

## **HUMAN TRAFFICKING: A SOUTH AFRICAN PERSPECTIVE**

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### **ABSTRACT**

Human trafficking is a lucrative global crime. Organised criminals continue to ply their trade with impunity. They profit from this illicit trade. Victims of trafficking are transported from their places of origin to destinations both within and outside their countries. They are promised better life by the traffickers, who sometimes coerce victims to work against their will upon arrival in their destination countries. In some instances, the victim's travel documents are seized by the traffickers. The purpose of this article is to highlight the impact of human trafficking internationally and in South Africa. The researcher relies on an extensive literature review and the collection of secondary data. Secondary data in the context of this research is the process of reviewing several data already collected from previous studies relating to the research topic 'human trafficking'. The research is informed by the labeling theory. The researcher highlights some of the challenges faced by policing human trafficking both as organised and borderless crime. The researcher recommends both the use of information technology and intelligence-led policing for combating the growing trend of human trafficking. It is also recommended that both national and regional co-operation needs to be strengthened globally to combat human trafficking.

**Keywords:** Human trafficking, body-parts, organised crime, trade, victims

### **INTRODUCTION**

The researcher in this research looks at the organised crime of human trafficking in South Africa. The purpose of the article is to highlight the impact of human trafficking on the victims both internationally and nationally within the South Africa context. Previous researchers have predominately focused their studies more on the criminality element of human trafficking and have paid less attention to the impact of it on the victims. The research seeks to fill this academic gap. The passage of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons in 2000, especially concerning women and children, assured citizens of the world that the issue of human trafficking was beginning to be taken very seriously. Before this, young men and women as young as 12 were being transported by organised criminal gangs in China, Russia, Italy, Nigeria, and Thailand to provide services as sex workers. Some of those who were trafficked had been promised improved financial wellbeing (Adepoju 2005).

According to a US Department of State report published in June 2013, 'South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South Africans and foreign nationals are subjected to human trafficking within the country. Children are trafficked mainly within the country, from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein. Girls are subjected to sex trafficking and domestic servitude; boys are forced to work in street vending, food services,

begging, criminal activities, and agriculture. Nigerian syndicates dominate the commercial sex trade in Hillbrow and other areas, though local criminal rings and street gangs also organise child prostitution; Russian and Bulgarian crime syndicates operate in the Cape Town sex trade.

Chinese nationals coordinate the sex trafficking of Asian national. Traffickers control victims through intimidation and threats, including witchcraft, use of force, withholding of passports, debt bondage, and enforced use of drugs and alcohol. Women and girls from China, Taiwan, Thailand, Cambodia, India, Russia, Ukraine, Moldova, Bulgaria, Brazil, the Democratic Republic of Congo, the Republic of Congo, Rwanda, Mozambique, Lesotho, Swaziland, and Zimbabwe are reported to have been transported to South Africa for enforced prostitution, domestic servitude, or forced labour or taken onward to Europe for enforced prostitution' (US Department of State Report 2008).

## **REVIEW OF LITERATURE**

### **Slavery**

Slavery refers to the servitude of inhuman nature. In 1880, following a legal ruling in the High Court of Allahabad, India, slavery was defined as follows:

A person is treated as a slave or is reduced to a condition of slavery if another person exercises power or control over that person: i) to restrain the person's liberty, ii) to dispose of the person's labour against his will without lawful authority. The following forms of slavery can be found in certain countries of the world:

- i. Bonded labour - where people take or are tricked into taking a loan for as little as the cost of medicine for a sick child and are made to repay the debt by being forced to work long hours, receiving only basic food and shelter as 'payment' for their services.
- ii. Early and forced marriage - which affects women and girls who are married without choice and are forced into lives of servitude, often accompanied by physical violence.
- iii. Forced labour - where people are illegally recruited by individuals, governments, or political parties and forced to work, usually under threat of violence or other penalties.
- iv. Slavery by descent - where people are either born into a slave class or are from a 'group' that society views as suitable for use as slaves. The Indian caste system (depicting the untouchables) or members of the Dalit communities were examples of this before the system was abolished under Article 17 of the India Constitution 1950.
- v. Trafficking - which consists of the transport and/or trade of people – men, women, and children and – from one area to another to force them into slavery conditions.
- vi. The worst forms of child labour – where children are made to engage in work that is harmful to their health and welfare or work that exposes them to danger. (Anti-Slavery Society report 2008).

