

**TSIRELEDZANI:
UNDERSTANDING THE DIMENSIONS OF HUMAN
TRAFFICKING
IN SOUTHERN AFRICA**



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EXECUTIVE SUMMARY

INTRODUCTION

This report provides the first comprehensive assessment of human trafficking in South Africa. This research study was conducted by the Human Sciences Research Council (HSRC) on behalf of the 'Programme of Assistance to the South African Government to Prevent, React to Human Trafficking and Provide Support to Victims of Crime'. The programme of assistance forms part of South Africa's National Strategy to Combat Human Trafficking through prevention, response and support for victims, known as TSIRELEDZANI. The programme of assistance is being implemented by the Sexual Offences and Community Affairs (SOCA) Unit of the National Prosecuting Authority (NPA).

The overall objective of South Africa's National Strategy on Human Trafficking is to ensure full compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter, 'Palermo Protocol'), which supplements the United Nations Convention against Transnational Organised Crime. Compliance includes developing comprehensive legislation under-pinned by a victim-centred empowerment approach, taking full account of the Victim's Charter¹ as well as relevant South African legislation.

The specific purposes of the Tsireledzani Programme are to:

- (a) contribute to compliance with the Palermo Protocol requirements,
- (a) increase capacity to deal with trafficking, and
- (a) enhance inter-sectoral coordination and cooperation.

The present study addresses Result 1 of the programme of assistance to the South African government: DEEPENED KNOWLEDGE AND UNDERSTANDING OF TRAFFICKING, and presents findings on human trafficking in South Africa obtained from research undertaken from December 2008 to March 2010. This project constitutes one of the four pillars of the Tsireledzani programme: the other three are Cooperation and Coordination; Capacity Building and Development; and a Prevention and Public Awareness Strategy.

South Africa's response to human trafficking

South Africa's commitment to addressing human trafficking has given rise to a number of initiatives. The Palermo Protocol was signed on 14 December, 2000 and ratified on 20 February, 2004. The Prevention and Combating of Persons Bill is awaiting ratification. Currently, the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) criminalises certain elements of the Protocol's definition of human trafficking.

The Tsireledzani Programme, led by the NPA, answers the call for a collaborative, multi-agency, long-term co-ordinated strategic action. A multi-sectoral National Task Team has been established which includes civil society representation and international organisations. A National Action Plan is in the developmental stage and is expected to be adopted in December 2010.

In terms of law enforcement responses, a Human Trafficking Desk has been established within the Organised Crime Unit of the South African Police Services and multi-stakeholder Provincial Task Teams² are being rolled out in the provinces.

¹ The Service Charter for Victims of Crime in South Africa (the Victim's Charter) is an important instrument elaborating and consolidating rights and obligations relating to services applicable to victims and survivors of crime in South Africa. <http://www.npa.gov.za/files/Victims%20charter.pdf>

² The first Provincial Task Team established in KwaZulu Natal has been cited as an example of best practice.

Government's commitment to a victim centred approach is demonstrated, for example, by the Victim's Charter, a collaborative initiative developed in response to Government's pledge to implement measures aimed at protecting and promoting the rights of victims in the criminal justice system.

In addition, a Victim Empowerment Programme (VEP) is currently being led by the Department of Social Development with the active participation of the Justice Crime Prevention Structure (JCPS) and the departments of Health and Education. The VEP has a dedicated sub-directorate: Transnational and Violent Crimes, which addresses the needs of victims of crime and violence, including victims of human trafficking.

The Department of Social Development also has two directorates: Child Protection and International Social Services (ISS). Child Protection is involved in implementing a strategy for the prevention of child trafficking while ISS assists and supports minors who have been trafficked, during the repatriation process.

Finally, the Thuthuzela Care Centres, established by the NPA, have been internationally recognised as models of best practice in the care and treatment of women and children who have experienced sexual violence, particularly rape.

Motivation for the research

South Africa was assigned a Tier 2 Watch List status for the years 2005 to 2008 in the annual US Department of State (USDS) *Trafficking in Persons Reports*. The USDS found that the South African government did not fully comply with the minimum standards for the elimination of trafficking but acknowledged that the country was making significant efforts to do so. According to the 2007 *Trafficking in Person Report*, South Africa was placed on Tier 2 Watch List for a fourth consecutive year for its failure to show increasing efforts to address trafficking over the previous years.³ However, in 2009 the country was removed from the Watch List in recognition of the country's significant efforts to bring itself into compliance with minimum standards based on commitments by South Africa to take additional steps the next year.⁴

Constructive action is impeded, however, by a dearth of empirical research on trafficking in South Africa, southern Africa and Africa in general. The limited number of studies that have been conducted suggest that South Africa is a key destination and, to a lesser extent, a country of origin and transit for people trafficked to and from Africa and globally. Trafficking within the country has also been noted. However, while varying (and often alarmist) statistics pertaining to human trafficking are sometimes reported in the media and by civil society institutions, reliable information on the scale, direction and nature of trafficking remains sparse.

This study provides a more detailed national picture of human trafficking in South Africa, while also examining issues and challenges in relation to policy, strategy formulation and implementation. While South Africa was the main focus of the study, Lesotho, Swaziland and Zimbabwe were also included in this research.

The objectives of the study were to:

1. Identify trafficking trends in order to develop appropriate responses;
2. Identify national legislative measures, policy frameworks and women's and children's rights instruments;
3. Analyse counter-trafficking responses regarding human trafficking in the SADC region and other countries with comparative features;

³ In 2007 the US Department of State reported that the South African government provided inadequate data on trafficking crimes investigated or prosecuted or on resulting convictions or sentences. In addition, it did not provide information on its efforts to protect victims of trafficking and continued to deport and/or prosecute suspected foreign victims without providing appropriate protective services.

⁴ The tier system used by the United States Department of State's Trafficking in Persons project is detailed in Chapter Four.

4. Identify the profile of the victims and characteristics and motives of the agents in human trafficking;
5. Identify the purposes for human trafficking and the key driving factors;
6. Identify socio-economic aspects of the demand and cultural values and practices influencing human trafficking;
7. Identify the interrelation between human trafficking and migration relation issues in the context of globalisation;
8. Identify the linkage between organised crime networks and corruption, and human trafficking;
9. Identify indicators for a national Trafficking Information Management System ;
10. Make recommendations on the outcome of the above results.

Research design and methodology

For this research, a multidisciplinary research team of experts was appointed, representing the fields of Anthropology, Criminology, Law, Migration/Demography, Organised Crime, Psychology and Sociology. Quantitative and qualitative data were drawn from surveys, interviews, focus group discussions, and documentary and open-source materials.

Key respondents included officials from law enforcement, immigration and customs, and relevant embassies; representatives of service providers, government, non-governmental and international organisations; victims of trafficking; and other relevant parties thought to have information on trafficking in persons. In keeping with the call for 'innovative methodologies' to research what is largely a hidden crime, a component of the research was intelligence-led.

Preliminary workshops were conducted with researchers and field workers in order to devise a range of appropriate methodologies. Training was conducted with researchers and fieldworkers on the definition of trafficking. Data collection instruments were designed and submitted for approval by the HSRC Ethics Committee.

Most of the fieldwork for the study was conducted between September 2009 and December 2010.

Key findings

South Africa is in the beginning stages of mapping out the dimensions of human trafficking. However, both anecdotal data and the limited quantitative data obtained for this study reveal a portrait of trafficking that warrants intervention on all fronts.

The key findings of the research are highlighted here.

1. *Unclear scale of the problem*

The criminal and hidden nature of human trafficking presents many challenges to empirical research, particularly collection of accurate statistics. The lack of official systems for recording human trafficking cases further impedes compilation of the quantitative data required to make an accurate assessment of the problem in South Africa. As this is a new area of empirical research, estimates at this point would not be methodologically advisable.⁵ Hence no attempt is made here to estimate the actual size of trafficking streams into South Africa and only the major characteristics of the practice are highlighted.

⁵ The need for accurate data to guide the allocation of resources has given rise to conflicting positions between those who argue that the numbers must be established *before* resources are allocated and those who take the view that processes, procedures and mechanisms must be initiated *in order* to determine numbers. The questions with which we must grapple are: How big must the problem be to warrant intervention? Are resources justified in relation to other offences where numbers are bigger?

2. *Trafficking streams*

A number of trafficking flows into South Africa have been identified. The four major streams are: (1) trafficking to South Africa from outside of Africa; (2) trafficking to South Africa from within Africa; (3) trafficking within the national borders of South Africa; and (4) trafficking that uses South Africa as a transit point to other countries. A fifth stream, South Africans trafficked abroad, appears to be smaller.

o *Trafficking to South Africa from outside of Africa*

South Africa is a destination country for long-distance flows for people (mainly women) trafficked from Thailand, Pakistan, Philippines, India, China, Bulgaria, Romania, Russia and the Ukraine. The main point of entry for this trafficking stream is OR Tambo Airport in Johannesburg.

o *Trafficking to South Africa from other African countries*

Trafficking of persons to South Africa from within the continent presents a more varied scenario. Trafficked persons from within Africa are trafficked across the extensive land borders of the country. The major African countries of origin are those immediately adjacent to South Africa, primarily Mozambique and Zimbabwe, but also Malawi, Swaziland and Lesotho. Victims of these short-distance flows comprise mostly women, girls and boys trafficked for a variety of purposes. Longer-distance trafficking involves victims trafficked from the Democratic Republic of Congo, Angola, Burundi, Ethiopia, Senegal, Tanzania, Uganda, Rwanda, Kenya, Cameroon, Nigeria and Somalia.

o *Domestic trafficking*

The largest movement of persons trafficked within the national borders of South Africa is from rural areas to cities. Women, girls and boys – and to a lesser extent, men – are the targets of traffickers for prostitution, domestic servitude, forced labour, begging, drug trafficking and criminal activity.

o *South Africa as a transit country*

South Africa is not only a destination point for the trafficking of persons, but has also been identified as a transit country for victims trafficked through Lesotho and Swaziland to other foreign destinations.

o *South Africans trafficked abroad*

Trafficking out of South Africa is much less voluminous than trafficking into the country. The International Organisation for Migration (IOM) in Pretoria recorded eight cases of trafficking from South Africa between January 2004 and January 2008. Destination countries include Ireland, Zimbabwe, Israel, Switzerland and the Netherlands. There were also cases of women being trafficked to Macau.

3. *Victims of trafficking*

Evidence available to this study confirms that women constitute the largest group of victims in all streams of trafficking.⁶ Victims of intercontinental trafficking are usually between the ages of 19 and 50 and are trafficked predominantly for sexual exploitation. Women also constitute the largest group of victims trafficked from within the continent and within national borders.

Young girls feature prominently in all trafficking streams. The demand for under-age girls for purposes of sexual exploitation is a disturbing feature of the South African trafficking landscape. Reasons for this demand

⁶ These findings mirror the findings of the global situational analysis study conducted by UNODC.GIFT (2008)

include the perception that young girls pose less of a risk in terms of HIV and also that they represent the 'sexual desirability of youth'.

Very little is known about the trafficking of men and boys, but this research found strong evidence for the trafficking of men and boys from Lesotho for illegal mining in the Free State and Northern Cape (mostly to Kimberly and Welkom), involving sophisticated supply chains that include middlemen called 'cables' because of their role in linking demand and supply. Young boys are also trafficked to smuggle drugs and for other criminal activities.

4. Forms of exploitation

In the course of the investigation, many forms of exploitation were identified, including trafficking for prostitution, pornography, forced marriage, domestic servitude, forced labour, begging, and criminal activity including drug trafficking.

Cape Town, Durban, Johannesburg and Port Elizabeth are believed to be primary destinations for underage sex tourism, involving children between 10 and 14 years of age. This pattern indicates an international component, in which people seeking sex tourism travel to developing countries looking for anonymity and vulnerable children who are available for prostitution.

Interviews with labour inspectors suggest that labour exploitation of migrants is commonplace. Migrants (frequently undocumented) from South Africa's neighbouring countries and further afield are employed in domestic services and in the agricultural, security, hospitality and retail sectors. Their vulnerability is often exploited by employers and unscrupulous labour brokers. There has also been an increase in female migration from rural to urban areas within the country in recent years. These women tend to be employed in less-skilled jobs, particularly domestic work in urban areas, with many cases of domestic servitude having been identified.

Intelligence-led investigation revealed the trafficking of body parts for muti and religious rituals. Albinos were identified as vulnerable to human traffickers for the harvesting of body parts, due to the belief that a 'white' skin has potent powers. Research also uncovered the trafficking of people, sometimes children, for ritual sacrifice by satanic cults.

5. Traffickers

Perpetrators of human trafficking include a wide range of participants, including international and national organised crime syndicates, less well-organised local networks and family members. Parents have been identified as being involved in trafficking or colluding with traffickers, sometimes as a result of their ignorance of a trafficker's intention or sometimes with knowledge that their child will be exploited.

Men make up the majority of traffickers, whether through transnational crime syndicates or looser local networks. While globally, women are heavily involved in human trafficking, this study found that the woman's role is more commonly that of intermediary rather than primary perpetrator.⁷

Transnational trafficking is driven by networks situated both in source countries and in South Africa as the destination country. Perpetrators and intermediaries involved in the international trafficking stream to South Africa include large organised-crime networks from Eastern Europe, South East Asia and other African countries. South African nationals have been identified as having close ties with some of these syndicates. These groups appear to be very well organised, often with networks that are able to provide victims with travel documents and visas. Victims are often recruited in the country of origin by female nationals. Intermediaries are often persons known to the victims. The same criminal syndicates involved in international trafficking are often involved in domestic trafficking as well. Diaspora communities are also channels for the trafficking of victims (often family members) into the country for exploitation.

⁷ The UNODC.GIFT (2008) findings reveal that, globally, women constitute the largest group of traffickers.

Trafficking from other African countries involves both larger networks and looser local networks like taxi and truck drivers. Truck drivers often act as links in the trafficking chain that supplies sex workers to 'receptionists' for brothels in the SADC region.

Domestic trafficking also involves a variety of perpetrators ranging from crime syndicates, to informal local networks, to family members. The domestic trafficking of children is often perpetrated by close family members, including the parents themselves.

A number of 'enablers' are involved in the illegal human movement from Zimbabwe into the neighbouring countries of Botswana, South Africa, Mozambique and Zambia. *Malaichas* (drivers who help people cross the borders illegally) or *gumagumas* (gangs which prey on migrants trying to cross the border on foot) are well known as smugglers and are also involved in trafficking activities, especially the trafficking of children. Members of the Zimbabwe population have been forced to mine for diamonds in the Marange region.

Within Zimbabwe, youth militias of the Zimbabwe African National Union (ZANU) have been identified as traffickers who have abducted women and girls (especially opposition supporters) for sexual and domestic servitude at command bases.

6. *Links to other illicit activities*

A strong tie between trafficking and other criminal activities is suggested in some cases. Trafficking victims, particularly women who have been trafficked for sexual exploitation, are often involved in ancillary criminal activities including the use and distribution of narcotics to clients. In many cases, the women are made dependent on drugs to ensure their compliance and reduce the possibility of their being able or wanting to escape. Young boys are also trafficked to distribute drugs.

The link between trafficking and narcotics is also evident in the activities of Cape Town gangs who fight for control of the local drug trade, and the trafficking of young boys and girls. Debts incurred by households borrowing money from these gangs are settled through the pimping of debtors' children for prostitution and drug trafficking.

7. *Enabling factors*

A number of factors enable the trafficking of people across national borders. The collusion of border and other immigration officials is a key factor facilitating trafficking. Syndicates exploit circumstances at border posts where lax border controls and vulnerability to bribery enable the illegal transportation of a variety of goods. South Africa's extensive land borders, which are largely unpatrolled, also allow easy access into the country.

8. *Vulnerabilities and cultural practices*

Findings of this study confirm general assumptions that poverty and economic inequality are primary factors making people vulnerable to deception and exploitation. Poverty and poverty-related problems are severe in Southern Africa. Youth poverty is fuelled by the scarcity of jobs. Survival imperatives and desperation make young people susceptible to being recruited into illegal activities or exploited.

Undocumented migrants, driven by economic need, are more generally exposed to human rights violations and often experience discrimination from the local population, while receiving little protection from law enforcement officers.

Traditional norms like family patronage in extended families may sometimes increase rather than decrease the vulnerability of children to exploitation and abuse. Young girls in both rural and urban settings are sometimes recruited by relatives, who force them to work as domestic servants, or exploit them for other forms of labour or sex work.

Deeply-rooted social and cultural practices buttress the unequal status of women and children. Practices which increase their vulnerability include, for example, the Zimbabwean practice of *kuripi ngozi* (appeasing the dead spirits) where a member of the family, usually a girl, is married without consent and the use of young boys in Lesotho for herding and *chobeliso* (marriage related abductions). In addition South African traditional practices, such as ukuthwala – the abduction and forced marriage of young girls – which has been identified as taking place in Lusikisiki in the Eastern Cape, and even virginity testing may put women and girls at risk. While the stated aim of virginity testing is to encourage chastity for purposes of marriage and curbing HIV, sex traffickers are alleged to monitor virginity testing ceremonies to identify those who have been proved to be virgins.

9. *The link between trafficking and HIV/AIDS*

A link between trafficking and HIV/AIDS is assumed, due to the vulnerability of victims and the illegal and covert nature of the trade in human beings, but it is not yet documented. Consequently, nothing concrete is known about the prevalence of HIV/AIDS among trafficking victims in South Africa. Interviews conducted for this study revealed that trafficking victims seldom knew or disclosed their HIV status to service providers. The double stigma of a positive HIV status, together with the status of having been trafficked for prostitution, is a potential obstacle to establishing the prevalence of HIV/AIDS among trafficked women.

10. *Victim assistance*

Regarding victim assistance, this study focused on service providers specialising in this area. Research conducted with shelter managers revealed, however, that they have serviced only a limited number of trafficking victims. In a few cases, it appeared that shelters initially over-reported the numbers of victims they claimed to be assisting, as their own documentation indicated lower numbers.

Regarding the quality of their service delivery, shelters reported a lack of specific skills to deal with trafficking cases and a need for more human resources, mostly social workers and psychologists. They also expressed a need for integrated multi-sectoral services to provide, inter alia, legal, mental and physical health care focused on individual needs. They noted that services are currently fragmented as victims are moved around among service providers and shelters.

Respondents reported an urgent need for more shelters and safe houses and for different types of shelters to suit the stage of recovery of the victim. These included ‘reception’ shelters, longer-term homes and halfway or reintegration shelters.

While conducting research, three general problems were identified that inhibit the effective combating of human trafficking:

o *Limited understanding of trafficking*

Interviews revealed that there was considerable ignorance about human trafficking, in both lay and professional quarters. No clear definition of trafficking is recognised across sectors, including among prosecutors, immigration officials and service providers. The notion of trafficking is often confused with smuggling, and is generally conflated with prostitution, sexual abuse or labour abuse. It is possible that anti-trafficking campaigns being run by the government are raising awareness among the general public, however data on this trend has yet to be compiled. The NPA’s Tsireledzani Programme has tried to raise awareness by providing training to over a thousand government officials, some legal NGOs, and members of the media. In addition there were other awareness-raising programmes conducted by civil-society bodies in the run-up to the 2010 FIFA World Cup, which may have contributed to public awareness.

o *Denial of the problem*

This study found a degree of denial that human trafficking exists within some sectors. For instance, some embassies emphatically denied that their nationals were being subjected to human trafficking and refused to grant interviews. Others, however, cooperated fully.

o *Discomfort and fear*

A discomfort with the nature of the problem was also sometimes evident. Some South African government officials agreed to be interviewed only on condition of anonymity and were clearly anxious about talking about human trafficking. The reasons for this anxiety could be multiple, but it nevertheless constitutes a major challenge for empirical research.

9. *Research challenges*

Three major challenges impacted on the research:

- *Scope of project:* The time allotted for a project of this scope was insufficient. Before fieldwork could commence, workshops had to be conducted with researchers to arrive at appropriate methodologies; researchers and field workers had to be briefed by the IOM on the definition of trafficking; and the data collection instruments had to be designed and submitted for acceptance by the HSRC Ethics Committee. The lack of time prevented a more extensive investigation in many cases.
- *Difficulties in accessing key South African government informants:* Researchers experienced serious difficulties and delays in accessing key informants in government departments, despite letters of introduction from the NPA. These delays significantly curtailed the research, for example permission was never received to conduct formal interviews with South African Police Service officials and the Department of Home Affairs only granted permission to interview its employees in January 2010. In addition Government databases listing contacts, which were needed for survey and interview purposes, were not available.
- *Lack of official data:* Knowledge of trafficking in South Africa still suffers from a serious lack of hard data. South Africa is not collecting even basic national-level data, which will facilitate insight into the national situation. The overall lack of systematically gathered quantitative data curtailed efforts to provide sound estimates of any aspect of trafficking.

These research challenges had varying impacts on the research conducted and the data therefore does not provide full coverage of the trafficking landscape. Di Nicola (2007: 49) points out, however, that knowledge acquired through research develops progressively and sometimes slowly. This is particularly the case in the field of human trafficking and this exploratory study was no exception. This study has provided a more comprehensive understanding of human trafficking and its ramifications than any previous research has done. This will provide a baseline for future research initiatives.

10. *Conclusion*

The primary value of this report has been to assess available information on human trafficking, to identify gaps in our knowledge of the practice, and to suggest ways in which our knowledge and understanding can be improved. Much of the data gathered supports the findings of previous studies.

However, the overview gained through this study signals an urgent need for national-level data. One primary goal should be to create a database that can provide stakeholders with essential quantitative information that can underpin effective interventions and ultimately allow for regional and international comparison. Any response to the 'invisible challenge' of human trafficking must involve government, NGOs and civil society.

Detailed recommendations arising from the study's findings and from the Consultative Workshop held in Pretoria (15-16 February 2010) are provided in Chapter 11, but broad recommendations include the need for :

- a comprehensive stand-alone law⁸ on trafficking in persons;

⁸ The draft Prevention and Combating of Trafficking in Persons Bill was brought before Parliament on 16 March 2010.

- a trafficking information management system;
- more extensive and accelerated skills training for different stakeholders and front-line personnel;
- accelerated media and information campaigns that reach rural and urban communities, ports of entry, and transit sites (particularly with reference to the impending FIFA World Cup);
- initiatives to reduce vulnerability among those most at risk; and
- continued and more in-depth research, particularly of a longitudinal nature, to monitor the effects of interventions; and
- the mainstreaming of trafficking into secondary and primary school curricula.

LIST OF ABBREVIATIONS & ACRONYMS

ADDC	Association of Defenders of Child Rights
AFU	Asset Forfeiture Unit
AIDS	Acquired auto-immune deficiency syndrome
ATTO	Anti-Trafficking Task Order
AU	African Union
AUC	African Union Commission
BPM	Brigade pour la Protection des Mineurs (Malawi)
CARA	Criminal Assets Recovery Account
CAS	Crime Administration system
CASE	Community Agency for Social Enquiry
CATW	Coalition on Trafficking in Women
CBO	Community Based Organisation
CEDAW	Committee on the Elimination of Discrimination against Women
CDE	Centre for Development and Enterprise
CEO	Chief Executive Officer
CGE	Commission for Gender Equality
CGPU	Child and Gender Protection Unit (Lesotho Mounted Police)
CORMSA	Consortium for Refugees and Migrants in South Africa
CRC	Convention on the Rights of the Child
CT	Counter trafficking
CTOC	Transnational organised crime
DAW	Division for the Advancement of Women
DCIM	Data Collection and Information Management
DoE	Department of Education
DoH	Department of Health
DoHA (or DHA)	Department of Home Affairs
DoJCD	Department of Justice and Constitutional Development
DoL	Department of Labour
DoP	Department of Police
DoSD	Department of Social Development
DoT	Department of Tourism
DoWCPD	Department of Women, Children and People with Disabilities
DPP	Director of Public Prosecutions
DRC	Democratic Republic of Congo
DSD	Department of Social Development
ECOWAS	Economic Community of West African States
FAAST	Faith Alliance against Slavery and Trafficking
FWC	FIFA World Cup
FBO	Faith Based Organisation
FIFA	Fédération Internationale de Football Association
GDP	Gross domestic product
GGA	Girl Guides Association

GIFT	Global Initiative to Fight Human Trafficking
HAPSPA	Home Affairs, Public Safety and Parliamentary Affairs (Lesotho)
HIV	Human immuno-virus
HRC	Human Rights Commission
HSRC	Human Sciences Research Council
IC	Inter-sectoral committee
ICMPD	International Centre for Migration Policy Development
IDMT	Inter Departmental Management Team
ILO	International Labour Organisation
IOM	International Organisation for Migration
LCCL	Leadership Conference of Consecrated Religions
LCCU	Lesotho Child Counselling Unit
LOM	Land occupation movement (Zimbabwe)
LMPS	Lesotho Mounted Police Services
LSCF	Lesotho Save the Children Foundation
MLA	Mutual Legal Assistance Agreement
MoU	Memorandum of Understanding
MOWCD	Ministry of Women's Rights, Child Development, and Family Welfare (Mauritius & Malawi)
NAP	National Action Plan
NDPP	National Director of Public Prosecutions
NGO	Non Governmental Organisation
NIA	National Intelligence Agency
NPA	National Prosecuting Authority
NRM	National Referral Mechanism
NTT	National Task Team
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Co-operation in Europe
OWP	Office for Witness Protection
PFPU	Police Family Protection Unit (Malawi & Mauritius)
PSC	Program Steering Committee
SA	South Africa
SABC	South African Broadcasting Corporation
SACBC	Southern African Catholic Bishops' Conference
SACTAP	Southern African Counter Trafficking Assistance Programme
SADC	Southern African Development Community
SAFA	South African Football Association
SALRC	South African law Reform Commission
SANTAC	Southern African Network against Trafficking and Child abuse
SAPS	South African Police Service
SOCA (1)	Sexual Offences and Child Abuse
SOCA (2)	Sexual Offences and Community Affairs
SOPS	Standard Operating Procedures
StatsSA	Statistics South Africa
STD	Sexually Transmitted Disease

STI	Sexually Transmitted Infection
TCC	Thuthuzela Care Centre
TdH	Terre des Hommes
TECL	(Programme) Towards the Elimination of the worst forms of Child Labour
THB	Trafficking in Human Beings
TIMS	Trafficking Information Management System
TIP	Trafficking in Persons
TOC	Table of contents
TRM	Transnational Referral Mechanism
TTOC	Towards the Elimination of the worst forms of Child Labour
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
US	United States
USA	United States of America
USAID	United States Agency for International Development
VoT	Victim of Trafficking
VSU	Victims Support Unit (Zambian Police)
WLSA	Women and Law in Southern Africa Research and Education Trust
ZANU	Zimbabwe African National Union
ZAR	South African Rand
ZPS	Zambian Police Service

CHAPTER ONE: INTRODUCTION

1.1 MOTIVATION FOR THE STUDY

Although the forced movement of people for exploitative purposes has taken place for centuries, only in the last decade has the question of human trafficking come to the forefront of international policy and research agendas. Human trafficking re-emerged as an issue due to concern over changing migration flows, HIV/AIDS, child prostitution and child sex tourism; while the revitalisation of the feminist movement also had an effect (Nkiwane & Muso 2007). Adepodju (2005: 75) points out that until the late 1990s when activists, the media and non-governmental organisations (NGOs) began raising the alarm, very little had been written on human trafficking in Africa. While international literature on the topic has been growing exponentially, only a small portion of these studies have focused on Africa and an even smaller proportion on southern Africa (Laczko 2005: 8). Di Nicola (2007: 49) further argues that, while in the last decade there have been numerous policy interventions to curb traffickers and assist victims, the current body of knowledge on trafficking is not based on strong, substantiated research work.

