

The Palermo Protocol: Trafficking Takes it All

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Abstract

The Palermo Protocol is the outcome of bargain and lobbying with global institutions, NGOs and government representatives embattling to enforce their interests. The outcome is the concept of trafficking that embraces the struggles against prostitution, slavery and child labour. This broad concept has allowed various local cultural practices and survival strategies of those who live under difficult conditions to become classified as trafficking. While such definition may facilitate fundraising there are adverse consequences to be considered. Firstly, hazardous conditions of children that obviously are not trafficking tend to become ignored. Second, the victims of “real” trafficking become invisible by the excessive number of children allegedly trafficked. Third, the broad definition of trafficking has contributed to criminalization of whole communities and consequent conflicts between NGOs engaged in anti-trafficking activities and the communities involved. Such a situation is not in the best interest of the children involved. Rather than spending huge amount of resources on the conventional anti-trafficking measures there is a need to address the root causes of whatsoever unacceptable condition a child is suffering from.

Keywords: Trafficking; children; Palermo Protocol; maltreatment.

Introduction

Since *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, frequently referred to as the Palermo Protocol, was agreed on in the year 2000, trafficking has been represented as modern-day slavery (Bravo, 2007; Quirk, 2006;



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Schaeffer-Grabel, 2010; Welch, 2009; Wong, 2011). Human trafficking in all regions of the world, and not least child trafficking, has been high on the agenda of the international community, development agencies, non-governmental organizations (NGOs) and governments (Dottridge, 2004; Human Rights Watch, 2010; OIM, 2010; U.S. Department of State, 2013; UNICEF Innocenti Research Centre, 2005, 2011). The general public is constantly reminded about this crime through mass media and news reports, and heart-breaking stories of victims circulate on the web (Barber, 2008; IRIN, 2008, 2006; UNODC, 2009; Usnico, 2008; Walker, 2008). International institutions, multilateral and bilateral donors, NGOs and celebrities have joined efforts and allocated huge funds to rescue trafficked children from their exploiters (Kloer, 2009; UNODC, 2009).

West Africa has been highlighted as a region where children and youth are frequently engaged in situations classified as child trafficking (Adepoju, 2005; Dottridge, 2002; Lawrance & Andrew, 2011; U.S. Department of State, 2013; UNICEF Innocenti Research Centre, 2002). Among such situations are the seasonal harvest of cacao, cotton and cashew, deep-sea fishing, artisanal and small-scale mining, and domestic work. Large funds have, for instance, been allocated to eliminate child labour within the cocoa industry and deep-sea fishing, however without much success. Marco Chown Oved (2010) argues that despite years of efforts to eliminate child labour, “West Africa’s cocoa industry is still trafficking children and using forced child labour of thousands of children, many of whom come from the neighboring countries.” In a newspaper article entitled *Sons for Sale*, Sarah Left (2007) confirms that “most stubbornly in fishing communities on Lake Volta, Ghanaian children are still being sold for as little as 200,000 cedis (£12) into a life of forced labor, malnutrition, physical abuse and no schooling.”

In the West African region, fosterage has been implicated as trafficking of children. Hashim (2006:18) pays attention to the changing image of fostering from being seen as benign to becoming “corrupted by ill-meaning individuals, intent on exploiting children.” Hashim quotes the International Labour Organization (ILO) arguing that “[c]entral to the phenomenon of trafficking in Africa is abuse of the tradition of placing children with extended families or other care-takers when they cannot be cared for by their parents.” Likewise, the International Organization for Migration (IOM) has warned that traditional fostering practices are exploited in the region where traffickers lure destitute parents to sell their children (Hashim, 2006). In a UNICEF report, Rebecca Surtees (2005:22) highlights the difficulty to identify child trafficking in Sierra Leone, partly due to the difficulties in defining “the boundaries between trafficking, child labour, and genuine child placement or fostering.” In Sierra Leone, Surtees argues, most commonly children are trafficked from rural areas to towns and cities, and it is “often undertaken under the guise of fostering or child placement” and thereafter the children being “exploited for sexual or labour purposes” (22). Likewise forced and early marriage is at times accounted for as trafficking. The report *Trafficking in Human Beings, Especially Women and Children in Africa* is concerned with marriage practices on the continent through which “the bride’s family may receive cattle from the groom, or the groom’s family, as the brideprice for their daughter” (UNICEF Innocenti Research

Centre, 2005). The report maintains that every now and then girls run away to avoid such marriages, however only to risk entering brothels and become trafficked. However, the Trafficking in Persons Report 2010 affirms that “not all forced marriages result in cases of trafficking” and each case has to be evaluated on its own merits (U.S. Department of State, 2010).