The Constitution of the Republic of South Africa, 1996, provides a normative framework on slavery by stipulating that no one may be subjected to slavery, servitude, or forced labour. However, slavery is an international crime, the prohibition of which is incorporated in the law of South Africa (Dugard 2005). This article is divided into four parts. In the first part, the researcher

looks at different definitions of human trafficking and related concepts of human trafficking, and some of the causes of human trafficking.

In the second part of the article, the researcher looks at some Protocols and Treaties of international organisations in their efforts to combat human trafficking. This part of the article also looks at some laws designed to combat human trafficking globally and in South Africa. In the third part of the article, the researcher looks at the important roles played by non-government organisations in South Africa, such as Molo Songololo and the Salvation Army in their efforts to fight against the trafficking of children, illegal national and international body part trafficking. In the fourth part, the researcher looks at some of the challenges associated with the investigation of human trafficking and future directions or solutions to the illicit trade of human trafficking.

### **Human Trafficking**

Human trafficking is better understood as a collection of crimes bundled together rather than a single offence; it is a criminal process rather than a criminal event. ‘While international organisations such as the United Nations (UN) view trafficking as the movement of people across borders accompanied by coercion and considerable human rights violations, the specific differences between trafficking and illegal immigration continue to be debated (Rao & Presenti, 2012).

Human trafficking is a crime that reduces a person to a commodity to be bought, sold, exploited, and abused. It is an umbrella term that includes a variety of criminal practices, including forced labour, modern slavery, sexual exploitation, organ trafficking, child labour, child soldiering, and child marriage (Reitano 2017).

The International Organisation for Migration provides us with a definition of human trafficking: ‘the facilitation for money of largely voluntary illegal migration’. However, the United Nations, in summing up the Palermo Protocol, defined human trafficking as follows:

*‘The recruitment, transportation, transfer, harbouring or receipt of persons, employing the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or a position of vulnerability, or of the giving of payments or benefits to achieve the consent of a person having control over another person, for exploitation’*

(UN 2000; UNODC 2006).

In Africa today, and in some parts of the Indian subcontinent, the researcher argues that many people use culture and religion as a charade to break the law and this is true in cases of abuse of young women, especially those who are forced into marriages against their will.

### **Body parts trafficking**

It is widely reported that there is a high demand for human body parts in Malawi, Zambia, Mozambique, and South Africa. Within the South African context, the bodies of victims of so-called “Muti Murders” are mutilated by the removal – and subsequent sale of body parts such as the hearts, hands, eyes, and genitals. ‘These body parts are used allegedly for rituals aimed at increasing the wealth, health, or fertility of the buyer’ (Kenya 2000, Booyens 2011). The payment in these transactions is between US\$2 400 and US\$9 600.... There are various methods used to

make sure that the broker gets the organ or body parts from the victim. The most common methods are as follows:

- Kidnap, killing and sale
- The removal of organs by deception and coercion (victims are out of the promised payment)
- The removal of organs from bodies of people who have been prematurely declared brain – dead. ( United Nations 2008, Broughton 2004).

### **Transplant tourism**

The trafficking of human organs and body parts has become such a lucrative global market not only peculiar to South Africa alone. This market is euphemistically referred to as the “transplant tourism”. Transplant tourism is dependent on four variables namely:

- Desperate patients willing to travel great distances to get the transplant they need
- Mobile organ sellers
- Surgeon willing to break the law, and
- Organ brokers or middlemen

Next, the researcher explains the South African cultural practices of Ukuthwala.

### **UKUTHWALA**

The researcher explores the ‘Ukuthwala’ cultural practice in South Africa and argues that this practice contains elements of human trafficking, as it has been reported that young girls who cannot give consent are forced into marriages in South Africa. One point of view is that the tradition of Ukuthwala is indeed the forced marriage of young girls to adult men. Another school of thought concerning this cultural practice argues that the custom involves not marriage as such but a preliminary procedure that is employed to compel the family of the future bride to enter into negotiations for the conclusion of a customary marriage (Mwambene & Sloth-Nielsen 2011). The customary marriage is a mock abduction agreed by all parties involved (Koyana & Bekker 2007), where the bride-to-be is taken “by force” and kept at the residence of the future bridegroom’s father pending the marriage negotiations (Olivier et al., 1995).

