphasis placed by ECOWAS on the relevance of an inter-agency approach and its efforts to enhance the criminal law provisions of and between its Member States.¹¹⁰

The Plan of Action was updated in 2006 following the ECOWAS-ECCAS Regional Ministerial Conference on the Fight against Trafficking in Persons that was held in Abuja, Nigeria, on 6-7 July 2006. The joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially women and children in West and Central Africa (2006-09), set its development objective to be for all women and children within the ECCAS and ECOWAS regions to benefit from effective protection measures against trafficking in persons. Although similar to the original Plan of Action, it contains an additional seven interlinked strategies to achieve this objective:

Strategy one focuses on the legal framework and development of policy. It includes actions such as ensuring that international instruments are ratified by each Member State and translated into national legislative frameworks, their setting up and effective implementation in compliance with international legal instruments, establishing national policy frameworks and adopting inter-country co-operation agreements.

Strategy two deals with protection and support of victims of trafficking in persons through effective instruments that are implemented in their best interests. It includes aspects such as identification protection, the support and repatriation of victims or integration into the country of destination.

Strategy three deals with prevention and awareness-raising activities and includes strategies for disseminating information on trafficking in persons and developing community prevention mechanisms.

¹¹⁰ ‘Trafficking in Human Beings, Especially Women and Children, in Africa’ UNICEF, note 3, pp. 19-20.

Strategy four focuses on the collection, exchange and analysis of information. It requires such information to be updated and published and includes activities such as research and data collection, undertaking analyses and surveys and carrying out investigations in destination areas in order to develop targeted intervention strategies for the problem of demand.

Strategy five concentrates on specialization and training. Its activities include the specialized training of relevant role-players, for example, the police, immigration officials and prosecutors, as well as increasing the effectiveness of social workers and other personnel involved in the psycho-social management and monitoring of victims of trafficking, with special attention being paid to the needs of child victims.

Strategy six focuses largely on travel and identity documents. It requires States to provide victims of trafficking with the appropriate documents permitting them to remain in the country of destination until the time of repatriation or voluntary return. It also specifies the development of specific programmes and mechanisms on universal birth registration, family reunion and the immigration status of children at borders and other points of entry.

Strategy seven deals with the monitoring and evaluation of the Plan of Action. One of the many requirements is that States produce and submit a national annual report on the implementation of the multilateral interregional co-operation agreement. It also obliges the ECCAS and ECOWAS Secretariats establish Anti-Trafficking in Persons Co-ordination Units within their respective Secretariats to carry out the tasks of supporting the implementation of the Joint Plan of Action in States, and for monitoring and evaluation.

Overall, this Plan of Action is a useful blueprint for other regional initiatives that seek to address trafficking in persons. It contains obligations not only for Member States but also for regional bodies. In addition, while it concentrates on trafficking in persons generally, it recognizes the special vulnerability of children who are trafficked and contains specific provisions in this regard.

4.3.2 The Libreville 2000 Common Platform for Action

The development of the Common Platform for Action for West and Central Africa was the culmination of a process initiated in 1998 at a workshop held in Cotonou on the trafficking of child domestic workers in West and Central Africa. The workshop was organized by the UNICEF Regional Office for West and Central Africa, in collaboration with the ILO Regional Office for Africa. A follow-up meeting was held in Libreville, Sierra Leone, in 2000 to review progress on to decisions taken at Cotonou. The outcome of the Libreville process was the development of the Common Platform for Action, whose primary goals are:

- To increase advocacy and sensitization for strengthening mechanisms of social regulation within communities and institutions
- To put in place an appropriate legal and institutional framework
- To improve care for children who are victims of trafficking
- To improve the knowledge and monitoring of trafficking through decentralized, flexible and indirect mechanisms
- To strengthen inter-ministerial co-operation

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- To reinforce inter-governmental co-operation
 - To guarantee the implementation and follow-up of the Platform for Action.¹¹¹

UNICEF describes the Common Platform for Action as marking ‘the beginning of a regional process with serious political and strategic implications’.¹¹²

4.3.3 *The Protocol on the African Charter on the Rights of Women in Africa*

The Protocol on the African Charter on the Rights of Women in Africa was adopted by the Conference of Heads of State and Government in Maputo, Mozambique, in July 2003 and came into force in November 2005. Article 1(k) defines women as meaning persons of female gender, including girls, thus extending the provisions of the Protocol to include protection for girl children.

Article 3 of the Charter deals with the general rights of women to dignity, the right not to be subjected to exploitation or degradation, and the right to protection from all forms of violence, particularly sexual and verbal. All these issues are applicable in relation to human trafficking, albeit indirectly.

Article 4 deals more specifically with trafficking of women. Article 4(2)(g) directs State Parties to ‘prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk’. Article 4(1) states that ‘every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.’

4.3.4 *Bilateral and multilateral co-operation agreements*

In its 2005 report on trafficking, UNICEF noted the increasing recognition that trafficking is a transnational issue and argued that, at policy level, the development of bilateral agreements are an important tool for fostering co-operation. The report makes particular reference to the Co-operation Agreement between Mali and Côte d’Ivoire to combat trans-border Trafficking of Children (2000).¹¹³

In February 2000, a meeting that brought together senior government officials, representatives of employers’ and labour organizations, representatives of national, regional and international NGOs, as well as the media and representatives of UNICEF and the ILO, was held. Its objectives were, among other things, to increase awareness of the problem of the worst forms of child labour in the sub-region, trafficking for exploitative labour purposes in particular and to adopt a common platform for action in this area. One of the outcomes of the sub-regional consultation in Libreville in 2000 was the development of a Memorandum of Understanding (MoU) on international trafficking in children between the Governments of Côte d’Ivoire and Mali – the first such agreement to be signed in Africa. The MoU identified areas for cross-border co-operation in combating child trafficking, including the repatriation of trafficked children and the detection and tracking of child trafficking networks.¹¹⁴

¹¹¹ The detailed action plan is available on <http://www.unicef.org/media/newsnotes/platform.pdf>.

¹¹² ‘Trafficking in Human Beings, Especially Women and Children, in Africa’ UNICEF, note 3, p. 26.

¹¹³ Ibid. pp. 26-7.

¹¹⁴ Briefing on Trafficking in Children to the Congressional Human Rights Caucus, June 2002, http://www.unicef.org/media/media_9440.html.

Benin and Cote d'Ivoire also entered into a similar agreement. A repatriation agreement has been entered into by Togo, Ghana, Benin and Nigeria and a readmission agreement has been signed between Nigeria and Italy.¹¹⁵

More importantly, at regional level, two multi-lateral co-operation agreements have recently been entered into. Firstly, in 2005 the Governments of the Republics of Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo entered into the Multilateral Co-operation Agreement to Combat Child Trafficking in West Africa, otherwise known as the Abidjan Agreement. This Agreement was considered a necessary tool for both eliminating child trafficking and respecting children's harmonious development and observance of their fundamental rights. It contains a useful section where child trafficking is defined as 'the recruitment, transportation, transfer, harbouring or receipt of children, for the purpose of exploitation, regardless of the means'.¹¹⁶ In addition, it also provides definitions, inter alia, for repatriation, rehabilitation and reintegration.¹¹⁷ The agreement has a broad application and includes measures relating to combating child trafficking by prevention, protection, repatriation, reunion, rehabilitation, reintegration, repression and co-operation.¹¹⁸

It obliges States to establish, by mutual agreement, appropriate mechanisms for registration, documentation, family reintegration and the identification of child victims of trafficking.¹¹⁹ It also requires States to take the necessary steps to prevent and control child trafficking; prepare and implement plans of action as well as regional and national programmes and projects to combat child trafficking; exchange detailed information on the identity of child victims, traffickers, their accomplices, current repatriation sites and operations; and extradite, at the request of the contracting parties, traffickers and their accomplices or facilitate the process of their handing over.¹²⁰ It also contains specific obligations for countries of origin, countries of transit and countries of destination. This is very useful, as it not only focuses the attention on duties related to the nature or aspect of trafficking occurring in a particular country, but also illustrates the recognition of the specificities, rather than generalities, needed to combat trafficking.

Significantly, the agreement creates a monitoring mechanism in that it requires that a Permanent Regional Monitoring Commission (PRMC) for the Agreement be created and that it shall have a Secretariat.¹²¹ The PRMC shall be responsible for, among other things, following up and evaluating the actions of the contracting parties within the framework of the implementation of the agreement. This would be effected via annual reports and the exchange of experiences regarding the care and reintegration of child victims, information on the identity of child victims, traffickers and their accomplices, the measures taken against them and current repatriation sites and operations.¹²²

¹¹⁵ 'Trafficking in Human Beings, Especially Women and Children, in Africa' UNICEF, note 3, p. 27.

