

Country Report: Ghana¹



I. Introduction

Country Overview

The Republic of Ghana (“Ghana”) is a West African nation bordering Burkina Faso on the north, Togo on the east, the Atlantic Ocean on the south, and Côte d’Ivoire on the west.² Ghana achieved independence from British colonial rule in 1957,³ and after emerging from a significant stretch of military rule, has functioned as relatively stable multi-party democracy since 1992.⁴

Ghana is a presidential republic with a unicameral legislature, and has a mixed legal system of English common law and customary law.⁵ The Constitution of 1992 formally recognizes this pluralist legal system, and authorizes formal courts to apply both statutory and customary law in resolving disputes; however, court decisions are lower in the hierarchy of laws than statutory law.⁶ Ghana is rich in natural resources, particularly gold and oil; cocoa is also a major export.⁷ Although the Ghanaian economy has shown strong growth in the past, “since 2013, its economy has endured a growing public deficit, high inflation, and a weakening currency.”⁸ The economy is expected to turn around again, however.⁹

A little over half of Ghana’s population is urban;¹⁰ the most densely populated parts are the two major cities, Accra and Kumasi, the coastal areas, and the Ashanti region.¹¹ Approximately 40% of the land area is estimated to be forested.¹²

Ghana has free primary and secondary education,¹³ and labor participation rates for men and

¹ The statements and analysis contained within this report are the work of the American Bar Association Rule of Law Initiative, which is solely responsible for its content. The views expressed herein should not be construed as representing the policy of the ABA. This report was funded by a grant from the United States Department of State. The opinions, findings and conclusions stated herein are those of the author[s] and do not necessarily reflect those of the United States Department of State.

² *About Ghana*, GHANA EMBASSY, <http://www.ghanaembassy.org/index.php?page=about-ghana> (last visited July 17, 2017).

³ *Id.*

⁴ *Ghana Country Profile*, BBC, <http://www.bbc.com/news/world-africa-13433790> (last visited July 17, 2017).

⁵ *Ghana*, CIA WORLD FACTBOOK, <https://www.cia.gov/library/publications/the-world-factbook/geos/gh.html> (last visited July 17, 2017) [hereinafter *Ghana*, CIA WORLD FACTBOOK].

⁶ Jeanmarie Fenrich & Mary McEvoy, *Promoting Rule of Law in Customary Tribunals in Ghana*, HARV. HUM. RTS. J., <http://harvardhrj.com/2014/11/promoting-rule-of-law-in-customary-tribunals-in-ghana/> (internal citations omitted) (last visited July 17, 2017).

⁷ *Ghana*, Observatory for Economic Complexity, <http://atlas.media.mit.edu/en/profile/country/gha/> (last visited July 17, 2017).

⁸ *Ghana Country Profile*, *supra* note 4.

⁹ See, e.g., *Ghana Economic Outlook*, AFRICAN DEVELOPMENT BANK GROUP, <https://www.afdb.org/en/countries/west-africa/ghana/ghana-economic-outlook/> (last visited July 17, 2017).

¹⁰ *Ghana*, U.N. DATA, <http://data.un.org/CountryProfile.aspx?crName=ghana> (last visited July 17, 2017).

¹¹ *About Ghana*, *supra* note 2.

¹² *Ghana*, *supra* note 10.

¹³ *About Ghana*, *supra* note 2.

women exceed 75%.¹⁴

Trafficking in Persons (“TIP”) Context

Ghana “is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking.”¹⁵ It was placed on the Tier 2 Watchlist for a second consecutive year in 2016 by the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons (J/TIP).¹⁶

Today, Ghanaians migrate for work both within the West African region and as far as the Middle East, Europe and North America.¹⁷ Ghanaian women and children are often sent to the Middle East, West Africa, and Europe for the purposes of forced labor and sex trafficking.¹⁸

Fellow West Africans are subjected to forced labor in agriculture, domestic service, and the sex industry in Ghana.¹⁹ However, domestic trafficking of Ghanaians (particularly children) is more prevalent than transnational trafficking of foreigners into the country.²⁰ Ghanaian children are forced to work in various industries, including fishing, artisanal gold mining, quarrying, and agriculture.²¹ For example, it has been reported that children are trafficked from their villages by fishermen to work on the man-made Lake Volta, where fish stock has been depleting, increasing demand for cheap labor and small hands for small fishing nets.²² Children are also victims of sex trafficking; girls in particular are victims of sex trafficking in the “Greater Accra, Ashanti, Central, Volta, and Western regions” of the country.²³

As noted above, J/TIP’s 2016 Report places Ghana on the Tier 2 Watchlist for a second consecutive year.²⁴ This reflects J/TIP’s assessment that, while the Ghanaian government’s efforts to improve its anti-human trafficking framework have been significant, they fall short of all the previous year’s accomplishments and the minimum standards to eliminate trafficking established by the U.S. Trafficking Victims Protection Act (TVPA);²⁵ The government has made modest efforts to “investigate[] and prosecute[] trafficking and trafficking-related crimes . . . conduct[] public awareness activities . . . and [has] provided funding support facilitating two meetings of the Human Trafficking Management Board (HTMB).”²⁶ However, these efforts have been hampered by a lack of adequate and timely operating funds for law enforcement and protection agencies.²⁷

¹⁴ *Ghana*, *supra* note 10.

¹⁵ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 181, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2017) [hereinafter U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016].

¹⁶ *Id.*

¹⁷ *Ghana*, CIA WORLD FACTBOOK, *supra* note 5.

¹⁸ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 15, at 181.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Raggie Johansen, *Child Trafficking in Ghana*, UN OFFICE ON DRUGS AND CRIME, <http://www.unodc.org/unodc/en/frontpage/child-trafficking-in-ghana.html> (last visited July 17, 2017).

²³ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 15, at 181.

²⁴ *See supra* note 15 and accompanying text.

²⁵ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016, *supra* note 15, at 181.

²⁶ *Id.* at 180-82.

²⁷ *Id.* at 180.

Ghana supported specialized anti-TIP training for a number of border security and law enforcement officers, and has ensured that new recruits to the Ghana Police Service (GPS) and Ghana Immigration Service (GIS) receive anti-TIP training in their basic training.²⁸ 1.5 million cedis were allocated towards the implementation of the National Plan of Action for the Elimination of Human Trafficking in Ghana.²⁹ In spite of this, victim identification and assistance agencies report a continuing lack of funding for support services, and the GPS' Anti-Human Trafficking Unit (AHTU) "relie[s] on donor support for logistics, equipment, and facilities for identified adult victims"; furthermore, some AHTUs "did not have personnel assigned throughout the reporting period."³⁰ Notably, there were no trafficking convictions in the reporting period, despite a number of investigations and trials.³¹

²⁸ *Id.* at 181-82.

²⁹ *Id.* at 181.

³⁰ *Id.* at 180-82.

³¹ *Id.* at 182.

II. Institution Mapping

Government Structure

Executive

The Republic of Ghana is a constitutional republic in which the President acts as both the chief of state and head of government.³² The President and Vice-President are elected on the same ballot by majority popular vote for a four-year term, and the President may hold up to two terms in office.³³ The President's cabinet, known as the Council of Ministers, is nominated by the President and approved by Parliament.³⁴ The Council of State, which also advises the President, is composed of four *ex officio* members, eleven presidential appointees and one representative from each of the country's ten regions.³⁵ The Council of State must include a former Chief Justice, a former Chief of the Defense (the professional head of the armed forces), a former Inspector General of Police, and the President of the National House of Chiefs.³⁶

Legislative

Ghana's Parliament is a unicameral legislature made up of 275 members, who are elected in single-seat constituencies by majority popular vote.³⁷ Members of Parliament serve four-year terms, without term limit restrictions.³⁸

Judicial

The Supreme Court of Ghana consists of 13 members. The Chief Justice is appointed by the President in consultation with the Council of State, and with Parliamentary approval.³⁹ The Chief Justice also serves as head of the Judicial Council, which proposes judicial reforms to the government.⁴⁰ The Judicial Council and the Council of State advise the President on the appointment of the other 12 justices.

Ghana's Constitution also provides for a Court of Appeal and a High Court, in descending hierarchical order, and empowers the Chief Justice to create divisions of the High Court.⁴¹ These include the Commercial Court, the Lands Division, the Economic Crimes (Financial) Division, the Human Rights Division and the Industrial (Labor) Division.⁴² Ghana also has Regional Tribunals in

³² *Ghana*, CIA WORLD FACTBOOK, *supra* note 5.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ GHANA CONST. art. 39(3), *available at*

https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017).

⁴² Victor Essien, *Update: Researching Ghanaian Law*, GLOBALEX,

<http://www.nyulawglobal.org/globalex/Ghana1.html> (last visited July 17, 2017).

certain areas, and

there are Lower courts comprising Circuit Courts, District Courts and the judicial committees of the National House of Chiefs, the Regional Houses of Chiefs and the Traditional Councils. The Circuit Court has both civil and criminal jurisdiction . . . The Circuit Court has original jurisdiction in all criminal matters other than treason and offences punishable by death.⁴³

The District Courts, lowest on the non-traditional judicial hierarchy, have both civil and criminal jurisdiction.⁴⁴

Anti-Trafficking Institutions

Ghana's anti-trafficking institutions include the Human Trafficking Management Board (HTMB) and the Anti-Human Trafficking Unit (AHTU) of the Ghana Police Service (GPS).⁴⁵ International and domestic civil society actors also play an important role in addressing human trafficking in Ghana, including the International Organization for Migration (IOM), the Association of People for Practical Life Education (APPLE), and the Regional Advisory Information and Network Systems (RAINS).⁴⁶ IOM and APPLE have helped to rescue children who were trafficked in the fishing industry, and RAINS works to prevent child labor and trafficking in northern Ghana.⁴⁷

Additionally, the Commission of Human Rights and Administrative Justice (CHRAJ) investigates and aims to prevent corruption, combining "the work of the Anti-Corruption Agency, the Ombudsman and the human rights commission under one umbrella."⁴⁸

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See *infra* Part III (National Anti-Trafficking in Persons Legal and Institutional Framework) for further discussion.