The researcher argues that young children need to be protected by their families and the state. It is a child’s constitutional right to be protected by law. Both the family and the state have a moral duty to protect children under the UN declaration of the Rights of the Child, 1959. The right of a young girl to make a choice of their own who they marry must not be forced upon them. The state, religion, and family has no moral justification to impose force marriages on anyone. The researcher argues that we do not have to wait for others to tell us in Africa that this is a bad customary practice that must be done away with, especially as many of black South Africans know that ‘Ukuthwala’ promotes the abuse of children. The researcher argues that cultures are subject to change and most cultures that do not adapt to changes in the contemporary world would normally fade away with time. Practices that were accepted 200 years ago as cultural values may no longer be acceptable to many of us today. This line of argument must be taken seriously and taken into cognisance by policy-makers.

Ukuthwala, as the researcher understands it, was originally meant to be a means of finding a marriage partner in South Africa but it is now allegedly misused by some subscribers to this culture, and Ukuthwala is now practised in a very harmful way for children in South Africa (McQuoid 2009). A situation where children are forcibly removed from their parents to marry strangers without their consent may amount to abduction under South African law (see Sections 12 and 13 of the Sexual Offences Act of 1957). However, South Africa Customary law recognises those forms of Ukuthwala where the future bride consents to the Ukuthwala process as a legitimate means of marriage negotiations (Mwambene & Sloth-Niesen, 2011; Koyana & Bekker, 2007; Kruger & Oosthuizen, 2012).

The South African Constitution of 1996 provides us with a safeguard to ensure that the right of citizens to participate in cultural life is protected inconsistency with the Bill of Rights. Next, the researcher explains “labeling” as the theory informing the research.

## **METHODOLOGY**

The methodology by definition is the systematic, theoretical analysis of the methods applied to a field of study (Yesufu 2017). It comprises of the theoretical analysis and process used in the body of a research method design. The researcher relied on existing literature, case reviews, and several secondary data. The researcher subjected some of the secondary data information due to his ontological interpretations and standpoint. The researcher is aware of the limitations associated with over-reliance on secondary sources: ‘Secondary sources of data are usually of limited value because of errors that result when information is passed on from one person to another. However, they can be valuable in their own right in providing a partial commentary on the events by revealing the different viewpoints and cultural/social background of the sources’ (Silverman 2009).

Secondary data is a process of carrying out a systematic review of previous literature as it relates to the research topic. It relieves the researcher the burden of participation with research participants, who to identify, access to, and limited time frame available to conduct the research. Secondary data in the context of this study is limited to the following: data collected from previous qualitative studies; data collected may be shaped by the researcher's socio-cultural, political norms, and biases. The researcher’s main task was to ensure that the data analysed is not subject to any form of misinterpretation. In doing so, the researcher can rely on critical and reflective constant comparison of previous and present secondary data collected to arrive at an objective conclusion (Thorne, 1994; Fielding & Fielding 2000).

In this study, the researcher collected a more in-depth analysis of themes from both the primary study that appears to be relevant and to the present study. The researcher made use of reflexivity to be able to collect, identify, and relates the data collected to the socio-cultural political contexts of the study, which can also be relied upon to conduct future studies (Walters 2009). The researcher argues that secondary qualitative data is information that already exists in a written or audiovisual format. These include the following: government reports; newspapers; novels; diaries; pictures; television; and media output. One of the advantages of using secondary data for research is that it is easily available, cost-effective, and less time consuming for the researcher in gathering all the relevant information needed for the research (Smith 2008). Secondary data is easily identified by employing the use of manual thematic coding by the researcher.

Thematic coding allows the researcher to identify emerging relevant texts into distinctive themes they occur. The specifically identified themes are then arranged into a framework of ideas and analysed by the researcher. In other to do so, the researcher follows some basic guidelines as follows:

- The formulation of both previous and current data collected.
- Coding of re-occurring themes.
- Generating the themes resulting from the coding.
- Reviewing the themes using a descriptive approach based on existing knowledge of the research topic.
- Define and explain the meaning of the themes discovered.
- Analysing and writing up of the discovered themes with aims of the research and methodical approach in mind.

## **THEORETICAL FRAMEWORK**

The theory is a set of concepts linked together by a series of interconnected propositions in an organized way to explain a phenomenon. Labeling theory is sometimes referred to as “social reaction theory which is primarily concerned about how individuals or group identities are highly informed by the way that society or authority tends to categorise them as offenders. The offenders who have been referred to here in this study are human traffickers. With such categorization or labeling, an offender becomes a self-fulfilling prophecy...” (Tibbert 2012).

