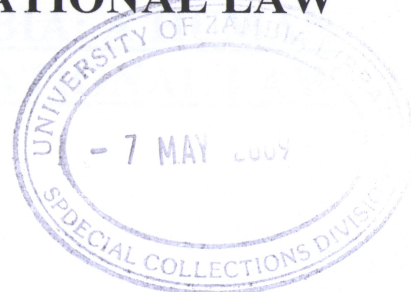


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HUMAN TRAFFICKING IN ZAMBIA: A HUMAN RIGHTS, GENDER AND INTERNATIONAL LAW PERSPECTIVE



BY

VALERIE KAWANGU

UNZA

2008/9

TITLE

**HUMAN TRAFFICKING IN ZAMBIA: A HUMAN
RIGHTS, GENDER AND INTERNATIONAL LAW
PERSPECTIVE**

BY

VALERIE KAWANGU

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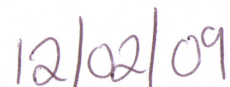
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DECLARATION

I VALERIE KAWANGU, COMPUTER NUMBER 25027701 hereby declare that the contents of this Directed Research entitled **HUMAN TRAFFICKING IN ZAMBIA: A HUMAN RIGHTS, GENDER AND INTERNATIONAL LAW PERSPECTIVE** are entirely based on my own findings and that I have not in any manner used any person's work without acknowledging the same.

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SIGNATURE..........
DATE.....12 TH FEBRUARY 2009.....

DEDICATION

I wish to dedicate this piece of work to all the victims of trafficking who have suffered silently without anybody coming to their rescue and also those that have survived the vice. I would also like to dedicate it to all the women's rights activists who have fought and fight tirelessly for the betterment of our *Zambian* women.

ABSTRACT

Human Trafficking is a crime recognised by international law in the Protocol to Prevent Suppress, and Punish Trafficking in Persons especially women and children. This vice affects the most vulnerable in our society today due to their social, economic and cultural status and even though men are also victims, women and children constitute an overwhelming number of those trafficked.

Human trafficking consists of 3 stages: recruitment is where traffickers convince unsuspecting persons to agree to leave their home countries for opportunities in foreign countries without giving them complete information about their likely working conditions. Through deception, a person is led to believe that she can get large amounts of money. Traffickers also recruit victims by means of force or abduction, fraud or abuse of power. Recruitment takes place mostly in the victims 'country of origin.' the second stage is transportation where a victim is transported over one or several international borders. Most victims are transported to distant locations in which they are not conversant with the place, language and authorities like the police so that they are isolated and obey the trafficker without the trafficker going to much trouble. Most victims experience different forms of violence during this stage, which is used to intimidate the victim. Exploitation is the last stage in which the victim is forced into various activities ranging from labour akin to slavery, prostitution, removal of organs. Exploitation usually takes place in the country of destination.

Trafficking consists of a hub of human rights and international law violations against the victim. Victim's rights are not respected, especially women victims who go through sexual and reproductive violation and are forced into labour akin to slavery.

National and international laws provide that the individual has got the right to basic human rights but these are not regarded during the process of trafficking.

Countries have in the recent past tried to put into place measures, laws and mechanisms to curb and prevent trafficking, Zambia inclusive. The Zambian Government has worked with stakeholders to come up with an Anti Trafficking Law which is yet to be assented to.

It is hoped that this law will take into account the provisions of the Palermo Protocol so that international law obligations are adhered to.

ACKNOWLEDGEMENT

The success of this study was as a result of the contributions and efforts of various individuals and members of the academic staff of the University of Zambia, School of Law. My heartfelt gratitude goes especially to my supervisor Ms. M. Lwatula for her patience, kindness, advice and guidance which enabled me to progress successfully.

I would also like to thank Ms. Sara Longwe of Equality Now!, Mr. Maxwell Mainsa of the Zambia Law Development Commission, Mr. Peter Kanunka of the Human Rights Commission, Mrs. Joyce Macmillan from Women and Law in Southern Africa, Mr. Francis Mwale of Transparency International Zambia for their help in providing most of the materials used in this Directed Research.

My heartfelt gratitude also goes to my dear mother Mrs. S.M Kawangu who has inspired me to work hard in life and my dear friend Hilda Nukwase Mwanza who has been there for me and has encouraged me to aim for greatness.

I would like to acknowledge the hardworking spirit of the fourth year class who have clearly demonstrated that anything is possible if you put your mind to it especially Fanaaka Chidakwa, Rex Zambwe, Susanimba.

I would also like to thank the people who have inspired me in my social and academic life. Precious Mumbi, the former Miss Zambia, you have been my great source of inspiration through your work and intelligence. Monde Michello, it is common knowledge that you have inspired my academic life, I love you and am grateful for all your support.

My dear heavenly father, who has granted me the grace to complete my four years on campus, am here because you love me!

TABLE OF LEGISLATION

The Anti Trafficking Bill, July 2008

The Constitution of Zambia, Chapter 1 of the Laws of Zambia

The Ottawa Charter for Health Promotion November, 1986

The Penal Code Act Chapter 87 of the Laws of Zambia

The Penal Code Amendment Act of 2005

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000.

The U.S Trafficking Victims Protection Act (TVPA) 2000

ACRONYMS

CMFD	Community Media for Development
HIV/ AIDS	Human Immune Deficiency Virus and Acquired Immune Deficiency Syndrome
ILO	International Labour Organisation
IOM	International Organisation for Migration
ISS	Institute for Security Studies
MIDSA	Migration Dialogue for Southern Africa
NGO	Non Governmental Organisation
SACTAP	Southern African Counter Trafficking Assistance Programme
SADC	Southern African Development Community
SANTAC	Southern African Network Against Trafficking and Abuse of Children
SGBV	Sexual and Gender Based Violence
SRMH	Sexual Reproductive and Mental Health
STI	Sexually Transmitted Infection
UN	United Nations
UNICEF	United Nations International Emergency Children's Fund
VSU	Victim Support Unit
WCPTT	Western Cape Provincial Task Team
WIRL	Women and Legal Rights Initiative
ZLDC	Zambia Law Development Commission

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CHAPTER ONE:

UNDERSTANDING HUMAN TRAFFICKING IN ZAMBIA AND ITS HUMAN RIGHTS, GENDER AND INTERNATIONAL LAW PERSPECTIVE

1.1 INTRODUCTION

Human trafficking has been a hidden crime all along and is only gaining attention now. International law officials estimate that human trafficking is now considered the third most profitable organized crime worldwide (estimated at US \$9-12 billion annually) with only drug trafficking and weapons trade surpassing it.¹

Trafficking in persons preys on vulnerable individuals, using deception, coercion or force to move them into a place where they are exploited. Exploitation can take many forms, but mostly involves sexual exploitation, forced labour, domestic servitude (or other slave like practices) and removal of organs.² In 2000, the international community developed a definition of trafficking in persons under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons especially women and children.³ In this protocol, trafficking is defined in Article 3 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

¹ WLSA/NCA, Report on the situational analysis on faith based organizations' response to Human Trafficking in Southern Africa, 2005.

² Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

³ Supplements the Treaty against Transnational Crime

other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.’

Several cases of trafficking in persons have been reported, showing that this problem exists in Zambia. In 1999 an Australian male was arrested at Chirundu border trying to export five Zambian teenage girls to Australia for purposes of prostitution.⁴ Other arrests were made at Chirundu involving the attempted trafficking of 14 children; at Dedza, where 15 children were being trafficked to Zambia and another involving the trafficking of nine children in the Eastern Province in September 2005.⁵ The Government and local Non Governmental Organizations have recognized this problem. Zambia is reportedly a country of origin for victims as well as a transit point.⁶

Zambia does not have a legal definition of trafficking but it is endeavouring to enact a law on trafficking; which now awaits presidential assent. Thus it relies on the terse provisions of the Penal Code to address issues of trafficking. The provision in section 143 of the Penal Code Amendment Act, ⁷ reads as follows:

“Any person who sells or traffics in a child or other person for any purpose or in any form commits an offence and is liable upon conviction to imprisonment for a term not less than twenty years; provided that where it is proved during the trial of the accused person that the sale or trafficking in a child or other person was for the purpose of causing that or other person to unlawfully and carnally know by any other person, whether such carnal knowledge was intended to be with any particular person or generally, the person is liable upon conviction to imprisonment for life.”

⁴ Times of Zambia, 14th July, 2003.

⁵ IOM Report Malawi, 2005

⁶ WLSA/NCA, Report on the situational analysis on faith based organizations’ response to Human Trafficking in Southern Africa, 2005.

⁷ No 15 of 2005

Visibly, the provision does not provide for issues relating to aiding the crime, abetting and conspiracy to trafficking. Human trafficking is a rapidly expanding global phenomenon that impacts on countries and communities throughout the world. Though governments and Non Governmental Organizations are increasingly responding to the problem of trafficking, there is much to be done. The first step in developing a comprehensive approach to counter- trafficking is to understand the basic concepts related to trafficking.⁸

1.2 CONTEXT AND STATEMENT OF THE PROBLEM

Zambia hit some economic doldrums in the late 1990's with the falling of copper prices and failure in the agriculture sector, which led to accumulation of massive external and internal debts in the years up to 1991. This situation was so bad that Zambia became one of the world's highly indebted and poor countries.⁹ The country adopted the IMF and World Bank programs, whose adoption and implementation of the Structural Adjustment Programs, included privatization and reduced government expenditure in the social sector. This in turn resulted into mass unemployment and poor working conditions, high poverty levels, continued gender disparities, high maternal mortality rates, continued high illiteracy levels and high HIV/AIDS prevalence rates. Most Zambians now live below the poverty datum line on less than a US dollar per day.¹⁰

In all this range of problems, the situation of women and children especially girls got worse than that of men and boys. The poorest of the poor are women; the majority of illiterate people are women and girls; the largest numbers of unemployed people or

⁸ Media Briefing Kit for journalists human trafficking: modern day slavery International Organization for Migration. September 2004, p1.