⁴⁶ *Support Trafficked Children in Ghana*, INTERNATIONAL ORGANIZATION FOR MIGRATION, <https://www.iom.int/support-trafficked-children-ghana> (last visited July 17, 2017); Jamily Alwekey Okertchiri, *Apple Assists 100 Trafficked Children*, MODERNGHANA.COM (Dec. 9, 2014), <https://www.modernghana.com/news/585513/apple-assists-100-trafficked-children.html> (last visited July 17, 2017); *Child Rights Promotion and Protection*, REGIONAL ADVISORY INFORMATION AND NETWORK SYSTEMS (RAINS), <http://www.rainsgha.org/Crpp.htm> (last visited July 17, 2017).

⁴⁷ Okertchiri, *supra* note 46; *Child Rights Promotion and Protection*, *supra* note 46.

⁴⁸ *Profiles: Ghana*, ANTI-CORRUPTION AUTHORITIES, <https://www.acauthorities.org/country/ghana> (last visited July 17, 2017).

III. National Anti-Trafficking in Persons Legal and Institutional Framework

Anti-TIP Legal Framework

Ghana has established a national TIP legal framework. While the Constitution of Ghana explicitly prohibits slavery and forced labor,⁴⁹ the country's principal anti-TIP legislation is the Human Trafficking Act of 2005 (HTA).⁵⁰

Domestic Statutory Authority

The HTA was amended in 2009 to align the definition of trafficking with the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ("Palermo Protocol").⁵¹ The HTA prohibits all forms of trafficking, and prescribes penalties ranging from five to 20 years for various trafficking offenses.⁵² Specifically, it criminalizes the trafficking of another person or acting as an intermediary for trafficking of a person, and makes the perpetrator "liable on summary conviction to imprisonment for a term of not less than five years."⁵³ The HTA also creates offenses for "providing another person for trafficking",⁵⁴ "using a trafficked person",⁵⁵ "failing to inform police" of a trafficking offense,⁵⁶ and publishing reports of human trafficking proceedings which could reveal the identity of a victim without court permission.⁵⁷ The HTA does not include provisions specific to TIP in supply chains.

Although the HTA establishes sufficiently stringent penalties for trafficking offenses,⁵⁸ its implementing regulations seem to undermine these penalties.⁵⁹ For instance, the regulations "specify that where . . . a person with parental responsibilities and rights over a child exploits such child in trafficking in persons, the penalty is a fine *or* five to 10 years' imprisonment *or both*".⁶⁰ Particularly in the Ghanaian context, where parents (or those standing *in loco parentis* to a minor) may be implicated in trafficking offenses,⁶¹ fines in lieu of imprisonment do not go far enough in

⁴⁹ GHANA CONST. art. 16, *available at*

https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017).

⁵⁰ Human Trafficking Act 694 of 2005 (as amended 2009), *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017) [hereinafter HTA].

⁵¹ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 181, *available at* <https://www.state.gov/documents/organization/258876.pdf> (last visited July 17, 2017) [hereinafter U.S. DEP'T OF STATE, 2016 TIP REPORT]; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol].

⁵² U.S. DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51; HTA, *supra* note 50.

⁵³ HTA, *supra* note 50, § 2(1).

⁵⁴ *Id.* at § 3 (1).

⁵⁵ *Id.* at § 4.

⁵⁶ *Id.* at § 6 (2).

⁵⁷ *Id.* at § 38 (1).

⁵⁸ *See supra* note 52 and accompanying text.

⁵⁹ U.S. DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51, at 180.

⁶⁰ Human Trafficking Prohibition (Protection and Reintegration of Trafficked persons) Regulations of 2015, *cited in* DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51, at 181 (emphasis added). Unfortunately, ABA ROLI researchers have not been able to review the text of these regulations in further detail.

⁶¹ *See* Manda Sertich & Marijn Heemskerk, *Ghana's Human Trafficking Act: Successes and Shortcomings in Six Years of Implementation*, 19 Hum. Rts. Brief, iss. 1 at 1, *available at*

providing a deterrent effect to TIP.⁶²

Domestic Policies and Action Plans

The government of Ghana has successfully drafted a National Plan of Action for the Elimination of Human Trafficking in Ghana; however, as of the writing of the U.S. Department of State's 2016 Trafficking in Persons report, it had not been finalized or adopted.⁶³

The Migration Policy of Ghana includes a discussion of human trafficking as a form of irregular migration, and notes that TIP is of concern to the government.⁶⁴ Strategies to address human trafficking in the Policy include preventing irregular migration (such as human trafficking and smuggling), increasing awareness of the risks of irregular migration, providing victim services, promoting regional and international policy dialogue on the topic, and establishing a national human trafficking database.⁶⁵ ABA ROLI was unable to confirm the extent to which these strategies have been implemented.

International Agreements

In addition to domestic legislation and policies, Ghana has ratified a number of international instruments relevant to addressing TIP, including the UN Convention against Transnational Organized Crime (UNTOC), International Labor Organization (ILO) Conventions No. 29 (concerning Forced or Compulsory Labor), 105 (concerning the Abolition of Forced Labor), 138 (concerning Minimum Age for Admission to Employment) and 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.⁶⁶

Anti-TIP Institutional Framework

Ghana has established a number of justice system institutions and procedures to address TIP.

<http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1779&context=hrbrief> (last visited July 17, 2017).

⁶² U.S. DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51, at 182.

⁶³ *Id.* at 183.

⁶⁴ GHANA MINISTRY OF THE INTERIOR, NATIONAL MIGRATION POLICY FOR GHANA (Apr. 2016), § 4.2, *available at* <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=national-migration-policy-for-ghana.pdf&site=354> (last visited July 17, 2017).

⁶⁵ *See generally id.*

⁶⁶ United Nations Convention against Transnational Organized Crime, Nov. 15, 2000, 40 I.L.M. 335; Palermo Protocol, *supra* note 51; International Labor Organization [ILO] Convention No. 29 (concerning Forced or Compulsory Labor) (June 28, 1930); ILO Convention No. 105 (concerning the Abolition of Forced Labor) (June 25, 1957); ILO Convention No. 138 (concerning Minimum Age for Admission to Employment) (June 26, 1973); ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (Jun 17, 1999); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3; Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 222.

The Human Trafficking Management Board

The HTA establishes a national anti-TIP coordinating body known as the Human Trafficking Management Board (HTMB). The HTMB is chaired by the Minister for Gender, Children and Social Protection (MGCSP), and is otherwise comprised of representatives of each of the following institutions: (i) the Attorney General; (ii) the Ministry of Local Government; (iii) the Ministry of Interior; (iv) the Ministry of Health; (v) the Ministry of Education; (vi) the Ghana Journalists Association; (vii) the Police Service; (viii) the Immigration Service; (ix) the Customs, Excise and Preventive Service; (x) the Office of the National Security Coordinator; and (xi) the Labor Department. The HTMB also includes the Director of Social Welfare, a representative of the private sector (to be nominated by the MGCSP), and three other persons—one of whom must be a woman.⁶⁷

HTMB's responsibilities include: (i) making recommendations for a National Action Plan against trafficking in persons, and monitoring and reporting on the progress of that plan to the Economic Community of West African States; (ii) assisting the investigation and prosecution of cases, and strategizing to prevent and combat trafficking in persons; (iii) working with other agencies and organizations to promote victim rehabilitation and reintegration; and (iv) conducting research on international and regional developments on TIP.⁶⁸

The HTMB also is tasked with preparing guidelines for disbursements from the Human Trafficking Fund (HTF).⁶⁹ The HTF is funded through grants, voluntary donations, Parliamentary appropriations, and "proceeds from the confiscation of property connected with trafficking."⁷⁰ Disbursements from the fund are to be applied towards victim support, rehabilitation, and reintegration, and towards capacity building for the same.⁷¹

Though the HTMB was dissolved in 2014 due to a lack of funding,⁷² it has been re-established and was able to conduct three meetings during the 2017 reporting period.⁷³ However, although the government of Ghana has been reviewing the National Action Plan since at least 2015,⁷⁴ as of the writing of the US State Department's 2017 Trafficking in Persons report it had not been finalized.⁷⁵

The government has failed to sufficiently fund the HTMB's efforts "to conduct monitoring and evaluation, data collection, and research relating to trafficking."⁷⁶ It also has not provided funding to the HTF under s. 21(b) of the HTA for a fifth consecutive year.⁷⁷

⁶⁷ HTA, *supra* note 50, at § 29.

⁶⁸ *Id.* at § 30.

⁶⁹ *Id.* at § 20.

⁷⁰ *Id.* at § 21.

⁷¹ *See id.* at § 22.

⁷² DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2014 187, *available at* <https://www.state.gov/documents/organization/226846.pdf> (last visited July 17, 2017).

⁷³ U.S. DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51, at 181.

⁷⁴ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2015 169, *available at* <https://www.state.gov/j/tip/rls/tiprpt/countries/2015/243444.htm> (last visited July 17, 2017).

⁷⁵ U.S. DEP'T OF STATE, 2016 TIP REPORT, *supra* note 51, at 181.

⁷⁶ *Id.* at 182.

⁷⁷ *Id.*

Policing and Prosecution

Ghana does not appear to have courts and prosecutorial units specifically designed to combat trafficking, though units of the Ghana Police Service (GPS) and the Ghana Immigration Service (GIS) work to combat TIP.

The Ghana Police Service's Anti-Human Trafficking Unit (AHTU) was established in 2008, and has an express mandate to: (i) proactively prevent TIP; (ii) investigate, arrest and prosecute trafficking offenses; (iii) work to protect victims' identities, (iii) assist victims in obtaining necessary care (e.g., physical and psychological treatment); (iv) inform victims of their rights and any material support that they may be able to obtain, including options for socio-economic recovery; and (v) and cooperate with other bodies to combat TIP.⁷⁸ The HTA additionally provides that police officers who fail to respond to victim assistance requests must undergo disciplinary procedures.⁷⁹

Though the GIS lacks a specific mandate to prevent trafficking, assist victims, cooperate with other institutions to combat trafficking, or require employees to undergo anti-TIP training, its Border Patrol Unit collaborates with other security agencies at the borders to check for drug trafficking, human trafficking and smuggling.⁸⁰ While the HTA does not immunize trafficking victims from prosecution, victims who are illegal immigrants may be permitted to stay in Ghana after the completion of a TIP investigation with the approval of the Minister of Interior.⁸¹

The principal institution that deals with organized, transnational and financial crimes is the Economic and Organized Crime Office (EOCO).⁸² The EOCO has jurisdiction to investigate and, on the authority of the Attorney General, prosecute serious offenses that involve financial or economic loss to the country; these include TIP and money laundering, among other offenses.⁸³ The Financial Intelligence Center, established to combat money laundering and terrorist financing, also has the authority to deal with crimes that could be by-products of or relate to TIP.⁸⁴

⁷⁸ HTA, *supra* note 50, § 11.