The concept of self-fulfilling prophecy” was developed by (Robert K Merton 1948). He defined self-fulfilling prophecy as, a false definition of the situational evoking a new behaviour which makes the original false conception come true” Merton explains how a belief or expectation, whether correct or incorrect may affect the way a person or a group will behave towards each other. For example, labeling someone a “criminal” and treating that person as such, may foster criminal behavior in the person who is subjected to the expectation. Previous labeling theorists have argued that for a person or group to be labeled as deviant(s), they are likely to assume certain characteristics associated with such labeling.

Labeling is a „process of tagging, identifying, segregating, making conscious and self-conscious...a way of stimulating, suggesting, expressing, and evolving only traits that are complained of” (Tannenbaum 1938).

### **Organised Crime**

Human trafficking belongs to the family of organised crime. Terrorism, fraud and money laundering, cybercrime, illegal arms sales, and drug trafficking are all part of the organised criminal world. The capacity to organise means that a person possesses desirable skills and some amount of knowledge to perform his/her role in society. The organised crime is when a person who plans his/her crime well in advance and does his/her market research to determine where his/her trafficked property will be sold and how much profit such a crime might generate when successfully executed. Organised crime is a borderless crime, carried out with elements of sophistication and accuracy. The modus operandi of organised criminals varies and they are not

known for leaving any clues behind; tracking their activities is problematic as they do not take place within the territory of one country alone.

This may involve dealing with several countries and sometimes includes a three-dimensional trade process starting from countries of origin, to transit countries and, finally, to destination countries. Organised criminals are known to develop good social networks of friends who occupy positions of economic and political power. In doing so, organised criminals carry out their illicit trade with impunity and sometimes enjoy some kind of protection from law enforcement officials.

### **Consent**

The Palermo Protocol provides us with the meaning of “consent” concerning human trafficking. Consent is defined as “voluntary or un-coerced agreement”. The researcher posited three controversial hypothetical questions as follows:

- i. Can a prostitute be raped?
- ii. Can a prostitute whose service has been paid withdraw his/her consent?
- iii. Can a child under 12 years of age consent to sex?

The researcher argues that the answer to the first two questions is ‘Yes’. First, a prostitute can be raped in law the moment she/he withdraws her/his consent to partake in any sexual activity; it does not matter whether the services have been paid for or not. Second, prostitutes have rights as human beings regardless of how much has been paid for their services; they are still juristic persons who are protected in law. A prostitute may withdraw her/his consent, for example, if she/he is no longer enjoying or willing to take part in any of the sexual acts proposed by the client, as long as the notice to withdraw such consent is sounded to the client clearly in a language he/she understands. If the client ignores this warning, the act may be seen as rape. In this hypothetical scenario, the client must wait for the prostitute to explain why she/he has withdrawn her/his services and discuss any refund due. One can safely argue that the answer to the third question is ‘no’ because, under South African law, a child under 12 years of age is not a consenting adult. The Palermo Protocol (2000) raises the age of consent to 18 years.

### **The Causes of Human Trafficking (The Pull and Push factor)**

Some of the identified ‘push factors’ concerning human trafficking that has emerged include the economic situation and personal characteristics of the human trafficking victim, and the characteristics of their families, home, community, and peer network (Oppong 2012).

#### **Push Factors**

- a. Individual characteristics

In terms of personal characteristics, a human trafficking victim is already a person who is vulnerable and lacks options due to his or her circumstances as opposed to the changes or dynamics in society (Kamala et al., 2002). Some of the victims may already be homeless or living

in shelters, uneducated, and unemployed. Others may be children who have run away from their families (Adepoju 2005; Pearson 2003).

The researcher argues that poverty has been a contributory factor in human trafficking. In South Africa and in most Western countries, where capitalism promotes competition, many citizens are disempowered and locked out of the mainstream of society. These citizens are likely to feel the strain of society more than others because of the stigma attached to being seen as a failure in one's community (Agnew 1991). The desperation to succeed against all odds may lead to the victim's willingness to offer themselves for trafficking (Fong 2004).

b. Ignorance lack of awareness

The promise of a better life by traffickers to escape poverty. Victims of human trafficking are sometimes deceived by a promise of better jobs and lucrative employment opportunities that do not exist by organised crime syndicates. In some instances, it is an act of desperation that makes one become a victim of human trafficking.

c. The curiosity of going abroad/ overseas

Many economic migrants equate traveling abroad as a precondition for success. In some instances, the pursuit of this economic dream may become a nightmare. First, it takes time for migrants to legally settle in their host countries. As many of the host countries have their economic woes exacerbated with high unemployment rates of their citizens.

