

The Nature and Future of Human Trafficking in South Africa



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Photo by Melanie Doucakis: Sunrise over the Amatola hills, Eastern Cape, South Africa. Taken during an investigation into child trafficking and *ukuthwala* in the Eastern Cape.

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1. Terms of reference

The author was requested to provide insights into the nature and future of human trafficking in South Africa by broadly deconstructing existing knowledge and speculating about future trends. What is most certain and uncertain about the future of human trafficking in South Africa was considered and, given the current trends, the author speculated about the implications for 2030 and how these trends may be disrupted.

Information sources that contributed to this report include the author's law enforcement and investigative background with human trafficking between 2002 and 2011 which include human trafficking investigations at the Hawks (DPCI) and Family Violence, Child Protection and Sexual Offences (FCS) Unit; Ongoing human trafficking case management and investigative assistance for the National Freedom Network (NFN) since 2011; Local and international human trafficking task team and deliberation platforms; Consultations with prosecutors and victims of trafficking in criminal cases; Expert court testimony; Academic literature and; A micro-level Ph.D. research study between March 2012 and January 2018 where unstructured interviews were conducted with 120 participants, which included amongst others, victims of trafficking, actors in the sex trade and convicted traffickers, who directly and indirectly either contributes to the perpetration of human trafficking in South Africa, or the combating thereof.

2. Legislative framework

The international community began meeting in 1999 to draft the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children (Miko, 2003: 15), also known as the Palermo Protocol, which took into account that there was *"no universal instrument that addresses all aspects of trafficking in persons"* (United Nations, 2000). The Palermo Protocol came into force on 25 December 2003 and was subsequently ratified by South Africa on 20 February 2004. South Africa was now bound to develop laws to protect the victims of trafficking and prosecute offenders in a manner appropriate to the seriousness of the offence. With due consideration to the varied interpretations, ideological

tensions and understandings of what the crime of human trafficking constitutes in South Africa, it becomes considerably important to reflect on the definition. The offence of 'Trafficking in Persons' is defined by section 4 (1) in Chapter 2 of the Prevention and Combating of Trafficking in Persons (PACOTIP) Act 7 of 2013 as follows:

“Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of –

(a) a threat of harm;

(b) the threat or use of force or other forms of coercion;

(c) the abuse of vulnerability;

(d) fraud;

(e) deception;

(f) abduction;

(g) kidnapping;

(h) the abuse of power;

(i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or

(j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons;

4 (2) Any person who—

(a) adopts a child, facilitated or secured through legal or illegal means; or

(b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence.”

Also important here is the definition of 'abuse of vulnerability' as deconstructed in section 1 of the PACOTIP Act as a means through which a person can be mobilised for subsequent exploitation. According to this definition, 'abuse of vulnerability' for purposes of section 4 (1) means

“any abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not limited to, taking advantage of the vulnerabilities of that person resulting from—

- a) the person having entered or remained in the Republic illegally or without proper documentation;*
- b) pregnancy;*
- c) any disability of the person;*
- d) addiction to the use of any dependence-producing substance;*
- e) being a child;*
- f) social circumstances; or*
- g) economic circumstances.”*

The aforementioned vulnerability considerations are reflective of the South African social context, and features prominently in numerous past and ongoing reports, investigations and prosecutions of human trafficking in the country.

3. Human Trafficking in South Africa: A broad overview

Human trafficking is by no means a recent phenomenon in South Africa and has shown to be an emergent property of the country’s past and present deep and dense structural inequalities. From the outset of its ratification of the Palermo Protocol in 2004, South Africa has been identified as a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking in all the U.S. TIP Reports¹ for the period 2004 to 2017. South Africa has been assigned a Tier 2 ranking in 2004 in the annual U.S. TIP Report, regressed to a Tier 2 watch list ranking between 2005 and 2008, and again improved to a Tier 2 ranking from 2009 to 2017. Currently the South African government does not fully meet the minimum standards for the elimination of trafficking and fell short *“in several key areas”*, but are making significant efforts to do so (US Department of State, 2017: 362).

¹ The annual Trafficking in Persons (TIP) Report is the principal diplomatic tool used by the U.S. government to engage foreign governments on human trafficking. It is also the world’s most comprehensive resource of governmental anti-trafficking efforts. The annual US TIP Report presents a global assessment of governments’ actions to respond to and eliminate trafficking in persons and also considers the nature and scope of trafficking in countries (see: <https://www.state.gov/j/tip/rls/tiprpt/>).