⁷⁹ *Id.* at § 10 (2).

⁸⁰ *Introduction*, GHANA IMMIGRATION SERVICE, www.ghanaimmigration.org/bpu.html (last visited July 17, 2017).

⁸¹ HTA, *supra* note 50, § 34.

⁸² *See* Economic and Organized Crime Office Act 804 of 2010, *available at* https://www.unodc.org/res/cld/document/gha/2008/economic-and-organized-crime-act_html/Economic_and_Organized_Crime_Act_804.pdf (last visited July 17, 2017).

⁸³ *Id.* at § 3.

⁸⁴ Anti-Money Laundering Act 749 of 2008 § 4, *available at*

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92293/107406/F-308019291/GHA92293.pdf> (last visited July 17, 2017).

IV. Justice System

Access to Justice

Ghana does not appear to restrict marginalized groups' legal standing or access to justice institutions. The Constitution of Ghana recognizes that all persons are equal before the law, and discrimination on the basis of gender, race, color, ethnic origin, religion, creed, or social or economic status is prohibited.⁸⁵ Further, it enables a person whose fundamental human rights and freedoms have been, are being, or are likely to be contravened to apply to the High Court for redress.⁸⁶

At least as written, the Legal Aid Scheme of Ghana creates a right to counsel for those who earn the government minimum wage or less and desire legal representation in criminal and certain civil matters.⁸⁷ Persons who are party to constitutional claims also have the right to legal representation.⁸⁸ However, unless the applicant is indicted for an offense punishable by death or life imprisonment, they must submit an application to the Selection Committee, and their ability to gain access to counsel is subject to the decision of the Committee. This process may involve the payment of certain fees.⁸⁹

Victims' rights to pursue civil claims against traffickers are not contingent upon the existence of criminal charges.⁹⁰

Criminal Law and Procedure

ABA ROLI was unable to locate the Ghanaian judiciary, prosecutorial services, police, armed/security forces, intelligence agencies, and border control agencies' standard operating procedures (SOPs); thus, it is unable to confirm whether any of these documents contain anti-TIP provisions or guidelines.

Under the HTA, any government agency may rescue a victim,⁹¹ and TIP cases may be filed with the GPS or other security services.⁹² As noted in Section III above, the GIS' Border Patrol Unit and the GPS' AHTU have specific anti-TIP responsibilities. The HTA lays out complaint and arrest procedures, and provides that private individuals may also conduct warrantless arrests of perpetrators under certain circumstances.⁹³ However, in such circumstances perpetrators must immediately be transferred to police custody.⁹⁴

⁸⁵ GHANA CONST. art 17(1).

⁸⁶ *Id.*, art. 33.

⁸⁷ Legal Aid Scheme Act 542 of 1997 § 2, *available at* <http://www.legalaidghana.org/web/index.php/about-us/legal-aid-scheme-act-1997> (last visited July 17, 2017).

⁸⁸ *Id.*

⁸⁹ *Id.* at §§ 24-25.

⁹⁰ Human Trafficking Act 694 of 2005 (as amended 2009) § 39, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017).

⁹¹ *Id.* at § 14.

⁹² *Id.* at § 9.

⁹³ *Id.* at § 13.

⁹⁴ *Id.*

Extradition

The Extradition Act of 1960 governs extradition.⁹⁵ Ghana has bilateral extradition treaties with other states, such as the United Kingdom and the United States. Ghana is also party to the Economic Community of West African States (ECOWAS) and to its Convention on Extradition, which grants extradition “under certain circumstances in respect of offences punishable under the laws of the requesting State and of the requested State by deprivation of liberty for a minimum period of two years.”⁹⁶

⁹⁵ Extradition Act 22 of 1960, *available at* [https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+\(Act+22\).pdf](https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+(Act+22).pdf) (last visited July 17, 2017).

⁹⁶ Convention on Extradition art. 3(1), Aug. 6, 1994, A/P.1/8/94, *available at* [http://documentation.ecowas.int/download/en/legal_documents/protocols/Convention%20on%20Extradition\(2\).pdf](http://documentation.ecowas.int/download/en/legal_documents/protocols/Convention%20on%20Extradition(2).pdf) (last visited July 17, 2017).

V. Economic System

Economic and Financial Crimes

Ghana criminalizes a number of financial crimes, including money laundering, financial fraud, forgery, counterfeiting and terrorist financing. For example, the Anti-Money Laundering Act of 2008 criminalizes both money laundering and the aiding and abetting of the offense. These are punishable by a fine or imprisonment between one to ten years, or both.⁹⁷ The Act also establishes the Financial Intelligence Centre (FIC), which is responsible for the identification of proceeds of unlawful activity and combating money laundering.⁹⁸ Institutions are required to report suspicious transactions, such as those having no apparent lawful or business purpose or those relevant to tax evasion investigations, to the FIC.⁹⁹

The Criminal Code of Ghana defines forgery as fraud, when it is “done with the intent to defraud, which is defined as an intent to cause monetary gain, or with the possibility of such gain to a person, at the expense of loss to another person.”¹⁰⁰ Forgery of currency is a crime,¹⁰¹ as is the forgery of judicial, official and other documents, gold or silver plate or bullion, trademarks, and stamps.¹⁰² Counterfeiting is also criminalized under § 6 of the Currency Act and Chapter 2 of the Criminal Code.¹⁰³

Providing financial services to facilitate the commission of a terrorist act or to benefit a terrorist group is an offense punishable with at least seven years’ imprisonment.¹⁰⁴

Regulation and Monitoring of International Financial Transactions

Several laws regulate international financial transactions, including the Banking Act and the Foreign Exchange Act.¹⁰⁵ The Banking Act allows banks to open representative offices in Ghana only with prior approval of the Bank of Ghana.¹⁰⁶ Banking secrecy laws provide that bank employees may not disclose information about their employers’ affairs or customers, unless required by law or certain other exceptions.¹⁰⁷ This could arguably pose obstacles to detecting corruption if the protections are very strong. The Foreign Exchange Act provides that every payment in foreign

⁹⁷ Anti-Money Laundering Act 749 of 2008, §§ 1-3, *available at* <https://www.anti-moneylaundering.org/Document/Default.aspx?DocumentUid=F3CAF1BC-E01D-4261-B2AD-0773051E7153> (last visited July 17, 2017).

⁹⁸ *Id.* at § 5.

⁹⁹ *Id.* at § 30.

¹⁰⁰ Criminal Code, Act 29 of 1960 (as amended 2003), § 16, *available at* www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf (last visited July 17, 2017).

¹⁰¹ Currency Act 242 of 1964, §§ 16-20, *available at* <http://laws.ghanalegal.com/acts/id/21/currency-act> (last visited July 17, 2017).

¹⁰² *See* Criminal Code, *supra* note 100, at ch. 2.

¹⁰³ Currency Act, *supra* note 101; Criminal Code, *supra* note 100, at ch. 2.

¹⁰⁴ Anti-Terrorism Act 762 of 2008, § 7.

¹⁰⁵ Banking Act 673 of 2004, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/banking+act+2004+act+673.pdf> (last visited July 17, 2017); Foreign Exchange Act 723 of 2006, *available at* <http://sec.gov.gh/wp-content/uploads/Securities-Industry-Laws/Foreign-Exchange-Act-2006-Act-723.pdf> (last visited July 17, 2017).

¹⁰⁶ Banking Act, *supra* note 105, at § 21.

¹⁰⁷ *Id.* at §§ 83-84.

currency between a Ghanaian resident and a non-resident or between non-residents must be made through a bank.¹⁰⁸

Asset Freezing and Forfeiture

The HTA mandates that courts order confiscation of property acquired from human trafficking activity.¹⁰⁹ Courts may direct that proceeds from confiscated property be paid into the HTF.¹¹⁰

Remittances

Remittance flows into Ghana are estimated to be greater than foreign direct investment and overseas development assistance.¹¹¹ The Migration Policy of Ghana seeks to maximize the benefits and minimize the challenges associated with these remittance flows. It employs the following strategies to do so: (i) engaging the diaspora to assist the increase of remittance flows; (ii) broadening formal remittance markets through new technology; (iii) reducing the costs and barriers of transferring remittances; and (iv) improving research on remittance flows.¹¹²

Ghana must balance these strategies to maximize the benefits of remittances against the need to protect victims of trafficking and trafficking-vulnerable populations. Ensuring that the policy objectives and strategies laid out in the Migration Policy are effectively implemented is one way to ensure this.¹¹³

¹⁰⁸ Foreign Exchange Act, *supra* note 105, at § 15.

¹⁰⁹ Human Trafficking Act 694 of 2005 (as amended 2009) § 40, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017).

¹¹⁰ *Id.* at § 20.

¹¹¹ GHANA MINISTRY OF THE INTERIOR, NATIONAL MIGRATION POLICY FOR GHANA (Apr. 2016), § 10.1, *available at* <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=national-migration-policy-for-ghana.pdf&site=354> (last visited July 17, 2017).

¹¹² *Id.*

¹¹³ See *id.* at § 4.2.

VI. Corporations

Liability of Legal Persons for Violations of Law

Legal persons, such as corporations, may be held criminally and civilly liable for violations of state law: “Any act of the members in general meeting, the board of directors, or a managing director while carrying on in the usual way the business of the company shall be treated as the act of the company itself; and accordingly the company shall be criminally and civilly liable therefor to the same extent as if it were a natural person.”¹¹⁴ However, acts of officers and agents are not deemed to be acts of the company unless the company officially authorized the acts or held the person(s) out as having authority to act in the matter.¹¹⁵

The HTA does not explicitly create liability for legal persons. However, a “body of persons”, including a corporate body, a firm, or a union or group of workers can be held liable for offenses committed under the Labor Act, and each director of a corporation, partner of a firm, or member of a union can be deemed to have committed the offense unless they can prove they had no knowledge of it or tried to prevent it.¹¹⁶ It is unclear whether officers who are not directors can be held liable under these provisions. The penalty for forced labor under the Labor Act, however, is only a fine that cannot exceed 250 ‘penalty units’.¹¹⁷

Compliance with Laws on Incorporation

Companies are prohibited from carrying on their business outside the authorized scope of their Regulations; these regulations are required when incorporating and state the nature of the business and/or its objectives.¹¹⁸ Courts are empowered to issue injunctions against a company’s *ultra vires* actions upon application by a member of the company or certain debtholders.¹¹⁹

Corporate Social Responsibility Initiatives

ABA ROLI was unable to locate any Ghanaian legislation that specifically requires officers and directors of companies to comply with human rights standards, or mandates companies to undertake corporate social responsibility initiatives on TIP.

