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**ADEQUACY AND COMPREHENSIVENESS OF ZIMBABWE'S LAWS IN  
COMBATING CHILD LABOUR TRAFFICKING**

**Submitted in partial fulfilment of the requirements of the Master of Human  
Rights**

**(LLM) in Human Rights and Democratization in Africa**

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**23 October 2024**

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## PLAGIARISM DECLARATION

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## ACKNOWLEDGEMENTS

I would like to express my sincere appreciation and gratitude to the following people for their supervision, assistance and support they provided for the successful completion of this research:

- Matilda Lasseko-Phooko for her guidance, dedication and expert knowledge
- Dr Evelyne Owiye Asaala my co-supervisor for her guidance and constant encouragement
- My mother, Shalati and my father Niro for their constant encouragement and support
- My colleagues Laurian Wilberforce Magaka and Neville Munashe Mupita for their moral support, constant encouragement and professional advice.
- My family which I left home for being patient with, my wife, Beauty, for her loyalty, support and understanding, and my two lovely sons Constantine and Arthur for their love.

## KEYWORDS

Child labour trafficking, Child labour, Child exploitation, Child protection, Combating Trafficking, Human trafficking, modern-day slavery, Trafficking in Persons.

## ACRONYMS AND ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AU	African Union
CRC	Convention on the Rights of the Child
The Code	Criminal (Codification and Reform) Act
CTOC	UN Convention on Transnational Organised Crime
CEDAW	Convention on the Elimination of All Forms of the Discrimination of Women
CESCR	Committee on Economic, Social and Cultural Rights
ILO	International Labour Organization
IOM	International Organisation for Migration
IOM	International Organisation for Migration
NAPLAC	Zimbabwe Trafficking in Persons National Plan of Action
NPA	National Prosecuting Authority
NGO	Non-Governmental Organisation
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
Ouagadougou Plan	The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children
Palermo Protocol in	UN Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children
Rome Statute	Rome Statute of the International Criminal Court
SADC	Southern African Development Community
TIP	Trafficking in Persons
UDHR	Universal Declaration of Human Rights



UN	United Nations
UNESCO	UN Educational, Scientific and Cultural Organisation
UNHCHR	UN High Commission on Human Rights
UNICEF	UN Children's Education Fund
UNODC	UN Office on Drugs and Crime
US	United States
WHO	World Health Organisation

## CHAPTER ONE: INTRODUCTION

*Human beings are not commodities to which a price can be attached; they are creatures with inherent and infinite worth they ought to be treated as ends in themselves, never merely as means to an end.*<sup>1</sup>

### 1.1 Brief background

The ushering in of the new constitutional dispensation in 2013 heralded the dawn of a new epoch in the reinvigoration of the impetus to fight human trafficking in Zimbabwe by trying to domesticate the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) through the enactment of the Trafficking in Persons Act of 2014.<sup>2</sup> The ideological underpinning behind the enactment of the TIP Act was to comprehensively combat human trafficking through the implementation and domestication of the international legal instrument to combat trafficking – the Palermo Protocol – which Zimbabwe is a state party.<sup>3</sup> This research examines the adequacy and comprehensiveness of the TIP Act in combating child labour trafficking. It seeks to explore the scope, magnitude, forms, and causes of child labour trafficking. The research focuses on the principal international legal instrument meant to combat child labour trafficking, the Palermo Protocol, in a bid to find the legal solution to child labour trafficking in Zimbabwe. The research will draw inspiration from best practices from South Africa and Kenya on how to craft adequate and comprehensive legislation to combat child labour trafficking which is congruent to the Palermo Protocol. The study will contextualise child labour trafficking to the exigencies facing Zimbabwe while drawing inspiration from the two mentioned jurisdictions of Kenya and South Africa.

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<sup>1</sup> *S v Dodo 2001 (3) SA 382 (CC) para 38.*

<sup>2</sup> The Deputy Minister of Home Affairs Mr Ziyambi Ziyambi during the second reading speech on Trafficking in Persons Bill in the National Assembly on Wednesday 14 May 2014 (H. B. 5, 2014): *'Thank you Mr. Speaker Sir. I rise to present the Trafficking in Persons Bill. This Bill provides for the domestication of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime.....'* <https://www.veritaszim.net/node/925> (accessed on 11 October 2024).

<sup>3</sup> As above.

Child labour trafficking is far beyond mere deprivation of human rights but has harmful effects on societies and families.<sup>4</sup> The Palermo Protocol defines child labour trafficking as the recruitment, transfer, harbouring or receipt of persons below the age of eighteen for exploitation.<sup>5</sup> While labour trafficking, in general, includes the act, means and purpose, the Palermo Protocol provides that means is not a necessary element for the commission of child labour trafficking.<sup>6</sup> Kulig defines child trafficking as a form of trafficking where there is the use of coercion, force, and deception in order to exploit an individual through commercial sex and involuntary labour.<sup>7</sup> Save the Children, an NGO defines child labour trafficking as the exploitation of boys and girls primarily for forced labour.<sup>8</sup> Although the concept of human trafficking is a highly contested topic around the world it is a term which has been generally defined as a form of slavery.<sup>9</sup> Slavery was officially abolished in 1833 by the British Empire where nearly one million slaves were freed.<sup>10</sup>

However, labour trafficking as a form of modern-day slavery is no longer characterised by legal ownership of another human being for long-term enslavement, it is now through temporary ownership, forced labour, exploitative contracts and debt bondage.<sup>11</sup> Human trafficking in general and child labour trafficking, in particular, is a lucrative billion-dollar thriving industry with an estimated profit of over US\$10 Billion per annum.<sup>12</sup> Globally, it is estimated that over 12 million children are facing modern-day slavery, with 3 000 000 facing forced labour and 9 000 000 facing forced marriages and sexual exploitation.<sup>13</sup> However, Zimbabwe's Trafficking In Persons Act,<sup>14</sup> which is the principal legislation to combat child trafficking, does not include

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<sup>4</sup> V Mabvurira et al 'Child trafficking and child smuggling in Zimbabwe: legislation and policy gaps' (2022) 12 *African Journal of Social Work* 51.

<sup>5</sup> Article 3 The Protocol to prevent, suppress, and punish trafficking in person, especially women and children, supplementing the United Nations Convention against transnational organized crime.

<sup>6</sup> Article 3(c) Palermo Protocol.

<sup>7</sup> T Kulig 'Understanding the nature of human trafficking: A content analysis approach' PhD thesis, University of Cincinnati, 2018 1.

<sup>8</sup> Save the Children, The fights against child trafficking <https://www.savethechildren.org/us/charity-stories/child-trafficking-awareness> (accessed on 9 July 2024)

<sup>9</sup> M Lee *Understanding Human trafficking* (2007) 3.

<sup>10</sup> N Molena 'Combating Human Trafficking in South Africa: A comparative legal study' PhD thesis, University of South Africa, 2013 1.

<sup>11</sup> Lee (n 9 above) 2.

<sup>12</sup> HB Kruger 'Combating Human Trafficking: A South African Legal Perspective' PhD Thesis, University of THE Free State 2010 3.

<sup>13</sup> Anti-Slavery International, Child Slavery <https://www.antislavery.org/slavery-today/child-slavery/#:~:text=Common%20forms%20of%20slavery%20of,crime%20or%20the%20drug%20trade> (Accessed on 9 July 2024)

<sup>14</sup> Trafficking in Persons Act, Chapter 9:25.

forced marriages and child marriages as forms of human trafficking.<sup>15</sup> Leaving out forced marriage and early marriages by the TIP Act leaves young people vulnerable to child trafficking. Well-calibrated legislative thinking to deal with child labour trafficking should be alive to the fact that forced marriages and early marriages are part and parcel of the scourge of child labour trafficking.

Zimbabwe is a Sub-Saharan African country recording a high prevalence of internal unreported cases of child labour trafficking.<sup>16</sup> Children are exploited through labour trafficking in cattle herding, domestic work, the mining sector and agriculture.<sup>17</sup> Child labour trafficking is rife in tobacco industry, sugar cane industry, cotton farming sector, and the fishing sector.<sup>18</sup> There are several traditional practices which make Zimbabwean girls vulnerable to child labour trafficking through trading for food, money and coercion into forced marriages.<sup>19</sup> Children in Zimbabwe are forced into selling illicit drugs.<sup>20</sup> Traffickers target girls and force them into forced commercial sex trafficking as well as forcing them to assist in illegal mining activities.<sup>21</sup> Children are fraudulently promised good jobs in neighbouring countries such as South Africa where they find themselves in sex trafficking and forced labour.<sup>22</sup> Human traffickers in South Africa recruit undocumented children promising them employment where they will find themselves exploited in mines, farms and forced prostitution.<sup>23</sup>

The common forms of child labour trafficking are forced commercial sex exploitation, forced labour, forced marriages, forced begging and illegal adoption.<sup>24</sup> Child labour trafficking often overlaps with abuse and sexual exploitation.<sup>25</sup> Sexual exploitation

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<sup>15</sup> US Department of State 2023 Trafficking in Person Report <https://www.state.gov/reports/2023-trafficking-in-persons-report/zimbabwe/> (accessed on 16 August 2024).

<sup>16</sup> US Department of State 2024 Trafficking in Person Report <https://www.state.gov/reports/2024-trafficking-in-persons-report/zimbabwe/#:~:text=Internal%20trafficking%20is%20prevalent%20and,the%20gold%20and%20diamond%20sectors> (accessed on 17 August 2023).

<sup>17</sup> As above.

<sup>18</sup> As above.

<sup>19</sup> As above.

<sup>20</sup> As above.

<sup>21</sup> As above.

<sup>22</sup> As above.

<sup>23</sup> As above.

<sup>24</sup> United Nations Office on Drugs and Crime, Understanding child trafficking [https://www.unodc.org/unodc/frontpage/2024/July/explainer\\_-\\_understanding-child-trafficking.html](https://www.unodc.org/unodc/frontpage/2024/July/explainer_-_understanding-child-trafficking.html) (accessed on 7 July 2024).

<sup>25</sup> [https://oijdp.ojp.gov/model-programs-guide/literature-reviews/child\\_labor\\_trafficking.pdf](https://oijdp.ojp.gov/model-programs-guide/literature-reviews/child_labor_trafficking.pdf) (accessed on 16 August 2024).

and forced labour are lucrative forms of trafficking.<sup>26</sup> Almost over a decade ago, Africa witnessed an upsurge of child labour trafficking with research showing that no single African country is immune to trafficking.<sup>27</sup> However, research by the United Nations Office on Drugs and Crime revealed that many governments across the world are in denial, which negatively affects prosecution and reporting of trafficking cases.<sup>28</sup> Children in Zimbabwe are forced into street vending where they sell goods or are involved in menial jobs in the streets.<sup>29</sup>

On 13 December 2013, Zimbabwe acceded to the Palermo Protocol.<sup>30</sup> In August 1998, Zimbabwe ratified the 1957 Abolition of Forced Labour Convention which aims to suppress and forbid any form of compulsory or forced labour.<sup>31</sup> In December 1998, Zimbabwe further deposited its declaration for the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. The supplementary convention is meant to eradicate practices that are similar to slavery which are being perpetuated either by institutions or practice.<sup>32</sup> Zimbabwe is also a state party to the African Charter on Human and Peoples' Rights (ACHPR), which provides that no one shall be subjected to all forms of exploitation particularly slavery, the slave trade, and any form of degrading treatment.<sup>33</sup> Zimbabwe ratified the 1999 African Charter on the Rights and the Welfare of the Child which provides that countries should guard against child labour,<sup>34</sup> sexual exploitation,<sup>35</sup> trafficking, abduction, and sale.<sup>36</sup> In 2006 through the Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children (Ouagadougou Plan), Zimbabwe committed to prevent and combat trafficking by giving special attention to the Palermo Protocol.<sup>37</sup>

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<sup>26</sup> UNODC Report on human trafficking exposes modern form of slavery, <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (accessed on 5 July 2024).

<sup>27</sup> O Adepitan 'Decolonizing Human Trafficking: A Case Study of Human Trafficking in Edo State Nigeria' Master of Arts in Political Science Thesis, University of South Florida, 2020 1.

<sup>28</sup> UNODC Report on human trafficking exposes modern form of slavery, <https://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html> (accessed on 5 July 2024)

<sup>29</sup> As above.

<sup>30</sup> The Zimbabwe Trafficking in Persons National Plan of Action (NAPLAC) 2016-2018 7.

<sup>31</sup> Article 1 of the Abolition of Forced Labour Convention, 1957.

<sup>32</sup> Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, preamble.

<sup>33</sup> Article 5 of The African Charter on Human and People's Rights.

<sup>34</sup> Article 15 of the African's Children Charter.

<sup>35</sup> Article 27 Children's Charter.

<sup>36</sup> Article 29 Children's Charter.

<sup>37</sup> Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children (Ouagadougou Plan) at 2.

In 2013, Zimbabwe's constitution was enacted.<sup>38</sup> The promulgation and subsequent enactment of the 2013 Constitution was celebrated as a landmark epoch in the country's human rights protection, promotion and the fight against slavery, servitude and forced labour.<sup>39</sup> The Constitution provides a comprehensive Bill of Rights. Child trafficking militates against the values and spirit of fundamentally entrenched constitutional rights such as human dignity,<sup>40</sup> freedom of movement<sup>41</sup> and right to life.<sup>42</sup> The Constitution provides that no person may be subjected to slavery and servitude.<sup>43</sup> The Constitution further guarantees the right to personal security and protects people from forced labour which are major forms of human trafficking around the world.<sup>44</sup>

After acceding to the Palermo Protocol Zimbabwe promulgated the Traffic in Persons Bill. The bill was enacted into law in 2014 as the Trafficking in Persons Act.<sup>45</sup> Although the Act provides for the prohibition, protection and prosecution of human trafficking, the act fails to adequately address the concept of child labour trafficking. For example, the Act does not include the aspects of forced marriages and child marriages in its conceptualisation of child trafficking. The major reason for enacting the Trafficking in Persons Act of 2014 was realigning anti-trafficking legislation in line with the Palermo Protocol.<sup>46</sup>

## 1.2 Problem statement

In 2014, Zimbabwe promulgated and subsequently enacted the TIP Act to domesticate the Palermo Protocol.<sup>47</sup> However, although Zimbabwe enacted the TIP Act as the principal legislation to fight child labour trafficking, there are some gaps which render the act insufficient in dealing with child labour trafficking. Zimbabwe's TIP Act provides that a person commits the crime of trafficking when transporting the victim within or outside Zimbabwe. This conceptualisation of trafficking as a

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<sup>38</sup> The Constitution of Zimbabwe Amendment (No 20), Act 2013.

<sup>39</sup> Section 54 and 55 of the Constitution of Zimbabwe.

<sup>40</sup> Section 51 of the Constitution of Zimbabwe.

<sup>41</sup> Section 66 of the Constitution of Zimbabwe.

<sup>42</sup> Section 48 of the Constitution of Zimbabwe.

<sup>43</sup> Section 54 of the Constitution of Zimbabwe.

<sup>44</sup> Section 52 of the Constitution of Zimbabwe.

<sup>45</sup> NAPLAC 8.

<sup>46</sup> Trafficking in Persons Bill - Deputy Minister's Second Reading Speech <https://www.veritaszim.net/node/925> (accessed on 21 September 2024)

<sup>47</sup> As above.

movement-based crime leaves children in communities bearing the brunt of labour trafficking. The Trafficking in Persons Act's definition of trafficking as transportation of victims creates a problem in the conceptualisation of trafficking. Trafficking is a criminal conduct which does not require movement or the crossing of borders, a person can be exploited without movement.<sup>48</sup> The crux of the crime of trafficking is exploitation not only movement. This leaves a gap in the prevention, prosecution and protection of heinous child labour trafficking acts happening where the victims have not been transported from one place to another.

While the Palermo Protocol defines child trafficking, the TIP Act fails to define child trafficking. It only mentions that the crime of trafficking will be committed in aggravating circumstances when the trafficked person is a child.<sup>49</sup> Unlike the Palermo Protocol, the Act does not differentiate child trafficking from trafficking of majors which distinction is key to addressing unique aspects that affect children such as child labour. The Act left out other forms of trafficking such as forced marriages, child pledging and early marriages which are the biggest forms of child trafficking in the country.

The TIP Act provides two categories of victims of trafficking. The Act provides for involuntary<sup>50</sup> trafficking and voluntary<sup>51</sup> trafficking which confuse trafficking and smuggling. The Trafficking in Persons Act fails to adequately address forced labour which is a critical definitional element in the Palermo Protocol. Instead, the act refers to forced labour to be regulated by the Labour Act. The Labour Act deals with labour matters, but its conceptualisation of forced labour is not underpinned by the Palermo Protocol's aspirations, spirit and purport.

The TIP Act fails to comprehensively define the concept of exploitation. The Act provides the phrase 'unlawful purpose' instead of the word 'exploitation' a situation which creates problems in the conceptualisation of trafficking. As a result of these gaps, despite the existence of laws to combat child trafficking, children in Zimbabwe

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<sup>48</sup> Office of Trafficking in Persons, Myths and Facts about human trafficking <https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking#:~:text=MYTH%3A%20Trafficking%20includes%20some%20form%20of%20travel%20or%20transportation%20across%20borders.&text=FACT%3A%20Human%20trafficking%20does%20not,their%20will%2C%20it%20is%20trafficking>. (accessed 6 September 2024).

<sup>49</sup> Section 3(3)(1).

<sup>50</sup> Section 3(1)(a)(i) Trafficking in Persons Act.