¹¹⁶ Article 1(b). Article 1(c) defines exploitation as 'among others, all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs', closely following the Palermo Protocol and not limiting the definition to labour exploitation.

¹¹⁷ Articles 1(g), (h) and (i).

¹¹⁸ Article 6.

¹¹⁹ Article 7.

¹²⁰ Article 8.

¹²¹ Article 12.

¹²² Article 14.

In 2006, an ECOWAS-ECCAS Regional Ministerial Conference on the Fight against Trafficking in Persons was held in Abuja on 6-7 July. This resulted in a Resolution of the Fight against Trafficking in Persons¹²³ and a Multilateral Co-operation Agreement to Combat Trafficking in Persons, especially Women and Children, in West and Central Africa.

The latter agreement has a number of similarities to the West Africa Child Trafficking Agreement (2005) in that it has a comprehensive definition clause providing for general obligations as well as specific obligations for origin, transit and destination countries.¹²⁴ It also has a section dedicated to establishing a monitoring mechanism.¹²⁵ However, it also includes some important additions such as the specific provision clearly setting out its aims, which are as follows:¹²⁶

- To develop a common front to prevent, fight, suppress and punish trafficking in persons by mutual co-operation at the international level
- To protect, rehabilitate and reintegrate victims of trafficking into their original environment, where necessary
- To give assistance to each other in the investigation, arrest and prosecution of trafficking-in-persons offenders through the respective competent authorities of the parties
- To promote friendly co-operation between the parties, with a view to attaining these objectives.

Article 10(m) requires the contracting States to work out and implement the Joint ECCAS/ECOWAS Plan of Action against Trafficking in Persons, especially women and children in West and Central Africa with its implementing tools. These are a model national task force against trafficking in persons; a model bilateral agreement on co-operation and mutual legal assistance in protecting children from trans-border trafficking;

¹²³ The Resolution called for, inter alia, Member States of ECOWAS and ACCAS to ratify the various law enforcement and mutual assistance-in-criminal-matters Conventions of ECOWAS and ratify relevant international instruments such as the Palermo Protocol. The ECOWAS and ACCAS states also committed themselves, amongst others to adopt as quickly as possible such legislative and other measures as may be necessary to i) establish as criminal offences the trafficking in persons within, between, or from, their territory; ii) implement measures to provide for the protection and physical, psychological and social recovery of victims of trafficking through affording them the full protection of their physical safety, privacy and human rights; iii) establish comprehensive policies, programmes, and other measures to prevent and combat trafficking in persons, and to protect victims of trafficking from further victimization; iv) create specialized anti-trafficking units within law enforcement agencies and within the prosecutorial services, with a special view to fight the involvement of organized criminal groups; v) exchange such information among law enforcement and other agencies of Member States, as well as with other countries of origin, transit and destination, and with the United Nations, and other relevant international organizations; and vi) direct the ECOWAS and ECCAS Secretariats to forge close links with the Member States' task forces on trafficking in persons, in order to achieve co-ordination of the control of trafficking in the sub-regions, and, for that purpose to establish ECOWAS and ECCAS units for the co-ordination of the efforts to combat trafficking in persons.

¹²⁴ Article 1 contains the same definitions for child trafficking and exploitation as the 2005 Agreement, but defines trafficking in persons as 'the recruitment, transport, transfer, accommodation or receipt of persons by means of 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 which includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'

¹²⁵ Article 21 provides that the State Parties agree to establish a Joint Permanent Regional Monitoring Commission (JPRMC), with a joint Secretariat created in ECCAS and ECOWAS. Its duties are the same as those of the Commission in the 2005 Agreement.

¹²⁶ Article 2.

guidelines for the protection of the rights of child victims of trafficking; and a model of child trafficking monitoring system for West and Central Africa. This shows a clear recognition that additional steps need to be taken in respect of children and that activities to address trafficking generally need specific adaptation to cater for the needs of its child victims.

The third section of the Agreement is dedicated to mutual legal assistance. Accordingly, it contains obligations on State Parties to, *inter alia*, take the necessary steps to assist one another in the investigation, arrest and prosecution of people involved in the trafficking of human beings;¹²⁷ designate their respective competent authorities to coordinate the requests and respond appropriately purposing order to ensure due co-operation between the parties in providing mutual assistance within the purview of the Agreement;¹²⁸ guidelines on the contents of the request for mutual assistance;¹²⁹ and provisions on limitations on use of information or evidence, serving documents, availability of persons to give evidence or assistance to investigation and costs.¹³⁰

Overall, both the 2005 and 2006 Agreements contain useful provisions that together create a clear framework on how countries within a particular sub-region should co-operate in trying to combat trafficking. A significant aspect of both is the focus on children and the special measures needed to address them as child victims. While the Palermo Protocol is regarded as the seminal international instrument that addresses trafficking, its focus tends to be very general and does not pay due heed to the special requirements of child victims of trafficking.

The progress that countries in West Africa have made with regard to bilateral co-operation provides a useful template for work in the Southern African sub-region, particularly in relation to cross-border migration. However, UNICEF cautions that in their analysis of existing inter-state co-operation agreements in West Africa and elsewhere, it has become clear that their success is dependent on the extent to which they establish genuine complementarity; they cannot succeed if they are only pushed by one country.¹³¹ There is therefore a need for similar training and information-sharing between countries entering into these types of agreements. This is an area that TECL could consider supporting. South Africa could initiate these types of agreements with its neighbours and proper multi-country training materials and workshops could be developed to ensure the same level of understanding and skill among various countries' border and immigration officials.

¹²⁷ Article 14.

¹²⁸ Article 15.

¹²⁹ Article 16.

¹³⁰ Articles 17-20.

¹³¹ 'Trafficking in Human Beings, Especially Women and Children, in Africa', UNICEF, note 3, p. 27.

5. Southern African Initiatives to Combat Child Trafficking

5.1 Sub-regional governance and oversight structures and institutions

5.1.1 *The Southern African Development Community (SADC)*

The Southern African Development Co-ordinating Conference came into being in Lusaka, Zambia, on 1 April 1980, following the adoption of the Lusaka Declaration: ‘Southern Africa: Towards Economic Liberation’. It was a loose alliance of nine majority-ruled states in Southern Africa with the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa. The founding Member States were Angola, Botswana, Lesotho, Malawi, Mozambique, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe. The transformation of the organization from Co-ordinating Conference into a Development Community (SADC) took place in 1992, when the Declaration and Treaty was signed at the Summit of Heads of State and Government, thereby giving the organization a legal character. Its Member States expanded to include the Democratic Republic of Congo, Madagascar, Mauritius, Namibia and South Africa.

The SADC vision is one of a common future, a future in a regional community that will ensure economic well-being, an improvement in standards of living and quality of life, freedom, social justice, peace and security for the peoples of Southern Africa. This shared vision is anchored on the common values and principles and the historical and cultural affinities that exist between the peoples of Southern Africa.

The objectives of SADC, as stated in Article 5 of the Treaty, are to:

- Achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration
- Evolve common political values, systems and institutions
- Promote and defend peace and security
- Promote self-sustaining development on the basis of collective self-reliance and the interdependence of Member States
- Achieve complementarity between national and regional strategies and programmes
- Promote and maximize productive employment and utilization of resources of the region
- Achieve sustainable utilization of natural resources and effective protection of the environment
- Strengthen and consolidate the long-standing historical, social and cultural affinities and links among the people of the region.

5.1.2 *The SADC Protocols*

In 1992, SADC institutionalized protocols as legally binding instruments aimed at facilitating the implementation of the SADC treaty.

According to Futter, a scan of both the SADC Treaty and its protocol yields no specific reference to, or concrete directives for, the combating of trafficking in persons.¹³² There are, however, a range of SADC Protocols that have potential use for this purpose. She notes in particular the Protocol on Mutual Assistance in Criminal Matters, which refers to co-operation among Member States in criminal matters relating to offences concerning transnational organised crime.¹³³ This Protocol, together with the Protocol on Extradition, could assist Member States in their investigation of trafficking offences.¹³⁴ Futter does caution that this would only be the case if trafficking in persons is considered a crime in both the requesting and the requested country. Futter also notes the importance of the Protocol on Corruption, which focuses on the promotion and strengthening of mechanisms to prevent, combat and eradicate corruption through co-operation and the development and harmonization of domestic legislation. Finally, she draws attention to the Protocol on Legal Affairs, whose aims include assisting Member States in developing the legal capacity and expertise in a specific field as well as co-operation in legal matters. She argues that this form of co-operation among Member States could strengthen law enforcement agencies and prosecutors in combating trafficking.¹³⁵ The SADC Heads of State have also adopted the Gender and Development Protocol, an instrument that aims to increase the accountability of Member States in achieving gender equality and women's rights, which may be of relevance, given the particular vulnerability of women and girl children to trafficking.