Better knowledge is vital to ensure adequate prevention of the practice of human trafficking, the protection of people who have been trafficked and the provision of assistance to them, as well as the prosecution of criminals. Research is necessary to gain a more comprehensive picture in several key areas: the prosecution of criminals; the scope of the problem, including numbers of trafficked persons; the characteristics of trafficked persons and the conditions that render them vulnerable to the practice; and the identity, techniques, routes and financial gains of the traffickers. Ongoing research is required to establish whether the problem is escalating and under what conditions. It is also essential to monitor and evaluate efforts to address the basic international three-pronged approach of prevention, prosecution and protection in order to assure that funded programmes are in fact effective (UNODC.GIFT 2009: 6; UNODC 2008: 14).

South Africa has been identified by law enforcement agencies and research institutions as one of the countries in southern Africa that is a key destination. It is also, to a lesser extent, a country of origin and transit for people trafficked to and from Africa and globally.

The country was assigned a Tier 2 Watch List¹ status for the years 2005 to 2008 in the annual US Department of State *Trafficking in Persons Reports*. A combination of geographical, economic and social conditions makes South Africa susceptible to both international trafficking and trafficking within national borders. Occupying the southern tip of Africa, South Africa has a coastline of 2 798km and shares borders with Namibia in the north-west, Botswana and Zimbabwe in the north and Mozambique in the north-east. Lesotho and Swaziland lie within South Africa's borders. While varying and often alarmist statistics are reported in the media and by civil society institutions (particularly in the run-up to the 2010 World Cup), little is known about the scope and characteristics of human trafficking in either South Africa or southern Africa. While this study draws on previous studies of human trafficking in South Africa and the region, the evidence base of many of these studies is problematic and needs to be expanded and improved through more systematic investigation and analysis.

In this context, the National Prosecuting Authority commissioned the Human Sciences Research Council (HSRC) to undertake a broad study of human trafficking in South Africa. The goal was to supply a stronger knowledge base upon which Government and other stakeholders can develop national frameworks, structures, policies and processes to address the problem. This project was originally scheduled for the period December 2008 to December 2009. Fieldwork, however, began in June 2009 and continued until January 2010.

The objectives of the study are to:

- Identify national legislative measures, policy frameworks and women's and children's rights instruments;
- Analyse counter-trafficking responses regarding human trafficking in the Southern African Development Community (SADC) region and other countries with comparative features;

¹ The tier system used by the United States Department of State's *Trafficking in Persons* project is detailed in Chapter Four.

- Identify the profile of the victims and characteristics and motives of the agents in human trafficking;
- Identify the purposes of human trafficking and the key driving factors;
- Identify socio-economic aspects relating to the demand for trafficking, and the cultural values and practices influencing human trafficking;
- Identify the interrelationship between human trafficking and other forms of migration in the context of globalisation;
- Identify the link between organised crime networks and corruption, and human trafficking;
- Identify indicators for a national Trafficking Information Management System;
- Make recommendations on the outcomes of the study.

In summary, this study aims to construct a more detailed national picture of the phenomenon whilst also examining the issues and challenges for policy, strategy and implementation.

1.2 THE PALERMO PROTOCOL

South Africa has signed and ratified the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (henceforth referred to as the Palermo Protocol), which came into force on 29 September 2003 and 25 December 2003 respectively. The Palermo Protocol obliges member states to criminalise trafficking in persons and to investigate and prosecute traffickers, as well as undertake border control measures. In addition, each country that accedes to the protocol must, in accordance with its means, provide measures to protect and assist victims; train law enforcement and border officials; and inform and educate victims, potential victims and the general public.

The Palermo Protocol establishes the framework for a co-ordinated international effort against human trafficking based on a common definition of the practice (see Box 1). The Preamble to the Protocol states that State Parties should act in concert against the practice:

Effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognised human rights.

The purposes of the Protocol are:

- To prevent and combat trafficking in persons, paying particular attention to women and children;
- To protect and assist the victims of such trafficking with full respect for their human rights; and
- To promote cooperation among State Parties in order to meet those objectives.

By ratifying the Protocol, South Africa committed itself to criminalise trafficking, investigate, prosecute and convict traffickers; undertake border control measures and a range of other measures such as protecting and assisting victims.

To meet South Africa's obligations to implement the Palermo Protocol will require a more extensive and systematic body of knowledge on the practice in the South African context, based on a definition of trafficking that is applicable and appropriate within this context. It is only on this basis that policy makers, legislators and service providers will be able to respond adequately and effectively to the problem.

The Programme of Assistance to the South African Government to Prevent, React to Human Trafficking and Provide Support to Victims of Crime (known as Tsireledzani) is being implemented by the National Prosecution Authority over a three-year period with funding allocated by the European Commission (EC). The programme focuses on four areas: (1) Research; (2) Cooperation and Coordination; (3) Capacity Building and Development; and a (4) Prevention and Public Awareness Strategy.

1.3 DEFINITION OF HUMAN TRAFFICKING EMPLOYED IN THE STUDY

The call for the adoption of an internationally recognised definition of human trafficking in the late 1990s was an attempt to consolidate the diverse ways in which trafficking is understood and conceptualised. The Palermo Protocol provides a uniform definition (Box 1.1) which aims to set guiding standards for domestic law to address human trafficking.

Truong & Angeles (2005: 17) point out, however, that while adoption of the UN Protocol definition has facilitated discussion on human trafficking, the matter of definition remains problematic. They further point out that the particularities of human trafficking are diverse since they are embedded in social relations, which means the international definition does not entirely fit the situation in Africa. The UN definition bases itself on the model of transnational trafficking, which is often attributed to the presence of large networks of organised crime. Trafficking in Africa is usually (but not always) through small, family-related networks and does not always take place across national borders. Terms such as ‘trafficking’, ‘abduction’ and ‘sale of children’ all have different meanings, depending on the context. Even the term ‘consenting party’ is controversial when it relates to the involvement of the parents and sometimes children in the decision-making process. The International Programme on the Elimination of Child Labour (IPEC) – a programme of the International Labour Organisation (Truong & Angeles 2005: 19) sees the merit in maintaining some flexibility in the use of the concept of ‘trafficking’ to accommodate institutional objectives and contextual requirements. A wide definition permits the practical accommodation of the specific objectives of the different, yet complementary, international instruments.

BOX 1.1

PALERMO PROTOCOL — DEFINITION OF TRAFFICKING

- (a) *‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;*
- (b) *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;*
- (c) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- (d) *‘Child’ shall mean any person under eighteen years of age.*

Article 3(a) of the Trafficking in Persons Protocol

For the purposes of this study, the definition of trafficking as contained in the UN Protocol was expanded to align it with the 2009 South African bill: *Preventing and Combating Trafficking in Persons Bill*. It therefore includes trafficking within national borders; forced marriages; child labour; the impregnation of a female against her will for the purpose of selling her child when born; and trafficking of body parts.²

² Trafficking (of persons) for removal of organs is included in the Palermo Protocol: trafficking of body parts as such is not.

Another question is whether the physical movement of people is a defining condition of human trafficking. Some sources, such as the 2008 Annual Trafficking in Persons (TIP) Report,³ argue that movement is not required by either the international definition in the Trafficking Protocol or the United States definition in section 103(8) of the *Trafficking Victims Protection Act* of 2000.⁴ This point of view argues that movement of persons is not essential to the definition of human trafficking, as localised trading within a specific area may meet all the requirements (Snyman 2005: 5,281). On the other hand, others argue that the transport or movement of a trafficked person is a requirement if the activity is to be defined as human trafficking (Dottridge & Weissbrodt 1999: 243-244,263; GAATW 1999; ILO 2008: 11; Jordan 2002: 7 Laczko & Gramegna 2003: 180; Lee 2007: 1; Rijken 2003: 65,57,79; Singh 2004: 341; UNODC.GIFT 2009:4). Some authors interpret the definition of the Trafficking Protocol to require transportation of the trafficked person (Rijken 2003: 66).⁵

The UN definition of trafficking in persons identifies several key elements of trafficking: recruitment and facilitated movement of a person within or across national frontiers by means of coercion, threats or deception for the purpose of exploitation (Lee 2007: 10).

It is well known that moving trafficked persons away from familiar surroundings is an important strategy for traffickers: it restricts the victim's scope for seeking help or escaping and facilitates the exploitation of the trapped victims (IOM 2006: 20). For this reason it is argued that transportation or movement of the trafficked person is part of the definition of the crime. In addition, it is argued that 'transportation' for the purpose of facilitating control of the trafficked person distinguishes human trafficking from other crimes. For example, what is the difference between trafficking and forced labour, where people are also recruited by means of deception, force or coercion and subsequently exploited for profit? Exploitation by means of coercion and deception is part of both activities, but it appears that transportation to a foreign location coupled with being controlled by the trafficker, distinguishes labour *trafficking* from *forced* labour. Workers who are subject to forced labour are abused, but nonetheless free to leave or resign, while trafficked persons cannot leave, because they are kept under control of the trafficker.

Finally, the interpretation of the concept of 'transport'⁶ (not defined in the Palermo Protocol) is problematic. If only the literal meaning of the term 'transport' (namely to take someone or something from one place to another (Reader's Digest, Oxford 1996: 1626) is taken into account, then a few questions arise. Would being transported over a minimal distance, such as down the road from where the victim lives, or just a few metres, fulfil the definition? On the other hand, if the victim is transported over a small distance, but it is across a national border into a foreign country, that can indeed render the victim vulnerable. The question then arises whether in this context the meaning of 'transport' is linked only to distance, or whether it should also be associated with moving the victim to a foreign location, which would increase vulnerability and facilitate control.

³ USA Department of State (2008: 6); USA Department of State (2007: 30-31); Harrold (2006: 101). With reference to the definitions of 'severe forms of trafficking' in the *Trafficking Victims Protection Act*, the 2007 and 2008 TIP Reports explicitly states that 'a victim need not be physically transported from one location to another in order for the crime to fall within these definitions' - USA Department of State (2008: 6); USA Department of State (2007: 7) See also Pharoah (2006: 8-9); Shapiro (2008: 18).

⁴ USA Department of State (2008: 6, 19); Harrold (2006: 101). In contrast to the United Nations Trafficking Protocol which uses the term 'trafficking in persons', the USA *Trafficking Victims Protection Act* of 2000 uses the term 'severe forms of trafficking in persons' and defines the term in section 103(8) as: a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or b) the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. In section 103(9) the term 'sex trafficking' is defined as the recruitment, harbouring, transportation, provision, or obtaining of a person for the purpose of a commercial sex and section 103(3) defines the term 'commercial sex act' as any sex act on account of which anything of value is given to or received by any person.

⁵ Referring to transportation, which is included in the definition of human trafficking in the Trafficking Protocol, GAATW (2001: 9) argues that, 'some form of physical movement or transportation is needed.' The purpose of such transport is to move victims to unfamiliar places, away from home and thus place them under the control of traffickers.

⁶ See the discussion by Immelback, M. 2008. What does it mean to 'transport' a victim of trafficking? *Gloval Eye on Human Trafficking*, 19:3

To conclude, the concept of ‘transport’, which is not defined in either the Trafficking Protocol or the SA counter-trafficking legislative response, opens the gate for legal uncertainty in the implementation of current and proposed national anti-trafficking legislation.

1.4 BACKGROUND TO THE STUDY

1.4.1 The scope and nature of modern day trafficking

A wide range of estimates exist on the scope and magnitude of modern-day slavery. The International Labour Organisation (ILO) estimates that there are at least 12.3 million adults and children in forced labour, bonded labour, and commercial sexual servitude at any one time. Of these victims, the ILO estimates that at least 1.39 million are victims of sexual servitude, both transnational and within countries (US Dept of State 2009: 8).

The common denominator of trafficking scenarios is the use of force, fraud or coercion to exploit a person for profit. Despite the apparent success of the global anti-slavery movement in the nineteenth century, trade in human beings has continued to evolve into new and more complex forms of ‘unfree’ labour, using debt contracts and other means to coerce people. Human trafficking in the twenty-first century has thus retained some of the core aspects of previous forms of servitude and human trade whilst also adapting to meet changing economic, cultural and political realities (Picarelli 2007: 45). It is commonly understood to involve a variety of crimes and abuses which are associated with the recruitment, movement and sale of people (including body parts) into a range of exploitative situations in various places around the world (Lee 2007: 1).

Traffickers can subject victims to labour exploitation, sexual exploitation or both. Trafficking for labour exploitation includes traditional slavery, forced labour and debt bondage. Trafficking for sexual exploitation typically includes abuse within the commercial sex industry. In other cases, individuals exploit victims in private homes, often demanding both sex and work. The use of force can be direct and violent, or psychological (US State Dept 2009: 7).

1.4.2 The impact of human trafficking

The consequences of trafficking are felt most directly by trafficked people, as trafficking activities contravene fundamental human rights, denying people basic and broadly accepted individual freedoms. Every stage of the trafficking process can involve physical, sexual and psychological abuse; violence, deprivation and torture; the forced use of substances; manipulation, economic exploitation, and abusive working and living conditions. There is an increased likelihood of HIV infection in the case of women trafficked for sexual exploitation. Unlike most other violent crime, trafficking usually involves prolonged and repeated trauma (UNODC 2008: 9, 81). As a cross-cutting political, economic and social issue it undermines the health, safety and security of all affected nations. It is a crime that increases global health risks, fuels growing networks of organised crime, and can sustain levels of poverty and impede development in certain areas (US State Dept 2009: 5).

1.4.3 Root causes of trafficking

While the root causes of trafficking are complex, the vulnerability resulting from poverty is a major contributor. Some of the *pull factors* that draw people into the trafficking chain include: economic inequality, which makes neighbouring cities, regions or countries attractive destinations for people in highly impoverished regions; conflicts, which generate a demand for domestic and sexual services; the adoption trade; and the use of organs or body parts for rituals. The *push factors* are primarily poverty and deprivation, persistent unemployment, gender discrimination, lack of information and education, harmful socio-cultural practices and lack of legislative and policy protection. Women and children are the most vulnerable to human trafficking, largely because they tend to carry the brunt of the poverty burden. Although poverty is in many cases the *key* push factor, this is not always the case. Issues such as disempowerment, social exclusion and economic vulnerability are the results of policies and practices that marginalise entire groups of people and render them particularly vulnerable to being trafficked. Natural disasters, conflict and political turmoil exacerbate the inadequacies of already tenuous social protection measures (UNODC 2008: 3).

1.4.4 Global report on human trafficking

Information gathered from 155 countries and territories as part of the Global Initiative to Fight Human Trafficking (GIFT) under the auspices of the United Nations Office on Drugs and Crime (UNODC) reveals that:

Over the past few years, the number of countries that have taken steps to implement the UN Protocol against Trafficking in Persons has doubled. However, there are still many countries that lack the necessary legal instruments.

The number of convictions is increasing, however this is not in proportion to the growing awareness (and probably, size) of the trafficking problem – two out of every five countries⁷ covered in the report had not recorded a single conviction (UNODC.GIFT 2009: 7).

Sexual exploitation is by far the most commonly identified form of human trafficking followed by forced labour.⁸ The exploitation of women usually tends to be more visible in city centres or along highways. In comparison, other forms of exploitation are under-reported: forced or bonded labour; domestic servitude and forced marriage; organ removal; and the exploitation of children in begging, the sex trade and warfare.

A disproportionate number of women are involved in human trafficking, not only as victims, but also as traffickers (first documented in the 2009 UNODC.GIFT report). Proportionately, female offenders have a more prominent role in present-day slavery than in most other forms of crime. Offenders include women who were former victims. Most trafficking at country and regional level is carried out by people whose nationality is the same as that of their victims. There are also notable cases of long distance trafficking. Europe is the destination for victims drawn from the widest range of origin countries, while Asian victims are trafficked to the widest range of destinations. The Americas are prominent as both the origin and destination of victims in the human trade (UNODC.GIFT 2009: 6-7).

1.5 TRAFFICKING OF PERSONS ACROSS SOUTH AFRICAN BORDERS

The trafficking via South Africa of nationals from other African countries to destinations in Europe and Southeast Asia is noted in several studies. An IOM study (conducted by Martens, Pieczkowski & Van Vuuren-Smyth 2003) identified the transportation of Malawian women and children through South Africa *en route* to the Netherlands, Germany, Belgium and Italy. The Molo Songololo report (2000b) indicates that children from southern and East Africa are trafficked through South Africa to Asian destinations such as Bangkok. According to UNESCO (2007a), the Western Cape is also a key trafficking point for people brought from Asia bound for North America.

The scale and type of recruitment ranges from small-time traffickers and 'second wave' trafficked women acting as recruiters to large-scale organised crime. According to Martens et al (2003), the majority of victims trafficked from Thailand are sex workers with limited earning power in their country of origin who are recruited with offers of greater earnings in South Africa. Women who are not sex workers are recruited with false promises of jobs in South Africa. On arrival the women are forced to repay the debt incurred to bring them to South Africa; they are allowed no freedom of movement and are sold and rented out to brothels, bars and nightclubs.

Chinese women and girls are recruited from among poorly educated and unemployed village communities. False offers of employment in restaurants and clubs, or opportunities to study English, are made to them, but upon arrival they are trafficked into the sex industry in clubs and restaurants owned and operated by mafia-type organizations. The victims have no freedom of movement and all their earnings go directly to the restaurant or club, or in payment of the debt incurred in bringing them to South Africa (Martens et al 2003).

⁷ The UNODC.GIFT report covers 155 countries and territories

⁸ The UN Office on Drugs and Crime (UNODC) does caution, however, that this may be the result of statistical bias)

Traffickers in Russia and Eastern Europe recruit women to work in up-market clubs and brothels in Johannesburg and Cape Town on behalf of Russian and Bulgarian crime syndicates that have bases in South Africa. The victims are lured with job offers as waitresses, strippers and hostesses and apparently few are aware that they will be employed as sex-workers. As with others, once in South Africa the women are forced into sex work to pay off the debt incurred in bringing them to the country. If they resist, they and their families in their home countries are threatened with violence (Martens et al 2003).

The IOM study (2003) noted that young women and children in the southern African region are especially vulnerable to the recruitment tactics of traffickers because civil unrest and economic deprivation leave them with few opportunities at home and make migration a natural and common solution. Furthermore, the HIV/AIDS pandemic has resulted in many households headed by widows or orphans, while the region's ongoing food crisis has exacerbated the vulnerability of households. In these conditions, parents have been known to sell their children to passers-by.

According to the Molo Songolo study (2000b), children are also trafficked into South Africa from the rest of Africa. Some as young as seven are trafficked into South Africa from Senegal, Kenya, Ethiopia and Uganda, while women are trafficked also from Sudan, Nigeria and Cameroon (Molo Songolo 2000a).

A 'Towards the Elimination of Child Labour (TECL)' report (as cited in Pharoah, 2006) indicates that children from countries such as Swaziland, the Democratic Republic of the Congo, Mozambique and Burundi are trafficked to South Africa to work as street vendors, child-minders and domestic workers. Research by the ILO (conducted by Bermudez in 2008) alleges that Mozambican and Malawian boys and young men are trafficked to South Africa for agricultural labour and work on the mines.

The IOM research report (2003) indicates that street children from Maseru in Lesotho are trafficked by long-distance truck drivers to neighbouring for sexual exploitation. Among the destination countries noted are Zimbabwe, Zambia and South Africa, with the towns of the eastern Free State, which borders on Lesotho, specifically mentioned.

The IOM notes that children are either forcibly abducted or are lured to South Africa on false promises of employment. There appears to be a clear link between child labour and trafficking. According to the IOM (Martens et al 2003), the promises of employment or education made by the traffickers are appealing and seem credible to the child victims since the historical migration patterns in southern Africa tend to flow southwards to the relative prosperity of South Africa and northwards to Europe. The transnational communication and transportation networks have given people a broader awareness of opportunities that exist elsewhere, leading to increased cross-border migration, whether documented or undocumented (Martens et al 2003).

1.6 TRAFFICKING WITHIN NATIONAL BORDERS

The IOM Report on internal trafficking in South Africa (Bermudez 2008: 12) notes that the country has the potential for high levels of internal trafficking due to 'its unique socio-political history and stark economic inequalities'. According to Bermudez (2008) victims trafficked internally in South Africa are generally recruited from regions with lower socio-economic status, for example, from provinces such as Mpumalanga, Limpopo, Northern Cape and Eastern Cape, as well as the informal settlements or rural areas of the Western Cape, Free State and Gauteng. The victims are mainly trafficked to the urban centres of Johannesburg, Pretoria, Cape Town, Bloemfontein and Durban. Similar findings are listed by the US Dept of State (2009) and Martens et al. (2003).

Bermudez (2008) found that highly organised employment agencies are trafficking coloured girls and young women from the rural areas of the Western, Eastern, and Northern Cape and North West Province to work as domestic servants in the suburbs of Cape Town, where they are subjected to slave-like working conditions and bonded by debt. Bermudez also found that adolescent girls and young women who leave exploitative domestic work situations are in turn vulnerable to recruitment into the sex industry.

According to Molo Songololo (2000b), the trafficking of children in South Africa is mainly conducted by people within the country, with parents and local criminal gangs being the primary traffickers. The girls mainly originated from the Eastern Cape and KwaZulu-Natal, and end up in Gauteng and the Western Cape.

An ILO study (ILO 2008b) indicated that more than 3 million South African children are engaged in economic activities with just more than half of these children working to help support their families.

A study undertaken by Koen and Van Vuuren (2002) illustrates the link between child labour and the trafficking of children. The child domestic workers are generally recruited from impoverished rural areas with promises of work, but the terms of employment can include slave-like conditions, sexual violence and debt bondage. Bermudez (2008) notes that boys are recruited from rural regions of the Western and Northern Cape to be used for exploitative labour as street vendors in Cape Town. Bermudez (2008) also reports the trafficking of men and boys for forced agricultural labour within the rural areas of KwaZulu-Natal, the Free State and Limpopo. According to the report, adults and children living in impoverished conditions and child-headed households due to HIV/AIDS, are most vulnerable to this form of trafficking.

1.7 TRAFFICKING OF BODY PARTS

There is some confusion and extensive debate about what this form of trafficking entails. A clear distinction must first be made between human trafficking *for purposes of the removal of body parts* and trafficking *in organs/body parts*. While the two crimes may be interlinked, they are not identical. For example, the removal of body parts from a corpse found in the countryside or in a mortuary, and the subsequent selling of these parts for *muti*⁹ or other purposes would not be defined as human trafficking for body parts, since the prohibited 'action' is not committed against a (living) 'person' with the purpose to exploit such a person.¹⁰ Such illegal removal of body parts from a corpse may constitute the crime of violating a corpse. On the other hand, when a living person is recruited, transported, transferred, received or harboured by force, deception or any of the other listed means for the exploitative purpose of removing an organ¹¹, the elements required for 'trafficking in persons' in terms of the Palermo Protocol are present. The removal of a body part of a child with the valid consent of a parent for legitimate medical or therapeutic procedure is not considered to be exploitation and thus is not human trafficking.¹²

No comprehensive surveys have been conducted and the literature confirms the lack of substantial research on human trafficking for body parts (Di Nicola 2007: 66; Dottridge and Weissbrodt 1999: 282; UN.GIFT 2008: 4,11,12). Still, research conducted between May and September 2008 in Mozambique and South Africa reveals that the trafficking of body parts is a widespread and prevalent problem (Fellows 2008). Body parts are reported to be regularly trafficked either to sell or for use in witchcraft and the preparation of *muti*. The report documents instances of body parts being taken from victims while they were still alive or directly after they had been murdered. Regular mutilations occur both in South Africa and Mozambique and body parts are forcibly removed from children and adults causing death or severe disability. While the study found no evidence that adults are specifically targeted for their body parts, it listed a number of accounts which indicated that children had been specifically targeted.

⁹ The term 'muti' (also spelt 'muthi') is widely used in South Africa; it comes from the isiZulu and isiXhosa word for medicine and in a general sense it refers to any type of medicine or healing procedure.

¹⁰ Watson 2006: 39-44 fails to distinguish between the two phenomena and conflates the crime of organ trafficking with human trafficking for the purposes of organ removal as is set out in the Trafficking Protocol.

¹¹ Since 'the removal of organs' was expanded in the South African legislative context (Children's Act 38/2005; Sexual Offences Amendment Act 32/2007 and the Prevention and Combating of Trafficking in Persons Bill, 2009) to include the removal of other body parts as well, the removal of body parts in these circumstances complies with the requirements set in the SA context for human trafficking.

¹² Some insightful sources are: UN.GIFT (UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING) (2008). Human Trafficking for the Removal of Organs and Body Parts. Background Paper 011 Workshop (UN.GIFT B.P:011) at the Vienna Forum to Fight Human Trafficking, 13-15 February 2008, Austria Centre, Vienna; Slabbert, M. 2002. Handelsdryf met Menslike Organe en Weefsel vir Oorplantingsdoeleindes. Unpublished LL.D thesis. University of the Free State, Bloemfontein; Watson, C. 2006. The Organised Crime of Organ Trafficking. Unpublished LL.M thesis. University of the Free State, Bloemfontein.

1.7.1 *Muti Murders*

Muti (or *muthi*) is a term for traditional medicine in southern Africa. In a *muti* murder, body parts are removed from a living victim to use medicinally, either mixed with other ingredients or used alone (Labuschagne 2004). Whether *muti* murders properly fall within a definition of human trafficking is a more complicated question.

First, *muti* murders may not involve transporting or moving of people, factors which are usually considered to be basic features of human trafficking (although some debate surrounds this (Labuschagne 2004)). In such cases, the crime may not fall under the category of human trafficking according to the UN definition. However, the 'action' element of the offence, as defined within the protocol, may be fulfilled if someone is recruited by force or deception, or if a victim is harboured to perform the required tissue and/or organ removal.