Human trafficking for the purpose of sexual exploitation is not only the most documented type of trafficking both locally and internationally, but also saturated with ideological tensions between abolitionist and preservationist positions on the nature of prostitution and human trafficking in South Africa. Those that adopt an abolitionist stance have often been accused of sensationalising the issue of human trafficking for sexual exploitation, exaggerating and fuelling moral panic (Skosana & Wilkinson, 2017; Chiumia & Wilkinson, 2013), whilst preservationist perspectives diminish the estimations about the scope of the problem and call for the decriminalisation of the sex trade (Gould, 2014; Gould & Fick, 2008). Preservationist-slanted research about the nature of the South African sex trade and its 'disputed' intersection with human trafficking have also been accused of truncating the scope of the definition of human trafficking and even excluding cases involving the use of force (Dempsey, 2017: 73-74). These South African studies were criticised for incorrectly coding cases as not being trafficking, and thus *"undercounted the prevalence of trafficking for the purpose of sexual exploitation"* (Dempsey, 2017: 75-77).

Despite this criticism levelled against these South African studies, they continue to be used in support of sex work decriminalisation (see: Yingwana, 2018: 209). Preservationist perspectives were also found to be in stark contrast to the day-to-day realities of police investigators, social workers and prosecutors who work on human trafficking for sexual exploitation cases (Van der Watt, 2018: 95). It remains important, though, that prostitution and human trafficking for the purpose of sexual exploitation not be equated (Van der Watt, 2018; Huisman & Kleemans, 2014: 216; Zheng, 2010), however, the similar methods that traffickers and pimps use suggest that the sex trafficking and prostitution industries are not as disparate as some believe (Van der Watt, 2018: 199; Elrod, 2015: 978).

Communities across South Africa have ventilated much frustration and anger about the prevalence and intersection of drugs, prostitution, human trafficking and a variety of criminal activities. Examples include incidents of public violence in

Rosettenville², Mamelodi³, Rustenburg⁴ and, more recently, Krugersdorp⁵. International syndicates involving Nigerian, Thai, Chinese, Russian, or Bulgarian traffickers are consistently reported to operate in South Africa with impunity. Nigerian syndicates, implicated in local and transnational human trafficking, features prominently in reports and are said to “*dominate the commercial sex trade in several provinces*” (US Department of State, 2015, 2016, 2017). Children also fall victims to associated crimes, or are in fact usurped into the larger crime whirlpool. Criminal activities that interweave with human trafficking for sexual exploitation include child sex tourism, forced marriage and harmful cultural practices, child pornography, the ‘blesser’ phenomenon, arms trafficking, drugs and drug trafficking.

The extent and multi-layered realities of labour trafficking, illicit mining, exploitative farm labour and domestic servitude in South Africa remains largely unexplored, yet cases are beginning to appear in the criminal justice system. Labour trafficking remains grossly under-represented in South Africa’s counter-human trafficking chapter and probably a far greater problem than what is realised. The South African government also falls short in comprehensively monitoring or investigating forced child labour or the labour trafficking of adults in the agricultural, mining, construction, and fishing sectors (US Department of State, 2017: 362; Frankel 2016). Prominent mining operations are at least indirectly implicated in the trafficking of men through informal labour brokers and recruiters, whilst illegal mining operations continue unabated. In one case of illegal mining investigated by the author in the Free State area, photos, videos, maps, and operational details of a Mozambican syndicate was gathered that is implicated in luring men and boys from rural villages in Mozambique for illicit mining operations. It is reported that as many as 50 men and boys cross the South African border on a weekly basis – many of whom succumb to operational injuries, suicide, murder and poor health. Corruption on all levels is reported to enable the persistence of these activities with similar operations in the Free State and Vaal area reported to be ring-fenced by corrupt police officials, prosecutors and private security companies.

