

EXPLORING POLICY ISSUES ON THE TRAFFICKING OF WOMEN IN SOUTHERN AFRICA WITH REFERENCE TO ZIMBABWE

Tawanda Ray Bvirindi

Centre for Africa Studies
University of the Free State, South Africa
tbvilaz@gmail.com

Nigel Mxolisi Landa

Nehanda Centre for Gender and Cultural Studies
Great Zimbabwe University, Zimbabwe
nlanda@gzu.ac.zw

ABSTRACT

Following the socio-economic and political problems that ensued after the Fast Track Land Reform Programme (FTLRP) in Zimbabwe, instances of human trafficking previously unseen on a large scale have sparked a newfound interest among policy makers and researchers. This article examines the flawed system provided by the Zimbabwean Trafficking in Persons Act No. 4 of 2014 for the protection of victims of human trafficking. It argues that the “Palermo Protocol”—the international instrument against all trafficking in persons is well-equipped to assume greater responsibility in ensuring the protection of victims. Although the Palermo Protocol is a universal protocol; which should be contextualised to suit various scenarios in which trafficking occurs across the globe, it may still be reasonably interpreted as providing the core principles which are vital to the protection of vulnerable populations from trafficking. Over the long haul, a new Zimbabwean Act, re-aligned with the Palermo Protocol, yet flexible, anti-trafficking partnerships between the government, Non-governmental Organisations and Civil Society remain the most viable solutions to addressing this predicament.

Keywords: civil society organizations; Palermo Protocol; policy; trafficking



INTRODUCTION

The reality of human trafficking is, despite any romantic insinuations to the contrary, widely accepted as being mostly harsh, difficult and imaginably most importantly dangerous. It is mainly for these reasons that an unpretentious perception of the need to form partnerships has tended to characterize the interactions of Civil Society Organisations (CSOs), the Non-Governmental Organisations (NGOs) and governments when confronted with perilous situations experienced by vulnerable populations, especially women and children. Given the harsh realities of human trafficking, giving help to the victims becomes a humanitarian issue. Helping and protecting the victims of trafficking, however, becomes difficult; given the financial costs and legal issues, which might arise after giving help and protecting the victims. This is regardless of the fact that organisations such as the International Organisation for Migration (IOM) exist to advance the interests of victims of human trafficking; especially the most vulnerable. In addition to the work that IOM does, a number of international Conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) empower the IOM to execute its duties. In the African region, such instruments the African Charter on Human and Peoples Rights (ACHPR), the SADC 10 Year Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (SADC Plan). However, as is often the case, considerations concerning the wellbeing of the victims of trafficking in need of help are often given only insufficient attention by law enforcement agencies and responsible government departments such as the Department of Social Welfare in Zimbabwe. Needless to say, recent examples of Zimbabwean women trafficked and in need of assistance in Kuwait¹ have tended to illustrate this situation of neglect and unpreparedness on the part of government, which is characterised by a lack of co-ordination and harmony between international instruments, aimed at protecting victims of trafficking as well as the interpolations in the domestic instruments, aimed at assisting victims of human trafficking. The inertia of the Zimbabwean government to make rescue efforts, for instance, has been highly criticised in the media as amounting to neglect and having exposed the lives of the victims of trafficking to risk—hence, more are suffering in the hands of the traffickers. One of the disturbing aspects of this neglect is the increase in incidents of trafficking; both regionally and internationally of Zimbabweans (notably young women), with little-concerted efforts made to stop the trafficking, despite the fact that this endangers human life.

The article pays attention to the international legal framework which supports anti-trafficking in persons; particularly the Palermo Protocol, in its attempt to find solutions to the scourge of the trafficking of young women in Zimbabwe. The Palermo Protocol does not, however, exist in a vacuum—other relevant rules and principles of general regional and domestic anti-trafficking laws must be taken into consideration; such as the SADC 10 Year Strategic Plan of Action on Combating Trafficking in Persons,

especially Women and Children (SADC Plan), the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (Ouagadougou Plan), the Economic Community of West African States' Declaration on the Fight against Trafficking in Persons (ECOWAS Declaration), as well as the Trafficking in Persons Act in Zimbabwe. In other words, related international and regional instruments and initiatives, with a focus on protecting people from the scourge of trafficking (should the necessity arise) must be considered. These are:

- the Protocol against the Smuggling of Migrants by Land, Sea and Air (Migrant Smuggling Protocol)
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention)
- the Convention on the Rights of the Child (CRC)
- the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC)
- the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OPCC)
- the ILO's Forced Labour Conventions and the Minimum Age Convention, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- the Council of Europe Convention on Action against Trafficking in Human Beings (European Convention)
- the Inter-American Convention on International Trafficking in Minors (Inter-American Convention),
- the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (Ouagadougou Plan)
- as well as other areas of law which may be applicable.

