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PROTECTING CHILDREN FROM EXPLOITATION IN WEST AFRICA

ILLUSION OR REALITY?

by

AFUA BROWN-EYESON

(Under the Direction of Professor Sarajane Love)

ABSTRACT

This thesis analyses the implementation of the main international and regional conventions, which guarantees the protection of children's rights and their effectiveness in combating the issue of child trafficking in West Africa. This paper examines both internal and external child trafficking and some of the causes of this menace. The thesis argues that the international and regional conventions, regardless of their efforts to protect the rights of the children, have failed to achieve their purpose especially in the sub-region. In summary, this paper concludes that unless the issue of poverty, which is the underlying factor in the exploitation of children, is tackled head on, the implementation of these conventions would be ineffective in the sub-region.

INDEX WORDS: Child Exploitation, Internal Child Trafficking, External Child Trafficking, Convention on the Rights of the Child, ILO Convention No. 182, Hazardous Work, Children's Rights, Child Abuse.

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ILLUSION OR REALITY?

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MASTER OF LAWS

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PROTECTING CHILDREN FROM EXPLOITATION IN WEST AFRICA

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DEDICATION

To my Parents: my Heavenly Father, God Almighty and my mother, Amy Forson.

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CHAPTER 1

INTRODUCTION

“There remains enormous obstacles preventing the universal attainment of children’s rights, a goal that is so simple to state yet so difficult to meet.”

Secretary-General Kofi Annan, Opening of the 2001 International Youth Day.

Under the Convention on the Rights of the Child¹ and other international conventions², anyone below the age of eighteen is considered as a child.³ According to International Labor Organization (ILO), one out of six children in the world is involved in child labor doing work that would adversely affect their mental, physical and psychological being.⁴ The children work in various industries but majority of them are in the agricultural industry and are often exposed to dangerous chemicals and equipments.⁵ The reason why the exploitation of children is on the increase is because this normally occurs in the informal sector where the government is not directly in control. There are 2.5 million children working in developed countries and the same number working in transition economies like the Soviet states.⁶ The highest proportion of children working in Sub-Saharan Africa, a third of the children under 14, that is, about 48 million children are in active labor. Nearly three-quarters of working children are engaged in the

¹ Convention on the Rights of the Child, G.A. Res. 44/25 (1989)

² See e.g., ILO Convention No. 182, art. 2.

³ See id, Convention on the Rights of the Child, art. 1.

⁴ *Facts on Child Labor*, International Labor Office, available at <http://www.ilo.org/public/english/bureau/inf/download/child/factsonchild.pdf>

⁵ *Id.*

“worst forms of child labor” which includes trafficking, armed conflict, slavery, sexual exploitation and hazardous work.⁷ It is estimated that 1.2 million children are trafficked worldwide⁸. “Whenever a child is relocated and exploited, it is trafficking.”

In Africa, children are considered a blessing. When a woman cannot have children, the communities frown upon her and attribute this ‘sad occurrence’ to some sins of the past. For this reason, infertile women go to great lengths to have babies, some even go to the extreme extent of stealing babies. When a baby is born, there is a lot of fanfare to welcome the baby into the family and community. Both mother and child are showered with gifts, and the father of the baby is congratulated for proving his ‘manhood’.

The idea of children being sheltered from the hardship of this world during their childhood is quickly becoming an illusion. Children have been forcefully uprooted from the security of their homes due to poverty, killer diseases like AIDS, armed conflict, child labor, sexual exploitation, famine, drought and neglect. In West Africa, most children living in the urban areas have quality health and education, whilst children in the rural areas have little access to health services and quality education.

The ILO has found children working under hazardous circumstances like hauling wagons in underground mines, drawing molten glass in extreme heat, contact with solvents and glues in the leather industry, lead poisoning in glass works, mercury poisoning in gold mining, deep sea diving without protective equipment in the fishing

⁶ *Id.*

⁷ Convention No. 182, *supra* note 1, art. 3

⁸ *Facts on Child Labor*, *supra* note 3

industry, exposure to pesticides and herbicides in agriculture and bearing heavy loads in the construction industry.⁹

Some Africans from other cultures and value systems consider children's rights like most human rights as an imposition. Many African communities have their own ideas on how children should be brought up, and as most Africans are really attached to traditions, they find it very difficult to let go. However, some practices like female genital mutilation, the abuse and exploitation of children and the recruitment of child soldiers in war-stricken countries clearly violate the rights of the child and have long lasting negative effects on them.

The child being considered as a person with rights was an alien phenomenon in every part of the world till the turn of the 20th century.¹⁰ This step was due to research in psychoanalysis and the humanities.¹¹ However, the idea of children having rights is still too much to take in for most adults in the developing countries.¹²

A number of conventions by the International Labor Organization (ILO) and the U.N. Convention on the Rights of the Child (CRC) were passed to protect children from the above problems. By ratifying these conventions, the national governments committed themselves to protecting and ensuring children's rights in their respective countries and they agreed to hold themselves accountable for this commitment before the international community. However, when one looks at the situation prevailing in Sub-Saharan Africa

⁹ ILO/IPU, ELIMINATING THE WORST FORMS OF CHILD LABOR, A PRACTICAL GUIDE TO CONVENTION 182, 30, (2002)

¹⁰ Carole Bouquet, *The Right to Childhood*, available at http://www.france.diplomatie.fr/label_france/DUDH/english/film/texte.htm

¹¹ *Id*

¹² See *id*.

one begins to wonder whether these countries understood what they ratified or they are just victims of circumstances that they cannot control.

This paper first summarizes some of the major international and regional organizations and the work they have done to combat child exploitation. This paper then examines the issue of internal child trafficking, in Ghana. The reason for choosing this issue is to look at the exploitation of children in their own countries. The next issue, which is examined by this paper, is child trafficking along the west coast of Africa. This paper studies the cross-border transaction that moves children from their homes or countries to the destination countries where they are exploited or engage in hazardous work. Also the paper will consider some of the West African countries involved in this cross-border network to examine what they have done to curb this menace in the region and find the causes of the problem and how the country is dealing with it.

The focus of this paper is to analyze the implementation of the international conventions relating to child trafficking and find out some of the reasons behind the exploitation of these children and find out whether the protection of children's rights will be a reality in Sub-Saharan Africa.

CHAPTER 2

DEVELOPMENT OF INTERNATIONAL AND REGIONAL LAWS CONCERNING CHILDREN

A. The League of Nations

The Allied Powers who emerged victorious in World War I established the League of Nations.¹³ The Charter of the League, which was known as the Covenant, was approved as part of the Treaty of Versailles at the Paris Peace Conference in 1919.¹⁴ Leaders of 32 countries comprising of 75% of the world's population attended the conference. Among the objectives in the Covenant was "to promote international cooperation and to achieve international peace and security."¹⁵ The treaty came into force on January 10, 1920, and despite its objective not "to resort to war,"¹⁶ the League of Nations was unable to stop the military incursion by the Germans that led to World War

¹³*Research Guide to League of Nations Documents and Publications*, available at <http://www.library.northwestern.edu/govpub/collections/league/background.html#introduction>

¹⁴ *Id.* The leaders of the Allied Powers met at the Palace of Versailles to decide on the peace settlement after the war. The main terms of the Treaty of Versailles were to break the military and political power of the German state. Some people believe that the harsh terms of the treaty led to the outbreak of another world war twenty years later. See *Modern World History: The treaty of Versailles* at <http://www.bbc.co.uk/education/modern/versail/versahtm.htm>

¹⁵ THE COVENANT OF THE LEAGUE OF NATIONS, preamble, which states that, "THE HIGH CONTRACTING PARTIES, In order to promote international co-operation and to achieve international peace and security by the acceptance of obligations not to resort to war by the prescription of open, just and honorable relations between nations by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and by the maintenance of justice and scrupulous respect for all treaty obligations in the dealings of organized peoples with one another Agree to this Covenant of the League of Nations."

II.¹⁷ It ceased operations during the war and was dissolved in April 18, 1946.¹⁸ The United Nations took over its assets and carries on much of its work.¹⁹ The Declaration of the Rights of the Child was their first treaty concerning the rights of the child passed by the League of Nations.

1. The Declaration of the Rights of the Child

In 1923, Eglantyne Jebb, founder of the Save the Children Fund, London, and the Save the Children International Union, Geneva pioneered in formulating the Declaration of the Rights of the Child.²⁰ It had five principles aimed at ensuring that every child has the essential conditions for his or her full personal development.²¹ The Declaration was promulgated in 1923 by the Union and is “its Magna Carta.”²²

In 1924, the League of Nations unanimously adopted the Declaration of the Rights of the Child, thereby adopting the first global charter focusing on children’s rights.²³ It was commonly known as the Declaration of Geneva, and the charter stated that mankind owes to the child the best it has to offer.²⁴ Although this Declaration was not a

¹⁶ *Id.*

¹⁷ See Research Guide to League of Nations, *supra* note 13.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *A Brief Chronology of Some Events Leading up to the Convention, available at* http://www.iin.oea.org/breve_cronologia_de_algunos_hechos_ingles.htm

²¹ *Id.*

²² *Id.*

²³ See International Documents on Children 3 (2d ed. 1998) (reprinting Declaration of the Rights of the Child).

²⁴ *Id.* at 3. See JENNY KUPER, INTERNATIONAL LAW CONCERNING CHILD CIVILIANS IN ARMED CONFLICT 41-42 (1997) (discussing 1924 Declaration of the Rights of the Child).

sufficient children's rights document, it did protect children's most basic needs.²⁵ Despite its pioneering role, the Declaration had a number of limitations.²⁶

First, rather than addressing civil and political rights, the Declaration devoted itself to economic, social and cultural interests.²⁷ Also, the term "right" does not appear in any part of the Declaration.²⁸ Furthermore, the Declaration had no enforcement mechanisms.²⁹ This meant that once a right was violated, there was nowhere one could go for redress. Once the state parties were aware of this loophole, abuse was likely. This questions the good intentions of the framers of this convention as they know or ought to know that laws without enforcement mechanisms end up being ineffective.

The Declaration placed the duties on individuals rather than the nation states.³⁰ Where the duties were not placed on the nation states, the convention becomes defunct because it results in an individual fighting against a state, which is frustrating or impossible in some cases. To a large extent, it was a toothless bulldog having a lot of work put into it yet lacking any force to enable a change in the problem it was supposed to solve.

²⁵ See Roger J.R. Levesque, *International Children's Rights Grow Up: Implications for American Jurisprudence and Domestic Policy*, 24 CAL. W. INT'L L.J. 193 at 209(1994).

²⁶ *Id.* at 210

²⁷ See GERALDINE V. BUEREN, *INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD* 7 (1995). The Declaration does not deal with rights to life and liberty, freedom from torture, due process of law, religion and thought, which rather appears, in the Universal Declaration of Human Rights of 1948. See also Timothy John Fitzgibbon, *The United Nations Convention on the Rights of the Child: Are Children Really Protected? A Case Study of China's Implementation*, 20 LOY. L.A. INT'L & COMP. L.J. 325 at 328.

²⁸ See Levesque, *supra* note 25 at 210. The Declaration rather uses principles instead of the words "rights" and "freedoms".

²⁹ See *id.*

³⁰ See Bueren, *supra* note 27 at 7.