In its National Gender and Children Policy of 2004, the Ministry of Women and Children’s Affairs specified that it would encourage the private sector to promote gender equity and abide by international labor conventions and provisions in the Children’s Act relating to child labor, among other suggestions.¹²⁰ However, ABA ROLI is unable to assess what impact, if any, this policy has had

¹¹⁴ Companies Act 179 of 1963, § 139, available at <http://laws.ghanalegal.com/acts/id/17/companies-act> (last visited July 17, 2017).

¹¹⁵ *Id.* at § 140.

¹¹⁶ Labor Act no. 651 of 2003, § 173, available at <https://www.ilo.org/dyn/natlex/docs/SERIAL/66955/63431/F1429852156/GHA66955.pdf> (last visited July 17, 2017).

¹¹⁷ *Id.* at § 116.

¹¹⁸ Companies Act, *supra* note [114], at § 25.

¹¹⁹ *Id.*

¹²⁰ MINISTRY OF WOMEN AND CHILDREN’S AFFAIRS, NATIONAL GENDER AND CHILDREN POLICY § 8.4.8 (2004), available at <https://www.hsph.harvard.edu/population/womenrights/ghana.gender.04.pdf> (last visited July 17, 2017).

on corporate social responsibility initiatives.

Supply Chain Transparency and Accountability

ABA ROLI was unable to locate Ghanaian legislation requiring companies to report or disclose any efforts they take to prevent, identify and/or address TIP in their supply chains, or to conduct verification of product supply chains to evaluate TIP risks.

Contract Law

Fraudulent contracts appear to be voidable under Ghanaian common law. In *KPEGLO v SCOA Motors*, the Chief Justice of the Supreme Court stated that “a contract obtained by fraudulent misrepresentation is voidable, not void; it is valid until it is avoided, and it is voidable, at the option of the party defrauded.”¹²¹

ABA ROLI did not find legislation that specifically voids or renders voidable contracts for indentured labor. However, under the Labor Act of 2003, forced labor—defined as work or service exacted from a person under threat of penalty, and for which that person has not offered himself or herself voluntarily—is prohibited.¹²² Presumably, therefore, contracts for forced labor are illegal under Ghanaian law.

ABA ROLI was not able to confirm whether unfair substitutions for previous contracts are void or voidable. Because there is a minimum age for employment,¹²³ presumably children younger than the minimum age are unable to legally enter into contracts for employment.

¹²¹ *Kpeglo v SCOA Motors*, (1962) 2 G.L.R. 82, *available at* <http://cases.ghanalegal.com/cases/detail/kpeglo-versus-scoa-motors> (last visited July 17, 2017) (internal citations omitted; furthermore, ABA ROLI is unable to determine whether this opinion has been superseded, overruled, reversed, and/or questioned.).

¹²² Labor Act, *supra* note 116, at §§ 116-117.

¹²³ *See infra* Part IX (Labor Rights) for further discussion.

VII. Natural Resources, Environment, and Property

Natural Resource Extraction Laws

Various laws regulate rights to natural resource extraction and harvesting in Ghana.

Timber

Timber harvesting is regulated by the Timber Resource Management Act (1988). The Act establishes a Timber Rights Evaluation Committee to evaluate applications for timber harvesting rights.¹²⁴ It also provides investors with immigration quotas based on capital investment levels,¹²⁵ which may affect incentives to use trafficked labor in the logging industry.

Fishing

The Fisheries Act of 2002 governs fishing activities, including licensing and registration of fishing vessels and conservation of fisheries.¹²⁶ It also establishes a Fisheries Monitoring, Control, Surveillance and Enforcement Unit.¹²⁷

Mining

The Minerals and Mining Act of 2006 governs mineral and mining rights. Under the Act, no person may extract, export, sell or dispose of minerals without prior authorization. If such authorization is received, it cannot be transferred, assigned, or mortgaged.¹²⁸ The Minister Responsible for Mines governs mineral rights, which are required for search, reconnaissance, prospecting, exploration or mining. These rights are granted on the recommendation of the Minerals Commission.¹²⁹

The Parliament of Ghana ratifies contracts granting mineral exploitation rights or concessions, unless it chooses to waive this ratification.¹³⁰ Mining licenses can be revoked by the Minister Responsible for Mines for actions such as smuggling or illegal sale of minerals, or if the Minister determines it is in the public interest.¹³¹ This permits the Minister to revoke a license if TIP is discovered during mining operations; however, TIP is not itself an explicit ground for revocation of a license.

Petroleum

¹²⁴ Timber Resource Management Act 547 of 1997, §§ 5-6, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha16665.pdf> (last visited July 17, 2017).

¹²⁵ *Id.* at § 14(G).

¹²⁶ *See generally* Fisheries Act 625 of 2002, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha34737.pdf> (last visited July 17, 2017).

¹²⁷ *Id.* at § 94.

¹²⁸ Minerals and Mining Act 703 of 2006, §§ 6, 9, 13, 14, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha85046.pdf> (last visited July 17, 2017).

¹²⁹ *Id.* at §§ 5, 9.

¹³⁰ *Id.* at § 5.

¹³¹ *Id.* at § 87.

Several laws govern the exploration, development and production of petroleum, including the National Petroleum Corporation Law, the Petroleum Exploration and Production Law, the Petroleum Commission Act, the Petroleum Revenue Management Act, and the Petroleum (Exploration & Production) Act.¹³²

Environmental Regulation

The Environmental Protection Agency (“EPA”) prescribes standards and guidelines relating to the pollution of air, water, and land, as well as any other forms of environmental pollution, including the discharge of waste and the control of toxic substances.¹³³ The EPA’s mandate includes issuing permits and pollution abatement notices for emissions, including hazardous substances, and ensuring compliance with environmental impact assessment procedures in the planning and execution of development projects.¹³⁴

The Hazardous Chemicals Committee, established under the authority of the EPA Act, monitors the use of hazardous chemicals and advises on the regulation and management of such chemicals.¹³⁵ The Environmental Protection Agency Act also deals with pesticide control.

The Water Resource Commission has the authority to grant water rights and advise pollution control agencies on matters concerning the management and control of pollution of water resources, among other functions.¹³⁶

The Forestry Commission is responsible for the regulation, conservation and management of the use of forest and wildlife resources. There are several laws and regulations that apply to forest conservation; for instance, under the Trees and Timber Act, a person cannot fell trees for export without authority, and under the Forest Protection Act it is an offense to fell or destruct trees in reserves.¹³⁷

The Wild Animals Preservation Act protects wild animals by placing restrictions on the export of trophies, defined as certain scheduled animals or parts of such animals, without a certificate.¹³⁸ It additionally prohibits hunting by motor vehicle or aircraft, and surrounding animals with fire for hunting.¹³⁹

¹³² *Laws and Regulations*, PETROLEUM COMMISSION GHANA, <http://www.petrocom.gov.gh/laws---regulations.html> (last visited July 17, 2017).

¹³³ Environmental Protection Agency Act 490 of 1994, § 2, *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/environmental+protection+agency+act+1994.pdf> (last visited July 17, 2017).

¹³⁴ *Id.*

¹³⁵ *Id.* at § 10.

¹³⁶ Water Resources Commission Act 522 of 1996, § 2, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha10691.pdf> (last visited July 17, 2017).

¹³⁷ Trees and Timber Act, N.R.C.D. 273 of 1974, § 2, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha93274.pdf> (last visited July 17, 2017); Forest Protection Act, N.R.C.D. 243 of 1974, § 1(a), *available at* http://laws.ghanalegal.com/acts/id/362/section/1/Forest_Offences (last visited July 17, 2017).

¹³⁸ Wild Animals Preservation Act 43 of 1961, § 4, *available at* <https://www.clientearth.org/external-resources/ghana/forests-and-wildlife/1979%20WILD%20ANIMALS%20PRESERVATION%20ACT.pdf> (last visited July 17, 2017).

¹³⁹ *Id.* at §§ 6-7.

Land Ownership and Eminent Domain

The Constitution expressly prohibits non-citizens from acquiring land in Ghana,¹⁴⁰ and recognizes the Parliament's authority to enact laws to this effect.¹⁴¹ The Constitution does not restrict land ownership by other groups.

The Constitution, Administration of Lands Act, and the State Lands Act (1962) permit the state to take ownership of private lands, upon a showing that the acquisition is necessary and the payment of fair compensation.¹⁴² The Constitution also requires the state, upon the exercise of this eminent domain power, to "resettle . . . displaced inhabitants on suitable alternative land with due regard for their economic well-being and social and cultural values."¹⁴³

¹⁴⁰ GHANA CONST. art. 266, *available at* https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

¹⁴¹ *Id.* at art. 17(4)(c).

¹⁴² *Id.* at art. 20; Administration of Lands Act 123 of 1962, § 10(1), *available at* <http://extwprlegs1.fao.org/docs/pdf/gha3115.pdf> (last visited July 17, 2017); State Lands Act 125 of 1962, § 1(1), *available at* <http://extwprlegs1.fao.org/docs/pdf/gha3105.pdf> (last visited July 17, 2017).

¹⁴³ GHANA CONST. art. 20(3).

VIII. Individual Rights

Ratification of and Accession to International and Regional Human Rights Treaties

Ghana has ratified or acceded to a number of international human rights treaties. These include:

- the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol;
- the International Covenant on Economic, Social, and Cultural Rights (ICESCR);
- the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol;
- the Convention on the Rights of the Child (CRC);
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and
- the Convention and Protocol Relating to the Status of Refugees (Refugee Convention).¹⁴⁴

Regional human rights treaties that Ghana has ratified or acceded to include:

- the African Charter on Human and Peoples' Rights (Banjul Charter);¹⁴⁵
- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);¹⁴⁶ and
- the African Charter on the Rights and Welfare of the Child.¹⁴⁷

As a dualist state, Ghana "is required to ratify a treaty internationally and then proceed to ratify the treaty, in accordance with the Constitution" in order for it have the effect of domestic law.¹⁴⁸ ABA ROLI has not confirmed whether this second level of domestic ratification has occurred for all these treaties.

