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Anti-Trafficking Legislation in Sub-Saharan Africa: Analyzing the Role of Coercion and Parental Responsibility

Ruby Andrew and Benjamin N. Lawrance*

In 2008, a South African magistrate's court dismissed a trafficking case after learning that the victims' parents had "allowed" the trafficker to take the children to Cape Town, where the exploitation occurred. The 2009 Trafficking in Persons Report from the United States Department of State Office to Monitor and Combat Trafficking in Persons (OMCTP) foregrounds this and other examples of the role of parents in child trafficking. It observed,

Parents are often among the victims in child trafficking cases. Traffickers convince them to part with their children with false promises of schooling or prosperity. But in some cases parents may also play an active role in the trafficking of children. To combat these types of child trafficking, law enforcement must send a strong message that these practices will not be tolerated.¹

In highlighting the coercion of children and parents' roles in the practices of trafficking, the OMCTP draws attention to a central area of contestation in the expansion of legislative responses to global trafficking in children and adults. The OMCTP observed that "[c]ourts should not withdraw cases on the basis of parental consent." Whereas some sub-Saharan nations have legislative remedies for trafficking, these may have been drafted without adequately considering the dimensions of parental involvement.

From the late 1990s anti-trafficking agencies – including domestic and regional NGOs and inter-governmental organizations – called on African nations to take legislative action to combat trafficking. Responding to this advocacy, the US State Department joined in this call and added further political pressure to change. This chapter explores the content of anti-trafficking legislation in sub-Saharan Africa as they pertain to the issue of coercion and parental responsibility. We examine the forms and content of the laws, using several examples from different countries, and propose a preliminary typology of the current wave of anti-trafficking legislation based on their respective responses to international models for parental role criminalization. The tensions surrounding parental responsibility on show in South Africa are broadly emblematic of the continent's struggles with regard to the content of trafficking laws pursued by sub-Saharan nations. Whereas South Africa in 2010 adopted tough new standards on parental coercion, other sub-Saharan African nations have taken different approaches.

This paper argues that the US has played an important role in fostering international consensus for legislative remedy for trafficking in children and women among sub-Saharan

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¹ United States Department of State Office to Monitor and Combat Trafficking in Persons "Trafficking in Persons Report," (TIPR), 2009, p. 7.

African states through the US State Department Office to Monitor and Combat Trafficking in Persons (OMCTP). The annual ranking of states by the US (and latterly by the UN Office on Crime and Drugs) with regard to anti-trafficking is both an important source of data about trafficking and anti-trafficking and a powerful incentive for effecting legislative change. Data on parental roles and coercion, however, is largely non-existent. We further argue that although the US supports strong criminalization and punishment of traffickers, the laws unfolding across Africa rarely mirror the goals espoused by the OMCTP and its collaborating agency, the United States Agency for International Development (USAID) with respect to parental roles and the definition of coercion. The US endorses “minimum standards” and circulates model language for legislative remedy.² We find, however, that three forms of legislative response appear to be underway in sub-Saharan Africa. The first form groups together states whose laws on *human* trafficking *generically* appear to meet minimum standards but approach parental roles and coercion in complex and contradictory ways. A second group comprises states whose laws prohibit only *child* trafficking but accompany these prohibitions with harsh penalties for parents coercing children. The third group of states consists of those maintaining that their respective current domestic legislative apparatus sufficient enables the protection of victims and prosecution of perpetrators, and give little or no consideration to neither parental roles nor do they define coercion.

While the US Department of State’s annual ranking of states’ efforts at criminalizing trafficking operates as a powerful incentive for legislative action, the “aggressive enforcement efforts by the United States and its global partners,” are only part of the picture.³ The politically-savvy, international membership of human-rights agencies also played a role in effecting legislative change.⁴ With their relentless emphasis on immediate and urgent action and voluminous documentation of the extent of the “crisis,” these agencies also sought to bolster their influence in international anti-trafficking projects.

However, the US scrutiny of African children’s and women’s rights was both more aggressive and narrower in focus. While the NGOs perceived their mission as addressing both child labor and human trafficking generally, the US in many ways limited its interest to efforts to framing specific laws directed at trafficking in women and children. Child labor and forced adult labor became ancillary issues, with the US targeting only forms of labor it deemed abusive, in part because it included the removal of child victims from their homes.

The legislative agenda of African nations and the OMCTP coincides with an important increase in research and publication highlighting particular aspects of exploitative labor and

² See *TIPR* 2009, p.28: “Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking, including provisions for legal alternatives to their removal to countries in which they would face retribution or hardship, and ensures that victims are not inappropriately incarcerated, fined, or otherwise penalized solely for unlawful acts as a direct result of being trafficked, including by providing training to law enforcement and immigration officials regarding the identification and treatment of trafficking victims using approaches that focus on the needs of the victims.”

³ See C.S. Torg, “Human Trafficking Enforcement in the United States,” *Tulane Journal of International and Comparative Law* Vol.14:503. P. 504.

⁴ See B.N. Lawrance, “From Child Labor Conundrum to Human Trafficking “Crisis”: Child Advocacy and Anti-Trafficking Legislation in Ghana,” *International Working Class and Labor History* 78 (2010, forthcoming).

trafficking for labor purposes throughout sub-Saharan Africa and globally.⁵ National African agencies only began to acknowledge the extent of trafficking in the mid 1990s.⁶ Prior to this, few agencies addressed the issue; as a result, comparative and longitudinal statistics are rare, and complete data are often scant.⁷ A 1998 United Nations study offered an early taxonomy of the problem of child trafficking. The six typologies highlighted traffickers' activities and parents' roles: (1) child abduction; (2) bonding of children by impoverished parents; (3) bonding of children for debt; (4) a token sum/gift for specified duration; (5) fee-based domestic work at parents' request; and, (6) deception of parents into enlisting children to gain education or skill.⁸ This typology was subsequently revised by Aderanti Adepoju into three supra-categories applicable to sub-Saharan Africa generally. The new categories were based on the labor purpose of the victims, namely:

[1] trafficking in children primarily for farm labour and domestic work within and across countries; [2] trafficking in women and young persons for sexual exploitation, mainly outside the region; and [3] trafficking in women from outside the region for the sex industry of South Africa.⁹

The conceptual complexity aside, however, from 2000 African nations operated under the so-called Palermo Protocols which prohibited trafficking in persons, not only children. So whereas Adepoju's typology is helpful, we consider that it does not adequately account for the current legislative trends with respect to trafficking.

In this paper we first explore the dimensions of trafficking and anti-trafficking in sub-Saharan Africa based on available statistical data. We demonstrate that, while much of the more important sources of data are also tools of agencies endorsing criminalization, data on parental roles and coercion is non-existent. We then consider the international models for language for new legislation on human trafficking as it pertains to parental roles and coercion. Based on our

⁵ This is best documented by Eric Edmonds, when he wrote that a "search of keywords "child lab*r" reveals a total of 6 peer reviewed journal articles between 1980 and 1990, 65 between 1990 and 2000, and 143 in the first five years of the present decade." E. V. Edmonds, "Child Labor," J. Strauss and T. P. Schultz (eds.), *Handbook of Development Economics*, Volume 4.

⁶ See K. Fitzgibbons, "Modern-day Slavery? The Scope of Trafficking in Persons in Africa, *African Security Review* 12.1 (2003): 81. The earliest domestic NGO publication encountered with "traffic" as a focus is WAO-Afrique's "Le travail des enfants en milieu domestique au Togo," (1994).

⁷ There are isolated examples of domestic reports on children's issues pre-dating 1990 including, G. Adansi-Pipim, "Survival in childhood: the dimensions of the problem in Ghana." (1986). Scholarly research on children in West Africa was similarly scant prior to this period. Notable exceptions include B. Kaye, *Bringing up children in Ghana, an impressionistic survey* (London: Allen & Unwin [1962]). International research collaborations and intergovernmental agency conferences include: "Child labour in Africa: proceedings of the First International Workshop on Child Abuse in Africa, held at Enugu, Nigeria, 27th April - 2nd May, 1986," (Imprint: [Enugu, Nigeria]: ANPPCAN, [1986?]); DSE, "Recherche de nouvelles lignes d'action et de stratégies pour un développement coopératif propre à l'Afrique de l'Ouest: Togo," (Bonn: 1986); UNESCO-UNICEF-WFP, "The early childhood development centres in Benin: a national health care and education programme for three- to five-year old children," (Paris: 1988); UNICEF, *Les enfants en circonstances difficiles du Bénin: une étude préliminaire* (Cotonou: 1990).

⁸ L. Veil, UNICEF West and Central Africa Regional Office, "The Issue of Child Domestic Labour and Trafficking in West and Central Africa," a study prepared for a sub-regional workshop on "Trafficking in child domestic workers, in particular girls in domestic service in West and Central Africa," Cotonou, Benin, 6-8 July 1998.

⁹ Adepoju, "Review of Research," 76-7.

understanding of the US anti-trafficking vision, we interrogate the forms of anti-trafficking legislation unfolding in sub-Saharan Africa as they pertain to coercion and parental roles. Our preliminary assessment of basic legislative data provides for the creation of a new typological focus on legislative outcomes. We discern the emergence of three typologies: the first is a broad human trafficking model; the second consists of a “child-centric” legislative tool; and the final comprises countries which “revalorize” or enhance existing domestic legislation. While data is absent for several countries, it would be inaccurate to cast any sub-Saharan nation as unresponsive from the standpoint of legislation.

Sub-Saharan Patterns in Trafficking and Anti-Trafficking

Data on trafficking and anti-trafficking in sub-Saharan African comes from a number of sources, but three are preponderant: domestic and inter-governmental reports, mainly on labor; US and UN documentation of anti-trafficking initiatives; and NGO reports on trafficking. Even after the recent spotlighting of trafficking in sub-Saharan Africa, its scale remains difficult to gauge, because its victims constitute a “hidden population”; their numbers cannot be assessed using traditional census or survey tools.¹⁰ Their existence is often deliberately concealed, and the stigma associated with many of the practices described often renders sampled populations uncooperative and unreliable.¹¹ While there are a number of ways that the limitations of trafficking data can be partly overcome, including cross-referencing with labor data, a survey of the data on trafficking reveals the rapidly shifting methodologies, the scale of analysis, and the heuristic models employed. Notwithstanding these observations, no significant data exists on the subjects of parental roles and coercion.