B. The United Nations

Theodore Roosevelt, then United States president coined the name ‘United Nations’ in the Declaration of the United Nations of January 1, 1942.³¹ This happened during the Second World War, when 26 countries pledged their allegiance to fight against the Axis Powers.³² In 1945, representatives of 50 countries met in San Francisco at the United Nations Conference on International Organization to draw up the United Nations Charter.³³ The United Nations officially came into existence on October 24, 1945 when the Charter was ratified by a majority of signatories.³⁴

In 1948, after the Second World War, the U.N. General Assembly proclaimed the equal and alienable rights of all human beings, regardless of age, by adopting the Universal Declaration of Human Rights (UDHR).³⁵ “The dislocations, severed families, abuse of children, and economic upheaval of the World War II prompted the United Nations to call upon the International Union for Child Welfare (IUCW)³⁶ to draft a new Declaration of the Rights of the Child (DROC).³⁷

1. The Declaration of the Rights of the Child (1959)

The first U.N. instrument devoted solely to children’s rights came into being when the

³¹ About the United Nations/History, at <http://www.un.org/aboutun/history.htm>

³² *Id.* The Axis Powers were Germany, Japan and Italy.

³³ *Id.*

³⁴ *Id.*

³⁵ See Universal Declaration of Human Rights, G.A. Res. 217, and U.N. Doc. A/3 (1948). See also Amy Beth Abbott, *Child Soldiers – The Use of Children as Instruments of War*, 23 SUFF. TRANSNAT’L L. REV. 499 (2000)

³⁶ See Fitzgibbon, *supra* note 27 at 330. See also Cynthia P. Cohen, *The Human Rights of Children*, 12 CAP. U.L. REV. 369, 372 (1983)

³⁷ See *id.*

UN adopted the Declaration of the Rights of the Child in 1959 (DROC).³⁸ The 1959 Declaration sets forth the best interest of the child standard and demands that those responsible for the education and advisement utilize this standard as a guiding principle.³⁹ This statement of children's rights focused on the children as objects of international law perpetuating their reliance on adults to ensure the realization of their rights.⁴⁰ Most of the principles of the DROC reflected the horrors children were subjected to during World War II.⁴¹ The first principle prohibited any type of discrimination or distinction among children.⁴² Principle 3 declares that, "the child shall be entitled from his birth to a name and nationality"⁴³ and principle 10 deals with protecting the child from discriminatory practices. The UDHR also specifically recognizes a child's right to special care and assistance.⁴⁴

In the declaration, the child was entitled to education, which would promote his general culture and enable him to develop his abilities, individual judgment, and sense of moral and social responsibility.⁴⁵ Furthermore, the child could only work when he attained the appropriate minimum age and was not to be the subject of traffic or exploitation of any form.⁴⁶

³⁸ See Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, at 19, U.N. Doc. A/4059 (1959). The Declaration of the Rights of the Child did not constitute binding law, only a statement of general principle and intent. See *id.*; Kuper, *supra* note 24 at 42-43 (discussing the Declaration).

³⁹ Declaration of the Rights of the Child, *supra* note 38 at princ. 7

⁴⁰ *Id.*, princ. 6

⁴¹ Declaration of the Rights of the Child, 14 U.N. GAOR. Supp. No. 16, at 19, U.N. Doc. A/4354 (1959)

⁴² *Id.*, princ. 1.

⁴³ See *id.*, princ. 3

⁴⁴ See Universal Declaration of Human Rights, *supra* note 3, at art. 25, which state that, "motherhood and childhood are entitled to special care and assistance. All children born in wedlock or out of wedlock shall enjoy the same social protection." *Id.*

⁴⁵ Declaration of the Rights of the Child, *supra* note 38, princ. 7

⁴⁶ *Id.*, princ. 9

The DROC, unlike the Declaration of Geneva used the term “right” in the actual text, which was a progressive step.⁴⁷ Also, the DROC is said to create civil and political rights,⁴⁸ and declares that nations should pass laws that prioritize children.⁴⁹ Although the DROC guaranteed the rights of the child, it was a non-binding resolution. Despite the fact that the Declaration was adopted unanimously, the Declaration was still without the necessary force to ensure that the rights of the children were guaranteed.

In spite of the strides made by the DROC in improving the rights of the child, it was also plagued with its weaknesses. It concentrated more attention to the economic, social and cultural rights instead of the civil and political rights.⁵⁰ Rights like freedom of opinion and expression is not part of the DROC. This shows that children, including teenagers were still not regarded as persons capable of thinking for themselves.

Furthermore, the DROC barely refers to rights and freedoms but instead labels subsections as either principle or entitlement bestowed on the child.⁵¹ “Thus the language itself lacks enforcement and compliance measures, thereby making it a weak tool.⁵² Despite its weaknesses, the DROC was progressive in its conceptual thinking of children’s rights⁵³ whereas the Declaration of Geneva views children as objects of international law, the DROC perceived children as subjects of international law.⁵⁴ The next international convention dealing with the rights of children was the Convention on the rights of the Child.

⁴⁷ Records of the Fifth Assembly, League of Nations O.J. Supp. 25 (1924)

⁴⁸ See Levesque, *supra* note 25 at 211.

⁴⁹ *Id.* at 212.

⁵⁰ See Walter H. Bennett Jr., *A Critique of the Emerging Convention on the Right of the Child*, 20 CORN INT’L L.J. 1, 18 (1987). See also Fitzgibbon, *supra* note 27 at note 70.

⁵¹ *Id.* at 19

⁵² *Id.*

⁵³ See Bueren, *supra* note 27 at 19

⁵⁴ *Id.*

2. The Convention on the Rights of the Child

The United Nations General Assembly adopted the Convention on the Rights of the Child (CRC) on November 20, 1989.⁵⁵ The Convention is the principal children's treaty encompassing a full range of civil, political, economic, social and cultural rights.⁵⁶ However, in the case of economic, social and cultural rights, the Convention gives that responsibility to the State Parties to undertake appropriate measures to the extent of their available resources.⁵⁷ This gives the State Parties the power to decide how much resources are available to ensure these children such rights. This is rightly so as it is the state parties who will draw policies and budget their resources according to such policies. However, in countries where the rights of its children are neglected, the state parties have been found not to act responsibly where the rights of their children are concerned. Most often the excuse for violation of children's rights in poor countries has been the non-availability of funds.

The Convention aims at protecting children from discrimination, neglect and abuse.⁵⁸ The Convention on the Rights of the Child spells out the rights of children everywhere without discrimination.⁵⁹ The rights include the rights to survival,⁶⁰ to develop to the fullest,⁶¹ protection from harmful influences,⁶² abuse and exploitation,⁶³ to participate fully in family, cultural and social life.⁶⁴

⁵⁵ See United Nations: Convention of the Rights of the Child, *supra* note 2

⁵⁶ UNITED NATIONS, MILLENNIUM SUMMIT MULTILATERAL TREATY FRAMEWORK: AN INVITATION TO UNIVERSAL PARTICIPATION, 35 (2000)

⁵⁷ Children's Convention, *supra* note 1, art. 4

⁵⁸ *Id.*

⁵⁹ *Id.*, art. 2

⁶⁰ *Id.*, art. 6

⁶¹ *Id.*

⁶² *Id.* art. 32

⁶³ *Id.*

⁶⁴ *Id.* art. 30

The CRC was ratified by 191 of the 193 participating nations. It has been ratified quickly than any specialized United Nations human rights treaty and it came into force within a short period of time.⁶⁵ The United States of America, Somalia and Timor-Leste, which became independent in May 2002, are the only countries, which have not ratified the convention.

It is the first legally binding international instrument, which provides in a single text universally recognized norms and standards concerning the protection and promotion of the rights of the child.⁶⁶ In addition, the Convention establishes standards in new areas including the issue of alternate care,⁶⁷ the rights of disabled⁶⁸ and refugee children;⁶⁹ and the administration of juvenile justice.⁷⁰

Among the rights enshrined in the Convention is the right to be protected from economic exploitation and any work that is likely:

- To be hazardous; or
- To interfere with the child's education; or
- To be harmful to the child's health, physical, mental, spiritual, moral or social development.⁷¹

The CRC has stimulated a deeper discussion on the status of children as human beings with full rights.⁷² According to Save the Children, a non-profit organization involved in children's rights, it believes that "the CRC provides an internationally agreed minimum set of standards against which to test law, policy and practice as it affects all

⁶⁵ See UNICEF, *Convention on the Rights of the Child*, available at <http://www.unicef.org/crc/crc.htm>

⁶⁶ *Id.*

⁶⁷ *Id.* art. 5

⁶⁸ *Id.* art. 23

⁶⁹ *Id.* art. 22

⁷⁰ *Id.* art. 40

⁷¹ *Id.* art. 32

children; encourages international cooperation where richer countries assist the poorer countries; and encourages a positive and optimistic image of children as active holders of rights”.⁷³

The CRC places an obligation to parents, relatives, community, governments and the international community to recognize the value of families, protect the individual child, and ensure that children can grow up free from oppression and all other conditions which enable them to attain their full potential within society.⁷⁴ This approach transfers what was previously a matter of goodwill, charity and benevolence to one of obligation and duty.⁷⁵

One of the major inconsistencies of the CRC is between article 1 and article 38 of the CRC. In article 1, the convention defines a child as anyone under the age of eighteen while article 38 redefines the child for the purposes of engaging in armed combat at the age of fifteen.⁷⁶ This presupposes that children who are not child soldiers are accorded more protection. This is sad because most of the child soldiers in war torn countries were forced into the army and are in need of protection due to the lifestyle they are forced to live.⁷⁷ These children are abducted, tortured and raped and taught to kill without appreciating the psychological effects of their actions.⁷⁸

⁷² Save the Children, *What's this about Rights* at <http://www.savethechildren.org.uk/childrights/index.html>

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Art. 38 provides that state parties must undertake to respect and to ensure to respect for relevant rules of international humanitarian law; ensure that children under 15 do not take direct part in hostilities; refrain from recruitment of those under 15 and give priority to the oldest among those under 18; in accordance with international humanitarian law, ensure protection and care of children affected by armed conflict., *See SHARON DETRICK, A COMMENTARY ON THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD, 723-37 (1999)*

⁷⁷ *See Child Soldiers, supra note 35*

⁷⁸ *Id.*

Three different age groups have been identified below the age of majority are,⁷⁹

- Under 12, where the children are bound to their families and the children divide their time between household chores and schooling;
- Between 12-13, where children physically and psychologically begin to move from the family ties and associate more with their peers. This results in children moving out of home to make a living on their own and become susceptible to outside and sometimes dangerous influences;
- Between 14-15, where children are now learning a trade and developed behavior patterns. The main preoccupation of these children is to learn job security.⁸⁰

The author did not tackle the age group of 15-17 years as the author considers them to be of age as most of these children have completed their basic education and moved to the next step of development, which is to learn a trade and earn a living.⁸¹ It now looks like childhood and schooldays go hand in hand but the crux of the matter is that not all African children go to school, and most of them complete the basic education much earlier before they attain the age of majority.⁸²

Furthermore, the CRC is riddled with several reservations thus weakening the requirements needed for the protection of children.⁸³ Some of the reservations have been

⁷⁹ Michael Bonnet, *Child Labor in Africa*, INT'L LAB. REV, 372, 1993

⁸⁰ *Id.*

⁸¹ *See id.*

⁸² *Id.*

⁸³ *See* United Nations Treaty Collection, Reservations and Declarations, *available at* http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm.

based on religious fundamentalism, inconsistencies with the domestic law and cultural traditions.⁸⁴

Children under 18 can join the army and they go through rigorous training in order to keep the soldiers fit and psyche them for the battle or war they have to fight in. This is considered acceptable in the CRC regardless of the trauma that the young soldiers are likely to face at the battlegrounds when they are surrounded by death and carnage by their guns and the weapons of their colleagues. The different standards endorsed by the CRC are confusing and makes its best interest standard of the child questionable. Two optional protocols were passed by the United Nations to correct some of the defects of the Convention on the Rights of the Child.