² <http://ewn.co.za/2017/02/11/community-meeting-in-rosettenville-turns-violent>

³ <https://mg.co.za/article/2017-02-17-00-we-dont-burn-we-clean-brothels>

⁴ <http://ewn.co.za/2018/01/11/rustenburg-residents-vent-anger-over-drugs-and-prostitution>

⁵ <http://www.politicsweb.co.za/news-and-analysis/kidnapping-triggers-antidrug-riots-in-krugersdorp>

South African citizens are also duped or coerced into the trafficking of drugs by syndicates comprising South African and Nigerian nationals and end up in international prisons in countries as far afield as Thailand, Brazil, India, Nepal, China, Mozambique and Mauritius. Many of these cases bears the hallmarks of human trafficking for the purpose of criminal exploitation, yet are rarely identified or documented as such. As a conservative figure, over 1000 convicted South African drug mules are detained abroad (Friedman, 2014: viii). South Africa is also a key destination for sophisticated smuggling operations from a variety of countries on the African continent. Many of these operations seamlessly morph into cases of human trafficking where those smuggled end up being exploited or trapped in a subjugated state. Ongoing cases that the author are investigating include smuggling-cum-trafficking operations from Somalia, where terror organisation Al-Shabaab are alleged to be financial beneficiaries of operations, and a syndicate operating between Eritrea and South Africa with Eritrean criminal associates owning properties in South Africa whilst using Dubai as a base for money laundering. Other types of trafficking include, to a lesser extent, the removal of or trade in body parts.

One of the most pressing questions that continues to plague practitioners, researchers and policy-makers is 'How big is the problem?' As a hidden and subversive crime, human trafficking does not lend itself to be quantified and therefore the quest for reliable statistics will remain "*an elusive statistical nightmare*" (Van der Watt, 2015) for the foreseeable future. A centralised database and aggregated data on the scope, nature and extent of human trafficking in the country is also non-existent whilst non-reporting by government on pending prosecutions and the number of cases investigated are but some of the shortfalls raised in the U.S TIP reports. The crime is, however, widespread, systemic and interwoven with organised crime. Countless cases are either not identified or documented, whilst others are subsumed under cases such as kidnapping, abduction, domestic violence, assault, labour and civil disputes to name but a few. Ongoing investigations, evidence led in ongoing trials, successful prosecutions and judgments in cases provides valuable qualitative insights into the scope, nature and extent of human trafficking in South Africa. The sexual exploitation of children in the sex trade, albeit bizarrely denied by some, emerge strongly in these cases

and features prominently in the author's own investigations and research over the past 15 years.

Apart from a vibrant civil society and NGO community engaged in frontline counter-human trafficking work in South Africa, the mere handful of skilled and dedicated social workers, prosecutors and police investigators working tirelessly to address the crime amidst a high workload and limited resources, is by no means sustainable. In their analysis of the criminal justice system's efforts to effectively combat the formidable human trafficking system in South Africa, Van der Watt and Van der Westhuizen (2017: 226) argue:

"...that the scoreboard in the ongoing 'battle of wits' between the criminal justice system, and the human trafficking system that it seeks to combat, is convincingly in favour of well organised and agile human trafficking networks."

Frankel (2016: 2) points to the hidden domain of transactions in human beings that subsists *"behind the facade of an iconic constitutional democracy"* and argues that some of the worst variations of trafficking and modern slavery continue unabated behind the gracious surface of the 'rainbow' nation (Frankel, 2016: 3). The foreseeable future will see the persistence of human trafficking in South Africa as a crime oxygenated by greed, perpetuated and enabled by corruption, and vested in the country's deep and dense structural inequalities.

Ideal conditions for the crime that are likely to continue include multi-layered vulnerabilities and the concomitant push and pull factors that dictates the movement of people; the vibrant economics of demand and supply of cheap services (sex and labour); large scale access to both the vice and value of information and communications technology (ICT); sophisticated financial systems; sophisticated transportation systems; porous borders; and fragmented or poor law enforcement. Criminal networks will continue to capitalise on these ideal conditions that enables the low risk and high income associated with the perpetration of the crime. Certainty is however found in South Africa's Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PACOTIP), described by Kruger (2016: 84) as an *"innovative and invaluable tool"* and a *"sharp prosecution sword"*.

4. Speculation: Implications for 2030

2030: South African citizens are beyond battle weary as their day-to-day realities continue to be marred by social insentience and multi-layered structural inequalities of which the triple challenge (unemployment, poverty and inequality) continue unabated. Others, however, continue to hope in yesteryear's fleeting promises of economic freedom, land ownership and prosperity. Persistent political instability on the African continent, and unprecedented water and food insecurity in South Africa not only adds to the vulnerability melange, but fundamentally reconfigured the scope, nature and extent of interprovincial and cross-border migration into the country. The government's continued failure to address the demand for commercial sex and forced labour, and the concomitant shrinking universe of choices faced by ordinary South African citizens, have seen criminal networks increasingly exploiting the economic principles of supply and demand. The commodification of- and trade in human beings have become a critical threat to human and national security, and its crippling effect on South Africa's rule of law, democratic aspirations and the socioeconomic well-being of its people has come to fruition.