Therefore, this article seeks to provide a solution to the problem of trafficking in Zimbabwe by critiquing the Trafficking in Persons Act in Zimbabwe, and suggesting possible solutions to the weaknesses by employing relevant norms of international anti-trafficking as a means of ensuring that greater consideration is paid to humanitarian concerns inherent in the failure to robustly protect victims of human trafficking.

CONTEXTUALIZING HUMAN TRAFFICKING

Trafficking in persons and the humanitarian issues associated with such a crime such as torture, forced labour and forced prostitution have regrettably established a pedigree in modern history. The phrase "the 21st Century slavery", which refers to human trafficking, was coined in order to describe the gruesome nature of human trafficking,

which is akin to slavery of the 18th to 19th century (King 2007). Trafficking of women for prostitution in Africa dates back to the 19th century during the diamond rush in South Africa around 1871 when an 83.50 carat (16.5g) diamond (Roberts 1976) was discovered, as well as the trafficking of white women for sexual exploitation in Muslim Harems in the Middle East; in what was referred to as “white slavery” (Doezema 2000). Human trafficking has become even more conspicuous in the 21st century, with advanced transportation and communication systems (Deer 2010; Gallagher 2010; Howard 2009). Since the turn of the millennium trafficking has become a billion-dollar industry, which has seen a lot of people being trafficked for sexual and labour exploitation, and in some instances, organ trafficking (Kreston 2007; Shelley 2010). Thousands of women, for example, have been trafficked across the United States border from Mexico for sexual exploitation (US Department of State Trafficking in Persons Report 2006 (2006)). Dozens others have also been trafficked to be killed and have their organs sold on the black market in the Sinai region (van Reisen, Estefanos and Rijken, 2012). Southern Africa has not been spared of this horrendous act. Kusemwa (2017) for instance, notes that there is an increase in the number of reported cases of Zimbabwean young women who have been trafficked to the Middle East; notably Kuwait and the United Arab Emirates for domestic servitude and sexual exploitation. This is in spite of the fact that international, regional and national legal tools exist to combat this multi-billion dollar criminal enterprise. A closer analysis of the one key instrument to combat human trafficking—the Palermo Protocol, is imperative if local solutions to this challenge are to be meaningful and effective.

THE PALERMO PROTOCOL

Under the Palermo Protocol, the obligation of the contracting state responsible include criminalisation, investigation and prosecution; protection of victims of trafficking and prevention and cooperation. The main aim of these obligations is to combat the scourge of human trafficking. This is even the case when dealing with women and children who are more susceptible to trafficking. Needless to say, a situation where the victims of human trafficking are not repatriated, and perpetrators of this crime are not brought to the book, following traumatic trafficking experiences, is undesirable, to say the least. Given that the Zimbabwean Trafficking in Persons Act No. 4 of 2014 and the initiatives that have been made by the government to protect the victims of trafficking do not seem to provide the protection needed, as well as the criminalisation stipulated under the Palermo Protocol, a solution must therefore, be sought through a radical reconfiguration of the Zimbabwean Trafficking Act, so that it becomes a picturesque of the Palermo Protocol.

With Zimbabwe being a contracting state, the Palermo Protocol can be said to enjoy considerable significance with respect to the protection and prevention of trafficking in persons. Under Article 4 of the Protocol, the issue of criminalisation; investigation and

prosecution contained is essential in making sure that traffickers are brought to the courts of law. In addition, the issue of assisting and protecting victims of human trafficking is enshrined under articles 6 – 8 of the Protocol and goes together with Articles 24 and 25 of the *Countering Transnational Organized Crime* (CTOC). Ultimately, the issue of prevention, cooperation and other measures is enshrined under Article 9 of the Protocol. In the context of a discussion on the duty to protect and combat human trafficking, it will be more appropriate to refer to whether there is a positive duty on a signatory state to protect vulnerable populations from trafficking, as well as preventing trafficking. The fundamentals of the pertinent legal framework is provided by the Palermo Protocol and its Interpretative Notes (*Travaux Préparatoires*), as well as the Convention against Transnational Organised Crime—thus, the Zimbabwean Trafficking in Persons Act is a *lex specialist*, with no consideration to the urgency of human trafficking in the country, as the act (Trafficking in Persons Act of Zimbabwe) seems not to provide the needed protection to the victims (Kusemwa 2017).