Legal Guarantees of Equality and Non-Discrimination

The Constitution of Ghana recognizes that all persons are equal before the law, and discrimination on the basis of gender, race, color, ethnic origin, religion, creed, or social or economic status is prohibited.¹⁴⁹ The Constitution does protect against discrimination based on disability,¹⁵⁰ but

¹⁴⁴ Multilateral Treaties Deposited with the Secretary-General, United Nations Treaty Collection, https://treaties.un.org/Pages/TreatyParticipantSearch.aspx?clang=_en (last visited July 17, 2017) (select "Ghana" in the drop-down Participant list to access a full list of international treaties and agreements deposited with the U.N. Secretary-General that Ghana has ratified or acceded to).

¹⁴⁵ African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58.

¹⁴⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Sep. 13, 2000, 1 Afr. Hum. Rts. L.J. 40.

¹⁴⁷ African Charter on the Rights and Welfare of the Child, July 11, 1990, OAU Doc. CAB/LEG/24.9/49.

¹⁴⁸ REPUBLIC OF GHANA TREATY MANUAL 3, available at <http://legal.un.org/avl/documents/scans/GhanaTreatyManual2009.pdf?teil=II&j> (last visited July 17, 2017).

¹⁴⁹ GHANA CONST. art. 17(1), available at https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

¹⁵⁰ *Id.* at art. 29.4.

sexual orientation or gender identity are not explicitly named as prohibited grounds for discrimination.

The Labor Act of 2003 provides that equal pay shall be given for equal work,¹⁵¹ and the Public Health Act and Mental Health Acts of 2012 provide for non-discrimination in treatment of patients and employees.¹⁵² These build further protections against discrimination in specific areas.

Rights of Foreigners and Stateless Individuals

A person who is granted refugee status in Ghana is entitled to all the rights, and subject to all the duties, laid out in international law.¹⁵³ For example, refugees are to be issued identity cards, residence permits, and UN travel permits, where appropriate.¹⁵⁴ To the extent that refugees are granted resident status, they may be eligible to apply for insurance under the National Health Insurance Scheme, which covers a variety of outpatient and inpatient services including oral, eye, maternity, and emergency care.¹⁵⁵

The Constitution recognizes that all persons have an equal right to education.¹⁵⁶ This encompasses a right to free and compulsory primary education, “generally available” secondary education, and tertiary education, which is to be made “equally accessible to all on the basis of capacity.”¹⁵⁷ While no specific mention of foreign citizens and stateless people is made under this provision, the fact that “all” people are granted the right to education arguably grants non-citizens these rights.

State Human Rights Guarantees

The Constitution of Ghana recognizes a number of fundamental civil and political rights, including:

- the right to life;¹⁵⁸
- the right to personal liberty;¹⁵⁹
- the right to a fair trial, by judge or jury;¹⁶⁰
- the right to a legal remedy, and access to the High Court for redress;¹⁶¹
- the right to be free from torture and cruel, inhuman, or degrading treatment or punishment;¹⁶²

¹⁵¹ Labor Act 651 of 2003, § 68, *available at* <http://www.ilo.org/legacy/english/inwork/cb-policy-guide/ghanalabouract2003section109.pdf> (last visited July 17, 2017).

¹⁵² Public Health Act 851 of 2012, § 42, *available at* <http://extwprlegs1.fao.org/docs/pdf/gha136559.pdf> (last visited July 17, 2017); Mental Health Act 846 of 2012, § 54, *available at* <http://www.refworld.org/pdfid/528f243e4.pdf> (last visited July 17, 2017).

¹⁵³ Refugee Law P.N.D.C.L. 305D of 1992, § 11, *available at* <http://laws.ghanalegal.com/acts/id/550/refugee-law> (last visited July 17, 2017).

¹⁵⁴ *Id.*

¹⁵⁵ *See Benefits Package*, NATIONAL HEALTH INSURANCE SCHEME, <http://www.nhis.gov.gh/benefits.aspx> (last visited July 17, 2017).

¹⁵⁶ GHANA CONST., art 25.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at art. 13.

¹⁵⁹ *Id.* at art. 14.

¹⁶⁰ *Id.* at art. 19.

¹⁶¹ *Id.* at art. 33.

¹⁶² *Id.* at art. 15.

- the right to freely assemble and associate, including the right to participate in workplace decision-making and the right to form or join labor unions;¹⁶³
- the right to political participation;¹⁶⁴
- the right to free speech and expression, as well as the right to freedom of conscience, thought, and religion;¹⁶⁵
- the right to privacy of home, property, correspondence or communication;¹⁶⁶
- the right to move freely within Ghana;¹⁶⁷ and
- the right to be free from slavery or forced or compulsory labor.¹⁶⁸

The Constitution does not establish an explicit right to marry or found a family, but does allow Parliament to enact laws on marriage and family.¹⁶⁹

State Human Rights Bodies

The Commission on Human Rights and Administrative Justice (CHRAJ) functions as a national human rights institution, an Ombudsman's office and an anti-corruption agency.¹⁷⁰ It is Ghana's principal human rights body, and is tasked with investigating complaints of human rights violations, denials of enjoyment of rights, inappropriate administrative actions and decisions of public institutions and public officials, and corruption in public institutions or by public officials.¹⁷¹

¹⁶³ *Id.* at arts. 24(3), 36(11).

¹⁶⁴ *Id.* at art. 21.

¹⁶⁵ *Id.* at art. 21.

¹⁶⁶ *Id.* at art. 18.

¹⁶⁷ *Id.* at art. 21.

¹⁶⁸ *Id.* at art. 16.

¹⁶⁹ *Id.* at art. 17.

¹⁷⁰ *See generally Home*, COMMISSION ON HUMAN RIGHTS & ADMINISTRATIVE JUSTICE GHANA, <http://www.chrajghana.com/> (last visited July 17, 2017).

¹⁷¹ *Id.*

IX. Labor Rights

Work Protections Established by Law

Applicable International Instruments

Ghana is party to a number of international instruments that protect workers, including:

- ILO Convention No. 29 (concerning Forced or Compulsory Labor);¹⁷²
- ILO Convention No. 105 (concerning the Abolition of Forced Labor);¹⁷³
- ILO Convention No. 138 (concerning Minimum Age for Admission to Employment);¹⁷⁴
- ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor);¹⁷⁵ the
- the ICMW;¹⁷⁶ and
- the CRC.¹⁷⁷

Domestic Legal Protections

The Constitution of Ghana states that “the guarantee of a fair and realistic remuneration for production and productivity in order to encourage continued production and higher productivity” is an underlying principle of a healthy economy.¹⁷⁸ Both the Constitution and the Labour Act of 2003 recognize the right to equal pay for equal work.¹⁷⁹ These laws also provide for the right to join or form a trade union, though the constitutional right may be limited by law if “reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others.”¹⁸⁰

Notably, the Labor Act not only confers workers with rights, but also enumerates broad duties. These include working “work conscientiously in the lawfully chosen occupation”, taking reasonable

¹⁷² ILO Convention No. 29 (concerning Forced or Compulsory Labor) (June 28, 1930), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029 (last visited July 17, 2017).

¹⁷³ ILO Convention No. 105 (concerning the Abolition of Forced Labor) (June 25, 1957), *available at* http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105 (last visited July 17, 2017).

¹⁷⁴ ILO Convention No. 138 (concerning Minimum Age for Admission to Employment (June 26, 1973), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138 (last visited July 17, 2017).

¹⁷⁵ ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (Jun 17, 1999), *available at* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 (last visited July 17, 2017).

¹⁷⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3.

¹⁷⁷ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC].

¹⁷⁸ GHANA CONST. art. 36(2)(a), *available at* https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

¹⁷⁹ *Id.* at art. 24(1); Labor Act 651 of 2003, § 68, *available at* <http://www.ilo.org/legacy/english/inwork/cb-policy-guide/ghanalabouract2003section109.pdf> (last visited July 17, 2017).

¹⁸⁰ Labor Act, *supra* note 179, at § 10(d); GHANA CONST., arts. 24(3)-(4).

care of the safety and health of fellow workers, and protecting the interests of the employer.¹⁸¹

Minimum Wage Requirements

The National Tripartite Committee, established under the Labor Act, determines and sets the national daily minimum wage.¹⁸²

The minimum wage applies to casual and temporary workers, in addition to permanent wage workers.¹⁸³ “Casual workers” are defined as those who engage in seasonal or intermittent work of six continuous months or less, whose remuneration is calculated on a daily basis;¹⁸⁴ “temporary workers” are defined as those who are employed for at least one month but are not permanent or seasonal workers.¹⁸⁵ Note that contracts for casual worker employment need not be in writing.¹⁸⁶

Certain classes of workers who earn daily wages, such as part-time workers and seagoing workers in the fishing industry, are excluded from these provisions of the Labor Act.¹⁸⁷

Working Hours Requirements

Both the Constitution and the Labor Act impose reasonable limitations on working hours.¹⁸⁸

The Labor Act generally establishes that no worker may work for longer than eight hours a day, or 40 hours a week. However, there are exceptions to these limits: overtime requirements are expressly delineated, and in certain emergency situations workers may be expected to perform unpaid overtime work.¹⁸⁹

Seasonal workers are allowed to work up to 10 hours a day, provided that their daily average does not exceed eight hours.¹⁹⁰ The Minister for Labor is also permitted to prescribe shorter maximum hours for manual labor and “jobs likely to be injurious to health”.¹⁹¹

Workers are entitled to daily and weekly rest periods, as detailed in the Labor Act.¹⁹² In general, workers are to be granted at least 12 hours’ continuous rest between consecutive working days, with 48 hours of consecutive rest for each seven-day period.¹⁹³

These work hour and rest period requirements are expressly inapplicable to domestic workers in private homes,¹⁹⁴ and seasonal workers are subject to slightly different provisions.¹⁹⁵ forty-

¹⁸¹ Labor Act, *supra* note 179, at § 11.