Trafficking affects all countries in sub-Saharan Africa, and national and regional networks are also part of larger Africa-wide networks.¹² Empirical data can be domestic, regional or Africa-wide.¹³ Africa-wide estimates often emanate from international bodies, such as the ILO, which claimed 80 million African children between ages five and fourteen (or 40% of that cohort) worked in 1998.¹⁴ A number of regional bodies have also attempted to compile data sets to support regional “plans of action.” The Economic Community of West African States (ECOWAS) set a goal of December 2002 for the collection and sharing of national data “on the means and methods used, on the situation, magnitude, nature, and economics of trafficking in persons, particularly of women and children.”¹⁵ The Southern African Development Community, for its part, delivered a communiqué in May 2009 adopting the SADC Strategic Plan of Action to Combat Trafficking in Persons, especially Women and Children, effective August 2009.¹⁶

¹⁰ G. Tyldum and A. Brunovskis, “Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking,” *International Migration* 43 Issue 1-2 (2005): 18.

¹¹ D.D. Heckathorn, “Respondent-driven sampling: a new approach to the study of hidden populations,” *Social Problems* 44.2 (1997): 174-198.

¹² In South Africa, 79 Nigerian nationals were arrested in connection with running a child prostitution ring in 2005. See UN Office on Drugs and Crime, “Organized Crime and Irregular Migration from Africa to Europe,” p.31 n. 64

¹³ L.E. Bass, *Child labor in Sub-Saharan Africa* (Colorado: Lynne Rienner Publishers, 2004).

¹⁴ ILO, “Child labour: Targeting the intolerable,” (ILO, Geneva, 1998).

¹⁵ ECOWAS, “ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003),” (Executive Secretariat, Dakar, December 2001)

¹⁶ RECORD OF SADC MINISTERIAL MEETING ON TRAFFICKING, ESPECIALLY WOMEN AND CHILDREN, 28 MAY 2009 MAPUTO, MOZAMBIQUE

Trafficking has become such big business in West Africa that vendors often operate hubs in Europe, North America, and South Africa and feed their human cargo into larger international networks for movement of other illicit goods, including narcotics, counterfeit pharmaceuticals, small arms, and toxic waste.¹⁷ As domestic trafficking operations now constitute parts of larger global networks, African trafficking statistics are also embedded in international data sets. A 2006 report by the UN Office on Drugs and Crime estimated that “the market for smuggling human beings from Africa to Europe in ... transfer fees alone could be on the order of \$300 million each year.”¹⁸ As some data sources are “classified,” reports may have no references, such as the U.S. Department of Justice’s claim that “800,000 to 900,000 victims are trafficked globally each year and 17,500 to 18,500 are trafficked into the United States.”¹⁹

National data on child labor is more accessible than trafficking data partly because of the institutional support the ILO provides in domestic data collection. Statistical data on labor is gathered using conventional social science methodologies. National data sets, while still uncommon in Africa, are becoming an increasingly important tool in analyzing the contours of trafficking of children for the purposes of labor. Numbers on the extent, characteristics and determinants of child labor have been assembled by the ILO’s Statistical Information and Monitoring Programme on Child Labour (SIMPOC), which is the statistical arm of the International Program on the Elimination of Child Labour (IPEC). SIMPOC assists countries in the collection, documentation, processing and analysis of child labor relevant data. National labor surveys have been commissioned from all sub-Saharan African domestic statistics agencies. By 2010 only thirteen nations had compiled national child labor surveys: Cote d’Ivoire, Ethiopia, Ghana, Kenya, Madagascar, Mali, Malawi, Nigeria, Senegal, South Africa, Tanzania, Uganda, and Zimbabwe. Other ILO/IPEC tools include, “Baseline Survey Reports” (Uganda); “Rapid Assessment Reports” (Ethiopia, Madagascar, South Africa, and Tanzania); and “Micro Data Sets” (Ghana, Kenya, Mali, Namibia, Senegal, South Africa, Zambia). Thus, data on child labor, much of it related to trafficking modalities and networks, is available from about one quarter of sub-Saharan Africa.

Reports investigating child labor forms are very detailed, but numbers are complicated by the variety of categorizations, which cannot be mapped neatly from one study onto another. Nigeria, for example, identified 15,027,612 “as working children,” including 7,812,756 males and 7,214,856 females in 2000. Among other things it described so-called “new types of child labor,” including “young bus conductors, child begging and scavengers and child prostitution.”²⁰ The Ghana Child Labour Survey estimated between 1 and 1.4 million child laborers, but set this against the definitions and constraints on child work as proscribed by the 1998 Children’s Act.²¹

¹⁷ See UN Office on Drugs and Crime, “Transnational Trafficking and the Rule of Law in West Africa: A Threat Assessment” (Vienna 2009); also <http://news.bbc.co.uk/1/hi/world/africa/1122416.stm>.

¹⁸ UN Office on Drugs and Crime “Organized Crime,” p.19.
http://www.unodc.org/pdf/research/Migration_Africa.pdf (Retrieved June 19, 2009)

¹⁹ U.S. DoJ, Human Smuggling and Trafficking Center, “The Human Smuggling and Trafficking Center: FACT SHEET: Distinctions Between Human Smuggling and Human Trafficking,” Unclassified (January 2005), p.3.

²⁰ Nigeria Federal Office of Statistics (NFOS), “National Modular Child Labour Survey,” (2000/01), 26-7.

²¹ Ghana Statistical Service (GSS), “Ghana Child Labor Survey,” (March 2003), 137: “According to the 1998 Children’s Act, children under 15 years are not supposed to be employed. However, by all indications, 22.2 percent of children worked for pay, profit or family gain in the last 7 days preceding the interview. Thus according to the

Other national studies and localized surveys shed light on the dimensions of labor and migration. The ILO estimated between 10,000 and 15,000 West African children work on cocoa plantations in Côte d'Ivoire, sold by middlemen to farm owners for up to \$340 each.²² In the Tanzanian coffee sector, sixty percent of laboring children were girls and forty percent boys, while in the country's tobacco sector the percentages were reversed.²³ Among 600 working children interviewed in Gabon between 1998 and 1999, only seventeen were Gabonese.²⁴ A Ugandan survey of 16,345 households in 2004 noted that 20 percent had children “were working for pay, 34 percent had children working without pay, while 21 percent had children working as a result of armed conflict.”²⁵ Burkina Faso is experiencing an increase in child migration from rural communities to urban areas or abroad. A 2002 study showed that 9.5 percent, or approximately 333,000 rural Burkinabe children between the ages of 6 to 17 lived beyond the proximity of their parents.²⁶ And in South Africa, approximately 10,000 children perform “paid domestic work” wherein they “face conditions that are likely to be detrimental to their health or development.”²⁷

While nation-based data is important, the multiple heuristic frameworks mean that data can rarely be compared directly. The “Trafficking in Persons” Reports from the UN and the US, however, provide an important window into comparative national dimensions of trafficking networks and anti-trafficking activities. The two reports have their respective operating rubrics, but contain important conceptual and empirical overlaps. The 2009 report is the second report from the UN Office on Drugs and Crime. Whereas the first report, published in 2006, sought “to identify human trafficking patterns,” the 2009 report goes a step further, cataloguing and analyzing the world’s response, based on criminal justice and victim assistance data. Among the preliminary conclusions from the second report are: (1) the national adoption of the Palermo Protocols by domestic legislative instruments has doubled globally since 2006; (2) the rate of conviction for trafficking offenses has increased; (3) sexual exploitation is by far the most often-reported “form” of human trafficking, constituting 79% of global reported incidents; (4) a disproportionate number of women are involved in trafficking, both as victims and perpetrators; (5) most trafficking is “national or regional” and “carried out by people whose nationality is the same as that of their victims.” The report acknowledges that as a “result of statistical bias,” other forms of exploitation are “under-reported,” including “forced or bonded labour; domestic

Act, 1,407,770 children under 15 years were estimated to be working in Ghana. Under the same law, however, children can be allowed to do light work if they are 13 years and above. This suggests that all children below 13 years who are in any form of economic activity are in child labour. On the basis of age alone, then, 1,031,220 children in Ghana could be said to be in child labour.”

²² ILO-IPEC, “Lutte contre le trafic des enfants à des fins d’exploitation de leur travail dans les pays d’Afrique Occidentale et Centrale: Problématique du trafic des enfants en Côte d’Ivoire,” (Geneva, 2000).

²³ George S. Nchahaga, “Children working in commercial agriculture, coffee: A rapid assessment,” (IWFCL, no 13, 2002), 10; A.Masudi et al, “Child Labour in Commercial Agriculture – Tobacco: A Rapid Assessment,” (IWFCL, no 9, 2002), 14.

²⁴ UNICEF, “Atelier sous-régional sur le trafic des enfants domestiques en particulier les filles domestiques dans la région de l’Afrique de l’Ouest et du Centre,” (Cotonou, Bénin, 6-8 juillet)

²⁵ Ministry of Gender, Labour, and Social Development, Uganda, “Report of the Thematic Study on Child Labour and Armed Conflict in Uganda,” (Kampala, 2004), iv-v.

²⁶ A. Kielland (World Bank) and I. Sanogo, (Terre des Hommes), “Burkina Faso: Child Labor Migration from Rural Areas. p.8-10

²⁷ D. Budlender and D. Bosch, “South Africa Child Domestic Workers: A National Report,” (IWFCL, no.39, 2002), 9.

servitude and forced marriage... and the exploitation of children in begging, the sex trade, and warfare.”²⁸

The 2009 UN “Global Report on Trafficking in Persons” contains data on thirty-seven sub-Saharan nations, and is organized regionally into three zones: West and Central Africa; East Africa; and Southern Africa (Sudan is included in Middle East and North Africa). Each individual country summary contains important data, and when interpreted collectively they demonstrate significant trends in sub-Saharan African trafficking. Many countries focus exclusively on children as victims, and adults as perpetrators. Benin, for example, collects data on the gender of traffickers of children and related offenses. Over a four-year period the percentage of women investigated for trafficking offenses spanned 8-14% of those under investigation; conviction rates of women versus men mirrored investigations.²⁹ In neighboring Togo, in only one of forty-one investigations (2004-07) was the offender a woman.³⁰ Trafficking victims are also identified by national origin, and in Benin 88% of children trafficked were of Beninese origin.³¹ Data from Burkina Faso demonstrates an astonishingly low conviction rate: on the one hand over a three year (2004-06) period 3217 child victims of trafficking were identified by the Child Protection Department of the Ministry of Social Affairs and National Solidarity; on the other hand, only thirty-three individuals were convicted of child trafficking offenses during the same period. While one trafficker may have many victims, conveying 97 children on average would be impossible, suggesting many traffickers remain at large. Uganda, by contrast, collected data on the offences of “child stealing”, “child abduction” and “child kidnapping,” partly because of the on-going civil conflict with the Lord’s Resistance Army and its use of abducted children as child soldiers. During 2006-07 only six individuals were convicted of such offenses, but 219 children were identified as “victims.”³² Ethiopia investigated, on average, thirty traffickers per year between 2004 and 2007.