While *muti* murders¹³ have occurred throughout history in South African culture, little is known about them and little research exists on the phenomenon. Muti-related killings have been documented in the provinces of Limpopo, Free State, KwaZulu-Natal, Mpumalanga and the North West Province and have been confined to more rural and/or informal settlements (Bermudez 2008: 2). The US Department of State Trafficking in Persons Report 2006 (quoted in Bermudez 2008: 60) proposes that between 150 and 300 murders related to muti occur annually, but this is difficult to confirm due to the lack of official criminal statistics. *Muti* murders are difficult to prosecute partly because witnesses are afraid to testify for fear of retribution.

Research conducted by Fellows (2008) in Mozambique and South Africa found clear evidence of the trafficking of body parts. Fellows contends that information on the trafficking of body parts has previously been based almost entirely on hearsay and it has therefore been easy for both governments and civil society to claim that it either does not occur, or is so infrequent that it does not merit any response or attention. Fellows' findings show that regular mutilations occur both in South Africa and Mozambique and body parts are forcibly removed from children and adults, causing death or severe disability. The report documents that body parts are frequently trafficked in South Africa and Mozambique and that sangomas (spiritual healers) actively seek human body parts from live victims to be used in their medicine. These are usually obtained through a third party. The research found that it is a commonly held belief in South Africa and Mozambique that traditional medicine, when made with body parts, is stronger and more powerful (Fellows 2008: 7).

1.8 TRANSNATIONAL AND NATIONAL ORGANISED CRIME

There is very little literature on human trafficking from a policing and organised-crime perspective. This paucity of research on organised crime in relation to human trafficking may be traced to a belief that most human trafficking is conducted through indigenous informal networks (HSRC 2008: 25).

Since the end of the apartheid regime in 1994, South Africa has increasingly become integrated into the global market. This shift has brought an influx of organised crime from both local and transnational sources. Transnational crime often includes criminal elements from Russia, Italy, Nigeria, Morocco and China. These organised crime groups are multi-disciplined and focus on the import and export of illicit goods, drugs and illicit trafficking, including the trafficking of persons (Williams & Brooks 1999: 81-99).

In addition, organised crime involvement in human trafficking has been clearly identified by the IOM (Martens et al 2003; Bermudez 2008), particularly the trafficking of Thai, Chinese and Eastern Europeans to South Africa. Molo Songololo (2000a) has identified elements of organised crime in the trafficking of children to the Western Cape. According to Bermudez (2008: 60) not only are international organised crime syndicates operating in a transnational capacity, they are also involved in internal trafficking, often using local South Africans as recruiters. The study undertaken by Bermudez (2008: 60) identifies Nigerian organised crime syndicates operating in Pretoria, Port Elizabeth, Johannesburg and Bloemfontein. These syndicates are predominantly

¹³ Labuschagne (2004) points out that the term 'muti murder' has been used interchangeably with the term ritual or sacrificial murder, often adding to confusion in terminology and definitions regarding these types of cases.

involved in the trafficking of local black South African females into commercial sexual exploitation. It was also found that organised crime syndicates operated by foreign nationals use local South Africans as recruiters. The syndicates are also involved in the recruitment of boys from rural regions of the Western and Northern Cape Provinces for exploitative labour as street vendors in Cape Town. Men and boys are also recruited to work on farms under false promises of pay and suitable accommodation. Boys who are not in school or who are on school holiday are more frequently targeted (Bermudez 2008).

1.9 EXISTING INSTITUTIONAL ARRANGEMENTS

Concrete, reliable data on human trafficking is an essential requirement for all effective programmes, interventions, policy and legislation (ICMPD 2007: 9). In South Africa, the lack of legislation and an absence of systematic, national-level data collection¹⁴ on the prevalence and trends of human trafficking, have obstructed the compilation of reliable statistics on trafficking to quantify the magnitude of the problem as a national and regional phenomenon. The South African Police Service (SAPS) collects statistics on the offence of trafficking for sexual purposes (contravention of section 71 of the Sexual offences Act 32 of 2007) and other trafficking-related offences under this Act as part of the Crime Administration system (CAS).¹⁵ In addition, incidents of trafficking are reported within other crime categories such as kidnapping, abduction, rape, assault, soliciting and immigration-related offences. Trafficking trends are thus inferred from a mix of studies on trafficking, prostitution, exploitative labour and child labour (Pharoah 2006: 23). The lack of legislation and of a coordinated database is hampering efforts by government and civil society to effectively address the problem in terms of prevention, prosecution and protection.

1.9.1 Legislation

The Government acknowledges that the current legislation is inadequate to combat human trafficking but the new Prevention and Combating of Trafficking in Persons Bill¹⁶ will enable authorities to prosecute all forms of trafficking. The purpose of the new legislation is both to provide a basis for the prosecution of all those involved in the process of trafficking persons and to create a statutory framework for victim assistance. Its finalisation will provide a comprehensive basis for tackling the problem of human trafficking in South Africa.

In the absence of all-encompassing legislation which criminalises the offence, the **Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007** (16 December) enables law enforcement officials to investigate and charge suspected perpetrators of human trafficking for sexual purposes. Prosecutions for other forms of human trafficking such as kidnapping, indecent assault and rape, can proceed on an ad hoc basis but sentences in such cases do not individually attract as heavy a penalty as trafficking in persons specifically would impose. The absence of comprehensive legislation also limits prosecutors to charging only the perpetrator directly linked to the offences, and not perpetrators behind the scenes.

1.9.2 Coordinated institutional responses to trafficking

1.9.2.1 Human Trafficking Desk

In addition to a comprehensive Trafficking Bill, a Human Trafficking Desk¹⁷ was established within the Organised Crime Unit of the South African Police Service in 2003. The function of the Human Trafficking Desk is to:

¹⁴ The International Organisation for Migration (IOM) is the only service provider in South Africa and the SADC region which has a database of internationally trafficked persons to whom they have rendered assistance.

¹⁵ At the time of writing, 19 cases of contravention of section 71 had reportedly been listed on the CAS system (informal personal discussion with Comm. C de Kock(SAPS). Time constraints prevented researchers from obtaining further information on these 19 cases.

¹⁶ This Bill was awaiting finalisation at the time of writing the report. Advise the head of the Organised Crime Unit on matters relating to trafficking in persons.

¹⁷ The current Task Team is chaired by an official of the National Prosecuting Authority (NPA), Ms N. Qaba. The composition of the current Task Team is set out in Section 11

- Coordinate all trafficking-in-persons issues received from the provinces, project investigations, the offices of the National Commissioner and the Minister for Safety and Security.
- Advise the provinces and organised crime units on complex matters arising from trafficking in persons' investigations.
- Provide training to members of organised crime units tasked with investigating human trafficking cases.
- Liaise with relevant counterparts within the South African Police Service on a national, provincial and local level, as well as external role-players.
- Refer investigations to provinces and monitor such investigations through monthly progress reports.
- Monitor and evaluate whether the Organised Crime Unit effectively addresses organised crime involving the trafficking of persons.

1.9.2.2 Trafficking in Persons Intersectoral Task Team

In December 2003, the South African government established a Trafficking in Persons Intersectoral Task Team (Task Team).

The Task Team comprises stakeholders from various government departments:

- the Sexual Offences and Community Affairs Unit (SOCA) of the National Prosecuting Authority (NPA);
- the South Africa Police Service's Port of Entry Policing and Organised Crime Units;
- the Department of Justice;
- the Department of Home Affairs (DHA);
- the Department for Social Development (DSD);
- the Department of Labour (DoL).

It also includes the following international organisations:

- the International Organisation for Migration (IOM);
- the United Nations Office on Drugs and Organised Crime (UNODC); and
- the NGO Molo Songololo.

Provision was made for the *ad hoc* co-option of technical knowledge and expertise in various departments and organisations, such as the South African Law Reform Commission within Department of Justice and Constitutional Development.

The Sexual Offences and Community Affairs (SOCA) Unit, which is mandated to deal with the prevention and reduction of violence against women and children, was chosen to chair and assume a secretariat function for the Task Team and a broader Consultative Forum. Its mission is to facilitate a multi-sectoral response to the development and implementation of a National Action Plan to prevent trafficking in persons, to support victims of trafficking and to prosecute traffickers.

The broader Human Trafficking Consultative Forum is comprised of 30 members from diverse government departments, international organisations, South African NGOs and foreign representatives. Quarterly meetings, are held where stakeholders involved in the management of human trafficking convene to keep abreast of developments and ensure coordination in planning and implementation of related measures.

1.9.2.3 Programme Steering Committee

The inter-departmental Management Team (IDMT) was constituted by Cabinet to develop and implement a national anti-rape strategy. This team includes representatives from the Departments of Health; Justice and

Constitutional Development; Education; Correctional Services; and National Treasury. It is chaired by the National Prosecuting Authority and acts within the broad mandate of Violence against Women and Children and Sexual Offences. In relation to human trafficking, a broadened IDMT will constitute the Programme Steering Committee (PSC), authorising and coordinating all activities. The Department of Home Affairs and the Department of Labour were incorporated into the PSC through a special resolution. The PSC will report through the National Director of Public Prosecutions to the Justice, Crime Prevention, Security and Social Cluster of Directors-General.

1.9.2.4 Tsireledzani Anti-Trafficking Programme

The Tsireledzani initiative¹⁸ to combat human trafficking was launched at a conference in March 2009 to ensure that South Africa fully complies with the UN Palermo Protocol through improved coordination, research, training and awareness-raising. The initiative is led by South Africa's National Prosecuting Authority, together with key international and local parties including the International Labour Organisation, the International Organisation for Migration, the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the Human Sciences Research Council and non-governmental organizations with funding provided by the European Commission.

The Tsireledzani conference generated a framework for a National Action Plan (NAP) to ensure cohesion between government departments, civil society and international organisations and improve the alignment of efforts in combating human trafficking.

1.9.2.5 Provincial Task Teams

Provincial Task Teams have been established in KwaZulu-Natal, Limpopo and Mpumalanga. Further task teams are being planned for the Western Cape, Eastern Cape, Free State, Gauteng, North-West and Northern Cape provinces.

1.9.3 Victim identification and assistance

South Africa has no official mechanism and/or standard operating procedure to ensure the referral of victims of trafficking for assistance, or any standard procedures for serving the victims of trafficking. This lack contributes to the problems of identifying victims and referring them to police authorities. Victim referral is usually based on personal connection with law enforcement agencies, or it is from organisations working with commercial sex workers (Du Toit, Hunziger, Marks & Rajiv 2005: 22). In the latter category, Thuthuzela Care Centres stand out as 'a unique one-stop, integrated response to the burgeoning incidence of violent sexual acts against women and children and its intersect with HIV and AIDS.'¹⁹

1.10 METHODOLOGY OF THIS STUDY

Through a combination of quantitative and qualitative methods, this exploratory research aims to increase understanding of the scope and context related to trafficking in persons in South Africa. As human trafficking is a cross-cutting social problem, the research was conducted by a multidisciplinary team which included experts in the fields of Sociology, Psychology, Anthropology, Legislation and Criminology. Although South Africa was the major focus of the study, data was also collected from Lesotho, Swaziland and Zimbabwe as countries of origin. Prior to any research being conducted by the HSRC, all methodological approaches were scrutinised by the HSRC Ethics Committee to ensure compliance with sound academic principles and ethics.

¹⁸ The first Human Trafficking Awareness Week (HTAW) held in 2006 was named a global best practice in the US TIP Report 2007 because of the involvement of a local soccer team that, during warm-up at one of their televised games, wore t-shirts advertising the South African Counter Trafficking Assistance Programme (SACTAP) helpline number. Human Trafficking Awareness Week, 4-10 October 2009. http://iom.org.za/site/index.php?option=com_content&task=view&id=211&Item=1 (accessed 12/11/2009). In October 2009 a nation-wide observation of the human trafficking awareness week was promoted under the banner of 'Human Trafficking is Real Tsireledzani!'

¹⁹ See UNICEF, 'HIV and AIDS: Thuthuleza Care Centres', available at: http://www.unicef.org/southafrica/hiv_aids_998.html

The applied research consisted of three key components designed to provide an overview of the current understanding of human trafficking in South Africa.

Component 1 consisted of an initial literature review of human trafficking in southern Africa and South Africa, which was provided to researchers as a starting point.

Component 2 consisted of field assessments by researchers. This component included specialised literature reviews, a statistical review and key informant interviews to provide an exploratory assessment of the current context of trafficking in the country. Each researcher's analysis aimed also to identify current strengths and gaps and make recommendations to address knowledge gaps and identify best practices.

Literature review: Researchers examined official relevant national policy and law documents, regional policy documents, and international and NGO reports. This literature review was carried out in addition to the general overview of trafficking in South and southern Africa.

Quantitative review: Special attention was paid to the need for quantitative information regarding trafficking. Researchers attempted to ascertain whether there were any direct statistics available on trafficking in persons in the country. Quantitative data could include the following information:

Number of person trafficked, disaggregated by sex, age, nationality.

Number of arrests, investigations, convictions for trafficking in persons and other related crimes with disaggregated data on sex, age, nationality, age of defendant, sex of defendant, nationality of defendant, summary of facts, and sentence.

Primary data collection: Researchers obtained data using survey and questionnaire tools. Key informant interviews were conducted with law enforcement officials, immigration and or customs officials, embassy officials, social service representatives, government representatives, NGOs, international organisations, traditional healers, with victims of trafficking and with other relevant parties thought to have information on trafficking in persons. Obtaining data on the criminal activity of human traffickers²⁰ necessitated the use of covert observation as there are some issues that cannot be studied overtly (Babbie & Mouton 2001: 293).

These key informant interviews were conducted with individuals and organisations that are considered to be crucial partners in strengthening the collaborative framework that is required to combat trafficking in persons. The selection of key informants was decided by each researcher and included all relevant sectors as far as possible.

Component 3 consisted of writing up the research findings by each of the specialised experts.

In order to address the objectives of the study, the issue of human trafficking was tackled from a multidisciplinary perspective, including its legal, psychosocial, migration, vulnerability and organised crime, and policing aspects. To deal more effectively with the multifaceted scope of the study, the findings are presented in separate chapters reflecting the disciplinary perspectives of each expert researcher or area. This arrangement does not prevent a large degree of overlap of data but this overlap enhances triangulation of data. The specific methodologies of each expert are delineated in the specific chapters.

²⁰ Di Nicola (2007: 55) is of the opinion that some of the most serious shortcomings of the available data on trafficking are: (1) the lack of concise data on offender characteristics and offender structures; and (2) lack of data on the financial aspects, including the whereabouts of the profits. He further argues that research which uses primary sources on trafficking suffers from a certain flatness in its data collection techniques: surveys, (questionnaires and interviews), life histories and case studies are the most widely used and perhaps abused, while one rarely encounters other techniques. He urges the exploitation of the potential of techniques like participant observation (as 'innovative methodology'). (See also his discussion of the ethnographic-anthropological in the 2004 study of medical anthropologist, Nancy Scheper-Hughes, who, by posing as a prospective buyer, established contact with kidney sellers and organs brokers to investigate organ trafficking).

1.11 RESEARCH CHALLENGES

The major factor compromising the gathering of data for this report was the limited time period in which the fieldwork was conducted. This did not allow for sufficient in-depth exploration of themes, particularly in the cases where hitherto unknown information came to light. The sensitivities and difficulties encountered in assembling information on covert and illegal activities are detailed in the following chapters.

CHAPTER TWO: KNOWLEDGE OF TRAFFICKING TRENDS

INTRODUCTION

RESULT AREA 2: ALL SUBSECTIONS.

This section provides a summary overview of trafficking flows, broad profiles of victims and a general portrait of the geographic areas involved. The trends here are distilled from the five expert studies conducted for this project and details are provided in relevant chapters. However, it is important to stress here that knowledge in these areas still suffers from a serious lack of data. South Africa is not collecting even basic data that will facilitate insight into the national situation or meet international standards of comparability. Consequently, any attempt to provide estimates of the actual size of trafficking streams in South Africa at this point is futile.

Research conducted for the purposes of this project reveals a number of trafficking flows into South Africa, including three major streams: (1) intercontinental trafficking, that is trafficking to South Africa from outside of Africa; (2) trafficking to South Africa from within Africa, and (3) domestic trafficking, within the national borders of South Africa. While each of these categories shares a number of common features, they also differ. A fourth form of trafficking, from South Africa to other African countries or countries outside of Africa, is significantly less prevalent than the first three categories. South Africa is also a transit country for the trafficking of persons. This section highlights the distinguishing characteristics of each form of trafficking.

2.1 INTERCONTINENTAL TRAFFICKING (TO SOUTH AFRICA FROM OUTSIDE OF AFRICA)

Research has revealed that South Africa is a destination country for long distance flows of people trafficked from Thailand,¹ Philippines, India, China,² Bulgaria, Romania, Russia and the Ukraine. Available evidence indicates that victims of intercontinental trafficking are predominantly women between the ages of 19 and 50, trafficked for purposes of sexual exploitation. While sex work is the primary form of exploitation, criminal syndicates are usually involved in several areas of illegal activities, including smuggling and the trafficking of weapons and narcotics. Trafficked women are often also involved in the ancillary line of selling drugs to their clients. (Victims of smuggling may also become subject to trafficking when smugglers sell them to syndicates.)

The main point of entry for people trafficked from outside of Africa is OR Tambo Airport in Johannesburg. In some cases, trafficked women are taken to 'safe houses' located within a 30-minute drive from the airport. A range of perpetrators and intermediaries involved in international trafficking have been identified. These include large organised crime networks, like the Russian Mafia and Bulgarian syndicates, as well as individual South African and Bulgarian agents with ex-military backgrounds. Intermediaries are often persons known to the victims. Victims are often recruited in the country of origin by female nationals. This is particularly true of Thai victims, who are often trafficked to South Africa by Thai women who were themselves previously trafficked to South Africa and who now have their own brothels. In the case of Thai victims, the trafficking network appears to be extensive. Brothel owners are able to place 'orders' for women who are then brought into the country. Many victims respond to what they perceive to be legitimate employment offers in South Africa – even prostitution – and therefore possess legitimate passports and travel visas, making it difficult for border control agents to detect discrepancies.

¹ Figures supplied by IOM indicate that Thai women constitute the largest group of women trafficked to South Africa.

² Despite several cases of trafficked Chinese women being reported in the press, attempts to secure an interview with officials from the Chinese embassy were met with: 'We don't have that problem.'

The collusion of officials in trafficking cases is demonstrated in the case of a Thai woman recently arrested in Rustenburg for trafficking women (MSN: 2009). She allegedly assisted girls from Bangkok to enter South Africa illegally by promising them work in a Thai massage parlour, but then forced them to work as prostitutes at her brothel in Rustenburg. She herself entered the country with fraudulent documents that allowed her to travel continuously between Thailand and South Africa. This was due to connections in the Department of Home Affairs, the police and the aviation industry. This story bears out information provided by an official of the Thai Embassy, who reported that the victims of trafficking whom the Embassy had assisted told the Embassy that they had been told to use specific lanes at airports in Thailand and at OR Tambo Airport.

2.2 TRAFFICKING TO SOUTH AFRICA FROM OTHER AFRICAN COUNTRIES

The trafficking of persons to South Africa from within the continent presents a more varied scenario. Trafficking takes place predominantly across the land borders of the country. The country's extensive and unpatrolled land borders provide ideal opportunities for traffickers, who are able to cross into South Africa undetected. South Africa shares borders with six countries: Botswana (1,840km), Lesotho (909km), Mozambique (491km), Namibia (967km), Swaziland (430km), Zimbabwe (225km). Each country has a number of points of entry: Botswana has 16 of which four are commercial points of entry; Lesotho has 18 of which five are commercial points of entry; Mozambique has three that are all commercial points of entry; Namibia has six with two being commercial points of entry; Swaziland has 11 with five being commercial points of entry; and Zimbabwe has two, one of which is a commercial point of entry (Dept Home Affairs: 2010). Corrupt border officials act as magnets for criminal syndicates to facilitate their activities. Syndicates exploit circumstances at border posts where lax border controls and bribery enable the illegal transportation of a variety of goods. The Lebombo border into Mozambique was identified as one of the land ports of entry where this occurred on a large scale. Moreover, taxi drivers regularly transport persons via the Komati valley and Lebombo Mountains to avoid official border crossings.

The major countries of origin for trafficking from Africa are those immediately adjacent to South Africa,³ with the primary ones being Mozambique and Zimbabwe. Malawi, Swaziland and Lesotho are also amongst other African countries of origin. People are trafficked through the Lebombo/ Komatipoort border (Mozambique), and the Swaziland border areas. Zimbabwean and Malawian children are trafficked through the Musina/Messina border. Young girls are trafficked through the Lesotho border post at Maseru and then on to Bloemfontein. Destination points include Johannesburg, Cape Town and farms within Mpumalanga Province. Barberton in Mpumalanga has been identified as a conduit for young girls trafficked from Swaziland by illegal miners.

Both large organised syndicates – criminal syndicates operating across the African continent and within South African borders – and looser networks of traffickers, are involved in the trafficking stream. Evidence suggests that diaspora communities are often channels for the trafficking of victims to South Africa.

Longer-distance trafficking documented by IOM Pretoria⁴ involves victims trafficked from the Democratic Republic of Congo (DRC), Angola, Rwanda, Kenya, Cameroon, Nigeria and Somalia.⁵ Cases assisted by IOM Pretoria since 2004 were all women, trafficked for purposes of both sexual and labour exploitation. However, men and boys are also trafficked from neighbouring countries and from more distant sub-Saharan countries.

A variety of types of trafficking have been identified in the trafficking stream from Africa. These include trafficking for prostitution, pornography, domestic servitude, forced labour, begging, criminal activity (including drug trafficking), and trafficking for the removal of body parts (or *muti*). Young boys in particular are trafficked to smuggle drugs and for other criminal activities.

³ With the exception of Namibia.

⁴ Most reported cases of human trafficking involve victims who are moved across international borders.

⁵ In many of these cases only a single victim is recorded.

Young children, particularly girls, appear to make up a large component of these streams. The reasons for recruiting prepubescent girls are made clear in this interview:

Little girls between the age of ten and twelve don't have the attitudes of older women. The older girls have gone downhill, they drink, use foul language and they are hardened. The little girls are not hardened and they want to please you.

The interviewee goes on to add that a girl becomes a woman at the age of 12 and is an old lady by the age of 28. It is also known that certain clients prefer sex with children because they are less able to negotiate the nature of the exchange and are more likely to have sex without a condom.

As mentioned in Chapter 1 victims are lured with seemingly legitimate offers of employment in South Africa. Money is paid to the parents of minors with promises of better lifestyles and educational opportunities for the children or promises of jobs that will secure cash to be sent back to their families.

2.3 DOMESTIC TRAFFICKING IN SOUTH AFRICA

The modus operandi of traffickers involved in internal or domestic trafficking is similar to that used for trafficking across international borders. Very often the same criminal syndicates are involved. South African nationals often become victims of human trafficking through various forms of deception. Kidnapping has also been documented in some cases.

The largest movement of trafficked persons is from rural areas to cities. Provincial 'hotspots' for trafficking activity within the various provinces have been identified as:

- *Gauteng* – Pretoria and Johannesburg;
- *North West* – Rustenburg;
- *Free State* – Bloemfontein, the South Africa/Lesotho Maseru border;
- *KwaZulu-Natal* – Durban and harbour;
- *Western Cape* – Cape Town and harbour;
- *Eastern Cape* – Port Elizabeth and surroundings;
- *Limpopo* – Musina (previously spelt Messina) – the South African /Zimbabwe border Beit Bridge;
- *Mpumalanga* – Barberton, South African/ Mozambican border Ressano Garcia and Lebombo.

Domestic trafficking includes trafficking for prostitution, domestic servitude, forced labour, begging, drug trafficking, criminal activity, removal of body parts for *muti* and for sacrifice in rituals.

Trafficking for sexual and labour exploitation in South Africa is relatively well-documented but less is known about the trafficking of body parts for *muti* and trafficking for religious and ritual sacrifice. Sufficient primary and secondary data exists to suggest trafficking for the removal of body parts is more prevalent than previously acknowledged. This view was confirmed by the responses of key informants who indicated that the majority of victims are women and children although men are also targeted. Once victims are acquired through kidnapping, deception or even purchasing a child victim from parents or guardians, they may be held in what traffickers call 'safe houses'. Then they are allegedly 'sold' to church and faith-based groups for the killing and removal of body parts. (One respondent is of the opinion that these faith-based groups account for a large proportion of the demand for body parts for *muti* purposes.)

In the areas of Bushbuck-ridge in northern Mpumalanga and the southern Limpopo region of Tzaneen, people who are albino are at the greatest risk of falling prey to traffickers for the harvesting of body parts. This is allegedly because their 'white skins' make their body parts more valuable.

Very little research is available in South Africa about the linkage between the ritualistic killings practised by satanic cults and human trafficking. Interviews with key informants, however, reveal a belief that satanic cults operate within all areas of South Africa. These cults allegedly have significant financial resources and members are usually white and include both men and women. They are often affluent members of society, including

doctors, lawyers and business people. The main centre for operation of satanic cults in South Africa is allegedly in Krugersdorp in Gauteng province.

Where satanic rituals require human sacrifice; children are usually sacrificed. However, adult men and women may also be sacrificed, depending on the ritual being performed. Respondents believe that victims are either recruited by cult members or purchased from criminal syndicates that specialise in human trafficking; these syndicates are said to be mostly Nigerian. Alternatively, satanic cults will kidnap victims often from rural areas. Other targets are street children and prostitutes, probably because they are less likely to be missed and reported to the police. If the ritualistic killing requires a man, gay men in bars are targeted and sedated to overcome physical resistance.

2.4 SOUTH AFRICANS TRAFFICKED ABROAD

There is far less trafficking out of South Africa than there is into the country. IOM Pretoria recorded eight cases of trafficking from South Africa between January 2004 and January 2008 (probably all South African nationals): four persons returned from Ireland (trafficked for labour exploitation); one person returned from Zimbabwe (trafficked for forced marriage); two persons returned from Israel (trafficked for labour exploitation); and one person returned from Switzerland (trafficked for labour exploitation). In all cases the victims were women. One instance of trafficking to the Netherlands was recorded as a case of sexual exploitation. IOM has also documented cases of South African women being trafficked to Macau for sexual exploitation, by South African and Chinese nationals with links to organised crime networks.

While anecdotal reports exist of young girls being sold as mail-order brides and of children being sold into adoption, no concrete data on these practices could be found. Unconfirmed reports have been received of the corpses of children being used to conceal narcotics. The bodies are shipped to destination countries of which the children are allegedly nationals.

2.5 SOUTH AFRICA AS A TRANSIT COUNTRY

South Africa is not only a destination point for the trafficking of persons, but also a transit country for trafficking to countries such as Thailand. The fact that there is insufficient data to provide a comprehensive portrait of this problem highlights the urgent need for more research, new statistical methods and centralised record-keeping.