¹⁸² *Id.* at § 113.

¹⁸³ *Id.* at §§ 74-76.

¹⁸⁴ *Id.* at § 78.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at § 74.

¹⁸⁷ *See id.* at §§ 73-78.

¹⁸⁸ GHANA CONST., art. 24(2); Labor Act, *supra* note 179, at § 10(c).

¹⁸⁹ Labor Act, *supra* note 179, at §§ 33-38.

¹⁹⁰ *Id.* at § 34.

¹⁹¹ *Id.* at § 37.

¹⁹² *Id.* at §§ 40-44.

¹⁹³ *Id.* at § 42.

¹⁹⁴ *Id.* at § 44.

Seasonal workers also have slightly different provisions on the daily rest period.¹⁹⁶ As a result, these classes of workers are vulnerable to potential exploitation.

Overtime Remuneration

Employers must have fixed rates of pay for overtime work,¹⁹⁷ unless “exceptional circumstances including an accident threatening human lives” call for unpaid overtime.¹⁹⁸ The Labour Act prohibits employers from assigning overtime work and night work to pregnant women and mothers of children under eight months of age without the consent of the worker.¹⁹⁹ If work is assigned without the worker’s consent under these circumstances, she may lodge a complaint with the National Labour Commission.²⁰⁰

Leave Requirements

All workers are entitled to at least 15 working days of fully-paid leave for each calendar year of continuous service, where payment is calculated on the basis of the worker’s non-overtime remuneration.²⁰¹ Employees are entitled to take this leave in “two approximate equal parts.”²⁰² Agreements to waive the right to leave, or to forgo leave, are deemed void.²⁰³ However, employers who face “urgent necessity[ies]” may require workers on leave to return to work; under such circumstances, the employee is permitted to take the balance of their leave “anytime thereafter”, and employers are obliged to bear the costs of these interruptions.²⁰⁴

Absences from work due to sickness, pregnancy, voluntary communal work, and civic duties are not calculated against the statutory annual leave requirement, and the Labor Act guarantees at least 12 weeks of paid maternity leave.²⁰⁵

Labor Inspection and Oversight Systems

Ghana has statutory labor inspection and violation complaint mechanisms.

The Labour Act mandates that workplaces undergo labor inspections.²⁰⁶ These inspections are intended to “secure the enforcement of the [Labor Act’s] provisions . . . relating to conditions of work and the protection of workers at workplaces, including the provisions relating to hours of work, wages, safety, health and welfare of the workers and the employment of young persons” .²⁰⁷

¹⁹⁵ *Id.* at § 41(2).

¹⁹⁶ *Id.* at § 34(c).

¹⁹⁷ *Id.* at § 35.

¹⁹⁸ *Id.* at § 38.

¹⁹⁹ *Id.* at § 55.

²⁰⁰ *Id.*

²⁰¹ *Id.* at § 20.

²⁰² *Id.* at § 28.

²⁰³ *Id.* at § 31.

²⁰⁴ *Id.* at § 25.

²⁰⁵ *Id.* at §§ 22-24, 57.

²⁰⁶ *Id.* at § 122.

²⁰⁷ *Id.* at § 122(a).

Labor inspectors are appointed by the Civil Service, and are empowered to: (i) conduct unannounced inspections at any time during working hours; (ii) carry out any inquiries necessary to ensure that workplaces are complying with the Labor Act; (iii) interview employers or workers, alone or with witnesses present; (iv) demand the production of documents relating to the terms and conditions of employment; (v) take samples of materials and hazardous substances that may be used or handled by workers during the course of their employment; and (vi) direct employers to carry out any physical alterations to the workplace necessary for ensuring worker health and safety.²⁰⁸

While ABA ROLI was not able to locate more sector-specific labor laws, there is at minimum Minerals Commission that is authorized to “inspect unauthorized mining sites, identify cases of child labor, and conduct awareness-raising activities . . . in the mining sector in parallel with criminal law enforcement agencies.”²⁰⁹

Inspectors are required to report “defects of the [Labor] Act” and other practices or abuses not specifically envisioned by the Act to the Labour Department or the National Labour Commission.²¹⁰ The National Labor Commission adjudicates unfair labor practices complaints.²¹¹ It is authorized to issue injunctions to correct unfair labor practices, and in unlawful termination cases it may order that a worker’s position be restored and that the worker be compensated for lost earnings attributable to the unlawful termination.²¹² Orders of the Commission have the same effect as High Court orders, and appeals from such orders are heard by the Court of Appeal.²¹³

Applicability of Labor Laws to Migrant Workers

The Labor Act does not address specific rights and duties for migrant workers. However, given that “worker” is broadly defined as “a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis,”²¹⁴ and that migrant workers are not specifically excluded from the scope of the statute, it may be inferred that the protections and duties delineated in the Labor Act apply to migrant workers.

The fact that wage and working-hour requirements in the Labor Act do not apply to casual, temporary, and domestic workers as they do to normal wage workers may place migrant workers in these industries at greater risk of abuse.²¹⁵

ABA ROLI was unable to confirm the process by which migrant workers may obtain work permits in Ghana, or the existence of any bilateral and/or regional agreements relating to this subject.

²⁰⁸ *Id.* at § 124(1).

²⁰⁹ *Child Labor and Forced Labor Reports: Ghana*, U.S. DEP’T OF LABOR, BUREAU OF INT’L LABOR AFF., https://www.dol.gov/agencies/ilab/resources/reports/child-labor/ghana#_ENREF_26 (last visited July 17, 2017) [hereinafter *Child Labor and Forced Labor Reports: Ghana*].

²¹⁰ Labor Act, *supra* note 179, at §§ 122(c)-(d)

²¹¹ *Id.* at § 132.

²¹² *Id.* at §§ 132, 133(2).

²¹³ *Id.* at §§ 133.4-134.

²¹⁴ *Id.* at § 175.

²¹⁵ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 181, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2017) (noting the areas of employment in which forced labor and trafficking are rampant).

Child Labor Laws

International Laws, Policies, and Agreements

Ghana has ratified the CRC, which recognizes the rights of children to be protected from economic exploitation by requiring State Parties to prohibit children from performing any work that is likely to be hazardous or to interfere with their education, or to be harmful to their health or development.²¹⁶ State Parties also undertake to provide minimum age requirements for employment, regulate work hours and employment conditions, and establish sanctions to ensure that child labor laws are effectively enforced.²¹⁷

While Ghana has ratified the CRC's Optional Protocol on Armed Conflict, it has signed but not ratified the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.²¹⁸

Ghana is party to the Economic Community of West African States' (ECOWAS) Regional Action Plan for the Elimination of Child Labor, Especially the Worst Forms,²¹⁹ although—according to the U.S. Department of Labor—had not participated in any activities related to the Regional Action Plan as of 2015.²²⁰

Ghana additionally joined, alongside the United States, Côte D'Ivoire, and the International Cocoa and Chocolate Industry, in the 2010 Declaration of Joint Action to Support the Implementation of the Harkin-Engel Protocol and its Accompanying Framework of Action (Declaration and Framework).²²¹ This Declaration and Framework is intended to reduce the use of child labor in cocoa production areas.²²² Pursuant to this agreement, the government of Ghana commits to: (i) collecting data on the use of child labor in cocoa production through the use of nationally-representative surveys; (ii) establishing community-based child labor monitoring systems in cocoa production areas; (iii) providing education, vocational training, and other support for households with children in these areas; (iv) preventing children from joining the cocoa industry; and (v) enforcing laws protecting children from the worst forms of child labor.²²³ The government of Ghana has established a number of programs in support of the Declaration and Framework.²²⁴

²¹⁶ CRC, *supra* note 177, at art. 32(1).

²¹⁷ *Id.* at art. 32(2).

²¹⁸ See *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209; *Status: Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-11-c&chapter=4&lang=en (last visited July 17, 2017).

²¹⁹ ECONOMIC COMMUNITY OF WEST AFRICAN STATES, ECOWAS REGIONAL ACTION PLAN FOR THE ELIMINATION OF CHILD LABOUR, ESPECIALLY THE WORST FORMS, *available at* http://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_227737.pdf (last visited July 17, 2017).

²²⁰ *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209.

²²¹ See Framework of Action to Support Implementation of the Harkin-Engel Protocol, <https://www.dol.gov/ilab/projects/summaries/CocoaFrameworkAction.pdf> (last visited July 17, 2017).

²²² *Id.* at 1.

²²³ *Id.* at 2-3.

²²⁴ See generally *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209, at Section VI: Social Programs.

Domestic Laws and Policies

The Children's Act of 1998 fixes the standard minimum employment age at 15 years.²²⁵ For "light" work, defined as work that is "not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work",²²⁶ the minimum age is 13. The minimum age for "hazardous" work, including going to sea, mining and quarrying, portering of heavy loads, work in manufacturing industries that require chemical exposure, work involving machinery, or "in places such as bars, hotels and places of entertainment where a person may be exposed to immoral behavior" is 18.²²⁷

While employers who use children in industrial undertakings such as mining, transportation, manufacturing, and power plants must register child workers and their known or otherwise "apparent" birth dates,²²⁸ it is not evident that Ghana has any verification mechanism to ensure compliance with this provision.

Employers who violate child labor laws are liable on summary conviction to a fine up to ₵10 million, up to two years' imprisonment, or both.²²⁹

Ghana has established a number of policies intended to eliminate and prevent child labor, including the Ministry of Food and Agriculture's Child Labor Strategic Plan of 2013-2015, the UN Development Assistance Framework Action Plan of 2012-2016, and the Hazardous Child Labor Activity Frameworks.²³⁰ Respectively, these policies aim to address the use of child labor particularly in the cocoa and fishing subsectors, provide education and/or vocational training to 5,000 children between the ages of five and 17 who have been involved with child labor, and engaging with workers' organizations to develop action plans for how to prevent children from engaging in hazardous activities.²³¹ However, the Hazardous Activities Frameworks have no binding effect, and failure to comply with the recommendations and actions noted in the Frameworks carry no penalties.²³²

Provisions Regarding the Worst Forms of Child Labor

Ghanaian law generally outlaws the use of the worst forms of child labor, as defined in ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor).²³³ Ghana's Armed Forces Regulations establish 18 as the minimum

²²⁵ Children's Act 560 of 1998, § 89, available at <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/56216/65194/E98GHA01.htm> (last visited July 17, 2017).

