

REPORT ON CHANGES MADE TO MY DISSERTATION ON THE RECOMMENDATIONS OF THE EXAMINERS

1.0 Introduction

I handed in my dissertation titled ‘Hidden and Forgotten: the plight of children trafficked for domestic work in Uganda.’ on the 22nd of November 2010. I received comments from two examiners in July 2011. The comments although mainly editorial and recommended a few minor substantive changes. These comments were greatly appreciated, considered and incorporated in the dissertation which is hereby submitted for final consideration.

2.0 Comments by first examiner

2.1 The need for specific statistics

The examiner pointed out the need for statistical evidence that girls and women are the majority victims of trafficking. Considering that there are no particular statistics, I have deleted any statements that state that girls are the majority victims of trafficking in persons. This has been done on page 26 under 2.2 paragraph 2 and 36 under 2.2.5 paragraph 1.

2.2 Applicability of ILO Conventions and CRC

The examiner noted that other international measures, particularly those flowing from the CRC and ILO Conventions seem far more directly applicable to the problem of children’s domestic work than the protocol on trafficking in persons. I did agree with the comment, however, the dissertation aims to analyse the law on trafficking in persons and thus the need to focus attention to the Protocol on trafficking in persons. On page 5 paragraph 1 I have stated that;

It is against this background that this study aims to examine the contribution of the Ugandan law on trafficking of persons to the ever increasing practice of child domestic labour in Uganda.

Nonetheless, it is pointed out in the dissertation that the Protocol on trafficking in persons fails to deal with problem of child trafficking for domestic work adequately. Under section 3.4 on page 66, this recommendation has been incorporated as follows;

As already noted, the Trafficking Protocol criminalises the trafficking of children for the purpose of exploitation. It defines exploitation to include inter alia slavery or practices similar to slavery. The Supplementary Convention on Slavery lists among practices similar to slavery the exploiting of a child of his or her labour. However the Supplementary Convention does not define the term exploiting a child of his or her labour.

The most adequate protection of children whose labour is exploited requires a clear definition of notion of exploitation of a child for purposes of his or her labour. Other international law instruments which deal with relevant issues of child labour and children's rights are explored to help understand the notion of exploitation of a child for purposes of his or her labour. Reference is made to the United Nations Convention on the Rights of the Child (CRC), the ILO Convention 138 on the Minimum Age for Admission to Employment and the ILO Convention 182 on the Worst Forms of Child Labour.

2.3 Missing footnotes

The examiner noted that footnotes 35 and 36 were missing and these have been added on page 10.

2.4 Bibliography

The examiner noted that the bibliography was neither standardized nor alphabetized, this has been done and the bibliography can be found on pages 142 to 158.

3.0 Comments of the second examiner

3.1 Contradictions on available research

The examiner noted that in some instances I make contradicting statements about the available research and statistics on human trafficking. This concern was taken into consideration and the following amendments were made.

On page 18, under 2.1 I have amended the sentence to read;

Despite growing international interest in human trafficking, there are no agreed on statistics on the scope and magnitude of the problem.

On page 22 paragraph 1 has been amended to read;

While it is established that trafficking of persons and children particularly has existed for many years, research shows that in Uganda very little is known about this practice. Available literature indicates the existence of child trafficking, although there is limited in-depth research and information on the scope and magnitude of the problem. However, the little literature available indicates that in Uganda, trafficking occurs at two levels, namely at the internal level and at the international level across the border of the country. At the internal level, trafficking of children is mainly characterized by the unlawful transportation of children (mostly young girls) from the rural to the urban areas of the country. At the international level, trafficking involves the transporting children across borders for purposes of engaging them in domestic work and prostitution and other illegal activities. Apart from being trafficked to other African countries, Ugandan children are mainly trafficked to the Middle East and to Europe for predominantly to undertake domestic work and for prostitution.¹ Some examples of countries to which Ugandan children are trafficked include Canada, Egypt, the United Arab Emirates, and Saudi Arabia.²

Page 24 paragraph 3 has been amended to read;

While it may be true that detailed research has not been done on trafficking for body parts in Uganda, it is evident from newspaper reports that children are being trafficked for removal of

¹ Elaine Pearson *Study on Trafficking in Women in East Africa* (2003) at 3. Available at <<http://www.gtz.de/traffickinginwomen>> [Accessed on 20 March 2009].

² United States. State Department Report (note 4) at 15.

their body parts and sexual organs for purposes of undertaking rituals, sacrifice and other witchcraft related activities.