CHAPTER THREE: LEGAL AND POLICY FRAMEWORK

SECTION 1: OVERVIEW OF HUMAN RIGHTS INSTRUMENTS

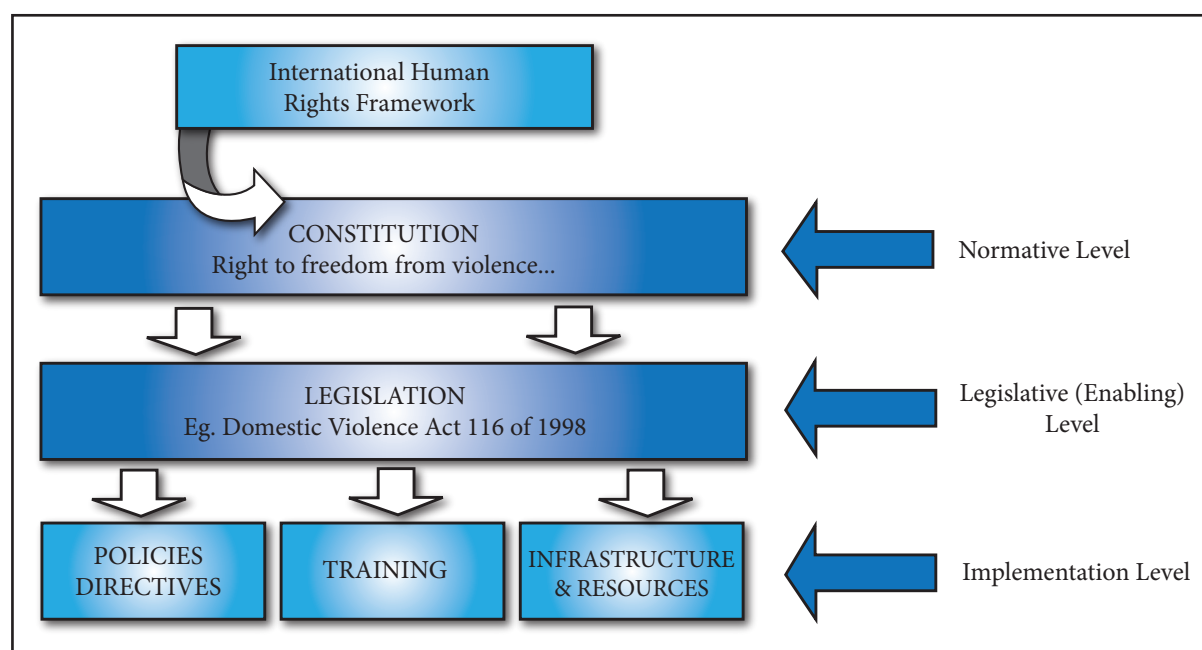
INTRODUCTION

This section provides an overview of national, international and regional human rights instruments relating to human trafficking¹ and applicable to South Africa, as well as the national legislative measures currently in place and draft legislation pending at the time of writing. It further summarises present national policy frameworks that address aspects of human trafficking and examines comparable countries in the SADC region. It has been completed as a part of the 'Legal and Prosecution' component of the project and accordingly complements the empirical research conducted with prosecutors (see Section 2 of this chapter).

3.1 CONCEPTUAL FRAMEWORK

A conceptual framework of the linkages between the South African Constitution, national legislation and public policy development can be illustrated by means of Figure 3.1. This section examines each of these three levels in turn, starting with the normative level.

Fig 3.1: Conceptual Framework



¹ The term 'human trafficking' is used in this section rather than 'trafficking in persons', except where specifically required by the context.

3.2 INTERNATIONAL LAW ON TRAFFICKING IN PERSONS

At the beginning of the twentieth century, concern over the ‘white slave trade’ prompted the adoption of a series of international agreements (Haynes: 437). The first of these was the International Agreement for the Suppression of White Slave Traffic of 1904, which was aimed at addressing the fraudulent or abusive recruitment of women for prostitution in another country. A number of further documents followed,² culminating in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949. Prior to the development of the Trafficking Protocol (discussed in 3.2.2), the 1949 Trafficking Convention was the sole international instrument on human trafficking (SA Law Commission 2002a: para. 9.1).

In the international context, interest in human trafficking re-emerged during the 1980s (Haynes: 438; SA Law Commission paras 9.1-9.4). The issue received specific attention on international level at two major human rights conferences: the 1993 World Conference on Human Rights in Vienna and the 1995 UN Fourth World Conference on Women in Beijing. In 1997, the UN Special Rapporteur on Violence against Women included a section on trafficking in women and forced prostitution in her report on violence in the community,³ and also produced a report on her visit to Poland on the issue.⁴ In 2000, the Special Rapporteur completed a comprehensive analysis of trafficking in women, women’s migration and violence against women.⁵

In the late 1990s, a growing concern about organised criminal groups and operations crossing national borders led an increasing number of countries to consider and adopt new laws, measures and strategies to deal with the problem (UNODC 2006b: 18). In December 1998, the UN General Assembly established an intergovernmental ad hoc committee to elaborate on a comprehensive international convention against transnational organised crime,⁶ whose work culminated in the UN Convention against Transnational Organised Crime⁷ and its supplementary Protocols. This Convention was adopted in 2000 and entered into force in September 2003.

Certain specialised instruments on women’s rights and children’s rights also address trafficking in detailed terms. State duties to take action against trafficking can thus be inferred from a number of human rights instruments.

The rest of this chapter examines the key international and regional instruments relating to human trafficking, with specific emphasis on the State duties generated by these documents: the UN Convention against Transnational Organised Crime and the Trafficking Protocol; major women’s and children’s rights documents; the role of the International Labour Organisation in the emergence of the international normative framework; and recent activities of leading UN bodies, including the High Commissioner for Human Rights and the Special Rapporteur on trafficking.

3.2.1 United Nations Convention against Transnational Organised Crime

The UN Convention against Transnational Organised Crime (CTOC) provides ‘a truly global approach’ to the problem of international organised crime. The Convention focuses on offences that facilitate the profit-making activities of organised criminal groups (UNODC 2006a: 2).

² Subsequent instruments included the Convention for the Suppression of the White Slave Traffic of 1910; Convention for the Suppression of Traffic in Women and Children of 1921; Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications of 1923 as amended by the Protocol of 12 November 1947; and the Convention for the Suppression of the Traffic in Women of Full Age of 1933.

³ E/CN.4/1997/47.

⁴ E/CN.4/1997/47/Add. 1.

⁵ E/CN.4/2000.68 of 29 February 2000.

⁶ GA Res 53/111 of 9 December 1998. See also Preamble to the Trafficking Protocol.

⁷ GA Res 55/25, Annex I of 15 November 2000 (referred to as ‘the CTOC’).

The CTOC applies to the prevention, investigation and prosecution of the four offences created in terms of the Convention itself. These are: participation in an organised criminal group; laundering of crime proceeds; corruption; and obstruction of justice. The CTOC also applies to other 'serious offences' according to Article 2 and offences established in terms of the supplementary Protocols, which target organised criminal activity that are deemed to require specialised measures:

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,
- Protocol against the Smuggling of Migrants by Land, Sea and Air,
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their parts and Components and Ammunition.⁸

The CTOC and the Trafficking Protocol establish minimum standards; States Parties are bound to adhere to this threshold but may adopt stricter measures. For example, in a State's domestic law, the offence of trafficking in persons must be defined to cover all conduct included in the definition of trafficking contained in Article 3(a) of the Trafficking Protocol, but can cover additional activities if legislators so wish.

The CTOC and the Trafficking and Smuggling Protocols were drafted as a group. The Convention contains general requirements for mutual legal assistance and other forms of international cooperation (for example, extradition), while requirements to render specific assistance, such as the verification of travel documents, are found only in the appropriate Protocols. Protocol offences are regarded as offences established in accordance with the CTOC and the provisions of the Convention apply to the Protocols *mutatis mutandis*.

3.2.2 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

This Protocol (hereafter, the 'Trafficking Protocol') is a law enforcement instrument developed within the UN Crime Commission. It comprises a strong law enforcement tool, although with comparatively weak language on human rights protections and victim assistance.

The Trafficking Protocol contains mandatory language, such as 'States Parties *shall*', while the protections and assistance provisions contain weaker terms, such as 'in appropriate cases' and 'to the extent possible'.⁹ The Protocol does oblige governments to adopt domestic laws and policies to protect and assist trafficked persons, in accordance with international human rights standards (Global Rights 2006: 3). Article 2 dictates that such laws and policies be consistent with international human rights norms. The provisions of this Protocol are divided into four primary sections: general provisions; provisions for the protection of victims of trafficking; provisions for the prevention of trafficking, cooperation and other measures; and final provisions.

⁸ The first two protocols were passed as Annex II and III to the UN Convention on Transnational Organised Crime (UN Doc A/55/383 of 15 November 2000). The third protocol was passed as an Annex by the General Assembly in Resolution 55/255 of 31 May 2001.

⁹ See, for example, Trafficking Protocol, Articles 6 and 7 and CTOC, Articles 24 and 25.

3.2.2.1 'Exploitation of the Prostitution of Others' and 'Sexual Exploitation'

'Exploitation of prostitution' and 'sexual exploitation' as components of the definition of human trafficking in the CTOC have led to controversy and accordingly are left undefined (Global Rights 2006: 4-5). In deliberations on the Protocol, some delegates and NGOs insisted that all adult prostitution, including voluntary and even legal prostitution involving adults, should be classified as trafficking and forced a year-long debate on the subject.¹⁰ The majority of delegates and the Human Rights Caucus, however, understood that countries have different laws and policies on adult sex work and that many countries would not sign the Trafficking Protocol if it forced them to change their prostitution laws (Global Rights 2006). They also rejected the notion that voluntary, non-coerced participation by adults in sex work, factory work or any other work is trafficking per se, arguing that, while such work can be abusive and exploitative, it is trafficking only if it amounts to forced labour, slavery or servitude.

The solution was to allow States to sign the Trafficking Protocol by leaving these terms undefined. Each government was thus allowed to decide for itself the legal treatment of voluntary adult sex work. An Interpretative Note explains the compromise language and recognises the existence of both coerced and non-coerced participation in adult sex work.

Since forced or coerced adult sex work (and any other forced or coerced work) and all child participation in sex work is covered in the Trafficking Protocol in the context of slavery, forced labour or servitude, governments can omit the terms 'exploitation of the prostitution of others or other forms of sexual exploitation' from their domestic laws. Any government that decides to include these terms in their domestic law will have to define them clearly.

3.2.2.2 Human Trafficking and Smuggling

The Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter, 'the Smuggling Protocol') aims at preventing and combating the smuggling of migrants while protecting the rights of smuggled migrants (Article 2). The Smuggling Protocol defines 'smuggling' of migrants as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident' (Article 3(a)). The Protocol criminalises smuggling as well as the conduct associated with smuggling, such as the 'procuring, providing or possessing' of a 'fraudulent travel or identity document' (Article 6.1(b)).

Smuggling of migrants and human trafficking both involve moving human beings for profit (UNODC 2006a: xiii-xiv). However, to constitute human trafficking, two additional elements beyond smuggling must be present: some improper form of recruitment, such as coercion, deception or some abuse of authority; and some exploitive purpose, although that purpose need not necessarily have been fulfilled (UNODC 2006a: xiv). Human trafficking is further distinguished from human smuggling by the profit motive: the major source of revenue for offenders (and the economic driving force behind the offence) is the proceeds derived from the exploitation of victims in prostitution, forced labour or other ways (UNODC 2006a: xiv). In the case of smuggling, the smuggling fee paid by the illegal migrant is the major source of revenue and usually no relationship endures between the offender and the migrant once the latter has arrived at the destination. Finally, smuggling is always transnational, whereas trafficking may not be.

¹⁰ See also SALC (2002a) paras 9.20-9.25. One school of thought, held by the Coalition on Trafficking in Women (CATW), for example, is that all prostitution is coercive, and also responsible for subordinating women as a group. According to this definition, there can be no such thing as 'voluntary' prostitution, as all prostitution is a violation of human rights, and 'trafficking in women' is taken to include any migration for purposes of prostitution. The second view, expounded primarily by the Global Alliance Against Traffic in Women (GAATW), makes a distinction between 'trafficking in women' and 'forced prostitution' on the one hand, and 'voluntary prostitution' on the other: '[T]rafficking in persons and forced prostitution are manifestations of violence against women and the rejection of these practices, which are a violation of the right to self-determination, must hold within itself the respect for the self-determination of adult persons who are voluntarily engaged in prostitution' (Doezema 2000: 33). The GAATW was a member of the Human Rights Caucus.

Protection and assistance services required for victims of human trafficking are not typically available to migrants who have been smuggled into a State. In practice, however, actual cases of human trafficking and smuggling may involve elements of both offences or shift from one to the other. Many victims of human trafficking begin their journey by consenting to be smuggled from one State to another, yet are deceived or coerced into exploitive situations and thus become victims of human trafficking. It may therefore sometimes be difficult for law enforcement officials and victim service providers to determine whether a particular case is one of smuggling or trafficking. For this reason, law enforcement personnel must be familiar with both Protocols and their operational concepts (UNODC 2006b: 8).

3.2.2.3 Scope of Application of the Palermo Protocol

Article 4 specifies that offences stipulated in Article 5 of the Protocol apply also to offences that are transnational in nature and involve an organised criminal group. Article 3.2 of the CTOC defines an offense as 'transnational' if:

- (a) It is committed in more than one State;
- (e) It is committed in one State but a substantial part of its preparation, planning, directing or control takes place in another State;
- (f) It is committed in one State but involves an organised criminal group that engages in criminal activities in more than one State; or
- (g) It is committed in one State but has substantial effects in another State.

In Article 2(a), the CTOC describes an organised criminal group as a

structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established [by] the Convention [or Trafficking Protocol], in order to obtain, directly or indirectly, a financial or other material benefit.

However, States Parties to the CTOC are obliged to criminalise trafficking in their national legislation irrespective of whether it is transnational in nature or involves an organised criminal group (Article 34.2).

3.2.2.4 Criminalisation of trafficking

Article 5(1) of the Protocol provides that States Parties 'shall adopt such legislative and other measures as may be necessary' to criminalise human trafficking, as defined Article 3. Article 5(2) further requires States Parties to establish as criminal offences, any attempt to commit human trafficking, serving as an accomplice in human trafficking, and organising 'or directing' other people to commit human trafficking.

Theoretically, section 5.2 could be used to prosecute trafficked persons who agree to work illegally and to travel with false or no documentation (Global Rights 2006: 11). Trafficked persons could be accused of 'organizing' or 'attempting' to traffic or knowingly 'participating' or assisting in their own trafficking. As this effect is not the intention of Article 5, domestic legislation should clearly state that a trafficked person is never punishable in connection with her or his own trafficking. It should also ensure that trafficked persons are not prosecuted for trafficking someone else. For example, if several persons are trafficked together, none of the victims should be prosecuted as an accomplice to trafficking the other victims.

3.2.2.5 Supplementary Measures

The principle that the provisions of the CTOC also apply to the Trafficking Protocol brings with it a number of obligations for States Parties. A number of examples are set out here.¹¹

¹¹ For a more detailed discussion, see UNODC (2004), para. 44.

(i) Anti-corruption provisions

Because the commission of trafficking-related offences often relies on the complicity of government officials, anti-corruption provisions contained in the CTOC supplement the provisions of the Protocol (Global Rights 2006: 12). Article 8 requires States Parties to criminalise a number of acts relating to corruption and Article 9 then demands legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials.

(ii) Proceeds of Crime

States Parties are required to include provisions in domestic legislation relating to the confiscation and seizure of proceeds of crime (Article 12). Such confiscated assets become the property of the State in which they are located (Global Rights 2006: 13). Article 14(1) stipulates that such proceeds be handled by that State Party in accordance with its domestic law and administrative procedures.

The Global Rights report holds that confiscated assets should be handled in a way that benefits trafficked persons, such as paying compensation, restitution and damage awards to trafficked persons, and supporting services for trafficked persons in countries of destination, transit and origin.

Governments should not keep the assets for other purposes and those that do so are guilty of profiting from the traffickers' criminal acts. Assets from human trafficking represent the forced labour, suffering and human rights violations suffered by human beings and they should be distributed to and for the benefit of those victims (Global Rights 2006: 13).

(iii) Special investigative techniques

Special investigative techniques must be provided for the purpose of combating these offences, if permitted by basic principles of the domestic legal system of the State Party concerned and, where deemed appropriate, other techniques such as electronic surveillance and undercover operations may be used (Article 20).

3.2.2.6 Money-laundering

States Parties are expected to criminalise the laundering of the proceeds of a comprehensive range of trafficking offences in accordance with Article 6 of the CTOC.

3.2.2.7 Liability of Legal Persons

Article 10 of the CTOC requires States Parties to adopt measures to ensure the liability of legal persons, for example, companies or partnerships. The liability of legal persons may be criminal, civil or administrative (Article 10.2).

3.2.2.8 Protection of Victims of Trafficking

Articles 6, 7 and 8 of the Protocol reflect the intention of the drafters of the CTOC and the Trafficking Protocol to supplement general rules for dealing with witnesses and victims with additional assistance and support specifically established for victims of trafficking (UNODC 2004: para. 51). Obligations apply equally to any State Party in which the victims are located, whether a country of origin, transit or destination.¹² These provisions should be read and implemented in conjunction with Articles 24 and 25 of the CTOC, which make provisions for victims and witnesses that apply to all cases covered by the Convention. Thus, where the Trafficking Protocol applies, trafficking would be an offence covered by the CTOC and victims would be covered by Articles 6-8 of the Protocol and Article 25 of the CTOC. To the extent that victims are also witnesses, they would also be covered by Article 24 of the CTOC.

¹² See the interpretative notes (A/55/383/Add.1, para. 71).

The language employed in these provisions is considerably weaker than in the ‘law enforcement’ articles of the Protocol (UNODC 2004: para. 52). The discretionary nature of the protective duties reflects concerns about costs and difficulties associated with delivering social assistance to all victims in many developing countries.

The obligations imposed on States Parties in respect of the protection of and assistance to victims of trafficking can be summarised as follows (UNODC 2004: para. 49):

- (a) Protect the privacy and identity of victims in appropriate cases and to the extent possible under domestic law (Article 6.1);
- (b) Ensure that victims receive information on relevant court proceedings in appropriate cases and have an opportunity to have their views presented and considered (Article 6.2);
- (c) Endeavour to provide for the physical safety of victims while they are in their territory (Article 6.5);
- (d) Ensure that measures exist to allow victims the opportunity to seek compensation for damages suffered (Article 6.6);
- (e) Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety (Article 8.1); and
- (f) Verify without unreasonable delay whether a trafficking victim is a national or has the right to permanent residence and issue the necessary travel documents for re-entry (Article 8.3 and 4).

States Parties must furthermore consider implementing measures to provide for the physical, psychological and social recovery of victims of human trafficking (Article 6.3). This includes, in appropriate cases, in cooperation with non-governmental organisations, other relevant organisations and other elements of civil society, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

Article 6.4 of the Protocol provides that each State Party, in considering measures to assist and protect victims of trafficking, must take into account the special needs of child victims.

Article 7 of the Protocol addresses the status of victims of trafficking in receiving states. States Parties are required to consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. In implementing the provision contained in paragraph 1 of this article, each State Party must give appropriate consideration to humanitarian and compassionate factors.¹³

¹³ Note that this section recognises the need for legal immigration status but it does not actually require governments to do anything. It merely states that governments ‘shall consider’ temporary or permanent residence ‘in appropriate cases’: Global Rights (2006a), pp. 23-24.

3.2.2.9 Preventive Measures¹⁴

The Trafficking Protocol, in conjunction with Article 31 of the CTOC, requires States Parties to adopt comprehensive prevention strategies (UNODC 2004: para. 71). These strategies include addressing socio-economic conditions that contribute to the desire to migrate (and hence the vulnerability of victims to traffickers) as well as providing for education and awareness-raising. It also calls for measures to protect victims from being trafficked again and from other forms of secondary or re-victimisation (Article 9.1(b)).

The Protocol also requires measures to ‘discourage the demand that fosters all forms of exploitation of persons, especially women and children, which leads to trafficking’ (Article 9.5).

Finally, the Protocol seeks to prevent trafficking in persons by requiring measures intended to make it more difficult for traffickers to use conventional means of transport to enter into countries, by requiring States Parties to ensure that border controls are effective, and by taking measures to prevent the misuse of passports and other travel or identification documents (UNODC 2004: para. 73). Those provisions, found in articles 11-13 of the Trafficking Protocol, are identical to the corresponding provisions of the Smuggling Protocol.

Other measures set out in Articles 9, 11, and 12 of the Protocol can be summarised as follows (UNODC 2004: para. 70):

- (a) Support media campaigns and social and economic initiatives to prevent and combat trafficking in persons, including through cooperation with non-governmental organisations (Article 9.2 and 3);
- (b) Prevent commercial carriers from being used to commit trafficking offences and require commercial transportation carriers to ascertain that all passengers have the required travel documents, including sanctions for failure to do so (Article 11.2 and 3);
- (c) Ensure that travel and identity documents are of such quality that they cannot be altered or misused (Article 12(a)); and
- (d) Prevent the unlawful issuance of a State Party’s travel documents (Article 12(b)).

3.2.2.10 Cooperation

Various articles of the Trafficking Protocol contain specific obligations to cooperate with other States Parties and, in two cases, to cooperate with entities that are not States Parties (2004: para. 83). Cooperation is required regarding assistance to and protection of victims of human trafficking (Article 6), repatriation of victims of trafficking (Article 8), prevention of trafficking (Article 9), information exchange and training (Article 10), border measures (Article 11) and legitimacy and validity of documents (Article 13).

3.2.2.11 Summary: Main Requirements¹⁵

- (a) Provide or strengthen training for law enforcement, immigration and other relevant officials (Article 10.2);
- (b) Comply with use restrictions placed on information received from another State Party (Article 10.3);
- (c) Facilitate and accept the return of victims who are nationals or have the right of permanent residence, with due regard for their safety (Article 8.1); and
- (d) Verify without unreasonable delay whether a trafficking victim is a national or has the right of permanent residence, and issue necessary travel documents for re-entry (Article 8.3).

¹⁴ For a more detailed discussion see UNODC (2004), paras. 74-79, and Global Rights (2006a), pp. 27-28, 29-31.

¹⁵ For a more detailed discussion, see UNODC (2004), paras. 84-95.

In addition, a number of discretionary measures are set out (UNODC 2004: para. 82). States Parties must:

- (a) Consider implementing support measures in cooperation with non-governmental organisations, other relevant organizations and other elements of civil society (Article 6.3);
- (b) Where appropriate, consider including cooperation with non-governmental organisations, other relevant organisations and other elements of civil society in establishing preventive measures in accordance with Article 9 (Article 9.3);
- (c) Consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication, without prejudice to Article 27 (Law enforcement cooperation) of the CTOC (Article 11.6 of the Protocol).

Section 14.1 explains that provisions of the Protocol do not affect the rights, obligations and responsibilities of States and individuals under international law, while the Protocol does not cover the status of refugees. Thus all provisions of the Trafficking Protocol must be interpreted in a manner that is consistent with international instruments, such as the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child (Global Rights 2006: 32).

Section 14.2 prohibits discrimination against victims of trafficking on grounds such as gender, race, religion, nationality, and so forth, as enumerated in existing international instruments prohibiting discrimination on these grounds. However, it does not eliminate all possible bases for discrimination, so governments could still discriminate against a trafficked person who is gay, lesbian or transgender. Unfortunately, governments worldwide routinely discriminate against people in the sex industry if they are gay, lesbian or transgender. National legislation on trafficking should remedy this gap.

3.2.3 Women's Rights

3.2.3.1 Convention on the Elimination of All Forms of Discrimination against Women

This Convention prohibits all discrimination that has 'the effect or purpose of impairing women's enjoyment or exercise of their fundamental rights and freedoms' (Article 1). Article 6 provides that States Parties must take all appropriate measures, including legislation, to suppress 'all forms of traffic in women and exploitation of prostitution of women.' South Africa ratified this Convention on 15 December 1995, and is therefore bound by the obligations created by the Convention.

The Committee on the Elimination of Discrimination against Women (CEDAW), the monitoring body for the Convention, has dealt with the issue of trafficking in the context of violence against women in its General Recommendation Number 19, which observes that poverty and unemployment increase opportunities for trafficking in women (para. 14). In addition to established forms of trafficking, the General Recommendation notes related practices—such as sex tourism, recruitment of domestic labour from developing countries to work in developed countries, and organised marriages between women from developing countries and foreign nationals—which are deemed incompatible with the equal enjoyment of rights by women and respect for their rights and dignity. Furthermore, CEDAW notes that war, armed conflict and belligerent occupation often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures (para. 16). The CEDAW accordingly recommends that States Parties should take specific preventive and punitive measures to overcome trafficking and sexual exploitation (para. 24(g)).

States Parties are required to describe, in their periodic reports, the extent of these problems and all measures taken to protect women subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures must also be described (para. 24(h)).

South Africa submitted its first country report in 1997 and a combined second, third and fourth report in 2009. In its concluding comments on South Africa's initial report, CEDAW expressed its concern that insufficient attention was being devoted to the problem of trafficking in women and recommended that both the legal

situation and the reality with regard to trafficking in women be addressed.¹⁶ It requested that information on this issue be contained in South Africa's next report (para. 125-126).

The second South African country report acknowledged this comment and addressed the strengthening of measures aimed at combating trafficking in women and children at some length (at 68-72). Specific reference is made to building up of international relations, especially with neighbouring States, the prosecution of traffickers using existing legal provisions and administrative mechanisms, including forfeiture of assets, and the current law reform process. At the time of writing, the country report is being considered by the Committee; it is scheduled for discussion at a future date (beyond October 2010).

3.2.3.2 Declaration on the Elimination of Violence against Women and the Beijing Platform

The Declaration on the Elimination of Violence against Women explicitly includes trafficking of women in the definition of violence against women. Article 2(b) states that violence against women 'shall be understood to encompass, but not be limited to, physical, sexual and psychological violence occurring within the general community, including ... trafficking in women'. Thus State duties to address violence against women, set out in Article 4 of the Declaration, also apply to acts of trafficking (Article 4(c)).

The Beijing Platform adopts the definition of violence against women from the Declaration (para. 113) and notes that the effective suppression of trafficking in women and girls for the sex trade is a matter of pressing international concern (para. 122). Women and girls who are victims of this international trade are at an increased risk of further violence, as well as unwanted pregnancy and sexually transmitted infection, including infection with HIV/AIDS.

The elimination of trafficking is therefore formulated as one of the strategic objectives of the Beijing Platform. To this end, governments are required to take a number of actions, ranging from prevention, cooperation and resource allocation to service provision, to victims of trafficking (para. 130).