3. Optional Protocols of the Convention on the Rights of the Child

There is an Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict.⁸⁵ This Protocol encourages the member states to increase from 15 the age of recruitment of children into national armies or rebel groups.⁸⁶ In article 3(3)(a), the Protocol allows national armed forces to recruit children under the age of 18 when the recruitment is genuinely voluntary. Would the same standard apply if a child voluntarily allows himself or herself to be trafficked? There is no guarantee that the national armies would treat the child soldiers better than the rebel

⁸⁴ Countries where Islam is the state religion like Afghanistan, Iran, Egypt and Algeria reserve on all provisions, which are incompatible with the Islamic Sharia laws. Argentina reserved on art. 21, paras. (b), (c), (d) and (e). The Argentine Republic states that these provisions would not apply in some areas in its jurisdiction until there are the necessary mechanisms existing for the legal protection of children in order to prevent trafficking in and the sale of children. Djibouti would not bind itself to provisions that are incompatible with its religion and traditional values.

⁸⁵ Optional Protocol of the Convention on the Rights of the Child on the involvement of armed conflict, G.A. Res. A/RES/54/263, 25 May 2002

groups, especially in war-torn African countries. The preamble actually states that the reason for the Protocol is to rectify the confusion between articles 1 and 38 of the CRC.⁸⁷

There is another Optional Protocol on the sale of children, child prostitution and child pornography.⁸⁸ The Protocol complements the CRC with special emphasis on the requirement for criminalizing violations of children's rights in relation to the sale of children, child prostitution and child pornography.⁸⁹ The Protocol gives a framework for increased international cooperation in this area.⁹⁰ The Protocol is the first international instrument to define the terms "sale of a child", "child prostitution" and "child pornography."⁹¹ It defines the sale of child as any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration. Also the State Parties are to take necessary measures to establish its jurisdiction over the offences the listed offences committed in its territory or on board a ship or aircraft registered in that State.⁹²

4. The Commission on the Rights of the Child

In article 43, the Convention establishes a monitoring body, entitled the Committee on the Rights of the Child, which is composed of ten experts taken from around the world.⁹³ It is responsible for monitoring the implementation of the Convention

⁸⁶ Art. 1 of the Protocol prohibit recruitment and direct participation in hostilities of children under the age of 15. Art 4 § 3(c) also prohibits the indirect recruitment of children.

⁸⁷ Children's Convention, *supra* note 1 at preamble

⁸⁸ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, U.N.Doc. A/54/L.84 at 5 (2000)

⁸⁹ *Id.*, art. 3

⁹⁰ *Id.*, art. 10

⁹¹ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, *supra* note 88, art.2

⁹² *Id.*, art 4

⁹³ Art. 43, Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Agenda item 108, U. N. Doc. A/RES/44/25

through the examination of the reports submitted by State Parties.⁹⁴ The Committee discusses the reports with the representatives of the nation states and publicizes its observations and recommendations.⁹⁵

The CRC has no enforcement mechanism and must rely entirely on international pressure from other nation states to implement the recommendations.⁹⁶ This means that the implementation of the Convention is based on the legislative, administrative and judicial institutions of the individual states.⁹⁷ Under articles 44 and 45, the state party must let the committee know its efforts in implementing the Convention.⁹⁸ The initial report has to be submitted within two years after the ratification of the nation state after which the reports would be submitted every five years.⁹⁹ As the Convention is not law, it merely provides a standard against government actions and policies.¹⁰⁰

The problem with the reporting is that once the State parties refuse to submit their reports, there is little that the Committee can do to enforce this condition. Furthermore, the nation states are the ones who have to adjust their administrative and legislative policies to accommodate the ideals of the Convention. The only thing the Committee can do is to threaten sanctions against such a state. The fact that a member state is implementing the CRC would be known when the member state files its report to the Commission.

⁹⁴ See AMNESTY INTERNATIONAL, THE CONVENTION ON THE RIGHTS OF THE CHILD, 9 (Oct. 1994).

⁹⁵ See *id.*

⁹⁶ *Id.* at 11.

⁹⁷ See LAWRENCE LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD, 286 (1995)

⁹⁸ See *id.*

⁹⁹ See *id.*

¹⁰⁰ *Id.*

C. International Labor Organization

The International Labor Organization (ILO) is a UN specialized agency which strives to promote social justice and internationally human and labor rights.¹⁰¹ ILO was founded in 1919 and is the only surviving major creation of the Treaty of Versailles, which brought about the League of Nations, which later led to the formation of the United Nations.¹⁰² The ILO became the first specialized agency in 1946.¹⁰³

The ILO sets out international labor standards in the form of Conventions and Recommendations.¹⁰⁴ Conventions are international treaties, which are open to ratification by member states.¹⁰⁵ When a state ratifies a Convention, it is up to the state to bring national legislation and practice into line with the provisions of that Convention, and to report to the international supervisory bodies on the steps it had taken to implement such provisions.

The initial motivation for the formation of ILO was humanitarian.¹⁰⁶ This was due to the fact that most workers were exploited and not well treated, worked in hazardous conditions which had adverse effect on their health.¹⁰⁷ In the preamble to the Constitution of the ILO, it states that among the existing conditions prevailing at that time were injustice, hardship and privation.¹⁰⁸

¹⁰¹ ILO, *About the ILO*, available at <http://www.ilo.org/public/english/about/index.htm>

¹⁰² *Id.*

¹⁰³ *See id.*

¹⁰⁴ See ILO/IPU, *supra* note 9 at 16

¹⁰⁵ *Id.*

¹⁰⁶ ILO History, available at <http://www.ilo.org/public/english/about/history.htm>

¹⁰⁷ *Id.*

¹⁰⁸ ILO CONSTI., preamble.

The second motivation was political.¹⁰⁹ Due to the ill treatment of the workers, there was a lot of social and political unrest, as workers took to the streets to demand better working conditions.¹¹⁰ The preamble notes that the “injustice produces unrest so great that the peace and harmony of the world are imperiled.”¹¹¹

The third motivation was economic.¹¹² Due to industrialization, there had been an increase in the number of workers and with no improvement to the prevailing conditions, there was a likelihood of a social upheaval, which could adversely affect business and give competitors an advantage.¹¹³ According to the preamble, any nation that fails to adopt humane conditions for its workers adversely affect nations, which would want to improve their countries.¹¹⁴

Within the UN system, the ILO has a structure that works with workers and employers working as equal partners and the government, working through its governmental organs.¹¹⁵ The underlying objectives of the organization are to promote and realize standards and fundamental principles and rights at work; creating more opportunities for men and women to enjoy better employment and income; enhance the covering and efficiency of the protection of all; strengthen social dialogue and cross-cutting activities.¹¹⁶

The ILO has from its inception been an advocate for the eradication of child labor.¹¹⁷ In the Preamble to its Constitution, the ILO calls for the protection of children

¹⁰⁹ ILO History, *supra* note 106

¹¹⁰ *Id.*

¹¹¹ *Id.* See also ILO CONSTI, preamble.

¹¹² ILO History, *supra* note 106

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Strategic Objectives of the ILO at <http://webfusion.ilo.org/public/db/bureau/program/objectives>

¹¹⁷ INTERNATIONAL LABOR ORGANIZATION, CHILD LABOR AND THE ILO, 1 (1989)

and young persons.¹¹⁸ The ILO's approach has been to document the nature and extent and causes of harmful child labor.¹¹⁹ Also, the ILO adopts conventions that member states are encouraged to sign and implement as law in their countries.¹²⁰ Furthermore, the ILO attempts to formulate and implement practical policies and programs to combat child labor.¹²¹

Convention No. 138 was supplemented by Minimum Age Recommendation 1973 (No. 146), which seeks to define certain policy elements related to child labor.¹²² This recommendation sets a national policy by stating that policy makers should give high priority to meeting the needs of children by extending economic or social measures to alleviate poverty, developing social security and family welfare measures, and ensuring appropriate education and vocational training.¹²³

The ILO has two special procedures to investigate alleged non-observance of ratified conventions. By representations, an industrial association of employers may make a representation that a member state has violated the provisions of a Convention to which it is a party.¹²⁴ Once the ILO Governing Body receives it, a tripartite committee appointed by the Governing Body from among its member states examines such representation.¹²⁵

A member state may also adopt the procedure of filing a complaint against another member state for violating a Convention, which both states have ratified.¹²⁶ The

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 3-4

¹²⁰ *Id.* at 2

¹²¹ *Id.*

¹²² 56 ILO OFFICIAL BULL., No. 1, at 34-37 (1973)

¹²³ *Id.*

¹²⁴ Art. 24, ILO CONSTI.

¹²⁵ *Id.*

¹²⁶ Art. 26, ILO CONSTI

Governing Body may appoint a Commission of Inquiry to look into the complaint.¹²⁷ The Governing Body would also adopt this procedure either of its own motion or by receiving a complaint from a delegate to the International Labor Conference.¹²⁸

1. International Program on the Elimination of Child Labor

In 1999, the International Labor Organization (ILO) and the United Nations teamed up to form the International Program on the Elimination of Child Labor (IPEC). It aims to gradually and progressively eliminate child labor by strengthening national capacities and an international movement to combat it.¹²⁹ IPEC focuses on bonded children laborers and children working under hazardous conditions.¹³⁰

West African countries that have signed a Memorandum of Understanding with IPEC are Benin, Burkina Faso, Ghana, Mali, Nigeria, Senegal and Togo. The countries affiliated with IPEC are Cameroon, Cote d'Ivoire and Gabon.

The ILO Conventions that deal with minimum age has an interesting trend. The earlier conventions, although they seem to apply to everyone, have provisions that specifically reduced the minimum age for some countries. With time the conventions were more universal, however, the more developed countries had higher minimum ages while the developing countries had lower minimum ages or it was left to such countries to decide their minimum age. Below are some of the ILO Conventions relating to child exploitation.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ ILO, *All About IPEC*, available at <http://www.ilo.org/public/english/standards/ipec/about/implementation/ipec.htm>.

2. Convention No. 5 - Minimum Age (Industry) Convention

This Convention was adopted at the first International Labor Conference in 1919 and came into force in June 1921.¹³¹ The Convention was ratified by 72 countries of which 15 countries ratified after its coming into force for ten years.¹³² The first article of the Convention explains what industrial undertaking includes.¹³³ Children under the age of fourteen were not supposed to be engaged in any private or public industrial undertaking except in situations where only members of the same family were employed.¹³⁴ In order to facilitate this provision, employers in industrial undertakings were supposed to keep a register for workers below the age of 16, including their date of births.¹³⁵

However the standard was lowered for Japan where children above the age of 12 were allowed to work if they had finished their elementary school,¹³⁶ and transitional regulations made for children between the ages of 12 and 14 who were already working.¹³⁷ Any law allowing children under 12 to work was to be repealed.¹³⁸ Another surprising provision prohibits children less than 12 years to work in India except in some listed industries.¹³⁹

Sadly, children in India are allowed to be engaged in some industrial undertaking. One is led to question why the different standards. Was it because India was a colony and as a result could not benefit from the protection ILO was giving the world's

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Minimum Age (Industry) Convention, 1919, (No. 5), art.1

¹³⁴ *Id.*, art. 2

¹³⁵ *Id.*, art. 4

¹³⁶ *Id.*, art. 5 § 1(a)

¹³⁷ *Id.*, art. 5 § 1(b)

¹³⁸ *Id.*, art. 5 § 2

children? The Convention was binding on countries that had ratified it,¹⁴⁰ and countries with colonies and protectorates should apply this Convention to countries, which were not self-governing.¹⁴¹

The pioneer convention only concentrated on industrial labor as if that was the only area a child worked. The convention did not make provision for agricultural and other forms of child labor. The convention did not tackle the issue of child exploitation satisfactorily as it focused only on industrial undertaking. Convention No.138 revised this Convention in 1937 by Convention No.59, and later in 1973.