⁹ Alistair Fraser and John Lungu. For whom the wind falls? Winners and losers in the privatization of Zambia's copper mines.p9

¹⁰ Ibid

people working under deplorable conditions are women and girls; the highest numbers of HIV/AIDS infected people are women and girls who are also the highest number of people carrying the burden of care for infected relatives; the lag status of women and girls continues to be low; gender disparities have narrowed only slightly in the past decade and violence against women and children has reached epidemic proportions.¹¹

This situation has created an environment where trafficking can thrive. The push and pull factors referred to above are all present in Zambia hence enticing most Zambians to look for what is commonly referred to as 'greener pastures.'¹²

1.3 RATIONALE OF THE STUDY

The study will serve as an addition to the knowledge that exists on human trafficking in Zambia. It will highlight the issues relating to women and girls and how vulnerable they are in the light of the traffickers and further it will endeavor to highlight the nexus between the economic, social and cultural status of women in society and how it creates a hub for traffickers and also how the rights of women and girls are subsequently violated.

1.4 JUSTIFICATION FOR THE STUDY

There has been a lot of talk in the recent past about human trafficking in Zambia and how it can best be combated and prevented by the government but not so much attention has been paid on the impact it has on the rights of women and girls and how the phenomena of trafficking embraces a hub of human rights violations. Human trafficking is a gender concern; although victims of traffickers can be of either gender, an overwhelming

¹¹ Women and Law in Southern Africa Research and Education Trust Zambia. A position paper on human trafficking in Zambia. 30th May, 2006.p12

¹² Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

majority of the victims are women and the girl child. This is largely due to the persistent inequalities that they face in status and opportunity.

1.5 RESEARCH QUESTIONS

Questions that are answered in this essay are the following:

- a) What is human trafficking and what are its causes?
- b) What is the difference between human trafficking and human smuggling?
- c) Is there any connection between human trafficking in Zambia and the economic, social and cultural status of women in society?
- d) If affirmative, what must the country do in order to fight human trafficking and prevent it from causing the country to respect women's rights and adhere to international prescriptions of the Palermo Convention?

Because of the importance of these questions at this moment in time, this paper has been prepared to throw light on the topic and to motivate the move towards action against this vice.

1.6 OBJECTIVES OF THE STUDY

1.6.1 General objective

The general objective is to analyze the nexus between trafficking in women and girls and their status in society and also to ascertain to what extent it is a gender, human rights and international law concern.

1.6.2 Specific Objectives

- To assess the impact of the traditional, cultural, social and economic situation of women and girls and how it creates a fertile ground for traffickers.
- To assess the impact of the lack of respect for women's rights and how it affects them during the various stages of trafficking.
- To ascertain whether the efforts by government on the protection of women's rights with due regard to legislation and international instruments, are enough to guarantee their livelihoods.
- To assess the increase in numbers of women being trafficked in the SADC region and to ascertain the efforts being made by member countries to curb the vice.

1.7 METHODOLOGY

This study being an elaborative analysis of the law and actual real life problems relating to the topic will mainly be based on Desk Research and Field Research.

1.7.1 Desk Research

This will involve the use of secondary information, namely cases reported in newspapers, journals and articles obtained from various sources.

1.7.2 Field Research

In addition, information will be obtained from persons who are knowledgeable with the law regarding human trafficking and competent in issues relating to gender and the law. Such persons will include people from Human Rights Commission, Women and Law in Southern Africa and from the Zambia Law Development Commission.

1.8 WHAT IS HUMAN TRAFFICKING AND HOW DOES IT DIFFER FROM HUMAN SMUGGLING?

Human trafficking is defined in Article 3(a) of the **Palermo Protocol**¹³ as ‘the recruitment, transportation, transfer, harbouring 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 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 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’. It further states in Article 3(b) ¹⁴that the consent of a victim of trafficking in persons to the intended exploitation set forth supra is irrelevant where any means set out above have been used.

Human smuggling, by contrast, is a process where an organized criminal group transports a client to a desirable foreign destination in exchange for payment. Once the client has arrived in the destination country and the fee has been paid, the relationship between the smuggler and client ends. There is no exploitation of the smuggled person or client. The client merely relies on the smuggler to move her or him illegally through the border of a desirable foreign country in exchange for a fee. Human trafficking is a violation of the victim’s human rights while human smuggling is the violation of the immigration laws of the destination country. ¹⁵

¹³ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and children, supplementing the United Nations Convention against Transnational Organised Crime

¹⁴ *ibid*

¹⁵ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 15/2007 p4

1.8.1 HOW DOES HUMAN TRAFFICKING HAPPEN?

Human trafficking, otherwise called trafficking in persons, is a new form of slavery that involves three stages: recruitment, transportation and exploitation.¹⁶

Recruitment can take the form of deception where the victim is promised prospects of a good education. Some victims are recruited by false promises of marriage or jobs while others are simply abducted. Sometimes a victim is recruited by partial deception; the recruiter may inform the victim that she or he would be doing a particular kind of work, but may not disclose the deplorable conditions and full exploitative nature of the work that she or he will be subjected to.¹⁷ This is common in the case of women who are recruited to work as prostitutes in distant areas and promised lucrative wages, but end up being threatened with violence, working long hours under deplorable conditions, with their earnings seized by the traffickers.¹⁸

The second phase of human trafficking is transportation. Transporting a victim from a familiar environment to an unfamiliar environment makes it easy to exploit that person. People are usually trafficked within their own national borders, for example, from rural areas to big cities with which they are not familiar. In the new environment, the trafficker's true intention is revealed. Exploitation is the third phase and the ultimate purpose of human trafficking. The trafficker could use the victim for financial gain or sexual gratification, or sell the victim, or both. As mentioned above, forced prostitution and forced labour are common forms of exploitation.¹⁹

¹⁶ US Department of State (2003) Trafficking in persons Report.

¹⁷ Women and Law in Southern Africa Research and Education Trust Zambia. A position paper on human trafficking in Zambia. 30th May, 2006.p12

¹⁸ ibid

¹⁹ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 15/2007 p4

1.8.2 WHAT ARE THE CAUSES OF HUMAN TRAFFICKING?

It has been observed that human traffickers tend to target people in countries or regions where socio- economic conditions are difficult and opportunities for work and education limited.²⁰ These underlying conditions create a desire among target groups to migrate to find work or a 'better life' through education, adoption or marriage and increase the risk of being trafficked. Women and girls are particularly vulnerable, due to lack of opportunities at home, as are children living in poverty or without adequate family support.²¹

Adding to the risk factor of poverty, the HIV/ AIDS pandemic has substantially increased the vulnerability of families, and particularly children. The HIV/AIDS pandemic is cited as a major cause of the current orphaned and other vulnerable children crisis in the region and the dramatic increase in the number of street children and child headed households.²² Gender inequality also plays a role in promoting trafficking of women and children. Unequal access to education, training, employment, land and credit, discrimination with respect to marriage, family and property, gender based violence, early marriage and early childbearing all contribute to the economic and social vulnerability of women and their families.²³ Societal and cultural attitudes that consider women and girls as inferior or require them to be submissive also create a climate in which the practice of trafficking is

²⁰ US Department of State (2003) Trafficking in persons Report.

²¹ *ibid*

²² Women and Law in Southern Africa Research and Education Trust Zambia. A position paper on human trafficking in Zambia. 30th May, 2006.p12

²³ *Ibid*

likely to flourish. Commercialization of the bridal price is another cited contributing factor to trafficking in Zambia.²⁴

The root causes of trafficking in Zambia can be pointed to the socio-economic conditions in Zambia which have created an enabling environment. While the actual causes have not been empirically studied, various factors are known to contribute to increased vulnerability for Zambians in general and women and children in particular.²⁵ These include: poverty (poverty can make someone act like an animal, as it is animalistic to look at your wife and children like something you can sell), unemployment (especially among women and the youth), low wages/poor working conditions, job insecurity/casualisation of labour, HIV/AIDS, disintegration of families/ child headed households/ 'streetism,' gender inequality and discrimination, traditional practices such as forced and/or early marriages, pledging women or children to pay debts, placement of children with another family, selling or hiring out children or wives for prostitution or commercial labour and property grabbing leaving the widow\er in a desperate situation, lack of compulsory education, inadequate birth registration and work restrictions and social exclusion of refugees.²⁶

The increasing demand for sex workers, pornography and inexpensive, exploitable labour in Zambia also play a role by contributing to internal trafficking and the 'import' of child labour from within and neighbouring countries. It has actually been noted that internal

²⁴Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

²⁵ Ibid

²⁶ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

trafficking is the ingredient for international trafficking, as once the women and children are taken from their family, anything can happen.²⁷

Since trafficking is a transnational and regional issue, the underlying problems in neighbouring countries, such as poverty, political instability and conflict also contribute greatly to the problem of human trafficking in Zambia.²⁸ Citizens from neighbouring countries, including refugees, migrate to or pass through Zambia in search of stability and economic opportunities. Some may be engaging in human trafficking; others are victims of trafficking or at risk of trafficking. Foreign children and refugees appear to be particularly vulnerable.²⁹ In addition to the “push factors” various “pull factors” in countries of destination create demand and encourage the trade in human beings. These include: steady demand for prostitutes of both sexes, especially young, foreign and/or new recruits who are perceived as more desirable and/or less likely to be infected with HIV/AIDS, a strong market for pornography, particular for distribution on the internet, demand for trafficked women and children as ‘wives’ for domestic servitude and/or personal sexual gratification, demand for cheap and exploitable labour, particularly in certain employment sectors and the low risk, high profit nature of trafficking for organized crime.³⁰

²⁷ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 11/2006 p6

²⁸ Ibid

²⁹ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

³⁰ Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

1.9 A BRIEF BACKGROUND OF HUMAN TRAFFICKING AND HOW IT IMPACTS ON THE LIVELIHOODS OF THE VICTIMS.

Although human trafficking has only recently emerged as an issue in Zambia, it appears to be a widespread and growing problem. Many victims of trafficking are nationals of neighbouring countries transiting through Zambia; others are Zambians themselves.³¹ Since 2004, the Zambian Government has taken several important steps to address the problem of trafficking, including establishing an inter-ministerial committee on human trafficking, amending the Penal Code³² to include a trafficking offence and investigating and prosecuting a number of suspected trafficking cases. It has also cooperated with the International Organization for Migration (IOM) and other Non Governmental stakeholders to train law enforcement officers and provide assistance to victims of trafficking. In 2005, Zambia acceded to the principal international agreement governing state obligations with respect to human trafficking, the United Nations Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Having acceded to the Protocol, it is now incumbent on Government to domesticate the Protocol's provisions into national law, policy and programmatic strategies. Further, on 28th July, 2008, the anti human trafficking bill was officially presented and now awaits Presidential assent.³³

All these efforts by Government show that it is alive to the dire consequences of trafficking on its victims. Traffickers tend to prey on the most vulnerable members of

³¹ Times of Zambia, 14th July, 2003.