While child victimization and labor are preponderant categories in sub-Saharan Africa, several nations also collected data on sexual exploitation and on adults both as perpetrators and victims. As Liza Buchbinder’s chapter in this volume demonstrates, Nigeria national anti-trafficking strategy is expansive and well-financed. Nigeria’s data collection undercuts some of the trends emerging from other parts of sub-Saharan Africa. For example, the majorities both of prosecutions of traffickers (25 of 40 during 2004-06) and convictions (21 of 40 during 2004-08) were women. Unlike other neighboring countries’ episodic and inconsistent trajectories of anti-trafficking enforcement, Nigeria’s rates of identification and prosecution increase year after year. In 2005, of 340 identified victims of trafficking, fifty-one percent were women, thirty-one percent were girls, eight percent were boys, and ten percent men. By 2007 identification rates had more than doubled, and adults comprised seventy-two percent of victims.³³ Zambia is unusual insofar as the majority of victims (63%) originated externally, from the conflict-torn Democratic Republic of Congo.³⁴ South Africa’s victims of trafficking, based on 2004-06 data from the International Organization on Migration, were overwhelming (almost eighty percent)

²⁸ UNODC, UN Global Report on Trafficking in Persons, 2009, p.6

²⁹ UNODC, UN Global Report on Trafficking in Persons, 2009, p.92.

³⁰ UNODC, UN Global Report on Trafficking in Persons, 2009, p. 109.

³¹ UNODC, UN Global Report on Trafficking in Persons, 2009, p.93.

³² UNODC, UN Global Report on Trafficking in Persons, 2009, p.117.

³³ UNODC, UN Global Report on Trafficking in Persons, 2009, p.104-5.

³⁴ UNODC, UN Global Report on Trafficking in Persons, 2009, p.130.

adult women and victims of “sexual exploitation.” Unlike any other sub-Saharan nation, however, the majority of victims in South Africa, were not Africans, but from Southeast Asia.³⁵

The annual US report has richer comparative data on trafficking, and anti-trafficking data more closely tied to legislative developments. Unlike the UN, the US report ranks states by their “compliance” with anti-trafficking goals in the 2000 US Trafficking Victim Protection Act (TVPA). The 2009 report explains that “placement is based more on the extent of government action to combat trafficking than on the size of the problem, although that is also an important factor.” The OMCTP “first evaluates” whether a “government fully complies with the TVPA’s minimum standards for the elimination of trafficking.” In 2009 only one sub-Saharan state, Nigeria, was considered fully compliant and therefore in Tier One. Tier Two consists of states “making significant efforts to meet the minimum standards,” and in 2009 consisted of the plurality (eighteen) of African states. Tier Three consisted of seven African nations “not making significant efforts” to legislate or enforce anti-trafficking. Six nations were unranked in 2009.

A new category, "Tier Two Watch List," was created after the 2008 reauthorization of the trafficking act.³⁶ The 2009 report explains that inclusion in the Tier Two Watch List is based on three key issues:

- (1) the extent to which the country is a country of origin, transit, or destination for severe forms of trafficking;
- (2) the extent to which the country’s government does not comply with the TVPA’s minimum standards including, in particular, the extent to which officials or government employees have been complicit in severe forms of trafficking; and
- (3) the government’s resources and capabilities to address and eliminate severe forms of trafficking in persons.³⁷

Table One lays out the number of states ranked by the US in each category, and demonstrates that the plurality of sub-Saharan African nations in 2009 had legislative tools focused on anti-trafficking.

³⁵ UNODC, UN Global Report on Trafficking in Persons, 2009, p.127-8.

³⁶ TIPR 2009, p. 12: “The TVPA requires that certain countries be placed on a Special Watch List. This includes countries in which: a. The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b. There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecutions, and convictions of trafficking crimes; increased assistance to victims; and decreasing evidence of complicity in severe forms of trafficking by government officials; or c. The determination that a country is making significant efforts to bring itself into compliance with the minimum standards was based on commitments by the country to take additional steps over the next year. Countries that meet one of these three criteria are placed onto what the Department of State.”

³⁷ TIPR 2009, p.11

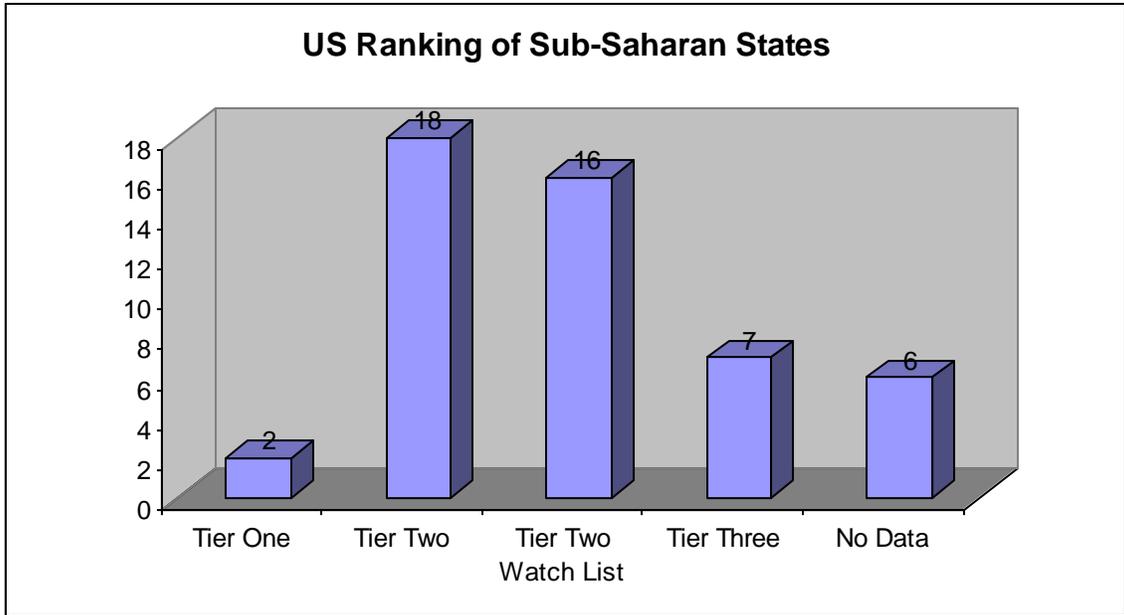
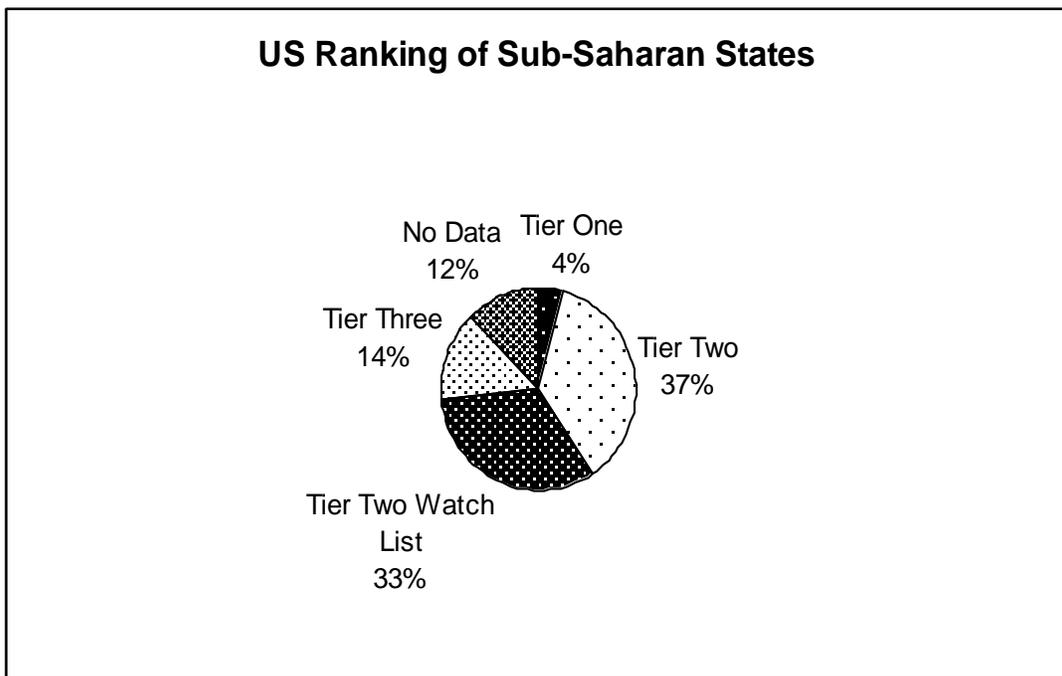
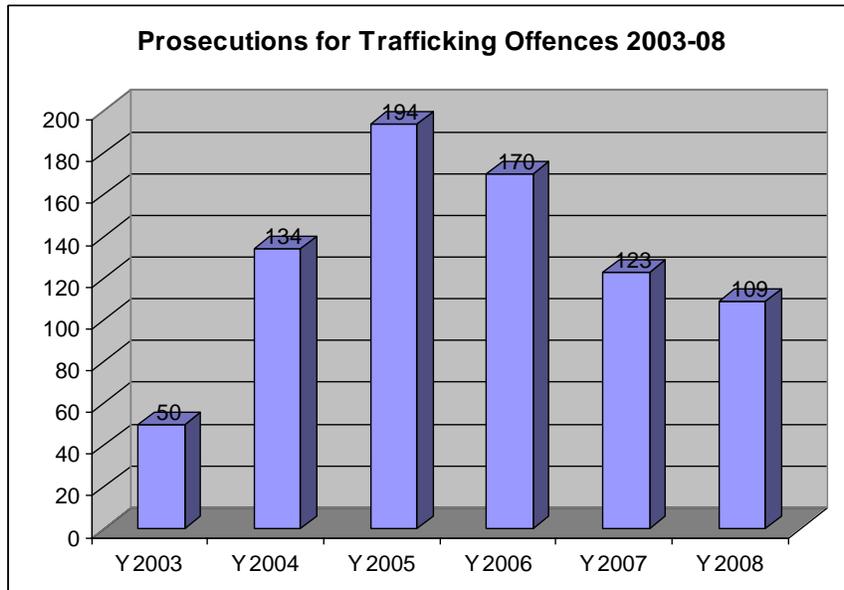


Table Two shows the percentages of states, ranked and unranked. It demonstrates that the vast majority (96%) of African nations failed to meet the standards set forth by the OMCTP to enter into Tier One.