According to Mhlanga, SADC protocols provide a legal and institutional framework for deepening regional integration in the social, economic and political sphere. She describes the SADC protocol system as a bridge between policy and action, saying that protocols aim to step up accountability by Member States for policy commitments made and to translate political will into systematic and sustainable implementation. Nevertheless, she argues that there is a widening gap between policy and action and that promises made by governments rarely match actual delivery.¹³⁶ Reinforcing this view is the fact that none of the Protocols mentioned above have yet been implemented.

5.1.3 *The SADC Regional Indicative Strategic Development Plan (RISDP)*

The RISDP is a 15-year regional integration development framework setting out the priorities, policies and strategies for achieving SADC's long-term goals. It is intended to guide Member States, SADC institutions, regional stakeholders and international co-operating partners in the process of increasing integration, thus transforming the Community's vision into reality. It currently appears to be SADC's main focus, and possibly to the exclusion of previous initiatives.

Using the RISDP, SADC plans to review its main areas of co-operation and integration; define the priority integration areas for the next 15 years; set up a logical implementation programme for the primary activities required to meet the region's broader goals; ensure

¹³² Futter, note 87, p. 44.

¹³³ Article 2 (3).

¹³⁴ Article 2.

¹³⁵ Futter, note 87, p. 44.

¹³⁶ Mhlanga, P. 'Success of SADC Gender Protocol lies in Evaluation', Cape Times 23 July 2007.

effective sectoral linkages and enhance synergy amongst sectors; and provide Member States, the SADC Secretariat, other institutions, and regional and international stakeholders with a coherent and comprehensive long-term implementation agenda.¹³⁷

The main intervention areas, policies and strategies in the RISDP focus on poverty eradication, regional development integration, regionally balanced and equitable development, integration into the continental and global economies, sustainable development and gender equality.

It is envisaged that the RISDP will be regularly monitored, and at three levels: *policy*, *stakeholder* and *technical* levels. The plan makes specific reference to the fact that stakeholder engagement will promote transparency in its implementation, create a platform for adding value and continue to broaden ownership. It will be the responsibility of the Secretariat and the SADC National Committee to ensure that progress on the RISDP is monitored on a regular basis. In addition, an independent evaluation of the implementation of the RISDP is to be conducted every three years.

As the RISDP is the central strategic document that SADC is currently using to implement its goals, it is therefore critical for agencies who wish to influence the SADC agenda to engage proactively with its content and implementation. The RISDP identifies the broad participation, consultation and engagement of regional expertise and institutions as critical to its successful implementation. These provisions can be used to good effect by agencies wishing to place the issue of human trafficking more squarely on the SADC agenda.

5.1.4 *The Southern African Customs Union*

The Southern African Customs Union (SACU) consists of five Member States: Botswana, Lesotho, Namibia, South Africa and Swaziland. It was established, in 1969, through the renegotiation of the Customs Union Agreement of 1910. Re-negotiated in 1994, it led up to the SACU 2002 Agreement that came into force on 15 July 2004. The main objectives behind the establishment of SACU were regional integration and the facilitation of trade, not only among the members of the customs union, but also in trade negotiations between SACU and third parties. If these objectives were realized, the economic development of the Member States would be greatly improved.¹³⁸

The 2002 SACU Agreement aimed to a) facilitate the cross-border movement of goods among the the Member States; b) create effective, transparent and democratic institutions to ensure equitable trade benefits to Member States; c) promote conditions of fair competition; d) increase investment opportunities in the Common Customs Area; e) enhance economic development; f) promote integration into the global economy; and g) facilitate the development of common policies and strategies.

Although neither of their objectives make specific reference to issues of migration, border control or human trafficking, it can be argued that SACU could potentially play a key role in controlling the illegal entry and exit of persons across borders, thus assisting in combating the trafficking of persons. In fact, SADC would seem to be the logical choice for a forum for addressing the trafficking of children in Southern Africa.¹³⁹

¹³⁷ *Summary of the Regional Indicative Strategic Development Plan* (2006), The Southern African Development Community, accessed at <http://www.sadc.int/conference/cc2006/note/theme.php>.

¹³⁸ <http://www.sacu.int/>.

¹³⁹ <http://www.sacu.int/ResourceCentre/Legislation/2002SACUAgreement/tabid/370/Default.aspx>.

5.1.5 *The Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO)*

The Southern African Regional Police Chiefs Co-operation Organisation (SARPCCO) was formed in 1995 by 11 SADC Member States, namely Angola, Botswana, Lesotho, Malawi, Mauritius, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. They were later joined by the Democratic Republic of Congo (DRC) and the Seychelles.¹⁴⁰ The objectives of SARPCCO are:

- To promote, strengthen and perpetuate co-operation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications
- To prepare and disseminate relevant information on criminal activities as may be necessary to benefit members in their attempts to contain crime in the region
- To carry out regular reviews of joint crime management strategies in the light of changing national and regional needs and priorities
- To ensure the efficient operation and management of criminal records and the efficient joint monitoring of cross-border crime, taking full advantage of the facilities of Interpol
- To make recommendations to governments of member countries about matters affecting effective policing in the Southern Africa region
- To formulate systematic regional police training policies and strategies, taking into account the needs and performance requirements of the regional police services or forces
- To carry out any relevant and appropriate acts and strategies for promoting regional police co-operation and collaboration as dictated by regional circumstances.

An Agreement in respect of Co-operation and Mutual Assistance in the Field of Crime Combating was signed by SARPCCO members in October 1997. The Agreement allows, for example, police officers of the region to enter countries of other parties, with the authority to do so, for the purpose of police investigations. Futter argues that it would be sensible for SARPCCO to include provisions that focus on the investigation of human trafficking, given the existing scope for co-operation.¹⁴¹

It may be worth lobbying for amendments to the Agreement to include human trafficking. UNODC and SARPCCO have collaborated to compile a training manual on trafficking and the emphasis placed on it is indicative of a general enthusiasm to tackle the issue. The value, usefulness and co-operative nature of SARPCCO should not be ignored when devising any child trafficking strategy in Southern Africa.

¹⁴⁰ Msutu, F. (2001) 'Responses to organised crime in SADC: Interpol and SARPCCO', in Goredema, C. (ed.) *Organised Crime in Southern Africa, Assessing Legislation, Monograph 56*, Institute for Security Studies.

¹⁴¹ Futter, note 87, p. 62.

5.2 Sub-regional instruments and action plans

5.2.1 *The Ouagadougou Action Plan (2006) to Combat Trafficking in Human Beings, Especially Women and Children*

In November 2006 the European Union and African States adopted an Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, a plan generally referred to as the Ouagadougou Action Plan. It resulted from a commitment by the Heads of State during the EU-Africa Summit to develop measures to deal with trafficking in persons that was undertaken at the Ministerial Conference on Migration and Development, which was held in Tripoli that same month.

In addition to a set of general principles, the plan is structured according to four key pillars, namely: I. Prevention and Awareness-raising; II. Victim Protection and Assistance; III. Legislative Framework, Policy Development and Law Enforcement; and IV. Co-operation and Co-ordination. What follows is a brief summary of the Ouagadougou Action Plan and comments on its utility as a mechanism for eradicating human trafficking.

I. Prevention and Awareness-Raising

The Plan of Action tasks start with a range of activities and interventions aimed at preventing the occurrence of trafficking and raising awareness of its existence. These include education, training and efforts to improve the economic conditions of youth and their families. A particular emphasis is placed on girl children and women and their empowerment through national policies. The Plan also strongly favours the training and capacity-building of those in key positions to combat trafficking, the police authorities of African countries in particular. It also directs that States mobilize the support of families, NGOs and local communities to combat trafficking.

II. Victim Protection and Assistance

The Plan of Action recommends that policies and programmes for victims of trafficking be based on international human rights instruments. States are instructed to adopt appropriate measures for the protection of victims and provide them with information regarding their rights in the country of destination as well as their country of origin in cases of repatriation. Regarding the prosecution of traffickers, the Plan provides that victims be encouraged to testify by giving due consideration to their safety and security, particularly in the case of children. In addition, measures should be adopted to avoid the criminalising of victims. States are also tasked with developing their capacity to provide victims with psychological, medical and social assistance. Section II also deals, in brief, with the issue of repatriation and directs that States consider adopting legislative or other measures that permit victims of trafficking to remain in their territory, temporarily or permanently.