3.2.4 Children's Rights

3.2.4.1 Convention on the Rights of the Child (1989)

South Africa ratified the Convention on the Rights of the Child (CRC) on 16 June 1995. A number of provisions in this Convention are relevant to child trafficking. Firstly, Article 19 obliges States Parties to protect children from, inter alia, all forms of physical and mental violence, exploitation and sexual abuse. Article 32 protects children from performing any work that is likely to be hazardous or to interfere with the child's education, or which is harmful to the child's health or physical, mental, social, spiritual or moral development. Article 34 protects children from all forms of sexual exploitation and sexual abuse and their use in the sex trade such as prostitution and pornographic performances. Article 36 protects children against all other forms of exploitation and Article 39 requires States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflict.

Article 35 particularly refers to the issue of trafficking and obliges States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form. Kassan (2007) explains that Article 35 acts as a 'fail-safe protection' for children at risk of abduction, sale or trafficking. It serves as a safety net to ensure that children are safe from being abducted or procured for purposes of exploitative or harmful work (as provided in Article 32), or their use in the sex trade (in Article 34) or other forms of exploitation (as in Article 36) or any other purpose. Article 35 thus provides a double protection for children, in that, while the main forms of trafficking are dealt with in other articles of the

¹⁶ The Committee considered the initial report of South Africa (CEDAW/C/ZAF/1) at its 387th, 388th and 393rd meetings, on 24 and 29 June 1998 (see CEDAW/C/SR.387, at 388 and 393).

CRC, Article 35 requires blanket action on abduction, sale or the traffic of children for any purpose or in any form. However, it should be noted that while the CRC protects children against trafficking, it fails to stipulate what constitutes the offence of trafficking in children.

3.2.4.2 Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

This Protocol, which supplements the Convention on the Rights of the Child, arose from concern about the significant and increasing international traffic in children for the purposes of the sale of children, child prostitution and child pornography (Preamble) and calls on all ratifying States Parties to prohibit child pornography, child prostitution and the sale of children (Article 1). The Protocol was ratified by South Africa on 1 July 2003.

The Protocol does not specifically mention trafficking, but it does define the ‘sale of children’ to mean ‘any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration’ (Article 2(a)). In addition, Article 3(1)(a) obliges States Parties to define certain core activities relating to the sale of children as a criminal offence irrespective of whether such acts are committed domestically or transnationally or on an individual or organised basis. Thus, the Protocol obliges¹⁷ States Parties to criminalise the offering, delivering or accepting, by whatever means, a child for the purpose of sexual exploitation; transfer of organs of the child for profit; engagement of the child in forced labour; and improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption. Kassan (2007) argues that, even though not expressly referred to as trafficking, these acts, particularly the offering, delivering or accepting a child for purposes of sexual exploitation, transfer of organs and forced labour, could amount to trafficking in children as defined in Article 3(c) of the Trafficking Protocol (discussed above), as they contain similar elements of what trafficking in children entails.

The Protocol furthermore covers issues of jurisdiction (Article 4), extradition (Article 5), inter-country assistance in relation to investigations, criminal and extradition proceedings (Article 6), seizure and confiscation of goods (Article 7), measures to protect the rights and interests of child victims of the practices prohibited under the protocol, (Article 8) and promotes international law enforcement co-operation (Article 10).

3.2.4.3 Additional Measures Relating to Children

The Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 2000 requires States Parties to ensure that ‘persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces’ (Article 2). South Africa ratified the Optional Protocol on 24 September 2009.

The Hague Convention on Protection of Children and Co-operation in respect of Inter-country Adoption (1993) prohibits inter-country adoption in cases where parental consent is obtained as a result of payment or compensation.¹⁸ In addition, the Convention provides that no one shall derive improper financial or other gain from an activity related to an inter-country adoption (Article 32).

3.2.5 The International Labour Organisation

The International Labour Organisation (ILO) started addressing human trafficking early on in its history (ILO 2008c: 1) While its initial anti-trafficking work was closely associated with the struggle against the ‘white slave trade’, it soon gained impetus through the 1930 Convention against Forced Labour, whose definition of forced labour is still relevant today. The ILO’s efforts against trafficking were subsequently reinforced by the adoption of two Migrant Worker’s Conventions and the Worst Forms of Child Labour Convention.

¹⁷ Unlike the Convention on the Rights of the Child, in terms of which State Parties commit themselves to take only ‘appropriate measures’ to prevent certain practices, the Protocol places an explicit obligation on State Parties to make certain activities relating to the sale of children a criminal offence: see SALRC (2006), para. 2.32.

¹⁸ South Africa acceded to the Hague Convention of 1993 in 2003.

The ILO addresses trafficking from a labour market perspective. It thereby seeks to eliminate the root causes, such as poverty, lack of employment and inefficient labour migration systems (ILO 2008c: 2). ILO-led responses involve labour market institutions, such as public employment services, labour inspectors and labour ministries. The ILO consults and involves workers' and employers' organisations in its work.

While most States condemn forced labour and the worst forms of child labour, national laws often lag behind international commitments. Following the adoption of the Trafficking Protocol, States enacted new anti-trafficking laws or sought to bring their laws in line with international standards. In many countries, however, legislation does not yet cover all forms of trafficking, for example, labour trafficking as compared to trafficking for sexual exploitation, or excludes certain groups of people as potential victims (ILO 2008c: 8).

The ILO recommends coherence between criminal, immigration and labour law in order to better protect victims of trafficking and to offer them compensation (ILO 2008a: 8). Labour law is particularly relevant to enable trafficked persons to seek compensation through employment tribunals or other dispute settlement mechanisms independent from criminal proceedings. For example, if States have a clear national policy on the employment relationship, this could go some way towards rooting out ambiguous situations where vulnerable persons' rights are not respected.

Where countries have ratified ILO Conventions, their effective application is principally assured by the relevant supervisory mechanism (ILO 2008c: 8). Measures taken by Member States to combat trafficking should be elaborated on in the reports to be examined by the independent Committee of Experts for the Application of the Conventions and Recommendations. On several occasions, ILO supervisory bodies have expressed increased concern about the illegal use of forced labour, including debt bondage of migrant workers in agricultural and non-agricultural sectors, and trafficking of men and women migrant workers in agriculture, the sex industry and domestic service. In 2001, the Committee of Experts on the Application of Conventions and Recommendations adopted a general observation concerning trafficking under Convention No. 29, requesting all governments to include in their reports under the Convention, information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation.

3.2.5.1 Convention against Forced Labour No. 29 (1930)

States Parties are required to 'suppress the use of forced labour or compulsory labour in all its forms within the shortest possible period' (Article 1.1). The term 'forced or compulsory labour' is defined as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily' (Article 2.1). In terms of Article 25, States Parties must ensure that 'the illegal exaction of forced or compulsory labour shall be punishable as a penal offence' and 'that the penalties imposed by law are really adequate and are strictly enforced'. South Africa ratified this Convention on 5 March 1997.

3.2.5.2 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182

This Convention, which was ratified by South Africa on 7 June 2000, obliges States Parties to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour (Article 1). In terms of the Convention, the worst forms of child labour comprise of, inter alia:

- a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour including forced or compulsory recruitment of children for use in armed conflict;
- b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties.

3.2.5.3 Migrant Workers

As noted, the issue of trafficking is closely related to undocumented entry or stay in foreign countries (ILO 2008a: 7). For this reason, the ILO's Migration for Employment Convention (Revised) No. 9, 1949 and the Migrant Workers (Supplementary Provisions) Convention No. 143, 1975 provide a normative framework for the protection of likely and actual victims of trafficking. However, South Africa has not ratified any of the four Conventions relating to migrant workers below.

Migration for Employment Convention No. 9 (Revised), 1949

States Parties to this Convention undertake to maintain an adequate and free employment service for migrants (Article 2). Ratifying States will also take all the appropriate steps against misleading propaganda relating to emigration and immigration (Article 3.1).

Migrant Workers (Supplementary Provisions) Convention No. 143, 1975

This Convention is primarily aimed against the organised movement of migrant workers by labour traffickers. Ratifying States must take measures to detect, eliminate and apply sanctions for clandestine movement of migrants in abusive conditions and illegal employment of migrant workers, on the one hand, and on the other, provide a minimum level of protection to workers in an irregular situation (Articles 3 and 6).

Private Employment Agencies Convention No. 181

Given the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, including trafficking, this Convention offers guidance for designing a legal framework to address trafficking of human beings (ILO 2008c: 8). States that ratify this Convention are expected to adopt appropriate measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies (Article 8). These measures include laws or regulations that provide for penalties, including prohibition of those private employment agencies engaging in fraudulent practices and abuses.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)¹⁹

This Convention, adopted by the UN General Assembly, states that '[n]o migrant worker or member of his or her family shall be held in slavery or servitude' and that '[n]o migrant worker or member of his or her family shall be required to perform forced or compulsory labour' (Article 11). South Africa has neither signed nor ratified this Convention.

3.2.6 United Nations Initiatives

A number of influential United Nations (UN) bodies have in recent years taken steps to address human trafficking, and in doing so, have contributed to the emerging normative framework at international level. An overview of the main initiatives is provided here.²⁰

¹⁹ UN Doc A/Res/45/158 of 18 December 1990.

²⁰ The issue of human trafficking has been included in a plethora of UN documents and initiatives, including the *Millennium Development Goals Declaration* (UN Doc A/55/L.2 dated 8 September 2000) and the Universal Peer Review mechanism process of the Human Rights Council. A comprehensive discussion is not possible here.

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3.2.6.1 Rome Statute of the International Criminal Court

The Rome Statute of the International Criminal Court, which entered into force in 2002, includes 'enslavement' in the definition of crimes against humanity in Article 7(1)(c).²¹ It defines 'enslavement' as the exercise of any or all of the powers attaching to the right of ownership over a person, including the exercise of such power in the course of trafficking in persons, in particular of women and children.

3.2.6.2 UN High Commissioner for Human Rights: Recommended Principles and Guidelines on Human Rights and Human Trafficking

In 2002, the United Nations High Commissioner for Human Rights developed 'Recommended Principles and Guidelines on Human Rights and Human Trafficking',²² which provide a step-by-step interpretation of the Trafficking Protocol and identify the human rights considerations that must be borne in mind as the Protocol is implemented (ILO 2008: 18).

Principles 1 and 2 state that the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.

Importantly, these Principles include specific reference to the rights of children who fall victim to trafficking and underline the importance of ensuring that the best interests of the child prevail (Principle 10). The corresponding Guideline 8 notes that the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions.

A number of Principles deal with 'criminalisation, punishment and redress'. The following Principles are of particular relevance to the prosecution. Principle 12 requires States to adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct. Principle 13 reads as follows:

States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.

In terms of Principle 16, States must, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.

Although these 'Recommended Principles and Guidelines' are not legally binding on States, they do contribute to the overall normative framework that is emerging in the international sphere.

3.2.6.3 Special Rapporteurs

A number of the thematic Special Rapporteurs appointed by various human rights bodies have incorporated aspects of human trafficking in their work, depending on the nature and scope of their mandates. For example,

²¹ A 'crime against humanity' is defined as any of the listed acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The list includes murder, extermination, enslavement, torture, rape, sexual slavery, etc (Article 7(1)(c)).

²² E/2002/68/Add.1.

in her first report in 2000, the Special Rapporteur on the human rights of migrants emphasised the need to take account of the problem of human trafficking when considering various aspects of migration (Pizarro 2000). More recently, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examined human trafficking as a form of torture as part of his report focusing on the protection of women from torture (Nowak 2008: 19-20). The Special Rapporteur on contemporary forms of slavery, including its causes and consequences has explored the links between forced labour, bonded labour and human trafficking in her report on forced labour (Shahinian 2008: para. 62).

Although the findings and recommendations set out in these Rapporteurs' reports are not legally binding in international law, they are nevertheless influential in that they may contribute to the consolidation of international norms and standards. Certain of the findings may be of particular importance in the South African context. A brief overview of the main contributions is therefore provided.

3.2.6.3.1 Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography

The UN Commission on Human Rights decided in 1990 to appoint a Special Rapporteur on the sale of children, child prostitution and child pornography.²³ This Special Rapporteur was mandated to investigate the exploitation of children around the world, to submit reports on this matter, and make recommendations for the protection of the rights of the children concerned. Since then, the appointment of the Special Rapporteur has been regularly renewed, most recently in March 2008 for a three-year period.

The reports of the Special Rapporteur have covered various aspects of child trafficking. For example, the last thematic report submitted by the previous Rapporteur addressed the question of assistance and rehabilitation programmes for child victims of trafficking and sexual commercial exploitation (Petit 2008: para. 27).

The Special Rapporteur's 2007 report focused on the sale of children's organs and rapid response programmes for abducted and disappeared children (Petit: 2007: para. 18). The Special Rapporteur observed that although formal reports of organ and tissue trafficking were few, diverse unconfirmed rumours persisted (para. 79). Therefore, there was a need to report and investigate when these allegations appear and to ensure criminal sanctions against the traffickers and all those involved as child abusers. Regarding the question of abduction of children and the need to address this issue in a coordinated, comprehensive and global way, the Special Rapporteur recommended that all States set up rapid-response programmes (para. 85).

Other aspects relevant to child trafficking that have been investigated by the Special Rapporteur include an analysis of the legal consequences of the sale of children; child prostitution and child pornography, and particularly the criminalisation of child victims; as well as the prevalence of illegal or coercive adoptive practices that in effect are selling a child (Petit 2003).

3.2.6.3.2 Special Rapporteur on Trafficking in Persons, Especially Women and Children

In 2004, the Commission on Human Rights decided to appoint, for a three-year period, a Special Rapporteur on trafficking in persons, especially women and children, to focus on the human rights aspects of the victims of human trafficking.²⁴ On 18 June 2008, the mandate of the Special Rapporteur was extended for three years by the Human Rights Council.²⁵

In the discharge of his/her mandate, the Special Rapporteur:

- Takes action on violations committed against trafficked persons and on situations in which there has been a failure to protect their human rights;

²³ See website of the Special Rapporteur, available at: www2.ohchr.org/english/issues/children/rapporteur/index.htm (accessed on 25 January 2010).

²⁴ See 'Special Rapporteur on trafficking in persons, especially in women and children: Introduction': available at, <http://www2.ohchr.org/english/issues/trafficking/index.htm>.

²⁵ In terms of resolution 8/12.

- Undertakes country visits in order to study the situation in situ and formulate recommendations to prevent and or combat trafficking and protect the human rights of its victims in specific countries and/or regions; and
- Submits annual reports on the activities of the mandate.

The first Rapporteur was Ms Sigma Huda from Bangladesh (from 2004-2008), and the second (current) Special Rapporteur is Ms Joy Ezeilo from Nigeria (from 2008 to date).

The Special Rapporteur's first report in 2005 addressed the question of the demand for commercial sexual exploitation and trafficking (Huda 2006: para. 23). Her second report was devoted to forced marriage in the context of human trafficking (Huda 2007: para. 13). The current Special Rapporteur submitted a report covering the first part of her mandate to the Human Rights Council in February 2009 (Ezeilo 2009). This was a general 'overview' report, containing a global perspective of the trafficking phenomenon and its trends, and an examination of the legal and policy framework, especially the human rights frameworks and mechanisms for combating trafficking in persons at international, regional and national levels. More recently, a thematic report on the identification and protection of assistance to victims of trafficking was submitted to the UN General Assembly.²⁶

3.2.6.3.3 Special Rapporteur on Violence against Women

As noted above, the Special Rapporteur on Violence against women, its causes and consequences took specific notice of trafficking of women as a form of violence against women in her 1997 report, and then devoted her thematic report in 2000 to an investigation of trafficking in women, women's migration and violence against women (Coomaraswamy 2000).

In the 15-year review of the Special Rapporteur's mandate in 2009, she points out that the mandate's work on trafficking has significantly shifted the way in which the issue had conventionally been framed, in terms of de-linking it from prostitution, bringing out its linkages with migration, and putting the human rights of the trafficked women in the centre of approaches to trafficking (Ertürk 2009: para. 37).

It is significant to note that the Special Rapporteur has on more than occasion called for the use of the Recommended Principles and Guidelines on Human Rights and Human Trafficking (Coomaraswamy 2003: para. 60; Ertürk 2009: para. 41). In addition, she points out that more progress is needed to comprehensively address trafficking from a human rights and gender perspective such as a rethinking of restrictions on legal migration and legal protection under national and international labour law regardless of legality of status (Ertürk 2009: para. 41).

3.2.6.4 UN Studies on Violence against Women and Violence against Children

In recent years, two broad-scale studies were conducted under the auspices of the Secretary-General of the UN on violence against women and children respectively.

The report of the *'In-Depth Study on All Forms of Violence against Women'* acknowledges that measuring the extent of human trafficking has traditionally been difficult because of differing interpretations of what constitutes trafficking and what should be measured (Division for the Advancement of Women (DAW) 2006: para. 137, 231). However, the introduction of the Trafficking Protocol has improved this situation, and efforts are underway at national, regional and international level to improve data collection on trafficking.

Another reason why the (limited) statistics available in this area are often unreliable is that many countries either do not have trafficking legislation or have legislation that is inadequate (DAW 2006: para. 229). Even

²⁶ UN Doc Ref A/64/290 of 12 August 2009: available on the Special Rapporteur's website at www2.ohchr.org/english/issues/trafficking/index.htm (accessed on 25 January 2010).

where legislation is in place, few traffickers are successfully prosecuted. There is often no centralised agency collecting data on human trafficking. Statistics may be reported by individual government agencies, by NGOs, the media or international or regional organisations, but these data sources are rarely linked and are often not comparable. The report further notes that trafficked women rarely report their situation to the authorities and are often unwilling to cooperate with law enforcement officials if identified and rescued (para. 230).

In its discussion of gaps in the implementation of international standards at the national level, the report notes that human rights treaty bodies have highlighted the lack, in many countries, of comprehensive laws on trafficking (para. 276). Treaty bodies have also expressed concerns about the scope and coverage of existing legislation, in particular with regard to (amongst other areas) the inadequacy of protective measures for trafficked women, as well as their treatment as criminals rather than victims (para. 277).

The report lists a number of ‘promising practices’ that have been developed by States to meet their international obligations to address violence against women, including trafficking. In the area of monitoring laws to ensuring effective implementation, the appointment of national rapporteurs on trafficking to oversee and monitor anti-trafficking activities, as is the case in Nepal and the Netherlands, is recorded (para. 300). Another promising practice is the specialised Human Trafficking Unit in Belgium, which is tasked with detecting cases of human trafficking, sending early warnings to the authorities and serving as an operational focal point within the country’s police forces (para. 316).

The *Secretary-General’s Study on Violence against Children* similarly identified child trafficking as a cause of major international concern (Pinheiro 2006, 300). Where trafficked children are rescued or escape, they may be detained by the police or immigration authorities, and risk deportation to their country of origin. This has been reported from countries in every region and typically occurs without referral either to the courts or other authorities. Repatriation takes place without any attention being paid to the child’s best interests or to their right to be consulted when making decisions affecting their future. Child victims of trafficking are often treated as if they are criminals. This is because of their supposed or actual involvement in offences committed as a result of being trafficked, or of coercion by their captors. These offences include theft, prostitution and illegal immigration (Pinheiro 2006: 301).

Significantly, the report raises the question of ‘cyber-space and cyber-threats – the challenges of Internet and communication technologies’ (Pinheiro 2006: 312-315). These may range from exposure to violent imagery on television and video games to cyber-bullying, online sexual grooming, child pornography and ultimately the promotion of child sex tourism. Although some major companies internationally are now committing themselves to the ‘Code of Conduct to Protect Children from Sexual Exploitation in Travel and Tourism,’ to stop human trafficking, including making the links between HIV/AIDS and trafficking, the report recommends that Governments need to make sure that a great deal more is done (Pinheiro 2006, 314).

The recommendations include the need for efforts to prevent and punish child trafficking to be increased (Pinheiro 200: 337). Governments should ensure that measures range from primary prevention (i.e. changing the conditions that make children vulnerable to trafficking) to vigorous law enforcement action against traffickers. Children who are trafficked or used to traffic drugs and weapons are usually victims themselves of several violations of their rights, and should not be re-victimised as criminals. They should be carefully assisted to get out of these situations, with a focus on safe and viable alternatives.

3.2.6.5 UN General Assembly

The UN General Assembly has devoted a great deal of attention to the issue of human trafficking in recent years, passing a number of resolutions on trafficking in women and girls²⁷ as well as on improving the coordination

²⁷ See, e.g., General Assembly Resolutions 55/67 (2000), 57/176 (2002), 59/166 (2004), 61/144 (2006), and 63/156 (2008).

of efforts against human trafficking.²⁸ The Secretary-General has further submitted a series of reports to the General Assembly on trafficking in women and girls.²⁹ In addition, the General Assembly held two Thematic Debates on human trafficking on 3 June 2008 and 13 May 2009 respectively.

3.2.6.6 UN Global Initiative to Fight Human Trafficking (UN.GIFT)

Efforts have been made to coordinate the anti-trafficking work of high-level UN bodies. One of the largest inter-agency projects is the *Global Initiative to Fight Human Trafficking*, known as UN.GIFT, which was launched in March 2007. It involves entities of the UN system, regional organisations, civil society groups and the private sector. (The Steering Committee includes UNODC, UNICEF, the Office of the UN High Commissioner for Human Rights, ILO, IOM and the Organisation for Security and Cooperation in Europe.)

UN.GIFT convened a major international event during February 2008, entitled the *Vienna Forum to Fight Human Trafficking*, with the aim of raising awareness, facilitating cooperation and partnerships among stakeholders and avoiding duplication of efforts in the fight against human trafficking. The Forum, which was attended by over 1,600 delegates from more than 116 countries, was organised around three themes: vulnerability, impact and action.³⁰

3.3 REGIONAL INSTRUMENTS

Bilateral and multilateral cooperation is key to combating and eliminating trafficking, as it is a crime that frequently crosses borders and jurisdictions (UN Secretary-General 2008: para. 15). States are increasingly entering into cooperation agreements at regional and subregional level, such as the Bali Process³¹ and the Economic Community of West African States (ECOWAS) Joint Plan of Action against Trafficking in Persons, Especially Women and Children in West and Central Africa. For this reason, regional human rights instruments are gaining increasing importance, especially where the foundational documents are supplemented by instruments specifically aimed at addressing human trafficking. From the perspective of victims seeking redress, the implementation mechanisms for these regional mechanisms may be more accessible than those operating at international level. As the present discussion does not call for a comprehensive review, some examples are highlighted below.

3.3.1 European Human Rights System

The Council of Europe has adopted the Convention on Action against Trafficking in Human Beings, which entered into force in February 2008. This Convention has been praised as ‘an excellent regional example of using a rights-based approach to combat [human] trafficking’ by the Special Rapporteur on trafficking (Ezeilo 2009a, para. 21). The Convention adopts the definition of trafficking contained in the Palermo Protocol and goes beyond, by articulating the principle of non-discrimination and including safeguards for the protection of rights and the provision of assistance to victims.

Importantly, the Convention does not affect the rights and obligations derived from other international instruments to which States Parties have subscribed. (Article 40.1). This Convention is open to ratification by States that are not members of the Council of Europe.

²⁸ See, e.g., General Assembly Resolution 63/194 (2008).

²⁹ See, e.g., A/57/170 of 2 July 2002; A/59/185 of 28 July 2004; and A/63/215 of 23 January 2009.

³⁰ See also Commission on Crime Prevention and Criminal Justice, Report on the Vienna Forum to Fight Human Trafficking, 17th Session, Vienna, 14-18 April 2008 (E/CN.15/2008/CRP.2).

³¹ The Bali Process is a voluntary non-binding grouping of governments which was first convened in the form of the *Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime*, in response to large numbers of illegal boat arrivals run by human smuggling operations in the Asia-Pacific region. This conference was held in February 2002 and brought together thirty-eight origin, transit and destination countries from throughout the region. A statement issued by Co-Chairs Australia and Indonesia at the end of the Conference underlined participants’ commitment to concerted regional action to disrupt people smuggling and trafficking, and established a framework for future cooperative action. See www.baliprocess.net.

The European Court of Human Rights has also issued two important judgments on the issue of human trafficking and state duties to respond to trafficking. The first case, *Siliadin v France*,³² was brought by a young Togolese woman who had been brought to France at the age of 15 with the understanding that she would be going to school. Instead, she was subjected to domestic servitude, with significant restrictions placed on her personal freedom.

The Court held the French government liable for a violation of Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Although the husband and wife responsible for exploiting the applicant as a domestic servant had been prosecuted, they were acquitted because the criminal provisions were framed too narrowly at the time to include the conduct to which the applicant had been subjected. The Court emphasised that the positive obligations resting on States in terms of Article 4 require the penalisation and effective prosecution of acts aimed at maintaining a person in a state of servitude. Given the Court's conclusion that the applicant - a minor at the relevant time - had been held in servitude within the meaning of Article 4 (para. 129), the protection offered in terms of French law at the time fell short of the required standard.

In *Rantsev v Cyprus and Russia*,³³ the applicant (a Russian national) alleged a violation of the European Convention by the Cypriot and Russian authorities. The case arose from the death of his daughter, Oxana Rantseva, who had been trafficked from Russia to Cyprus, a destination country for women trafficked from Eastern and Central Europe for the purpose of sexual exploitation.³⁴ Working in Cyprus under the 'artiste' visa scheme, she was subjected to sexual exploitation in a cabaret in the island's largest coastal resort, Limassol. Ms Rantseva was found dead in March 2001 below the balcony of an apartment belonging to an employee of the cabaret, having been taken there from a police station by the cabaret's owner. The police found a bedspread tied to the railing of the balcony on the upper floor of the apartment. An inquest in Cyprus found she had died as a result of injuries sustained when she jumped from the balcony.

The applicant subsequently complained that the authorities in Cyprus had not adequately investigated the circumstances of the death of his daughter, had failed to adequately protect her while she was still alive and had failed to take steps to punish those responsible for her death and ill-treatment. He also alleged that the Russian authorities had failed to respond to his daughter's alleged trafficking and subsequent death and to take steps to protect her from the risk of being trafficked. He complained about the inquest proceedings and lack of access to court in Cyprus.

The Court found that Cyprus, the State of destination in this case, had not only failed to protect Ms Rantseva from being trafficked or from being unlawfully detained prior to her death, but it had also failed to adequately investigate her death. Russia, the state of origin, was found by the Court to have failed to adequately investigate the way in which Ms Rantseva had been trafficked from its borders. The Court ordered the Cypriot Government to pay Oxana Rantseva's father the sum of Euro 40,000 in damages and the Russian Government to pay a sum of Euro 2,000. In its judgment, the Court clarified the obligations of states in relation to trafficking - whether states of origin, transit or destination - as well as noting the importance of cross-border coordination in fighting trafficking.

The Court specifically looked at the obligations undertaken by the Cypriot authorities in terms of the Trafficking Protocol (Article 10) and, subsequently, the Anti-Trafficking Convention to ensure adequate training had been given to those working in relevant fields to enable them to identify potential victims of trafficking. In the Court's opinion, there were sufficient indicators available to the police authorities, against the general background of trafficking issues in Cyprus, for them to have a credible suspicion that Ms Rantseva was, or was at real and immediate risk of being, a victim of trafficking or exploitation. Accordingly, a positive obligation arose to investigate without delay and to take any necessary operational measures to protect Ms Rantseva (para. 296).