d. Family and social networks

Most victims of trafficking are from broken or dysfunctional families where there is a high incidence of domestic violence and abuse. The researcher argues that the family remains one of the primary socialisation processes for all of us. The unstable family background may lead to a higher risk of vulnerability to human trafficking. The situation becomes more complex when the child is an orphan with no family ties to provide guidance or social bonds.

e. Extreme poverty

South Africa is one of the most unequal countries in the world. With nearly over 30% of its labour force out of work and the relics of uneven poverty made possible by the brutal apartheid regime. Black South Africans were marginalised and denied opportunities enjoyed by white folks. Many black South Africans live in abject poverty faced with the imminent trio factors of hunger, poverty, and disease. Human traffickers are often likely to turn to black poor community members and lure them into human trafficking victims becoming drug mules with a promise to get them out of poverty.

## **Pull Factors**

### a. Cheap labour

Human trafficking victims are often seen as a source of cheap labour by traffickers. Both capitalism and communism have provided a fertile ground for maximisation of profits and exploitation of workers across the globe.

### b. Sex trafficking – prostitution

Cases of human trafficking facilitated by victims' willingness to escape poverty via prostitution are well documented (Kamala et al., 2001; UNICEF 2006; United States Department of State, 2006; 2013). Italy has been a location for the transiting and destination countries for African prostitutes over the years, especially prostitutes trafficked from Eastern Europe and West African countries. The researcher argues that it is an irony that a country containing the Vatican can also be known as a prostitution destination or a haven for global prostitutes.

“Trafficking in women and girls for sexual exploitation is a shadow market valued at US\$ 7 billion annually. Women are trafficked to, from, and through every region in the world. This highly profitable trade poses a relatively low risk as compared with the trades in drugs or arms. The money-makers are transnational networks of traffickers and pimps who prey on women seeking employment and opportunities. These illegal activities and related crimes not only harm the women involved but also undermine the social, political, and economic fabric of the nations where they occur” (Hughes 2001).

### c. The quest for financial reward

The researcher argues that the dollarisation of the world and the quest for material gains, by all means, necessary have left us with a desperate and exploited generation. In 2015, African economies received - both from overseas and Intra African corridors – officially recorded remittances amounting to US\$ 66 billion. Remittances are used by migrants' families to meet daily subsistence needs, health, and education, but are also invested in land, homes, entrepreneurial activities, et cetera. Identifying ways to maximise the developmental effects of remittances, and improving remittance transfer mechanisms, are therefore topics of growing importance to Africa (African Union 2018).

Some migrants voluntarily enter prostitution because they want to succeed in a difficult world or know one or two persons from their communities who traveled abroad and came home with money within a very short period. The researcher argues that the impact of the health risks faced by prostitutes on their life spans needs to be highlighted to dissuade victims from willingly offering themselves for trafficking. Next, the researcher looks at some existing anti-human trafficking protocols, treaties, and laws.

### **International Protocol on Human Trafficking (Palermo Protocol, 2000)**

The Palermo Protocol places the onus on each member state to protect victims of trafficking in persons under Article 6 as follows:

- i. Each State Party shall protect the privacy and identity of victims of trafficking in persons ... by making legal proceedings relating to trafficking confidential.
- ii. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide for victims of trafficking in persons, in appropriate cases.
- iii. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including in appropriate cases in cooperation with non-governmental organisations, other relevant organisations and other elements of the civil society and, in particular, the provision of:
  - Appropriate housing
  - Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons understand;
  - Medical, psychological and material assistance; and
  - Employment, educational, and training opportunities.

The researcher argues that meeting some of the expectations of the Palermo Protocol appears to be difficult and unrealistic for three reasons. First, South Africa has not fully recovered from the experiences of the oppressive apartheid regime.

Second, the economic disparity between the mainstream and the marginalised is very wide. Many people, predominately blacks, coloured and Indians, are still trapped in squalor and vicious poverty. Third, a large number of South Africans continue to live in shacks in townships rife with crime, suffering an unemployment rate higher than most European countries and battling to overcome the HIV/Aids epidemic.

### **The African Union**

The African Union's Policy Framework for Africa (2018-2030) illustrates a holistic approach to migration. It recommends the following:

- Migration is governed by in an integrated manner through comprehensive, human rights, and gender-responsive national migration strategies and policies.
- African governments to incorporate migration policies and considerations into portfolios including education, labour markets, and health.
- Advocates that governments engage all relevant ministries/ departments in the formulation of migration policy.
- Diaspora engagements: brain drain and remittances
- Irregular migration; migrant smuggling, human trafficking, return, re-admission and re-integration 'national and international security and stability
- Forced displacement: refugees and asylum-seekers, internally displaced persons, protracted displacement, crisis prevention, management and conflict resolution, principles of non-discrimination, integration, and re-integration, and Stateless person.
- Migration and trade. (African Union 2018).