In this article we aim to explore human trafficking, and in particular child trafficking in West Africa. We suggest that the history of the struggles against prostitution, slavery and child labour became the backbone of the trafficking concept adopted in the Palermo Protocol. As a consequence, the trafficking concept tended to embrace all the ills that might occur to children, which has resulted in ineffective measures and contributed to collateral damage.

1. Trafficking takes it all

The concept of trafficking in human beings has its roots in the struggle against prostitution in the late nineteenth century (Doezema, 2000; Leppänen, 2007; Long, 2004; Quirk, 2006). In the period 1860-1914, a huge number of European migrants, including thousands of women, moved to far-away regions including the American and Asian continents and South Africa. The term “white slavery” came into use referring to women who ended in brothels in their countries of destination, but also white women in prostitution in their home countries. “White slavery” matched “black slavery” and at times with racial notion. Leppänen (2007:525) maintains that the term “white slavery” highlighted the similarities between the exploitation of black slaves and exploitation of white women in brothels, and “the term ‘white slave’ was widely spread along with the idea of innocent white women in the hands of dark men.”

In the year 1904, 13 European countries adopted *The International Agreement for the Suppression of the White Slave Traffic* (Doezema 2000; Leppänen 2007; Quirk 2006). The term “traffic” referred to the exploitation of white women in prostitution when moving between countries. In 1910, the agreement was expanded to embrace also traffic with white women in prostitution within countries. The circumstances of other women in vulnerable situations were not considered. In 1921, two years after the foundation of The League of Nations, the title of the former agreement was changed to *The International Convention for the Suppression of Traffic in Women and Children*. This time the term traffic referred to all women and children, girls and boys, in prostitution, independent of their origin (Bravo 2007; Long 2004:20). An additional agreement, *The International Convention on the Suppression of Traffic in Women for Full Age*, from 1933 underlined the international aspects of traffic. *The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, adopted in 1949, added aspects such as criminalization of traffickers and assistance to victims, including repatriation of victims. As pointed out by Quirk (2008:30), in these conventions the concern is “not trafficking, which is not defined, but prostitution and pimping.” Quirk argues that only with the second slavery convention, agreed on in 1956, did a definition of trafficking begin to take shape.

The international struggle against slavery has its origin in the abolition of the trans-Atlantic slave trade (Welch, 2009; Wong, 2011). *The Slavery Convention* adopted by the League of Nations Assembly in the year 1926 defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised” (Kaye, 2008). *The Universal Declaration of Human Rights* (UDHR), adopted in 1948, was more comprehensive, confirming that “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” The UDHR mentions children only in the context of social protection that should be granted all children regardless of their parents’ marital status and on parents’ rights “to choose the kind of education that shall be given to their children.”

In 1956, *The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* adds four practices referred to as slavery-like. These are debt bondage, serfdom, certain marriage practices (forced marriage for pay or transfer of value and widow inheritance), and exploitation of children in which an individual who has not reached 18 years of age is handed over by a parent or guardian to another person for the purpose of exploitation (UNCHR, 1957). Institutions and practices found similar to slavery are specified in Article 1, include two forms that are of particular interest: “a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group” and “a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” (UNHCR, 1957).

In contrast to the struggles against prostitution and slavery, the fight against child labour did not have roots in international movement of humans. Child labour became subject for legalization in Britain in the late eighteenth century followed by a series of *Factory Acts* regulating the minimum ages, working hours and conditions of poor children (Bourdillon, Levison, Myers, & White, 2010). The aim was partly to protect children from health hazards and enforce education, and partly to protect the access of adult males to jobs. Similar acts were later adopted in other European countries and North America. From the establishment of ILO in 1919, its aim has been and still is to eliminate child labour, and during its first decade conventions regulating minimum age for various types of work were adopted. In 1973, ILO accepted *The Convention 138* that prohibits all labour for children younger than 15 years of age, including work within the family. *The Convention 138* was adopted in 1998 as one of ILO’s “core conventions” which all member states, regardless of their ratification, ought to follow (Bourdillon et al., 2010). In 1999, *The Convention 182*, entitled *The Worst Forms of Child Labour Convention*, was agreed on. According to Article 3, “the worst forms of child labour” consists of:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. (ILO, 1999)

Thus, when it concerns children, *The Convention 182* merged sexual exploitation and slavery of children into the term “the worst forms of child labor.” Similarly, the Palermo Protocol, as already noted, followed suit and fused slavery and sexual exploitation into the term trafficking (UN, 2000).