³² This is the Amendment Act No. 15 OF 2005

³³ Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

society and target countries and communities where poverty and unemployment are high. In the course of human trafficking, traffickers and “end users” may subject their victims to a wide range of human rights abuses, including physical and sexual violence, sexual exploitation, and restricted freedom of movement, forced or bonded labour and various forms of inhuman and degrading treatment. Many victims disappear and never return to their country of origin. Others return sick, injured, emotionally and psychologically traumatized and/or infected with HIV/AIDS.³⁴

1.10 ORGANISATION OF THE PAPER

The essay is divided into five chapters as follows:

- 1.12.1 Chapter one:** Basically an introduction, looking into the rationale, justification, objectives, research questions and the methodology of the essay. It also delves into aspects of what the law in Zambia provides with regards to human trafficking including the background of human trafficking, definition of trafficking and causes of trafficking.
- 1.12.2 Chapter two:** Assesses if there is any connection between the economic and social status of women and children and their vulnerability to trafficking. It also looks at the various human rights violations that take place during the whole process of trafficking.

³⁴ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

1.12.3 Chapter three: looks at the current anti- trafficking institutional frameworks, governmental bodies and non- governmental organizations contributions to the fight against trafficking and it will also look at the road towards anti trafficking legislation and institutional framework

1.12.4 Chapter four: looks at the efforts that Mozambique and South Africa are making towards reaching a comprehensive anti-trafficking system and also looks at the regional (SADC) mechanisms and systems in place and will look at the international law obligations and assesses whether these are adequate to combat trafficking.

1.12.5 Chapter five: Concludes and summarises the research and also establishes whether the present strategies to curb trafficking in Zambia are enough to help in the attainment of the respect of international law obligations and the respect of human rights. This chapter also provides for recommendations in the quest for a comprehensive anti human trafficking system.

CHAPTER 2

ASSESSING THE CONNECTION BETWEEN THE ECONOMIC, SOCIAL AND CULTURAL STATUS OF WOMEN AND CHILDREN AND THEIR VULNERABILITY TO TRAFFICKING AND ALSO, THE VARIOUS HUMAN RIGHTS VIOLATIONS THAT TAKE PLACE DURING THE WHOLE PROCESS OF TRAFFICKING.

2.1 SOCIAL, CULTURAL AND ECONOMIC STATUS OF WOMEN AND CHILDREN AND HOW IT IMPACTS ON THEM.

Women appear to be the ones most affected by the erosion of the formal sector and by unemployment. Among the male workforce, the participation rate in the formal sector is 67%, while the female workforce remains at just 45%.³⁵

Increasing levels of unemployment and simultaneous diminution of employment opportunities in the formal sector have constrained many women to seek precarious work in the informal sector and others, to turn to sex work in order to provide for their families. The alarming scale of the HIV/AIDS pandemic in Zambia and the government's increasingly strict regulation of prostitution have forced many Zambian women to migrate to neighboring countries to find work in the sex industry. Moreover, the disastrous economic situation in Zambia and the corresponding marginalization of women in the workforce means that women are frequently financially disabled and look to other means of survival³⁶. Traffickers then have an opportunity to lure these women with promises of jobs and a better life and they do not suspect that these promises will be

³⁵ Human Rights Violations in Zambia Part II: Women's rights: Shadow Report, UN Human Rights Committee 90th session July 2007: Lusaka and Geneva.

³⁶. Ibid. p7

life threatening in the long run due to the desperate desire to escape their weaning social, cultural and economic status.³⁷

There are various causes of human trafficking in men, women and children but studies have shown that women and children are the most trafficked as compared to men. The economic factors underlying most allurements tend to trap the most vulnerable of women due to their economic disadvantage in the home and in society. Traffickers tend to prey on the vulnerable nature of women, economically, with the promise of jobs and a better life.³⁸ Families seeing no economic opportunities within their communities will sometimes place their children with families and friends in areas where they believe the prospects for gainful employment are greater. Children in these communities become easy prey for traffickers who promise them trade and opportunities. This gives rise to, firstly internal trafficking and subsequently external trafficking as these victims are strategically moved from their homes, communities and countries. Poverty stricken parents have also sold their children to traffickers to get out of debt and the poverty they face.³⁹ Poverty and hunger thus places women and children in situations in which they are forced to exchange sex for food, shelter and survival without appreciating the risk that may come with such activities i.e. being placed at a higher risk of coming into contact with the traffickers.⁴⁰

The social and cultural status of women and children in the home and in society has a role to play in the vulnerability to trafficking.⁴¹

³⁷ Zambia Law Development Commission. Issue paper on human trafficking, April, 2006. p14

³⁸ US Department of State (2003) Trafficking in persons Report.

³⁹ Zambia Law Development Commission. Issue paper on human trafficking, April, 2006. p14

⁴⁰ Ibid. p14

⁴¹ Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

2.2TRAFFICKING IN WOMEN AND CHILDREN: A BY-PRODUCT OF SOCIAL INEQUALITY.

The poor economic situation among those trafficked, the breakdown in extended and nuclear families – often accompanied by changes in cultural attitudes and practices – and the high demand for sex with children are shown to be key factors behind the increase in internal sex trafficking.⁴²

Previous research tended to focus on the processes of trafficking and the conditions in which the women and children find themselves rather than the causes at deeper levels (structural, institutional, culture and agency). In recent years a deeper understanding has been developed regarding the conditions in the community and the different supply and demand factors influencing the occurrence of human trafficking. In many instances research has found that community members, parents, women or children still engage in trafficking *in spite of* understanding the risks involved. Often the vulnerability of children to trafficking is an outcome of broader societal neglect⁴³.

Nevertheless explanations for the continuity and agency of women, children and families of trafficked persons remain inadequate. The tendency is to place the onus on the trafficked persons. ILO-IPEC (2002:19)⁴⁴ notes,

‘Women and girls may themselves take the initiative to migrate in the hope of earning a decent income, escaping a miserable life, or supporting a family back home. In such cases, they are sometimes aware that they are going to work in commercial sex,

⁴² Ministry of Home affairs National Policy to combat Human Trafficking 2007.p5

⁴³ WLSA/NCA, Report on the situational analysis on faith based organizations’ response to Human Trafficking in Southern Africa, 2005.

⁴⁴ ILO-IPEC (2001) Combating Trafficking in Children for Labour Exploitation in West and Central Africa: A Synthesis Report based on Studies in Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Gabon, Ghana, Mali, Nigeria and Togo, Geneva: International Labour Organization –

considering this to be an acceptable short-term remedy to a desperate need to earn a living. They very rarely, however, are aware of the nature of the demands that will be made upon them, the conditions in which they are likely to be held, or the possible long-term repercussions of the activity (including reproductive illnesses and social exclusion).'⁴⁵

Concerning global inequality, most of the analysis of human trafficking tends to be one-sided, concentrating on the supply side only. A number of organizations (ILO-IPEC, UNIFEM, UNICEF, and Save the Children) have acknowledged that both the supply and demand sides perpetuate trafficking.⁴⁶ Trafficking will continue to happen as long as there is a demand for cheap labour, domestic workers, undocumented workers, and undocumented commercial sex workers. Simultaneous intervention to address supply and demand appears imperative. 'Generally, boy victims of trafficking are used in coffee and cocoa plantations and in the gravel quarries. The girls, by contrast, are used in domestic work, peddling in the markets or they are victims of commercial sexual exploitation. All of these situations show the degree of disrespect for human rights in general and the rights of children in particular.'⁴⁷

'... there is limited recognition of even women, and still less of children, as human beings with rights in their own right.' '... the community attributes: the incidence of child trafficking and child labour to the lack of primary and secondary schools play a major role in making children and women the most vulnerable'.⁴⁸

⁴⁵ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

⁴⁶ Ibid.p104

⁴⁷ Op cit

⁴⁸ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

2.3 CONTRIBUTING FACTORS TO THE CAUSES OF GENDER- BASED AND CHILD TRAFFICKING

‘There is a combination of causes. The most common are: ignorance (parents and children ignore the risks of trafficking), they are illiterate for the most part and live in conditions of extreme poverty. In addition, most people in Africa have a long tradition of migration. Since the drop in prices in primary commodities, there is a very strong demand in the manual labour market to lower the cost of production for planters and other employers of children who constitute this manual labour that is exploitable and obedient and the employers no longer hesitate to look for them beyond their own borders.’⁴⁹