During the 25<sup>th</sup> Ordinary Summit of the AU Assembly in June 2015 in Johannesburg South Africa. A unanimous decision was reached by the Heads of State and government highlighting the urgency to “strengthen efforts to combat human trafficking and smuggling of migrants...through the effective implementation of existing international and regional frameworks”. Some of the key decisions taken were:

- Work towards the prevention of human trafficking and migrant smuggling
- Strengthening of protection and assistance to victims of human trafficking and smuggled persons.
- Enhancing the rule of law, prosecution, and border management

### **Southern African Development Community (SADC)**

Legislation and Policy Measures: To date, 13 out of 15 SADC Member States have specific legislation addressing the crime of human trafficking. Additionally, Member States have national strategic frameworks and action plans on human trafficking, standard operating procedures, and referral mechanisms, and guidelines to identify victims of human trafficking. While 86.7% of Member States have legislation in place, the implementation of their respective laws is still in the infancy stages, with most Member States yet to develop implementing regulations (SADC 2009).

All 15 SADC member states are parties to both the Convention and the Protocol, indicating their commitment to joining the global drive to combat the scourge. At the regional level, SADC member states adopted the 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009–2019) in 2009 (Government of Botswana & UNODC 2012).

South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South Africans and foreign nationals are subjected to human trafficking within the country. Children are trafficked mainly within the country, from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein. Girls are subjected to sex trafficking and domestic servitude; boys are forced to work in street vending, food services, begging, criminal activities, and agriculture. Nigerian syndicates dominate the commercial sex trade in Hillbrow and other areas, though local criminal rings and street gangs also organise child prostitution; Russian and Bulgarian crime syndicates operate in the Cape Town sex trade, and Chinese nationals coordinate the sex trafficking of Asian nationals. Traffickers control victims through intimidation and threats, including witchcraft, use of force, withholding of passports, debt bondage, and enforced use of drugs and alcohol.

Women and girls from China, Taiwan, Thailand, Cambodia, India, Russia, Ukraine, Moldova, Bulgaria, Brazil, the Democratic Republic of the Congo, the Republic of the Congo, Rwanda, Mozambique, Lesotho, Swaziland, and Zimbabwe are recruited for legitimate work in South Africa, but are sometimes subsequently subjected to forced prostitution, domestic servitude, or forced labour in the service sector or taken onward to Europe for forced prostitution. (USA Department of State 2013).

As long as the states of southern Africa act independently of one another, criminals will continue to exploit both this situation and the loopholes that exist between the different legislative

regimes. The harmonisation of legislation within the region will facilitate collaboration between member states to share intelligence and to take a proactive stance towards combating human trafficking.

### **South African Anti-Human-Trafficking Law**

The Republic of South Africa has several laws to combat human trafficking within and beyond the borders of South Africa. The research in this section looks at some of the legislation that existed before the Prevention and Combating of Trafficking in Persons Act 2013 came into force. Some of this legislation remains a significant component of South African law. The legislation is as follows:

- a. Prevention and Combating of Trafficking Persons Act, 2013
- b. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- c. Children's Act 38 of 2005
- d. Prevention and Combating of Corrupt Activities Act 12 of 2004
- e. National Health Act 61 of 2003
- f. Immigration Act 13 of 2002
- g. Prevention of Organised Crime Act 121 of 1998
- h. International Co-operation in Criminal Matters Act 75 of 1996
- i. Drugs and Drug Trafficking Act 140 of 1992

#### a. Prevention and Combating of Trafficking Act 2013

The preamble section of this Act recognises that 'the search for improved socio-economic circumstances and the demand for the services of victims of trafficking contribute to making persons vulnerable to becoming victims of trafficking'. The Act is justified 'since the South African common law and statutory law do not deal with the problem of trafficking in persons adequately, and since the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the right to human dignity, equality, the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, and not be treated in a cruel, inhuman or degrading way, the right not to be subjected to slavery, servitude or forced labour, and the right of children to be protected from maltreatment, neglect, abuse or degradation. The Objectives of the Act are as follows:

- Give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements;
- Provide for the prosecution of persons who commit offences referred to in this Act and for appropriate penalties;
- Provide for the prevention of trafficking of persons and the protection of and assistance to victims of trafficking;
- Provide services to victims of trafficking;
- Provide for effective enforcement measures;
- Provide for the co-ordinated implementation, application and administration of this Act, including the development of a draft national policy framework; and

- Combat trafficking in persons in a co-ordinated manner.