Doezema (2005) argues that the Palermo Protocol is a result of bargain with number of states, international organizations and NGOs actively involved in lobbying to further their interests. While some denounced prostitution as inherently evil others pressed their anti-migration agenda. Doezema, a sex worker rights activist who participated in the negotiations, reveals the points of disagreement when it concerns prostitution. For some prostitution was a legitimate labour while others classified all prostitution as violation of human rights, and trafficking in itself. According to the Palermo Protocol, finally agreed on after two years of negotiations, the concept of trafficking became widely formulated. For identification of victims of trafficking three crucial elements are specified: actions, means and purpose (UN, 2000). The actions required include “recruitment, transportation, transfer, harboring or receipt of persons” and the means refer to the methods, such as threat, abuse, abduction, fraud or payments, used to gain control over a person. The ultimate purpose is exploitation, defined as “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN, 2000). All the three elements, i.e., actions, means and purpose, have to be present to constitute trafficking of an adult person, while only action and purpose need to be identified for children.

In short, according to the Palermo Protocol, trafficked children are recruited, transported, transferred, harboured or received for the purpose of exploitation, including sexual exploitation, forced labour, as well as slavery and practices akin to slavery. Thus, as scholars have pointed out, ultimately the concept is contingent on terms such as “exploitation” and “forced” (Huijsmans, 2008; Kielland, 2013; Uhl, 2010). While these terms tend to be poorly elaborated crucial questions are debated. Is all slavery trafficking? Is all prostitution trafficking? Is all child labour “forced” and thereby trafficking? The difficulties in defining trafficking and consequent lack of data on the numbers of trafficked victims is well documented (Farrell, McDevitt, & Fahy, 2010; Gozdziaik, 2010; Kangaspunta, 2010; Limoncelli, 2009; Loff & Sanghera, 2004; Musto, 2009; O’Connell Davidson, 2011; Sanghera, 2005; Schaeffer-Grabiel, 2010; Schober, 2007). For instance, professionals within the child protection services of the Nordic countries disagree on

whether or not movement of a child is a criterion for child trafficking, and some would classify a physically abused child as a trafficked victim (UNICEF Innocenti Research Centre, 2012).

2. Consequences

As presented above, in the Palermo Protocol the historically separate struggles to eliminate prostitution, slavery and child labour merged into the one and only concept of trafficking. The question is: what have been the consequences of such an overloaded concept for socially and economically disadvantaged children?

The wide definition of the concept of child trafficking implicates a large proportion of children globally as victims of trafficking, and traffickers abound. Let us take Guinea-Bissau as an example. In the country, as elsewhere in the West African region, global institutions and NGOs tend to apply a wide definition of the concept of child trafficking (Berlan, 2009; Castle & Diarra, 2003; De Lange, 2007; Hilson, 2010; Thorsen, 2005, 2007). Strictly speaking, the single condition of being a child 'forced' to work makes many Bissau-Guinean children victims of trafficking (Einarsdóttir et al., 2010). Most children in the country either work for their parents or other caretakers. Classifying all working children staying away from home as victims of trafficking implicates a large number of grandmothers and aunts, who are most likely to foster children, in international crime.

In Guinea-Bissau, again as elsewhere in West Africa, fostering is a widespread custom, although forms vary in the region between ethnic groups and context (Alber, 2004; Bledsoe & Isiugo-Abanihe, 1989; Castle, 1995; Einarsdóttir, 2004, 2006; Einarsdóttir et al., 2010; Goody, 1982, 1984; Howard, 2011; Oni, 1995; Verhoef, 2005). Positive aspects of the practice, including the spreading the burden of raising children, enforced inter-generational and family relations, and access to education or training, are well documented but also less favourable aspects such as harsh punishment and heavy labour. There is a tendency to recognize that formerly fostering used to be beneficial but the practice is claimed to have eroded. Recent research from Guinea-Bissau shows however that children who lost their mothers before the age of two did not differ from other children in access to food and cloths, school enrolment or type of housing, though they moved more frequently and lived in smaller families than other children (Masmas, Jensen, da Silva, Hoj, & Sandström, 2004). The on-going defaming of fostering as the backdoor to child trafficking might work against the best interests of orphaned children. Favourable alternatives to foster care for children in need are scarce and the dangers of institutional care are well documented (Browne, 2009; Biemba et al., 2009).

Forced and early marriage, at times classified as trafficking, is widely practiced in Guinea-Bissau (Einarsdóttir et al., 2010). However, there is a common understanding that the practice is in decline, mainly due to increased awareness about legislation that prohibits the practice. Still, parents are seen as increasingly wanting their daughters to have education, which results in higher age of marriage. Likewise, Bissau-Guinean boys

(in 2004 estimated by UNICEF to be about 100,000) who attend Koran schools in Senegal have been classified as victims of child trafficking, based on their crossing of borders and begging on the behalf of their Koran teacher (Einarsdóttir et al., 2010). Their parents lament lack of educational opportunities in the villages and hope their sons will “become somebody” through religious education. They feel criminalized by the anti-trafficking measures that include control of the borders to Senegal and repatriation of boys. Knowing that these measures are financed by Western donor money, the parents argue these should rather construct schools and pay the teachers’ salaries than preventing the religious education of their sons (Einarsdóttir et al., 2012).