²²⁶ *Id.* at § 90.

²²⁷ *Id.* at § 91.

²²⁸ *Id.* at § 93.

²²⁹ *Id.* at § 94.

²³⁰ *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209.

²³¹ *Id.*

²³² *Id.*

²³³ ILO Convention No. 182 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour), *supra* note 175.

age for enlistment in the armed forces, and there appears to be no conscription law.²³⁴ The HTA, the Criminal Code, the Criminal Offenses Act, and the Labor Regulations Legislative Instrument all prohibit child trafficking and the commercial sexual exploitation of children.²³⁵ However, none of these laws prohibit the use of a child in pornographic performances; nor do they punish individuals for benefitting for the proceeds from child pornography.²³⁶

While Ghanaian law does generally prohibit children from working in hazardous occupations,²³⁷ lake fishing—which often involves underwater and nighttime work and long hours—does not fall under this category.²³⁸ As such, children working in the Ghanaian fishing sector are at risk of engaging in the kind of hazardous work that would constitute the worst forms of child labor under the ILO’s Recommendation No. 190 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor).²³⁹

²³⁴ *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209.

²³⁵ *Id.*, citing Human Trafficking Act 694 of 2005 (as amended 2009), § 16, available at <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017); Labor Regulations, L.I. 1833 of 2007, at §§ 21-25, available at <http://www.ilo.org/dyn/travail/docs/1198/Labour%20Regulations%202007.pdf> (last visited July 17, 2017); Criminal Code, Act 29 of 1960 (as amended 2003), §§ 110-11, 274-77, 279-83 available at www.wipo.int/edocs/lexdocs/laws/en/gh/gh010en.pdf (last visited July 17, 2017); Criminal Offenses Act 29 of 1960 (as amended 2012), § 101-08, available at <http://laws.ghanalegal.com/acts/id/19> (last visited July 17, 2017).

²³⁶ *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209.

²³⁷ *Id.*, citing GHANA CONST. arts. 28(1)(d), 28(2), 28(5); Labor Regulations, *supra* note 235, at § 7; Children’s Act, *supra* note 225, at §§ 91-92; Labor Act, *supra* note 179, at § 58.

²³⁸ *Child Labor and Forced Labor Reports: Ghana*, *supra* note 209.

²³⁹ ILO Recommendation No. 190 (concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour) (June 17, 1999), art 3, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc87/com-chir.htm> (last visited July 17, 2017).

X. Rights of Communities and Indigenous People

Recognition of Customary and Communal Land Rights

Almost 80% of Ghana's land is held under customary tenure, made up of 'stool lands' (i.e., lands held in trust for the community by a 'stool' or 'skin' "as symbol of traditional authority").²⁴⁰ Possibly owing to the influence of early Ghanaian coastal chiefs, customary land ownership is based on the principle of allodial or absolute title;²⁴¹ stool lands are treated as a form of private property, held by chiefdoms and families who owe fiduciary duties with respect to the lands that they own.²⁴² Where land is designated stool land, no person or body may gain a freehold interest in it,²⁴³ and where customary property interests are not documented, the Constitution provides that they will be considered valid.²⁴⁴ In situations where groups do not recognize the use of a stool or skin to symbolize private communal land ownership, ownership rights are vested in clans, families, or individuals.²⁴⁵

The Government of Ghana has substituted its ownership rights in certain types of property for any rights that communities and indigenous groups might otherwise hold. For instance, the Water Resources Commission Act vests ownership, control, and management of all the water in the country in the government; the same is true of mineral rights.²⁴⁶ With respect to timber, while stools and/or families have ownership interests in the timber trees themselves, the Concession Act mandates that the government administer the trees in trust for their customary owners.²⁴⁷

The Constitution creates the Office of the Administrator of Stool Lands,²⁴⁸ which is tasked with establishing and collecting tariffs on such lands.²⁴⁹ The Office of the Administrator of Stool Lands is additionally supposed to work with the Regional Lands Commission "of the region in which the land is situated" and with the stools and traditional authorities to determine the disposition and development of such land.²⁵⁰

²⁴⁰ *Country Profile: Ghana*, USAID, <https://www.land-links.org/country-profile/ghana/> (last visited July 17, 2017) [hereinafter *Country Profile: Ghana*]; MINISTRY OF LANDS AND FORESTRY, NATIONAL LAND POLICY, JUNE 1999, § 2.1, available at <http://theredddesk.org/sites/default/files/National%20Land%20Policy.pdf> (last visited July 17, 2017).

²⁴¹ NATIONAL LAND POLICY, *supra* note 240, at § 2.1.

²⁴² See Liz Alden Wily, *Customary Land Tenure in the Modern World: Rights to Resources in Crisis: Reviewing the Fate of Customary Tenure in Africa* (Nov. 2011) at 11, available at <https://dlc.dlib.indiana.edu/dlc/bitstream/handle/10535/7713/customary%20land%20tenure%20in%20the%20modern%20world.pdf?sequence=1> (last visited July 17, 2017); GHANA CONST. art. 36(8), available at https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

²⁴³ GHANA CONST. art. 267(5).

²⁴⁴ TÉODYL NKUINTCHUA, THE STATE OF COMMUNITY LAND RIGHTS IN AFRICA (Dec. 2016) 8, available at http://rightsandresources.org/wp-content/uploads/2017/02/The-State-of-Community-Land-Rights-in-Africa_English_Africa-Community-Rights-Network_Dec-2016.pdf (last visited July 17, 2017).

²⁴⁵ NATIONAL LAND POLICY, *supra* note 240, at § 2.1.

²⁴⁶ *Country Profile: Ghana*, *supra* note 240.

²⁴⁷ *Id.*

²⁴⁸ GHANA CONST., art. 267(2).

²⁴⁹ *Id.*

²⁵⁰ *Id.* at arts. 267(3), (7), (8).

Governance of Land Without Formal Title

Customary and community ownership interests in land need not be registered or titled for Ghanaian law to recognize those interests.²⁵¹ Nonetheless, where land interests are vested in stools, skins, or family members, the Land Title Registration Act of 1986 provides that “the stool or family shall be registered as a proprietor of the land or the interest.”²⁵² While this is not a formal title requirement, “[f]ormal adjudication, mapping of lands and registration of rights, including their conversion to a state-defined form . . . is required in order for community landholders to secure their rights.”²⁵³ In spite of the requirements of the Land Title Registration Act, as of December 2016, “there [was] still no legal means through which customary rights [could] be registered in the same way that freehold or leasehold rights [could].”²⁵⁴ These challenges to registration could pose issues for the *de facto* protection of customary and community land ownership rights in Ghana.

Community Rights in Land-Based Development

As noted, the Office of the Administrator of Stool Lands and the Regional Lands Commissions are supposed to work alongside the stools and other traditional authorities “in all matters relating to the administration and development of stool land . . . [and] in preparing a policy framework for the rational and productive development and management”.²⁵⁵ It has been reported that Ghanaian chiefs “exercise significant power over land allocation [and] alienation”;²⁵⁶ however, to the extent that administrative bodies are not easily accessible in rural areas, the ability for communities to effectively engage in consultative processes is undermined.²⁵⁷

Furthermore, questions arise as to whether powerful community leaders who engage in land deals truly represent the voices of their communities. It has been reported that some traditional rulers abuse their fiduciary roles with respect to communal lands to engage in large-scale land transactions; because such rulers are seen as representatives of indigenous communities, the government of Ghana may find it difficult to challenge the authority under which these transactions occur.²⁵⁸ As a result, community leaders who engage in less-than-transparent land transactions may contribute to the overall vulnerability and insecurity of their subjects.²⁵⁹

The government’s eminent domain power, combined with its ability to exercise dominion and control over all of Ghana’s mineral deposits, arguably permits it to authorize large-scale investments, especially with respect to mining.²⁶⁰ Despite the fact that communities have the right to “prompt payment of fair and adequate compensation” and resettlement in the case of such takings,²⁶¹ the possibility of displacement creates trafficking risks.

²⁵¹ NKUINTCHUA, *supra* note 244, at 35.

²⁵² Title Registration Act, P.N.D.C.L. 152 of 1986, § 110(1)(a), *available at* <http://extwprlegs1.fao.org/docs/pdf/gha6287.pdf> (last visited July 17, 2017).

²⁵³ NKUINTCHUA, *supra* note 244, at 9.

²⁵⁴ *Id.* at 13.

²⁵⁵ GHANA CONST., arts. 267(7)-(8).

²⁵⁶ NKUINTCHUA, *supra* note 244, at 15.

²⁵⁷ *Id.* at 16.

²⁵⁸ *Id.* at 17.

²⁵⁹ *Country Profile: Ghana*, *supra* note 240.

²⁶⁰ *See supra* note 246 and accompanying text; *see also* NKUINTCHUA, *supra* note 244, at vii.

²⁶¹ GHANA CONST., art. 20.

XI. Immigration and Border Security

Immigration Law Prohibitions against TIP and Migrant Smuggling

Migrant smuggling is defined in and criminalized by the Immigration (Amendment) Act.²⁶² The offense is defined as “the facilitation of the unlawful entry or departure from the country of a person in order to obtain, directly or indirectly, a financial or other material benefit”.²⁶³ Penalties for the crime of migrant smuggling include a fine between 625 and 1250 penalty units, five to 10 years’ imprisonment, or both.²⁶⁴

The Immigration Act and its Amendment Act do not specifically criminalize human trafficking; cross-border TIP is dealt with under the HTA.²⁶⁵

The Migration Policy of Ghana envisions a number of strategies by which to combat cross-border human trafficking and migrant smuggling.²⁶⁶ These include: (i) enforcing and ensuring compliance with the HTA; (ii) increasing public awareness about the dangers associated with irregular migration; (iii) creating preventive measures against irregular migration; (iv) establishing human trafficking and migrant smuggling databases; (v) working regionally to develop common anti-migrant smuggling measures and practices; and (vi) strengthening law enforcement capacity to prevent, curtail, and prosecute migrant smuggling.²⁶⁷

The GIS is tasked with advising on and implementing national immigration laws. To this end, its BPU collaborates with other security agencies at the borders to check for drug trafficking, human trafficking and smuggling.