III. Legislative Framework, Policy Development and Law Enforcement

Legislative Framework

In developing a legislative framework, States are directed to sign, ratify and fully implement the UN Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and other relevant regional and international legal instruments. They

should further adopt or review legislation, policies and programmes for implementing these instruments. At the same time, it is suggested that States take measures to combat organized crime and ensure the effective prosecution and punishment of those suspected of involvement in trafficking people. Countries are urged to introduce a comprehensive legislative and institutional framework that covers all aspects of human trafficking that is in line with the Palermo Protocol. According to the Plan, national legislation should define the crime of trafficking and criminalise its various aspects. The Plan also deals with the need to improve domestic legislation in respect of confiscating the proceeds of trafficking, providing protection and compensation for victims and punishing offenders.

Policy Development

Trafficking is a complex phenomenon that involves a range of crimes and human rights violations. It therefore requires a coordinated policy response from various sectors. The Ouagadougou Action Plan directs that States should improve data collection in respect of trafficking. It also advocates the development of a National Action Plan in each country to combat trafficking as well as the establishment of a multi-disciplinary National Task Force on trafficking in people, bringing together relevant ministries, agencies, NGOs and civil society organizations to formulate policy and take action against trafficking. It is envisaged that such task forces would, in addition to implementation, have a duty to monitor and report to their respective principals on their efforts to combat trafficking. In addition, it is proposed that States include trafficking in people in poverty reduction strategies at national level and allocate the necessary budget funds needed to combat this crime.

Law Enforcement

The Plan of Action advocates the specialization of police services in respect of human trafficking. The suggested approach includes the creation of special units within existing law enforcement structures, with a specific mandate to target operational activities towards combating human trafficking, to establish or strengthen joint border patrols trained in the prevention of trafficking and to establish joint investigation units. It further proposes the enactment of laws for the extradition of the traffickers/offenders. With regard to capacity-building, the Plan refers to the provision of specific training for law enforcement personnel, customs and immigration officials, prosecutors and judges and other relevant officials. Such training should focus on the methods used to prevent human trafficking, to prosecute the traffickers and to protect the rights of victims and the victims themselves from traffickers.

IV. Co-operation and co-ordination

This section places a strong emphasis on the need to extend multi-disciplinary co-ordination and co-operation to national and regional level. More specifically, it directs that bilateral and multilateral co-operation be promoted between Europe and Africa, countries of origin, countries of transit and countries of destination in terms of identification, assistance, protection, repatriation and reintegration. In addition, transnational co-operation agreements in the Plan advocate co-operation among governments, inter-governmental, international and non-governmental organizations and relevant role players in civil society in order to strengthen the overall capacity to assist victims. It promotes the development of Regional Action Plans for combating transnational human trafficking, thus recognising the need for international, regional and bilateral co-operation.

General comments

Although the Ouagadougou Plan of Action is comprehensive in scope, there are a number of concerns about its utility for, and potential impact on, eradicating human trafficking. First, it is simply a plan of action, and as such is not a legally binding document. Second, the directives and proposals set forth are non-specific and very broad – no implementation procedures are given. Individual states would need to take responsibility for developing implementation plans and for ensuring that it is incorporated into their government budgeting cycles. This would require significant inter-departmental and inter-governmental co-operation, not to mention a substantial financial and resource commitment. Third, it seems that there is no formal system of oversight and accountability either, nor is there a clear proposal for developing a formal monitoring and evaluations system. This means that it will be difficult to assess its usefulness in the long term. Therefore, while potentially similar in nature to the ECOWAS instrument, the Ouagadougou Plan clearly lacks its substance and careful consideration of particular key aspects.

6. National Responses

6.1 Introduction

A recent study by the International Organization on Migration (IOM) on obstacles to prosecuting cases of child labour exploitation in six countries in Southern Africa¹⁴² noted that South Africa is the only country that has a specific legal provision criminalising ‘child trafficking’ as contained in the Children’s Act.¹⁴³ According to that Act, trafficking is defined as follows:

‘Trafficking’, in relation to a child –

- (a) Means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic –
 - (i) By any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or
 - (ii) Due to a position of vulnerability, for the purpose of exploitation; and
- (b) Includes the adoption of a child facilitated or secured through illegal means.’¹⁴⁴

Likewise, ‘Exploitation’, in relation to a child, includes:

- (a) All forms of slavery or practices similar to slavery, including debt bondage or forced marriage
- (b) Sexual exploitation
- (c) Servitude
- (d) Forced labour or services
- (e) Child labour prohibited in terms of section 141

¹⁴² Thompson, J. (2006) *Legal and Practical Obstacles to Prosecution of Child Labour Exploitation in Southern Africa*, paper presented at the RECLISA Conference, South Africa, pp. 5-6. The countries are Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe.

¹⁴³ The Children’s Act 38 of 2005. This Act has been passed and signed into law, but remains unpromulgated until such time as certain amendments regarding provincial issues have been effected. Until such time as the law is promulgated, the present legal regime applies. Although there is at present no law dealing with trafficking per se, there are fragmented references to criminal acts that can be regarded as aspects of the crime of trafficking. For example, The Sexual Offences Act 23 of 1957, as amended, deals with the crimes of detention for the purposes of unlawful carnal intercourse, makes it illegal to keep a brothel, creates the offence of procuring and defilement of a child or ward by a parent or guardian, makes it unlawful to procure a child to have unlawful carnal intercourse with another person, assisting in the commission of indecent acts and abduction. This legislation thus does provide for the criminalization of trafficking children for the purposes of sexual exploitation. The Prevention of Organised Crime Act 121 of 1998, as amended, which introduces measures to combat and prohibit organized crime, money laundering and criminal gang activities. It is also ironic that since South Africa has enacted new legislation criminalising child trafficking it has also been ‘downgraded’ by the United States of America to a ‘tier 2 watch list’ country – possibly illustrating the difficulties with such legislation, particularly if the information upon which the grading is done is inaccurate.

¹⁴⁴ Section 1.

(f) The removal of body parts.¹⁴⁵

In addition, South Africa is embarking on certain law reform processes. At present, the South African Law Reform Commission (SALRC) is investigating the possibility of drafting comprehensive legislation regarding human trafficking. The SALRC has released an Issue Paper and a Discussion Paper as the basis for the Commission's deliberations on the topic and also to elicit comment and suggestions from stakeholders and to disseminate information on the issue of trafficking in persons to the public at large. Coupled with further intensive research, submissions on the Issue and Discussion Papers will form the basis for future discussion and result in SALRC's preliminary proposals for law reform and draft legislation.

The IOM study referred to above notes that virtually all of the countries in the SADC region have provisions in their criminal law relating to prostitution and sexual offences, but only a few specifically prohibit the commercial sexual exploitation of children, child pornography, or child prostitution.¹⁴⁶ The study determined that the laws' provisions varied from weak (Malawi and Mozambique) to strong (Tanzania and Zimbabwe) in terms of their ability to address, among other issues, commercial sexual exploitation. It also established that although some sexual offence/prostitution laws in the region could be used to prosecute certain aspects and types of sex trafficking, they had many gaps and weaknesses.¹⁴⁷

The research did ascertain that, of the six countries examined, Zambia's new statute (the Employment of Children and Young Persons Act (Laws of Zambia, 2004), Sections 4 and 17) was the most promising for deterring and punishing more serious forms of child labour, including child trafficking. This Act specifically prohibits the employment of any child under 18 in 'any type of employment or work, which by its nature or the circumstances in which it is carried out, constitutes a worst form of [child] labour'.¹⁴⁸

The research also determined some of the obstacles to the effective prosecution of the perpetrators of the worst forms of child labour (including child trafficking). For example, labour departments in the region have insufficient human and financial resources with which to combat child labour effectively. Child labour is not an enforcement priority and the lack of awareness and training on new legislation or amendments could create practical obstacles. Further, many police officers consider child labour and other forms of labour exploitation as beyond their jurisdiction or mandate, despite the fact that they are criminal offences.¹⁴⁹

¹⁴⁵ Ibid.

¹⁴⁶ Thompson, note 143, p. 6.

¹⁴⁷ Ibid. These gaps and weaknesses include, for example, the fact that some laws against 'procurement for prostitution' only apply to females, or are restricted to young people under a certain age. Some carry a corroboration requirement, which in many cases is sufficient to render prosecution for commercial sexual exploitation impossible. In addition, sexual offences relating to prostitution tend to be misdemeanours that carry very low penalties.