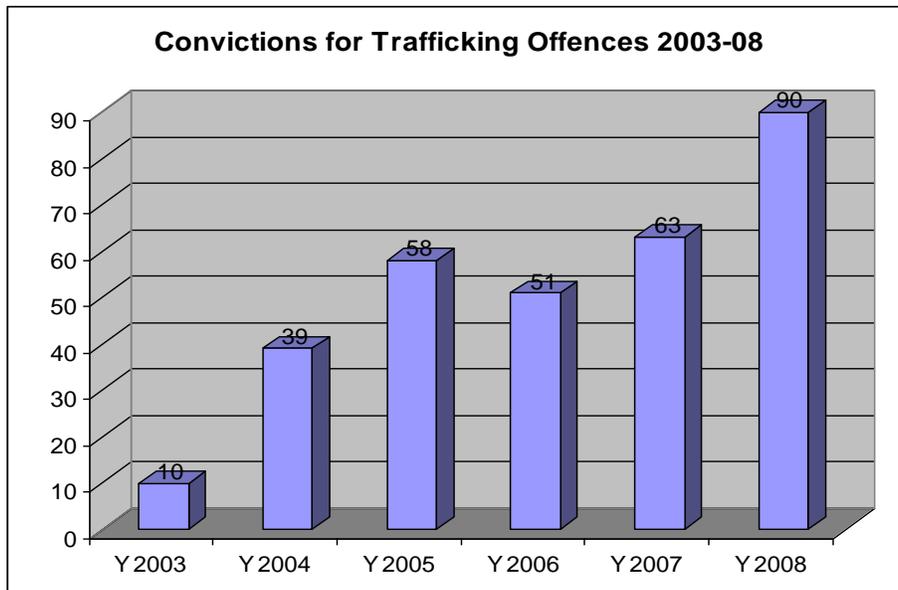


The US report on trafficking indicates an unusual trend: in sub-Saharan Africa anti-trafficking prosecutions have declined for four straight years, while convictions have progressively increased.

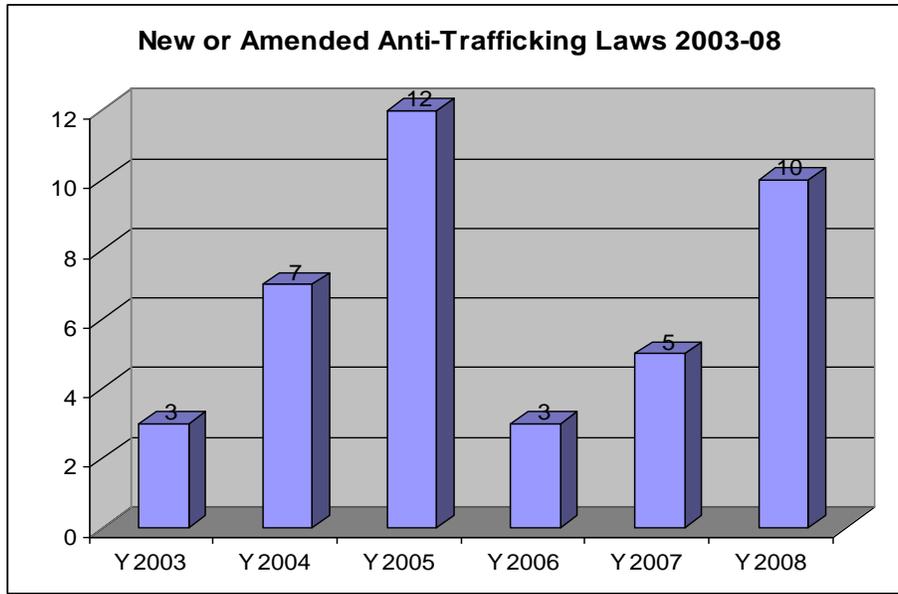
Table Three shows that in 2005 there were 194 prosecutions, but in 2008 an almost fifty percent decrease resulted in 109 prosecutions.



In contrast, the rate of convictions has been steadily upward in sub-Saharan Africa. Table Four shows a nine-fold increase in convictions over a five-year span.



This progression must also be set against data for legislative change and enhancement. Over a five-year period, forty separate acts of anti-trafficking laws or amendments passed Africa legislatures. Table Five demonstrates that 2005 was the peak year in legislative change, and 2008 was the year of the next greatest number of legislative changes.



Qualitatively and quantitatively the US TIP report is more detailed and more useful from the standpoint of legislative analysis. Unlike the UN report, individual country data on investigations, prosecutions and convictions is embedded within the text of the US TIP report; however, broader trends and patterns are discernible.

A third important source of data on trafficking and legislative developments in the arena of anti-trafficking is the non-governmental sector. NGO reports are important sources of data, but they are first and foremost documents from advocates and activists. The public relations advocacy adopted by humanitarian organizations in pursuit of their anti-trafficking objectives produces important framing devices, in both the language of the reports and the use of imagery. NGOs are increasingly turning to the use of personal testimony to entrench the urgency of the humanitarian crisis.

In addition to these concerns, NGOs also began to use the language and categories put forth by the OMCTP, thus implicitly validating the State Department's conceptualization of trafficking as the keystone of child exploitation. Disjunctions in statistics result from analysis of child labor, in contrast to the United States' focus on analysis of child trafficking. Statistics deployed by NGOs are sometimes difficult to interpret because of need to separating labor and trafficking numbers not intuitive to NGOs. Some studies may conflate child labor and child trafficking numbers, while others will compare the two data sets, or consider each practice independently.³⁸ The form and scope of empirical data vary widely from domestic to regional, continental, and international studies. Overall, however, NGOs advocating for legislative enhancements with respect to trafficking prioritize data on "young children recruited and transported across frontiers and later exploited" for agriculture, domestic service, and the sex industry.³⁹

³⁸ Adepoju, "Review of Research," 75-98

³⁹ Adepoju, "Review of Research," 84.

Our examination of the documentation of trafficking and anti-trafficking reveals that while there are multiple sites of data collection, there is very little information about parental coercion of children. Notwithstanding, some of the most revealing information about the trends in trafficking emerges from data produced in the aggressive pursuit of legislative remedy. We concur with Adepoju, who has observed that “no single research methodology can adequately capture” the dimensions of the either trafficking or currents in anti-trafficking. In contrast with the valuable surveys on child labor which shed important light on causes and dynamics of children’s work, data on trafficking in children and adults encompasses too many variables.⁴⁰ Data on anti-trafficking, by contrast, is deeply tied to the legislative frameworks endorsed by the UN or US. The expansion of anti-trafficking initiatives is in tandem with the increased surveillance and prosecution of perpetrators.

External Frameworks for Coercion and Parental Responsibility

The antitrafficking laws discussed here have been enacted by their respective governments to curb the victimization of children in particular. Indeed, where the culprits are unrelated to the child victims, the laws are most carefully drafted. However, the majority of the laws tends to gloss over parental involvement in the trafficking process, and may penalize culpable parents not at all.

Indeed, the usual formulation of trafficking, consisting of victimization resulting from "force, fraud, or coercion"⁴¹ may entirely sidestep the sorts of persuasive tactics parents or guardians may use on children. The colloquial meaning of "coercion" initially seems to encompass such cajoling; however, an analysis of the term in US law shows a much more limited definition.

Coercion in US law is conceptualized as a criminal charge, and is codified in many states in language paralleling the Model Penal Code (MPC).⁴² As defined in the MPC, coercion

⁴⁰ Adepoju, “Review of Research,” 89.

⁴¹ See, e.g. 22 USC 7102, §103(8): " The term "severe forms of trafficking in persons" means-- (A) sex trafficking in which a commercial sex act is induced by **force, fraud, or coercion**, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of **force, fraud, or coercion** for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery."

⁴² Model Penal Code §212.5. Criminal Coercion.

(1) Offense Defined. A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his detriment, he threatens to:

(a) commit any criminal offense; or

(b) accuse anyone of a criminal offense; or

(c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(d) take or withhold action as an official, or cause an official to take or withhold action.

It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances. ...Explanatory Note: An affirmative defense is provided in order to assure that the offense does not intrude upon legitimate bargaining and other **situations where one is privileged to assume a posture that could be characterized as a threat.**

requires that the coercer have no "independent right" to urge the victim to perform the acts in question.⁴³ However, a person who does have such a "right" cannot be acting to "coerce" another.⁴⁴ In fact, the iconic case of parent and child is widely offered as an example of a relationship wherein an accused may be absolved of culpability for urging the victim to an illegal course of action (absent the use of force or fraud).⁴⁵ This limitation exists throughout US laws, including the TVPA,⁴⁶ and replicates itself throughout statutes in other countries⁴⁷ which are based on the US model statute.⁴⁸

The US focus on child trafficking obscures child victimization that roots itself in the dynamics of familial relationships. African nations' conformity to the typological identifications determined by US law exacerbates the continuing invisibility of the problem. Such blind spots in

⁴³ See Alan Wertheimer, *Coercion*. Princeton University Press (1990) at 172: "A coerces B to do X if A's proposal creates a choice situation for B such that B has no reasonable alternative but to do X and it is wrong for A to make such a proposal to B. A acts wrongly for the purposes of the proposal prong if A proposes to do something that is independently illegal ... **it is ordinarily not coercion if A proposes to do what he has an independent legal right to do** so long as the right is not abused or used for purposes that the law considers illegitimate."