In some societies, cultural values produce the attitude that children should work outside the family to help parents and other siblings. This in turn puts them at risk of coming into contact with traffickers who promise them jobs and better livelihoods, most of them feel competent to do the work having gained experience by working for family members. The risk comes in when the child is relocated to another place where he is unfamiliar with the environment and the people in the neighbourhood.⁵⁰ There is also the attitude that a child is obligated to supplement the family income. Attractive job offers are made to the parents of children and in this way traffickers lure children.⁵¹ Further, in some societies men are held in higher esteem. Women and girls are often treated as property and denied a voice and a right to protection against violence. Families who do not value female children may deny them education or give them off into marriage at a young age. This

⁴⁹ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

⁵⁰ Ibid

⁵¹ Zambia Law Development Commission. Issue paper on human trafficking, April, 2006. p14

dramatically limits their life opportunities and increases their vulnerability to exploitation and abuse.⁵²

2.4 HUMAN RIGHTS VIOLATIONS AND HEALTH RISKS THAT ARE ENGULFED IN HUMAN TRAFFICKING

Human trafficking is a multi- dimensional threat. It deprives people of their human rights and freedoms. It is a global health risk and it fuels the growth of organized crime.⁵³

Human trafficking has a devastating impact on individual victims who often suffer physical and emotional abuse, rape, threats against self and family and even death.⁵⁴

Traffickers make full use of violence and the threat of violence as an effective method of controlling their victims. Victims are frequently beaten and raped, confined and imprisoned, kept in long periods of isolation, deprived of food and water, verbally assaulted, drugged and/or tortured in order to maintain their obedience to their traffickers. These abuses may be inflicted on victims as form of punishment or simply as a result of sexual abuse and sadism on the part of the trafficker.⁵⁵ On the other hand, the trafficker may not use violence but some form of coercion, making promises to the victim to ensure compliance.

Persons trafficked for sexual and forced labour form a particularly vulnerable group that currently poses a serious and urgent challenge to policy makers. Trafficked persons face numerous health risks exacerbated by prolonged exposure to repeated traumatic events and abuse.⁵⁶ Both sexes are exploited although girl children are more likely to be

⁵² Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

⁵³ United States Department of State. Democracy and Global Affairs. September 2005

⁵⁴ Ibid

⁵⁵ United States Department of State. Democracy and Global Affairs. September 2005

⁵⁶ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/2008 p4

channelled through cross-country migration and lured into the sex industry. Girl children are sold by their family as brides (to single men) or to brothels, syndicates and gangs. They can also be abducted, held captive and sexually assaulted in exchange for money. Boys tend to be voluntary migrants and engage in homosexual prostitution as a means to survive.⁵⁷ The recruitment of girls into the sex industry through newspaper advertisements whence ‘young women are then surreptitiously coerced through a form of debt bondage into doing strip-tease work, providing “sex” for patrons of certain establishments or performing in pornographic films’. Children who have experienced sexual exploitation do express a deep sense of despair owing to the conditions of captivity in lodgings controlled by gangs.⁵⁸ Studies emphasize the socio-economic structural conditions in Zambia as being a key problem. Thus, governments have been called upon to revise its approach to the social sector so that the girl child is adequately protected.⁵⁹

2.5 HEALTH RISKS ASSOCIATED WITH TRAFFICKING

Trafficked persons regardless of whether they are trafficked for the purpose of forced labour, sexual exploitation, removal of organs are exposed to a range of health risks. Throughout the trafficking process, they may experience physical, sexual and psychological abuse, poor living and working conditions, exposure to a wide range of

⁵⁷ Ibid

⁵⁸ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

⁵⁹ Ibid

diseases, social isolation and captivity, lack of access to health care, forced use of drugs and alcohol, limited or no access to health and social services and poverty.⁶⁰

The exploitative and abusive trafficking situation deprives these persons of any opportunity to obtain their basic health needs and rights.

Health related consequences of trafficking include the following: psychosomatic reactions, gastrointestinal problems, headaches, back aches and palpitations; psychoactive substance abuse and dependence such as overdose, addiction, needle introduced infections, alcoholism, high risk behaviors and violence; infectious conditions such as tuberculosis and hepatitis; sanitary problems such as gastro-intestinal, parasitic infections and scabies; occupational health problems such as pesticide, lead poisoning, hearing loss, respiratory problems and injuries and violence induced trauma such as head injuries, burns and fractures.⁶¹

2.6 TRAFFICKED PERSONS RIGHT TO HEALTH

The Charter of the World Health Organization provides that ‘every man, woman and child has the right to the highest attainable standard of physical and mental health, without discrimination of any kind.’⁶² From the perspective of the trafficked person, one of the most serious violations is the denial of the right to health. To improve the lives of trafficked persons who have already experienced abuse and exploitation, it is crucial that local, national and international authorities recognize trafficking as a serious health issue. Trafficked victims live and work in extremely difficult conditions which have a bearing on their physical and mental health. There are victims whose medical and psychological

⁶⁰ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/2008 p4

⁶¹ Ibid.p4

⁶² The Ottawa Charter for Health Promotion November, 1986

conditions are extremely serious.⁶³ Women are at a high risk of Sexually Transmitted Infections (STI) and psychological disorders. The International Organization for Migration (IOM) has revealed that medical data on STIs revealed that an alarming 75 percent of victims tested positive for Chlamydia, a sexually transmitted infection that can have severe consequences on one's reproductive health.⁶⁴ Other STIs detected included Gonorrhoea, Syphilis and even HIV. A review of their psychological conditions revealed that over 80 percent of trafficked victims showed signs of psychological or psychiatric problems some requiring extensive professional treatment and counselling.⁶⁵ Almost half of these cases have been diagnosed as schizophrenia or other delusional disorders. Nearly one quarter of those interviewed displayed symptoms of depression, including feeling of guilt, sleep disorders and weight loss.⁶⁶

There exists a link between human trafficking and increased Sexual Reproductive and Mental Health (SRMH) problems. A significant number of women are trafficked from, through and into East and Southern Africa every year and many of these women will be vulnerable to Sexual Reproductive and Mental Health (SRMH) problems. Yet the extent of this vulnerability is difficult to measure, partly because trafficked women do not want to identify themselves as having been trafficked due to fear and stigma. However, through anecdotal evidence gathered in East and Southern Africa and data from other regions, it is apparent that the Sexual Reproductive and Mental Health (SRMH) of

⁶³ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 11/2006 p1

⁶⁴ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 11/2006 p1

⁶⁵ Ibid. 2

⁶⁶ Op cit

women is affected negatively as a result of their exposure to sexual and gender based violence, sex work and social isolation.⁶⁷

2.7 SEXUAL AND GENDER BASED VIOLENCE

Globally, trafficked women suffer extremely high levels of Sexual and Gender Based Violence (SGBV), this puts women at an elevated risk of Sexual Reproductive and Mental Health (SRMH) related problems, including HIV infection. In addition to being subjected to physical abuse, some women face stigma, xenophobia and racism in the countries of destination.⁶⁸

It has been observed that women being trafficked are often, during transportation raped to 'initiate' them into the sex industry.⁶⁹ Research conducted among women working in brothels, where many trafficked women work, indicates that almost 100% of the women have experienced some form of physical abuse, often sexual, during childhood. This continues into adulthood, putting women at high risk of sexually transmitted infections and mental health problems.⁷⁰ Studies conducted on HIV reveal that 80% of women have tested positive because in this kind of environment, women are powerless to negotiate condom use and to some it is not a priority compared to basic day to day survival.⁷¹

Trafficked women work and live in isolation from society and cannot take precautions or seek the necessary treatment for their Sexual Reproductive and Mental Health (SRMH) problems. This isolation is caused by many factors including language barriers, illegal status, fear of prosecution, racism and xenophobia and fear of traffickers or pimps.

⁶⁷ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 10/2006 p5

⁶⁸ Ibid

⁶⁹ Op cit

⁷⁰ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 10/2006 p5

⁷¹ Ibid.p5

Traffickers target vulnerable women, and when these women are trafficked they are physically, sexually and psychologically abused. Through this experience they become more vulnerable and isolated.⁷²

CONCLUSION

At the moment trafficked women do not receive the care that they should. There is a marked lack of trained counsellors working with women who have been trafficked. In Zambia, the current legislative reform, and general victim assistance been considered does not adequately address the importance of Sexual Reproductive and Mental Health (SRMH) care but efforts are underway immediately after the Bill is enacted into law then this issue can be addressed.⁷³ The health of trafficked women must be given its place in the trafficking discourse if we are to address the multiple vulnerabilities of women to trafficking and Sexual Reproductive and Mental Health related problems.⁷⁴

It is thus pertinent for government to involve Non Governmental Organisations in the treatment of trafficked victims because NGO's such as Tasintha have had occasion to host victims of trafficking and have done tremendous work due to the expertise and experience and also due to the fact that NGO's have the facilities and trained counsellors and workers who are willing to assist and reintegrate the victims back into society by teaching them some skills and helping them recover from their ordeals.

⁷² The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/2008 p4

⁷³ Human Rights Violations in Zambia Part II: Women's rights: Shadow Report, UN Human Rights Committee 90th session July 2007: Lusaka and Geneva.

⁷⁴ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 10/2006 p5

CHAPTER THREE:

THE CURRENT ANTI- TRAFFICKING INSTITUTIONAL FRAMEWORKS, GOVERNMENT'S EFFORTS AND NON- GOVERNMENTAL ORGANIZATIONS CONTRIBUTIONS TO THE FIGHT AGAINST TRAFFICKING.

Human trafficking has become a sophisticated global phenomenon that exacerbates labour exploitation and human rights violations. To combat human trafficking require concerted efforts by all. According to the United Nations⁷⁵, human trafficking is defined as the recruitment, movement and harbouring of persons, by means of deception or force, in order to exploit them into prostitution or forced labour.