¹⁴⁸ Ibid., p. 4. The section in the Zambian Statute reads as follows in defining worst forms of child labour:

- (a) All forms of slavery and all practices similar to slavery, such as the sale and trafficking of children and young persons, debt bondage, serfdom, forced and compulsory labour and forced or compulsory recruitment of children and young persons for use in armed conflict
- (b) The use, procuring or offering of a child or young person for prostitution, production of pornography or for pornographic performances
- (c) The use, procuring or offering of a child or young person for illicit activities, such as the production and trafficking of illegal drugs
- (d) Work that by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children or young persons.

¹⁴⁹ Ibid., pp. 10-14.

Malawi is one Southern African country that has exhibited real commitment to combating human trafficking, both in law and in practice. Existing Malawian law covers the full scope of trafficking in persons and, in 2006, the Malawian Law Commission submitted a draft law to the Ministry of Justice specifically criminalising child trafficking.¹⁵⁰ In addition, the government has embarked on specialized training for judges on the issue of child trafficking, as demonstrated by the 2005 initiative that saw border patrol and police officials throughout the country receiving anti-trafficking training from government and NGOs. The government has also opened a drop-in centre to provide counselling, medical care, legal assistance, shelter, food and vocational training to victims of trafficking and sexual violence.¹⁵¹ Malawi is, in fact, the only country in the SADC region that was given tier 1 status in the Trafficking in Persons Report of 2007.

6.2 National legislative responses

It has been noted throughout this report that there is a dearth of empirical information on trafficking, its scope and governments' response to it. This situation is a global condition. One of the most comprehensive attempts to assess the responses of individual governments to the problem of trafficking is the annual TIP Report undertaken by the US State Department. The seventh report was released on 12 June 2007. Unfortunately, it has been extensively criticized for grading countries according to their progress in adopting measures to address trafficking in persons.¹⁵² However, some of the information contained therein does shed light on existing national legislative responses to trafficking in the SADC region:

1. Angolan law does not prohibit trafficking in persons, although elements of its constitution and statutes, including those criminalising forced and bonded labour, could be used to prosecute trafficking cases.
2. The TIP report notes that existing laws in the Democratic Republic of the Congo do not prohibit all forms of labour trafficking. In July 2006, its transitional government enacted a sexual violence statute (Law 6/018) that does specifically prohibit, and provide penalties of 10 to 20 years' imprisonment for, child and forced prostitution, pimping and trafficking for sexual exploitation. The new constitution, promulgated in February 2006, forbids involuntary servitude and child soldiering.
3. Although Madagascar's laws do not prohibit trafficking for commercial sexual exploitation, traffickers can be prosecuted under various provisions prohibiting the procurement of minors for prostitution, paedophilia, pimping and deceptive labour practices. In 2006, the Ministry of Justice finalized a draft law that, when enacted,

¹⁵⁰ TIP Report 2007, note 2, pp. 171-2.

¹⁵¹ Ibid.

¹⁵² See, for instance, Leggett, T. (2004) 'Hidden Agendas? The risk of human trafficking legislation', *Crime Quarterly*, No. 9, accessed at www.iss.org.za/Pubs/CrimeQ/No.9/Leggett.htm. The United States Trafficking Victims Protection Act of 2000 requires that an annual report must be submitted to the US Congress that describes the nature and extent of severe forms of trafficking in persons with respect to each foreign country and an assessment of the efforts made by the government of each country to combat trafficking. Section 108 of the Act sets out minimum standards that need to be complied with for the elimination of trafficking; countries are then assessed to determine whether they fully comply with the minimum standards, or do not yet fully comply but are making significant efforts to bring themselves into compliance therewith, or do not comply and have made no effort to do so. In terms of Section 110, the United States will not provide non-humanitarian, non-trade-related foreign assistance to the government of a country, for the subsequent fiscal year, until such government complies with the minimum standards or makes significant efforts to bring itself into compliance.

will protect child victims of sexual exploitation and punish the exploiters of children in prostitution. The Ministry has also written a decree listing the prohibited forms of child labour, which include prostitution, domestic slavery and forced labour. Work has also commenced on a Bill to bring domestic laws into line with the UN Convention on Transnational Organised Crime that will also include severe penalties and extradition provisions that will apply to traffickers.¹⁵³

4. Malawi prohibits all forms of trafficking through existing law, including Articles 135 to 147 and 257 to 269 of the Penal Code, although a lack of specific anti-trafficking legislation makes prosecution difficult and allows a large range of punishments for convicted traffickers. According to the TIP report, the punishment prescribed for trafficking under existing Malawian laws is commensurate with that for other grave crimes and is sufficiently stringent. The Child Care, Protection and Justice Bill, which defines child trafficking and sets a penalty of life imprisonment for convicted traffickers, was approved by the Cabinet and is expected to be tabled by Parliament in 2007. The Malawi Law Commission recently began drafting comprehensive anti-trafficking legislation.¹⁵⁴
5. Mauritius prohibits all forms of trafficking through its Child Protection Bill of 2005, which prescribes punishment of up to 15 years' imprisonment for convicted offenders. The government does not have laws prohibiting the trafficking of adults, though existing statutes covering crimes such as forced labour could be used to prosecute such cases. To rectify this situation, the Attorney-General's Office has announced plans to draft a comprehensive anti-trafficking statute.¹⁵⁵
6. The TIP report notes that while Mozambique has taken steps towards the passage of anti-trafficking legislation during the reporting period, actual law enforcement efforts have decreased. The country does not prohibit any form of trafficking in persons, but its penal code does include at least 13 Articles under which trafficking cases can be charged. The report indicates that in March 2007 the Ministry of Justice presented to Parliament a framework law on child protection that provides comprehensive guidelines for future laws concerning the sale and trafficking of children. The Ministry also finished drafting a comprehensive law against human trafficking that contains specific provisions on prevention, prosecution and protection. In early 2007, the Ministry and a local NGO conducted a series of three forums in the northern, central and southern parts of the country that allowed public debate of the draft law.¹⁵⁶ The report does not make the current status of this proposed legislation clear.
7. The TIP report contains no information on Namibia. The following has been gleaned from alternative sources: Namibia has a draft Children's Status Bill (approved by the National Council but sent back to the National Assembly, with more consultations to come), which provides for the social and economic rights and protection of children born out of wedlock.¹⁵⁷ This piece of proposed legislation

¹⁵³ TIP Report 2007, note 2.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid..

¹⁵⁶ Ibid.

¹⁵⁷ Terry, E.M. (2006) *A Rapid Assessment on Child Trafficking Linked to Child Labour and Commercial Sexual Exploitation of Children in Namibia*, International Labour Organization.

is a companion to the proposed Child Care and Protection Bill. These Bills, together with the Maintenance Act, will afford children greater economic protection, thereby reducing the likelihood of their engaging in work, including prostitution, to support themselves. The Child Care and Protection Bill (the draft version is still being finalized at the Ministry of Justice) covers the adoption and removal of children from the family home in cases of abuse or neglect and other related areas of concern. This Bill has the particular aims of protecting children, promoting child welfare and implementing the UN Convention on the Rights of the Child.

8. In South Africa, as pointed out above, the Children's Act, which specifically criminalizes child trafficking, has been passed but the TIP report correctly points out that this law cannot be enforced until its regulations are promulgated. The Sexual Offences Act 32 of 2007, which prohibits the trafficking of women for sexual exploitation, was passed in November 2007.
9. Mainland Tanzania's legislation does not prohibit all forms of trafficking in persons. However, traffickers can be prosecuted under existing statutes criminalising the sale of people, forced labour, child labour and various sexual offences. Zanzibar has a separate legal code.
10. The TIP report notes that Zambia prohibits all forms of trafficking by the 2005 amendment to its penal code, which prescribes penalties from 20 years to life in prison. The statute does not, however, define trafficking or set out the elements of the offence, thus limiting its utility.
11. Zimbabwean law does not prohibit all forms of trafficking in persons, though existing statutes outlaw forced labour and numerous forms of sexual exploitation.

7. Recommendations

‘The experience of African States demonstrates the extent to which effective counter-trafficking measures require to be comprehensive, integrated and targeted at multiple levels within society. In so doing, they must balance effective criminal law reform and enforcement with a firm commitment to the promotion and protection of actual and potential victims.’¹⁵⁸

The following section provides some recommendations as to how the Southern African region can consolidate its work regarding child trafficking and create a Southern African policy response to trafficking in general.