3. Convention No. 138

This Convention represents the most authoritative and comprehensive international definition of minimum age for admission to employment.¹⁴² It is flexible to developing countries in the sense that it gives the ratifying states the obligation to fix a minimum age below which no child is allowed to work.¹⁴³ In general, the minimum age for children to do light work is 13 and in developing countries it is 12.¹⁴⁴ For hazardous work, the general age for children is 18 but 16 under certain strict conditions.¹⁴⁵

Some of the countries, which have its minimum age as 14 are Benin, Togo, Cameroon, Gambia and Togo.¹⁴⁶ Burkina Faso and South Africa have 15 as their minimum age; and Kenya is the only sub-Saharan African country with a minimum age

¹³⁹ *Id.* art. 6

¹⁴⁰ *Id.* art. 10

¹⁴¹ *Id.* art. 8

¹⁴² ILO/IPU, *supra* note 9 at 17

¹⁴³ *Id.*

¹⁴⁴ *See id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 18

of 16.¹⁴⁷ Most of the countries which are receiving countries for child trafficking like Cote d'Ivoire and Gabon have not ratified this Convention, but this does not absolve them from any responsibility of curbing child exploitation in their countries. Although this Convention the minimum age issue, in reality, some of the countries that ratified it have had children below the minimum age being transported to other countries to work. This proves that after the Convention has been passed and ratified, there is no guarantee that the member states will comply with the provisions of the Convention.

4. Declaration on Fundamental Principles and Rights at Work

During the ILO Conference in 1998, the Declaration on Fundamental Principles and Rights at Work was adopted.¹⁴⁸ This Declaration affirmed that all member states of ILO, regardless of their ratification status have an obligation to respect, promote and realize four fundamental rights,

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labor;
- The effective abolition of child labor; and
- The elimination of discrimination in respect of employment and occupation.¹⁴⁹

This means that whether or not a member state of ILO ratifies Conventions Nos. 138 and 182, they are still under an obligation to make their best efforts to abolish child labor, and particularly the worst forms. The Declaration requires non-ratifying countries

¹⁴⁷ *Id.*

¹⁴⁸ Declaration on Fundamental Principles and Rights at Work, 66th Sess., June 1998

of the relevant Conventions to report annually on the changes that have taken place in their law and practice.¹⁵⁰

Once again, despite the good intentions of ILO, this declaration does not seem to be working, because a country like Cote d'Ivoire that did not ratify Convention No. 138 has been the destination of many children under the minimum age to work.

5. Convention No. 182

Convention No. 182¹⁵¹ of the ILO on the worst forms of Child Labor 1999, defines the worst forms of child labor in article 3,

- “all forms of slavery and practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.”¹⁵²
- The use procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances,¹⁵³
- The use, procurement or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties;¹⁵⁴ and

¹⁴⁹ *Id.*, art. 2

¹⁵⁰ ILO/IPU, *supra* note 9 at 21.

¹⁵¹ Convention, No. 182, *supra* note 2

¹⁵² *Id.*, art. 3 (a)

¹⁵³ *Id.*, art. 3 (b)

¹⁵⁴ *Id.*, art. 3 (b)

¹⁵⁴ *Id.*, art. 3 (c)

- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children, such harmful work to be determined by national authorities.¹⁵⁵

Article 4 requires each country to prepare its own list of what constitutes hazardous work. It states that “the types of work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned taking into consideration relevant international standards.” In an ILO brochure it states that because economies, industries, customs and production processes differ from place to place, the types of hazardous work in which children are engaged will differ as well, as will the ways of addressing them.¹⁵⁶ This is quite confusing as what is hazardous to a child in Africa should be hazardous to a child in Europe. If custom is going to play an important factor for governments to decide what is hazardous child work, then there is no need for universality of laws. This provision could be problematic as governments could abuse this privilege and this could end up affecting the children. Of course, with time, this would come to the notice of the monitoring body of ILO but that would be after a considerable number of children’s rights have been violated.

Convention No.182 makes it mandatory for all member states “to take immediate action and effective measures to prohibit and eliminate the worst forms of child labor as a matter of urgency.”¹⁵⁷ Unlike Convention No. 138, Convention No. 182 has no flexibility clauses and makes no distinction between developed

¹⁵⁵ *Id.*, art. 3 (d)

¹⁵⁶ ILO, ELIMINATING THE HAZARDOUS CHILD LABOR STEP BY STEP (2002)

and developing countries.¹⁵⁸ The Convention applies to all children regardless of sex under the age of 18.¹⁵⁹

The essence of this Convention is to eliminate as a matter of urgency certain forms of child labor. This means this convention is not opposed to all forms of child labor but the kind that would be hazardous to the physical, mental and psychological upbringing of the child.

The breakthrough for this convention is that representatives of the governments, employers and workers of all ILO member states represented at the International Labor Conference adopted it unanimously.¹⁶⁰ This is a record for the ILO as it surpassed the rate of ratification in previous records.

Lately, there has been a lot of awareness on children being exploited and engaging in hazardous work, and it is obvious that a lot of work is being done to alleviate this abuse. It is however obvious that it will take a very long time in order for these aims to be achieved.

6. Recommendation No. 190

Recommendation No. 190¹⁶¹ accompanies Convention No.182. It recommends that any definition of hazardous work should include,

- Work which exposes children to physical, psychological and sexual abuse;¹⁶²

¹⁵⁷ Convention No. 182, *supra* note 2 art. 1

¹⁵⁸ *See supra* note 144

¹⁵⁹ Convention No. 182, *supra* note 2, art 2.

¹⁶⁰ ILO/IPU, *supra* note 9 at 29.

¹⁶¹ Recommendation Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, 87th Sess., 1999, (No. 190)

¹⁶² *Id.*, para. 3(a)

- work underground, underwater, at dangerous heights or in confined spaces;¹⁶³
- work with dangerous machinery, equipment and tools or carrying heavy loads;¹⁶⁴
- exposure to hazardous substances, agents or processes, or to temperatures, noise levels or vibrations damaging to health;¹⁶⁵
- work for long hours, night work, and unreasonable confinement to the premises of the employer.¹⁶⁶

The Recommendation recommends that national programs of action should be aimed to prevent and remove the worst forms of child labor, criminalize all forms of slavery and child prostitution and prosecute persons involved in such acts.¹⁶⁷ Also, there was the need for international cooperation between countries facing similar problems in detecting and prosecuting culprits of such criminal offences.¹⁶⁸

Furthermore, the recommendation focuses on the minimum age requirement for employment. The recommendation sets out the uniform minimum age for employment at sixteen and urges lawmakers to take urgent steps to raise the age limit to fifteen in places where the minimum age is presently fifteen.¹⁶⁹

In most of the street children cases they work to pay for their education and in some cases, cater for their families. The work they do is out of necessity and they know that if they do not work they will have to do without schoolbooks or bags or even school

¹⁶³ *Id.*, para. 3(b)

¹⁶⁴ *Id.*, para. 3 (c)

¹⁶⁵ *Id.*, para. 3(d)

¹⁶⁶ *Id.*, para. 3(e)

¹⁶⁷ *Id.*, para 2

¹⁶⁸ *Id.*, para 11

fees. Setting the minimum age at sixteen will thus cause undue hardship to the children and their families. As there is no welfare system in Ghana, the responsibility of taking care of the children is solely on the parents or guardians and they regard the child working to help pay his fees as being in the best interests of the child. In most cases, these children do not work under supervision. They work on their own and work for as long as they want. As there is no government mechanism to monitor these children, it will be very difficult if not impossible for the ILO recommendation to work here.

D. The Organization of African Unity and the African Union

The Organization of African Unity was formed in Addis Ababa in 1963.¹⁷⁰ It started initially with 32 member states but it has 53 member states now, South Africa being the last state to join in 1994.¹⁷¹ Some of the policies of the OAU are to promote the unity and solidarity of African states; cooperation with the member states to achieve a better life for the people of Africa; defend their sovereignty; promote international cooperation, giving due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.¹⁷²

Since the entry into force of the Abuja Treaty establishing the African Economic Community (AEC) in May 1994, the organization has been operating on two legislative instruments and is officially referred to as OAU/AEC.¹⁷³

¹⁶⁹ *Id.*, para. 4

¹⁷⁰ Organization of African Unity (OAU)/African Union (AU) at <http://www.dfa.gov.za/for-relations/multilateral/oau.htm>

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

In an Extraordinary Summit of the OAU held in Sirte, Libya in September 9, 1999, it became apparent for the need for the establishment of an African Union in conformity with the objectives of the OAU Charter and the provisions of the Abuja treaty.¹⁷⁴ The Constitutive Act of the African Union was adopted at the Lome Summit of the OAU ON July 11, 2000.¹⁷⁵ The Union evolved from the OAU to the AU on July 10, 2003¹⁷⁶

One of the objectives of the AU as contained in the Constitutive Act is to promote and protect the rights of the peoples in accordance with the African Charter on Human and Peoples rights¹⁷⁷ and other relevant human rights instruments.¹⁷⁸ The African Charter has some provisions that caters for the wellbeing of the African child, however, another charter was passed that is specifically dedicated to the welfare of the child.

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

The African Children's Charter¹⁷⁹ was adopted in July 1990 after receiving the 15 needed ratifications it came into force on November 29, 1999. The African Children's Charter now guarantees any person below the age of eighteen¹⁸⁰ the inherent right to life,¹⁸¹ health¹⁸² and freedom from all economic exploitation.¹⁸³ It prohibits the death

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ African (Banjul) Charter on Human and Peoples Rights, OAU Doc. CAB/LEG/67/3 Rev. 5, adopted June 27, 1981.

¹⁷⁸ *Id.*, art. 60

¹⁷⁹ African Charter on the Rights and Welfare of the Child, (1990), OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov 29, 1999.

¹⁸⁰ *Id.*, art 2.

¹⁸¹ *Id.* art. 5

¹⁸² *Id.*, art 14

¹⁸³ *Id.*, art 15

penalty for crimes committed¹⁸⁴ and the enlistment of children in armed conflict¹⁸⁵ and the Charter is now binding on the states that ratified the charter. This means the countries that did not ratify are not bound by the Charter and are unaffected by it. That would mean if a country does not want to be bothered by such conventions, all it has to do is to refuse to ratify the convention in question. That way, they would not be held accountable to the Committee. Like the ILO some conventions should be mandatory to members of the AU regardless of their ratification status. The Charter has established a committee of experts to monitor the implementation and ensure the protection of the rights enshrined in the Charter.¹⁸⁶

In article 15 of the charter, it states that every child shall be protected from all forms of economic exploitation and from performing any work which is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral or social development. In article 29 of the charter member states are to take measures to prevent the abduction, sale of, traffic in children for any purpose or in any form, by any person including legal guardians or parents of the child. Article 25 of the charter states that any child who has been permanently or temporarily deprived of a family environment shall be entitled to special protection and assistance.