<sup>51</sup> Section 3(1)(a)(ii) Trafficking in Person Act.

continue to face the worst forms of child labour in mines and farms and sexual exploitation.<sup>52</sup> Poverty and the volatile macroeconomic climate in Zimbabwe are worsening the vulnerability of children to child trafficking, especially sexual abuse and exploitation.<sup>53</sup> In March 2024, the Zimbabwe Gender Commission issued a press statement concerned with the upsurge of child sexual exploitation and abuse.<sup>54</sup> Zimbabwe continues to experience the pledging of girls.<sup>55</sup> The TIP Act left forced commercial sexual exploitation to the Criminal Code. This is another form of child labour trafficking which should be regulated by trafficking legislation for meaningful protection of children. The existing legal lacuna in laws combating child trafficking has contributed to poor child protection mechanisms which fuels the growing trend of child labour trafficking in Zimbabwe. The inadequacy of the legal and policy framework makes it difficult for the prosecution of child trafficking perpetrators. This is particularly true with the definition of child trafficking, failure to make forced marriages and early marriages as forms of trafficking, and trivialising illegal adoption. The TIP Act does not adequately address the issue of illegal adoption which is one of the forms of child trafficking bedevilling the world today, instead of addressing unlawful adoption as a form of trafficking affecting children, the Act make it an aggravating factor which can be considered in sentencing traffickers.<sup>56</sup> This research focuses on how anti-trafficking laws in Zimbabwe do not adequately and comprehensively respond to the menace of child labour trafficking bedevilling Zimbabwe.

### 1.3 Significance of the study

The research study is for various players in the justice delivery system and players who are critical in combating child trafficking such as the Attorney General's Office, Ministry of Home Affairs and Cultural Heritage, Judicial Service Commission, and National Prosecuting Authority of Zimbabwe. The study further provides the legal loopholes of anti-trafficking legislation and recommendations which Zimbabwe

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<sup>52</sup> Bureau of International Labor Affairs, <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/zimbabwe> (accessed on 10 July 2024).

<sup>53</sup> M Muchacha 'Dynamics of child sexual abuse in Zimbabwe: towards a socio-ecological framework of prevention' 2015 27 *The Social Work Practitioner-Researcher* 118, 118-136.

<sup>54</sup> Zimbabwe Gender Commission, Statement on sexual exploitation and abuse of girls <https://zgc.co.zw/wp-content/uploads/2022/12/ZGC-statement-recommending-prosecution-and-conviction-for-girls-rape-211122.....pdf> (accessed on 10 July 2024).

<sup>55</sup> As above.

<sup>56</sup> Section 3(3)(b) Trafficking in Persons Act.



should consider when amending or repealing legislation to combat human trafficking. The study will help NGOs and other international organisations implementing anti-child trafficking programmes with insights on how to combat child labour trafficking.

#### **1.4 Research objectives**

This research aims to analyse the adequacy and comprehensiveness of Zimbabwe's laws in combating child labour trafficking in line with the Palermo Protocol. Although the researcher understands that child labour trafficking and legal response may differ from one jurisdiction to another, the research aims to analyse if the legislature successfully enacted anti-trafficking legislation which comprehensively responds to combat child labour trafficking. The objectives of this study are to:

- To analyse the adequacy and comprehensiveness of Zimbabwe's TIP Act in combating child labour trafficking.
- To assess if Zimbabwe successfully domesticated the Palermo Protocol to combat child labour trafficking through the enactment of the TIP Act.
- To evaluate how socio-economic factors are fuelling child labour trafficking in Zimbabwe.
- To provide best practices from South Africa and Kenya which Zimbabwe can draw inspiration in crafting legislation to combat child labour trafficking.
- To provide recommendations on how to come up with adequate and comprehensive laws and policies to combat child labour trafficking.

#### **1.5 Research Questions**

##### **Main question**

The leading research question of this mini dissertation is, to what extent is Zimbabwe's Trafficking in Persons Act adequate and comprehensive in combating child labour trafficking in line with the Palermo Protocol?

##### **Sub questions**

1. To what extent does Zimbabwe successfully domesticate the Palermo Protocol to combat child labour trafficking?

2. To what extent are socio-economic factors fuelling child labour trafficking in Zimbabwe?
3. What can Zimbabwe learn from Kenya and South Africa in crafting trafficking law which is congruent to the Palermo Protocol?

## 1.6 Literature review

Trafficking in persons is a crime which has been going unnoticed and unreported in many countries.<sup>57</sup> Various scholars have written on the forms, challenges, and effects of human trafficking in Zimbabwe. The majority of the literature is based on social science discipline. However, there is a gap in analysing Zimbabwe's legal framework in combating human trafficking.

*Bvirindi* explored policy issues on women trafficking in Southern Africa with particular attention to Zimbabwe.<sup>58</sup> He analysed how Zimbabwe's policies and legislation were addressing criminalisation, investigation and prosecution of women trafficking.<sup>59</sup> The author's journal article focused on the law to combat women trafficking. In doing so the article was focusing on women trafficking in general.<sup>60</sup> The author touched on women trafficking both in terms of forced labour exploitation and sexual exploitation.<sup>61</sup> This research focuses on child labour trafficking which is a form of trafficking in persons.

*Mabvurira et al* wrote a journal article on child trafficking and smuggling. In their research, they found three emerging issues which are the prevalence of child trafficking, strategies used in child smuggling and the phenomenon of child smuggling.<sup>62</sup> *Mabvurira et al* discussed the risks associated with child trafficking and smuggling.<sup>63</sup> The research mainly focused on child smuggling. The majority of respondents were prosecutors in the southern part of Zimbabwe.<sup>64</sup> The paper did not delve much into the analysis of legislation to combat child trafficking but

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<sup>57</sup> M Burke *Human Trafficking: Interdisciplinary Perspectives* (2013) 183.

<sup>58</sup> Tawanda Bvirindi 'Exploring policy issues on the trafficking of women in Southern Africa with reference to Zimbabwe' 38 *Africanus Journal of Development Studies* 73-87.

<sup>59</sup> As above.

<sup>60</sup> As above.

<sup>61</sup> As above.

<sup>62</sup> Mabvurira et al (n 4 above) 52.

<sup>63</sup> Mabvurira et al (n 4 above) 54.

<sup>64</sup> Mabvurira et al (n 4 above) 53.

recommended the need to harmonise anti-trafficking laws with international conventions.<sup>65</sup>

Despite grappling with social and economic<sup>66</sup> challenges, Zimbabwe is a Southern African country overwhelmed by trafficking in person cases.<sup>67</sup> Studies have shown that human trafficking in Zimbabwe is caused by social, religious, economic factors in most cases with the aim of self-enrichment the victims are lured to participate in prostitution, robberies, and suicidal killings and these victims can be killed for body organs.<sup>68</sup>

*Mushowe* wrote a book on the tragedy of child prostitution in Zimbabwe, where he mentioned that there is a growing general misconception that child prostitution is willing participation and the victims are becoming victims by choice, a development which makes their protection difficult.<sup>69</sup> Among sexual offences perpetrated against children globally, less attention is being given to child prostitution, even NGOs, law enforcement agents and authorities are reluctant to protect child prostitutes.<sup>70</sup> *Mushowe* further provided that even though pimping is not common in Zimbabwe, reports are revealing that in border areas and highways, there are older women who are making money through child prostitutes by offering protection and food while organising clients for these children.<sup>71</sup>

*Mugari* wrote about the impact of social media in worsening the trafficking of children and women.<sup>72</sup> He held that there is a need for laws to regulate social media to protect young people from trafficking. *Mugari* further explained the challenge of internet regulation and the growing trend of child trafficking through social media in Zimbabwe.

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<sup>65</sup> Mabvurira et al (n 4 above) 56.

<sup>66</sup>T Bvirindi 'Exploring policy issues on the trafficking of women in Southern Africa with reference to Zimbabwe' 38 *Africanus Journal of Development Studies* 73.

<sup>67</sup> C Munamati *Human Trafficking Discourse in Zimbabwe* 2002 <https://www.igi-global.com/chapter/human-trafficking-discourse-in-zimbabwe/303825> (accessed on 9 April 2024).

<sup>68</sup> Munamati (n 28 above) 6.

<sup>69</sup> B Mushohwe *Child Prostitution in Zimbabwe and the Tragedy of the 'Victim by Choice' Tag: An Overview* (2016) 2.

<sup>70</sup> B Mushohwe *Child Prostitution in Zimbabwe and the Tragedy of the 'Victim by Choice' Tag: An Overview* (2016) 1.

<sup>71</sup> Mushohwe (n 70 above) 6.

<sup>72</sup> I Mugari 'The dark side of social media in Zimbabwe: unpacking the legal framework conundrum' (2020) 6 *Cogent Social Sciences* 1.

*Maphosa* wrote extensively on the link between poverty and human trafficking in Zimbabwe. The author states that there is less information about human trafficking in Zimbabwe, poverty and the devastating impacts of HIV/AIDS which continue to weaken the capacities of individuals to fend for their families, thereby fuelling illegal migration which makes economically vulnerable Zimbabweans prone to human trafficking.<sup>73</sup>

The US Department of State stated that despite ratifying various international instruments to combat child labour, children in Zimbabwe especially those in mining and farming communities continue to face the worst forms of child labour such as commercial sexual exploitation as a result of human trafficking.<sup>74</sup> The deteriorating economic condition is likely to make Zimbabwe children living in border areas vulnerable. Some families recruit children from rural areas where they work as domestic workers in cities after promised education and a better life.<sup>75</sup> According to the United States of America's Department of Labour, children between the ages of 8 and 17 years work in tobacco farms performing planting, weeding, curing and grading tobacco, often exposing them to hazardous chemicals such as nicotine from tobacco leaves. Zimbabwe has a sizable number of children working as artisanal miners, in some mining areas armed criminal groups are luring children into mining shafts promising them employment but subsequently physically threatening them and enslaving them.<sup>76</sup> During the COVID-19 pandemic, children in Zimbabwe were forced into vending, sugar cane farms, brickmaking, and tobacco farms.<sup>77</sup>

*Sibanda* wrote on child marriages in Zimbabwe where she stated that despite a shortage of readily available statistics, forced marriages are rampant in Zimbabwe and 21% of young girls are married before the age of 18.<sup>78</sup> *Sibanda* further held that over 8,000 girls in Zimbabwe were forced into marriages or they were held as sex slaves from 2008 to 2011.<sup>79</sup> She further stated that culture continues to play a role in

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<sup>73</sup> F Maphosa 'Linking Poverty, Irregular Migration and Human Trafficking: Observations from a Migrant Sending Area in Zimbabwe' (2012) 9 *A Journal of Contemporary Research* 160

<sup>74</sup> US Department of Labour <https://www.ecoi.net/en/document/2082833.html> (accessed on 9 April 2024).

<sup>75</sup> US Department of Labour <https://www.ecoi.net/en/document/2082833.html> (accessed on 9 April 2024).

<sup>76</sup> US Department of Labour <https://www.ecoi.net/en/document/2082833.html> (accessed on 9 April 2024).

<sup>77</sup> As above.

<sup>78</sup> M Sibanda *Married too soon: Child marriages in Zimbabwe* (2011) 2.

<sup>79</sup> Sibanda (n 78) 2.

forced and early marriages in Zimbabwe where women are treated as commodities at a market place.<sup>80</sup>

*Chinyoka* who wrote extensively on child marriages in Zimbabwe stated that many people in remote and rural areas of Zimbabwe perceive girls as a source of income and wealth, they readily give away these girls in marriages so that they can raise funds for the family.<sup>81</sup> *Chinyoka* further held that the majority of these early and forced marriages are being experienced in religious groups such as the Apostolic Sects where church leaders can marry as many wives as they can and defiance of such orders is perceived as disobedience against God.<sup>82</sup>

*Munamati*<sup>83</sup> wrote on human trafficking discourse in Zimbabwe, where he unpacked forms of human trafficking affecting Zimbabwe. Munamati stated that Zimbabwe is overwhelmed with human trafficking cases. He further mentioned that macroeconomic challenges facing Zimbabwe are making the country more vulnerable to new forms of human trafficking targeting young people.<sup>84</sup> He further held that the majority of victims are being lured into prostitution, robberies, and suicide killings and others are being killed for body organs.<sup>85</sup> He further mentioned the need for more awareness and criminalisation of some forms of human trafficking.<sup>86</sup>

*Mavunga* wrote a journal article on the prohibition of child slavery in South Africa, Zimbabwe and Uganda, where he dealt with the challenges of legislative implementation.<sup>87</sup> *Mavunga* held that laws from the mentioned countries did not reflect international legal principles in combating modern-day slavery.<sup>88</sup>

## 1.7 Methodology

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<sup>80</sup> Sibanda (n 78) 8.

<sup>81</sup> K Chinyoka 'Depriving girls of their childhood: Causes and Consequences of Early Child marriages in Zimbabwe' (2017) 1 *Journal of Popular Education in Africa (JOPEA)* 9. [https://www.jopea.org/images/journals/Journal\\_of\\_Popular\\_Education\\_in\\_Africa\\_\(JOPEA\)\\_Volume1\\_No2\\_October2017.pdf#page=4](https://www.jopea.org/images/journals/Journal_of_Popular_Education_in_Africa_(JOPEA)_Volume1_No2_October2017.pdf#page=4) (accessed on 10 April 2024).

<sup>82</sup> Chinyoka (n 71 above) 10.

<sup>83</sup> Munamati Human Trafficking Discourse in Zimbabwe <https://www.igi-global.com/chapter/human-trafficking-discourse-in-zimbabwe/303825> (accessed on 15 July 2024).

<sup>84</sup> As above.

<sup>85</sup> As above.

<sup>86</sup> As above.

<sup>87</sup> R Mavunga The prohibition of child slavery in South Africa, Uganda and Zimbabwe : overcoming the challenges of implementation of legislation (2018) <https://journals.co.za/doi/epdf/10.10520/EJC-107c996f6e> (accessed on 15 July 2024).

<sup>88</sup> As above.

The research will be based on doctrinal legal research. The study is a desktop research and secondary data will inform this research. The researcher will analyse international and international instruments meant to combat child labour trafficking, which Zimbabwe ratified, to ascertain if Zimbabwe's principal legislation to combat trafficking is congruent with these instruments. In trying to see if Zimbabwe has crafted legislation in a proper manner meant to combat child labour trafficking, the researcher will draw inspiration from Kenya and South Africa on how to craft because they are among the African states which have done well in domesticating the Palermo Protocol. This research will also use the academic perspectives of writers who have looked at these and related issues for a qualitative analysis. Primary and secondary literature will be used in this research. This methodology will be taken to show the legal gap in Zimbabwe's laws which are meant to combat child labour trafficking. The reason for choosing this methodology is the limited timeframe for the completion of the research and the limited resources to conduct an empirical study.

### **1.8. Limitations**

This research focuses on the analysis of Zimbabwe's principal legislation to combat trafficking, the TIP Act, to ascertain if its enactment successfully gave effect to the tenor and spirit of the Palermo Protocol in combating child labour trafficking. Although some Zimbabwean laws which intersect with the TIP Act will be touched on during the study, the focus of the study is to analyse whether the legislature successfully enacted the principal anti-trafficking legislation which is congruent to the Palermo Protocol as desired by the legislature. Therefore the study only focuses on human trafficking which involves persons below the age of eighteen years. Time limitations will not allow the researcher ample time to conduct interviews for the study. The researcher will only analyse the TIP Act comparing with the international best practices in general and the Palermo Protocol in particular. Due to the limited time frame, word limit and the scope of the study, the researcher will not be able to cover every piece of literature, therefore the research will be based in Zimbabwe. The scope of this study is only focusing on child trafficking in the broader context of trafficking in persons.

## **8.9 Chapter Breakdown**

The research shall have five chapters:

### **Chapter one**

Chapter one is the research proposal. This chapter outlines the background of the study, the problem statement, the significance of the study, the research objectives, the literature review, the research questions, the research methodology, limitations of the study and the chapter breakdown.

### **Chapter two**

This chapter will look at the concept of child labour trafficking, forms of child labour trafficking prevalent in Zimbabwe and socio-economic factors of child labour trafficking in the country.

### **Chapter three**

This chapter deals with legal and policy frameworks in combating child labour trafficking. Chapter three will focus on the international legal and policy framework, regional legal and policy framework, national legal and policy framework and analysis of Zimbabwe's legal and policy framework in combating child labour trafficking. In analysing Zimbabwe's legal framework to combat child labour trafficking the research will draw inspiration from South Africa and Kenya on how to craft legislation which is adequate combat child labour trafficking.

### **Chapter four**

This is the last chapter of the study, it will conclude by stating whether the study objectives were met. It will provide a conclusion and recommendation.

## CHAPTER 2: UNDERSTANDING CHILD LABOUR TRAFFICKING IN ZIMBABWE

### 2.1 Introduction

This chapter will unpack the concept of child labour trafficking, especially components which are routinely confused or mistaken. This section will clarify the difference between trafficking and smuggling which are often confused in the discourse of transnational organised crimes. It will scrutinise forms of child labour trafficking in Zimbabwe and factors which are fuelling the vulnerability of children to trafficking.

Child labour trafficking is the use of force, fraud, misrepresentation or coercion to force a person below the age of eighteen to perform involuntary services or labour.<sup>89</sup> However, the principal international treaty to combat child labour trafficking, the Palermo Protocol, provides that the means used to exploit a minor who is below eighteen years old is not necessary for trafficking to be committed.<sup>90</sup> Child labour trafficking is a serious growing transnational crime which involves the use of children for labour exploitation.<sup>91</sup> It is estimated that one in every three cases of human trafficking is a minor below eighteen years of age.<sup>92</sup> Child trafficking is considered to be one of the fastest-growing criminal enterprises worldwide, affecting many countries and transcending geographical boundaries.<sup>93</sup> Child trafficking impairs human dignity and has far-reaching consequences for the physical and emotional well-being of the child.<sup>94</sup> Work which is likely to endanger the health, safety, morals, criminal activities and well-being of the child is considered trafficking.<sup>95</sup> Every worst form of child labour is trafficking.<sup>96</sup> The dynamism and complexities of trafficking

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<sup>89</sup> National Centre on Safe Supportive Learning Environments, Child labour trafficking <https://safesupportivelearning.ed.gov/human-trafficking-americas-schools/child-labor-trafficking> (Accessed on 25 August 2024).

<sup>90</sup> Article 3(c) Palermo Protocol.