Before setting out the actual recommendations, it is useful to list those recommendations flowing out from other processes aimed at creating a legislative and policy framework for trafficking in Southern Africa. The IOM notes in its bulletin, *Eye on Human Trafficking* that, globally, government action on trafficking is centred on the UN Protocol to Prevent Suppress, and Punish Trafficking in Persons (the Palermo Protocol).¹⁵⁹ The majority of governments in the region have ratified this instrument, which has committed them to criminalising human trafficking and develop specific legislation against it. In May 2007, the IOM brought together government officials from 13 Southern African countries for its Migration Dialogue for Southern Africa (MIDSA), with the aim of assisting in their development of effective legislation.

The delegates made several useful recommendations. Although they are still in draft form, they are as follows:

1. States that have not done so should ratify the Palermo Protocol and related instruments and incorporate their provisions into domestic legislation.
2. Legislation should specifically criminalize trafficking in persons, provide for the prosecution of perpetrators and provide protection, including witness protection and legal, medical and social assistance to victims of trafficking.
3. Immigration laws should be amended to provide victims of human trafficking with the possibility and opportunity of obtaining temporary residence. And, in cases where it is unsafe for them to return to their country of origin, they should be granted an appropriate immigration status.
4. Information, education and communication programmes should be developed to inform and sensitize the public.
5. Guidelines and training programmes aimed at increasing the capacity of law enforcement agencies and officials should be developed and implemented.

¹⁵⁸ ‘Trafficking in Human Beings, Especially Women and Children, in Africa’ UNICEF, note 3, p. 37.

¹⁵⁹ ‘MIDSA calls for legislation in Southern Africa’ (2007), *Eye on Human Trafficking, Issue 14*, International Organization for Migration, Pretoria, South Africa. The *Eye on Human Trafficking* is produced by the International Organization for Migration (IOM) and is described by the IOM Report as a bulletin on news, information and analysis on trafficking of persons in Southern Africa.

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6. SADC Member States should develop and implement bilateral and multilateral agreements pertaining to joint and co-operative measures, including investigations, mutual legal assistance, extradition agreements and resource- and information-sharing.
 7. Consideration should be given to the establishment of specialized courts and specialized training of law enforcement officials.
 8. Consideration should be given to the drafting of a SADC Protocol on Trafficking in Persons.
 9. Efforts should be made to engage members of parliament to facilitate the development of policies and legislation aimed at addressing the problem of trafficking.
 10. Co-operation within and between national governments, as well as between governments and civil society organizations, should be encouraged and strengthened.
 11. Existing regional institutions such as SADC and the Defence and Security Co-operation that could play a useful role in combating trafficking throughout the SADC region, should be identified and incorporated into the development of law and policy.
 12. Research and data gathering exercises should be undertaken to improve knowledge and understanding of the problem.
 13. Co-operating partners should continue to support governments and civil society, either directly or through international organizations.
 14. Efforts should be made to strengthen and increase the capacity and value of dialogue through processes such as MIDSA.¹⁶⁰

While some of these recommendations are very broad and extend beyond the scope of this report's present investigation, they do provide a blueprint against which the recommendations of this report can be framed.

7.1 Inter-agency Co-operation

In the UNODC concept paper entitled 'Global Initiative to Fight Trafficking', it is noted that at the international level a number of UN agencies and regional programmes have 'dealt' with aspects of human trafficking. Specifically, UNODC is the guardian of the UN Protocol against trafficking in persons; UNICEF protects children from violence, abuse and exploitation; the ILO protects against forced labour and child labour; the IOM protects migrant workers; and OHCHR is custodian of the anti-slavery legal instruments. The concept paper also notes that since 2006 a broader range of activities has been more loosely co-ordinated through an inter-agency co-operation group (ICAT) against human trafficking.¹⁶¹

¹⁶⁰ Ibid.

¹⁶¹ *The UNODC Global initiative to fight trafficking: Concept Paper* (2007), United Nations Office on Drugs and Crime.

It is accepted that much work has been done in Africa by the different agencies mandated with children's issues, child trafficking and organized crime - UNICEF, the ILO and UNODC in particular.¹⁶² However, the result is a multitude of initiatives that seem to duplicate each other. The time is ripe to ensure an inter-agency strategy that seeks to achieve a common objective for the Southern African response to child trafficking and the overall goal of an African-driven counter-trafficking approach.¹⁶³ This would include giving support to governments, whether in the form of resources, skills transfer or capacity-building, as well as training initiatives and the development of materials. There should be regular communication between identified agencies to co-ordinate efforts against child trafficking as well as co-operative efforts in awareness-raising and training.

To facilitate this inter-agency co-operation, it is suggested that a Memorandum of Understanding be drafted that deals with, inter alia:

- What agency would take responsibility for which actions
- The agency level at which this co-operation should rest – head office, regional or country level
- Country based co-operation in countries where all agencies are situated
- The need to record how this can be achieved and to make concrete recommendations specific to SADC co-operation structure with protocols and the UNODC Plan of Action in mind.
- The need to formulate a clear proposal.

7.2 Focus on child trafficking or human trafficking

This report has focused on issues related to child trafficking in the context of international instruments and regional institutional frameworks. However, the question arose at an inter-agency meeting hosted by the Pretoria TECL/ILO office on 17 August 2007 as to whether the focus should, in fact, be on placing trafficking on the agenda of regional institutional structures.

¹⁶² Other non-UN agencies working on trafficking include International Organization for Migration (IOM), which incorporates the Southern African Counter Trafficking Assistance Programme (SACTAP) and the Migration Dialogue for Southern Africa (MIDSA); the Southern African Network against Child Trafficking (SANTAC); Diasporafrique; and terres des hommes.

¹⁶³ For example, UNODC launched the Global Initiative against Human Trafficking in March 2007 and is facilitating the process, channelling existing efforts into a cohesive framework to reduce duplication. The Global Initiative (GIFT) will be rolled out in three phases. The preparatory phase (March-November) aimed to increase awareness and knowledge about human trafficking, identify partners in the fight against it, and mobilize financial resources to support action. A series of regional events involving relevant stakeholders examined both the causes of vulnerability (to trafficking) and the range and magnitude of the impact of this crime. The focus of the second phase was a conference hosted in Vienna on 27-29 November 2007. Its purpose was to take stock of advances made and set the direction for follow-up measures. It also aimed at assessing the lessons learned regarding the dimensions of the issue and the current plan of action. The conference focused on three themes, namely, vulnerability; impact; and action towards a coalition to end human trafficking and exploitation. The third phase is the operational phase. Projects and needs identified in the earlier, preparatory period will start being implemented, with the resources committed to a special purpose fund. The fund is designed to have a sustained impact at local and regional level. An informal co-ordination group of multilateral institutions would ensure depth and breadth to the range of activities to be funded. National ownership of the projects will guarantee the initiative's long-term success. The Global Initiative aims to: raise awareness; strengthen prevention; reduce demand; support and protect the victims; improve law enforcement; implement international commitments; enrich knowledge; strengthen partnership; create a special purpose fund; and create an informal contact group.

In so far as the Palermo Protocol is the seminal international instrument in relation to trafficking, it would make sense that any initiative regarding child trafficking focus on the broader issue of human trafficking. However, it is strongly submitted that any initiative on human trafficking should include a substantive child trafficking component that goes beyond the content of this protocol. The Palermo Protocol distinguishes child trafficking from human trafficking in Article 3 and in doing so, recognizes the specific vulnerability of children to being trafficked. However, as far as obligations regarding repatriation, protection, victim support, are concerned, no distinction is made between children and adults. It is argued that children need more specific and more focused re-integrative and protection services than adult. Any new initiatives flowing from this report should therefore take the needs of children into account in a more substantial manner.

7.3 The appropriate structure to lead child trafficking initiatives

The question is whether to target the AU or SADC in addressing the issue of (child) trafficking in the region. As these two structures are not mutually exclusive, a SADC-based approach to trafficking is also needed, which should ultimately complement a broader African initiative. However, for the purpose of the present investigation, the SADC structure should be the first point of departure, given its sub-regional constituency and the recent launch of the RISDP, its 15-year strategic plan.

In addition, support for NEPAD is crucial as its work on poverty reduction and education, among other things, should significantly reduce the risk or ‘push’ factors for (child) trafficking.¹⁶⁴

Furthermore, training or briefing initiatives on child trafficking for these institutional structures should be considered as a way in which to initially focus their attention on trafficking.