In spite of the above articles that seem to guarantee the protection of the rights of the child, child trafficking is still rampant in most African countries. Ghana, Nigeria, Cote d'Ivoire and Gabon have not ratified this Charter. Maybe that is the reason why the work of the committee is not seen in these countries. Ratifying the Charter could be beneficial to these countries which have a high case of child trafficking as this Charter is

¹⁸⁴ *Id.*, art 17

¹⁸⁵ *Id.* art. 22

purposely for the African region. Although a significant number of countries have ratified the Charter, the fact that countries that have a high incidence of child trafficking have not ratified makes the Charter useless in these areas, while it could have helped curb the situation.

¹⁸⁶ African Children's Charter, *supra* note 180, art 32

CHAPTER 3

CHILD TRAFFICKING

The trafficking of children is one of the most serious ills affecting children in poor countries. Children and their families are given empty promises of a better life and the children are smuggled across the borders and sold as mere commodities.¹⁸⁷ These children are abused, exposed to hazardous working conditions, denied education, basic healthcare, adequate nutrition, leisure time and the security of a family life.¹⁸⁸ The “scourge “ was highlighted when the Etinero boat carrying West African children who were going to be sold as slaves was intercepted in the Gulf of Guinea.¹⁸⁹ The ship carried 43 children, of which 13 were from Benin, 8 from Togo, 17 from Mali, one from Senegal and one from Guinea.¹⁹⁰

In a report, the escalation of child slavery is as a result of the following reasons:

1. The World’s population has tripled since 1945 with the great number of the people in “Majority World”;
2. Changes in the economy and globalization have drawn rural people to the urban areas and also into debt due to the high cost of living and lack

¹⁸⁷ See CHILD TRAFFICKING IN WEST AFRICA, POLICY RESPONSES, vii (2002)

¹⁸⁸ *Id.*

¹⁸⁹ Kevin Bales, *Going Cheap*, NEW INTERNATIONALIST, Aug. 2001. In April 2001, a ship reported to be carrying 200 enslaved children was refused entry to Gabon and Cameroon.

¹⁹⁰ *New Steps against Human Trafficking in West Africa*, available at http://www.afrol.com/News2001/afr027_human_trafficking.htm.

of jobs. These problems make these impoverished people easy preys to the slave business;

3. Corruption plays a major role in child trafficking as due to the economic problems facing the countries involved in slavery, the law enforcement officers are not well paid so the traffickers bribe them in order to be granted access to the countries of transit or destinations.¹⁹¹

A. Some Factors Leading to Child Trafficking

Two sub regional studies undertaken by UNICEF in 1998 and 2000, examined the factors that lead and contribute to child trafficking in the sub-region.¹⁹² The studies showed that poverty, cultural values and traditional belief systems all work to weaken the protection of children's rights and encourage child trafficking.¹⁹³ Other reasons mentioned as causes of child trafficking constant demand for manual work, high birth rates, porous borders and lack of appropriate legislation.¹⁹⁴ Below are some of the pull factors leading to child trafficking in the sub-region.

1. Poverty

Poverty plays a significant role in the child trafficking business.¹⁹⁵ The children who get these jobs on the plantations send money back home to help the family.¹⁹⁶ This

¹⁹¹ *Id.*

¹⁹² See Samlanchith Chanthavong, *Chocolate and Slavery, Child Labor in Cote d'Ivoire*, available at <http://www.american.edu/TED/chocolate-slave.htm>

¹⁹³ *Id.*

¹⁹⁴ *See id.*

¹⁹⁵ *See, Chocolate and Slavery, supra* note 163.

¹⁹⁶ *Id.*

money is much needed especially in places where a man has many children due to his polygamous nature, most often do not have enough money to feed the household, much more educate the children.¹⁹⁷ Once the child is old enough to fend for himself, he is encouraged to leave home and be a man like his friends. If a boy leaves home and is able to send money home, he or she is highly regarded. This is a contributory factor why the children stay under the harsh conditions.

The preamble of the African Children's Charter states that, "the situation of most African children remains critical due to the unique factors of socio-economic, cultural traditional and developmental circumstances, natural disasters, armed conflict, exploitation and hunger".¹⁹⁸ In most cases the per capita GNP of most African countries is less than one-tenth of average per capita GNP in industrialized countries.¹⁹⁹ In the Human Development Index (HDI) worked out by the UNDP, to measure development in terms of growth of opportunities available to an individual, most African countries were found in the bottom of the list of 160 countries.²⁰⁰ In an optimum rate of 1, few African countries scored 0.5.²⁰¹

"The poorer a family, the more vulnerable it is to events, whether the event is natural, such as plague of locusts, social such as war, personal such as the loss of a relative, or seasonal such as the arrival of the dry season."²⁰² The economic situation is such that the children need to work to supplement what their parents can afford. The parents in most cases send these children out to work hoping that the children can stop

¹⁹⁷ *See id*

¹⁹⁸ African Children's Charter, *supra* note 179, preamble

¹⁹⁹ OAU-UNICEF, *Africa's Children, Africa's Future*, vol. 2, Human Investment Priorities for 1990s, (1997)

²⁰⁰ *See id.*, *See also* UNDP WORLD REPORT ON HUMAN DEVELOPMENT (1992)

²⁰¹ *Id.*

²⁰² *See* Bonnet, *supra* note 80 at 375

working when things ease up financially, but sadly, the economy of such poor families gets worse with time.²⁰³

Due to the bad economy and global recession, governments cannot do much to improve the socio economic livelihood of the poor families. These families due to their low education are the first ones to fall prey to redundancies and salary cuts.²⁰⁴ As the welfare system as practiced in the developed countries is alien to Africa, the families, in order to make ends meet have to let their children go out to work. Some parents also see this as an opportunity to introduce their children at an early stage the benefits of hard work in order to be self-sufficient.²⁰⁵ One could conclude that the parents in this case are acting in the best interest of the child.

2. Education

In 1990, UNESCO, UNICEF, UNDP and the World Bank organized a world conference on Education for All at Jomtien, Thailand. It adopted a World Declaration on Education for All and a Framework for Action to meet Basic Learning Needs.²⁰⁶ This led to an urgent appeal made to all countries to revise their educational systems in conformity to the Declaration.

In a country like Ghana, free compulsory universal basic education is guaranteed in the constitution;²⁰⁷ however, in reality basic education is not free. The argument is that tuition is free and what the children have to pay are the charges necessary for the running of the individual schools. So far, as money has to be paid by the children, it creates a

²⁰³ *See id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

problem as money to cater for three square meals a day is difficult to come by in the deprived areas, and parents would not be happy to part with the little money that they have to pay for fees.²⁰⁸ Another problem is getting school uniform and books. Most children are turned out of school due to their lack of school uniforms, school fees or books.

In the deprived rural areas, some of the schools are far away from the community and this discourages children from attending school.²⁰⁹ They would rather follow their parents to their farms than attend schools, which are miles away from home. Instead of staying home, they would rather find some work to do which is deemed as using their time profitably. Some of the children through hard work dress better and can afford the things most of their colleagues who do not work can afford.²¹⁰ This has been the pull for young ones to abandon school and find some work to do.²¹¹

Most children join the vocational school after the basic education. The vocational school or apprenticeship is not free and sometimes quite expensive. Children see that there is the need to work in order to pay for their apprenticeship, which would ensure them of a regular income after completion and consider them as responsible persons.²¹² Most people resort to the vocational training because they do not see prospects in the area of blue-collar jobs.²¹³ Most of the children in the deprived areas

²⁰⁶ World Declaration on Education for and Framework for Action to Meet Basic Learning Needs, UNICEF, 1990.

²⁰⁷ Art. 25 § 1(a), Ghana Constitution, 1992.

²⁰⁸ See Sub-Regional Seminar on the Abolition of Child Labor and the Improvement of Working Conditions for Children (24-28 Feb., 1992)

²⁰⁹ See Bonnet, see *supra* note 80 at 377

²¹⁰ See *id.*

²¹¹ *Id.*

²¹² See Bonnet, *supra* note 80 at 383-4.

²¹³ *Id.*

cannot afford education beyond the basic education.²¹⁴ This means they end up working at the lower ranks in the civil service, which means that they are not well remunerated.²¹⁵ Those working in the informal sector²¹⁶ like farming, sculpting, fishing, weaving, tailoring, pottery and trading (to name a few) end up doing better financially than those in the civil service and this makes them question the importance of formal education.²¹⁷

A study carried in Cotonou, Benin, in 1990 revealed that the total cost of sending a child of about 12 years for an apprenticeship lasting three to four years amounts to only half the fees needed for technical education schools.²¹⁸ The formal education of the children who are trafficked are generally basic. Most of them have primary education but few have junior or secondary education, and 45% have never been in school.²¹⁹ This shows that children who stay longer in school hardly fall prey to child trafficking.

3. Non- Availability of Vocational Institutes

Another factor is the non- availability of vocational institutes in certain areas.²²⁰ In cases where the students finish the basic education in the rural areas, often than not, it ends their education due to lack of opportunities to further their education.²²¹ As there are not vocational schools where high school graduates can either further their education or learn a trade, they are prone to leave their homes for places where there are more opportunities.

²¹⁴ *See id.*

²¹⁵ *Id.*

²¹⁶ *See id at 385.*

²¹⁷ *Id.*

²¹⁸ *Id at 386.*

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *See id.*

Where such institutes are available, most children in the rural areas cannot afford the high fees and would rather attend the non- formal education whose standards are no match to the formal ones.²²² As scholarships are rare in the rural areas and most of these institutes are privately funded, it leaves the poor student with almost no other option but to forget about continuing their education. In most cases the long distance to these vocational centers makes it unattractive to the students.²²³ In rural areas where vehicles are the preserve of “the rich”, getting to these institutes would mean paying for transportation, which these students consider expensive.

4. Apathy by the Government

Also governments play an integral role in the rise of child trafficking, as despite the influx of trafficked children in most African countries the governments are apathetic to make the necessary laws to deter the culprits.²²⁴ The protection of children’s rights is not a priority for the governments, as they have to be queried by commissions of international organizations before one sees some efforts being made in that direction. Where child trafficking is considered illegal, due to a strain on the resources of these states, the governments lack the law enforcement agencies and judicial systems to fight this menace.²²⁵ A recent study undertaken in Benin showed that lack of family knowledge about what prevailed in neighboring countries was also a major factor in child trafficking.²²⁶ The government could use this information to educate people in the rural

²²² *Id.*

²²³ *Id.*

²²⁴ Trafficking in Children, West and Central Africa, US Department of State, International Information Program at <http://usinfostate.gov/products/pubs/traffick/problem.htm>.

²²⁵ *Id.*

²²⁶ ALAIN ADIHO, LE TRAFFIC DES ENFANTS ENTRE LE BENIN ET LE GABON ESAM AND ANTISLAVERY (1998).

areas about the horrors these children face in the neighboring countries. This might go a long way in deterring parents who believe they are doing their children a favor by allowing them to travel outside their countries to strike it rich.