³² Application no. 73316/01, judgment dated 26 July 2005.

³³ Application no. 25965/04, judgment dated 7 January 2010.

³⁴ See case summary by the International Centre for the Legal Protection of Human Rights, at <http://www.interights.org/rantsev/index.htm>.

However, as the court notes, in this instance ‘the failures of the police authorities were multiple’. They not only failed to further investigate the background facts, but eventually, instead of releasing Ms Rantseva, placed her in the ‘custody’ of her employer. No attempt was made to take measures to protect her. This amounted to a violation of Article 4 of the Convention.

3.3.2 African Human Rights System

3.3.2.1 African Charter on Human and Peoples’ Rights (1981)

The African Charter on Human and Peoples’ Rights (also known as the ‘Banjul Charter’) is the foundational document in the African human rights system. A number of rights set out in the Charter are important in the context of human trafficking: Article 4 provides that all persons are entitled to respect for their life and the integrity of their person. Article 5 states that every person has the right to human dignity and prohibits all forms of exploitation and degradation of persons, particularly slavery; slave trading; torture; cruel, inhuman or degrading punishment and treatment. Article 6 guarantees every individual the right to liberty and security of the person. In terms of Article 18(3), States are required to ensure the elimination of discrimination against women and also to ensure the protection of the rights of women and children as stipulated in international declarations and conventions.

The African Commission on Human and Peoples’ Rights, the committee overseeing the implementation of the Charter, has not yet been presented with a specific communication relating to human trafficking. However, the Charter provisions were recently applied by the Economic Community of West African States (ECOWAS) Court of Justice in the matter brought by Hadijatou Mani Koraou against Niger relating to slavery (discussed below).

3.3.2.2 African Charter on the Rights and Welfare of the Child (1990)

In terms of Article 29(a), States Parties are required to take appropriate measures to prevent the abduction, sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child. States Parties must also take appropriate measures to prevent the use of children in all forms of begging (Article 29(b)).

The Charter sets out a range of state duties relevant to the protection of children from trafficking. For example, children must be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or that may interfere with their physical, mental, spiritual, moral or social development (Article 15(1)). States Parties must also take specific legislative, administrative, social and education measures to protect children from all forms of torture, inhuman or degrading treatment, especially physical or mental injury or abuse, neglect or maltreatment (Article 16(1)). Importantly, Article 27 requires State Parties to protect children from all forms of sexual exploitation and to take measures to prevent:

- (a) inducement, coercion or encouragement of a child to engage in any sexual activity,
- (b) use of children in prostitution or other sexual practices, and
- (c) the use of children in pornographic activities, performances and material.

Kassan (2007) points out that like the CRC, the Charter fails to state what constitutes trafficking in children.

3.3.2.3 Protocol on the Rights of Women in Africa

The Protocol to the Africa Charter on Human and Peoples’ Rights on the Rights of Women in Africa (‘the African Women’s Protocol’) was adopted in 2003 to expand on the rights set out in the Charter, with particular reference to Article 18(3). The Protocol specifically deals with human trafficking under Article 4, which guarantees the right to life and the integrity and security of the person, although certain other provisions, such as Article 3, setting out the right to dignity, are also applicable.

Article 4 requires States Parties to take a range of measures to address violence against women, including enacting and enforcing laws to prohibit all forms of violence against women (Article 4(1)(a)). The Protocol expects States to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk (Article 4(1)(g)). Another measure that is required is to provide adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women (Article 4(1)(i)).

3.3.2.4 Regional Initiatives

3.3.2.4.1 SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development originated from the 1997 SADC Declaration on Gender and Development. An Addendum to the latter document, dealing with violence against women, was accepted in 1998 and called for states to consider the drafting of a legally binding instrument on the prevention of violence against women and children. The Protocol was accordingly adopted in 2008.

Articles 20 to 25 in Part 6 deal with gender-based violence and state obligations to address such violence. Importantly, they attach time-frames to the duties undertaken by states. The key articles deal with legislative requirements, setting out how states should (by 2015) address gender-based violence in legislation. Article 20(5) relates to human trafficking, and requires States Parties to enact and adopt specific legislative provisions to prevent human trafficking, and to provide holistic services to survivors, with the aim of re-integrating them into society. States Parties must also put in place mechanisms by which law enforcement authorities and institutions may eradicate national, regional and international human trafficking networks. Similarly, they must put in place harmonised data collection mechanisms to improve data collection and reporting on the types and modes of trafficking to ensure effective programming and monitoring. States Parties are required to establish bilateral and multilateral agreements to run joint operations against human trafficking in countries of origin, transit and destination. Finally, States Parties must ensure that capacity building, awareness-raising and sensitisation campaigns on human trafficking are put in place for law enforcement officials.

This document is potentially the most far-reaching of its kind, with tangible time-frames and in-depth provisions relating to the monitoring of its implementation (Combrinck 2010). However, full compliance with the Protocol will undeniably have resource implications for states where service provision is already imperilled, such as the public health sector. This challenge holds especially where the duties are fairly ambitious and the current capacity falls far short of the standard set in the Protocol, as is the case with human trafficking.³⁵

At the time of writing, the Protocol had not yet received sufficient ratifications to come into operation (only two ratifications, Namibia and Zimbabwe, could be confirmed).

3.3.2.4.2 Economic Community of West African States (ECOWAS)

The ECOWAS Heads of State and Government adopted a Declaration on the Fight against Trafficking in Persons in Dakar in December 2001.³⁶ This Declaration was accompanied by the first *Plan of Action against Trafficking in Persons* (2002 – 2003), which was followed up by the current *Joint Plan of Action against Trafficking in Persons, Especially Women and Children in West and Central Africa* (see above).

This region has also seen a landmark judgment in respect of human trafficking. As noted above, the ECOWAS Court of Justice recently ruled against Niger in the case of *Hadijatou Mani Koraou v Niger*.³⁷ The matter dealt with the customary practice of ‘wahiya’, which entails a man acquiring a young woman to work as a servant

³⁵ See overview in Chapter Four, regarding the criminal justice system and legislative position in SADC states relating to human trafficking.

³⁶ UN Document Reference A/DC12/12/01.

³⁷ Judgment No. ECW/CCJ/JUD/06/08 of 27 October 2008. Unofficial English translation of judgment provided by Interights available at www.interights.org/view-document/index.htm?id=533.

(as well as concubine) under slave-like conditions. In this instance the applicant, Hadijatou Mani, was sold to a clan chief, Mr. El Hadj Souleymane Naroua, who was 46 years old, for 240.000 CFA francs³⁸ when she was 12 years old.

For about nine years, Hadijatou Mani was a servant in El Hadj Souleymane Naroua's household, doing all sorts of housework and serving as a concubine. She bore him four children, two of whom survived. In 2005, Naroua gave Ms Mani a liberation certificate from slavery. However, when she attempted to leave the house, he refused on the ground that she was and remained his wife. She subsequently left his house under the pretext of a visit to her mother who was ill, with the intention never to go back.

In February 2006, she brought a complaint before the civil and customary tribunal of Konni for recognition of her freedom. This tribunal found that the applicant and El Hadj Souleymane Naroua were never properly married and that Ms Mani 'remains free to live her own life with the person of her choice.' A complicated series of legal events then ensued, with Naroua appealing against this ruling and the initial finding being set aside. The applicant in turn sought relief on appeal. Before this had been resolved, the applicant married, which resulted in Naroua laying charges of bigamy against her. Ms Mani was convicted, together with her brother and new husband, and she and her brother were imprisoned.

In the meantime, Ms Mani's original complaint was heard again, and her petition for a divorce was granted. Mr Naroua appealed against this ruling. The appeal brought by Ms Mani against the criminal charges of bigamy resulted in an interim ruling releasing her and her brother from custody, and in December 2007 she brought an application before the ECOWAS Court of Justice, alleging violation of her rights under Articles 1, 2, 3, 5, 6 and 18(3) of the African Charter. She requested (*inter alia*) for the Nigerian authorities to be compelled to adopt legislation that effectively protects women against discriminatory customs relating to marriage and divorce and also requested reparation from the Government for the wrong she suffered during the nine years of her captivity.

The ECOWAS Court took a somewhat narrow approach to the complaints outlined by the applicant. For example, it refused to review Nigerian legislation to eliminate discriminatory customs relating to marriage and divorce, stating that its role is 'not to examine Community Member States' laws *in abstracto*, but rather to ensure protection of people's rights when they are victims of violations of those rights and that it must do so by examining concrete cases brought before it' (para. 60).

However, the Court adopted a more expansive view when it came to the applicant's claim that she was held in slavery in violation of Article 5 of the African Charter as well as other international human rights instruments (para. 72). She declared that her parents were slaves themselves and she was always treated as such in her former 'master' Mr Naroua's household. The Nigerian State claimed that despite her slave status, the applicant was Mr Naroua's wife, with whom she lived more or less in happiness until 2005 as any couple would, and that children were born from this union.

The Court found that in this instance 'the moral element of enslavement' lies in Mr Naroua's intention to exercise the powers attached to the right of ownership over the applicant, even after he had issued her with a certificate of liberation. Consequently, the Court found there was no doubt that the applicant was held in slavery for nearly nine years in violation of the legal prohibition of this practice. The Court then goes further to examine the course of events following the applicant's 'liberation', and finds that the judge dealing with the initial case should have recognised that the applicant had been in a situation of slavery, and should have initiated criminal proceedings against Mr Naroua.

³⁸ The equivalent of US\$500: US Dept of State (2009), 37.

It was held that although the slavery situation of the applicant was due to a particular individual acting in a so-called customary or individual context, she had the right to be protected by the Nigerien authorities, be they administrative or judicial. Consequently, the defendant state becomes responsible under international as well as national law for any form of human rights violations of the applicant founded on slavery because of its tolerance and inaction with regard to this practice (Para 86). By failing to address an offence and to take measures to ensure punishment, the judge had failed in his duty of protecting the applicant's human rights and therefore engaged the Defendant State's responsibility.

The ultimate finding was that the Republic of Niger did not sufficiently protect the applicant's rights against the practice of slavery because of inaction of judicial and administrative authorities. This situation of slavery caused the applicant physical, psychological and moral harm. For this reason, the applicant was entitled to all-inclusive compensation. Although she had originally claimed 50 million CFS, she was awarded 10 million CFS³⁹. The Government of Niger accepted the verdict and paid the compensation in March 2009 (US Dept of State 2009: 37).

Although this case did not make reference to 'human trafficking' as such, the acts of the 'master' would clearly fall within the definition of child trafficking (bearing in mind that the applicant was 'sold' when she was twelve years old), and the court's ruling of state liability is therefore significant. The Court's jurisdiction includes most of West Africa, which also implies that the ruling has application more broadly than merely to Niger.

In terms of follow-up on the case, Mr Naroua has subsequently been convicted of the offence of slavery, but the penalties imposed have been disappointing.⁴⁰ In mid-2009, human rights organisations were exercising pressure on Nigerian authorities to investigate the circumstances of six other women allegedly enslaved in his household. Ms Mani was among the recipients of the US Secretary of State's 2009 Award for 'International Women of Courage' and was also voted among Time Magazine's Top 100 most influential people in 2009 (US Dept of State 2009: 37).

3.3.2.4.3 Inter-American system

The American Convention on Human Rights (1969), the Inter-American equivalent of the African Charter on Human and Peoples' Rights, contains provisions that specifically address human trafficking. Article 6 states that '[n]o one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women, and that '[n]o one shall be required to perform forced or compulsory labour' (paras. 1 and 2).

In addition, the Inter-American Convention on International Traffic in Minors (1994) requires States Parties to 'adopt effective measures, under their domestic law, to prevent and severely punish the international traffic in minors defined in this Convention' (Article 7). The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, (also known as the 'Convention of Belem Do Para') includes human trafficking in its definition of 'violence against women' (Article 2).

3.3.2.4.4 Other Regional Organisations

The *South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution* (2002) defines trafficking as 'the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking'. The Convention provides that '[t]he State Parties to the Convention shall take effective measures to ensure that trafficking in any form is an offence under their respective criminal law and shall make such an offence punishable by appropriate penalties which take into account its grave nature' (Article 3, para. 1).

³⁹ The equivalent of US \$19,800: US Dept of State (2009), 37.

⁴⁰ For more information, see discussion by the International Centre for the Legal Protection of Human Rights regarding Hadijatou Mani v Niger, available at: www.interights.org/niger-slavery#UpdateJuly2009.

The *Revised Arab Charter on Human Rights* (2004) of the League of Arab States declares that ‘all forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances... Forced labour, trafficking in human beings for the purposes of prostitution or sexual exploitation, the exploitation of the prostitution of others or any other form of exploitation or the exploitation of children in armed conflict are prohibited’ (Article 10).

3.4 APPLICATION OF INTERNATIONAL LAW IN SOUTH AFRICA

The South African Constitution of 1996 requires an act of incorporation by parliament in order for an international agreement to become law in the country (Section 231), but also states that customary international law is law in South Africa unless it is inconsistent with the Constitution or national legislation (Section 232). The implications of this dispensation become clear regarding the application of the Trafficking Protocol in South Africa as explained below. For example, although South Africa has ratified this Protocol and is therefore bound by its provisions in terms of international law, the Protocol has not yet been incorporated into domestic law and is therefore not ‘law’ on domestic level in South Africa.

Section 39(1) of the Constitution provides that when interpreting the Bill of Rights, a court, tribunal or forum -

- (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;
- (b) must consider *international law*; and
- (c) may consider foreign law.

The Constitutional Court has made it clear that ‘international law’ in this context extends beyond conventions and treaties that are binding on South Africa, such as the Trafficking Protocol; it may also include non-binding international law (for example, the Beijing Declaration and Platform for Action).⁴¹ In addition, Section 233 of the Constitution states that every court, when interpreting legislation, must prefer any reasonable interpretation of such legislation that is consistent with international law.

Provisions in the Bill of Rights of the South African Constitution of 1996 are particularly relevant to human trafficking. Section 12(1) guarantees the right to freedom and security of the person, which includes the rights not to be deprived of freedom arbitrarily or without just cause, to be free from all forms of violence from either public or private sources, not to be tortured in any way and not to be treated or punished in a cruel, inhuman or degrading way. Section 12(2) in turn entrenches the right to bodily and psychological integrity.

The Bill of Rights further guarantees every one the right to dignity (Section 10), gender equality (Section 9(3)) and freedom of movement (Section 21). Section 13 states that no one may be subjected to slavery, servitude or forced labour. Children in addition have the right to be protected from maltreatment, neglect, abuse or degradation and to be protected from exploitative labour practices (Section 28).⁴² Section 7(2) enjoins the state to ‘respect, protect, promote and fulfil’ the rights in the Bill of Rights, and applies to all of the rights enumerated above.

⁴¹ See judgement in *S v Makwanyane* 1995 (6) BCLR 665 (CC) at 686D-F.

⁴² A child is defined as a person under the age of 18.

SECTION 2: NATIONAL LEGISLATIVE AND POLICY FRAMEWORK

INTRODUCTION

The South African legal position relating to human trafficking is currently in a transitional phase, with comprehensive legislation aimed at addressing all aspects of trafficking awaiting introduction in parliament. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which criminalises trafficking for sexual purposes, can at present be utilised against offenders. The Children's Act 38 of 2005 further sets out provisions on trafficking of children (for a range of purposes, including sexual exploitation). However, at the time of writing, the latter provisions had not yet come into operation. Any instances of trafficking (or related offences) falling outside the ambit of Act 32 of 2007 therefore have to be prosecuted under general statutory or common law offences.

In addition to the prosecution and punishment of alleged traffickers, further aspects that need to be considered as part of the legal framework include arrangements relating to the seizure of assets and protection of victims/witnesses.

3.5 PROSECUTION OF TRAFFICKERS: CURRENT LEGAL POSITION

3.5.1 The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

Part 6 of this Act, which came into effect on 16 December 2007, contain provisions on 'trafficking in persons for sexual purposes'. Section 70(1) confirms that pending the adoption of legislation in compliance with the UN Trafficking Protocol, the transitional measures in this Part relating to the trafficking in persons for sexual purposes are provisionally provided for in partial compliance with South Africa's international obligations and to deal with this rapidly growing phenomenon globally. Section 70(2) sets out a definition of trafficking.

Section 71 provides for the offence of trafficking for sexual purposes, with subsection (1) setting out the offence itself, and subsection (2) dealing with various ancillary aspects amounting to the offence of 'involvement in trafficking for sexual purposes'. A sentence of life imprisonment may be imposed on a person convicted of the offence of trafficking in persons.⁴³ Subsections (3) and (4), which address the question of 'consent', are the mirror provisions of the general sections on consent found in subsections 1(2) and (3) of the Act. Subsection (5) states that a person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked. Subsection (6) deals with the liability of commercial carriers⁴⁴ for bringing persons into or removing persons from South Africa if they do not have the documents required for lawful entry or departure.

3.5.2 Common Law and Statutory Offences

The provisions in the 2007 Sexual Offences Act are the only trafficking-specific provisions in operation in our law pending the introduction of comprehensive trafficking legislation or the trafficking sections in the Children's Act coming into force. However, there are existing statutory and common law offences that may be employed to prosecute persons suspected of human trafficking and related activities. These common law offences include the following: kidnapping; common assault; assault with intention to do grievous bodily harm; extortion; slavery; attempted murder; and murder.⁴⁵ Statutory offences include contraventions of the Sexual

⁴³ The offence of trafficking in persons is included in Part I of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

⁴⁴ 'Commercial carriers' is defined in Section 70(2) of the Act.

⁴⁵ For a detailed discussion of the common law and statutory offences, see SALC, *Report on Trafficking in Persons* (2002a), paras 2.9 – 2.37.

Offences Act 23 of 1957; the Riotous Assembly Act 17 of 1956; the Immigration Act 13 of 2002; the Basic Conditions of Employment Act 75 of 1997; the Intimidation Act 72 of 1982; the Domestic Violence Act 116 of 1998; and the Prevention of Organised Crime Act 121 of 1998.

3.5.3 The Children's Act 38 of 2005

The issue of child trafficking came to the fore during the investigation conducted by the South African Law Reform Commission (SALRC) into the review of the Child Care Act. Although the Commission recognised that there were existing provisions in South African law that could be used to prosecute trafficking-related offences or to protect the victims of trafficking, it was decided to include a general provision on the trafficking in children in the Children's Bill upon receiving various submissions from child rights organisations calling for such inclusion. A further consideration was the fact that South Africa, as a signatory to the Trafficking in Persons Protocol, was obliged to fulfil its obligations and needed to build the requirements of the Trafficking in Persons Protocol into its domestic legislation.⁴⁶

Chapter 18 (sections 281-291) of the Children's Act contains provisions dealing with trafficking in children. In addition, section 1 sets out the definition of 'trafficking' and related concepts (such as 'exploitation' and 'removal of body parts'⁴⁷).

The definition of trafficking employed in the Act is modelled along the provisions of Article 3 of the Trafficking Protocol. The acts of 'sale' and 'supply' have been added, as well as 'adoption of a child facilitated or secured through illegal means'.⁴⁸ Kassan points out that article 3(c) of the Trafficking in Persons Protocol states that where a child is recruited, transported, transferred, harboured or received for purposes of exploitation, this in itself will be considered as trafficking in children even if the *means* (such as threat, force, abduction, deception, fraud, etc) are not involved. Therefore, trafficking in children can occur merely when a child is recruited, transported, transferred, harboured or received for the purpose of exploitation. This definition of trafficking in children as contained in section 1 of the Children's Act has accordingly been criticised for creating a greater evidentiary burden than necessarily required by the Trafficking Protocol as it requires the means listed (for example, force, threat, coercion, etc) to be involved.

Section 281 states that the purposes of Chapter 18 are to give effect to the UN Protocol to Prevent Trafficking in Persons and generally to combat trafficking in children. Section 282 provides that the UN Trafficking Protocol is in force in the Republic and its provisions are law in the Republic (subject to the provisions of this Act). This is an important stipulation, bearing in mind that a formal act of incorporation is required in order for international agreements to become part of domestic South African law.

Section 283 of the Children's Act makes provision for agreements between South Africa and foreign States, both those which are States Parties to the Trafficking Protocol and those who are not. This section paves the way for the cooperation envisaged in the Trafficking Protocol between States Parties relate to the repatriation of victims, the exchanging of information and the legitimacy and validity of documents (Kassan: 2007).

A key provision is found in section 284, which criminalises child trafficking. This prohibition extends to both natural and juristic persons as well as partnerships. The section specifies that consent by a child who is a victim of trafficking, or by a person having control over that child, is not a defence to a charge of trafficking (Section 284(2)).

⁴⁶ See SALC, *Review of the Child Care Act*, Discussion Paper 103 (2002b), p. 1135.

⁴⁷ The Children's Act goes broader than the Trafficking Protocol here in that it specifies 'removal of *body parts*' rather than 'removal of *organs*' (which is a narrower concept): see SALRC, *Report*, op cit., at para 2.6.

⁴⁸ See Kassan (2007) for a discussion of the debate on whether illegal adoption should be dealt with as a form of trafficking.

Section 285 criminalises certain behaviour related to child trafficking, i.e. knowingly leasing, subleasing or allowing property to be used for the purpose of harbouring a child who is a victim of trafficking and advertising, printing or distributing of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology.

The following grouping of provisions addresses assistance to child victims of trafficking. Section 286 looks at the position of a child who is a citizen or permanent resident of the Republic and who is a victim of trafficking. It states that with due regard to the safety of the child and without delay, the Director-General of Foreign Affairs must facilitate the child's return to the Republic. The Director-General of Home Affairs must facilitate and accept the return of the child; issue such travel documents as may be necessary to enable the child to travel to and enter the Republic; at the request of another State Party to the Trafficking Protocol verify that the child victim is a citizen or permanent resident of the Republic; and upon the child's entry into the Republic refer her or him to a designated social worker for investigation in terms of Section 155(2).⁴⁹

In terms of section 287, if a court has reason to believe that the parent or guardian of a child or any other person who has parental responsibilities and rights in respect of a child, has trafficked the child or allowed the child to be trafficked, the court may suspend all parental responsibilities and rights of that parent, guardian, or other person; and place that child in temporary safe care, pending an inquiry by a children's court.⁵⁰

Section 288 imposes a reporting duty on certain categories of professionals, i.e. immigration officials, police officials, social workers, social service professionals, medical practitioners or registered nurses who come into contact with a child who is a victim of trafficking in South Africa. Such a child must be referred to a designated social worker for an investigation in terms of Section 289(1).⁵¹ It has been observed that this section does not stipulate whether or not a failure to make such a referral would be a criminal offence (Kassan 2007); furthermore, it does not deal with the actual reporting of trafficking cases to the South African Police Service.

Section 289 deals with child victims of trafficking found in South Africa. Such children must be referred to a designated social worker for investigation in terms of section 155(2) and may, pending such investigation, be placed in temporary safe care. Section 289(2) is the converse of section 286 in that it addresses the situation of child victims of trafficking found in South Africa who are not South African citizens. It states that if, after an investigation an illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act 130 of 1998. A finding in terms of section 156 that an illegal foreign child who is a victim of trafficking is a child in need of care and protection, serves as authorisation for allowing the child to remain in the Republic for the duration of the child's court order.

Linked to section 289(2) is section 290, which provides that an illegal foreign child who is a victim of trafficking may not be returned to his or her country of origin or the country from where the child has been trafficked without giving due consideration to the availability of care arrangements in the country to which the child is to be returned; the safety of the child in the country to which the child is to be returned; and the possibility that the child might be trafficked again, harmed or killed. If it is essential in the best interests of a child who has been trafficked, the Director-General must authorise an adult at state expense to escort the child from the place where the child was found to the place from which she or he was trafficked.

Section 291 provides for extra-territorial jurisdiction, which means that a citizen or permanent resident of the Republic, a juristic person or a partnership that commits an act outside the Republic that would have constituted an offence in terms of Chapter 18 had it been committed inside the Republic, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed

⁴⁹ An investigation in terms of Section 155(2) of the Children's Act is aimed at determining whether the child is 'in need of care and protection': see Section 150 of the Act.

⁵⁰ For a discussion of the background to this provision, see Kassan (2007).

⁵¹ Section 289(1) provides that a social worker will institute an investigation in terms of Section 155(1).

for that offence. The global nature of human trafficking necessitates this provision. However, Kassan cautions against the possibility of 'double jeopardy': a person who has been prosecuted and convicted or acquitted for an offence in the country where the offence was committed, may not be prosecuted again in South Africa.⁵²

3.6 DEVELOPMENT OF COMPREHENSIVE HUMAN TRAFFICKING LEGISLATION: PREVENTION AND COMBATING OF TRAFFICKING IN PERSONS BILL

3.6.1 Background

The SALRC's investigations into the review of the Child Care Act 74 of 1983 and sexual offences respectively led to a consideration of the issue of trafficking in children (SALRC 2004: para. 1.3). Provisions arising from the Commission's findings were included in both the draft Children's Bill B70 of 2003 and the Criminal Law (Sexual Offences) Amendment Bill 50 of 2003 and eventually incorporated in the final versions of the legislation. However, given the magnitude of the problem and time constraints to finalise both the investigations referred to, the Commission realised that it would not be able to conduct detailed research in order to address the problem of trafficking in children adequately. The Commission subsequently decided to place a separate investigation into trafficking in persons, including children on its programme. It also decided that this investigation should not be limited to trafficking in persons for purposes of sexual exploitation, but should consider trafficking in persons broadly (para. 1.4).

The SALRC accordingly published an Issue Paper on Trafficking in Persons on 23 January 2004, followed by a Discussion Paper with a concept Bill attached in 2006.⁵³ A final report was produced in August 2008, accompanied by a draft *Prevention and Combating of Trafficking in Persons Bill*. After further consideration by the Department of Justice and Constitutional Development, the Bill was published for public comment, with a deadline of 15 June 2009. The Bill was subsequently approved by Cabinet in August 2009 (Engelbrecht (2009)). At the time of writing, it awaited introduction in Parliament. The proposed Bill aims to provide a comprehensive legal framework for addressing human trafficking, not only setting out all relevant trafficking-related offences, but also including protective measures for victims of trafficking as well as measures to prevent human trafficking. It is envisaged that the provisions in the above two Acts dealing with trafficking will be repealed after their incorporation into the proposed trafficking legislation.

3.6.2 Overview of the Prevention and Combating of Trafficking in Persons Bill

This overview of the Prevention and Combating of Trafficking in Persons Bill ('the Bill') considers the version approved by Cabinet. Changes are likely to result from the parliamentary process.⁵⁴ Readers are referred to the Issue Paper, Discussion Paper and final Report published by the SALRC for additional background information on the provisions of the Bill as it stands at this writing.