⁴⁴ Wayne R. LaFare et al., *Substantive Criminal Law* sec. 8.3(e), at 50 (2d ed. 2003). sec.18.3(e) (quoting Model Penal Code 212.5, Comment at 266) The authors state that, while all method of obtaining property that is not rightfully one's own constitutes extortion, because all such acts are always illegal, the way an alleged coercer prompts another person to act against his or her will constitutes the key to determining whether coercion exists, because not all ways of inducing an individual to act against his or her will are culpable).

⁴⁵ See, e.g., Model Penal Code 212.1 (Stating that, to commit kidnapping in the case of underage children, the removal must occur without the consent of a parent or other appropriate person.)

⁴⁶ Under the Trafficking Victims Protection Act of 2000, Pub. L. 106-386 ("TVPA"), a "severe form of trafficking in persons" is defined as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

⁴⁷ The model statute, which was utilized by several African nations, including Ghana, explicitly defines "coercion" in accordance with the Model Penal Code, §212.5 (see footnote 42 above).

⁴⁸ The US model trafficking statute utilizes the term "blackmail" instead of coercion, but defines blackmail using the definition of coercion from the Model Penal Code. See U.S. Department of Justice, Model State Anti-Trafficking Criminal Statute (2004): " "Forced labor or services" means labor, ... provided by another person and are obtained or maintained through an actor's:

(A) causing or threatening to cause serious harm to any person;

(B) physically restraining or threatening to physically restrain another person;

(C) abusing or threatening to abuse the law or legal process;

(D) knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person;

(E) blackmail; or

(F) causing or threatening to cause financial harm to [using financial control over] any person.

... Section XXX.01 defines blackmail in a manner identical to the Model Penal Code's Criminal Coercion statute, Section 212.5(1)(c). "

policy inquiry can only result in continued flaws in any proposed legislative solutions to child victimization.

NGOs and the Emergence of Legislative Paradigms

Just as the US and the UN promote the adoption of specific anti-trafficking language with respect to coercion and parental responsibility, NGOs also promote legal change. NGOs emphasize several broad issues as part of a comprehensive legislative response to trafficking, including, but not limited to: ratification of international treaties and protocols; creation of regional conventions to ban child trafficking; and passage and enforcement of national laws.

Human Rights Watch identified a number of African nations as specifically “implicated in the trafficking of children.”⁴⁹ It called for all sub-Saharan states to immediately ratify the 2000 Palermo Protocols on trafficking and the optional protocol on child pornography. HRW called for domestic legislation, creating the offense of child trafficking, (consistent with the protocols as well as with the U.N. Convention on the Rights of the Child, and ILO Convention No. 182 and Recommendation No. 190 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour), and the investigation, prosecution and punishment of perpetrators of trafficking. To this end, it called for the enactment of domestic anti-corruption laws consistent with Article 9 of the U.N. Convention Against Transnational Organized Crime.⁵⁰ It also recommended the “establish[ment of] a regional anti-trafficking convention, ensuring that any convention incorporates full protection of the human rights of trafficked children.”⁵¹ Indeed, some national laws specifically refer to the goal of putting into effect United Nations Protocols.⁵²

HRW’s call for a comprehensive legislative campaign was mirrored by other agencies. The ILO observed the “absence of specific legislation on trafficking in children for labour exploitation in most of the countries studied,” and called for the adoption of “national legislation to international standards and accelerating the ratification process of relevant instruments.”⁵³ Plan called for countries “to make the changes necessary in legal frameworks and policies to ensure child protection at all levels.”⁵⁴ UNICEF observed that, “[i]n the absence of comprehensive legislation specifically dealing with trafficking,” African countries “tackle aspects of the situation by means of laws in place to deal with a wide range of de facto situations.”⁵⁵ Innocenti Insight and UNICEF specifically called for a five-part program of “major legislative instruments.” ASI, for its part, shied away from specifically endorsing a normative legislative framework. While it applauded the incorporation of a number of international

⁴⁹ HRW, “Togo,” 46.

⁵⁰ HRW, “Togo,” 47.

⁵¹ HRW, “Togo,” 46.

⁵² See South Africa below.

⁵³ ILO/IPEC, “Combating Trafficking,” 36, 45.

⁵⁴ Plan-Togo, “For the Price of a Bike,” 37.

⁵⁵ UNICEF Innocenti Insight, “Trafficking in Human Beings,” 20.

conventions and protocols by African states, it called for “harmonization” of trafficking laws and the creation of a “code of conduct” for national legislative reform pertaining to trafficking.⁵⁶

Anti-trafficking agencies attempted to carve out a larger role in future domestic anti-trafficking initiatives. HRW recommended that the West African regional convention process include “qualified representatives from NGOs and civil society in all regional negotiations.”⁵⁷ ASI called for an on-going partnership between NGOs and governments, with a particular focus on the rehabilitation of rescued trafficked children.⁵⁸ TdH imagined a far more expansive and intrusive role for anti-trafficking NGOs, including civil society collaborations in the development and implementation of national action plans of surveillance and intervention, state and NGO capacities that flow from legislative instruments.⁵⁹

A Preliminary Typology of Anti-Trafficking Legislation

By 2010 the overwhelming majority of sub-Saharan African nations had responded to the legislative challenge of the US OMCTP. These responses into one of two categories; a third group had enacted no anti-trafficking legislation. In the first group there exist laws, such as that of Ghana, Mozambique and South Africa, which established a wide legislative tool to encompass all forms of trafficking, including adults and organ theft. In the second group, laws such as that of Togo, Benin and Gabon, focus on children exclusively. In the third, are countries such as Angola, Mali and Lesotho, which maintain they can combat trafficking through existing legislation, or enhancements of existing instruments.

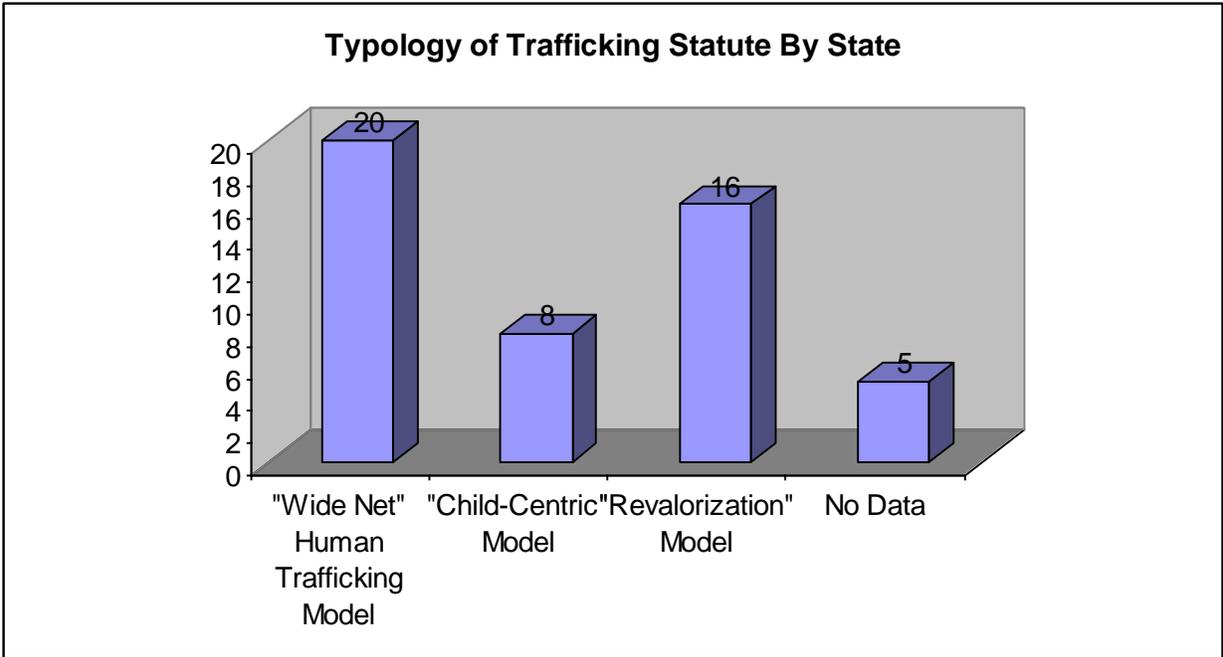
Our interest lies with the issue of state definitions of coercion and parental roles. The precise definition of coercion and parental roles are key factors in terms of the criminalization of anti-trafficking. The following two data sets, Tables Six and Seven, demonstrate respective placement in these three typologies.

⁵⁶ ASI, “Projet Sous-Régional,” 20: “Le mot ‘normes’ est utilisé avec beaucoup de précaution car elle a une connotation de loi et de législation qui ne relève pas des compétences des organisations non gouvernementales”; and 23: “Harmonisation des législations nationales avec les instruments internationaux ratifiés.”

⁵⁷ HRW, “Togo,” 46.

⁵⁸ ASI, “Projet Sous-Régional,” 21-3.

⁵⁹ TdH, “Les petites mains des carrières,” 34-40.



General Human Trafficking Model	Child-centric Model	Revalorization Model	No Data
Burundi	Benin	Angola	Cape Verde
Ghana	Togo	Botswana	Sao Tome et Principe
Nigeria	Cameroun	Central African Republic	Seychelles
Burkina Faso	DRC	Chad	Western Sahara
Djibouti	Congo Republic	Cote d'Ivoire	Comoros
Equatorial Guinea	Gabon	Guinea-Bissau	
Ethiopia	Guinea	Lesotho	
Gambia	Sudan	Eritrea	
Kenya		Mali	
Liberia		Namibia	
Mauritius		Niger	
Mozambique		Rwanda	
Nigeria		Somalia	
Senegal		Swaziland	
Sierra Leone		Zimbabwe	
South Africa			
Tanzania			
Uganda			
Zambia			

The first legislative model, the “wide-net” approach, situates child trafficking within wider clandestine networks of human trafficking. The laws in this group, while addressing trafficking of both adults and children, frame the role of parents in complex and at times conflicting ways. Ghana’s Human Trafficking Act (Act 694) of 2005 and South Africa’s 2010 Prevention and Combating of Trafficking in Persons Bill (B7-2010) are representative of this group of legislation.