Many traffickers have used Zambia being land-locked and centrally located in the Sub-Saharan region as a transit point.⁷⁶

Recent findings by the International Organisation for Migration (IOM) have revealed that Zambia is slowly becoming a recruitment point, due to rapid industrialisation taking place across the country owing to the growth of the mining sector. This has been common in places such as North Western Province which has seen intensified mining activities and rapid urbanisation.⁷⁷

⁷⁵ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and children, supplementing the United Nations Convention against Transnational Organised Crime

⁷⁶ WLSA/NCA, Report on the situational analysis on faith based organizations' response to Human Trafficking in Southern Africa, 2005.

⁷⁷ www.times.co.zm/news/viewnews website last checked on 14th November 2008

The risks facing many Zambians on account of human trafficking are many owing to high poverty levels, unemployment and ignorance. Many vulnerable groups fall prey to the vice as most are in search of greener pastures in neighbouring countries and abroad.⁷⁸

Although not accurately documented due to the sophisticated nature of the vice, few cases of human trafficking have been reported in Zambia but have not been properly addressed due to inadequate legislation.⁷⁹

Sadly, in the existing laws, Zambia has not clearly defined human trafficking and this has led to acquittals of those who were suspected to have been involved in the act.

To deal with the problem of inadequate legislation, Zambia has reached an advanced stage in formulating anti-human trafficking laws. One key institution in this process has been the Zambia Law Development Commission (ZLDC) that has assured that the new legislation will deal with the perpetrators of trafficking firmly and would also take care of the flaws in the existing laws.⁸⁰

ZLDC assistant researcher, Mr. Maxwell Mainsa explained that the new piece of legislation would not only criminalise human trafficking but also deal with the perpetrators of the crime at every stage.⁸¹

According to Mr. Mainsa, existing legislation in the country has flaws that include failure to address the full scope of trafficking.⁸²

⁷⁸ ⁷⁸ WLSA/NCA, Report on the situational analysis on faith based organizations' response to Human Trafficking in Southern Africa, 2005.

⁷⁹ Times of Zambia, 14th July, 2003.

⁸⁰ Ibid

⁸¹ Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

“The current law, Section 143 of the Penal Code⁸³ of the Laws of Zambia, does not clearly define human trafficking. It is inadequate and is only limited to the sale of a person.” He said this therefore leaves out other supposed perpetrators in the syndicate of human trafficking.

Mr. Mainsa said the new law is comprehensive and will effectively deal with all aspects of human trafficking. The development of the anti-human trafficking law went through a thorough consultative process.

He said the Bill, which has passed committee stage, is now awaiting presidential assent. He added that it was adopted from a number of international instruments to which Zambia has acceded. These instruments include trafficking in person’s protocol, SADC protocol and the Palermo protocol.⁸⁴

The new legislation will ensure that perpetrators go to prison for a period not less than 20 years in addition to a fine of K1.8 million.⁸⁵

Offenders would also include those directors owning companies operating under the guise of either recruiting job seekers or finding love partners. This would act as a deterrent to would-be offenders, and directors once found guilty will get both a fine and imprisonment.⁸⁶

⁸² Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

⁸³ Chapter 87 of the Laws of Zambia

⁸⁴ Ibid

⁸⁵ the Anti trafficking Bill, July 2008

⁸⁶ Ibid

The International Labour Organisation (ILO) and Children in Crisis are helping a number of schools in Zambia with materials dealing with human and child rights. Lusaka Girls Basic School is one of the schools that have been helped with such materials.

The club meets once a week and during their deliberations, talk about human rights and how human trafficking and child labour constitute a violation of rights.⁸⁷

In these deliberations, certain children have come out as having been leased out to wealthier families for education and money. In one particular case, a child disclosed and confessed that she worked for a family member who in turn provides her with shelter and education.⁸⁸

The school, through the help of these organisations also organise debates, sports tournaments and drama to educate their pupils of child labour and trafficking.

The IOM's mission is to provide information to the Government and the public on issues of trafficking. It does this through the print and electronic media. It also circulates literature which highlights issues on human trafficking⁸⁹.

The joint UN programme on human trafficking has also trained immigration officers and police officers in screening and interviewing techniques on how to track down human traffickers.

⁸⁷ Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

⁸⁸ *ibid*

⁸⁹ for example: it publishes a newsletter called The EYE, A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue

In addition, the immigration department has also gone a step further by publicizing any arrests of people flouting the immigration rules as a way of creating awareness. A simple survey conducted in Lusaka aimed at assessing the public knowledge on human trafficking indicates that the public awareness levels on the vice were very low.⁹⁰

Some of the people talked to could only cite the case of the Congolese woman mentioned in this feature who was arrested at Chirundu Border in the company of several children.⁹¹

It cannot be doubted that with increased awareness and the stiffening of existing laws in Zambia, perpetrators of human trafficking would not have it easy and the success in converting Zambia into an active recruiting point will be short-lived.⁹²

3.1 GOVERNMENT'S EFFORTS

The Ministries of Education and Labor worked with a local NGO to remove children from situations of forced labor, including girls in prostitution, and provide them with formal education and vocational training.⁹³ In 2006, the government allocated \$142,500 to the Ministry of Labor's Child Labor Unit, almost twice the amount given the previous year. This unit's 50 child labor inspectors, due to lack of transportation and other resources, conducted fewer than 50 inspections in 2006 and resolved most violations through mediation and counseling. The government encouraged victims to assist with the investigation and prosecution of traffickers. Identified victims are not detained, jailed,

⁹⁰ WLSA/NCA, Report on the situational analysis on faith based organizations' response to Human Trafficking in Southern Africa, 2005.

⁹¹ Times of Zambia, 14th July, 2003

⁹² www.times.co.zm/news/viewnews website last checked on 14th November 2008

⁹³ Ibid

deported, or otherwise penalized for unlawful acts committed as a result of their being trafficked.⁹⁴

3.2 PREVENTION

While Zambia lacks a comprehensive public awareness campaign, the government has sustained efforts to prevent vulnerable children from being trafficked. It has continued the operation of two youth camps that provide 18 months of counseling and rehabilitation services to street children vulnerable to trafficking, including girls removed from prostitution; 204 children graduated from the camps in 2006.⁹⁵ After graduation, some children opted to be placed in one of 16 Youth Resources Centers where they refined trade skills such as carpentry, tailoring, or poultry farming. The Child Labor Unit provided public education on the worst forms of child labor by staging public events to raise awareness, speaking in schools, and informally counseling families, children and employers.⁹⁶ The government's inter-agency committee on trafficking made progress toward realizing the goals of its three-pronged anti-trafficking strategy that focuses on drafting a comprehensive law, conducting a baseline study, and raising public awareness.⁹⁷ The government-owned radio station broadcasted IOM public service announcements on trafficking. The committee also facilitated the work of an outside expert who drafted a comprehensive national policy on human trafficking after consulting with NGOs and other stakeholders.⁹⁸

⁹⁴ extract from The U.S. State Department *Trafficking in Persons Report*, June 2003

⁹⁵ www.times.co.zm/news/viewnews website last checked on 14th November 2008

⁹⁶ *ibid*

⁹⁷ The Parliamentary Committee on Gender, Human Rights & Trafficking, 2006 Report

⁹⁸ Jill Thompson, toward the Development of an effective National Policy Framework & Comprehensive Legislation to Combat Human Trafficking in Zambia: Zambia Law Development Commission

3.2.1 THE ROLE OF THE POLICE

To change the role and reputation of the Zambian National Police Service from that of mere enforcer to a community service provider, the Victim Support Unit (VSU) was established under the Zambia Police Reform Program of 1994. This provides training and support to police officers to manage casework that involves violence against women, children and the elderly. The VSU mandate includes 43 reportable offences including sexual violence, property grabbing and trafficking in persons.⁹⁹

With funding from the US Office to Monitor and Combat Trafficking in Persons (G/TIP), IOM has been helping to build the capacity of the VSU by providing specialized training on trafficking in persons and victim assistance, and improving data collection and reporting procedures so that accurate information can be used for decision making. In addition, IOM is renovating victim friendly interview rooms in 9 district stations in border areas throughout Zambia. IOM partnered with the VSU to develop field interview rooms that are conducive to interviewing victims rather than suspects.¹⁰⁰

These victims have in the past made complaints or statements at the front desk of a police station or in open areas, offering no privacy. This environment may inhibit the victim from speaking freely. Victims are often ashamed of what has happened to them, and require, confidential and comfortable surroundings before they are willing to give full and accurate testimony. A less confidential environment may also put the victim in a

⁹⁹ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 15/2007 p4

¹⁰⁰ Ibid

compromising position if the report is overheard by neighbours or family members, or even people with links to the suspect.¹⁰¹

3.3 THE ROLE OF THE MEDIA

Radio stations across Zambia and Mozambique will soon play host to an exciting new radio drama, titled 'Dealers' in Zambia and 'Troco' in Mozambique. The drama, a project of the International Organization for Migration's (IOM) Southern African Counter Trafficking Assistance Programme (SACTAP) and produced by Johannesburg-based Community Media for Development (CMFD) Productions, uses a blockbuster storyline to raise awareness around human trafficking, migration and related issues in the region.¹⁰² The drama follows a family of cross-border traders who inadvertently get caught up in a mafia scandal and underground trafficking ring. The drama takes listeners on a roller coaster ride of love, lies, betrayal and daring escapes, while subtly passing on information about human trafficking, how it happens, what to look out for, and how to support survivors.¹⁰³

With the upcoming 2010 FIFA World Cup to be held in South Africa, organisations and activists are gearing up for a likely increase in trafficking activities. Borders in Southern African countries are notoriously porous, and this coupled with high rates of poverty, pervasive gender inequalities and nonexistent or ineffective trafficking laws make the region ripe ground for human traffickers. Zambia and Mozambique are both key source and transit countries for human trafficking activities to South Africa and Europe. These