<sup>91</sup> United Nations Office of Drugs and Crime: Understanding child trafficking [https://www.unodc.org/unodc/en/frontpage/2024/July/explainer\\_-\\_understanding-child-trafficking.html](https://www.unodc.org/unodc/en/frontpage/2024/July/explainer_-_understanding-child-trafficking.html) (accessed on 4 August 2024).

<sup>92</sup> As above.

<sup>93</sup> United Nations Office of Drugs and Crime, Children on the move, smuggling and trafficking, [Trafficking in Persons & Smuggling of Migrants Module 12 Key Issues: Children on the Move, Smuggling and Trafficking \(unodc.org\)](https://www.unodc.org/unodc/en/frontpage/2024/July/explainer_-_understanding-child-trafficking.html) (accessed on 4 August 2024).

<sup>94</sup> World Vision, Child Trafficking: What you need to know <https://www.wvi.org/stories/child-protection/child-trafficking-what-you-need-know> (accessed on 4 August 2024).

<sup>95</sup> As above.

<sup>96</sup> Swedish Development Research Network <https://www.swedev.dev/what-is-the-relation-between-child-labour-and-human-trafficking/> (accessed on 23 August 2024).



made scholars agree that the previous definitional elements in international legal instruments were not responsive enough to the realities and difficulties of modern-day slavery.<sup>97</sup> Therefore the consensus was that there was a need for a new encompassing and comprehensive definition of trafficking. In early international conventions, the definition of trafficking was confined to the abduction of women and forced prostitution.<sup>98</sup> This led to other manifestations of trafficking being left out of the definition. Many states and non-state actors adopted their definitions, creating a conceptualisation problem before the ushering in of the Palermo Protocol.<sup>99</sup>

## 2.2 Definition of a child

The UN Convention on the Rights of the Child provides that a child is any person below 18 years unless the majority status has been attained earlier under the law.<sup>100</sup> The International Labour Organisation's Worst Forms of Child Labour Convention provides that the term child shall apply to persons under the age of eighteen years.<sup>101</sup> The ACRWC provides that a child is every human being below the age of eighteen years.<sup>102</sup> The Constitution of Zimbabwe defines a child as a girl or boy who is under the age of 18 years.<sup>103</sup> Zimbabwe's Criminal Code defines a child as a person under the age of eighteen years.<sup>104</sup> Zimbabwe's Children Amendment Act of Zimbabwe defines a child as a person under the age of eighteen years including infants.<sup>105</sup>

## 2.3 Definition of trafficking in Palermo Protocol

### 2.3.1 The Act

The Palermo Protocol provides the recruitment, transportation, transfer, harbouring or receipt of a child as acts for the commission of child trafficking.<sup>106</sup> The definitional elements of child trafficking in general are characterised by two distinct stages: Act and Purpose. Child labour trafficking definition is different from trafficking of adults.

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<sup>97</sup> E Pearson *Historical Development of Trafficking* (2004) 21.

<sup>98</sup> Mollema (n 10 above) 31.

<sup>99</sup> Mollema (n 10 above) 31.

<sup>100</sup> Article 1 Convention on the Rights of the Child (1989).

<sup>101</sup> Article 2 Worst Forms of Child Labour Convention.

<sup>102</sup> Article 2 African Charter on the Rights and Welfare of the Child.

<sup>103</sup> Section 81(1) Constitution of Zimbabwe.

<sup>104</sup> Section 92 Criminal Code of Zimbabwe.

<sup>105</sup> Section 3 Children's Amendment Act, 2023 (No. 8 of 2023).

<sup>106</sup> Article 3(c) Palermo Protocol.

The Action element in child labour trafficking is important because it carries the *actus reus*, which constitutes the central element of the crime of child labour trafficking.

### 2.3.2 The Means

Generally, Article 3 of the Palermo Protocol provides that means in the commission of the offence of human trafficking consists of the use of force, threats, any form of coercion, fraud, abduction, deception, or abuse of power or authority, giving or receiving payment or benefits to procure the consent of the victim.<sup>107</sup> However, all the forms of means are not applicable when dealing with child trafficking. Child trafficking definitional elements are different from trafficking of majors or persons above the age of eighteen years. Means is not necessary for the commission of child trafficking in the Palermo Protocol. The Protocol provides that children cannot give valid consent for their exploitation in whatever circumstances.<sup>108</sup> Therefore the element of Means is only applicable to general trafficking in persons but not to children.

### 2.3.3 The Purpose

The ultimate goal or *Purpose* of child labour trafficking is exploitation.<sup>109</sup> The Palermo Protocol provides that exploitation includes sexual exploitation, slavery, forced labour and body organ removal.<sup>110</sup> The Palermo Protocol use the phrase 'for the purpose of exploitation' which introduces the element of *mens rea* (mental state) as a critical component in the commission of child trafficking.<sup>111</sup> Therefore the Palermo Protocol provides that only a person with an appropriate 'guilty mind' can be held accountable for the commission of child trafficking. The relationship between *actus reus* (Action) and *men reus* element (intention) is important in understanding the scope of child trafficking. Therefore the presence of intention does not necessarily mean the actual achievement of the goal of exploitation. Trafficking can

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<sup>107</sup> Article 3(a) Palermo Protocol.

<sup>108</sup> Article 3(c) Palermo Protocol.

<sup>109</sup> Article 3(a) Palermo Protocol.

<sup>110</sup> Article 3(a) Palermo Protocol.

<sup>111</sup> ECPAT UK, What is Child Trafficking, <https://www.ecpat.org.uk/faqs/what-is-child-trafficking#:~:text=Child%20trafficking%20is%20defined%20as,for%20the%20purpose%20of%20exploitation> (accessed on 7 August 2024).

happen even if the trafficker fails to achieve it, what is important is that there was the intention to exploit.<sup>112</sup>

## 2.4 Critique of the Palermo Protocol

Generally, the Palermo Protocol provides the internationally recognised and accepted definition of trafficking adopted by most states.<sup>113</sup> The Palermo Protocol supplements the United Nations Convention on Transnational Organised Crime (CTOC) and it deals with trafficking within the context of transnational crimes such as money laundering, corruption and smuggling.<sup>114</sup> Although the Palermo Protocol provides for a baseline definition of human trafficking, it made trafficking discussion easy but not less controversial.<sup>115</sup> Some scholars are of the view that the Palermo Protocol provides for the definition of trafficking in three categories, “transportation, recruitment, transfer, harbouring”, “fraud, coercion, abduction, deception” and “forced labour, servitude, slavery, removal of organs” which is not comprehensive enough.<sup>116</sup> These scholars further assert that legislatures around the world are left with more questions than answers on the definition of trafficking because the Protocol only offloaded to legislators the task of defining various terms which constitute the definition of trafficking.<sup>117</sup> The Protocol left the definition of exploitation open-ended.<sup>118</sup> This leaves room for countries to determine what exploitation is when crafting anti-trafficking legislation, a situation which can create the problem of conceptualisation of exploitation in trafficking discourse.<sup>119</sup>

Hathaway is one of the proponents of a school of thought which propounds that the Protocol only focuses on punishing traffickers and allows first-world countries to

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<sup>112</sup> ECPAT UK, What is Child Trafficking, <https://www.ecpat.org.uk/faqs/what-is-child-trafficking#:~:text=Child%20trafficking%20is%20defined%20as,for%20the%20purpose%20of%20exploitation> (accessed on 7 August 2024).

<sup>113</sup> ECPAT What is the Palermo Protocol? <https://www.ecpat.org.uk/united-nations-convention-against-transnational-organized-crime#:~:text=What%20is%20the%20Palermo%20Protocol,the%209th%20February%202006>. (accessed on 22 September 2024).

<sup>114</sup> United Nations Office on Drugs and Crime, The criminal justice response to human trafficking [https://www.unodc.org/documents/human-trafficking/Needs\\_Assessment\\_Toolkit\\_ebook\\_09-87518\\_June\\_2010.pdf](https://www.unodc.org/documents/human-trafficking/Needs_Assessment_Toolkit_ebook_09-87518_June_2010.pdf) (accessed on 7 August 2024).

<sup>115</sup> Mollema (n 10 above) 41.

<sup>116</sup> A Jean. ‘No Effective Trafficking Definition Exists: Domestic Implementation of the Palermo Protocol’ (2014) 7 *Albany Government Law Review* 119.

<sup>117</sup> Jean (n 115 above) 120.

<sup>118</sup> Jean (n 115 above) 120.

<sup>119</sup> Jean (n 115 above) 121.

pursue their agenda of strict border control to curtail international migration.<sup>120</sup> Abrahamson is among scholars who believe that the Protocol was created due to security and human rights concerns over the travelling and movement of people crossing borders.<sup>121</sup>

## 2.5 Trafficking versus Smuggling

Trafficking and smuggling are two different concepts regulated by different protocols of the United Nations Convention against Transnational Organized Crime.<sup>122</sup> The United Nations conventions subsequently led to the enactment of the Palermo Protocol which regulates trafficking and the Protocol Against Smuggling of Migrants by Land, Sea and Air which is commonly known as the Smuggling Protocol. Although there are these two different protocols to combat transnational organised crimes there is a challenge of differentiating the two. Although trafficking and smuggling are words often used interchangeably in our societies, these two are distinct crimes.<sup>123</sup> There are different elements which differentiate trafficking from smuggling, such as consent, exploitation, territory and source of profits.<sup>124</sup>

### 2.5.1 Definitions

The Smuggling Protocol defines smuggling as procurement for illegal entry into another state where the person is not a permanent resident or national,<sup>125</sup> while the Palermo Protocol defines trafficking as the use of fraud, deception, force, fraud or any form of misrepresentation to exploit a person.<sup>126</sup> Trafficking is separate and distinct from smuggling in that a person can be trafficked within or outside the country's borders, whereas smuggling requires illegal crossing of another country's border.<sup>127</sup> Although both trafficking and smuggling are products of organised criminal groups they are not similar. Smuggling is a crime against the border of another

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<sup>120</sup> Hathaway "The Human Rights Quagmire of Human Trafficking" 2008 49 *Virginia Journal of International Law* 58.

<sup>121</sup> Abramson "Beyond Consent, Toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol" 2003 44 *Harvard International Law Journal* 473.

<sup>122</sup> UNODC <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> (accessed on 11 October 2024).

<sup>123</sup> Coalition to Combat Human Trafficking, Smuggling versus Trafficking: Understanding the Difference <https://cchttx.com/about-human-trafficking/smuggling-vs-trafficking-understanding-difference> (accessed on 7 August 2024).

<sup>124</sup> Obokata (2006) *Trafficking of Human Beings from a Human Rights Perspective – Towards a Holistic Approach* 32.

<sup>125</sup> Article 3(a) Protocol Against Smuggling of Migrants by Land, Sea and Air (2000)

<sup>126</sup> Article 3(a) Palermo Protocol.

<sup>127</sup> CCHR above. CCHR not previously defined.

country whereas people can be trafficked even at their homes.<sup>128</sup> In smuggling, the person who will be smuggled is a client with the desire to gain entry into another territory through illegal means whereas in trafficking the person being trafficked does not give consent.<sup>129</sup>

### 2.5.2 Consent

Consent is another feature which distinguishes trafficking from smuggling. The Palermo Protocol provides that for trafficking to take place there is no consent of the victim, and consent is usually procured through force, fraud and misrepresentation.<sup>130</sup> The Smuggling Protocol provides that the person who is being smuggled participates in fraudulent procurement of illegal entry through alteration of documents, corruption or bribery.<sup>131</sup> Therefore smuggling is a voluntary criminal exercise where the person who will be smuggled consents and wants to be smuggled,<sup>132</sup> whereas trafficking is coercion, fraudulent recruitment, abduction, harbouring, transportation, transfer and reception of people for exploitation.<sup>133</sup> There is no coercion or deception in smuggling. Therefore where there is consent in smuggling there is no consent in trafficking. However, the Palermo Protocol provides that consent is not a factor to be considered when trafficking children.<sup>134</sup>

### 2.5.3 Purpose

The purpose of trafficking is exploitation<sup>135</sup>, while the purpose of smuggling is getting profit from illegal migration.<sup>136</sup> Unlike smuggling, trafficking involves continuous exploitation and coercion of the trafficked person or victim.<sup>137</sup> The victim of trafficking should continuously generate illegal profit for traffickers whereas smuggling is a once-off activity.<sup>138</sup> Human trafficking ends when the victim escapes or dies. In

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<sup>128</sup> Polaris, Understanding human trafficking <https://polarisproject.org/understanding-human-trafficking/> (accessed on 21 September 2024).

<sup>129</sup> As above.

<sup>130</sup> Article 3(a) Palermo Protocol.

<sup>131</sup> Article 3(b)(c) and (c)(ii) Smuggling Protocol.

<sup>132</sup> <https://enactafrica.org/research/explainers/human-smuggling-and-human-trafficking-what-is-the-difference-and-why-does-it-matter> (accessed on 21 September 2024).

<sup>133</sup> As above.

<sup>134</sup> Article 3(c) Palermo Protocol.

<sup>135</sup> Article 3(a) Palermo Protocol.

<sup>136</sup> Article 3 Smuggling Protocol.

<sup>137</sup> Obokata (2006) Trafficking of Human Beings from a Human Rights Perspective – Towards a Holistic Approach 20.

<sup>138</sup> As above.

smuggling, the smugglers usually facilitate safe passage to another country, they are not concerned about what will happen at the destination.<sup>139</sup> This means that in trafficking there is a continuous 'relationship' between the trafficker and the victim.<sup>140</sup> This distinction will only be blurred when the smuggler is also the trafficker who intends to deceive the victim into forced labour.<sup>141</sup>

#### 2.5.4 Territory and source of profits

Trafficking can happen when a victim is either transported or where there is no transportation of a victim, while smuggling is a border crime which only happens when a person uses illegal entry into another state.<sup>142</sup> This means for smuggling to take place there should be movement, while trafficking can happen internally without movement. Moreover, profits in human trafficking are obtained through ongoing exploitation whereas smuggling is mostly associated with one payment to facilitate illegal crossing of borders.<sup>143</sup>

#### 2.6 Conceptualisation of child labour trafficking in Zimbabwe

There is a fundamental distinction between child labour and child labour trafficking although there is intersectionality between the concepts. These interrelated concepts can result in challenges when it comes to the protection of children. UNICEF defines child labour as work which a child is too young to perform by its nature and in most cases hazardous.<sup>144</sup> ILO defines child labour as work which deprives a child of childhood, potential and dignity which is harmful to mental and physical development.<sup>145</sup> Child labour trafficking is a criminal activity where children are transported, recruited, harboured or received for labour exploitation irrespective of any means used by traffickers.<sup>146</sup> The Palermo Protocol provides that means used to

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<sup>139</sup> As above.

<sup>140</sup> Gould & Fick (2008) *Sex Work and Human Trafficking in a South African* 94.

<sup>141</sup> ILO (2003) *Trafficking in Human Beings: New Approaches to Combating the Problem* 36.

<sup>142</sup> <https://stopthetraffik.org/smuggling-trafficking-knowing-differences/> (accessed on 11 October 2024).

<sup>143</sup> As above.

<sup>144</sup> UNICEF <https://www.unicef.org/protection/child-labour> (accessed on 11 October 2024).

<sup>145</sup> ILO What is child labour? <https://www.ilo.org/international-programme-elimination-child-labour-ipecc/what-child-labour> (accessed on 11 October 2024).

<sup>146</sup> Antonela Arhin (2012) *Conceptualizing child labour trafficking and exploitation: The case of Roma children in Montenegro* 7.

exploit a child is not necessary for the commission of the offence.<sup>147</sup> Child labour exploitation is a human rights violation and the worst form of child labour.<sup>148</sup> Zimbabwe is among countries in the Sub-Saharan Africa grappling with the challenge of child labour trafficking.<sup>149</sup> The majority of children in Zimbabwe face child labour trafficking in farms, the mining sector, and the agriculture sector where they work for long hours and handle hazardous chemicals.<sup>150</sup> Forced commercial sexual exploitation is another form of forced labour where children are recruited, harboured, transferred and received for commercial sexual exploitation.<sup>151</sup>

### 2.6.1 Child labour trafficking in the mining sector

According to ILO, over 200 million children between the ages of 5 and 17 are employed and Africa constitutes more than 70 million child labourers.<sup>152</sup> In Africa, gold mining has been cited as a dangerous mining exercise for children.<sup>153</sup> Gold mining is associated with hazardous mining activity for children due to dangerous chemicals such as mercury.<sup>154</sup> It is estimated that 70% of children below the age of 15 in Africa are working in mines.<sup>155</sup> Poor working and living conditions in most small-scale mining sectors expose children to diseases such as malnutrition, diarrhoea, and other parasitic and viral infections.<sup>156</sup> In most small-scale mining communities children below the age of 10 years are subjected to less arduous tasks such as pushing water carts, petty trading and working as messengers whereas those between the ages of 12 and 14 years have regular full-time work associated with underground manual labour associated with long working hours.<sup>157</sup> This is against Article 32 of the United Nations Convention on the Rights of the Child (CRC)

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<sup>147</sup> Article 3(a) Palermo Protocol.

<sup>148</sup> Antonela Arhin (2012) *Conceptualizing child labour trafficking and exploitation: The case of Roma children in Montenegro* 9.

<sup>149</sup> UNHCR 2008 Findings on the Worst Forms of Child Labor – Zimbabwe <https://www.refworld.org/reference/annualreport/usdol/2009/en/69275#:~:text=On%20tea%2C%20tobacco%2C%20cotton%2C,and%20sometimes%20handle%20hazardous%20chemicals>. (Accessed on 21 September 2024).

<sup>150</sup> As above.

<sup>151</sup> As above.

<sup>152</sup> 'I need money for school': the children forced to pan for gold in Zimbabwe' The Guardian 13 November 2020 <https://www.theguardian.com/global-development/2020/nov/13/i-need-money-for-school-the-children-forced-to-pan-for-gold-in-zimbabwe> (accessed on 19 August 2024).

<sup>153</sup> ILO Child Labour in Mining and Global Supply Chains [file:///C:/Users/USER/Downloads/200606\\_Child%20labour%20in%20gold%20%20mining%20010606.pdf](file:///C:/Users/USER/Downloads/200606_Child%20labour%20in%20gold%20%20mining%20010606.pdf) (accessed on 19 August 2024).

