



An Investigation into the State's Response to the Trafficking of Women and Girls in Jamaica

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Abstract

Human Trafficking is ranked as the second fastest growing international crime, behind the trade of illegal drugs. Human Trafficking impacts social, cultural, economic development. In 2014, Jamaica was recognised as a Tier Two Watch List country by the United States Agency for International Development. Nations that fall in this group are those whose governments do not fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards but are making significant efforts to bring themselves into compliance with those standards. These countries have a significant number of victims of severe forms of trafficking but fail to provide sufficient evidence of increased efforts to combat these severe forms of trafficking in persons.¹ (State Report 2012, 51) Jamaica has been classified as a source, transit and destination country 2 (State Report 2012, 197) in the global multibillion-dollar trafficking in person trafficking in persons.

In this paper an analysis of the literature will undertake the state's response to the issue with specific focus on the trafficking of women and young girls is examined by the three pillars of prosecution, prevention and protection, which seek to guide the initiatives implemented by the government in an effort to ensure it is effective. Qualitative and quantitative methods of data collections will be used to speak to this matter. The initiatives that have been put in place by the government is measured against the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, more popularly known as the Palermo Protocol and the data will be analysed by the Theoretical Framework.

Keywords: Human Trafficking, victims, state, government, legislations, policies

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Introduction

Despite the absence of slave shackles, it appears that 21st century societies continue to witness a more modern system of slavery in which human beings are exploited sexually, physically and emotionally. Mesmerised by illusions of grandeur of the Global North created by the flickering lights on their television and computer screens, many from the poorer regions of the world vacate their homes and countries in pursuit of an advanced society in which they can actualise and develop.

Under the guise of overseas job opportunities and larger-than-life experiences, migration feeds an appetite starved for experience, riddled with aspirations and hopes. The introduction of international travel documents and border controls, however, limits population movement thus creating specialised underworld networks feeding into a ring of human trafficking.

Human Trafficking, the use of threat or force, coercion, abduction, fraud, deception, abuse of positions of power or abuse of positions of vulnerability for the purpose of sexual exploitation, forced labour, or for the involuntary donation of their organs (Crime, 2000), is ranked as the second fastest-growing international crime, behind the trade in illegal drugs. This gender dialogue will seek to explore Jamaica's response to human trafficking and the degree to which women are affected. The discourse will seek to bring clarity, thereby encouraging dialogue and a deeper understanding of an issue that greatly affects women across the globe.

Human Trafficking Tier Ranking

The United States Agency for International Development is the main administrator for tier ranking in the global marketplace. Each country is placed into one of four tiers based on the extent of government action to combat trafficking rather than on the size of the country's problem, as follows:

- Tier 1 is the highest ranking. It does not mean that a country has no human trafficking problem; rather it indicates that a government has acknowledged the existence of human trafficking, made efforts to address the problem and complies with the Trafficking Victim's Prevention Act (TVPA) minimum standards. These standards are outlined by the United States Department's office as to what they believe are adequate efforts in the fight against human trafficking.
- Tier 2 suggests that governments do not fully comply with the TVPA's minimum standards but are making significant efforts to bring themselves into compliance with those standards. Tier 2 Watch List indicates the governments that do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards, and for which: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards based on commitments by the country to take additional steps over the next year.
- Tier 3 is for those countries that do not fully comply with the TVPA's minimum standards and are not making significant efforts to do so (State Report 2015, 47).

Jamaica's Tier Ranking

Jamaica has been classified as a source, transit and destination country for adults and children subjected to sex trafficking and forced labour in the global multibillion-dollar (US\$32-billion) trafficking in persons industry (State Report 2014, 219). Non-Government Organisations (NGO) reported that the most common form of trafficking in Jamaica is sex trafficking, which allegedly occurs in night clubs, bars, and private homes (US Department States Report 2011, 197). Victims are typically recruited by family members or newspaper advertisements promoting work as spa attendants, masseuses or dancers. After being recruited however, victims are coerced into prostitution (Ricketts and Dunn 2007, 97).

The country's first downgrade to a Tier 3 in 2005 saw the Government of Jamaica implementing several measures to combat the crime. Legislative measures were implemented, including the enactment of the Trafficking in Persons Act (2007) which specifies a penalty of a fine or imprisonment for up to ten years or both, the Child Care and Protection Act, Child Pornography (Prevention) Act and the Sexual Offences Act were also introduced to combat this epidemic. In addition to strengthening the legislative framework to deal with the issue, the government, via the Ministry of Justice and National Security, established a Trafficking in Person (TIP) Unit that operates within the Organized Crime Investigation Unit of the Jamaica Constabulary Force. These measures saw the country's improvement in its ranking to Tier 2 in 2006. In the last two years (2013-2015) the country has amended the Trafficking in Persons Act to increase the maximum sentence for trafficking crimes from 10 to 30 years imprisonment, established a shelter to house victims of the crime, identified a National Trafficking in Persons Rapporteur (the first of its kind in the Caribbean) and has launched a public education programme to raise awareness of the crime. Despite the measures introduced, the country was ranked at a Tier 2 Watch List and has been for the last two years (2013-2015). This is cause for concern and highlights the need for the evaluation, assessment and analysis of how effective these methods have been.

Evaluation of Jamaica's Efforts

Five high level state officials and a member of an NGO that have done extensive research in human trafficking were interviewed, and their responses were assessed based on the facts and existing information.