The 2005 Ghana law elaborates a series of definitions pertaining to trafficking, which incorporates the parental role. Human trafficking is first defined as,

the recruitment, transportation, transfer, harbouring, trading or receipt of persons within and across national borders by (a) the use of threats, force or other forms of coercion, abduction, fraud or deception, the abuse of power or exploitation of vulnerability, or (b) giving or receiving payments and benefits to achieve consent.⁶⁰

Subsequently, exploitation is explained as including “at the minimum, induced prostitution and other forms of sexual exploitation, forced labor or services, slavery and practices similar to slavery, servitude or the removal of organs.”⁶¹ Trafficking is then framed to include “placement for sale, bonded placement, placement as service where exploitation by someone else is the motivating factor.”⁶² Finally, clause one, section 4 articulates that,

Where children are trafficked, the consent of the child, parents or guardian of the child cannot be used as a defence in prosecution under this Act, regardless of whether or not there is evidence of abuse of power, fraud or deception on the part of the trafficker or whether the vulnerability of the child was taken advantage of.

The *mens rea* thus undergirding the Ghanaian prohibition on trafficking is constituted in multiple ways. The law specifically criminalizes all behavior iterated in Article One.⁶³ Individuals are subject to no less than five years imprisonment.⁶⁴

Whereas the definition of trafficking includes the issue of coercion by parents, Clause 3, Section 1, restates the fact that simply being a parent of the trafficked victim does not preclude prosecution, *qua*: “A person who provides another person for purposes of trafficking commits an offence even where the person is a parent.”⁶⁵ The law is subsequently expanded to include *accessories* to trafficking, which are defined as “intermediaries.” An intermediary is “someone who participates in or is concerned with any aspect of trafficking” under the Act “who may or may not be known to the family of the trafficked person.”⁶⁶ The phrase “is concerned” is expanded to include “to send, take to, consent to the taking to or to receive at any place any

⁶⁰ Republic of Ghana, Human Trafficking Act of 2005 (Act 694), Article 1, Subsection 1 (a) and (b).

⁶¹ Human Trafficking Act of 2005 (Act 694), Art.1, Sub.2.

⁶² Human Trafficking Act of 2005 (Act 694), Art.1, Sub.3.

⁶³ Human Trafficking Act of 2005 (Act 694), Art.2, Sub.1.

⁶⁴ Human Trafficking Act of 2005 (Act 694), Art.2, Sub.2.

⁶⁵ Human Trafficking Act of 2005 (Act 694), Art.3, Sub.1.

⁶⁶ Human Trafficking Act of 2005 (Act 694), Art.2, Sub.3.

person” and “to enter into an agreement whether written or oral” that results in trafficking.⁶⁷ Anyone “who uses” a trafficking victim is subject to the same punishment.⁶⁸ Moreover, the Act tunders an extra-territorial jurisdiction to all acts that “would have constituted the offence of trafficking.”⁶⁹ Notwithstanding the defined punishments, a judge is permitted to take “special circumstances” into consideration when determining sentences, presumably including, for example, a possible kinship relation between victim and perpetrator.⁷⁰

Reporting mechanisms transcend the child/parental divide. It is the duty of all Ghanaians to “inform the police” of incidents of trafficking.⁷¹ Reporting to police “or other security services” may take place where the offender or victim lives, where the trafficking occurred or the temporary location of the victim.⁷² Child victims of trafficking too may report, with assistance from friends.⁷³ Knowledge of trafficking “may” also be passed on to a number of government agents and agencies, including “reputable” NGOs.⁷⁴ A further series of articles explains the processes whereby “trafficked persons” are to be rescued, cared for temporarily, counseled, and their families traced.⁷⁵ The law specifically mandates that “the views of the trafficked person shall be taken into consideration,” and “rehabilitation” and related matters are all to be done “in the best interests of the child.”⁷⁶ A 2006 Amendment to the 2005 Act corrected an error.⁷⁷

South Africa’s law describes parental responsibilities with greater precision vis-à-vis the criminal justice system. The definition of trafficking adopted is that which appears in the Palermo Protocols verbatim. In contrast with Ghana, South Africa’s law of 2010 specifically refers to the international “obligations” entered into when the state became a signatory to the Palermo Protocols. With respect to parental responsibility for trafficking of children, Chapter 9, Clause 34, entitled, “Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child,” discusses the parental role clearly.

34. (1) If a children’s court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child, the court may — (a) suspend all the parental responsibilities and rights of that parent, guardian or other person; and (b) place that child in temporary safe care, pending an inquiry by a children’s court. (2) Any action taken by a children’s court in terms of subsection (1) does not exclude a person’s liability for committing the offence of trafficking in persons ...

⁶⁷ Human Trafficking Act of 2005 (Act 694), Art.2, Sub.4.

⁶⁸ Human Trafficking Act of 2005 (Act 694), Art.4.

⁶⁹ Human Trafficking Act of 2005 (Act 694), Art.8: “Application” reads, “A person is liable to be tried and punished in Ghana for trafficking if the person does an act which if done within the jurisdiction of the courts in this country would have constituted the offence of trafficking.”

⁷⁰ Human Trafficking Act of 2005 (Act 694), Art.7: “Special Mitigating Factors.”

⁷¹ Human Trafficking Act of 2005 (Act 694), Art.6, Sub.1(a).

⁷² Human Trafficking Act of 2005 (Act 694), Art.9, Sub.1(a)-(d).

⁷³ Human Trafficking Act of 2005 (Act 694), Art.9, Sub.2. See also Sub.3-5.

⁷⁴ Human Trafficking Act of 2005 (Act 694), Art.6, Sub.2(b)(i)-(iv). “Organisation” is defined in Article 42.

⁷⁵ Human Trafficking Act of 2005 (Act 694), Art.14-17.

⁷⁶ Human Trafficking Act of 2005 (Act 694), Art.17, Sub.2, and Art.18, Sub.4.

⁷⁷ Human Trafficking Act of 2005 (Act 694), Art.35 and Human Trafficking (Amendment) Act of 2006.

The law also contains an elucidation of the purpose of the clause, under definitions. The purpose of Clause 34 is explained as follows:

If a children's court has reason to believe that a parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child has trafficked the child, the court may suspend such rights and responsibilities and place the child in temporary safe care, pending a children's court inquiry. This, however, does not exclude that person's liability for committing the offence of trafficking in persons.

Interestingly, although the 2008 magistrate's decision with which we began this chapter suggests that until 2010 the law with regard to parental responsibility was unclear, Clause 34 is identical to Chapter 18, Clause 287 of the 2005 South African Children's Act, except insofar as the entire matter is from its initial prosecution the remit of a Children's Court.⁷⁸

The "wide-net" approach is currently the largest and continues to expand. The newest additions to this group are South Africa and Kenya. The first group – also embodied in laws from Nigeria (2003) and Djibouti (2007) and Mauritius (2009) – has produced some surprising results. On the one hand, it groups together all forms of trafficking – child, adult and other – for the purposes of prosecutorial attention, and thus streamlines funding. On the other hand, the defocus on children means that curious inconsistencies emerge in domestic spheres, such as the fact that whereas Nigeria's Child Rights Act (2003) also criminalizes child trafficking, in only 20 of the country's 36 states is it enacted.⁷⁹ Furthermore, states with "wide-net" approaches devote significant enforcement support to aspects of trafficking, such prostitution, that are unrepresented in the child victim pool, and in compliance with foreign governmental initiatives with respect to the repatriation of smuggled "illegal" migrants from, for example, the European Union and the U.S.⁸⁰

The second legislative model, a "child-centric" law, prevails in many francophone nations, and Togo's and Benin's laws are broadly emblematic. The 2005 Togo law "with respect to the traffic in children in Togo," is divided into five chapters covering generalities, definitions, prevention, penalties, and miscellany. Because the law is not concerned with all forms of trafficking, the text is brief. The definition of trafficking is curtailed to specifically trafficking in children, and the purpose of the law is explained as "the definition, prevention and suppression of the trade in child in Togo."⁸¹

The law in Togo defines trafficking in children by focusing on the age of the individual, the process of movement or displacement, and the type of exploitation. Following emerging international standards, a child is defined for the purpose of this law as below eighteen years.⁸²

⁷⁸ [Title:]Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child. [Clause] 287. If a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may- (a) suspend all parental responsibilities and rights of that parent, guardian, or other person; and (b) place that child in temporary safe care, pending an inquiry by a children's court.

⁷⁹ TIPR 2009: 226, 254.

⁸⁰ TIPR 2009: 226-7.

⁸¹ La République Togolaise, Loi No.2005-009 du 3 août 2005, relative au trafic d'enfants au Togo, Chapitre I – Article premier.

⁸² Loi No.2005-009 du 3 août 2005, Chapitre II – Article 2.

Trafficking in children is viewed as “a serious infraction” which is defined “as the process whereby a child is recruited or kidnapped, transported, transferred, housed or accommodated,” with the interior of the country or externally of the national territory, “by one or more people with the purpose of exploitation.”⁸³ Exploitation in turn is defined as “all activities which provide to the child no economic, moral, mental or physical benefit but which by contrast, deliver to the trafficker or other individuals, either directly or indirectly, economic, moral or physical benefits.”⁸⁴ The trafficker (*auteur du trafic*) is described as “any individual who performs at least one of the acts enumerated” in the previous article.⁸⁵ A further provision elaborates a series of individuals who are considered “accomplices to the offences.” This category includes, those who provide “information or instructions”; those who procure “tools, weapons, transport or other means” to support, aid or abet traffickers; those who assist in the preparation, facilitation or consumption of the criminal acts of trafficking.⁸⁶

The 2005 law mandates both general and specific responsibilities for the state with respect to the prevention of trafficking.⁸⁷ The final article of the section on protection lays out the mechanism whereby a child, unaccompanied by parent(s) or guardian(s), may be permitted to leave the country; it provides for a “special authorization,” the details of which are to be elaborated by the Council of Ministers. Article Nine, Subsection Two exclaims that all “measures adopted must guarantee the superior interests of the child and respect his/her dignity.”⁸⁸

The largest chapter of the law pertains to sanctions. Traffickers and their accomplices as well as those attempting to traffic are all subject to prison sentences of between two and five years, and/or a fine of between one and five million francs, “regardless of the point of departure or destination of the children.”⁸⁹ A series of enhancements resulting in imprisonment of 5-10 years, and a fine of 5-10,000,000 francs, exist for a number of circumstances, including:

1. If the child is below the age of fifteen at the time of the crime;
2. If the act committed is accompanied by violence;
3. If the trafficker uses drugs (*stupéfiant*) that affect the capacity of the victim;
4. If the trafficker uses weapons, or carries a conceal weapon;
5. If the victim is hidden or displayed in a public or private place;
6. If the act of trafficking causes the child physical, mental or moral damage, or other repercussions requiring medical attention;
7. If the trafficking is part of an organized or group activity;
8. If the child is subjected to the worst forms of labor;
9. In the event that the trafficker is a recidivist.