<sup>154</sup> As above.

<sup>155</sup> As above.

<sup>156</sup> As above.

<sup>157</sup> As above.

which provides for the protection of children from exploitation and performing any kind of hazardous work.<sup>158</sup>

In Zimbabwe, children are subjected to the worst forms of child labour where they are forced to work in mining communities.<sup>159</sup> Mazowe district of Zimbabwe in Mashonaland Central province has been singled out as among the hotspots of child labour in artisanal mining communities.<sup>160</sup> During the COVID-19 pandemic, thousands of children (as young as ten years) in Zimbabwe were forced into where they were subjected to harsh and unsafe working conditions.<sup>161</sup> The Zimbabwe National Statistics Agency (ZIMSTAT) revealed that of the 50000 under 16 year olds survey, over 5% were in the mining sector.<sup>162</sup> Armed gangsters notoriously known as *Mashurugwi*<sup>163</sup> in Zimbabwe lure young people into disused and abandoned mines under the auspices of employment where they force them to work in dangerous mine shafts.<sup>164</sup>

## 2.6.2 Child labour trafficking in Zimbabwe's agriculture sector

Globally over 90 million boys and girls found themselves subjected to the worst forms of child labour in the agriculture sector, 60% of them are between the ages of 5 and 17 and are working in farming, forestry, fishing, fishing and aquaculture.<sup>165</sup>

### 2.6.2.1 Child labour trafficking in the farming sector

The world is grappling with child labour trafficking in the farming sector because the agricultural sector remains largely unregulated.<sup>166</sup> Generally, adult and child workers

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<sup>158</sup> Article 32 CRC.

<sup>159</sup> Bureau of International Labour Affairs <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/zimbabwe#:~:text=Children%20in%20Zimbabwe%20are%20subjected,harvesting%20of%20sugarcane%20and%20tobacco>. (Accessed on 19 August 2024).

<sup>160</sup> 'Zimbabwe mining industry attracts child labour as economy picks up' *The Reliefweb* <https://reliefweb.int/report/zimbabwe/zimbabwe-mining-industry-attracts-child-labour-economy-picks> (accessed on 19 August 2024).

<sup>161</sup> 'I need money for school': the children forced to pan for gold in Zimbabwe' *The Guardian* 13 November 2020 <https://www.theguardian.com/global-development/2020/nov/13/i-need-money-for-school-the-children-forced-to-pan-for-gold-in-zimbabwe> (accessed on 19 August 2024).

<sup>162</sup> As above.

<sup>163</sup> Mashurugwi means a group of violent gangsters which originated from a small town of Midlands Province of Zimbabwe called Shurugwi. They are notoriously known for terrorising people in mining communities around the country.

<sup>164</sup> US Department of State 2024 Trafficking in Persons Report: Zimbabwe <https://www.state.gov/reports/2024-trafficking-in-persons-report/zimbabwe#:~:text=Traffickers%20recruit%20Zimbabwean%20girls%20into,en%20route%20to%20South%20Africa>. (accessed on 19 August 2024).

<sup>165</sup> ILO Child Labour in Agriculture <https://www.ilo.org/international-programme-elimination-child-labour-ipec/sectors-and-topics/child-labour-agriculture#:~:text=In%20many%20countries%20child%20labour,98%20million%20girls%20and%20boys>. (Accessed on 20 August 2024).



are not covered by safety and health laws, in most countries, the legislation fails to regulate activities in farms where child labour is thriving.<sup>167</sup> In Zimbabwe, children are subjected to the worst forms of child labour trafficking in farms where they carry tasks such as planting and harvesting crops such as sugar cane and tobacco.<sup>168</sup> In Zimbabwe Children between the ages of 8 and 17 work on tobacco farms where they plant, weed, harvest, cure and pack tobacco and other tasks which expose them to dangerous chemicals such as nicotine in handling tobacco leaves.<sup>169</sup> In the Eastern part of the country, children are subjected to the worst forms of child labour trafficking in sugar cane plantations where they work with dangerous tools and endure long working hours in hot temperatures.<sup>170</sup>

### **2.6.2.2 Child labour trafficking in the fishing and aquaculture sector**

The ILO Work in Fishing Convention provides standards all players in the fishing sector ought to follow in a bid to regulate the industry where child labour trafficking is rampant.<sup>171</sup> Although there is limited research on child labour trafficking in the fishing and aquaculture industry, the industry has come under the spotlight over widespread human rights violations such as forced child labour.<sup>172</sup> Zimbabwe's fishing industry experiences rampant cases of child labour.<sup>173</sup> Children in Zimbabwe's largest inland water body, Lake Kariba, help their parents by using smaller boats and canoes along the Zambezi River.<sup>174</sup> Boys and girls in Zimbabwe are risking drowning, contracting diseases and being attacked by crocodiles trying to help their parents in water bodies across the country.<sup>175</sup>

### **2.6.2.3 Child labour trafficking in the forestry sector**

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<sup>166</sup> ILO International labour standards and child labour in agriculture [file:///C:/Users/USER/Downloads/wcms\\_172348.pdf](file:///C:/Users/USER/Downloads/wcms_172348.pdf) (accessed on 20 August 2024).

<sup>167</sup> As above.

<sup>168</sup> [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2022/Zimbabwe.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2022/Zimbabwe.pdf) (accessed on 20 August 2024).

<sup>169</sup> As above.

<sup>170</sup> As above.

<sup>171</sup> ILO Work in Fishing Convention No. 188 (2007).

<sup>172</sup> Food and Agriculture Organisation of the United Nations FAO Tackling child labour in fisheries and aquaculture <https://openknowledge.fao.org/server/api/core/bitstreams/f6d7c6e0-8ce8-4638-ac7b-23c8afdd7cdd/content#:~:text=Child%20labour%20in%20fishing%2C%20aquaculture%20and%20aquatic%20food%20processing%20has,high%20occupational%20risks%20levels%20overall>. (Accessed on 20 August 2024).

<sup>173</sup> 'Child labour rampant in fishing industry' *The Chronicle* 3 June 2018 <https://www.sundaymail.co.zw/child-labour-rampant-in-fishing-industry> (accessed on 20 August 2024).

<sup>174</sup> As above.

<sup>175</sup> As above.

Child labour in livestock production is generally ignored and unrecognised.<sup>176</sup> In Africa, child labour is thriving in the illicit timber logging sector which is a form of human trafficking.<sup>177</sup> Unstable economic conditions in Africa are incentivising families to take away children from school during the time of timber harvest because young people provide cheap labour.<sup>178</sup> Although a lot of literature has been written on the negative effects of illegal logging, there is less attention to the vagaries associated with it as a criminal enterprise, especially from a human rights perspective and trafficking. Children in the forestry industry are exposed to hazardous working conditions by operating chainsaws, without protective clothing, carrying heavy loads and operating in extreme weather temperatures.<sup>179</sup> In Zimbabwe, children are forced to work in forests and the logging sector where they are subjected to dangerous working environments such as long working hours, felling logs without protective gear, and dragging and loading timber in trucks.<sup>180</sup>

#### **2.6.2.4 Child labour trafficking in livestock production sector**

Globally, 98 million children work in the agriculture sector with a substantial number in forestry and livestock.<sup>181</sup> Child labour trafficking in the livestock sector is difficult to address due to the low capacity of law enforcement agents to visit rural areas where it thrives, the lack of self-organisation in the livestock production sector and the lack of formal contracts.<sup>182</sup> Children are subjected to child labour trafficking through herding domesticated animals such as cattle, goats, pigs, donkeys, camels and chickens.<sup>183</sup> Children in Zimbabwe perform strenuous livestock herding tasks, such

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<sup>176</sup> Global March against Child Labour <https://globalmarch.org/child-labour-in-livestock-sector-unrecognised-and-ignored/> (accessed on 20 August 2024).

<sup>177</sup> Institute for Security Studies, Illicit logging threatens lives and livelihoods in Africa <https://issafrica.org/iss-today/illicit-logging-threatens-lives-and-livelihoods-in-africa#:~:text=Child%20labour%20in%20the%20illicit%20logging%20sector%20is%20rife%20and.of%20school%20during%20timber%20harvests.> (Accessed 20 August 2024).

<sup>178</sup> As above.

<sup>179</sup> <https://verite.org/wp-content/uploads/2020/08/Burma-Case-Studies-Summary-Report-%E2%80%93-Verit%C3%A9-Forestry.pdf> (accessed on 20 August 2024).

<sup>180</sup> US Department of Labour, 2020 Findings on the Worst Forms of Child Labour: Zimbabwe [https://www.dol.gov/sites/dolgov/files/ILAB/child\\_labor\\_reports/tda2020/Zimbabwe.pdf](https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2020/Zimbabwe.pdf) (accessed on 20 August 2024).

<sup>181</sup> FAO Children's work in the livestock sector <https://www.fao.org/4/i2971e/i2971e.pdf> (accessed on 20 August 2024).

<sup>182</sup> As above.

<sup>183</sup> As above.

as toiling the field and grazing lands herding cattle for long hours and the majority of them are not paid.<sup>184</sup>

### 2.6.3 Forced commercial sexual exploitation

Forced commercial sexual exploitation is the recruitment, transportation, obtaining, provision, harbouring, or soliciting of persons below the age of eighteen for commercial sex acts.<sup>185</sup> ILO Convention on Worst Forms of Child Labour provides that the use or procurement of children for prostitution is a form of child labour.<sup>186</sup> The Zimbabwe Gender Commission (ZGC) revealed that the country has an upsurge in forced sexual exploitation and abuse of children.<sup>187</sup> The commission further indicated that children below the age of ten years are getting pregnant, and perpetrators are known to them (victims).<sup>188</sup> Zimbabwe continues to witness a growing trend of commercial sexual exploitation of children.<sup>189</sup> However, the lack of adequate data and proper surveillance systems makes it difficult to ascertain the magnitude of sexual exploitation of children.<sup>190</sup> The current situation was compounded by the COVID-19 pandemic where prolonged school closure forced young and vulnerable girls to sexual exploitation.<sup>191</sup> Sex traffickers use threats, violence, deception, debt bondages and other forms of coercion to force children into commercial sexual conduct.<sup>192</sup> Sex trafficking in Zimbabwe is common in brothels and in the transport sector where young people are exploited by long-distance truck drivers both in Zimbabwe and beyond borders.<sup>193</sup>

### 2.6.4 Child and forced marriages

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<sup>184</sup> 'Put children in school, not work' *The Herald* 6 August 2014 <https://www.herald.co.zw/put-children-in-school-not-work/> (accessed on 20 August 2024).

<sup>185</sup> US Criminal Division, Department of Justice, Child sex trafficking <https://www.justice.gov/criminal/criminal-ceos/child-sex-trafficking> (accessed on 12 August 2024).

<sup>186</sup> Article 3(b) Worst Forms of Child Labour Convention, 1999 (No. 182)

<sup>187</sup> Zimbabwe Gender Commission, Statement on sexual exploitation and abuse of girls <https://zgc.co.zw/statement-on-sexual-exploitation-and-abuse-of-girls/> (accessed on 12 August 2024).

<sup>188</sup> Zimbabwe Gender Commission <https://zgc.co.zw/statement-on-sexual-exploitation-and-abuse-of-girls/> (accessed on 12 August 2024).

<sup>189</sup> G Murewanhema et al *Commercial sexual exploitation of children in Zimbabwe: A threat to human and social development* (2022) 1.

<sup>190</sup> Murewanhema (n 188 above) 2.

<sup>191</sup> Murewanhema (n 188 above) 3.

<sup>192</sup> Safe Voices, sex trafficking and exploitation <https://safevoices.org/what-domestic-violence/sex-trafficking-and-exploitation> (accessed on 12 August 2024).

<sup>193</sup> US Department of State 2023 Trafficking in Person Report: Zimbabwe <https://www.state.gov/reports/2023-trafficking-in-persons-report/zimbabwe/#:~:text=Traffickers%20exploit%20women%20and%20girls,both%20sides%20of%20the%20border> (accessed on 12 August 2024).

The Global Estimate of Modern-Day Slavery records an upsurge in forced marriage since 2016, with over 6 million people forced into marriage – the largest chunk being minors below the age of 18 years.<sup>194</sup> Child marriage is considered slavery because minors are weaker in giving free consent and informed consent.<sup>195</sup> Forced marriages constitute human trafficking because it's associated with forced labour.<sup>196</sup> Forced marriage refers to transferring or receiving using deception, threats or coercion for sexual exploitation or servitude.<sup>197</sup> Despite being a state party to various conventions and treaties which protect girls and young people, Zimbabwe continues to be a hub of forced and child marriages, a situation which threatens the future and wellbeing of many girls.<sup>198</sup> It is estimated that one in every 3 women in Zimbabwe between the ages of 20 to 49 was married before 18 years.<sup>199</sup> Child marriage is a form of violence against children.<sup>200</sup> In Zimbabwe 34% are married before the age of 18 and 5% are married before their 15<sup>th</sup> birthday.<sup>201</sup> Child marriages in Zimbabwe are worsened by poverty, and religious and cultural beliefs, especially among followers of the apostolic faith whose religion compels children between the ages of 12 to 16 years to avoid out-of-marriage sexual relationships.<sup>202</sup> It is estimated that since 2008 over 8000 girls in Zimbabwe were forced into early marriages and held as sex slaves.<sup>203</sup> In Zimbabwe, some communities still practice child pledging, this is commonly known as *Kuzvarira*<sup>204</sup> and appeasing spirits known as *Kuripangozi*.<sup>205</sup> In

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<sup>194</sup>Global Estimate of Modern Day Slavery [https://cdn.walkfree.org/content/uploads/2022/09/12142341/GEMS-2022\\_Report\\_EN\\_V8.pdf](https://cdn.walkfree.org/content/uploads/2022/09/12142341/GEMS-2022_Report_EN_V8.pdf) (accessed on 12 August 2024).

<sup>195</sup> Anti-Slavery [https://www.antislavery.org/slavery-today/child-marriage/#:~:text=Image%20caption%3A%20Child%20marriage%20\(marriage,within%20marriage%2C%20it%20is%20slavery](https://www.antislavery.org/slavery-today/child-marriage/#:~:text=Image%20caption%3A%20Child%20marriage%20(marriage,within%20marriage%2C%20it%20is%20slavery) (accessed on 12 August 2024).

<sup>196</sup> UNODC Forced marriage <https://www.unodc.org/e4j/zh/tip-and-som/module-11/key-issues/som-or-tip---forced-marriage.html#:~:text=Cases%20of%20forced%20marriage%20may,sexual%20exploitation%20and%20For%20servitude> (accessed on 12 August 2024).

<sup>197</sup> As above.

<sup>198</sup><https://www.humanium.org/en/child-brides-in-zimbabwe-a-call-for-education/> (accessed on 12 August 2024).

<sup>199</sup> UNICEF Zimbabwe End Child Marriage, Empower women <https://www.unicef.org/zimbabwe/end-child-marriage-empower-women> (accessed on 12 August 2024).

<sup>200</sup> As above.

<sup>201</sup> Girls not brides: Zimbabwe <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/zimbabwe/#:~:text=What's%20the%20prevalence%20rate%3F,married%20before%20their%2018th%20birthday> (accessed on 12 August 2024).

<sup>202</sup> UNICEF Zimbabwe, Transforming Masculinities for Gender Equality and to End Child Marriage <https://www.unicef.org/zimbabwe/reports/transforming-masculinities-gender-equality-and-end-child-marriage> (accessed on 12 August 2024).

<sup>203</sup> Humanium, Child brides in Zimbabwe: a call for education <https://www.humanium.org/en/child-brides-in-zimbabwe-a-call-for-education/> (accessed on 12 August 2024).

<sup>204</sup> *Kuzvarira* is form of child pledging where parents, especially those in financial distress pledges their daughters to be married by rich person, or to wealthier families in exchange for money, cattle, food or other valuable commodities.

these two traditional practices parents and family members do not seek the consent of the child to be pledged.

### 2.6.5 Domestic servitude

Domestic servitude is a form of child labour trafficking or slavery where children are forced to work in private homes facing ill-treatment and working for long hours without payment or with little payment.<sup>206</sup> Children who are subjected to domestic servitude usually do household chores such as cooking, laundry, cleaning, herding cattle, and taking care of children – they are kept behind closed doors.<sup>207</sup> Their wages and salaries are usually low, and sometimes are not paid at all – they are always threatened, and not allowed to communicate with their relatives and friends.<sup>208</sup> Generally, domestic labour is not usually recognised as a form of employment or labour, domestic workers are seen as helpers especially children from remote and rural areas.<sup>209</sup> There is intersectionality between domestic servitude and forced marriages because both mix various forms of slavery such as domestic servitude, forced labour and sexual enslavement.<sup>210</sup> Domestic workers in Zimbabwe face numerous challenges such as poor working conditions, poor salaries, unpaid overtime and exploitation.<sup>211</sup> It is a common practice in Zimbabwe that people engage underage girls as domestic helpers in return for care and food.<sup>212</sup> ILO estimates that over 5000 children are living in the streets in Zimbabwe, these children are susceptible to many forms of trafficking including domestic servitude.<sup>213</sup>

### 2.6.6 Forced child begging

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<sup>205</sup> *Kuripangozi* is a customary practice where a family use a young virgin girl to compensate another family for the appeasement of the deceased person spirit. The child should be used as a wife after being pledged.

<sup>206</sup> The Freedom Fund, Domestic Servitude <https://www.freedomfund.org/what-is-modern-slavery/domestic-servitude/> (accessed on 15 August 2024).

<sup>207</sup> As above.

<sup>208</sup> As above.

<sup>209</sup> As above.

<sup>210</sup> End Slavery Now, Domestic servitude <https://www.endslaverynow.org/learn/slavery-today/domestic-servitude> (accessed on 15 August 2024).