Protections for TIP Victims in Immigration Law

Ghana’s Immigration Act does not prescribe protections for TIP victims. However, although it generally provides for the removal and deportation of non-citizens,²⁶⁸ it is possible for TIP victims to be permitted to stay in the country pursuant to the HTA.²⁶⁹ Under this law, trafficking victims that are present in Ghana illegally are allowed to remain “throughout the period of a legal

²⁶² Immigration (Amendment) Act 572 of 2012, *available at* https://www.unodc.org/res/cld/document/immigration-amendment-act-2012_html/Immigration_Amendment_Act_2012.pdf (last visited July 17, 2017).

²⁶³ *Id.* at §§ 52A(3)-(4).

²⁶⁴ *Id.* at § 52A(2).

²⁶⁵ Human Trafficking Act 694 of 2005 (as amended 2009), § 1(1), *available at* <https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/04/16/human+trafficking+act.pdf> (last visited July 17, 2017) [hereinafter HTA].

²⁶⁶ GHANA MINISTRY OF THE INTERIOR, NATIONAL MIGRATION POLICY FOR GHANA (Apr. 2016), §§ 4.2.1.2, 4.2.2.2, *available at* <http://migratingoutofpoverty.dfid.gov.uk/files/file.php?name=national-migration-policy-for-ghana.pdf&site=354> (last visited July 17, 2017).

²⁶⁷ *Id.*

²⁶⁸ *See* Immigration Act 573 of 2000, §§ 8, 21, 35-41, *available at* <http://www.ghanaimmigration.org/ACTS%20AND%20REGULATIONS/ACT%20573.pdf> (last visited July 17, 2017).

²⁶⁹ HTA, *supra* note 265, at § 34.

investigation and prosecution.”²⁷⁰ The HTA further stipulates that after this process is completed, victims must be repatriated; however, the Minister of the Interior may permit victims to stay in government-provided shelters after the completion of the legal process if they deem it to be in the victim’s best interests.²⁷¹

Victims who are to be repatriated upon the conviction of the trafficker are to receive “basic material support” until such time as this repatriation may occur, including lodging in a government reception center.²⁷² However, the Human Trafficking Fund, which is intended to provide a monetary source for such initiatives, has gone unfunded for a fifth consecutive year.²⁷³

ABA ROLI did not find any legislation requiring the state to obtain the victim’s consent prior to the institution of removal procedures.

Denial of Entry or Visa Revocation for TIP Offenders

The Immigration Law, its Amendment, and the HTA do not specifically state that TIP offenders may be denied entry to Ghana or have their visas revoked.

However, the Immigration Law’s grounds for inadmissibility and deportability do appear to create grounds for denial of entry or visa revocation for TIP offenders. For instance, to the extent that TIP offenders are considered to have committed “extraditable crimes” under the aegis of the Extradition Act,²⁷⁴ or are engaged in bringing individuals into Ghana “for the purpose of prostitution or other immoral purpose”,²⁷⁵ or are considered to be “person[s] whose activities are contrary to the laws of Ghana”,²⁷⁶ they may be considered ‘Prohibited Immigrants’ for the purposes of the Immigration Law.²⁷⁷

Similarly, those who are convicted of TIP are likely to be considered deportable foreign nationals. Under the Immigration Law, individuals who are convicted of offenses “punishable by a term of imprisonment exceeding three months with or without a fine” may be deported on the basis of a court’s recommendation.²⁷⁸ Additionally, if an individual’s “presence in Ghana is in the opinion of the Minister [for the Interior] not conducive to the public good”,²⁷⁹ they may be liable to deportation.

²⁷⁰ *id.*

²⁷¹ *id.*

²⁷² *id.*

²⁷³ U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 181, *available at* <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2017).

²⁷⁴ See Extradition Act 22 of 1960, First Schedule, *available at* [https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+\(Act+22\).pdf](https://s3.amazonaws.com/ndpc-static/CACHES/PUBLICATIONS/2016/09/04/EXTRADITION+ACT,+1960+(Act+22).pdf) (last visited July 17, 2017).

²⁷⁵ Immigration Act, *supra* note 268, at § 8(1)(g).

²⁷⁶ *Id.* at § 8(1)(h).

²⁷⁷ *Id.* at § 8(1).

²⁷⁸ *Id.* at § 35(2).

²⁷⁹ *Id.* at § 35(1)(e).

XII. National Security and Humanitarian Emergencies

National Security Laws and Strategies

The Constitution of Ghana mandates the establishment of a National Security Council.²⁸⁰ However, ABA ROLI was unable to locate a publicly-available national security strategy.

The government of Ghana does nonetheless retain the ability to introduce special measures for the protection of national security, public order, natural environment, health, public morals, and/or the rights and freedoms of other persons.²⁸¹

In March 2014, Ghana released a draft National Cyber Security Policy and Strategy,²⁸² which does not explicitly address TIP.

Firearm Import/Export Regulations

Under the Criminal Offenses Act, it is a felony to traffic in explosives, firearms and ammunition.²⁸³ It is also an offense to import any explosives, firearms or ammunition without lawful authority²⁸⁴ The import of export of arms or ammunition, including explosives, without prior written consent from the National Redemption Council is also prohibited.²⁸⁵ The National Redemption Council is free to specify any conditions or restrictions on the permit that it deems necessary;²⁸⁶ however, ABA ROLI was unable to determine whether such conditions ever have been imposed, or whether the Council issues standard TIP-related restrictions.

Conflict Resources Regulations

While Ghana is a Participant of the Kimberly Process,²⁸⁷ ABA ROLI was unable to find any legislation specifically prohibiting the import and export of conflict resources.

Emergency Management Laws and Strategies

The National Disaster Management Organization Act establishes the National Disaster Management

²⁸⁰ GHANA CONST. art. 83, *available at* https://www.constituteproject.org/constitution/Ghana_1996.pdf?lang=en (last visited July 17, 2017) [hereinafter GHANA CONST.].

²⁸¹ *See, e.g.*, eg GHANA CONST. art. 24(4), noting that the government may place restrictions on the right of a worker to form or join a trade union of his choice when “reasonably necessary in the interest of national security or public order or for the protection of the rights and freedoms of others.”

²⁸² REPUBLIC OF GHANA, MINISTRY OF COMMUNICATIONS, GHANA NATIONAL CYBER SECURITY POLICY (March 2014), *available at* https://www.sbs.ox.ac.uk/cybersecurity-capacity/system/files/Ghana_Cyber-Security-Policy-Strategy_Final_0.pdf (last visited July 17, 2017).

²⁸³ Criminal Offenses Act 29 of 1960 (as amended 2012), § 192(A), *available at* <http://laws.ghanalegal.com/acts/id/19> (last visited July 17, 2017).

²⁸⁴ *Id.* at § 179.

²⁸⁵ Arms and Ammunition Act, N.R.C.D. 9 of 1972, § 5(1), *available at* <http://laws.ghanalegal.com/acts/id/349/arms-and-ammunition-act> (last visited July 17, 2017).

²⁸⁶ *Id.* at § 5.2.

²⁸⁷ *Ghana*, KIMBERLEY PROCESS, <https://www.kimberleyprocess.com/en/ghana> (last visited July 17, 2017).

Organization to manage disasters and similar emergencies.²⁸⁸ Despite the fact that humanitarian emergencies render affected populations more vulnerable to TIP, this Act contains no explicit mentions or protections against trafficking or sexual and/or gender-based violence which may occur during such emergencies.

²⁸⁸ National Disaster Management Organization Act 517 of 1996, § 1(1), *available at* <http://extwprlegs1.fao.org/docs/pdf/gha91980.pdf> (last visited July 17, 2017).

XIII. Conclusion

Despite the existence of an anti-TIP legislative framework and institutions specifically established to combat TIP (such as the HTMB and the GPS' AHTU), Ghana has failed to swiftly enact implementing regulations to enforce the provisions of the Human Trafficking Act. As a result, it has been unable to systematically realize consequences for TIP perpetrators or adequate protections for their victims.

Additionally, despite the fact that Ghana is party to a number of international human rights and labor rights instruments that are relevant to anti-trafficking,²⁸⁹ ABA ROLI has been unable to confirm the extent to which its treaty obligations have been incorporated and implemented domestically. A general lack of funding for anti-TIP initiatives, including law enforcement training and victim protection mechanisms, have further watered down Ghana's anti-trafficking efforts.²⁹⁰

Ghana's anti-TIP legal framework could be strengthened, specifically by ensuring that victims cannot be criminalized for trafficking-related offenses, and by ensuring that penalties for all TIP offenses are commensurate with other serious crimes.²⁹¹ Furthermore, Ghana could improve its labor and land laws and policies in order to reduce citizens' vulnerability to TIP. For instance, ensuring that the labor laws specifically include lake fishing as a 'hazardous occupation' could help to prevent children from being abused in the fishing industry,²⁹² and more careful analysis of certain land transactions might ensure that citizens' displacement from communal lands does not render them vulnerable to exploitation.²⁹³

With an economy that is now reportedly poised to recover, in part due to "quick resolution of the power crisis, two new oil wells coming on-stream, and improved cocoa harvest and gold production",²⁹⁴ it is critical for Ghana to give teeth to the anti-TIP legislation and institutions that already exist in the country. Ghana has laid down some useful structural foundations to address trafficking, but has much work to do in making these largely aspirational mechanisms a reality. In particular, Ghana must commit adequate resources to investigating and prosecuting perpetrators throughout the supply chain, and providing victims, including exploited children, with critical, comprehensive protection and assistance.

²⁸⁹ See, e.g., *supra* Parts VIII (Individual Rights) and IX (Labor Rights).

²⁹⁰ U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT: JUNE 2016 181, available at <https://www.state.gov/documents/organization/271342.pdf> (last visited July 17, 2017).

²⁹¹ *Id.*

²⁹² *Child Labor and Forced Labor Reports: Ghana*, U.S. DEP'T OF LABOR, BUREAU OF INT'L LABOR AFF., https://www.dol.gov/agencies/ilab/resources/reports/child-labor/ghana#_ENREF_26 (last visited July 17, 2017).

²⁹³ *Country Profile: Ghana*, USAID, <https://www.land-links.org/country-profile/ghana/> (last visited July 17, 2017).

²⁹⁴ *Ghana Economic Outlook*, AFRICAN DEVELOPMENT BANK GROUP, <https://www.afdb.org/en/countries/west-africa/ghana/ghana-economic-outlook/> (last visited July 17, 2017).