Support for the African Commission and the African Committee of Experts on ACRWC is also a means through which trafficking and child trafficking can be addressed and measures to combat it be strengthened continentally. A strong Commission and Committee can play an important role in highlighting the continued need for action with the latter body in particular providing support through a child rights lens. Although its mandate to report to the AU has been criticized as detracting from the Committee’s independence,¹⁶⁵ the connection between it and the AU may be helpful in formulating an African strategy regarding child trafficking.

7.4 Trafficking Protocol and Plan of Action

The ECOWAS Plan of Action seems to be a well thought out and appropriate response to trafficking. The content provides a useful guide as to what a trafficking Plan of Action

¹⁶⁴ Likewise, achieving the Millennium Development Goals (MDGs) will also assist in reducing the risk factors for trafficking. In September 2000, at the United Nations Millennium Summit, world leaders agreed to a set of time-bound and measurable goals and targets for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women. The eight MDGs developed by the UN, which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education by 2015, form a blueprint agreed to by all countries and the world’s leading development institutions.

¹⁶⁵ Generally, see Lloyd, A. (2004) *Regional Developments on the Rights and Welfare of the Child in Africa: A general report on the African Charter on the Rights and Welfare of the Child and the African Committee of Experts*, Centre for Legal Research, Faculty of Law, University of the West of England, Bristol.

should contain and it is recommended that a SADC Protocol and Plan of Action¹⁶⁶ on trafficking be drawn up, using this instrument and the Palermo Protocol as a basis.¹⁶⁷ However, as stated in the conclusion, implementing such a Protocol and Plan of Action is imperative. Given all the various structures and institutional frameworks, it seems that targeting SADC should be the first option in trying to influence a sub-regional approach to child trafficking.

The possible means through which this could be achieved could include the following:

- Establishing a relationship between SADC and the inter-agency initiative through, for example, briefing the SADC secretariat on trafficking and the extent of the phenomenon; the recognition of the problem by individual SADC states; the uptake rate of the Palermo Protocol and ILO Convention 182 in the SADC region; regional co-operation on trafficking (SARPPCO, for example); how trafficking fits into RISDP; and the need for a SADC protocol and plan of action based on existing African initiatives such as ECOWAS
- Requesting SADC to identify a unit/committee that would take responsibility for action on trafficking, preferably a legal committee or one with a criminal justice focus
- Offering support to SADC by establishing a technical assistance project within it on trafficking. Any such project could initially collect expert advice and then later fund a potential office to co-ordinate trafficking efforts and responses for a protocol and plan of action.

Although the Palermo Protocol represents a comprehensive attempt by the international community to address human trafficking, Africa is proud of its own human rights initiatives. It is suggested that the uptake rate of an *African* protocol on trafficking (with a dedicated focus on child trafficking) to the African Charter on Human and Peoples Rights (ACHPR) may also meet with some success. The proposed protocol should look to the Palermo Protocol as a guide for content and to ILO Convention No. 182 for the measures that need to be adopted to address child trafficking and the worst forms of child labour.

7.5 Domesticating international and regional law

SADC countries are all signatories to the CRC. In addition, all other instruments dealing with child trafficking require legislative steps to realize the rights contained therein. It is therefore necessary for Southern African countries to sign, ratify and domesticate in their national laws all relevant international and regional children's rights instruments that deal with child trafficking, especially the Palermo Protocol and ILO Convention No. 182.

A suggestion for the inter-agency co-operation initiative is to convene something along the lines of a MIDSA forum or workshop for information exchange between countries to promote the harmonization of laws. This would target those Southern African countries that are still reforming their laws on trafficking.

¹⁶⁶ In addition, the UNODC plan of action that has been submitted to SADC should also form the basis for the SADC plan of action, but should possibly be revised to allow for inter-agency comment and ensure that there is a substantive child trafficking focus as recommended in 6.2 above.

¹⁶⁷ The IOM conference recommended a SADC protocol on trafficking. However, given the existing protocols and their non-operative status, it might be best to opt for influencing RISDP to operationalise these protocols and the one on potential trafficking.

In addition, work in connection with trafficking and the SADC plan of action should ensure that the domestication of national laws on trafficking is included. Other than this, it is very difficult to interfere with national law-making processes, as this is the purview of national governments and parliaments. However, there could be scope for technical assistance in the form of funding and other support for countries that have not yet legislated on trafficking. This is where the existing association of law reform commissions for Southern and East Africa could come in. Its Member countries are Botswana, Kenya, Lesotho, Malawi, Mauritius, Namibia, Rwanda, South Africa, Swaziland Tanzania, Uganda, Zambia, Zanzibar and Zimbabwe.¹⁶⁸

In addition, agencies could provide technical support to the law reform commissions of those countries that have not yet passed trafficking laws, and much along the same lines that Save the Children Sweden provided the South African Law Reform Commission in the work on the Children's Act and Child Justice Bill.

For countries that do not have law reform commissions, agencies could identify suitable service providers/NGOs to initiate law reform initiatives or simply negotiate technical assistance with the relevant justice ministry.¹⁶⁹

7.6 Policy initiatives

Apart from legislative initiatives, there seems to be an active development of policy by national governments on the issue of child trafficking and on trafficking in general. These policies need to complement other policy initiatives in the areas of health, education, social development, crime prevention and poverty reduction, for example. This should be at national level and at SADC level.

In particular, policy development should start by examining the following:

- Prevention – audit of existing national policies relating to crime prevention, assessment of whether the policy is sufficient to address root causes of trafficking – poverty, internal strife, HIV/AIDS, criminal demand/criminal economy. The non-criminal justice departments must also ensure that their policies on health, HIV/AIDS, education and skills development, for example, complement the crime prevention policies.
- Prosecution – development of standards and guidelines for investigation and prosecution of perpetrators and protection of victims and witnesses, harmonization of procedures and standards across countries to ensure certainty and consistent treatment
- Protection – development of standards and guidelines for victims and witnesses, development of transnational policy on repatriation and rehabilitation.

¹⁶⁸ <http://www.doj.gov.za/alraesa/bg.htm>.

¹⁶⁹ These would preferably be NGOs with proven track records, wide constituencies, legal knowledge or capacity and an understanding of criminal justice issues and children. Another option is for agencies to enter into co-operation agreements with governments and then provide an outside service provider to undertake the necessary law reform steps. An example is the Mozambican experience with the drafting of their new child law – UNICEF appointed consultants with child rights experience to undertake research and consultation in order to formulate recommendations for law reform, and then UTREL (the legal drafting section of the Ministry of Justice) undertook the drafting process.

8. Conclusion

Human trafficking, including child trafficking, is both a global and a regional issue that requires appropriate responses at all levels. While the literature seems to point to West Africa as having taken the lead in addressing the problem, a similar response for Southern Africa is not necessarily the only solution. While statistics with regard to child trafficking are notoriously unreliable, it is generally understood that trafficking patterns in Africa run from the north of the continent to the south, with countries in West and Central Africa being termed as ‘originating’ countries and countries in the South and South East being termed ‘transit’ or ‘destination’ countries.

Ideally, the response should be continental, spearheaded by the AU and taking international and global trafficking patterns into account. In addition, there should be a sub-regional Southern African attempt to complement an Africa-driven initiative to combat (child) trafficking. It is recommended that the Southern African response would be best placed in a binding protocol, in a similar vein to other existing SADC-developed protocols,¹⁷⁰ and with content similar to the Palermo Protocol. Further, this protocol should be implemented through a plan of action similar to that of ECOWAS and take the UNODC draft into account. Likewise, the West African impetus should not dissipate but be linked to a greater African initiative. Any Southern African initiative should support work on trafficking at a continental and/or AU level.

For the purposes of the present enquiry, it is suggested that efforts should first focus on ensuring that SADC addresses trafficking with the longer-term goal of making it an African response.

¹⁷⁰ This recommendation must be viewed against the unfortunate context of the status of SADC protocols, many of which are yet to be operationalised. A similar note of caution is sounded with regard to the efficacy of AU structures and initiatives. Although Africa has a fairly well developed oversight and accountability architecture on paper, this has not translated well into practice in real terms. UN agencies could play a crucial role in bringing pressure to bear on these structures to ensure that their mandates are implemented.

9. Bibliography

9.1 International Conventions, Protocols and Guidelines

International Labour Organization Conventions

The International Labour Organization Forced Labour Convention, 1930.

The International Labour Organization Convention No. 105 on the Abolition of Forced Labour, 1957.

The International Labour Organization Convention No. 138 on Minimum Age for Admission to Employment 1973.

The International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999.

United Nations Conventions

The United Nations Convention on the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others 1949.

The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956.

The International Covenant on Civil and Political Rights 1966.