<sup>211</sup> 'Domestic Workers Cry Foul' *The Chronicle* 3 May 2024 <https://www.chronicle.co.zw/domestic-workers-cry-foul/#:~:text=Ms%20Lusaba%20said%20domestic%20workers%20face%20numerous%20challenges%20in%20their,other%20various%20forms%20of%20abuse.> (Accessed on 15 August 2024).

<sup>212</sup> IOL A vision for domestic workers <https://voices.iol.org/stories/a-vision-for-domestic-workers> (accessed on 15 August 2024).

<sup>213</sup> IOL

[https://normlex.iol.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100\\_COMMENT\\_ID,P13100\\_LANG\\_CODE:2332524,en](https://normlex.iol.org/dyn/normlex/es/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:2332524,en) (accessed on 15 August 2024).

The general notion is that human trafficking always happens behind closed doors and in darkness. However this is not always the case when dealing with forced child begging – it happens in front of people – in broad light – and the majority of our communities see it as normal. Forced child begging is defined as an act of forcing girls and boys to beg using psychological and physical coercion.<sup>214</sup> Globally it is estimated that traffickers are realising over \$US40,000 in illegal profits from forced child begging.<sup>215</sup> According to the International Labour Organisation child begging is a form of child labour.<sup>216</sup> Children in some cases are forced into begging by their parents, siblings, relatives, criminal gangs, family friends or neighbours.<sup>217</sup> The majority of children used in forced begging are below the age of ten years.<sup>218</sup> Children below ten years are a lucrative population group in forced begging because young children draw more sympathy from passers-by.<sup>219</sup> Child beggars are subjected to long working hours, they suffer physical, verbal and mental abuse as well as sexual abuse by those people they encounter in the streets and those who are forcing them to beg.<sup>220</sup> Children are forced to play musical instruments and perform some tricks in the streets to evoke sympathy and entertain passersby who usually give money.<sup>221</sup>

In Zimbabwe, forced begging is now a growing phenomenon exacerbated by the volatile macroeconomic climate.<sup>222</sup> The majority of child beggars in Zimbabwe do not attend school, a situation which denies them their right to education.<sup>223</sup> In cities and towns of Zimbabwe, children are always standing at traffic lights, road junctions, and

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<sup>214</sup> Save the Children Child Rights Centre <https://resourcecentre.savethechildren.net/document/begging-change-research-findings-and-recommendations-forced-child-begging-albaniagreece/> (accessed on 15 August 2024).

<sup>215</sup> [https://www.iom.int/sites/g/files/tmzbdl486/files/our\\_work/DMM/MAD/07312017/ForcedBegging.pdf](https://www.iom.int/sites/g/files/tmzbdl486/files/our_work/DMM/MAD/07312017/ForcedBegging.pdf) (accessed on 15 August 2024).

<sup>216</sup> ILO Human trafficking for forced begging [https://www.iom.int/sites/g/files/tmzbdl486/files/our\\_work/DMM/MAD/07312017/ForcedBegging.pdf](https://www.iom.int/sites/g/files/tmzbdl486/files/our_work/DMM/MAD/07312017/ForcedBegging.pdf) (accessed on 15 August 2024).

<sup>217</sup> As above.

<sup>218</sup> As above.

<sup>219</sup> As above.

<sup>220</sup> As above.

<sup>221</sup> As above.

<sup>222</sup> 'Forced child begging vs ignorance of the law' *The NewsDay* 28 August 2019 <https://www.newsday.co.zw/opinion-amp-analysis/article/52922/forced-child-begging-vs-ignorance-of-the-law> (accessed on 15 August 2024).

<sup>223</sup> 'Forced child begging... Poverty in Zimbabwe?' The Source Media News Agency <https://www.sourcesmedia.com/news/forced-child-begging-poverty-in-zimbabwe> (accessed on 15 August 2024).

public parks begging bowls.<sup>224</sup> It is estimated that 1.6 million children are living in extreme poverty and 20 children join the streets as beggars every day.<sup>225</sup>

## 2.7 Socioeconomic factors fuelling child labour trafficking in Zimbabwe

### 2.7.1 Poverty and Unemployment

Half of Zimbabwe's population faces extreme poverty due to volatile microeconomic conditions, price instability and the vagaries of the COVID-19 pandemic.<sup>226</sup> The World Bank defines extreme poverty as living with less than US\$1.90 per day.<sup>227</sup> In Zimbabwe child labour trafficking is fuelled by economic hardships, especially in agriculture, forced begging, domestic servitude, informal trading and artisanal mining.<sup>228</sup> Poverty coupled with the hiking of prices for basic commodities makes young people vulnerable especially girls to forced sexual exploitation.<sup>229</sup> Zimbabwe's unemployment rate remains high with official statistics pegging it at less than 13% while independent analysts and international financial institutions pegging it at over 90%.<sup>230</sup> This is a recipe for young people to be vulnerable to child labour trafficking.

### 2.7.2 Unsafe migration

UNICEF estimates that over 7000 children from Zimbabwe cross borders annually.<sup>231</sup> The volatile macroeconomics in Zimbabwe worsened by the vagaries of climate change and poor social protection has fuelled unsafe migration, with over 80% of Zimbabweans especially unaccompanied children crossing borders to South Africa,

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<sup>224</sup> As above.

<sup>225</sup> 'Economic ripples in Zimbabwe force children into vending' *TellZim News* 23 May 2022 <https://tellzim.com/economic-ripples-in-zimbabwe-force-children-into-vending/> (accessed on 15 August 2024).

<sup>226</sup> UNICEF Zimbabwe <https://www.unicef.org/zimbabwe/press-releases/half-zimbabweans-faced-extreme-poverty-2020-due-covid-19-rapid-poverty-income> (accessed on 21 August 2024).

<sup>227</sup> World Bank <https://odi.org/en/insights/the-definition-of-extreme-poverty-has-just-changed-heres-what-you-need-to-know/> (accessed on 21 August 2024).

<sup>228</sup> US Department of State 2023 Trafficking in person report: Zimbabwe <https://www.state.gov/reports/2023-trafficking-in-persons-report/zimbabwe/#:~:text=Observers%20reported%20child%20sex%20trafficking,%2C%20begging%2C%20and%20artisanal%20mining.> (Accessed on 24 August 2024).

<sup>229</sup> UNHCR Findings on the worst forms of child labour in Zimbabwe <https://www.refworld.org/reference/annualreport/usdol/2009/en/69275> (Accessed on 24 August 2024).

<sup>230</sup> <https://www.forbes.com/sites/timworstall/2017/03/05/congratulations-to-robert-mugabe-zimbabwes-unemployment-rate-now-95/> (accessed on 24 August 2024).

<sup>231</sup> UNICEF Zimbabwe <https://www.unicef.org/zimbabwe/reports/improving-protection-unaccompanied-minors-and-separated-children-zimbabwe> (accessed on 24 August 2024).

Zambia and Botswana.<sup>232</sup> This exposes children to abuse, exploitation and traffickers.<sup>233</sup>

### **2.7.3 Ineffective legislation, corruption and poor law enforcement.**

The majority of sub-Saharan countries have poor legislation to combat trafficking in general and child labour trafficking in particular.<sup>234</sup> Lack of political will coupled with complacency and reluctance to implement the Palermo Protocol worsened the child labour trafficking response.<sup>235</sup> Government officials in Zimbabwe are allegedly complicit in human trafficking crimes, with some members of law enforcement agents playing a role in the trafficking of children.<sup>236</sup> The majority of law enforcement agents fail to conduct thorough investigations, especially in rural areas due to a lack of resources.<sup>237</sup>

### **2.7.5 Lack of Conceptualisation of child labour trafficking**

To combat child labour trafficking there is a need to conceptualise the crime of trafficking.<sup>238</sup> Failure to clearly and precisely conceptualise trafficking results in a messy trafficking definition riddled with methodology problems.<sup>239</sup> In Zimbabwe the number of trafficked persons especially children facing child labour trafficking is unclear and there is a lack of extensive research to understand the real magnitude of child labour trafficking.<sup>240</sup>

### **2.7.6 Unstable families**

The Family Dysfunctional theory provides that family dynamics have negative impacts such as vulnerability of children to trafficking and several forms of

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<sup>232</sup> As above.

<sup>233</sup> As above.

<sup>234</sup> Mollema (n 10 above) 93.

<sup>235</sup> As above.

<sup>236</sup> US Department of State 2024 Trafficking in person report: Zimbabwe [https://www.state.gov/reports/2024-trafficking-in-persons-report/zimbabwe/#:~:text=The%20Criminal%20Law%20\(Codification%20and,to%20cases%20of%20sex%20trafficking](https://www.state.gov/reports/2024-trafficking-in-persons-report/zimbabwe/#:~:text=The%20Criminal%20Law%20(Codification%20and,to%20cases%20of%20sex%20trafficking). (Accessed on 24 August 2024).

<sup>237</sup> As above.

<sup>238</sup> Mollema (n 10 above) 99.

<sup>239</sup> Mollema (n 10 above) 99.

<sup>240</sup> <https://businesstimes.co.zw/lack-of-research-exacerbates-human-trafficking-challenges-in-zimbabwe/> (accessed on 24 August 2024).



trafficking.<sup>241</sup> The Family Dysfunctional theory further propounds that children from dysfunctional families are likely to find themselves in forced sexual exploitation.<sup>242</sup> In Zimbabwe dysfunctional families coupled with domestic violence between parents have been cited as driving factors of children leaving their homes where they ended up facing commercial sexual exploitation and trafficking.<sup>243</sup> Zimbabwe is among countries in the SADC region witnessing an increase in commercial sexual exploitation of children and the majority of them come from dysfunctional families.<sup>244</sup>

### **2.7.6 Surge in the number of children in the streets.**

Although there are no exact statistics on children living on the streets, Zimbabwe continues to witness an upsurge of children living in the streets.<sup>245</sup> Children find themselves on the roads due to push and pull factors. Push factors driving children to the streets are poverty, domestic violence in homes, family breakdown, death of parents and guardians, abuse from step-parents and lack of family support.<sup>246</sup> Pull factors forcing children into the streets are peer pressure, desire for independence and urbanisation.<sup>247</sup> After getting to the street these children will be vulnerable to the worst forms of trafficking such as forced labour and forced commercial sexual exploitation. Over 20,000 people are vendors in the streets of Harare, and 15% are children below the age of 15.<sup>248</sup>

### **2.7.7 Gender inequality**

Generally, although there is no empirical conclusive research, women are trafficked more than their male counterparts.<sup>249</sup> Even though both boys and girls are vulnerable to child labour trafficking the propensity is high that girls face additional vulnerability

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<sup>241</sup> Z Lukman et al 'The relationship between dysfunctional family and involvement of children in prostitution' 2011 12 *World Applied Science Journal* 1818-4952 [https://www.idosi.org/wasj/wasj12\(SPSHD\)11/2.pdf](https://www.idosi.org/wasj/wasj12(SPSHD)11/2.pdf) (Accessed on 24 August 2024).

<sup>242</sup> As above.

<sup>243</sup> Commercial sexual exploitation of children in Zimbabwe: A threat to human and social development <https://onlinelibrary.wiley.com/doi/full/10.1002/car.2794> (accessed on 24 August 2024).

<sup>244</sup> As above.

<sup>245</sup> Everson Ndlovu, Richard Tigere (2022), 'Life in the Streets, Children Speak Out: A Case of Harare Metropolitan, Zimbabwe' *African Journal of Social Sciences and Humanities Research* 25-45

<sup>246</sup> As above.

<sup>247</sup> As above.

<sup>248</sup> Underage children turn to vending in Zimbabwe <https://www.aa.com.tr/en/africa/underage-children-turn-to-vending-in-zimbabwe/842798> (accessed on 24 August 2024).

<sup>249</sup> Mollema (n 10 above) 82.

originating from social discriminatory practices.<sup>250</sup> Forced marriage is another gender and harmful cultural practice and form of exploitation which exposes girls to forced labour trafficking.

## 2.8 Conclusion

Zimbabwe must harmonise its legal framework to be in sync with the Palermo Protocol to effectively combat the scourge of trafficking. The TIP Act fails to criminalise the majority forms of child labour trafficking which are rampant in the mining, farming and agriculture sectors. The principal legislation to fight trafficking does not criminalise child forced begging, illegal adoption, child pledging and child marriages which are major forms of child labour trafficking. The TIP further leaves forced labour issues to be dealt with by the Labour Act. Forced labour fails to adequately address child labour trafficking happening in informal job sectors because its philosophical underpinnings focuses on regulating employment in registered juristic persons. Zimbabwe should further invest in social infrastructure and economic turnaround as poor enjoyment of socio-economic rights to reduce the chances of more children falling prey to traffickers due to poverty, corruption and volatile macro-economic conditions.

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<sup>250</sup> Mollema (n 10 above) 83.

## **CHAPTER 3: THE LEGAL RESPONSE TO CHILD LABOUR TRAFFICKING IN ZIMBABWE**

### **3.1. Introduction**

Zimbabwe as a party to the international community should give effect to UN Conventions, ILO treaties and the African Charter in combating child labour trafficking. This chapter provides key instruments which inform the protection of children from child labour trafficking. It will discuss international, regional and national legal instruments to combat child labour trafficking. The main objective of this chapter is to analyse the adequacy and comprehensiveness of Zimbabwe's legislation, the Trafficking in Persons (TIP) Act in combating child labour trafficking. In the analysis, the research will draw inspiration from South Africa on how to craft legislation to combat child labour trafficking.

### **3.2. International instruments to combat child labour trafficking**

Child labour trafficking in Zimbabwe is regulated by three international regimes which are Human Rights frameworks, the ILO regime of treaties and the trafficking regime. However, although the coexistence of multiple regimes to combat trafficking provides opportunities in combating trafficking it comes with complexities which make it difficult for member states to address child labour trafficking.

#### **3.1.1. The ILO Convention Concerning Forced Labour 1930**

The convention entered into force in May 1932.<sup>251</sup> The Convention prohibits economic exploitation through forced labour. All states which ratified the Convention have an obligation to abolish any form of forced labour.<sup>252</sup> In May 2019 Zimbabwe its instrument to ratify the convention.<sup>253</sup> All state parties are obliged to put the convention into effect by criminalising and prosecuting the illegal use of forced labour.<sup>254</sup> However, although the Convention is a positive step towards the protection of children, its broad definition fails to adequately capture various types of

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<sup>251</sup> ILO Convention Concerning Forced Labour 1930.

<sup>252</sup> Article 1(1) ILO Convention Concerning Forced Labour 1930.

<sup>253</sup> <https://www.ilo.org/resource/news/zimbabwe-joins-efforts-combat-forced-labour> (accessed on 31 August 2024).

<sup>254</sup> Article 25 ILO Convention Concerning Forced Labour 1930.

exploitation and coercion faced in child labour trafficking. The Convention provides that forced labour is work or services offered under the fear of penalty and in the absence of consent of the person offering labour.<sup>255</sup> The challenge with this definition is that it does not include elements such as deception, misrepresentation and fraud in the procurement of labour and service, which make it not adequate to address child labour trafficking. The Convention should be crafted in a manner which recognises subtle forms of manipulation and exploitation associated with child labour trafficking. This is likely to create challenges in the prosecution of perpetrators because of the realities and exigence of child labour trafficking.

### **3.1.2. The ILO Convention Concerning Minimum Age for Admission to Employment 1973**

Zimbabwe ratified the convention in June 2000.<sup>256</sup> The promulgation and subsequent coming into force of the convention meant to eradicate child labour which is a serious form of child labour trafficking.<sup>257</sup> The Convention provides that the age of employment “shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years”.<sup>258</sup> The Convention further provides that no person before the age of eighteen years should be employed in work hazardous work or work which is likely health, safety and morals.<sup>259</sup> The Convention allows children as young as thirteen years to perform ‘light work’ as long it does not interfere with school or detriment to the growth of the child.<sup>260</sup> Exploiting children for labour purposes constitutes child labour trafficking which is prohibited by the convention. Zimbabwe as a state party to the convention is obliged to criminalise all forms of forced labour by providing adequate criminal sanctions or penalties. However, although the convention is a milestone in protecting children, the convention only addresses the minimum age for employment which is not specific to child labour trafficking. The Convention does not provide a mechanism of international cooperation in tackling child labour trafficking.

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<sup>255</sup> Article 2(1) The ILO Convention Concerning Forced Labour 1930.

<sup>256</sup> [https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312283](https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283) (accessed on August 2024).

<sup>257</sup> Article 1 The ILO Convention Concerning Minimum Age for Admission to Employment 1973.

<sup>258</sup> Article 2(3) ILO Convention Concerning Minimum Age for Admission to Employment 1973.

<sup>259</sup> Article 3(1) ILO Convention Concerning Minimum Age for Admission to Employment 1973.

<sup>260</sup> Article 7(1) ILO Convention Concerning Minimum Age for Admission to Employment 1973.

### **3.1.3 Convention on the Elimination of All Forms of Discrimination Against Women 1979**

In 1979, United Nations General Assembly adopted the CEDAW which subsequently came into force in 1981.<sup>261</sup> Zimbabwe ratified the convention in May 1981.<sup>262</sup> What is important for this research is that the convention prohibits “traffic in women”. However, CEDAW does not define the concept of traffic in women. The convention prohibits child marriages and a specific age must be pegged.<sup>263</sup> This is important because child marriages and forced marriage are increasingly becoming a haven for child labour exploitation.<sup>264</sup> The challenge of CEDAW is that its specific focus is on discrimination against women and girls without specific emphasis on tackling child labour trafficking.

### **3.1.4 United Nations Convention on the Rights of the Child (1989) (CRC)**

#### **3.1.4.1 Article 32 of the CRC**

In 1989, the world witnessed a historic epoch in protecting children’s rights after world leaders adopted the world’s most ratified human rights treaty, the CRC.<sup>265</sup> Article 32 of the CRC addresses child labour trafficking. Article 32 provides that state parties should protect children from all forms of economic exploitation and from performing hazardous work likely to affect the education and well-being of the child.<sup>266</sup> Under this Article, states should provide a minimum age for employment.<sup>267</sup> From this Article, the treaty shows that there is a connection between child exploitation and hazardous work. Although Article 32 does not define ‘economic exploitation of the Child’ scholars argue it’s the work that is hazardous to the child and has the potential to harm the child’s physical, spiritual, mental and emotional wellbeing.<sup>268</sup> However when comparing Article 32 and the Palermo Protocol the Article only focuses on economic exploitation but fails to define economic exploitation. This has also not been well defined by the Palermo Protocol.