Shortfalls in the multi-disciplinary response to human trafficking over the past two decades now reveals itself in a catapulting 'dark number' of victims whose lived experiences and harm compounds the overall level of harm to all spheres of society. Drug abuse, complex trauma, HIV/Aids and suicide features prominently amongst victims and survivors of the crime. Harm experienced by the individual causes harm to many others, such as their families, friends and community of origin. Numerous direct victims now impact many more indirect victims of the victim (see also: UNODC, 2009:8).

The lack of a comprehensive criminal justice response continues to fuel impunity and serve as positive feedback for global criminal networks of all kinds to invest in a South African footprint. Risks associated with the perpetration of the crime is almost non-existent whilst concomitant illicit profits soar. Drugs, arms, illicit goods and bulk cash generated from the sexual exploitation and cheap labour by subjugated human beings are seamlessly dispensed between provinces and through South Africa's porous borders. Tech-savvy traffickers optimally exploit

both the vice and the value of technology and effortlessly use the dark web, Blockchain and cryptocurrencies to ply their trade with diminutive resistance from law enforcement agencies who are short skilled to confront technological advancements, growing cybercrime empires and organised crime.

Transparency has been traded for translucency in issues related to governance and supply chains with society's trust deficit in the South African project now at an all-time low. Disillusioned masses increasingly turn to xenophobia and public violence in a desperate attempt to ventilate frustrations. Paradoxically this emergent state of affairs has opened up a market for traffickers who are willing and able to deceive, cajole, manipulate and ultimately exploit. With a copious supply of people-cum-commodities and an outstripping demand driven by greed, local and transnational human traffickers merrily generate large revenues that are predictable, stable and guaranteed with a high degree of certainty in the future.

5. Towards a disruption of current trends

Ideologically slanted, over simplistic and reductionist explanations of the who, what, when, where, why and how of human trafficking must be set aside. Rather, a more intricate understanding of human trafficking as a multi-layered and multifaceted phenomenon must be nurtured where the crime is understood as an emergent property of South Africa's structural inequalities, ambition-driven social insentience, greed, power- and gender disparities. Similarly, a consideration of the whole definition of 'Trafficking in Persons' and 'abuse of vulnerability' as defined in the PACOTIP Act is important if we are to imbue a truthful, realistic and functional grasp amongst all spheres of society as to how the crime manifest. Sensationalist representations, denialism and truncated explanations of the phenomenon must be rejected as it creates confusion and does precious little to promote an even-handed, evidence-based and informed response to the crime (see: Van der Watt, 2018: 401).

The role and importance of South Africa's criminal justice system must be elevated to unprecedented heights. This will require considerable financial investments in capacitating prosecutors, interpreters, investigators, law enforcement agencies, social workers and psychologists with essential skills and resources required to

investigate and prosecute complex human trafficking cases whilst maintaining a victim-centred approach in prosecution strategies. Important areas for skills development in this sector include trauma-informed care, specialised financial investigations, anti-money laundering, cybercrime, open source- and social media analysis, and responding to the use of cryptocurrencies and the 'dark web' in crimes associated with human trafficking. The multi-layered complexities and workload intrinsic to human trafficking investigations and prosecutions necessitates specialisation and dedicated capacity. Proactive, intelligence-led and court-driven investigation strategies must become a standard practice that is paralleled with financial investigations and asset forfeiture. Human trafficking as an organised crime demands compulsory integrity testing and vetting of all operational staff, including selected members from civil society and NGOs who participates in operational matters. Mandatory and random drug testing of frontline public officials must be considered, and official complicity in trafficking crimes, including crimes committed against persons in prostitution, must be dealt with decisively. Drug rehabilitation centres and shelters for victims, both men and women, must be properly funded and capacitated.