The Bill consists of ten 'substantive' chapters,⁵⁵ dealing with definitions and objects of the Act; prevention of trafficking; offences and penalties; identification and protection of victims of trafficking; status of foreign victims; services to adult victims; compensation; deportation and repatriation of victims of trafficking; general provisions; and administration of the Act.

⁵² Kassan (2007) citing SALRC (2006), paras. 5.245 -5.247at 139-140.

⁵³ The investigation included a series of consultative processes; for details, see SALRC (2008), paras. 1.21-1.27.

⁵⁴ For a discussion of certain of the issues arising from a previous version of the Bill, see Kreston (2007), pp. 46-50.

⁵⁵ In Chapter 11, 'Miscellaneous Matters', Clauses 47-48 deal with laws repealed or amended and the short title and date of commencement of the Act respectively.

3.6.3 Definitions and Objects of the Bill

Clause 1 contains a number of definitions discussed in the course of this overview. The objects of the Act indicate that the intention is to introduce comprehensive anti-trafficking legislation. These objectives are the following:

- (a) to give effect to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons;
- (b) to provide for the prosecution of persons involved in trafficking and for appropriate penalties;
- (c) to provide for the prevention of trafficking of persons and for the protection of and assistance to victim of trafficking;
- (d) to provide for effective enforcement measures; and
- (e) generally to combat trafficking in persons.

3.6.4 Prevention of Trafficking

Chapter 2 of the Bill deals with the prevention of trafficking. Clause 3 imposes a duty on the Intersectoral Committee to be established in terms of Clause 40 (see below) to institute public awareness programmes or other measures for the prevention of trafficking. One can distinguish three distinct 'target audiences' here: firstly, these programmes must be designed to inform and educate:

- (a) members of the public, especially those who are vulnerable or at risk of becoming victims of trafficking, foreigners who apply for South African visas who may be victims of trafficking and South African citizens or permanent residents who apply for South African passports or who depart abroad (3.1.a); and
- (b) victims of trafficking (3.1.b).

Secondly, the programmes must discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children (3.1.c).

Clause 3 sets out further stipulations in respect of these programmes, including that they must include appropriate measures aimed at reaching rural communities. The Director-General of Justice and Constitutional Development must take all reasonable steps *within available resources* to ensure that these programmes are implemented across the country (3.3). This latter reservation accordingly has the potential to limit the scope of application of Clause 3.

3.6.5 Offences and Penalties

Chapter 3 sets out to harmonise the legal position on trafficking-relating offences. It thus combines certain of the offences currently set out in the Children's Act with section 71 of the 2007 Sexual Offences Act, and adds new offences such as debt bondage. The Chapter also prescribes penalties. Key concepts that are defined in the Bill include 'abuse of vulnerability'; 'debt bondage' and 'exploitation'; 'forced labour'; 'removal of body parts'; 'servitude'; and 'sexual exploitation'. Only some highlights can be described here.

Clause 4(2) excludes consent as a defence in trafficking cases involving both children and adults. Clause 4 also deals with vicarious liability (4.3 and 4.4).

Clause 5 provides that any person who intentionally causes another to enter into debt bondage⁵⁶ is guilty of an offence. The prescribed penalty is a fine or imprisonment for a period not exceeding 15 years.

⁵⁶ Debt bondage is defined in Clause 1.

Clause 6 provides that tampering with travel documents is an offence and provides a penalty of a fine or imprisonment for a period not exceeding 10 years. The prosecution will have to prove, firstly, that the accused intentionally tampered with or destroyed the victim's travel documents and, secondly, that this act was committed in furtherance of trafficking — in other words, that there is a link between destroying the documents and the trafficking.⁵⁷

Clause 7 provides that anyone who intentionally benefits from the services of someone who has been trafficked is guilty of an offence. The prescribed penalty is a fine or imprisonment for a period not exceeding 15 years.

Clause 8 is reminiscent of Article 285 of the Children's Act, in that it criminalises the leasing of property that the offender knows (or ought reasonably to have known) will be used for facilitating or promoting trafficking, as well as the advertising, printing, broadcasting and distribution of information that facilitates or promotes trafficking.⁵⁸

Clause 8.2 imposes duties on internet service providers operating in South Africa, firstly to 'take all reasonable steps to prevent the use of its services for the hosting of information facilitating or promoting trafficking,' and secondly to take certain steps if it has knowledge 'that an Internet address on its server contains such information' (8.2.b). Failure to comply with these duties constitutes a criminal offence.

Chapter 3 also deals with the liability of carriers of trafficked persons who know that such person does not have valid travel documents (Clause 10). Clause 11 sets out a number of ancillary offences. Clause 12 sets out guidelines that should be taken into consideration by the Court when considering punishment. This appears to be a subsequent addition to the Bill proposed by the SALRC. While certain of these factors may provide courts with additional guidance, others are an undisputed part of South African sentencing jurisprudence: for example, the question of previous convictions for the same offence (12.b).

3.6.6 Identification and Protection of Victims of Trafficking

Chapter 4 commences with the processes for reporting and referral of victims of trafficking. These processes are different for child and adult victims. Clause 13, which deals with child victims, imposes a duty on certain professionals — 'an immigration official, labour inspector, social worker, nurse, teacher, or traditional healer' — who suspect that a child is a victim of trafficking to immediately report that suspicion to a police official for investigation. The duty is extended to 'any person' with a reasonable suspicion that a child is a victim of trafficking (13.2).

Police who are made aware of such cases 'must, within 24 hours, refer that child to a designated child protection organisation or the provincial department of social development, pending a police investigation into the matter' (13.4). The procedures for this are spelled out in section 110 (paragraphs 5–8).

Clause 15 essentially re-enacts section 289 of the Children's Act and provides that child victims be referred to designated social workers for investigation in terms of section 155(2) of the Children's Act.

Regarding adults, the Bill similarly imposes a duty on professionals who suspect that a person is a victim of trafficking to immediately report that suspicion to a police official for investigation. However, the professional in question may only report the matter if the person has given her written consent, except where the person is mentally disabled or in an 'altered state of consciousness [such as under the influence of a medicine or drug] to the extent that the person's consciousness or judgment is adversely affected' (14.1.b). A police official receiving such a report must refer the case within 24 hours to the appropriate service or department.

⁵⁷ Failing this, the prosecution will be able to charge the accused with a similar offence in terms of the Immigration Act; lower penalty, no demonstrable link to trafficking. See SALRC (2008), paras. 3.100–3.105.

⁵⁸ The prescribed penalty is a fine or imprisonment for a period not exceeding 10 years.

Clause 17 deals with the question of criminal prosecution against victims of trafficking. It addresses two 'categories' of victims: those already found to be victims of trafficking, and those found to be victims in the course of criminal prosecution. Clause 17.1 provides that no criminal prosecution be instituted against a child victim of trafficking or against an adult victim found to be illegally in South Africa, to have assisted others to immigrate illegally, holding falsified travel documents, or being forced to commit illegal activities as part of being trafficked.

3.6.7 Status of Foreign Victims of Trafficking

Chapter 5 deals with the status of foreign victims of trafficking. Clause 18 provides that a foreigner confirmed to have been a victim of trafficking may remain in South Africa for a 'recovery and reflection period' of up to 90 days. If the victim is unwilling to co-operate in the investigation and prosecution of a trafficker during this time, the Director-General of Social Development must investigate to determine whether it is safe for the victim to return to the country or place of origin (18.3) and may extend the 'recovery and reflection period' to six months.

Clause 19 provides for granting of a visitor's permit to a victim of trafficking who agrees to cooperate in the investigation and prosecution of a case of human trafficking. A visitor's permit may also be granted to a victim who unwilling to cooperate but where it is not safe to return her to her country of origin or the country from where she has been trafficked. The holder of a visitor's permit that has been extended in this way may work or study in South Africa. After five year's continuous residence, a trafficking victim may apply for a permanent residence permit⁵⁹ 'upon proof by the victim that she may be harmed, killed or trafficked again if she is returned to her country of origin or the country from where she had been trafficked' (Clause 20).

3.6.8 Services to Victims of Trafficking

Chapter 6 (Clauses 21 to 27) contains detailed provisions related to accredited organisations and their service provision to (mainly) adult victims of trafficking. Clause 21 provides for an accreditation system and clause 22 establishes norms and standards for services with which accredited organisations must comply. Clause 23 prescribes the programme and services that must be offered by such organisations to victims, including an adult victim of trafficking who has a child in her care (23.4). Accredited organisations are expected to draw up plans for meeting the immediate and long-term needs of a trafficking victim (Clause 25). An accredited organisation may not return a victim of trafficking to her area of origin if she might be harmed, killed or trafficked again if returned to that area (Clause 26).

Finally, accredited organisations are required to collect certain information on foreign victims of trafficking: including, the number and nationality of victims who have accessed their services, the countries from which they have been trafficked, the purposes for which they were trafficked and the methods used to recruit and transport them (Clause 27.1). Accredited organisations must provide an annual report containing this information to the Intersectoral Committee.

3.6.9 Compensation

Compensation to victims of trafficking is dealt with at some length in Chapter 7 of the Bill. Clause 28 envisages that the Court, may in addition to any sentence imposed, order a person convicted of the offence to pay appropriate compensation to a victim of trafficking. This compensation may extend to loss of property, mental suffering, life-threatening disease, and loss of income or support resulting from being trafficked (Clause 28.4.a).

Clause 29 also allows the Court to order the accused to compensate the State for expenses incurred in connection with the care, accommodation, transportation and repatriation of the victim.

⁵⁹ This provision reflects terms of Section 27(h) of the Immigration Act.

3.6.10 Deportation and Repatriation of Victims of Trafficking

Clause 30 prohibits the summary deportation of a victim of trafficking. Clause 31(1) states that a foreign child who is a victim of trafficking may not be returned to her country of origin (or the country from where she has been trafficked) without due consideration for her safety and best interests, especially the risk that the child might be harmed, killed or trafficked again. This provision also applies to adult trafficking victims. An adult victim who freely elects to return may do so accordingly. The Director-General of Social Development must take reasonable steps to find suitable support for victims upon their return and provide this information to the Director-General of Home Affairs.

Clause 33 provides similar procedures and protections to victims repatriated to South Africa. The Director-General of Foreign Affairs is expected to facilitate such return, including measures for her reception at a South African port of entry. The Director-General of Home Affairs must also facilitate and accept such return, for example by issuing travel documents (Clause 33.b). Both adult and child victims returning to South Africa are to be referred to the appropriate social worker or accredited organisation for assessment and care.

3.6.11 General Provisions

Chapter 9 concerns cases of human trafficking committed against child victims by parents and guardians (section 287) as well as international cooperation (section 283 of the Children's Act).

Clause 37 further enjoins the National Commissioners of the SAPS to issue national instructions for the administration of human trafficking cases. The National Commissioner of the SAPS must provide an annual report to the Intersectoral Committee on information about reported cases of trafficking, including the countries from which victims are being trafficked; the countries to which South African citizens (and other residents) are trafficked; the nationality of victims transiting South Africa and the countries to which they are being trafficked; gender, nationality and age profiles of the traffickers and their victims; and the link between trafficking operations and those involved in other forms of organised crime (Clause 37.1.k and i-ix).

Similar duties are imposed on the Director-General of Home Affairs in respect of immigration officers (Clauses 37.3 and 37.4); the Director-General of Labour in respect of labour inspectors (Clauses 37.5 and 37.6); and the National Director of Public Prosecutions (in respect of all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in cases relating to human trafficking (Clauses 37.7 and 37.8). The Director-General of Home Affairs is further required to verify the validity of travel documents involved in cases of human trafficking, if requested by another State party to the Trafficking Protocol. The Director-General of Social Development must submit an annual report on all cases regarding child welfare, which relate to trafficking.

The National Commissioner of the SAPS, the Directors-General of Social Development, Home Affairs, Labour and the National Director of Public Prosecutions must also develop training courses on these requirements and ensure that all officials can deal with trafficking-related matters in an 'appropriate, efficient and sensitive manner' (Clause 37.9). Disciplinary steps must be taken against officials who fail to comply with these duties (Clause 37.10).

3.6.12 Administration of the Act

Chapter 10 establishes an Intersectoral Committee on Prevention and Combating of Trafficking in Persons, which will consist of the Director-General of Justice and Constitutional Development; the Directors-General of Home Affairs, International Affairs and Co-operation, Social Development, Health and Labour; the National Commissioner of the SAPS; the National Director of Public Prosecutions; the CEO of Government Communications; and the Chairpersons of the Commission for Gender Equality, the Human Rights Commission and the National House of Traditional Leaders. The responsibilities of the Committee include monitoring implementation of the Act, ensuring compliance by various State organs charged with roles and responsibilities under the Act, and establishing an integrated information system to monitor and implement

the Act.⁶⁰ The Minister of Justice and Constitutional Development is to submit annual reports to Parliament on implementation of the Act (Clause 42).

3.7 POLICY FRAMEWORK

At present, there is no comprehensive policy framework relating to human trafficking in place in South Africa. This is largely due to the absence of comprehensive legislation to support such a framework combined with the fact that other areas of the law (such as the Regulations in terms of the Children's Act) are currently under development. In practice, victims of trafficking nevertheless benefit from policies that have been put in place in respect of, for example, the management of sexual assault or the provision of services to victims of crime generally. These policies are briefly outlined below. An important document to consider here is the *National Policy Guidelines for Victim Empowerment*, especially since the document identifies victims of human trafficking as a priority target group (see below).

It must be noted, for purposes of this section, that the term 'policy' is used very loosely in the South African context, and its meaning can range from a general 'principle approach' adopted in respect of a particular issue to a detailed set of directives that must be observed by officials.

3.7.1 National Policy Guidelines for Victim Empowerment

These policy guidelines arose out of a need to protect and support victims of violence by ensuring that victim-friendly services and programmes are integrated and co-ordinated (Department of Social Development 2009: 6). This must be achieved through well-established government structures to prevent re-victimisation within the criminal justice system and to maximise the impact of services rendered. Seven key principles inform the Guidelines: empowerment; human rights, participation and self-empowerment; a family-centred approach; accountability, effectiveness and efficiency; restorative justice; and a multi-disciplinary approach (DSD 2009: 8-9). The document lists several priority target groups for victim empowerment, including women, abused children, victims of domestic violence, sexual abuse and rape, and victims of human trafficking (DSD 2009: 10-11).

The document identifies a number of core intervention strategies to guide service delivery to victims of crime and violence (DSD 2009: 16). One of these strategies is the development of a 'Management Protocol' and legislation for the management of victims of human trafficking.

3.7.2 The Service Charter for Victims of Crime and the Minimum Standards on Services for Victims of Crime

In 2004, the Department of Justice and Constitutional Development (DoJCD) introduced the *Service Charter for Victims of Crime* with the aim of consolidating the present legal framework in South Africa relating to the rights of and services provided to victims of crime (DoJCD 2004a, Preamble). The objectives of this Charter are to eliminate secondary victimisation in the criminal justice process and to ensure that victims remain central in this process. A further purpose is to clarify the service standards 'that can be expected by, and are to be accorded to, victims' whenever they come into contact with the criminal justice system, and to make provision for recourse when these standards are not met (Preamble).

The Charter addresses victims' rights under seven broad headings: the rights to be treated with fairness and with respect for dignity and privacy, to offer information, to receive information, to protection, to assistance, to compensation and to restitution. Under each right, victims are briefly informed of what they are entitled to.

⁶⁰ See Clause 41(c)(i) – (xiv) for the information to be collated and analysed by the Committee.

Certain of these rights are subject to qualifications such as ‘if necessary’ and ‘where possible’, which would prove to have significant implications in practice (Combrinck 2008: 275). For example, under the right to offer information, victims are informed that this right means that they can ‘participate’ (*if necessary and where possible*) in criminal justice proceedings, by attending the bail hearing, the trial, sentencing proceedings and/or Parole Board hearing. Because of the nature of South Africa’s primarily adversarial criminal justice system, victims’ opportunities to actively participate in criminal trials are limited. The qualifier ‘if necessary and where possible’ included in the above statement makes it clear that this Charter intends to go no broader than the existing legal position.⁶¹

The DoJCD also produced a companion document to the Victims’ Charter entitled *Minimum Standards on Services for Victims of Crime*. This is an information document that was developed to elaborate on the rights set out in the Victims’ Charter and to enable victims to exercise their rights. The document sets out the minimum service standards that victims can expect from service providers and also provides information on the relevant complaints procedures.

The principles set out in the ‘Minimum Standards’ document are of particular significance to sexual assault victims (Combrinck 2008: 276). For example, it states that if the case goes to court, the victim can expect that the presiding officer will ensure that the trial proceedings are conducted in a manner that does not violate her right to fair treatment and respect for her dignity and privacy (DoJCD 2004b: Part III para. 1.10). Cases involving sexual offences will be heard in specialised courts where such courts are available (DoJCD 2004b: Part III para. 5.12). Prosecutors are expected to protect victims from unduly aggressive, harmful and degrading cross-examination (para. 3.12).

However, the ‘Minimum Standards’ are again subject to certain qualifications, as the following two examples show. The document states that court staff will *do their best* to protect victims from being further victimised or traumatised by what happens in court (para. 1.15). Similarly, it provides that if the case goes to court, the court staff will allow victims, *on request and if facilities are available* to wait separately from the accused and his or her witnesses in the case (para. 1.19).

The minimum standards set out in this document fill an important gap, and could potentially address a number of the difficulties experienced in practice by trafficking victims. The DoJCD has also developed an interdepartmental implementation plan for the Victims’ Charter (DoJCD 2007). However, it is important for victims to be aware of their rights, and for this purpose, the ‘Minimum Standards’ document must be accessible. While it is commendable that this document has been translated into all of the official South African languages (as well as Braille), victims who do not use any of these languages may be at a disadvantage if they have to rely only on this document for an understanding of their position.

The Victims’ Charter and the ‘Minimum Standards’ document have been amplified by the National Instruction and Directives that have been issued in terms of section 66 of the Sexual Offences Act.⁶² These documents provide victims with additional information on the standards of service-delivery they can expect from police and medical practitioners in the handling of their cases, and it is expected that the same will apply in respect of prosecutors once the National Director of Public Prosecutors issues the Directives as required in terms of the Act.

⁶¹ See for example Smythe and Artz (2005: 137-18) for a detailed analysis of the Victims’ Charter.

⁶² Subsection 66(1)(a) requires the National Commissioner of the South African Police Service to issue national instructions regarding all matters ‘which are reasonable necessary to be provided for and which must be followed’ by all police officials who are tasked with receiving reports of and the investigating of sexual offence cases, in order to achieve the objects of the Act. Similarly, the National Director of Public Prosecutions and the Director-General of Health must issue directives to be followed by all members of the prosecuting authority who are tasked with the institution and conducting of prosecutions in sexual offence cases and by medical practitioners respectively – see sub-s 2(a) and 3(a).

3.7.3 SAPS National Instruction 3/2008 in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act (No. 32 of 2007)⁶³

This Instruction sets out a number of aspects that are crucial from the perspective of victims of sexual offences. In terms of section 5 of the Instruction, entitled 'Victim Assistance', police officials are instructed, for example, to take statements in private (5.3.a), act professionally and sensitively (5.5) and inform victims regularly of the progress of the investigation (5.11). Police officials must also inform victims of the existence of the witness protection programme (5.11). Under section 19, which deals with 'Victim After-care', SAPS members are reminded that they have the duty to take appropriate steps to ensure that a vulnerable victim is protected (19.2).

The National Instruction complements and reinforces the Victims' Charter and Minimum Standards. It is therefore apparent that the SALRC's recommendation, included in the current version of the Bill, that the National Instruction to be issued by the National Commissioner in terms of Clause 37 of the Bill should not be subject to the same publication requirement as the Directives for other officials, is unfortunate.⁶⁴

3.7.4 National Sexual Assault Policy (Department of Health)

The National Department of Health (DOH) in 2005 issued a *National Sexual Assault Policy*, which aimed to provide comprehensive sexual assault care by trained staff – looking beyond the medico-legal needs of patients to include their mental and physical health needs (DOH 2005: 1). The objectives of this policy accordingly included the establishment of a designated, specialised, accessible 24-hour health care service for the holistic management of patients to improve health status after sexual assault; to provide training structures, guidelines and standards and to operate as part of an intersectoral service, establishing and maintaining links with the community and key stakeholders such as SAPS, DoJCD and social workers (DOH 2005: 12). The policy was accompanied by a detailed set of *National Management Guidelines for Sexual Assault Care* for health care practitioners (DOH 2005).

The Sexual Assault Policy and the Management Guidelines were subsequently reinforced by the Directive issued in terms of the 2007 Sexual Offences Act, which states that the 2005 Policy forms the basis for dealing with victims of sexual offences.

3.7.5 Thuthuzela Care Centres

A Thuthuzela Care Centre (TCC) is a 24-hour facility that provides professional support and services required by victims of sexual abuse (Kruger & Reyneke 2008: 115-116). These multi-disciplinary centres coordinate and centralise the activities of all role players, combining investigative, medical and psychological services at one facility. Some of the TCC's are linked to a specific Sexual Offences Court; where this is not the case, cases are prosecuted in general regional courts. The objectives of the TCC's, which are aligned with those of the Sexual Offences Courts, are to reduce the secondary traumatisation of victims, to increase the reporting and conviction rate, and to reduce the finalisation time of sexual offences cases. The SALRC correctly points out that as victims of trafficking are often subjected to sexual exploitation, they would be able to make use of the services provided at the TCCs (2008: para. 1.16).

⁶³ GNR.865 of 15 August 2008 (*Government Gazette* No. 31330).

⁶⁴ The SALRC based its recommendation on a submission from the South African Police Service that 'instructions for the police are not published in the Gazette because some instructions, especially those dealing with investigative techniques, are of a sensitive nature' – (2008: paras 3.149, 3.159). This submission is difficult to understand, given the publication of National Instructions in terms of both the Domestic Violence Act and the 2007 Sexual Offences Act (above). In any event, nothing prevents the National Commissioner from issuing National Instructions, for purposes of publication in terms of the Trafficking Bill, accompanied by further internal directives or operational guidelines dealing with such 'sensitive investigative techniques'.

3.8 Conclusion

Several of the rights guaranteed in the South African Constitution are directly relevant in the context of human trafficking. Human trafficking has been addressed as a normative concern from various perspectives, including law enforcement, women's rights, children's rights, labour and as a form of torture. South Africa has ratified a number of international and regional instruments that have a legally binding effect in terms of international law (Section 3.2.2). Even where South Africa has not ratified a particular document, or where the document itself does not have binding effect, the document (or the cumulative effect of a number of non-binding documents) can have an impact in terms of guiding the interpretation by our courts of rights enumerated in the Bill of Rights. For this reason, it is important to note the range of obligations imposed on Governments in respect of responding to human trafficking. Failure to comply with these standards can result in liability on the part of the state, as demonstrated in the recent judgments on the regional level in Africa and Europe (as discussed earlier).

On the positive side, the groundswell of international action against human trafficking has resulted in increasingly clear guidelines in terms of legislation, policy and information management for all States in the process of developing their response. This implies that South Africa can draw on these international 'best practices' when making key strategic decisions.⁶⁵

Legislation is in transition, centring on pending adoption of the *Prevention and Combating of Trafficking in Persons Bill*. In the interim, much can be done in respect of the prosecution and protection of victims of trafficking as the law stands, especially after the introduction of the 2007 Sexual Offences Act with its provisions on trafficking for sexual purposes. The Prevention of Organised Crime Act further makes provision for the forfeiture of assets involved in trafficking activities.

The biggest gaps pertain understandably to implementation, as policies and directives are generally dependent on enabling legislation. Victims of trafficking may presently benefit from existing victim empowerment or service provision policies, provided that these are accessible to them. Policies and directives under the 2007 Sexual Offences Act are also applicable. Training and infrastructure development will require additional attention to bring the South African response up to standard: this is addressed in the next section and in other chapters presenting empirical findings of this study.

SECTION 3: OVERVIEW OF PROSECUTION AND PROSECUTORS SURVEY

Criminal prosecution is critical to combat human trafficking because it discourages further trafficking and protects victims (Overbaugh 2009: 642). Successful prosecution can deter further trafficking, incapacitate current traffickers, and remove the powerful financial incentive to traffic through asset forfeiture and mandatory restitution. It can also protect victims by removing them from immediate danger and averting further harm or exploitation. For these reasons, the importance of effective prosecution (and the role of the prosecuting authority) in the fight against human trafficking cannot be over-stated (see Overbaugh 2009: 664).

3.9 MANDATE OF THE SOUTH AFRICAN PROSECUTING AUTHORITY

The mandate of the prosecuting authority is firstly set out in Section 179 of the Constitution. Section 179(1) provides that there is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of a National Director of Public Prosecutions (who is the head of the prosecuting authority and appointed by the President), Directors of Public Prosecutions and prosecutors. This prosecuting authority has the power to institute criminal proceedings on behalf of the state and to carry out any functions incidental to the institution of such proceedings (section 179(2)).

⁶⁵ For example, the UNODC (2006a) discusses certain challenges and proposed solutions for policymakers and law enforcement in dealing with human trafficking: see pp. xix-xx.

Section 179(3) requires national legislation to ensure that the Directors of Public Prosecutions are appropriately qualified and responsible for prosecutions in specific jurisdictions. In terms of Section 179(4), national legislation should also ensure that the prosecuting authority exercises its functions without fear, favour or prejudice. The legislation introduced in compliance with these provisions is the National Prosecuting Authority Act 32 of 1998.

The National Director of Public Prosecutions (DPP) must determine prosecution policy, which must be observed in the prosecution process; she or he must also issue policy directives, which must be observed in the prosecution process, and may intervene in this process when policy directives are not complied with (section 179(5)(a)-(c)). The National Director may review a decision to prosecute or not to prosecute, after consulting the relevant Director of Public Prosecutions and after taking representations within a specific period from the accused, the complainant or any other person or party considered to be relevant by the National Director.

3.9.1 Specialised Units

A number of specialised units or components have been developed in the National Prosecuting Authority. Since these specialised units may deal with different aspects of human trafficking, we provide a brief overview of their functions.

Sexual Offences and Community Affairs (SOCA) Unit

This Unit is based in the national office in Pretoria and also has offices in the nine provinces. Its purpose is to develop strategy and oversee the management of cases relating to sexual offences against women and children (National Prosecuting Authority 2009: 26). This means that the Unit develops strategy and policy, and oversees the management of cases relating to sexual offences, domestic violence, human trafficking, maintenance offences and young offenders. The broad outcomes that the SOCA Unit seeks to achieve are to:

- Improve the conviction rate in gender-based crimes and crimes against children;
- Actively protect vulnerable groups from abuse and violence;
- Ensure access to maintenance support; and
- Systematically reduce secondary victimisation.