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<sup>261</sup> Convention on the Elimination of All Forms of Discrimination against Women.

<sup>262</sup> <https://documents.un.org/doc/undoc/gen/n19/019/08/pdf/n1901908.pdf> (accessed on 31 August 2024).

<sup>263</sup> Article 16(2) Convention on the Elimination of All Forms of Discrimination against Women.

<sup>264</sup> Anti-Slavery, What is child marriage? <https://www.antislavery.org/slavery-today/child-marriage/> (accessed on 31 August 2024).

<sup>265</sup> United Nations Convention on the Rights of the Child 1989.

<sup>266</sup> Article 32 CRC.

<sup>267</sup> Article 32(a) CRC.

<sup>268</sup> S Detrick *A Commentary on the United Nations Convention on the Rights of the Child* (1999) 559.

### **3.1.4.2 Article 35 of the CRC**

This Article explicitly deals with child trafficking. It provides that all state parties are obliged to take appropriate bilateral, multilateral and national measures sale, abduction, and trafficking of children by any other means.<sup>269</sup> What is important in this Article is that it's clear that trafficking of children in any form is prohibited. However, there is a possible challenge associated with Article 35. The Article does not define 'child abduction', 'sale' and 'trafficking'. The treaty does not clarify and explain these concepts. This might make it difficult for state parties to effectively implement the treaty.

### **3.1.5. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPCS).**

On the 14<sup>th</sup> of February 2012, Zimbabwe acceded to the OPCS.<sup>270</sup> The Optional Protocol aims to achieve implementation of 34, 35 and 35 among other Articles.<sup>271</sup> The Optional Protocol acknowledges that the world is grappling with the surge in the trafficking of children for exploitation, sale, prostitution and extreme vulnerability of children.<sup>272</sup> The Optional Protocol has seen for the first time to see the definition of 'child prostitution' 'child pornography' and 'sale of children' in an international legal instrument.<sup>273</sup> This marked a historical epoch and evolution in the fight for the protection of the rights of children in general and child labour trafficking in particular. The Optional Protocol has tried its best to combat various manifestations of child trafficking including labour trafficking.

### **3.1.6. The ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999**

The convention was adopted by the ILO in 1999.<sup>274</sup> Zimbabwe ratified the convention in December 2000.<sup>275</sup> The mischief which the convention wants to cure is the

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<sup>269</sup> Article 35 CRC.

<sup>270</sup> United Nations Treaty Collection [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=en) (Accessed on 26 August 2024).

<sup>271</sup> Para 1 of the Preamble of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

<sup>272</sup> Para 3 of the Preamble of the OPCS.

<sup>273</sup> Article 2 of the OPCS.

<sup>274</sup> The Worst Forms of Child Labour Convention 1999.

prohibition and elimination of the worst forms of child labour. The convention defines the worst forms of child labour as all forms of slavery, such as the sale and trafficking of children, serfdom, forced labour, debt bondage, child prostitution, child pornography, recruitment in armed conflict, use of children in illegal activities and other activities likely to endanger children's safety, health and moral wellbeing.<sup>276</sup>

The Convention links child labour with the worst forms of trafficking a practice which requires urgent attention from all state parties.<sup>277</sup> The Convention further provides that exploitation of children through sexual exploitation, child prostitution and the use of children to engage in illicit activities are the worst forms of child labour which constitute child labour trafficking in terms of the Palermo Protocol definition.<sup>278</sup> The Convention put an obligation to Zimbabwe as a state party, to put measures in place such as criminal sanction to perpetrators of all worst forms of child labour trafficking.<sup>279</sup>

### 3.1.7. The Palermo Protocol 2000

Although the discourse so far has indicated that there are various international instruments on trafficking, the Palermo Protocol is recognised as a comprehensive international instrument to combat human trafficking in general and child labour trafficking in particular.<sup>280</sup> The United Nations General Assembly adopted the Palermo Protocol on 15 November 2000 and came into force on the 25<sup>th</sup> of December 2003.<sup>281</sup> It is the landmark and first international legally binding instrument to combat trafficking as part of the UN Convention against Transnational Organised Crime.<sup>282</sup> All state parties to the Protocol have a legal obligation to criminalise all

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<sup>275</sup> ILO Ratifications of C182 - Worst Forms of Child Labour Convention, 1999 (No. 182) [https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312327](https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312327) (accessed on 31 August 2024).

<sup>276</sup> Article 3 Worst Forms of Child Labour Convention.

<sup>277</sup> Article 3(a) Worst Forms of Child Labour Convention.

<sup>278</sup> Article 3(c) Worst Forms of Child Labour Convention.

<sup>279</sup> Article 1 Worst Forms of Child Labour Convention.

<sup>280</sup> Preamble of the Palermo Protocol.

<sup>281</sup> United Nations Treaty Collection [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg\\_no=xviii-12-a&chapter=18#:~:text=The%20Protocol%20was%20adopted%20by,Assembly%20of%20the%20United%20Nations.](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg_no=xviii-12-a&chapter=18#:~:text=The%20Protocol%20was%20adopted%20by,Assembly%20of%20the%20United%20Nations.) (Accessed on 28 August 2024).

<sup>282</sup> UNODC The Protocol <https://www.unodc.org/unodc/en/human-trafficking/protocol.html> (accessed on 28 August 2024).

forms of trafficking and develop legal anti-trafficking legislation which is in line with the provisions of the protocol.<sup>283</sup>

The Palermo Protocol provides the first internationally accepted definition of trafficking in persons.<sup>284</sup> The protocol is crafted in a manner which does not only approach trafficking through criminal lenses but from a well-calibrated human rights standpoint.<sup>285</sup> The quest to defend human rights in the Protocol is shown in its preamble which provides that must prevent trafficking, especially of women and children including the protection of their internationally recognised human rights.<sup>286</sup>

The Protocol is crafted to combat trafficking in persons, protect, prosecute, prevent and promote state parties to collaborate to combat trafficking.<sup>287</sup> The Protocol offers better protection of children as compared to the CRC, through defining child trafficking.<sup>288</sup> Although the Palermo Protocol applies to any person regardless of gender and age, it pays particular attention to children and women.<sup>289</sup> To protect children provides that any act of recruitment, harbouring, transportation, transfer and receipt of a person under the age of eighteen for exploitation is child trafficking.<sup>290</sup> These critical concepts which affect children today are not addressed by the CRC. The Protocol provides no monitoring mechanisms to hold state parties accountable when they fail to implement the protocol.<sup>291</sup> Lack of reporting procedures on treaties provides a substantive weakness which can lead to poor political commitment by state parties thereby making it an ineffective instrument.<sup>292</sup>

The Palermo Protocol comprehensively deals with trafficking irrespective of gender and age.<sup>293</sup> Article 4 of the Protocol provides circumstances in which the protocol is applicable as well as circumstances in which it cannot apply.<sup>294</sup> Although the protocol

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<sup>283</sup> As above.

<sup>284</sup> Heli Askola Legal Response to Trafficking in Women For Sexual Exploitation in the European Union (2007) 123.

<sup>285</sup> Nelson Sex Trafficking and Forced Prostitution: Comprehensive New Legal Approaches 2002 9 *Houston Journal of International Law* 551-570.

<sup>286</sup> Para 1 of the Preamble of the Palermo Protocol.

<sup>287</sup> Para 1 Preamble Palermo Protocol.

<sup>288</sup> Article 3(c) Palermo Protocol.

<sup>289</sup> Title of the Palermo Protocol.

<sup>290</sup> Article 3(c) Palermo Protocol.

<sup>291</sup> The Protocol does not have procedures for individual complaint mechanism, which can make it less effective in combating trafficking. Other international treaties such as CEDAW, CAT, ICESCR, and CERD have individual complaint mechanism procedure when a violation take place.

<sup>292</sup> Mohammed Ladan Migration, *Trafficking, Human Rights and Refugees under International Law: A Case Study of Africa* (2004) 122.

<sup>293</sup> Article 4 Palermo Protocol.

<sup>294</sup> Article 4 Palermo Protocol.



accepts that anyone can be a victim of trafficking it pays particular attention to children and women.<sup>295</sup> The obligations imposed on state parties by the Protocol are to promulgate and enact legislation which criminalises the intention to traffic a person,<sup>296</sup> attempt to commit trafficking,<sup>297</sup> participate as an accomplice,<sup>298</sup> and organise or direct any person to commit trafficking.<sup>299</sup>

## **3.2 International Human rights instruments and child labour trafficking**

### **3.2.1 Introduction**

Although the study does not focus on human rights issues in trafficking, the reason for including international human rights instruments is that human rights are also violated in the process of child labour trafficking. Office of the High Commissioner for United Nations Human Rights argues that human trafficking impairs fundamental rights and freedoms such as the right to dignity, liberty, life, integrity, security, movement.<sup>300</sup>

### **3.2.2 The Universal Declaration of Human Rights 1948**

The UDHR was proclaimed by the UN General Assembly in December 1948.<sup>301</sup> It provides minimum human rights standards that countries of the world should adopt to observe human rights.<sup>302</sup> The UDHR provides that all people are born free and equal in rights and dignity.<sup>303</sup> Even though the declaration does not expressly refer to trafficking, it provides fundamental rights violated by traffickers. Although it provides for various rights, the declaration underlines the right to be free from servitude and slavery.<sup>304</sup> However, the UDHR does not explicitly provide comprehensive protection of children against child labour trafficking.

### **3.3.3 The International Covenant on Economic, Social and Cultural Rights 1966**

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<sup>295</sup> Article 4 Palermo Protocol.

<sup>296</sup> Article 5(1) Palermo Protocol.

<sup>297</sup> Article 5(2) Palermo Protocol.

<sup>298</sup> Article 5(2) Palermo Protocol.

<sup>299</sup> Article 5(2) Palermo Protocol.

<sup>300</sup> United Nations Human Rights Office of the High Commissioner Human Rights and human trafficking [https://www.ohchr.org/sites/default/files/Documents/Publications/FS36\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS36_en.pdf) (accessed 31 August 2024).

<sup>301</sup> <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed on 1 September 2024).

<sup>302</sup> As above.

<sup>303</sup> Article 1 Universal Declaration of Human Rights 1948.

<sup>304</sup> Article 4 UDHR.

The UN adopted the Covenant in December 1966 and came into force in January 1976.<sup>305</sup> Zimbabwe acceded to the Covenant in May 1991.<sup>306</sup> The Covenant has converted the spirit and ideals of the UDHR into binding international legal instruments.<sup>307</sup> The Covenant tackles issues to do with labour trafficking where it explicitly addresses the right to safe and healthy conditions of work<sup>308</sup>, the right to work freely, and the right to fair wages.<sup>309</sup>

### 3.3. Regional Legal Framework

#### 3.3.1 African Charter on Human and Peoples' Rights 1981

The African Charter provides a normative human rights framework in the African region. Zimbabwe ratified the African Charter in October 1986.<sup>310</sup> The African Charter provides a plethora of human rights which are violated by trafficking. The Charter provides the right to liberty and security of person,<sup>311</sup> the right to personal integrity,<sup>312</sup> and equality before the law,<sup>313</sup> and all forms of exploitation.<sup>314</sup> The Charter is against labour exploitation and it provides that every person shall be entitled to under satisfactory and equitable conditions.<sup>315</sup> The challenge of the African Charter in addressing child labour trafficking is that it does not have a dedicated mechanism but only relies on state reports on progress achieved. The African Charter further overlaps with other international instruments such as the Palermo Protocol which might create a challenge to determine which instrument has jurisdiction over a specific issue concerning child labour trafficking.

#### 3.3.2 The African Charter on the Rights and Welfare of the Child 1990

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<sup>305</sup> United Nations Treaty Collection [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-3&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4) (accessed on 1 September 2024).

<sup>306</sup> As above.

<sup>307</sup> K Bales 'No One Shall Be Held in Slavery or Servitude: a Critical Analysis of International Slavery Agreements and Concepts of Slavery' (2001) *Human Rights Review* 23.

<sup>308</sup> Article 7(b) International Covenant on Economic, Social and Cultural Rights 1966.

<sup>309</sup> Article 7(a)(1) ICESCR.

<sup>310</sup> <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800cb09f> (Accessed on 2 September 2024).

<sup>311</sup> Article 6 African Charter on Human and Peoples' Rights 1981.

<sup>312</sup> Article 2 African Charter.

<sup>313</sup> Article 3 African Charter.

<sup>314</sup> Article 5 African Charter.

<sup>315</sup> Article 15 African Charter.

Zimbabwe ratified the African Children's Charter in January 1995.<sup>316</sup> In 1990, The African's Children Charter was adopted and it subsequently entered into force in 1999.<sup>317</sup> The Charter was created to address challenges such as the trafficking of children which was not being addressed by the African Charter.<sup>318</sup> The Children's Charter incorporated universal values of the CRC and conceptualised them from the African perspective.<sup>319</sup> The Charter further provides specific obligations on child labour.<sup>320</sup> The Children's Charter provides that every child shall be protected from economic exploitation and performing work which is detrimental to the health, safety, spirit, morals and social well-being of the child.<sup>321</sup> The Charter is unique from CRC. The Charter prohibits the economic exploitation of children in both formal and informal employment sectors. This is a great milestone because forced labour is happening in the informal sector and it is not regulated by labour laws. The African Children's' Charter imposes an obligation to state parties to prevent the sale, trafficking of children and use of children in begging.<sup>322</sup> However although the Charter is a milestone towards safeguarding the rights of children, the Charter does not expressly and explicitly address child labour trafficking. There is also a lack of dedicated enforcement mechanisms, the Charter only relies on state reporting on the progress achieved which is not an effective mechanism to protect children's rights.

### **3.3.3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003.**

The Protocol is commonly known as the Maputo Protocol. It was adopted in July 2003 and entered into force in November 2005.<sup>323</sup> Zimbabwe ratified the Maputo Protocol in April 2008.<sup>324</sup> The Protocol have numerous provision which deals with trafficking. The Protocol prohibits child labour,<sup>325</sup> and child marriages<sup>326</sup> and guarantees the right to integrity and security of persons.<sup>327</sup> The Protocol prohibits all

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<sup>316</sup> <https://www.acerwc.africa/en/member-states/ratifications> (accessed on 2 September 2024).

<sup>317</sup> African Charter on the Rights and Welfare of the Child 1990.

<sup>318</sup> Viljoen (2021) *Guide to the African Human Rights System* 75.

<sup>319</sup> As above.

<sup>320</sup> Article 15 ACRWC.

<sup>321</sup> Article 15(1) ACRWC.

<sup>322</sup> Article 29 ACRWC.

<sup>323</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

<sup>324</sup> <https://www.maputoprotocol.up.ac.za/countries/countries-table> (accessed on 3 September 2024)

<sup>325</sup> Article 13(g) Maputo Protocol.

<sup>326</sup> Article 6(a) Maputo Protocol.

<sup>327</sup> Article 4(1) Maputo Protocol.

forms of exploitation and inhuman and degrading treatment of persons.<sup>328</sup> Therefore the Protocol is a positive development in combating all forms of trafficking by imposing obligations on states to impose criminal sanctions on perpetrators.

### **3.4. Soft law to combat child labour trafficking**

Soft laws are principles, agreements, and declarations that are not legally binding. They are usually found in the international sphere, such as the United Nations General Assembly resolutions.<sup>329</sup> Soft law is important because it complements other legal norms in enforcement and implementation.<sup>330</sup> These soft laws are crucial in understanding the discourse of child labour trafficking.

#### **3.4.1. UN Principles and Guidelines on Human Rights and Human Trafficking (2002)**

Guideline 4 of the UN Principles states that the lack of adequate and comprehensive legislation is a major setback in the fight against trafficking.<sup>331</sup> It provides a need for urgent development of appropriate legal frameworks in many UN member states to align domestic laws with international legal instruments to combat trafficking.<sup>332</sup> The guidelines provide that member states should criminalise all forms of trafficking such as forced labour and debt bondage.<sup>333</sup> The principle clearly shows that there are some trafficking acts which are not being punished. Such a development negatively affects the adequate protection of children from child labour trafficking. The guidelines further emphasise addressing poverty, inequality and lack of education which are the main root causes of child labour trafficking.<sup>334</sup> Such legal thinking is alive to the dynamics and complexities of child labour trafficking.

#### **3.4.2. UN Children's Fund Guidelines for the Protection of Child Victims of Trafficking (2006)**

The 2006 Guidelines are important in combating child labour trafficking because of the unique and specialised approach to the complexities facing victims.<sup>335</sup> The Guidelines emphasise upholding the best interest of the child principle when dealing

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<sup>328</sup> Article 4(1) Maputo Protocol.

<sup>329</sup> As above.

<sup>330</sup> <https://www.aca-europe.eu/seminars/Paris2013bis/Julcher.pdf> (accessed on 11 October 2024).

<sup>331</sup> Guideline 4 UN Principles and Guidelines on Human Rights and Human Trafficking (2002).

<sup>332</sup> Guideline 4(1) UN Principle and Guidelines.

<sup>333</sup> As above.

<sup>334</sup> Guideline 8 UN Principles and Guidelines.

<sup>335</sup> Guideline 10 UN Children's Fund Guidelines for the Protection of Child Victims of Trafficking (2006).

with trafficking of children.<sup>336</sup>The guidelines provide comprehensive framework in protecting victims of trafficking such as rescue, reintegration, rehabilitation and justice.<sup>337</sup> The guidelines further provide the importance of addressing the root causes and awareness of child labour trafficking.<sup>338</sup> Such provisions need to be taken by the legislator when crafting trafficking legislation to provide more comprehensive protection against child labour trafficking.