3.2 Gender analysis

The examiner observed that the gender dimension of the problem had not been thoroughly analysed. On examining the comment of the examiner, I noted that the need to thoroughly examine the gender dimension of the problem lies outside the scope of the dissertation. Under the objectives of the study and the research questions on page 13 under 1.3 and 1.4 respectively, I do not include analysis of the gender dimension of the problem of child trafficking. To clear the confusion, I have amended the paragraph 2 on scope of analysis on page 5 to read as follows;

While the trafficking of persons, and in particular the trafficking of children, is a subject which can be studied in many fields including criminal law, migratory laws, human rights law, and other relevant areas; this study limits its scope to analyzing the problem from a criminal law, children's rights and child labour. While looking at the problem from children's rights and child labour perspective, I consider child labour as the economic exploitation of children. I discuss the nature and the conditions of work that are detrimental to the well-being and development of children. From the criminal law perspective, I explore the ways in which the available criminal law provisions can be used to effectively prosecute offenders and protect children from trafficking and labour exploitation.

Please note that I have nonetheless discussed gender discrimination and discriminatory cultural practices as some of the causes of children being trafficked for domestic work especially in Uganda under 2.2 on page 26. The paragraph 2 has been amended to read as follows;

The trafficking of persons has been analyzed as precipitated by demand and supply forces. On the supply side, also regarded as the 'push' factors, poverty, gender inequality, culture, lack of education, lack of employment opportunities and the desire to improve one's life make people vulnerable to the lures of trafficking. On the demand side, also regarded as 'pull' factors, market demand for sexual services, the needs of free or cheap labour and availability of unskilled labour in some countries create a fertile ground for trafficking of persons to flourish. The debate in the following parts of the thesis will focus on the push factors that make people, especially children, vulnerable to trafficking. It is argued that whereas several factors such as poverty, lack of

education and lack of employment opportunities do make people vulnerable, their effect is embedded in gender inequality and the cultural practices that perpetuate gender discrimination.

3.3 Analysis of the CRC and the African Charter on the Rights and Welfare of the Child

The examiner pointed out the need for further analysis of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

The CRC has been discussed as one of the applicable legal instruments to the economic exploitation of children and has been analysed only with regard to how it deals with the issue of economic exploitation of children under 3.4.1 on pages 66 and 67. To reflect this position, paragraph 2 on page 67 has been amended to read;

However, the CRC does not define economic exploitation of children, but it recommends that States parties provide for a minimum age or ages for admission to employment. It requires that States provide for appropriate regulation related to the hours and conditions of employment of children. It also requires States to provide for appropriate penalties or other sanctions to ensure effective enforcement of the provisions of the Convention in order to prevent economic exploitation of children.³ The Convention does not prescribe the minimum age for admission to work. This is established in the ILO Conventions relating to child labour which is discussed immediately below.

With regards to the rights of children, the purpose of the thesis was to consider the rights of working children or children in employment. Thus the CRC has also been analysed under 3.5 with regard to how it deals with the rights of working children or children in employment specifically. The following amendments were made to paragraph 1 on page 76 bring out this point clearly;

The CRC is one of the most significant instruments which regulate children's rights. As already discussed above, the CRC does not address the question of rights of children who are working.

³ Article 32(2) of the CRC.

Instead, it recommends State parties enact legislation which provides for the minimum age of admission to work. It also requires them to regulate the working conditions and to impose penalties and sanctions to prevent economic exploitation of children. The ILO Convention on Minimum Age attempts to regulate the minimum age of admission to work, as discussed in the previous section, however, it did not specifically address the question of working conditions of children. Although working children require more protection than working adults, one can argue that the omission by law to provide specific rights for working children means that children in employment are entitled to the same protections as adults without any discrimination based on age.

Similar to the CRC, the analysis of the African Charter on the Rights and Welfare of the Child (African Children's Charter) is limited to the discussion of the rights of working children or children in employment and not the rights of children as a whole. Considering that I was using the African Children's Charter to strengthen the argument of the need to protect all children regardless of whether they are in the informal or formal sectors, I was not convinced about putting it as a separate heading. Nonetheless, to incorporate the changes recommended, the paragraphs 1 and 2 on page 78 have been amended to read;

Children trafficked to perform domestic work are also discriminated against on the basis of their status and place of work. Children working in the formal sectors, where there are laws and regulations, have better protection than children who work in the informal sector of the economy. Both the CRC, the ILO Convention on Minimum Age and the Worst Forms Convention have general provisions on protection of children which do not specifically target the informal sector. The African Charter on the Rights and Welfare of the Child (African Children's Charter) on the other hand, places an explicit obligation on State parties to protect children from economic exploitation in both the formal and informal sectors.⁴ It shows that the African Children's Charter takes into consideration that the majority of children who are working in Africa, undertake activities within the informal sector where there is little or no protection.