Regardless of the fact that international obligations for fighting trafficking in persons were rooted in various international instruments, there was no universal instrument that aimed to address all aspects of human trafficking. The crafting of the Palermo Protocol was, therefore, the first major instrument, which encapsulated key issues on how to combat human trafficking. Mollema (2013) notes that the Protocol was drafted after it became clear that in the absence of an all-encompassing international instrument, victims of trafficking and those that are susceptible to trafficking will not be adequately protected. Thus, the crafting of the Protocol created a springboard for the crafting of an array of other counter-trafficking laws over the years.

In response to the increased reports of transnational organised crime, the United Nations adopted the CTOC. Mollema (2013) notes that only countries which are signatories to the CTOC may become party to the Palermo Protocol, as stipulated in article 37(2) of the CTOC. That being the case, all pertinent provisions of the CTOC are incorporated into the Palermo Protocol and should be interpreted together. Thus, albeit the Palermo Protocol encompassing a number of the human trafficking obligations, the most important provisions are found in the CTOC.

The Palermo Protocol is the first anti-trafficking instrument adopted by the United Nations, which contains an internationally-agreed definition of human trafficking (Askola 2007). The Protocol is also the first international instrument adopted by the United Nations, which officially recognised that poverty is a key contributor to trafficking. The Protocol also highlights the issue of demand and calls upon member states to adopt or strengthen measures that would “discourage the demand” (Mollema 2013, 110). The Protocol not only attempts to deal with the issue of human trafficking from a criminal law vantage point but also attempts to deal with the issue from a human rights vantage point (Haynes 2004). In the following discussion, three key issues encapsulated in the Palermo Protocol are identified, namely criminalisation; investigation and prosecution,

protection of victims of trafficking in persons and prevention, cooperation, as well as other measures.

(i) Criminalisation; Investigation and Prosecution

The Palermo Protocol expects signatories to come up with comprehensive policies and initiatives aimed at preventing and combatting human trafficking. The Protocol is, therefore, principally a law enforcement instrument, tailor-made to criminalise human trafficking, prosecute traffickers, protect victims and ultimately promote collaboration among countries which are signatory states to this protocol, so as to meet these objectives. The Protocol gives signatory states a platform to determine the details pertaining to prosecution and protecting the victims. Chuang (2006) rightly notes that the scope of application is encapsulated in Article 4 of the Palermo Protocol; which states that the scope of application shall apply to the prevention, investigation and prosecution of offences that are transnational in nature; and comprise an organised criminal group, as well as to the protection of victims of such offences. The first aim of the Palermo Protocol is, therefore, to prevent trafficking. The key to the prevention of trafficking is to toggle or alleviate vulnerability among populations which are susceptible to trafficking. As far as prosecution is concerned, the Protocol expects signatories to criminalise the organisation of, assistance with or participation in the trafficking of individuals as defined in Article 3(a). Mollema (2013) notes that signatory states are nevertheless, only asked to consider implementing protective measures for victims. It can be noted that this is due to the reasoning that a wide-ranging international consensus can only be realised by setting the required compliance relatively low. As far as protection is concerned, the Protocol underscores the physical, psychological and social recovery of the victims of trafficking.

Of critical importance is to note that albeit the Palermo Protocol's range of application covers any person, regardless of gender and age, it particularly pays attention to trafficking of women and children. Regarding the protection of children, the Protocol considers any act of recruitment, transportation, transferal, harbouring or reception of a child under the age of 18 as an offence of trafficking. Again, the Protocol allows signatory member states the freedom to come up with their domestic trafficking legislation, by incorporating relevant provisions from the Convention on the Rights of the Child (CRC), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and the ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No C182 (ILO C182) (Mollema 2013).