From the above it is evident that a large proportion of Bissau-Guinean children may be classified as victims of child trafficking, and the same applies to the neighbouring countries in the West African region. This increases the risk that ‘real’ trafficking becomes difficult to identify due to the large numbers of assumed victims. Mike Dottridge (2008:15) highlights this point when arguing that including all children in West Africa who “work in jobs where the terms of employment make them entirely dependent on their employers and they are badly treated, for example as live-in domestic workers” makes millions of children classified as trafficked, thereby diverting “attention away from the rather fewer, clearer cut cases of trafficking for sexual purposes and reduced the effectiveness of action on these cases.” We argue that the term trafficking should include breaches against individuals, children or adults, embraced by the Palermo Protocol that do not fall under other legislation. In order to counteract human right breaches and abuse a certain level of specificity is needed in order to formulate relevant measures and appropriate use of resources.

The broad definition of the trafficking concept has implications for identification of priorities when it comes to allocation of resources for children living under adverse conditions. Being classified as an international crime, fighting trafficking has been seen as urgent, which in turn may have contributed to additional inflation of estimated numbers of trafficked victims. Tyldum (2010:8) argues that “[a] consequence of the agenda-setting qualities of the trafficking concept is that various lobby groups keep pressing for new groups to be termed as victims of trafficking.” Scholars have noted the low reliability of statistics on trafficked victims and how such statistics are frequently based on estimates that are not adequately explained (Kangaspunta 2007). Loff and Sanghera (2004:566) highlight the difficulties in classifying child trafficking and argue that existing data “are often contaminated with ideological and moral bias.” Loff and Sanghera (2004) and Kangaspunta (2007) lament that such an unreliable data is frequently used for fundraising. Thus, the global alarm against child trafficking has diverted attention from burdens of children, such as lack of access to food, education and health care that obviously cannot be classified as child trafficking. In Guinea-Bissau, NGO representatives are conscious about the fact that it is easier to receive funding for anti-trafficking projects than projects in support of education or other activities for children (Einarsdóttir et al., 2010). Anne Kielland (2013:180) points out that although “poverty and poor

education systems were pointed out as the main causes of the trafficking, [but] due to the legal labeling of the practice, investments were placed in legal projects rather than in poverty alleviation, social protection and schools” (180).

Finally, we want to pay attention to collateral damage caused by conventional anti-trafficking strategies, including control of borders, repatriation and criminalization. The on-going criminalization of child mobility within the West African region, and the measures that have been applied to curb it, have partly made the mobility more dangerous for children, or as described by Kielland (2013:180):

For a period of time all child travelers not accompanied by parents were indiscriminately suspected of being trafficking victims, they were persecuted, detained, and returned without much investigation into the reasons why they were out there and the situations causing them to be. Consequences were dramatic. Because as it turned out, the children kept traveling. Their helpers, however, were now suspected of intermediation, largely scaring off the good ones, while leaving the field to less scrupulous people. On top of this, the children know had to obtain false papers and bribe border guards and police in order to move across borders.

The same measures in Guinea-Bissau have resulted in a conflict and mutual lack of respect between NGOs that aim to enhance the rights of children and the parents of the very same children (Einarsdóttir et al., 2010, 2012). We agree with Kielland (2013) who argues that the survival strategies of disadvantaged children who seek opportunities away from their home have been criminalized through anti-trafficking measures and trafficking discourses. The time is ripe to reconsider what is best for the children. The anti-trafficking measures that have been applied so far are not effective. The root causes must be addressed and strategies applied must be context sensitive.

Conclusions

International conventions are the outcome of bargain and lobbying. During meetings prior to the adoption of the Palermo Protocol, global institutions, NGOs and government representatives embattled to enforce their interests, including the struggle against prostitution, slavery or child labour. The result became the all-embracing concept of trafficking.

The widely formulated concept human trafficking has allowed various local cultural practices and survival strategies of those who live under hazardous conditions to become classified as trafficking. The labelling of adverse condition of children as trafficking may facilitate fund raising. At the same time, unfavourable conditions that obviously are not child trafficking tend to be ignored. Further, the victims of “real” trafficking disappear by the excessive number of children allegedly trafficked. Simultaneously, the broad definition of trafficking contributes to criminalization of whole communities and consequent conflicts between the NGOs engaged in anti-trafficking activities and the communities involved. This situation is in no way in the best interest of the children involved. Child trafficking is an intentional severe crime and it should not be confused with upbringing practices tinted by harsh economic and social reality of life. Rather, the focus should be

on measures that address the causes of unfavourable practices that most often have their roots in adverse conditions of life and lack of educational opportunities.

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