5. Demand for Workers

The increasing need for paid work in modern West Africa is gradually eroding the traditional values of communities that once placed limits on the abuse of children.²²⁷ According to investigators, more than 30 children cross the Benin-Nigeria border every two months.²²⁸ 95% of the girls trafficked are work as domestic servants, and half of them are under the age of fifteen.²²⁹ Due to the harsh economic conditions in their home countries or villages, and as this has been a trend for young girls in the community to search for opportunities to work outside their home states. It becomes even easier when agents actually come to the villages to recruit these girls.

Child trafficking in the region is as a result of uneven development in sub-Saharan Africa and migratory practices, which has existed in the region for centuries.²³⁰ In most of the bigger cities, there are all the amenities and the trappings that go with the status of a city, but when one travels some few miles away to the rural areas, these places are deprived of the things taken for granted in the cities. Apart from the trans-border trafficking most of the African countries experience internal trafficking where children move from the rural areas to the urban areas where they are exploited.²³¹

²²⁷ BBC News/Africa, West Africa Child Slave Trade, *available at* <http://bbc.co.uk/2/hi/world/africa/412628.htm>

²²⁸ *Id.*

²²⁹ *Id.*

B Internal Child Trafficking

UNICEF, the United Nations Common Fund estimates that there are about 300 million street children in the world.²³² Their ages range between three and eighteen, about 40% are homeless; the other 60% work on the streets to support their families.²³³ These children have increasingly become victims of violence, sexual exploitation, neglect, drug addiction and human rights violations.²³⁴ They live in deplorable conditions and lose their childhood due to the harsh working conditions they have to endure.²³⁵ Despite the misery of street children, street children in a country like Ghana are considered “fortunate” as there is no organized campaign to eliminate them like the street children in Brazil.²³⁶

Ghana is situated in West Africa, near the equator and bounded on the north by Burkina Faso, on the south by the Gulf of Guinea, on the west by Cote d’Ivoire and on the east by the republic of Togo. Formerly a British colony under the name Gold Coast, it was the first country in sub-Saharan Africa to gain independence in 1957. Like most of the other African countries the condition of Ghana has deteriorated after independence, despite its good education system and its rich resources.²³⁷

For decades now, children have been migrating from the rural areas to the cities in search of education and jobs.²³⁸ The situation has gotten out of hand and as in 1999,

²³⁰ See Child Trafficking in West Africa, *supra* note 187, at 2-3

²³¹ *Id.*

²³² ERIC BEAUCHEMIN, THE EXODUS - THE GROWING MIGRATION OF CHILDREN FROM GHANA’S RURAL AREAS TO THE URBAN CENTERS 5, (1999)

²³³ Street Children – Community Children World Wide Library, *available at* http://panagaea.org/street_children/kids.htm.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ Beauchemin, *supra* note 232 at 5.

²³⁷ *Id.* at

²³⁸ *Id.* at 34.

Accra that is the capital of Ghana had 15,000 street children, and Ghana as a whole has about 30,000 street children.²³⁹

Subsistence farming is the main occupation in the rural areas.²⁴⁰ This has its own share of problems due to the land tenure system practiced there.²⁴¹ The rich landowners lease their lands to these farmers for a fee.²⁴² As farming has been plagued by hazards like diseases, drought, floods, and fluctuation in prices, farmers live a miserable life.²⁴³ They spend long hours in the farm and get very little for their efforts. The children of the farmers witnessing this life view migration as the only escape to a better life.²⁴⁴ The reason being that poverty and under development are prevalent in such communities, and the children hear all these stories of having a better life in the cities.²⁴⁵

The government used to subsidize seeds, insecticides and fertilizers but due to poor economic conditions, this has stopped.²⁴⁶ As the farmers cannot afford fertilizers and insecticides, they do not use them and this has affected the harvest. Due to these dreary conditions and the primitive tools that are used to work, these farmers do not have credit and have to manage with their meager resources.²⁴⁷

Life has therefore become very challenging for these farmers who due to their polygamous nature find it very difficult or impossible to meet the educational needs of their many children. The children seeing these dreary conditions prevailing in the agricultural industry do not want to end up like their parents and they consider migrating

²³⁹ BEAUCHEMIN, *supra* note 232.

²⁴⁰ *Id* at 10

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id*

²⁴⁴ *Id* at 11.

²⁴⁵ *See id* at 7.

²⁴⁶ *Id* at 11.

²⁴⁷ *Id.*

to the big city as the way out and making life better for them. Fortunately or unfortunately for them, there are always agents who come to such poor parents promising their children education, vocational training and a trade. Most often the parents cannot provide these benefits so they consider this proposal as a great opportunity for their children to have a better life than them.

According to a report by the International Confederation of Free Trade Unions (ICFTU), child labor remains widespread throughout Ghana.²⁴⁸ Ghana ratified ILO Convention No. 182, the Worst Forms of Child Labor, but has still not ratified ILO Convention 132, the convention on minimum age.²⁴⁹ According to Ghanaian law, the minimum age for a child to work is 15,²⁵⁰ but this law is either disregarded or not known. ILO estimates that about 12% of children aged between the ages of 10-14 are economically active and work in the urban areas.²⁵¹ Furthermore, in 1996, the ILO found out that 80% of child labor in the rural areas in Ghana happened in the family situations.²⁵²

Ghana was the first country to ratify the CRC in 1990. In 1991, the government established the National Action Program that worked at implementing the CRC. This Program played a vital role in including children's rights in the new constitution in 1992. The constitution also established the Commission of Human Rights and Administrative Justice, which deal with human rights including children's rights.

²⁴⁸ Afrol News, *Child Labor Prevails in Ghana*, available at http://www.afrol.com/News2001/gha007_child_labor.htm.

²⁴⁹ *Id.*

²⁵⁰ Children's Act, 1998, Act 560, art. 89.

²⁵¹ See *Child Labor Prevails in Ghana*, *supra* note 248.

²⁵² *Id.*

In 1999, the Children's Act²⁵³ was passed which was passed to meet the recommendations of the Commission of the Rights of the Child. This Act was consistent to the Convention on the Rights of the Child. The Children's Act placed the state to assume the role of a parent to the children who needed care.²⁵⁴ Children who were not treated well by their parents were taken away from their parents and given up for adoption with suitable parents.²⁵⁵

The Act prohibits children under the age of fifteen to work.²⁵⁶ The children who are to work are not supposed to engage in exploitative labor, which deprives them of health, education, or development.²⁵⁷ Regardless of this new Act, which is supposed to save the children from abuse, children's rights are still violated with impunity. However, this time, a lot more people are now aware that children have rights due to the education and publicity given to this Act.

C. External Child Trafficking

Unlike child labor, child trafficking is a complex process of estrangement, abuse and exploitation. The child is initially removed from the protective environment of his/her family where the child is separated from his home, then the child is transported, illegally received and put in a place where he /she will be exploited.²⁵⁸ The rights of the child are violated long before the child starts to work at his new place of business.

²⁵³ Children's Act, 1998, Act 560.

²⁵⁴ *Id.* art. 18.

²⁵⁵ *Id.*

²⁵⁶ *Id.*, art. 89.

²⁵⁷ *Id.*

²⁵⁸ Child Trafficking in West Africa, *supra* note 187 at 7.

Due to the shady nature of external child trafficking, trafficked children are seen as young offenders and find themselves often in conflict with the police and judicial authorities and sometimes are deprived of their liberty.²⁵⁹ Child trafficking is a violation of the right of the child to be “protected from any form of economic exploitation, to preserve family relations and to grow up in a nurturing family environment.”²⁶⁰

The UNICEF Innocenti Research Center has worked with the UNICEF Regional Office for West and Central Africa to identify effective policy solutions in eight countries where external child trafficking thrives.²⁶¹ These countries are Benin, Burkina Faso, Cameroon, Cote d’Ivoire, Gabon, Mali, Nigeria and Togo.²⁶² There are two main trade routes; one is from Mali through Burkina Faso and to Cote d’Ivoire.²⁶³ The other is from Togo and Benin through Nigeria and Cameroon to Gabon.²⁶⁴ The countries are divided into three groups, which are countries of origin, countries of transit and countries of destination.²⁶⁵

Prior to the Libreville Consultation in 2000,²⁶⁶ awareness on child trafficking was minimal at the national level.²⁶⁷ The Libreville Consultation highlighted on the hardships that the children face during their exploitation and the need for collaboration between the countries in the region to fight this menace.²⁶⁸ This was due to the fact that the issue of

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *See* Child Trafficking in West Africa, *supra* note 187 at ix.

²⁶² *Id.*

²⁶³ *Id.* at 6.

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 5

²⁶⁶ In early 2000, senior government officials from across the region met in Gabon to adopt the Libreville Common Platform for Action, pledging to act against child trafficking.

²⁶⁷ Child Trafficking in West Africa, *supra* note 187 at 4.

²⁶⁸ The Libreville Platform for Action proposed seven strategies to fight child trafficking. They are:

1. Advocacy and awareness-raising efforts to reinforce social regulation mechanisms within communities.
2. Establishment of an appropriate legal and institutional framework.

child trafficking was not backed by qualitative research in child trafficking flows, its causes, and destinations and how the children were treated.²⁶⁹

One of the recent initiatives is when the West African cocoa producing countries, the Chocolate Manufacturers Association and other cocoa industry stakeholders signed an agreement in May 2003 to prevent the use of children on the farms.²⁷⁰ The memorandum of cooperation drafted with the ILO and the US Agency for International Development (USAID) states that,

“By 1 July, 2005, the industry in partnership with other major stakeholders will develop and implement credible, mutually-acceptable, voluntary, industry wide standards of public certification, consistent with applicable federal law that cocoa beans and their derivative products have been grown and/or processed without any of the worst forms of child labor.”²⁷¹

However, the cocoa industry is not the only place child exploitation and child labor is practiced. Sexual trade, mining, wholesale and retail trade, construction and manufacturing, restaurant and hotels and domestic work are areas where children are frequently exploited.²⁷² A focus on the cocoa industry would therefore not solve the problem but would drastically reduce it.

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3. Improved care for child trafficking victims.
 4. Enhanced knowledge about, and monitoring of, child trafficking through de-centralized and flexible mechanisms.
 5. Strengthening of cooperation between governments and different countries.
 6. Strengthening of cooperation between government ministries.
 7. Ensuring implementation and follow-up.

²⁶⁹ See *supra* note 286

²⁷⁰ WEST AFRICA: Focus on Efforts against Child Labor available at <http://www.irinnews.org/report.asp?ReportID>

²⁷¹ *Id.*

²⁷² See *id.*

In Cote d'Ivoire, the authorities have instituted urban associations (*equipe d'action socio-educative en milieu ouvert* EASEMO) whose main aim is to clear the streets of child laborers.²⁷³

1. Trafficking of Girls

The ILO declared in the year 2000 that there would be 378,000 children in active labor, 174,000 girls and 204,000 boys.²⁷⁴ Most of the girls trafficked were for domestic purposes, and this was done with the help of an employer or an intermediary who, in most cases than not, had affiliation with the girl's family.²⁷⁵ Some parents have been found to condone this act as they accept money from the intermediaries²⁷⁶ when they promise the children education and work abroad. Most of these girls from Togo are often taken to Nigeria or Gabon where they work as housekeepers. The journey to their final destinations is not pleasant as these girls are often left on their own to fend for themselves.²⁷⁷

When they arrive at their destinations, the girls are taken to their new homes where they work as housemaids or sell in the markets.²⁷⁸ These children are subject to sexual abuse, harassment, and other forms of mistreatment by their employers.²⁷⁹

²⁷³ *Id.*

²⁷⁴ ILO, International Labor Organization, Bureau of Statistics, Economically Active Population 1950 – 2010, STAT Working Paper, (1997).