The scope of application under Article 4 of the Protocol is limited to only transnational crimes, and this seems to submit that only cross-border trafficking is taken into consideration. Lamprecht (2009) notes that since trafficking may also happen exclusively within a country, traffickers within a country could claim their non-liability,

based on the principle of legality. Additionally, the scope of the crime under Article 4 of the Protocol is limited to an organised criminal group only. This restraint would, therefore, leave numerous victims who, mostly in developing countries are trafficked by individuals who are not part of a criminal group without any redress. Nonetheless, Article 34(2) of the CTOC, which states that certain crimes, such as belonging to an organised crime group (Article 5), money laundering (Article 6), corruption (Article 8) as well as an obstruction of justice (Article 23); need not be transnational or committed by an organised criminal group but can be classified under the crimes of trafficking in order to ensure that all traffickers are prosecuted under domestic laws.

Article 5 of the Palermo Protocol stipulates that signatory states should prosecute those who engage in human trafficking in compulsory terms. According to the UNODC (2004), with regards to culpability required for this crime, the provision states that intention, and not negligence, is required. Mollema (2013) notes that the *mens rea* requirement is already introduced through the definition under Article 3 with the phrase “for the purpose of.” That being the case, the Protocol states that the crime of human trafficking only takes place only if the concerned person or entity had the intention to traffic a person for specified exploitative outcomes. It is critical to note that the element of intent in trafficking is described as special or specific intent (*dolus specialis*). Gallagher (2010) notes that in order to mollify the special intent element, the intended aim need not be actually achieved. Thus, this mean that trafficking can take place without any exploitation taking place (Child Exploitation and Online Protection Centre 2007). Intent to exploit is also not restricted to the first trafficking phases only. Piper (2005) notes that it is a common misapprehension that if an act, which was not initially conceived or done with the intention to exploit ends in exploitation; this act does not constitute trafficking. However, intention may still be existing in the form of *dolus eventualis*; thus, if the possibility of the existence of the fact is foreseen but the person is reckless towards it (Mollema 2013, 115). In another way, if the person trafficking is not deterred by the possibility of the existence of the fact and goes ahead with the forbidden conduct regardless. In this way, even those claiming no direct intention to exploit may be held accountable for their participation in the crime. Section 5(2) of the Palermo Protocol also criminalises any attempt to commit the crime, be it as an accomplice to the offence, and as organising others to commit the offence (Morehouse 2009).

Under the Palermo Protocol, states are obliged to cooperate through information exchange; toughen law enforcement and border controls, and adopt legislative as well as other suitable measures such as sanctions to prevent commercial carriers to transport people who will be trafficked. Stoyanova (2008) notes that a broad savings clause was implemented to lessen a concern that fortified border controls would conflict with the principle of *non-refoulement* by limiting the right of individuals to seek asylum from persecution; although states may legally extradite illegal immigrants back to their country of origin, as they are obliged to respect international obligations; particularly if the person is a refugee whose life will be in danger if expelled back to his/her country

of origin. This principle is enshrined under Article 14 of the Protocol, which prohibits refoulment (Obokata 2006). Through recognising the stipulations of the 1951 Geneva Convention, the Palermo Protocol grants the status of refugee to human-trafficking victims in cases where there are substantial reasons for believing that they will suffer real harm if they are repatriated to their country of origin. Since corruption forms the substratum of most human trafficking activities, anti-corruption provisions are enshrined under Articles 8 and 9 of the CTOC, which effectively criminalises corruption. The confiscation and seizure of trafficking asserts is also provided for under Article 12 of the Palermo Protocol. The article states that the assets seized will become the property of the government in which they are located. Article 14(3) (b) of the Palermo Protocol encourages governments to share confiscated assets with all countries affected. Of note is the fact that when confiscated assets are distributed the needs of the trafficked persons and the particular government's financial ability to provide assistance to trafficked persons should be considered. Article 12(8) of the Palermo Protocol also ensures that *bona fide* third parties also have access to the confiscated assets. The provisions of Article 12(8) are then supplemented by Article 14 of the CTOC, which rules on the disposal of confiscated proceeds of crime and property. This article states that the assets ought to be distributed to and for the benefit of human-trafficking victims as compensation, restitution and damage. To Mollema (2013), this include support services for trafficked persons in countries of destination, transit and origin. It is recognised under Article 14(2), that governments, which would have confiscated assets, recompense victims, even if they are located in another country. Under Article 14(3) (a) of the Palermo Protocol, provision is also made for the depositing of such assets into a special United Nations fund for technical assistance to developing countries and countries with economies in transition. The reasoning behind this is that failure to return the assets to trafficked persons could lead to their re-trafficking and re-victimisation.