The Act defines trafficking in persons under section 4 (1) as any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, using

- A threat of harm
- The threat or use of force or other forms of coercion;
- The abuse of vulnerability;
- Fraud;
- Deception;
- Abduction;
- Kidnapping;
- The abuse of power;
- 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
- The direct or indirect giving or receiving of payments, compensation, rewards, benefits, or any other advantage.

Anyone targeting either the person or an immediate family member of that person or any other person in close relationship to that person, for any form or manner of exploitation, is guilty of the offence of trafficking in persons.

The researcher believes, having studied the provisions of the Act above, that it is a comprehensive piece of legislation. If the Act is properly implemented, human trafficking in South Africa will be combated successfully as the Act itself is undoubtedly a very useful piece of anti-human-trafficking legislation. All South Africa needs is an effective police service to enforce the law and establish robust and effective border control units to apprehend suspected traffickers and trafficked persons.

Chapter 2, section 9 (1) of the Act states that ‘A carrier who transports a person within or across the borders of the Republic, and who knows that the person is a victim of trafficking or ought reasonably to have known that the person is a victim of trafficking, is guilty of an offence’.

Section 9 (2) states that ‘A carrier who, on reasonable grounds, suspects that any of its passengers is a victim of trafficking must immediately report that suspicion to a police officer for investigation’. 9 (3) states that ‘A carrier who fails to comply with the provisions of subsection (2) is guilty of an offence’. 9(4) states that ‘A carrier is liable to pay the expense incurred or reasonably expected to be incurred in connection with the care, accommodation, transportation, and repatriation or return of the victim to his or her own country of origin or country or place from where he or she was trafficked, if the court finds, on a balance of probabilities, that the carrier has knowingly transported a victim of trafficking or ought reasonably to have known or suspected that it was transporting a victim of trafficking’.

Penalties under this Act vary from R100 million fine or life imprisonment to 15 years, 10 years, and 5 years in jail. The researcher argues that these severe sentences have sent a clear message to the world that South Africa is no longer a haven for human traffickers.

Next, the researcher looks at several pieces of South Africa legislation that existed before the passing of the Act explained exhaustively above.

b. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

This Act criminalises sexual abuse or exploitation comprehensively in a single statute. The Act criminalises conduct constituting trafficking in persons for sexual exploitation. The Act prohibits a person from trafficking any other person, without the consent of that person, for sexual exploitation. The Act provides that children below the age of 12 years are not able to consent validly, because their consent is not regarded as being given “voluntarily or without coercion”. This conflicts with the Palermo Protocol, which defines a child as any person under the age of 18 years (see Article 3 (d) Palermo Protocol, 2000).

c. Children’s Act 38 of 2005

One of the main objectives of this Act is to combat trafficking in children and to give effect to the Palermo Protocol 2000 (see Kassan, 2007; Kassan and Mahery 2009). The trafficking of children carries a maximum sentence of up to 20 years. In comparison with the Palermo Protocol, the Act added and criminalised the following unlawful acts: ‘debt bondage, forced marriage, child labour and the removal of body parts. The researcher finds the trade in body parts a despicable and callous crime and questions whether traffickers who deal in body parts are human beings from another planet. The sale of body parts for African medicine has become a very lucrative trade on the African continent.

d. Prevention of Organised Crime Act 121 of 1998

Organised crime involves the cooperation of several persons to commit crimes. Combating organised crime is a challenging matter because of the effective organisation of these criminal groups and because of their criminal expertise, resourcefulness, efficient use of the latest technology, and expansion over regions and even countries (Kroger & Oesthuizen, 2012). The Act covers crimes such as racketeering, gang-related offences, and money laundering, and it provides for asset forfeiture. The Act provides us with a definition of a criminal gang:

*“any formal or informal ongoing organisation, association, or group of three or more persons, which has as one of its activities the commission of one or more criminal offences, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity”.*

e. International Co-Operation in Criminal Matters Act 75 of 1996

This Act facilitates cooperation between South Africa and other countries in prosecuting criminal matters. A foreign state may request South Africa to execute a foreign confiscation order on its behalf. This enables the freezing of assets of organised criminals fleeing prosecution from their countries of origin and seeking a new country of domicile.

f. Drugs and Trafficking Act 140 of 1992

Criminal gangs who are involved in human trafficking are also known to deal in drugs and the illegal arms trade (Kreston 2007). Traffickers sometimes administer drugs to their victims to make them more compliant and submissive (Haynes 2004). The Act criminalises the possession of specific drugs in South Africa. Punishments for drug traffickers are severe and can be up to 25 years' imprisonment for trafficking cannabis, heroin, and morphine under section 17 of the Act. Next, the researcher introduces the reader to the impressive contributions made by both Molo Songololo and the Salvation Army as Non for Profit organisations in South Africa fighting against the trafficking of children and women.