¹⁰¹ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 15/2007 p4

¹⁰² www.traffickingproject.blogspot.com/2008_07_01. Tuesday, July 15, 2008

¹⁰³ Ibid

countries are thus trying to come up with strategies to prevent the occurrence of the vice during the period before during and after the 2010 FIFA World Cup¹⁰⁴

3.4 THE ROLE OF THE ARTISTS

Top hip hop artists in Zambia united to record a pulsating song that will enable the public to learn important messages about human trafficking while dancing to a new urban beat. The song was released together with International Organization for Migration's (IOM) counter trafficking radio drama on 28th August 2008.¹⁰⁵

Produced by the UN' Human Trafficking Programme, Zambia's first anti – trafficking campaign theme song is a departure from the Convention. "To reach and educate young people who are particularly vulnerable and who usually shun social messages, we needed an equally modern and unconventional way of getting our message across," says Gerry Finnegan, ILO Representative. This strategy puts entertainment first, but still gets the message firmly across."¹⁰⁶

The four minute 'bounce -to -beat' hip hop track, sung in English interspersed with three local languages, warns young people of the illegal trade in human beings and the false promises of a 'better life' that human traffickers use to lure their victims.¹⁰⁷

¹⁰⁴ www.traffickingproject.blogspot.com/2008_07_01. Tuesday, July 15, 2008

¹⁰⁵ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 19/2008 p7

¹⁰⁶ The EYE, A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa. Issue 19/2008 p7

¹⁰⁷ Ibid, p7

3.5 THE ROLE OF NON GOVERNMENTAL ORGANISATIONS

Tasintha Programme and Equality Now sponsored and organized a 3 day regional African Conference from 20-22 June 2008 in Lusaka, Zambia. The Conference, with participants from Botswana, Kenya, Malawi, Mozambique, Namibia, Nigeria, Rwanda, South Africa, Swaziland, Tanzania, Uganda, Zambia, and Zimbabwe - gave organizations and survivors of commercial sexual exploitation the opportunity to share their experiences and strategies in working to end the trafficking and commercial sexual exploitation especially of women and girls all over the Southern African region.¹⁰⁸

The Conference recognized that trafficking and commercial sexual exploitation of women and girls is a global crime and knows no national boundaries and is a gross violation of fundamental human rights and freedoms. After examining the many causes, the Conference found that the roots of the problem include but is not limited to: Gender inequality, racism, classism and homophobia Discriminatory laws and cultural practices which impact women negatively, poverty the demand for paid sex, a false vision of gender roles, the political system of male dominance that creates the demand for paid sex. The inadequate social and political structures relating to the girl child and women. The media objectification of females and the normalization of male dominance and racial, class and gender stereotypes which lean against women and girls.¹⁰⁹

Best practices were shared amongst the participants of the Conference. Such practices included survivor initiated actions, state legislative actions by some countries, NGO

¹⁰⁸ Communiqué on the 3 day regional African Conference workshop from 20-22 June 2008 in Lusaka Zambia sponsored and organized Tasintha Programme and Equality Now

¹⁰⁹ *ibid*

initiated actions and activities on the regional and international level.

In the light of the above, the Conference urged governments to put in place laws, policies and measures or review existing laws and policies that are inadequate in promoting, protecting and respecting the human rights of women and of the girl child and specifically: to identify the presence or absence of policies and laws which address trafficking and the commercial sexual exploitation of women and children; to ratify and implement international instruments, especially the Trafficking Protocol to the UN Convention against Transnational Organized Crimes (the Palermo Protocol) which calls for the institution of national laws and policies to address trafficking and the commercial sexual exploitation of women and children all over the world.¹¹⁰

CONCLUSION

From the foregoing it can be stated that Government as well as Non Governmental Organizations have put in so much effort in addressing Human Trafficking and anti Trafficking Legislation. Thus it remains that Government should implement the proposals and enact legislation that will put everything into prospective and actually come to fruition. Government should ensure that the provisions of the new law should conform to the strategies it has been working on and also the international law instrument.

¹¹⁰ Communiqué on the 3 day regional African Conference workshop from 20-22 June 2008 in Lusaka Zambia sponsored and organized Tasintha Programme and Equality Now

CHAPTER FOUR (4)

A BRIEF LOOK AT THE LEGISLATIVE AND OTHER EFFORTS BEING MADE BY MOZAMBIQUE AND SOUTH AFRICA AND ALSO THE SADC MECHANISMS TO COMBAT TRAFFICKING AND LASTLY, THE INTERNATIONAL LAW OBLIGATIONS AND AN ANALYSIS OF WHETHER THESE ARE ENOUGH OR NOT.

Mozambique and South Africa have been making strides in the fight against human trafficking. This has been through law reform, public discussions, debates, workshops, art and the production of materials for the education of the public. This part of the essay will thus look at the mechanisms and legislative frameworks that have been put in place.

4.1 MOZAMBIQUE

Mozambique has since 2006 been making strides to address the human trafficking phenomenon. The Government's 2006 Economic and Social Plan made provision for a specific law to punish and prevent the trafficking of persons.¹¹¹

In May 2006, a Mozambican NGO, called Rede came in partnership with the Ministry of Justice, and with financial support of the Women and Legal Rights Initiative (WIRL), organized a meeting to map a way forward for anti- trafficking. Government ministries including Education, Interior, Women and Social Welfare, and the Attorney's General

¹¹¹ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 15/ 2007, p1

Office joined civil society organizations including Save the Children and the International Organization for Migration to form an anti trafficking legislation group.¹¹²

On the 20th of June 2006, the drafting process kicked off when IOM was tasked to present an overview of human trafficking and related concepts to the different stakeholders. Thereafter three public debates were held to engage the public in the growing problem of human trafficking in Mozambique and to gather input for the draft bill.

Earlier, on 8th February the first public debate was held in Maputo with 75 participants from Maputo, Gaza and Inhambane provinces in the South of Mozambique; on 12th February, the second one was held in Beira with 50 participants from Sofala, Manica, Tete and Zambezia provinces in the centre of Mozambique, and the final one was held on 14th February with 47 participants from Nampula, Cabo Delgado and Niassa provinces in the north of Mozambique. Finally, a draft bill was submitted to the Ministry of Justice in May 2007.¹¹³

The highlights of the draft bill include severe punishment for traffickers and the constructions of two centres (one in the south and the other in the centre of Mozambique) to cater to victims of trafficking, “whistle blowers” and witnesses.¹¹⁴

It has been noted that following the council of ministers’ approval, it is likely that parliament will pass the law. Mozambique has ensured that the public gets the much needed information through public discussions, debates and information dissemination.

¹¹² Ibid

¹¹³ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 15/ 2007, p2

¹¹⁴ ibid

4.2 ANTI - TRAFFICKING EFFORTS IN SOUTH AFRICA.

South Africa can be cited as one country that is making tremendous efforts to combat and prevent trafficking. One would argue that this is so because it is cited as a transit point for victims from central and southern Africa to Europe and Asia.¹¹⁵

South African civil society and Governmental Organizations have been hosting numerous activities to educate and sensitize the public about trafficking.¹¹⁶

For example, in September 2007, there was a human trafficking awareness week where civil society organizations and the International Organisation for Migration launched South Africa's first provincial civil society initiative against human trafficking, the Western Cape Provincial Task Team (WCPTT), at the Slave Lodge in Cape Town on 12 December 2007. The aim of this Programme was to coordinate the activities of relevant stakeholders in the Province especially from civil society, towards an effective, cohesive and comprehensive approach to support the prevention of human trafficking, the protection of trafficked persons and the prosecution of traffickers.¹¹⁷

In 2006, the Mozambican community in South Africa raised the curtain on a new theatrical production to raise awareness of human trafficking. This was produced by IOM's Southern African Counter- Trafficking Assistance Programme (SACTAP), together with Community Media for Development (CMFD). The essence of the theatrical presentation was to give a human face to the issue of trafficking and women's rights. It was further stated that one of the aims of the production was to encourage whistle

¹¹⁵ Article by Carmen Martinez, United States Ambassador to Zambia. June 6, 2008. Post Newspaper

¹¹⁶ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/ 2008, p6

¹¹⁷ The EYE: A Bulleting of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/ 2008, p6

blowers to report suspected cases of human trafficking to the IOM national toll- free helpline number 0800 555 999.¹¹⁸

4.3 SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) INITIATIVES TO COMBAT TRAFFICKING.

The Institute for Security Studies (ISS) held a workshop at Leriba Lodge in Pretoria, South Africa, from 25 to 26 November 2004. 15 participants consisting mainly of senior law officers from the Southern Africa Development Community (SADC) Member States attended the workshop whose theme was “Extradition and Mutual Legal Assistance in the SADC Region: Working towards compliance with the Palermo Convention”. The workshop is one of the Deliverables under Component 3 of the NORAD Project whose objective is to contribute towards the implementation of the UN Convention against Transnational Organised Crime (Palermo Convention) in the SADC region. In particular, the workshop formed part of a three-year strategy towards addressing the fourth indicator under Component 3, namely, “an increased number of governments implementing and complying with international requirements relating to extradition and mutual legal assistance.”¹¹⁹

4.3.1 WORKSHOP OBJECTIVES

The purpose of the workshop was to provide a forum for senior officials from relevant government departments in the SADC region to share information on challenges of implementing legislation on extradition and mutual legal assistance in criminal matters

¹¹⁸ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p2

¹¹⁹ Report on ISS Workshop on the implementation of the Palermo Convention, Leriba Lodge, Pretoria 25-26 November 2004

with particular reference to cases involving organised crime; identify and analyse problems encountered in the implementation of legislation on extradition and mutual legal assistance and to recommend effective practices for implementation of extradition and mutual legal assistance requests.¹²⁰