(ii) Protection of Victims of Trafficking

The obligation to assist and protect victims of human trafficking is enshrined under Articles 6–8 of the Protocol, which go together with Articles 24 and 25 of the CTOC. Thus, the Palermo Protocol only institutes certain minimum standards on the protection and assistance of victims; which should be complemented by obligations to uphold human rights in other international instruments. While the Palermo Protocol regards law enforcement as a shared responsibility of all contracting states, issues pertaining to victims of trafficking are considered the responsibility of individual governments (Jordan 2002). Ladan (2004, 113) notes that the Palermo Protocol only provides guidelines agreed to by member states and monitors the implementation. Thus, it does impose binding obligations or issue dilatory orders to signatory states to provide remedies to a trafficking victim, whose human rights have been violated. Further, it can only request or recommend a contracting state of its responsibility to provide legal

recourse to victims of human trafficking. In other words, contracting states are given the responsibility to provide adequate remedies at national level through their courts or tribunals (Jordan 2002).

Under the Palermo Protocol contracting states are obliged to protect the privacy or confidentiality of the victims of trafficking through legal provisions; provide all information and legal help which have been taken on their behalf. The Protocol also notes that effective prosecution of traffickers is a vitally important form of redress for victims of human trafficking. Obokata (2006) notes that the Palermo Protocol stipulates that favourable conditions should be made for the victims of trafficking to participate; and for their views and concerns to be presented and considered in the investigation and prosecution. Albeit, the Palermo Protocol falls short in providing protection to the family of trafficking victims, who report or lay charges against their traffickers. Article 24(1) of the CTOC specifically necessitates for an extension of such protection to the families of victims of transnational crimes and other people close to them (Pearson 2002; Shelley 2009). This bespeak that for these protective measures to be effective, whether in the country of origin or destination, they should ensure that the victim is assured that no bad will befall them in a reasonably foreseeable future until they at least find closure; and should also extend beyond the victims to include those close to her or him (Pearson 2002). In addition, the Palermo Protocol obliges contracting states to give protection to the physical safety of victims while they are within their jurisdiction.

Section 6(3) of the Protocol gives governments discretionary powers; for it is compulsory that they consider the implementation of the physical, psychological or social recovery measures in applicable scenarios (Mollema 2013). Shelton (1999) notes that another important provision of the Protocol requires contracting states to ensure that their domestic legal system comprises measures that affords victims of human trafficking an opportunity to obtain compensation as reparation for damages suffered, notwithstanding their nationality. The trafficked person's need for legal immigration status is recognised under Article 7 of the Palermo Protocol. The article, however, does not really require governments to do anything about this provision (Weissbrodt 2002). The provision under Article 7 also calls for contracting states to consider adopting legislative or other suitable measures that permit those trafficked to remain in their territories, temporarily or permanently in appropriate cases (Mollema 2013). Ladan (2004) notes that proper consideration ought to be given to humanitarian and compassionate factors. It is also noted under this article that humanitarian factors; in this milieu, refer to the rights established by the human rights instruments and are as such, applicable to all persons (Ladan 2004). The Protocol also stipulates that repatriation should be decided only after due regard for the safety of the person to be repatriated (Obokata 2006). The Protocol further states that repatriations shall preferably be voluntary; nevertheless, the *Travaux Préparatoires* clarifies that repatriations cannot be involuntary in some instances. Sections 8(1) and 8(2) nonetheless, also clearly limit

involuntary repatriations to those that will be safe in the countries of their origin, after legal proceedings have been finalised.

(iii) Prevention, Cooperation and Other Measures

The Palermo Protocol allots five provisions to the prevention, cooperation and other measures aimed at combatting human trafficking. Mollema (2013) notes that in addition to contracting states instituting extensive policies and programmes concerning trafficking in collaboration with Non-Governmental Organisations as stipulated under Article 9(1) and 9(3)), research is vitally important in ensuring understanding to issues of human trafficking, as well as developing these policies and responses, as articulated under Article 9(2). The Protocol advocates information-sharing between contracting states and the training of experts who will be involved in one capacity or another in the quest to combat human trafficking. Article 9(4) of the Palermo Protocol calls for measures in both countries of destination and origin that will make people susceptible to trafficking. The Palermo Protocol states that in order to decrease the chances of people being trafficked, governments should make their legislations strong in order to discourage the demand for undocumented, vulnerable and exploitable people.