### **Molo Songololo**

Molo Songololo is a Child Rights organisation based in South Africa. Molo Songololo influence resulted in the South Africa government setting up a National Inter-Governmental Task Team to combat Trafficking in persons. In 2003, it developed a National Plan of Action Against Trafficking in Persons, adapting and implementing a National 2010 FWC Child Protection Plan as well as drafting a National Policy Framework Against Child Exploitation, 2011. The organisation also participates in various national and provincial government and NGO forums concerning the rights and protection of children ([www.MoloSongololo.com](http://www.MoloSongololo.com)).

### **The Salvation Army**

The Salvation Army is one of the Non- Governmental Organisations at the forefront of anti-human trafficking campaigns in South Africa. It provided us with an insight into the extent of human trafficking in South Africa as follows:

- It is estimated that 30,000 children are being prostituted in South Africa
- Half of these children are younger than 14 years' old
- Children as young as four are prostituted
- There are up to 10,000 child prostitutes in the city of Johannesburg alone
- Up to 1,000 girls are trafficked to South Africa from Mozambique each year
- The Eastern Cape, Mpumalanga, and Limpopo are the main recruitment areas for victims of human trafficking.

([www.salvationarmy.org.za](http://www.salvationarmy.org.za))

## **RESEARCH FINDINGS**

The researcher argues that more NGO's that deal with human trafficking is needed in South Africa to successfully combat human trafficking.

## **Human trafficking challenges in South Africa**

Informed by several existent literature on human trafficking, the researcher highlights some of the findings in the fight against human trafficking. They are as follows:

- Lack of comprehensive migration data in the Africa continent. Countries have fragmented data which makes it complex for reliable information to be shared with other members.
- Inadequate resources and budgetary allocations. Human trafficking is not seen as a government priority. Education, housing, and Health remain the main focal object for many African and developing countries of the world.
- Competing national interests amongst African countries instead of working in collaboration and partnership to combat human trafficking through regional and international bodies like ECOWAS, SADC, AU, EU, and the UN.
- Economic benefits of migration are often over emphasised more than the potential risks, loss of lives resulting from human trafficking. It is reported that migrants annually send remittances estimated over \$20- 35 billion dollars from overseas to their countries of origin.
- Identification of the incessant effects of the push and pull factors of human trafficking with no possible solutions.

## **DISCUSSION**

The researcher argues that for human trafficking to be combatted successfully, there has to be some form of collaboration by different countries as human trafficking is an organised and borderless crime. First, there has to be an establishment of a single database for information sharing for not only amongst African countries alone but globally. Organisations such as the International Criminal Police Organisation (INTERPOL) must become more proactive with all countries for effective intelligence operations that will disrupt the activities of human traffickers. Such law international law enforcement collaboration must be benchmarked by the number of successful convictions of human traffickers. Second, the researcher believes that if African states address the issue relating to poverty alleviation, youth employment, invest more in education, science, and technology for their citizens and with tougher punishment for human traffickers, human trafficking will be drastically reduced.

## **CONCLUSION**

Global inequality, the lack of employment and decent work, poverty, conflict, gender inequalities and discrimination, terrorism, and climatic pressure continue to drive people to search for a better life abroad. Human trafficking is illegal in most countries of the world. Despite global efforts by the international agencies to curb it, national governments' efforts to combat it bypassing numerous anti-trafficking laws, and the important role played by non-governmental organisations, human trafficking persists; billions of dollars are made annually from the illicit trade of human trafficking. Human trafficking is a part of the organised crime family tree, carried out with a degree of sophistication to evade law enforcement agencies. Human trafficking is seen as modern-day

slavery which depicts man's inhumanity to his fellow man. It is a fact of life that highlights the nasty side of humanity, and its practitioners are prepared to profit from the pain and suffering of their victims. The researcher argues that, without a uniform approach by signatories to the Palermo Protocol to combat human trafficking, it will be difficult to eliminate it.

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