The workshop was also intended to bring together members of the Palermo Group (a group of senior government officials working with the ISS on the ratification and implementation of the United Nations Convention on Transnational Organised Crime) for the purpose of accessing progress made by each SADC member State towards the implementation of the Palermo Convention since the last meeting in September, 2003 in Mauritius and to determine activities relating to the implementation of the Convention that member States intend to undertake in corroboration with the ISS in 2005.¹²¹

4.3.2 THE ORGANISATION AND PROCEEDINGS

Regional experts gave presentations, which critically examined policies, practices, legislation and regional instruments relating to extradition and mutual legal assistance in the SADC region. The main reference points for the presentations were the SADC Protocol on Mutual Legal Assistance in Criminal Matters (signed by all Member States, 3rd October 2002), SADC Protocol on Extradition (signed by all Member States, 3rd October 2002), and the UN Convention against Transnational Organised Crime. Each participating country gave a report on the progress made towards implementation of the Palermo Convention. The workshop made the following resolutions:

¹²⁰ Report on ISS Workshop on the implementation of the Palermo Convention, Leriba Lodge, Pretoria 25-26 November 2004

¹²¹ Ibid

4.3.3 RESOLUTIONS ON EXTRADITION ISSUES.

1. All SADC states should harmonise and standardise extradition procedures in conformity with the SADC Protocol.
2. SADC Secretariat should compile and maintain information on decided extradition cases around the region and beyond to be accessed by member states.
3. SADC Secretariat should maintain material including legislation on criminal procedures obtaining in all SADC states.
4. All SADC states should domesticate provisions of relevant treaties and Protocols including the Palermo Convention.
5. SADC should amend the SADC Extradition Protocol to define political offences so as to avoid the current uncertainty as to the meaning of the concept.
6. SADC should amend the SADC Extradition Protocol to include provisions on monitoring the implementation of the Protocol by Member States.
7. SADC Member States should consider enhancing the capacity of law enforcement agencies in the region through the provision of adequate resources and training.
8. A study should be undertaken by SADC of the cost implications of extradition cases, so as to recommend cost-sharing formulae to be included in the SADC Protocol on Extradition.
9. Extradition laws should be costed at the time of enactment by Member States to ensure adequate resources are available at the implementation stage.
10. SADC Member States should consider reviewing extradition laws that prohibit extradition of nationals.

11. Extradition laws in the SADC should be reviewed so as to conform to the African Union and global human rights conventions.

4.3.4 RESOLUTIONS ON MUTUAL LEGAL ASSISTANCE

1. Each SADC Member State should identify a central authority by law to avoid delays that arise as a result of uncertainty regarding the agencies authorised to receive mutual legal assistance requests.

2. SADC should assist Member States in the training and recruitment of personnel responsible for Mutual Legal Assistance.

3. SADC Member States should set time limits for processing of extradition requests to avoid undue delays.

4. SADC should develop a programme to facilitate study tours for officials responsible for mutual legal assistance matters within the region so as to develop better understanding of the legal systems obtaining in the region.

5. SADC Member States should process requests on mutual legal assistance on a reciprocal basis.

6. SADC Member States should develop a standard request document for mutual legal assistance to ensure that requests are clear and specific.

7. SADC Member States should develop an agreed method of sharing costs related to mutual legal assistance that is based on quantum merit.

A group of civil society organisations across the region have been mobilising to raise awareness about trafficking and exploitation, and to assist governments to develop strategies to combat it.

The Southern African Network Against Trafficking and Abuse of Children (SANTAC) was formed in 2005, three years after the Regional Campaign Against Trafficking and Child Abuse in Southern Africa was launched on 16th June 2002. Founded by the Mozambican Foundation for Community Development (FDC) and Terre de Hommes of Germany (TDH), it started off as the “Regional Campaign Against Child Abuse”, until it was registered in 2006 in Mozambique. Under the patronage of former first lady of Mozambique and South Africa, Graca Machel, and South African Anglican Archbishop emeritus, Desmond Tutu, the network now consists of more than 100 participant organizations in 8 countries (Angola, Malawi, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe). These constitute national and international governmental and non governmental organizations that seek to prevent the trafficking and abuse of children through networking, awareness, research, training, lobby and advocacy, cooperation, child participation and service delivery to victims. It has a core group that meets once or twice annually to strategize and advocate to engage relevant stakeholders.

SANTAC has so far conducted field research in Zimbabwe, Zambia, Mozambique, South Africa and Lesotho and has published a handbook on child trafficking and abuse in the region. It has also embarked on rigorous media campaigns targeting the public, as well as civil and government stakeholders. SANTAC continues to lobby the SADC Governments to ratify all UN legal instruments against trafficking, abuse and exploitation of children and to adopt specific anti- trafficking policies and legislation. Its dissemination strategy includes a website, printing of materials and public debates or interviews with national, regional and international media such as BBC, Radio France International etc¹²²

¹²² The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 10/ 2006, p7

SANTAC has been involved with specific countries to assist them in the reform of their laws to cater for anti trafficking legislation. In Mozambique, SANTAC has been assisting with the drafting of the children's Bill or the "basic law for child protection," by pushing for the inclusion of preventive and protective measures against trafficking and child labour. SANTAC is also involved on the Labour Law revision (to protect the rights of working children), and in the drafting of specific anti trafficking legislation in Mozambique.¹²³

SANTAC also runs a comprehensive victim assistance programme that has assisted 230 victims of human trafficking in Southern Africa between 2004 and 2008. Services at the beneficiaries' disposal include safe shelter, clothing and food, counselling and medical examination.¹²⁴

Also on the regional and international front, IOM organized a regional MDSA (Migration Dialogue for Southern Africa) workshop on irregular migration, including human trafficking and migrant smuggling in October 2008. It was attended by senior officials of 15 Southern African countries including Zambia. The aim of the workshop was to retain recommendations related to principles of prevention, prosecution and protection as well as regional cooperation to counter human trafficking.¹²⁵

4.4 INTERNATIONAL LAW

There are several instruments at national, regional and international levels that specifically address human trafficking, notably the Protocol to Prevent, Suppress and

¹²³ Ibid

¹²⁴ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 17/ 2008, p3

¹²⁵ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p2

Punish Trafficking in Persons, Especially women and children of 2000.¹²⁶ The international community has made commitments and taken several steps against human trafficking, yet it remains a major humanitarian challenge. In addressing this global problem, several writers have considered whether the Palermo Protocol, and other treaties that deal with human trafficking are playing the full role that they should, especially in terms of protecting victims of the trade.¹²⁷

Mohammed Mattar, Executive Director of US – based Protection Project, a counter-trafficking research institute posits that the current reporting mechanisms and committees that are established “with no real enforcement authority are inadequate and ineffective.” He believes that international law does not provide effective remedies for victims of trafficking as it does not allow the victim to bring a legal claim against the trafficker. He is, however, less critical of the Palermo Protocol, which attempts to address this challenge by providing provisions that cover the whole trafficking process. State parties are obliged to prevent and combat trafficking, but also encouraged to protect and assist victims, offer them the right to seek compensation from their traffickers, and make available temporary and permanent residency options in the country of destination.¹²⁸

On the other hand, Kelly Hyland has identified three particular shortcomings of the Palermo Protocol. Firstly, it does not contain any provision for the protection of victims from “prosecution for acts [victims are] forced to perform.”¹²⁹

¹²⁶ Known as the Palermo Protocol

¹²⁷ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p3

¹²⁸ Ibid

¹²⁹ Hyland, K. “The impact of the Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children” Human Rights Brief, Vol 8 No.2. 2001, p33

This means that the Protocol does not restrict signatory states from prosecuting trafficked persons for immigration violations, prostitution and other offences they may have committed in the process of being trafficked. He further suggests that protection of victims' identities, privacy and legal interests, according to the Protocol is discretionary as there is no definition or qualification of what appropriate cases for such protection might be.¹³⁰ Therefore it is up to the signatory states to define such cases. A third shortcoming, in Hyland's view, is that the Palermo Protocol does not mention reintegration or the provision of services once a victim has been repatriated to her country of origin. In this light, Ryszard Piotrowicz, Law Professor at the University of Wales, argues that victims who are repatriated after they have given evidence against their traffickers might face severe risk of retribution by their traffickers.¹³¹

Clearly, states have an obligation to develop criminal measures as part of their counter – trafficking policies. The Palermo Protocol is a “law enforcement” instrument and that “victim protection should be linked to law enforcement goals such as witness protection but in the final analysis, this obligation rests on individual states to consider “rights – protective national legislation”¹³²

Anti -Slavery International supports the notion that victims of trafficking should be protected by the state while giving evidence against their traffickers. However, the organization expresses the view that the current models of protection have a tendency to cater to the needs of law enforcement and not the rights of trafficked persons.¹³³

¹³⁰ In article 6 of the Protocol

¹³¹ Piotrowicz, R. “ European Initiative in the Prevention of Victims of Trafficking who give evidence against their traffickers” International Journal of Refugee Law, No 14, 2002, page 263

¹³² The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p3

¹³³ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p3

It has been observed that countries often enforce an approach that only focuses on the organised crime structure of the offence and therefore, does not consider or understand the problem from the victim's perspective. Inappropriate and inadequate laws and policies do not provide protection to victims of human trafficking, nor do they allow for prosecutions and convictions of the traffickers and other actors involved in the trafficking process.¹³⁴

There are also arguments that there is no provision for enforcement or penalties included in the Palermo Protocol. In other words, if a state does not comply with the provisions, there are no penalties involved. Lastly, it is argued that the Palermo Protocol relies heavily on the development and implementation of domestic legislation within states to address human trafficking.¹³⁵

While recognizing that there may be weaknesses in the Palermo Protocol as argued above, it was the first international instrument to give a clear and widely negotiated definition of trafficking in persons, and also included...some mandatory and many detailed provisions for victims of the trade. Amongst these, are provisions that focus on the assistance and protection of victims as well as their legal status.¹³⁶ Article 9 of the Palermo Protocol specifically addresses preventative activities that should be incorporated by State parties in their counter- trafficking responses.¹³⁷

The United States has also played a pivotal role in fighting trafficking. In 2000 Congress passed the Trafficking Victims Protection Act (TVPA) which was strengthened in 2003. This law provides tools for the U.S to combat trafficking in persons, both domestically

¹³⁴ *ibid*

¹³⁵ *Op cit*

¹³⁶ Article 6 and 7

¹³⁷ The EYE: A Bulletin of News, Informing and Analysis on Trafficking in Persons in Southern Africa issue 12/ 2006, p3

and abroad. One of the key components of the law is the creation of *the trafficking in persons report*. The Department of State produces this annual report assessing government response in each country with a significant number of victims of severe forms of trafficking in persons. Countries in the annual report are rated in tiers, based on government efforts to combat trafficking.¹³⁸

Tier 1: countries that fully comply with the Protocol's minimum standard for the elimination of trafficking.