Before the Fast Track Land Reform Programme,² which started in 2000, international human trafficking in Zimbabwe seemed to have been peripheral (Kusemwa 2017). This can no longer be said to be the case, given the recent cases as seen in a number of newspaper reports³ of women who are being trafficked to Dubai, Qatar, Kuwait, Saudi Arabia and in some instances China for domestic servitude and prostitution (Kusemwa 2017). Nevertheless, attempts to quantify the number of people being trafficked to these countries is particularly a mammoth task; given the sensitivity embodied in sexual exploitation; this has, therefore, made it difficult to collect the required data, since most victims are unwilling to open up (Askola 2007; Kusemwa 2017). The estimates provided by non-governmental organisations and civil society organisations such as the International Organisation for Migration, Save the Children and the media are that hundreds have been trafficked across the Zimbabwean borders, mostly into South Africa since the politico-economic and social problems, which have been prevalent in Zimbabwe since 2000 (Kusemwa 2017). Although this article deals specifically with the legal provisions pertaining to the protection of people from human trafficking, the solemnity of the situation is crystal clear from the foregoing. This article is limited, for practical reasons, to a depiction of the legal situation regarding victims of trafficking in destination countries only, and cannot account for the applicability or otherwise of human rights instruments such as the Universal Declaration of Human Rights for instance. With this taken into consideration, it can be argued that human rights law is of paramount importance in this milieu.

THE ZIMBABWEAN TRAFFICKING IN PERSONS ACT

Until 2008, when Zimbabwe finally ratified the UN Convention on Transnational Organised Crime (CTOC) (a convention whose ratifications paved a way for the ratification of the Palermo Protocol), Zimbabwe had not formally recognised human trafficking as a crime which warrants criminalisation, protection and prevention (Kusemwa 2017). Kusemwa (2017) notes that the ratification of the Palermo Protocol was followed by the enunciation of the temporary Trafficking in Persons legislation, which was decreed through the Presidential Powers. In June 2014, there was a subsequent enactment of a substantive Trafficking in Persons Act. In short, while the Act has number of weaknesses, on paper, the Act provides a fair protection to victims of trafficking. However, it fails to adequately empower relevant arms of the state, which are mandated to discharge the duties of safeguarding the victims of trafficking.

The Zimbabwe Trafficking in Persons Act (2014) in section 3(1) stipulates that a person guilty of trafficking meets this criteria: “a person who trafficks any individual by transporting him/her, outside or within Zimbabwe.” The law further breaks this victimhood into two categories; that is, voluntarily and involuntarily. To meet the involuntary victimhood criteria, guilty party(ies) would have forced, coerced, threatened their victims with violence, fraud, used substances for instances, to traffick the victim against their will. The voluntary kind of trafficking victimhood involves two or more parties engaging in activities such as leaving the borders of the country without any travel documents or using unauthorised exit points in the country. In certain circumstances, the trafficking may be viewed in light of aggravating circumstances; such as when the victim is a child or is disabled, or where the guilty party is a law enforcement agent, or where the victim contracted HIV/AIDS or any other Sexually Transmitted Infections (STIs) in the event that they were also sexually exploited in the trafficking process. The jail term for perpetrators of trafficking of persons for guilty parties is anything from a minimum sentence of 10 years in jail to life imprisonment. These definitions of trafficking are quite standard, as they seem to follow the universally-accepted criteria for defining the victims and guilty parties of these criminal activities. In addition, the stipulated punishment is a deterrent one would expect; as it provides for lengthy jail-terms.

The Government of Zimbabwe does not fully comply with the minimum requirements for the elimination of trafficking. While the government passed the “Trafficking in Persons Act” in June 2014, it failed to ensure that prohibitions under the Act were consistent with the international definition of trafficking in persons under the Palermo Protocol. In contrast with the Palermo Protocol, which conceptualises human trafficking as a crime of exploitation, the Zimbabwean Trafficking in Persons Act defines trafficking in persons as basically a crime of transportation. According to Kusemwa (2017), the 2014 Act criminalises the involuntary transportation of a person into, outside, or within Zimbabwe or voluntary transport for an unlawful purpose. This definition, which is not in sync with the definition of human trafficking by the

Palermo Protocol—which defines trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation, leaves The Zimbabwean Act without comprehensive prohibitions of trafficking crimes (Agere 2016; Nyakwenda 2016).