Reports over the period 2007 – 2012 identified 22 victims of human trafficking. Whilst the majority of responders to this research saw the crime as a cause for concern, 66 percent of participants believed the United States Department of State's (USDOS) report is an inaccurate portrayal of Jamaica's effort, highlighting that questions posed by the Department are limited and therefore unable to perfectly capture the efforts made. Candidates believe the report contains a great deal of errors and their sources, NGOs, are providing them with anecdotal evidence, adding that definitional issues are at play.

A Battle of Definition

The Jamaican Government adheres to the United Nations Palermo Protocol as their guide for what is constituted as human trafficking, while the USDOS has its own definition of the crime. The Protocol and that of the USDOS' report, interviewees stated, limit what falls under the TIP Act, as areas that are akin to trafficking in persons are often dealt with under different acts, for instance the Sexual Offence Act, the Child Pornography Act or the Child Protection Act. Under the TVPA, children below the age of 18 years that have been involved in sexual acts or forced labour are immediately considered as trafficking victims. The Palermo Protocol does not limit human trafficking to a particular age but sees in large part the actions themselves constituting human trafficking. The United States statistics and their recognition of the crime would, therefore, reflect a drastic difference from that of Jamaica's when these elements are considered. It is, therefore, possible that some sex crimes involving minors may

be considered trafficking based on the TVPA; however these may be considered as sexual exploitation under Jamaican law. Between 2007-2012 approximately 16 cases recognised as TIP in relation to the TVPA's definition have been convicted under the Jamaican law; however these cases were not categorised by the Jamaican Government as human trafficking. If the TVPA only examines Jamaica's convictions for Trafficking in Persons, they may underestimate the country's efforts. Therefore for the US Department of State to have a fair analysis of the efforts of each country, they would have to be mindful of that country's legislation and look not just at criminal statistics defined as trafficking offenses, but at other applicable offenses as well. Jamaica's laws need to be interpreted, and not assumed to be equivalent to the laws that exist within the US. If the country is guided by the Protocol they should be measured against this standard so as to determine whether or not the country's efforts should place it on the Tier 2 Watchlist or otherwise.

Missing Children and Human Trafficking

Several NGOs such as "Hear the Children Cry" and "Theodora Project" have identified a link between missing children and human trafficking, but only 33 percent of participants recognised the link between missing children and human trafficking and the remaining 67 percent maintained there was no evidence to support the correlation; however, the statistics that exist are cause for concern. This, however, contradicts the information that was presented by former Health Minister, Rudyard Spencer. In a newspaper article by Nadine Wilson (2011) Spencer said children who are still not found may be victims of human trafficking. With Ministry of Health representatives on the taskforce, one would assume that if there is no anecdotal evidence to prove a relationship between the missing persons and trafficking in persons, it would be communicated to the Minister. In response to the USDOS report, Minister of National Security Peter Bunting asserted that the taskforce reviewed the

response of the relevant governmental agencies when children were reported missing (Jamaica Information Service, 2012). According to the taskforce, however, Jamaica's missing children statistics are not trafficking statistics. These actions suggest there is a lack of either structure or investigation being carried out to arrive at a productive conclusion. During the period under review (2007-2012), approximately 8,600 persons went missing across the island. While 78 percent of these have returned home and another two percent found dead, the remaining 20 percent are still unaccounted for. Eighteen of the 20 percent are women or young girls. (Bureau, 2007) Some participants asserted that many of the cases of missing persons were relational issues between parent and child or those of a more intimate nature. Some feminists believe, however, that these cases are treated with disdain due in part to the fact that a preponderance of the victims are women. The state undervalues women's work and concerns, neglects the role of feelings and attitudes in a focus on institutional and material change, denigrates women in procedure, practice, and everyday life, and in general fails to distinguish itself from any other ideology or group dominated by male interests (Mackinnon 1982, 518).

Human Trafficking and Jamaican Courts

According to the TVPA report, authorities reportedly arrested seven individuals for suspected human trafficking crimes and initiated four prosecutions in 2013, compared with two prosecutions initiated in 2012. The government continued four prosecutions for human trafficking offences carried over from previous reporting periods. No government officials were prosecuted or convicted for alleged complicity in trafficking-related offenses, although allegations persisted from previous reporting periods that some Jamaican police officers were complicit in prostitution rings (State Report 2014, 219). The taskforce has asserted that the country's legislation places the victims' desires for prosecution at the core of whether or not cases are taken to trial. The Protocol guidelines highlight,

however, that in the event that victims are not desirous of taking their offenders to court, countries must make an effort to find other means of prosecuting offenders under the law. The taskforce cannot take the position of victim preference and thereby allow offenders to continue their practices. For prosecution and conviction to take place and the taskforce to comply with the protocol, the taskforce should ensure that other stakeholders – immigration, judicial authorities, labour inspectors, social workers and other relevant officials – are fully sensitised to the laws concerning trafficking, thereby ensuring increased identification of crimes, prevention of those crimes and additional material witnesses.

With the battle of definition, muddy linkages and a low prosecution rate, human trafficking may continue to plague this small island for some time. A proper and clear assessment of the country's measures is needed; clear definitions of the crime must be established. The USDOS will need to determine if it will assess the country's efforts based solely on the TVPA or if consideration will be given to a country's legislation. Jamaica needs to take greater care in highlighting correlations between human trafficking and other crimes, where such correlations exist, so as to ensure that the issue of human trafficking can be addressed from its various fronts and that all the necessary measures and resources are coordinated to yield desirable outcomes.

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