⁴ Article 15 of the CEDAW.

In order to protect children from exploitation, it is not enough to prohibit their economic exploitation and to provide for the minimum age of admission to work, or to list the worst forms of child. It is important that international law recognises that children who work constitute a special category, and it must regulate the conditions in which they work and provide for their rights as workers. This provision of rights should target both children working in the formal and informal sectors. The fact that global international law instruments do not specifically regulate for the protection of the rights of children who work in the informal sector raises a number of concerns. Most importantly, it places children working as domestic workers in a more precarious situation and increases their vulnerability to exploitation.

3.4 Labour inspection and problems of implementation

The examiner recommended that the all issues dealing with implementation of the Act such as labour inspection be discussed in one paragraph. To incorporate this comment, the paragraph on labour inspectors has been moved from page 99 to the discussion on the role of labour officers under 4.2.3 para 1 on page 112 to read as follows;

Among other relevant functions attributed to labour officers, they are mandated to institute civil or criminal proceedings before the industrial court in respect of a contravention or alleged contravention of the Employment Act or its regulation. A labour officer is also empowered to prosecute and appear in his or her own name in respect to such proceedings.⁵ However, it should be noted that there are few labour offices available, which are mostly located at the regional level. At the sub-regional level and in other remote areas where these are needed to address the questions at hand, labour offices have not been established. In this regard, it was observed that there are approximately thirty labour officers in the entire country, which makes it very difficult to ensure compliance with the labour standards. Each officer is required to cover about eight districts. It makes it practically impossible for them to carry out their duties effectively. In addition, there is only one industrial court located far from the reach of the most needy people.

⁵ Section 14 (1) of the Employment Act.

4.0 Other changes made

Both examiners noted that there were a number of grammatical, spelling and formatting errors in the dissertation. These have been addressed and several changes have been made through out the dissertation to make my arguments clearer. For example,

On page 84 the first paragraph has been amended to read;

The Act recognises the vulnerabilty of children and the need to protect them from any form of trafficking. It regards the trafficking of children for sexual or labour exploitation or for whatever other purpose as an aggravated offence to the trafficking in persons, and imposes a life imprisonment punishment for the perpetrators.⁶ It also provides for strict liability in the offence of promoting child trafficking which punishes any person who recruits, transports, harbours or receives a child without the authority of the parent or guardian.⁷

On page 92 the section on slavery and practices similar to slavery has been amended to read;

a) *Slavery, practices similar to slavery and servitude*

The Constitution prohibits the holding of persons in slavery or servitude and states that people should not be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.⁸ In order to emphasize the importance of these freedoms, the Constitution further provides that there shall be no derogation from the enjoyment of, among others, the freedom from slavery or servitude and the freedom from torture and cruel, inhuman or degrading treatment or punishment.⁹ The Constitution does not define the terms 'slavery' or 'servitude'.

The Prevention of Trafficking in Persons Act does not define the terms 'servitude' or 'practices similar to slavery' but defines slavery as:

⁶ Section 4 (a).

⁷ Section 6.

⁸ Article 24 and 25 of the Constitution of Uganda.

⁹ Article 44 of the Constitution of Uganda.

'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'.¹⁰

As was the case of with the previous concepts, this definition was also adopted from the UN Slavery Convention and incorporated into the domestic law. Conversely, the Penal Code Act does not define the term 'slavery' but it provides that

'any person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, commits a felony and is liable to imprisonment for ten years'.¹¹

In addition, the Penal Code Act provides that 'any person who induces another person to give up himself or herself as a slave commits a felony and is liable on conviction to imprisonment for ten years'.¹²

The use of acronyms has also been standardized, the spelling of names of authors and court cases corrected and full stops have been placed at the end of each foot note.

5.0 Conclusion

The comments from the examiners were very helpful and were incorporated into the dissertation as much as possible. I hope this final copy is pleasant to read and meets the required standards.

¹⁰ Section 2 (1) of the Prevention of Trafficking in Persons Act

¹¹ Section 249 of the Penal Code Act.

¹² Section 251 of the Penal Code Act.