The Trafficking in Persons Act in itself does not include fundamental issues, which go hand in glove with human trafficking, such as forced labour. Rather, other acts such as Zimbabwe's Labour Relations Amendment Act are referred to when it comes to the criminalisation of certain crimes such as forced and unpaid labour, which are interlaced with human. Dodo and Dodo (as quoted in Kusemwa 2017), however, note that although the Zimbabwean Labour Relations Amendment Act forbids forced labour and sees forced labour as punishable through a jail term of up to two years, the laws are not sufficiently stringent; especially if forced labour is done under the aegis of human trafficking. Further, Kusemwa (2017) notes that the Criminal Law (Codification and Reform) Act, which is also referred to in instances of human trafficking criminalises the procurement a person for unlawful sexual conduct, inside or outside of Zimbabwe; but does not sufficiently deal with human trafficking in a satisfactory manner. The Act (Criminal Law) however, penalises such a crime through a jail term of up to two years only. The issue of induction and coercion of anyone into unlawful sexual activities by threat or intimidation attracts a jail term of up to five years under the Criminal Law Act. In addition, pledging a female to forced marriage or pledging a girl to compensate the avenging spirit as a cultural practice known as *kuripa ngozi*⁴ or any debt or obligation is punishable under the Criminal Act, with penalties of up to two years imprisonment. According to Jacobsen (2005), none of these penalties are proportionate with penalties prescribed for other serious crimes, such as rape, which is usually inherent in human trafficking.

The trafficking in Persons Act of Zimbabwe gives the Zimbabwe Republic Police's Victim Friendly Unit (VFU) the responsibility of investigating cases involving women and children. VFU also has the mandate of referring the victims of human trafficking to support services. Nonetheless, VFU does not provide information on the number of trafficking investigations it conducts to partner organisations such as the International Organisation for Migration in order to enhance the concerted efforts needed to come up with programmes and initiatives meant to help the victims and the would-be-victims of human trafficking (Kusemwa 2017).

CONCLUSION

The plight of victims of human trafficking raises a number of policy-related challenges, which need to be attended if this scourge is to be addressed adequately. As bespoken

above, due to the lack of an all-encompassing legal framework on human trafficking in Zimbabwe, the Trafficking in Persons Act of Zimbabwe has failed to provide an adequate solution. It was submitted that the protection and prevention of human trafficking ought to be prioritised if human trafficking is to be combated. That these measures are in the long term, untenable in the Zimbabwean milieu, given its politico-economic and social problems; can scarcely be denied and as human trafficking continues unabated, the Trafficking in Persons Act in Zimbabwe would appear to be the only long-term, practically achievable solution. Such partnerships remain, for the moment, chastely within the dominion of wishful thinking. It can only be hoped that the needed partnerships and the amendment of the Trafficking in Persons Act, as well as the realignment of the Act to the Palermo Protocol, which, for so many countries, has helped in combatting human trafficking, can be done as a matter of urgency. This might, therefore, prevent the tragedies occurring on an even larger scale than is already the case.

ENDNOTES

1. In March 2016 there were reports of women who were enticed to search for lucrative jobs in Kuwait, who and were, instead, trafficked and exploited. The women were left stranded in Kuwait and the government failed to facilitate their repatriation. (see Agere, 2016; Nyakwenda 2016)
2. The Fast Track Land Reform programme in Zimbabwe saw up to 5000 commercial farmers losing the farms as a result through a of violent land reform programme led by the Zimbabwean government. Also known as Jambanja, the chaotic nature of the programme led to massive company closures and capital flight. Since agriculture was the backbone of the economy, most people lost their jobs and vulnerability increased.
3. Bvirindi 2014; Bvirindi, Tombindo and Chirau 2016; Moyo 2005; Sachikonye 2004. ; Moyo 2005; Bvirindi 2014; Bvirindi, Tombindo and Chirau 2016).
4. *Kuripa ngozi* is a traditional Shona cultural practice which was used to avenge the spirits of a dead person after murder. Under this practice the murderer was obliged to pledge a virgin girl to the family of the murdered person as a way of appeasing the spirit of the murdered. The girl was supposed to bear children with any family member of the murdered person. The custom was however, jettisoned in the 1990s after a presidential decree.

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