²⁷⁵ Human Rights Watch, *Child Trafficking in Togo* at http://hrw.org/reports/2003/togo0403/togo0303.htm#P103_4323

²⁷⁶ *Id.*

²⁷⁷ *Id.* Some of these journeys lead to death as in one case the boat transporting girls to Cameroon capsized and nine girls lost their lives as a result.

²⁷⁸ *See id.*

2. Countries of Origin

The countries of origin are very poor countries with very low GDP and very low socio-economic facilities.²⁸⁰ For the two trade routes the countries of origin are Mali, Togo and Benin.²⁸¹ In these countries, there is the awareness that their children move to other neighboring countries to work.²⁸² In September 1998, a private Abidjan newspaper, reported that there was widespread importing and indenturing Malian boys for fieldwork on Ivorian plantations under abusive conditions.²⁸³ Children from Benin were also taken to Nigeria, Gabon, Cameroon and Cote d'Ivoire and sold into servitude as prostitutes, housemaids and farm laborers.²⁸⁴

According to a UNICEF study, approximately 15,000 Malian children were trafficked and sold into indentured slavery in 2000.²⁸⁵ Since 1999, the government has prosecuted at least 22 traffickers and has repatriated approximately 3,000 foreign trafficked children.²⁸⁶ There have been reports about children as young as six years old were found working as laborers on Ivorian plantations or as domestic maids.²⁸⁷ Other sources of child labor are Burkina Faso, Ghana and Togo.²⁸⁸

²⁷⁹ US Dept of State, *Country Report on Human Rights Practices – 2001* (March, 2002)

²⁸⁰ *See id.* at 5-6.

²⁸¹ *Id.*

²⁸² *See id.*

²⁸³ US Dept. of State, *Country Reports on Human Rights Practices – 1999* (February 2000).

²⁸⁴ *Id.*

²⁸⁵ US Dept. of State, *Country Reports on Human Rights Practices – 2000* (February 2001)

²⁸⁶ US Dept. of State, *Country Reports on Human Rights Practices – 2000* (July 2001)

²⁸⁷ *Id.*

3. Transit Countries

These countries are not directly involved in the child trafficking but their countries are used to pass through to the countries of destination.²⁸⁹ “Transit countries are more likely to perceive trafficking as a non-national issue and this is a major obstacle to the control of national borders and coastlines.”²⁹⁰ These countries are not too keen to stop this exodus because they don’t perceive it as a national issue and it would cost a lot of money trying to monitor the roads and return the children to their countries. The transit countries in the two trade routes are Burkina Faso, Nigeria and Cameroon.²⁹¹

The Protocol of the CRC on the sale of the children, child prostitution and child pornography gives a broad definition of the sale of children that covers many constituents of child trafficking.²⁹² This makes it possible to prosecute intermediaries as well as employers.

4. Countries of Destination

The countries of destinations are Gabon for the oil rich fields and Cote d’Ivoire for the large cocoa plantations.²⁹³ Due to the oil and cocoa business that thrives in these countries, there is a large market for children who are exploited to work in these countries.²⁹⁴ These countries are reluctant to stop the influx of these children because their business will suffer greatly and they would have to pay more money if the children

²⁸⁸ *Id.*

²⁸⁹ *See* Child Trafficking in West Africa, *supra* note 187 at 5.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *See* Optional Protocol

²⁹³ *See* Child Trafficking in West Africa, *supra* note 187 at 5-6

²⁹⁴ *Id.*

leave.²⁹⁵ Countries of destination are nonchalant as the problem originates from another country, and does not concern their children.²⁹⁶

In Cote d'Ivoire for example, there has been the need for the use of child laborers due to the nosedive of the cocoa prices and as a result the World Bank is threatening an end to the State marketing monopoly.²⁹⁷ Cote d'Ivoire is the world's number one exporter of cocoa and produces half the world's cocoa.²⁹⁸

D. Recommendations by the CRC Committee

The Committee on the Rights of the Child is the body that monitors how well states are meeting their obligations under the Convention on the Rights of the Child.²⁹⁹ When states ratify the CRC they bound themselves to the provisions of the Covenant. As there is the tendency to slack after the Convention has been ratified it is mandatory for the signatories to submit reports periodically to the Commission on the Rights of the Child. This report is to show the Commission how the rights under the CRC are being implemented.

The State parties are initially to report two years after joining and afterwards, every five years.³⁰⁰ Furthermore, the Committee also receives human rights reports from other sources like non-governmental agencies, other intergovernmental organizations,

²⁹⁵ *See id.*

²⁹⁶ *Id.*

²⁹⁷ Bale, *supra* note 203.

²⁹⁸ *Id.*

²⁹⁹ Children's Convention, *supra* note 1, art. 42

³⁰⁰ *Id.* at art. 44

UN agencies, academic institutions and the press.³⁰¹The Committee, after receiving all these reports, examines them with representatives of the government.³⁰² The Committee then publishes its “concerns and recommendations,” referred to as “concluding observations” based on the dialogue.³⁰³

The Committee was deeply concerned at the huge number of children trafficked for the purpose of exploitation in Cote d’Ivoire’s agricultural, mining, and domestic service sectors and other forms of exploitation.³⁰⁴

The Committee recommended that the State party should ratify and implement ILO Convention (No. 138) on the Minimum Age for Admission to Employment and ILO Convention (NO. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor.³⁰⁵ Two years after this recommendation was made, Cote d’Ivoire has still not ratified these conventions.

Although the Committee appreciated the efforts being made by the State party with Mali in their bilateral agreement, the Committee encouraged the State party to enter such agreements with the concerned states.³⁰⁶The Committee further recommended that measures used to combat child trafficking should be taken on an urgent basis, including awareness raising campaign and educational programs.³⁰⁷

In the Concluding Observations of the Committee of the Rights of the Child for Ghana, in paragraph 19, the Committee was concerned by the increase in the number of

³⁰¹ Outline of day of discussion on the rights of the indigenous children, Committee on the Rights of the Child, available at <http://193.194.138.190/html/menu2/6/crc>.

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ Para. 55, Concluding Observations of the Committee on the Rights of the Child: Cote d’Ivoire, CRC/C/Add.155 (July 9, 2001).

³⁰⁵ Concluding Observations of the Committee on the Rights of the Child: Cote d’Ivoire, CRC/C/15/Add.155, para. 54 (9 July 2001).

³⁰⁶ *Id.* at para. 56.

street children living and/or working on the streets of major cities and was worried about the violence meted out to these children.³⁰⁸ It states that the State party should be encouraged to undertake prevention and combat of the phenomenon of children working and/or living on the street by engaging in research and collection of data, promoting integration and vocational training programs as well as guaranteeing equal access to health and social services.³⁰⁹

In the same report, the Committee noted that Ghana was facing economic difficulties due to the Structural Adjustment Program. In the above recommendation the State Party is to find funds to prevent and combat the menace of street children. As the State party ratified the Convention, the country is expected to ensure that the provisions of the Convention are implemented.³¹⁰

The State party was to give specific attention to monitoring the full implementation of labor laws in order to protect children from being economically exploited.³¹¹ The Committee further suggested that Ghana should ratify the ILO Convention No. 138 on minimum age for employment, and adopt explicit legislation and measures to protect children from exploitation and child labor in the informal sector.³¹² Six years after this recommendation was given, Ghana has still not ratified ILO Convention No. 138.

Another reason why most children are trafficked is due to the fact that they cannot afford school fees and tuition to stay in school. In the Constitution of Ghana, 1992, free

³⁰⁷ *Id.*

³⁰⁸ Concluding Observations of the Rights of the Child: Ghana, CRC//C/15/Add.73 (Concluding Observations/Comments) (June 18, 1997)

³⁰⁹ *Id.* at para. 19

³¹⁰ *Id.* at para 6.

³¹¹ *Id.* at para. 45.

³¹² *Id.* In 1998, the new Children's Act was passed as law and it answers the recommendation in para 45

compulsory universal basic education is guaranteed but this is not the reality on the ground in the schools. In articles 28 and 29 of CRC, with regard to the right to education, the Committee noted that this has not been implemented throughout the country.³¹³The Committee also noted with concern the high level of drop out rates and the low level of school enrolment, the lack of learning and teaching facilities and shortage of trained teachers.³¹⁴ The situation has improved considerably since 1997 as more children are going to school and most children attribute this to the funds they make from trading on the streets.³¹⁵

The Committee in the Observations report suggested that in order for the State party to make education free and compulsory and available to all, the government should take measures to improve school enrolment.³¹⁶The Committee further suggested that the State party could consider requesting further international cooperation for the implementation of the measures identified for the application of the provisions relating to education in the Convention.³¹⁷

The Committee also recommended that priority should be given in budget allocations to the realization of the economic, social and cultural rights of children.³¹⁸ The Committee also suggests that the authorities responsible for the overall planning and budgeting continue to be fully involved in the activities of the Ghana National Commission of Children.³¹⁹

³¹³*Id.* at para. 22

³¹⁴ *Id.*

³¹⁵ See Education in Ghana, available at <http://www.ghanaweb.com/GhanaHomePage/education/index.html>

³¹⁶ Concluding Observations-Ghana, *supra* note 308 at 43.

³¹⁷ *Id.*

³¹⁸ *Id.* at para. 31

³¹⁹ *Id.*, The Ghana National Commission on Children is now defunct. It has been taken over by the Ministry of Women and Children's Affairs.

CHAPTER 4

COMBATING CHILD TRAFFICKING

A. National Plans of Action

The National Plan of Action (NPA) focuses on national realities as it can create a deeper understanding “of the national trafficking picture and ensures a comprehensive action needed to address the causes while assisting the victims”.³²⁰ This is effective in cases where the trafficking is internal. In external trafficking, the risk involved in the NPA is that there is the tendency to think that enough is being done to combat the problem, which leads to the intercountry dimension being overlooked.³²¹ The NPA may show positive short term, but if the problem were a cross-country problem, it would not be solved if the country does it alone.³²² As child trafficking is a chain of events, which takes place in a number of places, it would be prudent for the NPA to be combined with Intercountry Cooperation Agreements (ICA).³²³

Furthermore, the NPA could pose a problem to the implementation of ICA, as a country would implement its NPA compatible to the needs of its people.³²⁴ This would not be compatible to an ICA and a nation that has an NPA working well would not want

³²⁰ Trafficking in West Africa, *supra* note 187 at 9.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

to implement a different procedure.³²⁵The development of an ICA would need a compromise of the state parties involved to work together and find the right approach and practice that will be suitable for all.³²⁶

Mali is the only country that has adopted an NPA to fight child trafficking. Burkina Faso and Cote d'Ivoire have draft NPAs for child trafficking.³²⁷ Cameroon, Gabon and Nigeria have draft plans as components of Action against Child Labor and Benin has no NPA.³²⁸

In Ghana, the National Task Force on Trafficking in Persons is proposing a Human Trafficking Prevention Bill in relation to UN and ECOWAS position on this issue.³²⁹

B. Inter-country Cooperation Agreements

Intercountry Agreements are based on common obligations by the affected countries. Firstly, the countries should have strategies that should be implemented on the national level and secondly, joint actions that should be taken by these countries bound by the Agreement.

On September 1, 2000, the governments of Cote d'Ivoire and Mali signed a Cooperation Agreement on combating trans-border trafficking of children.³³⁰This Agreement was signed under the auspices of UNICEF and in the presence of NGOs

³²⁴ *Id* at 10.