The United Nations Convention on the Elimination of All Forms of discrimination against Women, 1979.

The United Nations Convention against Torture and other Cruel, Inhumane and Degrading Treatment 1985.

The United Nations Convention on the Rights of the Child 1989.

The United Nations Rome Statute of the International Criminal Court 1998.

The United Nations Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women 1999.

The United Nations Convention against Transnational Organised Crime, 2000.

The United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime 2000.

The United Nations Optional Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention against Transnational Organised Crime 2000.

The United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000.

United Nations Guidelines

The United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking 2002.

Other Conventions

The International Convention for the Suppression of the White Slave Traffic 1910.

The International Convention for the Suppression of the Traffic in Women and Children 1921.

The Slavery, Servitude, Forced Labour and Similar Institutions Convention of 1926.

The Universal Declaration of Human Rights, 1948.

The Hague Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption (1990).

9.2 Regional Instruments, Protocols and Action Plans

Regional Instruments

The African Charter on the Rights and Welfare of the Child 1990.

The African Charter on Human and Peoples Rights 1986.

Protocols

The Protocol to the African Charter on the Rights of Women in Africa 2003.

The SADC Protocol on Legal Affairs 2000.

The SADC Protocol on Mutual Assistance in Criminal Matters 2002.

The SADC Protocol on Extradition 2002.

The SADC Protocol on Corruption (undated).

The SADC Protocol on Gender and Development (not adopted as yet).

Action Plans and other documents

The Treaty of the Southern African Development Community 1992.

The Libreville Common Platform for Action 2000.

The Southern African Customs Union Agreement of 2002.

The ECOWAS Declaration and Plan of Action Against Trafficking in Persons 2002–2003 and 2006–2009.

The SADC Regional Indicative Strategic Development Plan 2004.

Multilateral Co-operation Agreement to Combat Child Trafficking in West Africa 2005.

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children 2006.

ECOWAS–ECCAS Regional Ministerial Conference on the Fight Against Trafficking in Persons Resolution of the Fight Against Trafficking in Persons 2006.

Multilateral Co-operation Agreement to Combat Trafficking in Persons, especially Women and Children, in West and Central Africa 2006.

9.3 Books, articles, documents

- Bassiouni, M.C. and Blakesley, C.L. (1992) 'The need for an International Criminal Court in the New International World Order', *Vanderbilt Journal of Transnational Law* Volume 25 Number 2.
- Detrick, S. (1999) *A Commentary on the United Nations Convention on the Rights of the Child*, Kluwer Law International.
- Ehlers, L. and Mathiti, V. (2003) *Children's Perspectives on Children's Rights in Mozambique*, Community Law Centre, University of the Western Cape.
- Fitzgibbon, K. (2003) 'Modern-day Slavery? The Scope of Trafficking in Persons in Africa', *African Security Review*, Vol. 12, No. 1.
- Futter, L. (2007) *The need for a regional mechanism to protect victims of human trafficking in Southern Africa*, masters thesis, unpublished, University of Cape Town.
- Gallagher, A. (2001) 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis', *Human Rights Quarterly*, Vol. 23.
- Gose, M. (2002) *The African Charter on the Rights and Welfare of the Child*, Community Law Centre, University of the Western Cape.
- Hammarberg, T. (1995) 'Introduction', in Hime, J.R. (ed.) *Implementing the Convention on the Rights of the Child – Resource Mobilisation in Low-Income Countries*, Martinus Nijhoff Publishers.
- ILO-Geneva (2006) *The End of Child Labour: Within Reach. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*.
- International Organization for Migration (2007) 'MIDSA calls for legislation in Southern Africa', *Eye on Human Trafficking*, Issue 14, South Africa: Pretoria.
- IWAN Consultancies (2007) *Rapid Assessment of Child Trafficking in Botswana*. International Labour Organization.
- Kassan, D. (2004) *Children's right to be heard in divorce proceedings*, unpublished MA thesis, University of the Western Cape.
- Keregero, J.B. and Keregero M.M. (2007) *A Rapid Assessment of Child Trafficking and other Migration-Related Child Labour in Swaziland*, International Labour Organization.
- Koen, K. and Van Vuuren, B. (2002) *Children in domestic service: A case of the Western Cape*. terre des hommes schweiz.
- Leggett, T. (2004). 'Hidden Agendas? The risk of human trafficking legislation', *Crime Quarterly*, No. 9.
- Letsididi, B. (2007). 'Botswana: child trafficking is rife', *Africa* 2007, 7th edition.
- Lloyd, A. (2004) *Regional Developments on the Rights and Welfare of the Child in Africa: A general report on the African Charter on the Rights and Welfare of the Child and the African Committee of Experts*, Centre for Legal Research, Faculty of Law, University of the West of England, Bristol.
- (2001) 'The African Charter on the Rights and Welfare of Children and the Reality for Africa's Children: An Evaluation of the ACRWC through a Cultural Perspective', MA thesis, University of the West of England, Bristol.
- Madotyeni, Z. (2000) A Charter for African Children, *ChildrenFIRST*, Issue 30.

-
- Martens et al. (2003) 'Seduction, Sale and Slavery: Trafficking in women and children for sexual exploitation in Southern Africa' in *A situational analysis of the Abuse and Trafficking of Children for Sexual Exploitation (prostitution, labour and crime) purposes in Southern Africa*, Southern African Campaign against the Abuse and Trafficking of Children (SANTAC).
- Martens J, Pieczkowski, M and van Vuuren-Smythe, B. (2003) 'Trafficking in women and children for sexual exploitation in Southern Africa', International Organization for Migration.
- Mhlanga, P, 'Success of SADC Gender Protocol lies in Evaluation', *Cape Times* 23 July 2007.
- Molo Songololo Report (2000) *The Trafficking of Children for purposes of Sexual Exploitation – South Africa*.
- Msutu, F. (2001) 'Responses to organised crime in SADC: Interpol and SARPPCO', in Goredema, C. (ed.) *Organised Crime in Southern Africa, Assessing Legislation, Monograph 56*, Institute for Security Studies.
- Noguchi, Y. (2002) 'ILO Convention No. 182 on the worst forms of child labour and the Convention on the Rights of the Child', *The International Journal of Children's Rights*, Vol. 10.
- Olowu, D. (2002) 'Protecting children's Rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child', *The International Journal of Children's Rights* 10, Kluwer Law International.
- SADC. (2006) *Summary of the Regional Indicative Strategic Development Plan*.
- Shotwell, J.T. (ed.) (1934) *The Origins of the International Labor Organisation*, Columbia University Press.
- South African Law Reform Commission. (2004) *Issue Paper 25: Trafficking in persons*.
- Statistics South Africa. (2001) *Survey of Activities of Young People in South Africa: Country report on children's work-related activities*, South Africa: Department of Labour.
- Terry, E.M. (2006) *A Rapid Assessment on Child Trafficking Linked to Child Labour and Commercial Sexual Exploitation of Children in Namibia*, International Labour Organization
- UNICEF. (2006) *UNICEF Child Protection Information Sheet: Trafficking*.
- 'Trafficking in Human Beings, Especially Women and Children, in Africa', *Innocenti Insight* (2nd edition).
- Thompson, J. (2006) *Legal and Practical Obstacles to Prosecution of Child Labour Exploitation in Southern Africa*, paper presented at the RECLISA Conference, South Africa.
- US Department of State. (2007) *Trafficking in Persons Report*.
- UNDOC. (2007) *The UNODC Global Initiative to Fight Trafficking: Concept Paper*.
- (2006) *UNODC Toolkit to Combat Trafficking in Persons*.
- UNESCO. (2005) *Human Trafficking, Especially of Women and Children: Lesotho* (draft report).
- Van Bueren, G. (1995) *The International law on the Rights of the Child*, Martinus Nijhoff Publishers.
-

9.4 Websites

<http://www.achpr.org>

<http://www.african-union.org>

<http://www.allAfrica.com>.

<http://www.allAfrica.com>.

<http://www.doj.gov.za/alraesa/>

<http://www.hrw.org/children/>

<http://www.iss.co.za/Pubs/Monographs/No56/Chap2.html#Anchor-Frank-7791>

<http://www.labour.gov.za>

<http://www.nepad.org>

<http://www.ohchr.org/english/countries/ratification/>

<http://www.sacu.int/>

<http://www.sadc.int/conference/cc2006/note/theme.php>

<http://www.unicef.org/crc/crc.htm>

<http://www.unicef.org/media/>

<http://www.unicef.org/crc/monitoring/>

<http://www.unicef.org/protection/>

<http://www.unodc.org>