### **3.4.3. UN General Assembly resolution on “Improving the Coordination of Efforts against Trafficking in Persons (2009)”**

This 2009 UN resolution is important in combating child labour trafficking. The resolution calls for national, regional and international coordination to suppress, prevent and punish trafficking.<sup>339</sup> The resolution calls for criminalising all forms of trafficking by national legislation of member states.<sup>340</sup> The resolution provides that there is more work to be done in fixing national legislation to be congruent with international instruments to combat trafficking. Therefore national legislation for combating child labour trafficking should be crafted with an appreciation that poverty and marginalisation play a role in worsening the scourge of child labour trafficking.

### **3.4.4. CEDAW Committee General Recommendation 38 on Trafficking of Women and Girls in the Context of Global Migration (2020)**

The 2020 General Recommendation contextualises the implementation obligations of all state parties to CEDAW to combat all forms of trafficking.<sup>341</sup> The GR provides root causes of all forms of trafficking such as socio-economic injustice.<sup>342</sup> The GR offers important factors worsening trafficking such as structural inequality, poverty, and marginalisation.<sup>343</sup> It further provides that states should invest in fighting poverty and marginalisation to combat all forms of trafficking effectively. Such vices mentioned in the GR are important to understand when crafting legislation to combat child labour trafficking. Therefore Zimbabwe’s principal legislation to combat

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<sup>336</sup> Guideline 8(8.3) Children Fund Guidelines.

<sup>337</sup> As above.

<sup>338</sup> Guideline 9 Children Fund Guidelines.

<sup>339</sup> Resolution 12 UN General Assembly resolution on “Improving the Coordination of Efforts against Trafficking in Persons (2009).

<sup>340</sup> As above.

<sup>341</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no38-2020-trafficking-women> (accessed on 11 October 2024).

<sup>342</sup> <https://documents.un.org/doc/undoc/gen/n20/324/45/pdf/n2032445.pdf> (accessed on 11 October 2024).

<sup>343</sup> As above.

trafficking, the TIP Act, should be crafted in a manner which recognises that the majority of trafficking victims are those marginalised persons in the communities, especially women and children.

### **3.4.5. The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked**

This soft law plays an important role in addressing all forms of trafficking. The application of Article 1A(2) of the 1951 Refugee Convention provides that some potential victims of trafficking are likely to fall within the definition of the Convention.<sup>344</sup> This soft law provides an important understanding that refugees especially unaccompanied children are at a high risk of child labour trafficking. Therefore legislation should be crafted in manners which recognise that refugees constitute a group of people who are vulnerable to child labour trafficking.

### **3.4.6. The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children 2006**

The plan of Action was jointly established by Europe and America in 2006 to combat trafficking, especially of women and children.<sup>345</sup> The Ouagadougou Action Plan endorses the Palermo Principle in preventing, protecting and prosecuting traffickers. The Action Plan advocates for the creation and development of National Action Plans by the states and task forces which oversee the implementation of the national action plans.<sup>346</sup>

## **3.5 National legal framework to combat child labour trafficking**

Although there are various national legal instruments which supplement the TIP Act in combating trafficking, this section is dedicated to analyse the adequacy and comprehensiveness of Zimbabwe's anti-trafficking Principal legislation. It will assess this by analysing if the TIP Act is sync with the Palermo Protocol which Zimbabwe domesticated through enactment of the principal legislation.

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<sup>344</sup> Para 12 The application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked.

<sup>345</sup> The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children 2006.

<sup>346</sup> The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children 2006.

### 3.5.1 Constitution of Zimbabwe Amendment (No. 20) Act, 2013

The constitution of Zimbabwe is the supreme law of the land which was adopted in May 2013. The Constitution provides a plethora of provisions which are meant to combat child labour trafficking. The majority of these provisions are found in the Bill of Rights found in Chapter 2 of the Constitution. These fundamental rights and freedoms include freedom from slavery and servitude,<sup>347</sup> freedom from forced labour,<sup>348</sup> right to human dignity,<sup>349</sup> right to personal liberty,<sup>350</sup> right to personal security,<sup>351</sup> and freedom from torture, and cruel and degrading treatment.<sup>352</sup> These mentioned fundamental rights and freedoms are impaired when a child is subjected to labour trafficking.

### 3.5.2 The Labour Act Chapter 28:01

The Labour Act of Zimbabwe prohibits forced labour.<sup>353</sup> The Labour Act further provides that forced labour is work or service provided by a person against his or her will under threat or some form of punishment.<sup>354</sup> The 2023 Labour Act amendment provides for ten years imprisonment for perpetrators of forced labour which is a deterrent provision. The penal provision is in line with international standards in deterring traffickers. However, the definition provided by the Act is not congruent to that provided by the Palermo Protocol. The purpose of forced labour in the discourse of trafficking should be exploitation. The definition provided by the Act does not provide exploitation as the end goal. Furthermore, the Labour Act provides that forced labour should be done under the threat of some form of punishment.<sup>355</sup> This is not in sync with the definition of Palermo where force, coercion, misrepresentation or fraud comprise the means used for the conduct to be considered trafficking. Therefore the use of threat only as provided by the Act is narrow to protect children from child labour trafficking. Exploitation constitutes the critical definitional element of the Palermo Protocol. The Act further does not provide a definition of child labour

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<sup>347</sup> Section 54 Constitution of Zimbabwe.

<sup>348</sup> Section 55 Constitution of Zimbabwe.

<sup>349</sup> Section 51 Constitution of Zimbabwe.

<sup>350</sup> Section 49 Constitution of Zimbabwe.

<sup>351</sup> Section 52 Constitution of Zimbabwe.

<sup>352</sup> Section 53 Constitution of Zimbabwe.

<sup>353</sup> Section Labour Act Chapter 28:01.

<sup>354</sup> Section 2 Labour Act of Zimbabwe.

<sup>355</sup> Section 2 Labour Act of Zimbabwe.

which makes children vulnerable to labour trafficking in farms, mines, fishing, livestock and timber logging sectors.

### **3.5.3 Children Act Chapter 5:06**

The Zimbabwe Children Act prohibits some forms of labour trafficking. Section 8(2) of the Act provides that it's an offence to cause abduction or prostitution of a child or any sexual conduct which impairs the child's morality.<sup>356</sup> Section 8(4) of the Act provides for a not more than 5-year imprisonment or fine or both for any person convicted of the offence of corrupting children or young persons.<sup>357</sup> Criminalising these forms of child labour trafficking by the Act protects children from being exploited.

### **3.5.4 Criminal Law (Codification and Reform) Act Chapter 9:23**

Section 156 of the Criminal Code makes it a criminal offence for any person to incite a minor into dealing with dangerous drugs.<sup>358</sup> Forcing children to deal with drugs is another form of child labour trafficking which exposes young people to life which threatens their health, and social, spiritual and moral well-being. This provision meets international standards in trying to address the worst forms of child labour which constitute child labour trafficking.

### **3.5.5 The Trafficking in Persons Act Chapter 9:25**

The TIP Act is Zimbabwe's Principal Legislation which was enacted in 2014 to domesticate the Palermo Protocol.<sup>359</sup> The Act provides for the prevention, prohibition, protection and prosecution of trafficking.<sup>360</sup> Although the Act is a milestone achievement by Zimbabwe to combat the scourge of trafficking, the Act fails to comprehensively combat child labour trafficking.

## **3.6 Analysis of Zimbabwe's Trafficking in Persons (TIP) Act**

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<sup>356</sup> Section 8(2) Children Act Chapter 5:06.

<sup>357</sup> Section 8(4) Children Act.

<sup>358</sup> Section 156(2)(d) Criminal Code of Zimbabwe.

<sup>359</sup> Trafficking in Persons Bill - Deputy Minister's Second Reading Speech <https://www.veritaszim.net/node/925> (accessed on 11 October 2024).

<sup>360</sup> Long title TIP Act.



While the national laws discussed above complement in combating trafficking in Zimbabwe, this section is dedicated to analysing the adequacy and comprehensiveness of the TIP Act in combating child labour trafficking. This will be done by assessing if the legislature successfully domesticated the Palermo Protocol. The analysis will also look into how South Africa and Kenya have complied with crafting their legislation in sync with the Palermo Protocol.

### 3.6.1 Introduction

The major aim for Zimbabwe to promulgate the Act was to domesticate the Palermo Protocol.<sup>361</sup> The purpose of this section is to evaluate if Zimbabwe successfully crafted its legislation to give effect to the spirit and tenor of the Palermo Protocol in combating child labour trafficking.

### 3.6.2 Failure to define child trafficking

The definition of child trafficking is important to comprehensively address child labour trafficking. Unlike the Palermo Protocol, the TIP Act does not define child trafficking. When the Palermo Protocol was crafted, its philosophical underpinning was to combat trafficking in general but specific to women and children.<sup>362</sup> The trafficking in person special rapporteur held that children constitute vulnerable groups which legislation to combat trafficking should focus on.<sup>363</sup> The Palermo Protocol defines the trafficking of children as

*....recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a)....*<sup>364</sup>

Zimbabwe's Trafficking in Persons Act does not define child trafficking. Failure to define child trafficking by the Act provides less protection for children from child labour trafficking. The legislature was supposed to create anti-trafficking legislation

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<sup>361</sup> Trafficking in Persons Bill - Deputy Minister's Second Reading Speech <https://www.veritaszim.net/node/925> (accessed on 6 August 2024).

<sup>362</sup> The preamble of the Palermo Protocol provides that its aim is to '.....prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking....'

<sup>363</sup> J N Ezeilo, 'Achievements of the Trafficking Protocol: Perspectives from the former UN Special Rapporteur on Trafficking in Persons' 2015 *Anti-Trafficking Review* 144—149 <https://antitraffickingreview.org/index.php/atjournal/article/view/94/114> (accessed on 6 September 2024).

<sup>364</sup> Article 3(c) Palermo Protocol.

which provides enough protection to child trafficking in general and child labour trafficking in particular. Since the philosophical underpinning of the Palermo Protocol is to combat trafficking with special emphasis on children, the failure to define child trafficking by the Act is incongruent with objects of the international principal legislation. The inability to define child trafficking by the Act creates a reasonable suspicion that the Act was not promulgated to give effect to the Palermo Protocol.

The long title of Zimbabwe's TIP Act mainly provides that the major mischief of the Act is to prohibit, protect, and prosecute trafficking.<sup>365</sup> The other main objective of the long title is to create an inter-ministerial taskforce, establish victim centres, and amend the Criminal Code and Money Laundering and Proceeds of Crime Act.<sup>366</sup> The long title does not mention children and women as provided in the Palermo Protocol and Ouagadougou Action Plan. According to Botha, the long title summarises the legislation.<sup>367</sup> The long title provides the intention of the legislature in crafting legislation, the mischief which the legislature wanted to cure.<sup>368</sup> How the long title of the Act was crafted shows a deficiency in understanding that children are more susceptible to the vagaries of trafficking than other population groups. The Palermo Protocol and Ouagadougou Action Plan demonstrate that the mischief to be cured is combating trafficking with special emphasis on children and women. Such philosophical underpinning of protecting women and children is not provided in the Trafficking in Persons Act. Failure to specifically mention children in the long title of the Act, which provides the intention of the legislature provides ineffective calibration and conceptualisation of child trafficking. This negatively affects combating child labour trafficking.

The Act only provides that trafficking will be committed in aggravating circumstances when a child is involved.<sup>369</sup> Aggravating circumstance refers to factors that courts consider to increase the severity of punishment.<sup>370</sup> While it is a good penal provision which provides that the commission of the offence of trafficking is aggravated when committed to a minor person below eighteen years, such provision does not offer

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<sup>365</sup> Preamble of the Zimbabwe Trafficking in Persons Act.

<sup>366</sup> As above.

<sup>367</sup> C Botha (2012) *Statutory interpretation* 37.

<sup>368</sup> As above.

<sup>369</sup> Section 3 Zimbabwe Trafficking in Persons Act.

<sup>370</sup> Legal Information Institute

[https://www.law.cornell.edu/wex/aggravating\\_circumstances#:~:text=Aggravating%20circumstances%20refers%20to%20the%20penalty%20for%20a%20convicted%20criminal](https://www.law.cornell.edu/wex/aggravating_circumstances#:~:text=Aggravating%20circumstances%20refers%20to%20the%20penalty%20for%20a%20convicted%20criminal). (Accessed on 6 September 2024).

more protection as compared to the provision of the definition of child trafficking. A proper definition of child trafficking protects the ongoing challenge of child labour trafficking around the world and Zimbabwe in particular.

Kenya and South Africa's trafficking in persons legislation provides better protection against child trafficking. Such protection is important in combating child labour trafficking. Section 4(1) of Kenya's Counter-Trafficking in Persons Act solely provides for the punishment of child trafficking.<sup>371</sup> It provides a plethora of conducts which prohibit child trafficking. Section 4(2)(1) of South Africa's Prevention and Combating of Trafficking in Persons Act provides a comprehensive definition of child trafficking. Unlike Zimbabwe's Act which does not define child trafficking, South Africa and Kenya provide for child trafficking. Such a legal provision protects children against child labour trafficking than a legal provision which only provides that trafficking is committed in aggravating circumstances when perpetrated against a person below the age of eighteen. Defining child trafficking shows the sensitivity of the legislature to the vulnerability of children to trafficking. Children should be protected more than any other group when it comes to trafficking in general and child labour trafficking in particular.

Unlike Zimbabwe, Kenya's trafficking-in-person legislation shows that the intention of the legislature was deliberate in fighting all forms of child trafficking. The long title of Kenya's Counter-Trafficking in Persons Act provides that clearly states that the purpose of the Act is to suppress trafficking, especially of women and children.<sup>372</sup> This is in line with the objects and spirit of the Palermo Protocol. Therefore it can be argued that Kenya's long title shows the legislature intended to conceptualise trafficking in a manner which protects all forms of child trafficking. Unlike Zimbabwe's long title which does not mention the vulnerability of children in its long title, how children are cited in the Kenya Act shows that the Kenyan legislature is alive to the exigencies, intricacy and vulnerability of children to trafficking. It further shows a holistic approach to the conceptualisation of child trafficking.

### **3.6.3 Narrow definition of trafficking**

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<sup>371</sup> Kenya's Counter-Trafficking in Persons Act.

<sup>372</sup> Long title Kenya's Counter-Trafficking in Persons Act.

The definition of trafficking is provided in section 3(1)(a) of the Trafficking in Persons Act of 2014. The conceptualisation of the definition of trafficking in general is an important point of departure in addressing child labour trafficking. The Zimbabwe's Trafficking in Persons Act defines trafficking as

*(1) Any person who (a) Trafficks any individual by transporting him or her into, outside or within Zimbabwe...*<sup>373</sup>

The Palermo Protocol provides that

*"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons...*<sup>374</sup>

There is a fundamental difference in how the Act and the Protocol conceptualise the definition of trafficking. The Act conceptualise human trafficking as a crime of moving a person from one point to another point. Trafficking is a criminal conduct which does not require movement or the crossing of borders, a person can be exploited without movement.<sup>375</sup> The legal impression created by the definition in the Act gives an assumption that trafficking is a movement-based crime. A close analysis of the definition of the Act and the Palermo Protocol shows that the trafficking from the lenses of the Act is mainly transporting whereas in the Protocol trafficking is exploitation. Trafficking is not only transporting but includes a lot of components such as recruitment, harbouring and receiving.

The problem created by the definition of the Act is the concept of the principle of legality. The principle of legality is commonly known as the *nullum crimen sine lege*.<sup>376</sup> The principle entails that there is no crime without the law.<sup>377</sup> Therefore in terms of the Trafficking in Persons Act, trafficking means 'Transporting', which means an accused person who recruits can contest that he or she never trafficked a person because 'transporting' is the crux of the definitional elements of trafficking. From a criminal point of view, the definition of trafficking is couched in a manner

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<sup>373</sup> Section 3(1)(a) Zimbabwe's Trafficking in Persons Act.

<sup>374</sup> Article 3(a) Palermo Protocol.

<sup>375</sup> Office of Trafficking in Persons, Myths and Facts about human trafficking

<https://www.acf.hhs.gov/otip/about/myths-facts-human-trafficking#:~:text=MYTH%3A%20Trafficking%20includes%20some%20form%20of%20travel%20or%20transportation%20across%20borders.&text=FACT%3A%20Human%20trafficking%20does%20not,their%20will%2C%20it%20is%20trafficking.> (accessed 6 September 2024).

<sup>376</sup> C R Synman 'Criminal Law' 7<sup>th</sup> Edition 31.

<sup>377</sup> As above.

which suggests that a person who recruits, harbours or receives the victim of trafficking has less culpability than the one who transports the victim.

To cure challenges likely to be brought by the definition, Zimbabwe can draw inspiration from South Africa and Kenya. South Africa's Prevention and Combating of Trafficking in Persons Act of 2013 defines trafficking as the recruitment, delivery, transferring, transportation, harbouring, selling, and exchanging of persons within or across borders.<sup>378</sup> The definition is congruent to the Palermo Protocol. Unlike Zimbabwe's Act, the South African definition does not conceptualise trafficking as a movement-based crime but a crime which can be committed within the country's border. Such provision provides more protection to victims of child labour trafficking which in most cases does not require a person to be transported from one point to the other. Kenya's Counter-Trafficking in Persons Act defines trafficking as recruitment, transferring, harbouring or receiving for exploitation.<sup>379</sup> This definition by Kenya is in sync with the Palermo Protocol. It shows that trafficking is not just a movement-based crime but a crime premised on the exploitation of persons. Such a definition provides better protection to child labour trafficking which usually happens even without movement.

Section 3(1)(b) of the Act further convolutes the definition of trafficking. It provides a host of actions which supplement the definition of trafficking such as harbour, receives, transfers, and receives which are supposed to constitute the central definition of trafficking. By the end of the day, the manner of the definition of trafficking in the Act provides a legal assumption that if there is no transportation there is no crime of trafficking. This creates a problem in addressing child labour trafficking which is happening in farms, mines and the livestock sector where young people are being exploited without being transported.