The government's response to child labour and the labour trafficking of adults in the agricultural, mining, construction, and fishing sectors remain pale in comparison to the focus on human trafficking for sexual exploitation and must be prioritised. The role of labour inspectors in this process cannot be overstated. Comprehensive and itemised budgeting and funding for the implementation of the PACOTIP Act by all government departments, and the establishment of an integrated information system in terms of section 41(1)(b) of the PACOTIP to facilitate the effective monitoring and implementation of the Act requires urgent and deliberate action by government. Intelligence-led policing and the integrity of South Africa's borders, described by a member of the Hawks as more porous than a "*tea strainer*" (Van der Watt, 2018: 278), must become a strategic project.

Individual-, organisation- and society-wide learning, development and awareness creation about human trafficking and its manifestations as a crime against humanity must be nurtured, and collective compassion and responsibility for the plight of the vulnerable and victimised to be cultivated amongst all spheres of society and government. South Africans are to be reminded that:

“We must take sides. Neutrality helps the oppressor, never the victim. Silence encourages the tormentor, never the tormented.” Elie Wiesel

Education systems, the Department of the Government Communication and Information System (GCIS) and the media⁶ are fundamental catalysts to be employed in the education of citizens on issues related to human rights and human rights violations, ethics, transparency in supply chains and fair trade whilst concomitantly empowering them with information on reporting structures⁷ and processes when abuses, exploitation and corruption in the relevant industries are identified. The South African government must also take the lead in efforts to reduce the demand for commercial sex and forced labour. A momentous decision currently finds itself on South Africa’s proverbial doorstep after the ANC resolved to decriminalise sex work in the country. This resolution was made despite extensive research and consultation by the South African Law Reform Commission who concluded that changing the legislative framework could *“create an extremely dangerous cultural shift”* where women *“would be considered even more expendable than at present”* (South African Law Reform Commission, 2017: 4). Context matters and South Africa will be writing its own examination paper. Copying and pasting from other prostitution models is disingenuous and dangerous. South Africa’s labyrinth of structural impediments should be considered with a concomitant socioeconomic assessment on the eventuating impact of sex work decriminalisation on society. The best interests of the child should remain of paramount importance whilst efforts focus on transforming the lives and opportunities of the poorest South Africans ‘in a sustainable manner’.

Partnerships between the public-, private- and NGO sector must become the lifeblood of South Africa’s endeavours to comply with its international obligations in terms of the prevention of human trafficking, the prosecution of traffickers and the protection of victims. The tourism industry, hotels, mining companies, property letting agencies, transportation and bus companies, the taxi industry, financial institutions and the broader ICT community are but some of the industries that intersects with the human trafficking system in South Africa and must be included

⁶ Print, radio, television and social media.

⁷ National Human Trafficking Resource Line (0800 222 777) and the Department of Social Development Gender Based Violence (GBV) Command Centre (0800 428 428).

in the broader counter-trafficking strategy. Finally, in considering the importance of partnerships in combating the bane of human trafficking in South Africa, the sentiment expressed by a shelter manager is worth considering:

“...we’re dealing with very clever, well-organised syndicates and I don’t think we’ll ever be able to beat them until we work in a very trusting, efficient network ourselves. We can’t individually fight them and so we have to become a syndicate, we need to be working together, but it means a lot of trust between each other and keeping each other...accountable, in the loop, informed.”

(Van der Watt, 2018: 210)

6. Concluding remarks

When confronting complex social ills in a complex and pluralistic society, a range of opposing views are bound to be evoked. Human trafficking, in particular, represents such a phenomenon which has garnered a variety of interpretations, many of them conflicting. These include human trafficking as slavery, illegal migration, transnational organised crime, a threat to national sovereignty and security, a labour issue, a violation of human rights or a combination of the aforementioned issues (see: Lee, 2007: 1-2). Opposing views and ideas are an inseparable part of human trafficking combating efforts and instead of being suppressed, they should be ventilated and considered with a healthy dose of scepticism. The wisdom of crowds must be mined. They include, most importantly, victims of human trafficking, practitioners and communities affected by the crime as co-creators of desired outcomes for a socially cohesive South Africa by 2030. Finally, in our efforts to cultivate collective compassion and social cohesion, the words of Martin Luther King Jr (1967) is worth contemplating:

“In a real sense all life is inter-related. All men are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly. I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be...This is the inter-related structure of reality.”

A luta continua! [The struggle continues]

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⁸ Reports on South Africa for the period 2004 to 2017 can be found at <https://www.state.gov/j/tip/rls/tiprpt/>