⁸³ Loi No.2005-009 du 3 août 2005, Chapitre II – Article 3.

⁸⁴ Loi No.2005-009 du 3 août 2005, Chapitre II – Article 4.

⁸⁵ Loi No.2005-009 du 3 août 2005, Chapitre II – Article 5.

⁸⁶ Loi No.2005-009 du 3 août 2005, Chapitre II – Article 6.

⁸⁷ Loi No.2005-009 du 3 août 2005, Chapitre III – Article 7: “L’Etat et les collectivités locales prennent toutes les mesures appropriées en vue d’assurer la protection de tous les enfants contre le trafic et toute forme d’exploitation.”

⁸⁸ Loi No.2005-009 du 3 août 2005, Chapitre III – Article 9.

⁸⁹ Loi No.2005-009 du 3 août 2005, Chapitre III – Article 10.

Parents are subject to lesser punishments (six months to a year in prison or probation up to three years) if they knowingly facilitate the trafficking of their child or one under their guardianship.⁹⁰

The 2006 Benin law, subtitled a law “with respect to the conditions whereby children are moved, and for the suppression of the trade in children,” is divided into four chapters.⁹¹ In defining precisely what constitutes child trafficking, the text of the first chapter highlights several key factors. “Children” are those under eighteen years.⁹² A trafficker is rendered as an individual performing an act “for the purpose, the alienation of the liberty or person of a child, whether gratuitously or for personal financial gain,” and such acts may include “recruitment, transportation, transfer, placement, and harboring,” of children “regardless of the ultimate particularities of the method of exploitation.”⁹³

The concept of “exploitation” in Benin is further elaborated as

including but not limited to,

- all forms of slavery or analogous practices, debt bondage, and servitude such as force labor, the use of children in armed conflict or for the purposes of organ transplant;
- the offering up or procurement of a child for the purposes of prostitution, the production of pornographic materials and films;
- the offering up or procurement of a child for the purpose of criminal activities;
- any work, which by its nature and/or conditions, may endanger the health, security or morality of a child, or delivering a child into any such circumstances.⁹⁴

The concluding articles of the opening section state unequivocally that child trafficking and all forms of child labor are illegal in Benin, except for those permitted under international law.

The most important section of Benin law describes several contexts in which child trafficking operates. This section includes: types of acts whereby children would be considered trafficked within and outside the country; forms of movement of a child (except for judicial or social services) within the country; and separation from a biological parent or a person with designated “authority” without “a special authorization delivered by the competent administrative authority in the child’s place of residence.” No one is permitted to receive a child without assurance that such an authorization exists.⁹⁵ Furthermore, anyone receiving a child other than the biological parents must report the arrival of the child within seventy-two hours, subject to penalties described in the same law. With the exception of war and natural disaster, no foreign child may enter the Benin, unless accompanied by a biological parent or a guardian, and in possession of an identity document and documentation about the destination and purpose of

⁹⁰ Loi No.2005-009 du 3 août 2005, Chapitre III – Article 12.

⁹¹ Loi No.61-20 du 05 Juillet 1961 (République du Dahomey); Ordonnance No.73-37 du 13 Avril 1973. It builds on a 1961 law concerning the movement on minors outside the nation and a 1973 modification of the criminal code with respect to the slavery and the abduction of minors.

⁹² République du Bénin, Loi No. 2006-04 Du 05 Avril 2006, Chapitre Premier, Article 2.

⁹³ Loi No. 2006-04 Du 05 Avril 2006, Chapitre Premier, Article 3.

⁹⁴ Loi No. 2006-04 Du 05 Avril 2006, Chapitre Premier, Article 4.

⁹⁵ The mode of acquisition of such authorization is to be elaborated by decree by the Council of Ministers.

the voyage.⁹⁶ Restrictions on the movement of Beninese children beyond the limits of the republic are similar to entry constraints. Any parent or guardian seeking to remove a child must be in possession of a dossier consisting of the place of origin, the destination, the purpose of the movement, and the identity of the individuals or establishment that will receive the child.⁹⁷

Like Togo, Benin's law highlights the state's capacity to prosecute and punish. Any child found in violation of the terms laid out above may be returned to his or her parents or an institution of protection.⁹⁸ Anyone found to be "moving, attempting to move or accompanying" a child without the appropriate identifying documents, regardless of destination, is subject to punishment if it can be "established that the child is a victim of trafficking and the transporter took the child deliberately."⁹⁹ Mothers or fathers who knowingly relinquish their child into the custody of a "trafficker" are subject to between six months and five years imprisonment.¹⁰⁰ Any individual involved in the domestic movement or "attempted" movement of a child who has not followed the protocols stipulated by the law, is subject to between one and three years imprisonment and a fine of between 50,000 and 500,000 CFA.¹⁰¹ Similarly individuals, regardless of nationality, involved in removing a child from the territory of the republic are subject a sentence of two-five years and fine of between 500,000 and 2,500,000 CFA.¹⁰² Furthermore, anyone failing to convey knowledge of the trafficking of a child is punishable by a fine.¹⁰³

A crucial distinction is made, however, between those who "move or attempt to move" and those who "deliver into the trade" a child, whereby the latter are subject to between 10 and 20 years imprisonment.¹⁰⁴ A series of circumstances are subsequently iterated, including a provision that "if the child is not recovered prior to sentencing or is recovered deceased," each of which results in a sentencing enhancement, often life behind bars.¹⁰⁵ Recidivism results in the doubling of the punishments iterated in articles 16-21.¹⁰⁶ Additional criminalized activities include knowingly "employing" a child who originated in the trade, threats or use of force, "other forms of constraint," abduction, fraud, deception, and "abuse of authority."¹⁰⁷ Violence, deprivation, "incitement to debauchery" or mendacity, "public indecency," "offering" or "accepting" payment or benefits, or "consent" to "exploit" a child, are all viewed as acts constituting "aggravation of child trafficking."¹⁰⁸ And to underscore the severity of the proscriptions, Articles 26 and 27 state first, that "the attempt to commit any of the infractions previewed in the present law is subject to the same punishment as if the crime were committed,"

⁹⁶ Loi No. 2006-04 Du 05 Avril 2006, Chapitre II, Article 9. Moreover, in the paramount interests of the child, any appropriate government or judicial authority may refuse entry to foreign children if the conditions of articles nine and ten are not met. Loi No. 2006-04 Du 05 Avril 2006, Chapitre II, Article 11.

⁹⁷ Loi No. 2006-04 Du 05 Avril 2006, Chapitre II, Article 12.

⁹⁸ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 14.

⁹⁹ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Articles 15, 18

¹⁰⁰ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 16.

¹⁰¹ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 17.

¹⁰² Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Articles 18-19.

¹⁰³ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 20.

¹⁰⁴ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 21.

¹⁰⁵ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 21, Paragraphs 2-3.

¹⁰⁶ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 25.

¹⁰⁷ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 22.

¹⁰⁸ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Articles 23-24.

and second, that “accomplices” will be punished in the same way as “authors” of the criminal acts.¹⁰⁹

This narrower approach delinks children from adult trafficking networks with a variety of consequences. The “child-centric” group currently comprises primarily francophone countries, but also includes Sudan.¹¹⁰ Because we are interested in the emergence of legislation partly in response to external incentives, we specifically exclude states that have Children’s Acts but no law focused on trafficking exclusively. Preliminary data suggests this is a transitional stage. For example the Gambia and South Africa previously passed laws on children’s rights in 2005, which enshrined the International Convention on the Rights of the Children into law, and included provisions prohibiting trafficking. Yet in 2007 and 2010 respectively the laws were expanded to include all forms of human trafficking, and at least in South Africa’s case the language employed was more or less identical to the 2005 text. Each state in this second group reported investigations and prosecutions by 2009. Gabon and Cameroun may be included in this group because 2004 and 2005 laws respectively complement existing criminal code articles and prohibit child trafficking and slavery.¹¹¹

The third legislative model, one of “revalidation,” is predicated on the idea that existing laws provide adequate legislative remedy. Because this group is constitutive of states which contend that domestic laws adequately provide for the prosecution of traffickers, no one state’s laws are emblematic of this model. The “revalidation” group of nations is smaller and continues to diminish in membership. For example, Côte d’Ivoire’s Penal Code prohibits forced labor (Article 378), entering into contracts that deny freedom to a third person (Art. 376), and recruiting or offering children for prostitution (Art. 335-337), all with imprisonment and fines. The military code (Art. 2) prohibits child conscription. Mali has similar, if not identical, articles of prohibition in the 1973 revision of its criminal code.¹¹² Rwanda uses existing penal and labor code statutes to prosecute traffickers variously for slavery, forced labor, forced prostitution, and child prostitution. Malawi prosecuted traffickers via the Employment Act and Articles 135 and through 147 and 257 through 269 of the Penal Code.

While each country in the third group reported investigations and prosecutions, many states are currently revising their statutes. For example, until December 2009 Kenya was in the third group, but with the passage of the Counter-Trafficking in Persons Bill of 2010 it moved into the first. Notwithstanding “increased efforts to address trafficking through... enforcement” of existing law, Côte d’Ivoire currently has legislation pending that would propel it into either the first or second group.¹¹³ While Guinea Bissau only criminalizes forced labor under Article 37 of its Penal Code, itself a colonial legacy, it recently began drafting a child trafficking bill. Others, such as Niger, have recently revitalized existing laws. For example, Niger’s Penal Code

¹⁰⁹ Loi No. 2006-04 Du 05 Avril 2006, Chapitre III, Article 26-27.