Illegal child adoption is a source of child labour trafficking bedevilling the world today.<sup>380</sup> The Zimbabwe Trafficking in Persons Act provides illegal adoption as an aggravating circumstance in trafficking.<sup>381</sup> Many countries have included illegal

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<sup>378</sup> Section 4(1) South Africa's Prevention and Combating of Trafficking in Persons Act of 2013.

<sup>379</sup> Section 3 Kenya's Counter-Trafficking Act of 2010.

<sup>380</sup> United Nations *illegal adoptions* <https://www.ohchr.org/en/special-procedures/sr-sale-of-children/illegal-adoptions#:~:text=Adoptions%20resulting%20from%20crimes%20such,financial%20gain%20by%20intermediaries%20and> (accessed on 8 September 2024).

<sup>381</sup> Section 3(3)(b) Trafficking in Persons Act.

adoption as a form of trafficking in their anti-trafficking legislation.<sup>382</sup> Section 4(2)(a) of South Africa's anti-trafficking act provides illegal adoption of a child in the definition of child trafficking.<sup>383</sup> South Africa's provision of illegal adoption in its definition of child trafficking demonstrates its understanding and conceptualisation of how children are vulnerable to trafficking. Providing illegal adoption as an aggravating circumstance as provided in Zimbabwe's anti-trafficking legislation does not adequately insulate children from the vagaries of child labour trafficking associated with illegal adoption.

### 3.6.4 Voluntary and involuntary victims of trafficking

The Trafficking in Persons Act provides two categories of victims of trafficking, voluntary<sup>384</sup> and involuntary<sup>385</sup> trafficking victims. Voluntary trafficking from the Act involves victims who are engaged in unlawful conduct such as leaving the country's borders illegally.<sup>386</sup> This is contrary to the provisions of the Palermo Protocol. The Protocol provides that where the person consents it falls out of the definition of trafficking. The Protocol is clear that a victim of trafficking should not consent to the act for such conduct to constitute trafficking. The Act further fail to distinguish the difference between trafficking and human smuggling. The moment a person consents to leave the country's border through illegal means, it's no longer trafficking but smuggling. The Act confuses trafficking and smuggling.

### 3.6.5 Failure to provide child pledging as a form of trafficking

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<sup>382</sup> Human Trafficking Search Illegal Adoption: Is it human trafficking?

<https://humantraffickingsearch.org/resource/illegal-adoption-is-it-human-trafficking/> (accessed on 8 August 2024).

<sup>383</sup> Section 4(2)(a) Prevention and Combating Trafficking in Persons Act.

<sup>384</sup> Section 3(1)(a)(1) Trafficking in Persons Act.

<sup>385</sup> Section 3(1)(a)(ii) Trafficking in Persons Act.

<sup>386</sup>Section (1) of TIP Act provides that Any person who—

(a) trafficks any individual by transporting him or her into, outside or within Zimbabwe —

(i) involuntarily, that is to say by any of the following means—

A. force, violence or threats thereof; or

B. administering drugs to subdue the victim or causing the victim to be addicted to drugs; or

C. abduction or detention of the victim; or

D. fraud, extortion or deception; or

E. the abuse of power or trust over the victim; or

F. the giving of inducements to the victim or a person having control over the victim for the purpose of facilitating the transportation of the victim; or

(ii) voluntarily, for an unlawful purpose;

The Trafficking in Persons Act does not criminalise some forms of human trafficking. Child pledging is another form of the worst form of labour trafficking.<sup>387</sup> Child pledging is a form of human trafficking where young girls are being pledged to clear debts or to appease the avenging spirit in a traditional practice commonly known as *kuripa ngozi*.<sup>388</sup> These girls find themselves in sexual exploitation and child labour trafficking. The offence of child pledging is provided in section 94 of the Criminal Code.<sup>389</sup> Although the Criminal Code prohibits the pledging of girls and forced marriages, the penal provision leaves a lot to be desired. Section 94(1)(c) of the Code provides that any person who commits the offence of child pledging is liable to a fine or imprisonment not exceeding two years.<sup>390</sup> According to the 2023 Criminal Procedure (Sentencing Guidelines) the presumptive penalty for pledging a female person is 12 months in prison.<sup>391</sup> The minimum trafficking sentence by the Act is 10 years imprisonment or a fine equivalent.<sup>392</sup> If the same offence was provided in the Trafficking in Person Act, the minimum sentence was going to be ten years imprisonment. Therefore leaving the Criminal Code to deal with forced marriages as a form of child labour trafficking trivialises the heinous act.

### 3.6.6. Failure to provide child marriages as a form of trafficking

Child marriage or bride trafficking is a form of human trafficking where girls are sold to people who in turn use them as sex slaves and labourers.<sup>393</sup> The United Nations posited that the majority of girls who found themselves in child marriages face child labour trafficking, servitude and sexual exploitation.<sup>394</sup> The African Commission in its 2017 Joint General Comment held that Article 6 of the Maputo Protocol and Article 12 of the Children Charter are meant to deal with harmful practices linked to child

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<sup>387</sup> African Child Policy Forum *Prohibition of child trafficking* [https://clr.africanchildforum.org/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation\\_15\\_en.pdf](https://clr.africanchildforum.org/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_15_en.pdf) (accessed on 8 September 2024).

<sup>388</sup> *Kuripa Ngozi* is a Shona tradition and custom for compensatory payment of another family disputes through pledging a virgin girl to appease the avenging spirits of a dead person. [https://www.researchgate.net/publication/335453907\\_Kuripa\\_Ngozi\\_as\\_a\\_conflict\\_resolution\\_model\\_in\\_Shona\\_communities\\_of\\_Zimbabwe\\_a\\_conceptual\\_analysis](https://www.researchgate.net/publication/335453907_Kuripa_Ngozi_as_a_conflict_resolution_model_in_Shona_communities_of_Zimbabwe_a_conceptual_analysis) (accessed on 12 October 2024).

<sup>389</sup> Section 94 Criminal Code.

<sup>390</sup> Section 94(1)(c) Criminal Code.

<sup>391</sup> Statutory Instrument 143 of 2023 Criminal Procedure (Sentencing Guidelines) [https://www.jsc.org.zw/upload/Gazette/S.I.%20146%20of%202023%20Criminal%20Procedure%20\(Sentencing%20Guidelines\)%20Regulations.%202023%20Normal%20\(1\).pdf](https://www.jsc.org.zw/upload/Gazette/S.I.%20146%20of%202023%20Criminal%20Procedure%20(Sentencing%20Guidelines)%20Regulations.%202023%20Normal%20(1).pdf) (accessed on 7 September 2024).

<sup>392</sup> Section 3(2)(b)(ii) Zimbabwe Trafficking in Persons Act.

<sup>393</sup> Bride trafficking is a combination of multiple social evils <https://www.empowerpeople.in/bridetrafficking> (accessed on 7 September 2024).

<sup>394</sup> UNODC Forced Marriages <https://www.unodc.org/e4j/zh/tip-and-som/module-11/key-issues/som-or-tip---forced-marriage.html> (accessed on 7 September 2024).

marriages such as child labour.<sup>395</sup> Girls in Zimbabwe are subjected to child marriages where they face abuse, are beaten by their husbands, forced to work for long hours in fields and do household chores.<sup>396</sup> However, despite being a nation facing an increase in cases of child marriages which force girls into labour exploitation, the Trafficking in Persons Act does not identify child marriage as a form of trafficking. Failure by the Trafficking in Persons Act to include child marriages as a form of child trafficking makes children more vulnerable to child labour trafficking associated with child marriages. Although the Palermo Protocol and Legislation in South Africa and Kenya do not explicitly provide early marriages and child pledging as forms of trafficking, what is important is that the major reason for child pledging and early marriage is to exploit them. In Zimbabwe majority of these young girls are subjected to harmful practices such as forced labour.<sup>397</sup> The presence of forced labour in child pledging and child marriages makes practices to fall within the purview of the definition of child labour trafficking. These children find themselves in exploitative circumstances characterised by threats and other subtle forms of intimidation from husbands and family members such as in-laws.<sup>398</sup> Such scenario constitute trafficking in form of forced labour.

### **3.6.7 Failure to adequately address the concept of exploitation.**

The crux of the definition of trafficking in the Palermo Protocol is premised on exploitation. Instead of using the word 'exploitation' the TIP Act of Zimbabwe elects to use the phrase 'unlawful purpose'. Zimbabwe's legislature is of the view that exploitation and unlawful purpose can be used interchangeably. The Cambridge online dictionary defines exploitation as an act of using someone unfairly for one's advantage.<sup>399</sup> According to Collin's online dictionary, exploitation means the use or utilisation of something for a profit.<sup>400</sup> The dictionary further defines 'unlawful' as

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<sup>395</sup> Joint General Comment of the African Commission On Human And Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child on Ending Child Marriage 2017 page 11.

<sup>396</sup> Human Rights Watch *Ensure Justice for Zimbabwe's Child Brides* <https://www.hrw.org/news/2021/08/06/ensure-justice-zimbabwes-child-brides> (accessed on 7 September 2024).

<sup>397</sup> <https://www.hrw.org/news/2021/08/06/ensure-justice-zimbabwes-child-brides> (accessed on 12 October 2024).

<sup>398</sup> As above.

<sup>399</sup> Cambridge online dictionary <https://dictionary.cambridge.org/dictionary/english/exploitation> (accessed on 9 September 2024).

<sup>400</sup> Collin online dictionary <https://www.collinsdictionary.com/dictionary/english/exploitation> (accessed on 8 September 2024).



doing something which is not permitted or prohibited by the law.<sup>401</sup> Snyman defines ‘unlawful’ as conduct contrary to law.<sup>402</sup> Although these two concepts are intertwined in criminal jurisprudence, they are not the same. The word ‘exploitation’ has an element of taking advantage of someone, whereas ‘unlawful purpose’ just has an element of conduct which is prohibited by the law. The use of the phrase ‘unlawful purpose’ by the Act suggests that the legislature in Zimbabwe views exploitation as often associated with unlawful purpose. Such conceptualisation of these concepts might be problematic. A close analysis of the dictionary definition suggests that exploitation has the element of power imbalance and the abuse of that power. In contrast, unlawful purpose simply means to achieve a goal that is prohibited by statute. South Africa’s anti-trafficking Act provides the word ‘exploitation’ which is in line with the Palermo Protocol.<sup>403</sup> Kenya’s Counter-Trafficking Act provides that the aim of trafficking conduct should be exploitation.<sup>404</sup> The reason Kenya and South Africa use the word ‘exploitation’ shows understanding in conceptualising trafficking. Although exploitation and unlawful purpose are words which are intertwined, Zimbabwe should be aware of the fact that they are distinct features in their meaning when it comes to the conceptualisation of human trafficking.

### **3.7 Conclusion**

Although the main three international law regimes which regulate trafficking have done well in protecting the rights of children, they did not adequately address the scourge of child labour trafficking. Zimbabwe should harmonise its trafficking legislation to be congruent with international legal instruments to effectively deal with the scourge of trafficking. The TIP Act fails to adequately give protection against child labour trafficking because it does not define child trafficking. The Act does not criminalise other forms of child labour trafficking such as forced begging, illegal adoption, child marriages and child pledging. Even though Zimbabwe has its principal legislation to combat child labour trafficking, there is a need to recalibrate it so that it can provide enough protection against child labour trafficking. The Act fails to provide a comprehensive definition of trafficking like what South Africa and Kenya did in their principal legislations to combat trafficking.

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<sup>401</sup> As above.

<sup>402</sup> C R Snyman *Criminal Law* 27

<sup>403</sup> Section 4(1)(j) Prevention and Combating Trafficking in Persons Act.

<sup>404</sup> Section 3(1) Counter-Trafficking in Persons Act.

## **CHAPTER 4 CONCLUSION, RESEARCH FINDINGS AND RECOMMENDATIONS**

### **4.1 Introduction**

This chapter is the final chapter of the study. It provides the conclusion, research findings, and recommendations. The research findings provided are based on each Chapter of the study.

### **4.2 Conclusion**

Chapter One served as the research proposal of this research. The research aims to analyse the adequacy of Zimbabwe's TIP Act in combating child labour trafficking. The study examined the Act using the Palermo Protocol as the yardstick to measure if Zimbabwe's TIP Act was congruent with the Protocol in combating child labour trafficking. The Chapter provided the introduction and the background of the research. It further hypothesises that Zimbabwe's TIP Act was not adequate and comprehensive enough to combat the growing trend of child labour trafficking. The Chapter further proposes that it was going to look at how Zimbabwe can draw inspiration from South Africa and Kenya on how to craft principal anti-trafficking law which is congruent to the Palermo Protocol. The Chapter provided the research questions, objectives and literature review.

Chapter Two provided the conceptual framework of child labour trafficking in Zimbabwe. In providing the conceptual framework the distinction between trafficking and smuggling often creates challenges in the conceptualisation of trafficking. In analysing the two concepts the research found that although there is intersectionality among the two concepts they are distinct, which the TIP Act failed to appreciate in conceptualising trafficking. The research revealed that, despite great strides by Zimbabwe to align its anti-trafficking laws with the Palermo Protocol, Zimbabwe's principal legislation to combat trafficking, the TIP Act defines trafficking in a manner which does not fully protect children from labour trafficking. The research revealed that the Act is crafted in a manner which conceptualises trafficking as a movement-based crime failing to understand that a lot of trafficking is happening within the country's farming, mining and agriculture sectors without the movement of children. Such conceptualisation of trafficking gives the impression that trafficking occurs

when someone is transported within or outside Zimbabwe. This can create even an interpretational challenge within courts. It further discussed various forms of child labour trafficking happening in Zimbabwe. Chapter Two further went on to discuss the major causes of child labour trafficking in Zimbabwe. In Chapter Two, the study revealed that the Zimbabwe TIP Act views illegal adoption not as a form of trafficking. The Act provides illegal adoption as an aggravating circumstance that the court should consider in sentencing traffickers.<sup>405</sup> Such legal development does not offer adequate protection against child labour trafficking. In South Africa, illegal adoption is clearly stated as a form of trafficking.<sup>406</sup> The research has revealed that the TIP Act does not criminalise all forms of child labour trafficking. Chapter Two further revealed that the TIP Act does not criminalise some forms of trafficking such as child marriages and child pledging where young people face some forms of worst labour trafficking. It revealed that the Act further leaves child labour trafficking to the Labour Act. The Labour Act only criminalise forced labour and its conceptualisation of child labour trafficking is limited. The study revealed that Zimbabwe's TIP Act confuse trafficking and smuggling. The Act provides for voluntary<sup>407</sup> and involuntary<sup>408</sup> trafficking victims. In terms of the Palermo Protocol for trafficking to take place, there should be no consent from the victim, worse still consent is not a factor to be considered in child labour trafficking.<sup>409</sup> The South African and Kenyan legislation to combat trafficking conceptualised trafficking in a manner which is in sync with the Palermo Protocol. The research revealed that forced child begging is not criminalised by the TIP Act.

Chapter Three of the study focused on Zimbabwe's legal response to child labour trafficking. In analysing the International legal framework the research revealed that child trafficking in general and child labour trafficking in particular as a separate and distinct problem facing the globe is relatively new. First international legal instruments meant to combat trafficking were only focusing on women with little or no attention to child labour trafficking. This same historical challenge affected Zimbabwe's conceptualisation of child labour trafficking. The findings of this study have revealed that there is a shortage of academic literature in Zimbabwe which

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<sup>405</sup> Section 3(3)(b) Zimbabwe Trafficking in Persons Act.

<sup>406</sup> Section 4(1)(2)(a) South Africa Prevention and Combating of Trafficking in Persons Act.

<sup>407</sup> Section 3(1)(a)(ii) Zimbabwe Trafficking in Persons Act.

<sup>408</sup> Section 3(1)(a)(i) Zimbabwe Trafficking in Persons Act.

<sup>409</sup> Article 3(c) Palermo Protocol.

deals with child labour trafficking. The majority of the literature is on women trafficking and sexual trafficking. Chapter Three further examined the Challenges of Zimbabwe's TIP Act in combating child labour trafficking. In analysing the TIP Act the research looked into how Kenya and South Africa crafted their anti-trafficking laws to effectively deal with child labour trafficking. Chapter three provided an analysis of how Zimbabwe's TIP can draw inspiration from South Africa and Kenya to craft legislation which is in sync with the Palermo Protocol in combating child labour trafficking. Although Kenya and South Africa<sup>410</sup> face the scourge of child labour trafficking, their anti-trafficking legislations conceptualise trafficking in line with the Palermo Protocol which provides better protection for children against child labour trafficking.

### **4.3 Recommendations**

#### **Broaden the definition of trafficking.**

The legislature should expand the definition of trafficking from its current approach of providing that a person is said to be trafficked if transported within or outside the country so that it includes elements as provided in the Palermo Protocol. In doing so the legislature can draw inspiration from South Africa and Kenya.

#### **Define child trafficking**

Zimbabwe's TIP Act should be amended to include the definition of child trafficking which is the best way to combat the scourge of child labour trafficking. The legislature should understand that child trafficking in general and child labour trafficking, in particular, are a distinct issue which requires urgent legal attention.

#### **Broaden the definition of exploitation**

The legislature should broaden the definition of exploitation to encompass other exploitative conducts that incorporate both objective and subjective elements with an understanding that exploitation can appear voluntary while procured by force coercion and fraud.

#### **Criminalise all forms of trafficking**

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<sup>410</sup> Section 4(2) South Africa Prevention and Combating of Trafficking in Persons Act.

The legislature should amend the TIP Act to criminalise other forms of trafficking such as child marriages, forced child begging, child pledging and all forms of labour trafficking. Failure by the current legislature to criminalise these forms of trafficking makes children vulnerable to child labour trafficking.

### **Include illegal adoption as a form of trafficking**

The legislature should amend the TIP Act and include illegal adoption as a form of trafficking with a large bearing on child labour trafficking rather than providing it as an aggravating circumstance to be considered for sentencing by the court.

### **Differentiate trafficking from smuggling**

The legislature should amend the TIP Act and delete voluntary trafficking since voluntary contact in the discourse of transnational organised crimes is associated with smuggling, not trafficking.

Word Count: 19, 849

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