Tier 2: countries that do not fully comply with the minimum standards but are making significant efforts to bring themselves into compliance.

Tier 2 watch list: countries on tier 2 requiring special scrutiny because of a high or significantly increasing number of victims; failure to provide evidence of increasing efforts to combat trafficking in persons; or an assessment as tier 2 based on commitments to take action over the next year.

Tier 3: countries that neither satisfy the minimum standards nor demonstrate a significant effort to come into compliance. Countries in this tier are subject to potential non-humanitarian and non-trade sanctions.¹³⁹

On June 4, 2008, the Secretary of State Condoleezza Rice released the 8th annual *Trafficking in Persons Report* to raise the level of awareness and to stimulate action to address the crime. It is an invaluable tool in drawing the world's attention to the existence of modern day slavery. The report highlighted the issue of demand and the role it plays in perpetuating the phenomenon of trafficking.¹⁴⁰

¹³⁸ United States Department of State. Democracy and Global Affairs. September 2005

¹³⁹ *ibid*

¹⁴⁰ Article by Carmen Martinez, United States Ambassador to Zambia. June 6, 2008. Post Newspaper

Zambia has been grouped in the second category of countries that have made efforts in combating human trafficking, United States embassy public affairs officer, Dehab Ghebreab, has said.¹⁴¹

Zambia was in the second category after government made significant efforts to combat trafficking through law enforcement actions at borders which saw a woman from the Democratic Republic of Congo being intercepted at Chirundu in the company of several children in unclearly unexplained circumstances.¹⁴² Others are increased efforts to prevent trafficking during the past year like the presentation of the Bill to Parliament which now awaits Presidential assent which is expected to take place soon. Being rated in the second category showed that Zambia needed to do more to move to the first category of countries that were effectively combating human trafficking.¹⁴³

CONCLUSION

It is clear from the discussion that South Africa and Mozambique are making strides with the various activities they are undertaking. Civil society is actively involved in these countries, it is not just a matter for government to handle but also many other stakeholders. SADC as a regional organization needs to strengthen its mechanisms to tighten the loopholes so that it is easy to identify and intercept a trafficker, also SADC needs to harmonize its intra laws to effectively deal with victims of trafficking so that issues like

¹⁴¹ Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

¹⁴² Times of Zambia, 14th July, 2003

¹⁴³ Report and recommendations of the MIDSA Workshop on: Human Trafficking and Legislative Responses in Southern Africa. 28- 30 May 2007, Gaborone , Botswana

the flouting of immigration laws and prostitution charges are waived for the effective investigation of traffickers and related issues.

Zambia should also look at the drawbacks of the Palermo Protocol so that it uses them as the benchmarks for elevating the quality of its anti trafficking laws. It should thus provide for the immunity status of victims so that they are not prosecuted for crimes committed during trafficking and also, the victims should be allowed to commence action against the traffickers upon successful litigation by the state.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

Human trafficking is a new form of slavery that imparts greatly on the well being of the world's citizens.¹⁴⁴

In 2000, The United Nations enacted a protocol to the Convention against Transnational Crimes, known as the Palermo Protocol. It was enacted to provide for incidences of trafficking. Trafficking is defined in the Protocol as the 'recruitment transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'¹⁴⁵

It is argued, even from the spirit of this paper that human trafficking is a gender phenomenon because even though it affects men as well, it greatly affects women and children. Women are affected in this sense because of the social, cultural, and economic status that they possess in society. Most women are vulnerable because of the need to improve their livelihoods and traffickers prey on this vulnerability by offering lucrative

¹⁴⁴ United States Department of State. Democracy and Global Affairs. September 2005

¹⁴⁵ Article 3 of the Protocol

job promises that do not come to fruition but these women end up being forced into labour, sexual exploitation, removal of organs etc.¹⁴⁶

Human trafficking also embraces a hub of human rights violations. Victims of human traffickers are forced to work and live under inhuman and degrading conditions.¹⁴⁷ In many countries including Zambia, constitutions provide for the protection against slavery and forced labour. However, our legislation in the past has not been adequate, to cater for all aspects of trafficking. Most trafficked women suffer from mental health and sexual problems and many other sicknesses due to unhealthy lifestyles that they are exposed to. Most traffickers who are the pimp masters, in cases of sexual exploitation, do not emphasize on condom use such that the victims are exposed to HIV and AIDS.¹⁴⁸

Zambia, like several other Southern African countries has been reported to be a source and transit country for women and children trafficked for the purpose of sexual exploitation.¹⁴⁹

The Southern African Development Community (SADC) has been trying to prevent trafficking by hosting workshops to come up with solutions and ways of dealing with victims of trafficking. (SADC) has come up with resolutions for mutual legal assistance amongst member countries, problems encountered in the implementation of legislation on extradition and other related aspects for the prevention of trafficking.¹⁵⁰ Regardless of

¹⁴⁶ Report on Legal Affairs, Governance, Human Rights and Gender Matters for the fifth session of the ninth National Assembly appointed on 19th January 2006

¹⁴⁷ Report on Legal Affairs, Governance, Human Rights and Gender Matters for the fifth session of the ninth National Assembly appointed on 19th January 2006.

¹⁴⁸ Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management By Thanh-Dam Truong UNESCO 2006.p103

¹⁴⁹ Report on Legal Affairs, Governance, Human Rights and Gender Matters for the fifth session of the ninth National Assembly appointed on 19th January 2006.

¹⁵⁰ Report on ISS Workshop on the implementation of the Palermo Convention, Leriba Lodge, Pretoria 25-26 November 2004

these efforts there is still a lot that needs to be done because countries like Zambia and Mozambique have not domesticated the Protocol. And there have also been arguments that SADC should come up with mechanisms that will ensure that countries anti trafficking legislation is harmonized so that issues to do with extradition and mutual legal assistance are adequately covered.

Thus, it is this author's conclusion that human trafficking is a gender, human rights and international law perspective. Gender, because it affects the female gender more than the male gender due to their vulnerable status in society. Human rights, because there are a hub of human rights violations that take place ranging from, forced labour, inhuman and degrading treatment and sexual abuse. International law perspective because, human trafficking is an international crime that has been recognized as such by the drafting of the Palermo Protocol which lays down the incidences of trafficking and the standards that states parties must adhere to in the fight against trafficking.

RECOMMENDATIONS

1. The Zambian Parliament, with the help of the Zambia Law Development Commission and the Ministry of Justice have drafted the Anti- Human Trafficking Bill which has among other things provided for the identification of victims, aiding and abetting, protection of the victim, Centres for Victims, Forfeiture of trafficking proceeds. All these are good things in principle but one would wonder if they will come to fruition. It is thus recommended that Zambia should make it a point to ensure that the safe

houses for the victims should be developed with full facilities of psycho social and health counselling as the victims go through many violations that need to be handled by professionals.

2. Also, government should put in place mechanisms to reintegrate the victims back into society because they usually suffer isolation and may lose touch with what is obtaining in society, thus it is important that special mechanisms are put in place.
3. Foreign employment offers: Government should play a pivotal role in approving and disapproving employment offers from outside the country to prevent citizens from being recruited into forced labour and sexual exploitation and it should also put in place periodical checks to follow up its citizen's well being in foreign countries.
4. Further, it is recommended that the laws should provide for checks at the border posts using an independent body to ensure that corruption does not frustrate the efforts of government to identify and prosecute offenders because if traffickers are able to offer bribes to border post officials for ease of transporting victims in or out of the country, then all the efforts will not bear any fruit.
5. With the upcoming 2010 FIFA World Cup to be held in South Africa, organizations and activists are gearing up for a likely increase in trafficking activities. Borders in Southern African countries are notoriously porous, and this coupled with high rates of poverty, pervasive gender inequalities and nonexistent or ineffective trafficking laws make the region ripe ground for human traffickers. Zambia and Mozambique are both key source and transit countries for human trafficking activities to South Africa and Europe. According to the IOM, at least 1000 people are trafficked from Mozambique

into South Africa each year, thus there is need for SADC to put in place measures that will ensure that trafficking is prevented and if it occurs how it will be dealt with because there will be many nationals from all over the world, it will be very cardinal to put in place a code.¹⁵¹

6. It is also recommended that government should improve the social sector so that education and skills training will remove the vulnerable, especially women and the youth from poverty which increases the likelihood of women and children being trafficked. It should place emphasis on improving the social economic status of women.

¹⁵¹ www.traffickingproject.blogspot.com/2008_07_01. Tuesday, July 15, 2008

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