¹¹⁰ Burkina Faso (Law No. 038-2003 concerning the Definition of Child Trafficking).

¹¹¹ Gabon (Law 09/04 Preventing and Combating Child Trafficking); Cameroun (Law Combating Child Trafficking and Slavery of 2005). TIPS (2009), 98, 137. A 2006 Camerounian draft text on human trafficking was never signed into law. TIPS (2009), 98.

¹¹² The Criminal Code of prohibits and punishes with imprisonment all forms of child trafficking (Art. 244), the sexual exploitation of children and forced prostitution of adult women (Art. 229) and the entering into agreements or contracts that deprive third parties of their liberty (Art. 242).

¹¹³ TIPS 2009, 114.

prohibits procurement of a child for prostitution (Art. 292-293), slavery via a 2003 amendment (Art. 270-2003), and forced and compulsory labor through its Labor Code (Art. 4).

These three typologies of legislative remedy are revealed to be at once problematic with respect to enforcement and the product of hasty action. With respect to the “wide-net” approach, almost immediately upon passage of the new law both Ghana and Nigeria began drafting amendments. Prosecutors complained that poorly written definitions did not provide the leverage to guarantee convictions. The second “child-centric” approach is revealed to be a highly transitory stage. No sooner had prosecutors in Burkina Faso, Mauretania and the Gambia become familiar with the first law, than legislators redefined trafficking to include adults. The framework of the third group encapsulates its inherent inefficacy. It comprises states that at once insist that current law is satisfactory, while simultaneously drafting new laws on child or human trafficking.

Conclusion – US Directives and the Unfinished Business of Parental Coercion

The April 2003 Human Rights Watch report “Togo: Borderline Slavery” contained an unusual juxtaposition of interviews between a trafficking victim and several anti-trafficking practitioners from Togo. Kéméyao A., aged ten years, made the following statement:

There was a woman who came to the market to buy charcoal. She found me and told my mother about a woman in Lomé who was looking for a girl like me to stay with her and do domestic work. She came to my mother, and my mother gave me away. The woman gave my mother some money, but I don’t know how much.¹¹⁴

But whereas Kéméyao identified a direct relationship of complicity between the trafficking agent and her mother, among Togo’s anti-trafficking practitioners attitudes differ with regard to how to deal with parental responsibility.¹¹⁵

Togo’s Children’s Code drafting committee included an expansive criminalization of parental roles in the draft legislation “over the objections” of the committee’s president, Judge Emanuel Etorh. Etorh told HRW that while most everyone on the committee wanted to “criminalize parental involvement,” including NGOs, this did not make sense.

it does not further the rights of the child to violate human rights [of parents] in this way.... If a father takes a risk with his child, we know he’s committed an infraction and has to be punished. But where I part with my fellow committee members is whether such a parent should be imprisoned for six years. The punishment should be six months to a year, not six years.

¹¹⁴ HRW, “Togo: Borderline Slavery,” 23.

¹¹⁵ Ritualo et al, “Measuring Child Labor.”

Judge Edorh's view was shared by Togo's Minister of Women's Affairs, Suzanne Aho. She expressed concern about how the "punishment of parents... might affect children." She explained that, "children are also stigmatized when they have a parent in prison."¹¹⁶

Although many Togolese anti-trafficking practitioners and NGOs supported tough penalties on parents, HRW took a midway stance and endorsed limited provisions on parental complicity. HRW reminded Togo's many constituencies that the UN Convention of the Rights of the Child specifically articulated that the "best interests of the child" determine such matters.¹¹⁷ HRW called for "an explicit defense for parents who are genuinely deceived about the purpose of their child's recruitment, believing it to be educational or otherwise non-exploitative" and endorsed "reduced penalties for parents who reasonably but mistakenly believe that aiding and abetting child trafficking, or failing to report child traffickers to the police, is in their child's best interests."¹¹⁸ And HRW's position on parental responsibility resonates with the US policy.

By 2010 the elected legislatures of the vast majority of African republics promulgated new legislation to combat and outlaw trafficking in either humans or children.¹¹⁹ These individual laws were the culmination of several years of research and lobbying by domestic and international anti-trafficking constituencies, including children's and women's advocates, legislators and legal activists, and the crowning achievement of a campaign that had gained significant traction barely a decade earlier. The laws built on national acts focused on children, domestic violence, and women's rights by criminalizing specific practices associated with the illegal labor and movement of individuals and penalizing non-compliance in a variety of ways.¹²⁰ The laws provide specific articles to discourage offenders, and inducements to discourage offenders and incentivize compliance.

The move toward new law coincides with the development of federal responses in the United States. The State Department for example, with the creation of its Office to Monitor and Combat Trafficking in Persons, began publication of annual reports on child trafficking from 2001. From this date, African trafficking began to be reframed as an issue of domestic legitimacy, and regimes were pressured by a variety of mechanisms to deliver results and "establish law and order within their own borders."¹²¹ The positivistic legal framework lends itself to legislative remedies for trafficking, and clearly eased the production of such laws.

In sub-Saharan Africa in the new millennium the tension between anti-trafficking constituencies – such as in Togo – has been both productive and counterproductive in terms of child protection and parental roles. The legislative agenda of anti-trafficking agencies moved

¹¹⁶ Human Rights Watch, "Togo: Borderline Slavery," p.40.

¹¹⁷ Article 9(1) of the Convention on the Rights of the Child provides that "a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child." Article 3(1) of the Convention on the Rights of the Child obliges states to make the best interests of the child a "primary consideration" in "all actions concerning children."

¹¹⁸ Human Rights Watch, "Togo: Borderline Slavery," p.48.

¹¹⁹ US State Department, *Trafficking Persons Report* 2009, 51

¹²⁰ For an appraisal of the child rights act of Ghana, see S. Laird, "The 1998 Children's Act: Problems of Enforcement in Ghana," *British Journal of Social Work* 32 (2002): 893-905

¹²¹ Fitzgibbon, "Modern-Day Slavery?" 88.

through the assemblies of African republics with few of the obstacles encountered by other acts of social engineering.¹²² But many of the resulting laws delinked the newly criminalized aspects of trafficking from both the demand for and form of labor in the sub-region. There are a number of reasons for this but among the more important is that it reflects a neo-liberal turn on “traditional” African parental ideologies with regard to proprietary claims in the person and labor of children.¹²³ The anti-trafficking legislative drive in Africa operated with a continental thoroughness far more all-encompassing than previous anti-slavery legislative platforms. The passage of national laws pertaining to trafficking was, however, complicated by the agendas of the many constituencies working against the exploitation of children *and* adults.

The process of drafting laws is consultative and deliberative, and draws on different sources within the nation and beyond for how to deal legislatively with specific issues. While laws are national products, the simultaneous introduction of anti-trafficking legislation in African in multiple national assemblies was hardly coincidental. Anti-trafficking laws unfolded swiftly across Africa in the new millennium, but it would be far too simplistic to interpret this development as another manifestation of US imperialism.¹²⁴ While USAID routinely sponsored legislative drafting training in Africa, and disseminated draft anti-trafficking statutes to national legislative drafters, African nations drew on a rich history and a variety of sources for inspiration.¹²⁵

¹²² The best example of contentious social legislation is women’s rights legislation, including laws introduced in Ghana, Nigeria, and Mali with respect to domestic violence. For the controversy surrounding Ghana’s domestic violence legislation and the “marital rape” exception, see S. Hodžić, “The Logics of Controversy: Gender Violence, Women’s Rights, and the Frictions of Ghanaian Advocacy,” in E. Thornberry, E. Burrill, and R. L. Roberts (eds.), *Domestic Violence in Africa* (2010) forthcoming; N. K. Stafford, “Permission for Domestic Violence: Marital Rape in Ghanaian Marriages,” *Women’s Rights Law Reporter* 29 (2008): 63-75; A. Adomako Ampofo, “Collective Activism: The Domestic Violence Bill becoming Law in Ghana,” *African & Asian Studies* 7.4 (2008): 395-421.

¹²³ P. Erny, *L’enfant dans la pensée traditionnelle de l’Afrique noire* (Paris: l’Harmattan, 1990), 119: “L’homme qui a procréé des FILS ressemble au bananier qui a donné des fruits: il peut mourir. Par le truchement de l’enfant le nom du parent revivra. Qui nommera l’enfant, nommera les parents.”

¹²⁴ For a critique of the “moral panic” characteristic of Bush administration’s approach to female sex trafficking and its conflation with child trafficking, see K. Kempadoo, “Introduction: From moral panic to global justice: Changing perspectives on trafficking,” K. Kempadoo, J. Sanghera & B. Pattanaik (Eds.), *Trafficking and prostitution reconsidered: New perspectives on migration, sex work, and human rights* (Boulder, CO: Paradigm Publishers, (2005); G. Soderlund, “Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition,” *NWSA Journal* 17.3 (Fall 2005): 64-87; M. C. Desyllas, “A critique of the Global Trafficking Discourse and U.S. Policy,” *Journal of Sociology & Social Welfare* 34.4 (2007): 57-79. Also, J. Doezema, “Forced to choose: Beyond the voluntary v. forced prostitution dichotomy,” K. Kempadoo & J. Doezema (Eds.), *Global sex workers: Rights, resistance and redefinition* (New York: Routledge, 1998); J. Doezema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking of Women,” *Gender Issues* 18.1 (2000): 23–50; W. Chapkis, “Soft Glove, Punishing Fist: The Trafficking Victims Protection Act of 2000,” E. Bernstein and L. Schaffner (eds.), *Regulating Sex: The Politics of Intimacy and Identity* (New York: Routledge, 2005), 51-65.

J. Doezema, “Now You See Her, Now You Don’t: Sex Workers at the UN Trafficking Protocol Negotiation,” *Social and Legal Studies* 14.61 (2005): 61–89; J. Doezema, “Ouch! Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute,’” *Feminist Review* 67 (2001): 16–83.

¹²⁵ http://www.justice.gov/crt/crim/model_state_law.pdf