³²⁵ *Id.*

³²⁶ *See id.*

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ Taskforce Meet on Human Trafficking Bill, available at <http://ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=46942>

committed to the eradication of child trafficking.³³¹ This kind of bilateral Agreement was the first of its kind in West and Central Africa to establish formal procedures for cooperation against child trafficking.³³²

The two main principles of the agreement were the best interests of the child in all circumstances, in line with the CRC, and the definition of minimum standards.³³³ It broadly defines trafficking as,

*“the entire process whereby a child is displaced inside or outside a country under circumstances which transform him or her into a marketable commodity for at least one of the of the attendant adults whatever the purpose of the displacement of the child; any act involving the recruitment, transportation, receipt or sale of a child; any act causing the displacement of a child inside or outside a country.”*³³⁴

The Agreement is based on complementary responsibility and the two types of obligations, which arise, are parallel measures and strategies to be implemented at national level and actions to be taken jointly.³³⁵

In the Agreement, the country of origin has the obligation to prevent the trafficking and to ensure that child trafficking victims are reunited with their families.³³⁶ In this case that would mean Mali is the country that is to ensure the prevention of child trafficking and the reintegration to their families.

Also, the country of destination has to protect child trafficking victims without discrimination, by ensuring that they receive the care that they need and that they are repatriated and full rehabilitation is guaranteed for the victims by recognizing their right

³³⁰ *Id.* at 11.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*

³³⁴ Cooperation Agreement reprinted in *id.*

³³⁵ Child Trafficking in West Africa, *supra* note 201 at 11.

³³⁶ *Id.*

to compensation.³³⁷ Again, Cote d'Ivoire has to ensure full rehabilitation. That would mean psychological, emotional and physical rehabilitation and pay compensation to the victims. That means if the Agreement is followed religiously, Cote d'Ivoire would not want a situation where there would be trafficked children in the country as it would be a great drain on the resources of the country.

The countries also have to document and monitor child-trafficking practices within the national territory and organize and facilitate the repatriation of children within national territory in association with other bodies.³³⁸ The States according to an arrangement suitable to them would share the financial burdens for the repatriation of the children.³³⁹

In May 2002, fifteen children from Benin were repatriated home, four years after being brought to Cote d'Ivoire to work as child laborers.³⁴⁰ The children aged between 11 and 18 were working as laborers in coffee and cocoa farms, street vendors, domestic hands and helpers on construction sites.³⁴¹ They were promised about U.S.\$1,600 for four years of work but they rather got \$70, which impelled them to run away but the Ivorian police, who informed the embassy of Benin in Cote d'Ivoire, apprehended them.³⁴² They were subsequently repatriated to Benin.³⁴³

³³⁷ *Id.*

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ All African News, *Child Laborers Repatriated Home* (May 15, 2002), available at <http://allafrican.com/stories/200205150669.html>.

³⁴¹ *Id.*

³⁴² *Id.*

C. Recommendations by Human Rights Watch

In order to combat child exploitation, the Human Rights Watch, a non-profit organization recommends that all governments who have not yet ratified the ILO 182 Convention on the Worst Forms of Child Labor and ensure that their national laws are consistent with the Convention and the Recommendation 190.³⁴⁴ National laws should prohibit all persons under the age of 18 from using dangerous tools, from hauling heavy loads, from working long hours, from handling pesticides and from being exposed to pesticides in the workplace.³⁴⁵

Human Rights Watch further recommends that measures should be taken to ensure the effective implementation of the ILO regulation.³⁴⁶ The measures should include resources allocated to provide sufficient labor inspectors to monitor child labor in agriculture.³⁴⁷

Governments are also recommended to have a comprehensive survey to determine the number of children involved in the agricultural sector, the number and nature of injuries and illnesses suffered by these children, disaggregating by sex and age.³⁴⁸ The nation states should ensure that basic education is free and compulsory for all.³⁴⁹ Fees for

³⁴³ *Id.*

³⁴⁴ Human Rights Watch, *Backgrounder: Child Labor in Agriculture*, HRW World Report, 2002, available at <http://hrw.org/backgrounder/crp/back0610.htm>.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

books and uniforms must be waived and children who cannot afford should have scholarship programs to assist them.³⁵⁰

The implementation of this recommendation is going to be difficult if not impossible. Most of the sources of child exploitation are rural areas where families are extremely poor. This would mean a whole village would have children who cannot afford school. If most of the villages in the deprived areas have to be sponsored by the government, then it would take a government that is financially sound to be able to take this burden. Once again, most of these countries where child exploitation is prevalent do not have the resources to make this feasible.

HRW also recommends that corporations, which employ child workers, should provide adequate support to the children as espoused in the ILO Minimum Age Convention to attend school or find an alternative in place of work.³⁵¹ This would also prove problematic due to the high unemployment rate in these countries. Due to the unavailability of jobs, the supervisors or the heads of the corporations tend to abuse these children as they consider them lucky to have a job. Once demands are made on the corporation, the children are allowed to go and replacements are found immediately. Due to this, violations against the rights of the children are silently endured in order to keep their jobs.

³⁵⁰ *Id.*

³⁵¹ *Id.*

CHAPTER 5

CONCLUSION

A positive outcome seems unlikely in a sub-region that has long known abject poverty, non- recognition and violation of children's rights, but it is not impossible. A lot depends on the determination and diligence of the leaders in the region. To suppose that a better future may triumph over the past may be an illusion; but if this is possible, then the security and law enforcement agencies must be actively involved.

No doubt there are enough international conventions that address the child trafficking problem in West Africa, but the problem still persists in countries that have ratified these conventions. The problem is that the conventions rely on the nation states to report to the Commissions about their implementation efforts. These are the very nation states that have previously neglected their duties to protect the children in their countries. They can always find all sorts of excuses to explain why the convention is not really working.

Furthermore, the Commissions of CRC and ILO do not really sanction countries that do not fully implement these conventions. Fact is, they cannot force countries that have a huge problem of child trafficking to ratify these conventions and even when these conventions are ratified, they are unable to stop the reservations that follow.

The crux of the matter is how to stop younger children from migrating from either the rural areas to the urban cities or from their home country to the destination countries. The government states have to align national legislation to the international Conventions ratified. Legislations have to be passed in accordance to the provisions in the Convention ratified; most countries do not have specific laws against child trafficking and migration. For internal child trafficking the legislative bodies of the home country should make the necessary laws which would make it extremely difficult for children to cross one regional border to the next one. Children under the age of fourteen should have documents that verify their age in their possession.

In order to curb this incursion of children moving from their homes to workplaces where these children are possibly exploited, stringent measures have to be taken. In Ghana, the Ministry of Social Welfare should compile the details of all children and identification cards issued. Children moving from one border to another have to show documents to prove their identity and their age, their destination and the reason for their journey. This would be like the visa system but be used locally.

Due to the high corruption rate in most West African countries, there is always the possibility of forged documents being presented by these children but in situations where the children voluntarily migrate to the urban areas, it would be difficult for such children to get fake documents as they always come at a high price. The problem however would be with the children who have agents who could possibly afford and actually get fake documents.

Another hitch which might undermine this process is the possibility of some of the children not having birth certificates as some children are delivered at home by

community or traditional mid-wives, and after birth the parents do not go to the Births and Deaths Registry as they do not want to part with money. As there are ways in determining one's age, the Children's Ministry should endeavor to investigate the real ages of the children and issue them with a form of identification showing their ages.

This new law should apply not only in the internal borders of a country but the external borders of the sub-region. For external trafficking, this program should be under the direction of ECOWAS (Economic Community of West African States). ECOWAS should have inspectors who will go the places where children normally work and return children who work in the urban areas back to their homes when they violate the new law. Furthermore, there should be trafficking inspectors at the regional borders to check the documents of the children crossing the borders. These trafficking officers should have the powers to arrest any culprits or detain any suspicious people for further interrogation.

Some of these children voluntarily move to the urban areas to work because despite the harsh conditions they face, some consider it better than staying in the rural areas with no opportunities of a better life. Most of these children have finished with their basic education, yet there are no industries to generate jobs in their communities. One begins to wonder if the children are better off at home wasting their time and talent, or staying in working conditions where they are exploited. However, most children would choose to leave home as they see the possibility of having a better life than their parents.

Members of Parliament also need to ensure that sufficient funds and mechanisms necessary for the implementation of the legislation are available. That would mean all sectors that could play a vital role in the protection of the child should be consulted in order to know how much is needed for them to achieve this goal. The Police

Service, the Immigration Service, Customs and Excise Service, the Prison Service, key non-governmental agencies who deal with children's rights, the Ministry of Justice of member states are organizations that could play a vital role in the protection of children's rights.

The West African governments must ensure that there are adequate laws that would protect children from exploitation. Countries like Cote d'Ivoire, which have not ratified the ILO Convention No. 132, should ratify it as the first step. As a follow up, labor laws should be promulgated with provisions that prescribe the minimum age for particular jobs and laws governing apprenticeship.

Military laws should endeavor that persons under the age of 18 are not recruited or used in armed conflict. Criminal laws should prohibit all forms of child slavery, the sale and trafficking of children, forced or compulsory labor, the use and procurement of children for illicit sexual and drug related activities. There should be strict punishments in order to deter such crimes

Legislation is meaningless if it cannot be enforced. After the relevant laws have been passed, the government should ensure that the necessary mechanisms are in place to make implementation of such laws a reality. In most of these West African countries, the police force is in a bad state, it is no wonder that the system is so corrupt. The police are poorly paid and equipments like mobile phones, cars and computers necessary to make their work effective are denied them. This makes them ineffective in their job and susceptible to receiving bribes in order to allow culprits to go free. The same applies to the Prison Service, the Immigration Service and Customs Service. The ILO suggests that parliamentarians should oversee adequate programs in place to combat the worst forms of

child labor especially in preventing and removing children from the worst forms of child labor; allocating income support for the children withdrawn from the worst forms of child labor; access to free basic education.

The rights of children are not taken seriously in African countries. The focus has always been on how to make the adults happy. This is no surprise as it is the adults and not the children who vote governments in or out of power. This suggestion would be difficult for the parliamentarians to achieve, as most of the countries we are referring to be extremely poor and the idea of supporting children who have been withdrawn from exploitative work are impossible. In a British Broadcasting Corporation report where children from Mali were returned from Cote d'Ivoire, there was no indication that the children were recompensed as stipulated in the Bilateral Agreement between Mali and Cote d'Ivoire.

Recently, there has been gross and flagrant violations and disrespect of the by some of the richer industrialized countries that has sorely tested the authority of international organizations like the UN. This attitude could cause serious repercussions as it now looks like the richer countries can flaunt the conventions while the poor countries are coerced into obeying them.

The ideals of the international conventions that are supposed to protect children are laudable and have created the necessary awareness to some extent that children are persons who have rights and should be protected by the government, the parents and all those who play a significant role in the lives of the children. However, if the issue of poverty is not tackled in the poorer countries, these conventions will have very little impact on the children they are supposed to protect. Poverty plays an integral role for

children being exploited in West Africa. The question of poverty must be tackled once and for all or else there is no way the least developed countries could meet the standards as enshrined in the international covenants as the developed countries.

The International Covenant on Economic, Social, and Cultural Rights states in the preamble that “recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created where everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights”. If these international organizations could not guarantee the rights to health, education, fair wages as enshrined in the Covenant of Economic, Social and Cultural Rights, how then can they possibly guarantee the rights of the child in West Africa.

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