Asset Forfeiture Unit

The Asset Forfeiture Unit (AFU) ensures that the powers in the Prevention of Organised Crime Act of 1998 to seize criminal assets are used effectively to remove the profits of crime (National Prosecuting Authority 2009: 39). The Unit focuses on restraining and forfeiting the proceeds of crime or the property used to commit crime.

Chapter 5 of the above Act provides for the forfeiture of assets from a person convicted of an offence. Chapter 6 provides for a civil process that is not dependent on criminal prosecution for forfeiting assets that are the proceeds of crime, or have been involved in the commission of crime. Forfeited money is paid into the Criminal Assets Recovery Account (CARA), unless there is an identified victim of the crime, in which case the victim is compensated first. Applications in terms of the Act are civil in nature and are mostly conducted in the High Court. The AFU therefore occupies a unique position in the NPA as essentially a specialist civil litigation unit. The Unit has offices located in each of the nine provinces.

The purpose of the Asset Forfeiture sub-programme has been described as the seizure of criminal assets that are the proceeds of crime or have been involved in the commission of an offence either through a criminal or civil process (National Prosecuting Authority 2009: 39). The measurable objectives of the Unit are to contribute to removing the profit of crime through increasing the value and number of orders and the success thereof.

Office for Witness Protection

‘Witness protection’ is described as the safekeeping of identified and intimidated witnessed and related persons requiring prosecution whilst testifying in cases being prosecuted (National Prosecuting

Authority 2009: 31). This function is fulfilled by the Office for Witness Protection (OWP), which provides a support service to the criminal justice system by protecting threatened or intimidated witnesses (and related persons) and by placing them under protection, thus ensuring that they will testify in criminal and other defined proceedings. The measure objectives are to reduce the number of witnesses who abandon the witness protection programme.

The framework legislation here is the Witness Protection Act 112 of 1998, which sets out the operation of the Office for Witness Protection.

At the end of 31 March 2009, the unit had 218 witnesses, including family members, on the programme (National Prosecuting Authority 2009: 31). It is an achievement of the programme that no witness or related person on the programme has been threatened or harmed in the past seven (7) years.

Organised Crime Section

The Organised Crime Section, which focuses on combating serious organised crime (National Prosecuting Authority 2009: 17), is located in the DPP's offices in the nine provinces. This specialised component handles prosecutions in terms of the Prevention of Organised Crime Act, the legislation that sets out offences relating to racketeering activities (sections 2 to 3) as well as offences relating to proceeds of unlawful activities, including the offence of money laundering (sections 4 to 6).

3.9.2 Empirical Findings

3.9.2.1 Profile of the Respondents

A total of 101 respondents participated in the survey. The majority of prosecutors were from KwaZulu-Natal (27) and Gauteng (24). The Northern Cape (4) and Eastern Cape (5) had the least respondents, with none from the Free State.

Most of the respondents work in the district courts (35), while 25 indicated that they are based at regional courts. Only two of the participants were operating at the High Court. The rest of the respondents (39) included those working in the district and regional courts (16) and those prosecuting on all three levels (4). Twelve respondents work on management level. The remaining seven respondents did not specify where they work. The average experience of respondents was 11.2 years.

Of the 101 respondents interviewed, only eight had dealt with human trafficking cases. Of these, five reported that they had handled three or more cases of human trafficking. (These five later contributed in-depth interviews, presented below.)

3.9.2.2 Training on Human Trafficking

Only 19 of the respondents indicated that they had received training in human trafficking and 82 reported that they had received none. Seven respondents received training from the NPA's Sexual Offences and Community Affairs Unit, five from NPA (National Office), five from Senior Public Prosecutors, and five from non-governmental organisations. All but one of those who received training were trained between 2004 and 2009.

The largest number of respondents indicated that they had received training on the definition of human trafficking (11), about the link between human trafficking and organised crime (11) and human trafficking and sexual exploitation (10). See table 3.1 on pg 57.

Nine of the respondents indicated that the training they had received lasted between two and three hours. Another responded that training had lasted one day and 10 indicated that training had lasted three or more days. The majority received training after December 2003.

Table 3.1: Content of Training in Human Trafficking

Historical background of human trafficking	7 respondents
Causes of human trafficking	9 respondents
Legal definition of human trafficking	11 respondents
Human trafficking in international law	5 respondents
Human trafficking trends in southern Africa	6 respondents
Links between human trafficking, migration and smuggling	6 respondents
Links between human trafficking and organised crime	11 respondents
Human trafficking and sexual exploitation	10 respondents
Consequences of human trafficking for victims and communities	8 respondents
Prosecution of human trafficking cases	7 respondents
Protection of victims of human trafficking	8 respondents
Cooperation with other government agencies	7 respondents
Other (please specify)	6 respondents
Other (please specify)	6 respondents

3.9.2.3 Understanding of Human Trafficking

The survey contained an open-ended question on the definition of human trafficking, phrased as ‘briefly explain what you understand with the term “human trafficking”’. Responses were coded according to the three components of the definition of human trafficking as set out in the Palermo Protocol: i.e. ‘action’, ‘means’ and ‘exploitation’. An answer with all three components was the optimal response.

In total, 10 respondents were able to provide a definition that included all three components of the definition. Forty-six provided responses with two components and 16 had one component.

The following are examples of responses where all three components are present:

When people or children are kidnapped and kept for purposes for mostly of sexual nature. Prostitution and labour related but mostly sexual.

Any person who is promised a better life or enticed into leaving where they are. Also involves kidnapping. People are used as workers or sex slaves. Also includes farm workers, children, women, men.

Ten respondents equated trafficking with prostitution Examples included:

Some people are used like prostitutes by other people.

People are promised to work as administrators especially females but then become prostitutes.

Force people into prostitution.

The use of sex slaves for people to get money.

Girls are taken from China to come here. Illegal. Prostitution.

Some responses were so vague that they did not seem to relate to human trafficking specifically or did not contain information related to the accepted definition:

Involves drugs and regulating crime, they get informants to infiltrate drug areas.

Take people out of their own environment under false pretences for the wrong reasons.

3.9.2.4 Respondents' recommendations

Respondents made recommendations on improving the investigation, prosecution and general management of human trafficking cases in South Africa. Categories included (in order of the number of mentions):

- Training (29)
- Specialised units (11)
- Public awareness and Prevention (8)
- Investigation (5)
- Victim Support (1)
- Other (7)

The need for training predominated among the recommendations. A related theme was the need for specialised units for both prosecutors and police investigators:

Training is absolutely necessary for both the prosecutors and the police.

More education for prosecutors and police to identify situations... Lack of knowledge.

Think that we need more training: police, prosecutors, magistrates - all need more training.

One will have to have a skilled investigation officer, it is critical to the process.

Improve the police services. Incompetent, contaminate evidence on crime scenes.

Another theme emerging from the responses was that of public awareness and prevention:

Need to do some workshops in order to inform the public on this. Unemployed need to [be] educated on the dangers as they are very vulnerable to exploitation.

There is not enough information out there. The victims need to be made more aware of it through advertising.

Four respondents linked recommendations about human trafficking to the 2010 FIFA World Cup. Two of these recommendations were in the area of prevention, with one respondent suggesting that with '2010' approaching, more police should be deployed to prevent trafficking. Another proposed that '2010 prostitution' should be investigated where trafficking is involved.

Regarding victim support, one respondent noted that 'the important part is going to be how we support the victims. If the victims don't have support they will not want to come to court.'

The remaining recommendations, grouped together as 'Other', included the need for 'proper' legislation and for prosecutors to have access to information on other countries. One commented that proving cases of human trafficking is 'extremely difficult' since 'lots of allegations [are] made but no testifying.' This was echoed by another respondent, who reported sexual exploitation 'from town to town', but 'no witnesses'. In contrast, another observed that trafficking is dealt with just like other cases. (None of these respondents reported that they had personally dealt with trafficking cases.)

3.9.3 Individual Interviews

The qualitative interview schedule for this section was developed with reference to instruments developed by the UNODC for use in its study on human trafficking in West Africa (Bénin, Burkina Faso, Ghana, Niger, Nigeria and Togo)⁶⁶ and translated from the original French. The schedule consisted of two parts: the first part related

⁶⁶ UN Document Reference UNODC/FS/RAF/R92.

to the individual respondent and the second part to cases dealt with by respondents. Interview schedules with slight adjustments were also developed for members of the Asset Forfeiture Unit and the Witness Protection Office. Twelve interviews were conducted face-to-face and telephonically and one prosecutor returned a completed questionnaire to the researchers. (The small sample size suggests that these results should be treated with caution.)

3.9.3.1 Profile of Research Participants

Participants were from six provinces: seven from KwaZulu-Natal, three from Gauteng, two from the Western Cape and one each from the Eastern Cape, Limpopo and Mpumalanga. (The predominance of participants from KwaZulu-Natal can be attributed to the fact that an intersectoral task-team on human trafficking has been established there.)

Respondents included one deputy director, five senior state advocates, three senior public prosecutors, two witness protection officers, one regional court control prosecutor, one state advocate, one pupil state advocate and one specialist investigator. Eleven of the interviewees are attached to specialised NPA units, including the SOCA Unit, the Organised Crime sections located in provincial DPP offices, the Asset Forfeiture Unit and the Office for Witness Protection. The research participants had experience ranging from 27 years to two years and seven months. The average experience was 15.6 years.

In response to whether they had received training on human trafficking, nine of the fifteen respondents confirmed that they had received such training. Some had attended two or more training sessions on trafficking. Among the six respondents who had not received training, two had attended either a workshop or a conference on the topic.

The respondents were themselves currently busy with the presentation of training on human trafficking for prosecutors or had been involved with the development of training material. Certain of the respondents who had not received training explained that they had built up their own expertise when they were called on to present training on trafficking.

3.9.3.2 Understanding of Human Trafficking

Respondents were asked how they would classify human trafficking – as organised crime, illegal immigration, slavery or ‘something else’. Partway through the survey, a question was added requiring respondents to explain human trafficking to the interviewer in the same terms as they would use with a layperson.

It was apparent from the definitions provided by participants that they are familiar with the technical definition of human trafficking (in contrast to responses on the general prosecutors’ survey: see above). Only one respondent diverged by including other forms of trafficking / smuggling along with human trafficking:

It’s when foreign citizens are taken from one country to the other for purpose of unlawful business like transporting drugs, prostitution, taking goods from one country to the other, using these human beings and the person may not be aware of exactly what they are going to do.

Respondents almost unanimously agreed that trafficking virtually always features an element of organised crime. However, some believed that trafficking takes place even where no element of ‘organised crime’ in the conventional sense is present. For example, where a woman is recruited under false pretences in a township outside a large city to go and work in a small-scale suburban brothel, without links to ‘big’ organised crime, and is kept there under some form of duress, this would fall within the definition of trafficking. Others felt that this type of localised, ‘down the road’ recruitment into the sex industry did not quite comply with the definition of trafficking – that something more was required in the form of an organised crime component (as conventionally understood).

3.9.3.3 Perceptions of Trends in South Africa

Research participants were asked to comment based on the human trafficking cases they had dealt with, on whether South Africa is a country of origin, transit or destination and the main purpose of trafficking to and from South Africa. Some respondents indicated that they had not dealt with sufficient cases themselves to identify such trends but others offered impressions and opinions.

Opinion varied among respondents as to South Africa is a country of origin, transit or destination. One interviewee suggested that it is all three, another that it is a country of transit and destination and a third that South Africa is a country of destination only. These three respondents agreed that the purpose of trafficking to South Africa is prostitution. One respondent expressed the view that South Africa is more of a country of destination for people coming from neighbouring countries, especially Mozambique.

Another respondent believed that South Africa is mainly a country of transit and destination. He explained that women of Eastern European origin, for example, from Romania, Russia, Hungary, Bulgaria, and the Ukraine, are brought to work in brothels in South Africa. Traffickers from the African continent (Nigerians, Mozambicans, Zimbabweans and Zambians) bring persons to South Africa to be sold for purposes of labour. People from India or Pakistan are kept here for three or four years to be 'westernised' and then moved on to Britain, America or Canada or even New Zealand. In this instance, South Africa is a transit country.

Another respondent confirmed that South Africa is a destination country for purposes of prostitution, and said that there is currently a demand for young women (14 to 15 years of age). She noted that she had also heard about the involvement of Nigerian syndicates and that many women are coming in from Mozambique, but this information was anecdotal and she had no personal experience of this.

This impression was borne out by a respondent who also explained that people are brought to South Africa for purposes of prostitution. In his experience, many of the trafficked persons entered South Africa knowing that they would be working in the sex industry here. He estimated that approximately 60% had been involved in prostitution in their home countries and had come to South Africa for financial gain. However, once they arrived here, they were informed that they had to work off their debt and due to the terms imposed, they never manage to do so.

Respondents in Durban identified the purpose of human trafficking as transnational prostitution: specifically, bringing women to work in brothels, whether in Durban itself or somewhere else. Respondents in other parts of South Africa believe that the main form of trafficking is local, with the abduction and murder of children predominant. While these incidents have been linked to organ removal, the possibility of illegal adoption was also raised, given the fact that very young children are involved. These variations may imply that the types of trafficking cases, and the challenges facing prosecutors, also differ from one location to the next.

3.9.3.4 Who is Dealing with Trafficking Cases?

One of the aspects that we examined in this section was whether there are specialised units allocated to dealing with trafficking cases within the different NPA components. Given that our sampling technique had, for the most part, already led us to specialised units (such as the Organised Crime sections in provincial DPP's offices and Asset Forfeiture Units), asking this question appeared to become somewhat redundant. It was however interesting to note that within these units, the human trafficking cases were often assigned as a further sub-specialty to one particular person or to a smaller group of persons only. This may be the result of this person or grouping having been trained, their experience in dealing with trafficking cases or their enthusiasm for these cases – or a combination of all of the above.

The sample size was too small to draw any definitive conclusions about the assignment of cases. One should nonetheless flag the question of specialisation for further attention. Although building up a pool of specialist prosecutors with expertise in the prosecution of human trafficking cases is a worthwhile enterprise, it is at the same time important to firstly document this expertise and secondly develop the capacity of others to do this work as well. (This is to avoid 'burn-out' on the part of the specialists and to ensure sustainability.)

3.9.3.5 How are Trafficking Cases Identified?

The interview schedule did not initially include any questions about the flow of cases from the initial point where an incident is reported, through the police investigation, to where the matter is first handed over to the prosecution (whether in the form of a 'general' district court or a specialist unit such as the Organised Crime section). Researchers however decided to incorporate this question after preliminary interviews indicated a need for exploring this aspect.

Outside KwaZulu-Natal, it appears that there is no 'flagging' system in place that alerts the prosecution at an early stage (prior to an arrest) that a particular investigation may be a human trafficking case. The prosecutor will in the normal course of events only see the docket if an arrest takes place and the accused appears before court for the first time. If no arrest is made, the prosecutor sees the docket when the investigating officer decides to present it for a decision regarding prosecution, unless there is an agreement between the prosecution and SAPS that the prosecutor will provide guidance as the investigation proceeds.

One respondent expressed the opinion that trafficking cases are currently getting 'lost' because they are not initially correctly identified:

I believe that there are many more trafficking cases out there that are not identified because of the fact that the police don't recognise them as such.

Another respondent related her disappointment that an investigating officer had failed to identify a case as trafficking (for sexual purposes), although he had received training on the topic. By the time she saw the docket, certain key witnesses could no longer be found.

Importantly, certain prosecutors' offices have instituted a policy that trafficking cases must be reported to the senior public prosecutor as soon as they are identified.

Within the KwaZulu-Natal task-team, people disagreed about whether a police official who identifies a potential human trafficking case should immediately contact the task-team upon recognising such a case or complete the investigation at station level first before referral to the task-team. The latter option was chosen.

While this may not be feasible in all cases, ideally police investigators and prosecutors would work together on investigations from the start. For example, where a raid on a brothel is planned, prosecutors would be advised beforehand and would be available to provide telephonic advice to investigators during the raid if necessary. This approach is currently being used to some extent in KwaZulu-Natal.

Finally, cases should not simply be taken at 'face value'. One respondent explained how a case that initially looked like a 'simple' brothel raid started unfolding when the Asset Forfeiture Unit began looking into assets, and soon turned out to be a much more complicated instance of human trafficking. This demonstrates the value of training and experience in dealing with trafficking cases.

3.9.3.6 Prioritisation of Trafficking Cases

In order to establish where human trafficking fits into the 'general scheme' of priority accorded to cases, two questions were included in the interview schedule. The first required respondents to rate the seriousness of human trafficking cases compared to the other offences they deal with on a scale of 1-10, with 1 'minor' and 10 'most serious'. The second question asked what degree of priority respondents give to the investigation and prosecution of trafficking cases (again, on a scale of 1-10).

When evaluating the responses, it appeared that there were broadly three approaches. The first was that all trafficking cases are among the most serious, and should be given the highest priority. It appears that in certain instances the level of priority may be determined by the unit or office where the respondent is situated: for example, if the respondent works for a specialised unit, and is part of the team who usually deals with trafficking cases, they would indicate a high priority for trafficking cases.

The second approach was that trafficking is generally more serious, but that it also depends on the facts of each case (for example, whether children are involved). As one respondent put it: 'Different cases, different dynamics'. This was echoed by other interviewees who noted that the level of seriousness (and the priority accorded to the case) would be assessed on an individual 'case by case' basis.

The third view was that trafficking cases should be dealt with in the same way as other cases, and should not necessarily be prioritised over other comparably serious cases – they would get exactly the same attention as other cases. One respondent expressed concern about prioritising trafficking cases over other cases:

An individual person that has a sexual offence case against them should be treated with no less priority and in a no less serious way than someone who has trafficked. I don't know how you can prioritise one case over another in terms of what criteria you are using... A sexual offence is a sexual offence. It shouldn't be categorised in terms of prioritising offences.

It would therefore seem that there is no uniform approach among the respondents in terms of how they regard the seriousness of trafficking cases or the degree of priority they attach to these cases. This is understandable, given that such 'standards' are subjective to begin with, and are secondly dependent on where the respondent is based, as noted above. However, it is interesting to note that this question again seems to bring up the question, if indirectly, whether human trafficking cases are somehow 'different' from other cases.

3.9.3.7 Resources for Dealing with Human Trafficking

(a) Involvement of Units/ Offices in Trafficking Cases

With one exception,⁶⁷ the prosecutors' units or offices represented by participants, started dealing with trafficking cases within the last five to six years (in one instance), in 2006 (in two cases) and approximately two years ago (in the remaining five cases). The sudden emergence of interest around two years ago is likely attributable to the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which came into force on 16 December 2007 and includes provisions on trafficking for sexual exploitation.

Respondents could not report the number of trafficking cases handled by their units /offices but could provide information about specific cases they had personally dealt with.

(b) Adequate Resources

For the most part, respondents based at specialised units considered that their units were relatively well-resourced when it came to dealing with human trafficking cases. However, those working in 'regular' prosecutors' offices reported staff shortages and limited prosecutorial expertise in dealing with trafficking cases. One respondent said that more prosecutors are needed to guide investigations, since this would generate cases – one can't rely on the police to generate cases or wait for the complainant to come forward. One respondent noted that the availability of equipment for use in criminal cases (for example, closed-circuit television systems) varies from court to court. Another reported that in certain courts in the area where he worked, this equipment was not working. Accommodation was also problematic: prosecutors share offices, which makes it very difficult to do consultations in private. While these shortcomings may be endemic to the criminal justice system generally, their effect may be felt more acutely in trafficking cases. This is due to the particular nature of these cases, which may require greater sensitivity to witnesses' needs for confidentiality (and therefore private consultations).

⁶⁷ This exception constitutes a prosecution that commenced in 2002 and was finalised in 2006.

One respondent observed that child sex workers who are victims of trafficking lack shelters. Sexually active and addicted to drugs, these children do not have places of safety prepared to accommodate them. However, the respondent had negotiated with two shelters to accommodate these victims and the problem had been resolved locally.

(c) Directives, Protocols and Training Manuals

'Directives' are administrative instructions issued to prosecutors by the national or provincial offices, usually on specific topics such as the management of sexual offences or the referral of certain categories of cases to the High Court for trial after initial appearance in the lower courts. Legislation may require the prosecuting authority to develop 'directives' on specified issues: for example, sec 66(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 requires the NDPP to issue directives on a range of matters for prosecutors tasked with sexual offence cases.⁶⁸ A 'protocol' in this sense is generally understood to refer to an agreement or code of conduct, often drafted in a multi-sectoral environment, setting out the responsibilities of each sector or detailing the practical steps to be followed by each participant towards a common objective.

In response to the question whether any directives or protocols have been developed, almost all the respondents noted that no directives are in existence yet. This is to a large extent a function of the fact that there is no comprehensive trafficking legislation in place at present, combined with the fact that the provisions in the Children's Act are not in force. In one instance, the DPP had issued directives regarding the referral of trafficking for sexual purposes to the High Court.

Similarly, protocols detailing the specific roles and responsibilities of a multi-sectoral approach to human trafficking have not yet been completed. The most likely site for the development of such protocols is KwaZulu-Natal, where there is some experience of such multi-sectoral work in the form of the provincial task-team. One respondent there explained that the development of such protocols for the task-team is a priority: the lack thereof currently leads to potential misunderstandings among members (for example, in terms of their respective responsibilities towards trafficking victims) and difficulties in holding other task-team members accountable.

Regarding training manuals, respondents mentioned the NPA's training manual, which has been developed in respect of the Sexual Offences Act and also contains a component on trafficking for sexual purposes.

3.9.4 Cooperation with other Agencies

Participants were asked whether their units or offices currently share information regarding human trafficking with other law enforcement agencies. If so, they were asked to describe how this happens, for example, through regular meetings or on an ad hoc basis.

Some respondents lacked any such arrangements. Other respondents reported regular meetings between criminal justice stakeholders (including the prosecuting authority) as part of a general liaison process, in which trafficking would be discussed. One respondent mentioned that in addition to these stakeholder meetings, their office also did outreach programmes.

A group of respondents are members of the provincial task-team in KwaZulu-Natal. The task-team is described in the next section.

⁶⁸ As this report is going to press, these directives have not yet been issued.

3.9.4.1 How Can This Information-Sharing be Improved?

The absence of formal protocols has presented challenges regarding stipulating the roles and responsibilities of the different sectoral representatives and concomitant difficulties around accountability. However, respondents generally agreed that the formation of the KwaZulu-Natal provincial task-team constituted a significant advance in the response to trafficking. Currently the only provincial task-team in existence (although others are in the planning phase), this task-team is potentially an example of 'good practice' in terms of inter-sectoral cooperation and information-sharing regarding human trafficking, although its short track record suggests caution in drawing firm conclusions.

The task-team was started approximately a year before the time of writing, and tries to assemble a wide range of role-players who may in some way deal with human trafficking. It is made up of approximately 60 persons and meets about once every two months. The task-team has now separated into two sub-teams, one tasked with prevention (which is largely the responsibility of the NGO sector), and the other with investigation and prosecution (consisting of the prosecuting authority and law enforcement agencies such as the South African Police Service, Metropolitan Police etc.). Although the NPA does not form part of the prevention team, its members have been very active in taking responsibility for prevention work.

In certain contexts, the notion of 'information-sharing' is complicated, for example, in the case of witness protection, where confidentiality is an essential part of the agency's work. Respondents suggested that information-sharing would be facilitated if the Office for Witness Protection could identify a contact person in other departments with whom they could liaise without having to divulge confidential information.

3.9.4.2 Knowledge of Other Agencies of Legal Provisions on Human Trafficking

Asked to assess the knowledge among police investigating officers about laws regarding human trafficking, the majority of respondents described such knowledge as 'inadequate', 'very poor', and 'very limited'. One respondent observed that police 'are the biggest obstacle' in dealing with human trafficking cases. Since there is no specialised unit, and officials haven't received training, they usually handle these cases as 'simple' kidnapping cases. This respondent also expressed dissatisfaction about the fact that the Organised Crime Unit of the SAPS is not involved in the investigation of trafficking cases, in spite of the clear involvement of syndicates. This shortcoming was confirmed by a respondent from another province.

One respondent expressed the view that about 30% of police know about human trafficking, and in his experience, it was mostly police employed at the borders of South Africa who have this knowledge. A second offered the following example to illustrate the lack of knowledge:

We had this case in [...] Court last week when they explained that this girl had been kidnapped by a specific lady. She had been taken to a specific hostel where she had been rented for sex. I mean, and there is an ongoing pattern of the same trafficking. Kidnapped by one group of people, taken to another group of people where she is sold. It's a clear indication once again of that internal trafficking. No one identified the trafficking. The woman was released, I think on R1000 bail because it was just regarded as a kidnapping charge.

A respondent pointed out that, in his experience, it is not only police officials who have limited knowledge of human trafficking but also immigration officials and presiding officers (both magistrates and judges). He explained that those who are not familiar with trafficking look at the broader picture but don't see what is happening 'behind the scenes':

They think oh, it is just prostitution and oh the woman consented to it, she did it freely and that is not necessarily always the case.

⁶⁹ Details of court withheld for purposes of confidentiality.

3.9.4.3 Information and Resources that Should be Available

Respondents were asked which kinds of information, basic knowledge, resources or capacities they would like to see being more accessible to the immigration officials, police officials and presiding officers dealing with trafficking. A number of respondents answered this question with reference to information available to *prosecutors*. Observing that prosecutors dealing with human trafficking cases rely strongly on internet-based resources, one respondent argued for greater Internet access for prosecutors. A second respondent noted:

I think human trafficking in terms of the prosecution is really simple but in terms of the human element it is really complex, but ja, certainly if you need information you know where to get it.

In terms of this ‘human element’, another respondent pointed out that it would be useful to have more experts available to testify in court about the psychology involved in human trafficking, as in many cases the victims are so traumatised and dehumanised that they want to return to the traffickers. Two respondents further emphasised that immigration officials need to be trained on recognising psychological signs of human trafficking.

The question of training for judicial officers was also raised. One respondent explained that this is a very sensitive matter, since presiding officers (and particularly judges) are reluctant to agree to ‘training’. (This is even more difficult when the training is being offered by the NPA, which holds the risk of presiding officers being seen as ‘partisan’.) One respondent suggested that a short information document (in the form of a pamphlet) should be developed.

You know what, even if it is just a one-leaf pamphlet telling people this is trafficking, be aware of it. I see quite a few posters or ads and [it] still doesn’t tell me legally this is what trafficking means.

This was confirmed by a second respondent who noted that the definition of human trafficking and its interpretation should receive attention. She explained that if one looks at the new Sexual Offences Act, one finds that even police officials who have worked with sexual offences for a long time battle to grasp the basics, such as the new expanded definition of rape.

Other respondents also observed that criminal justice officials need more knowledge of human trafficking in order to distinguish it from other offences and that training has not been sufficient in this regard.

3.9.4.4 International Cooperation

Asked whether their unit or office participates in international cooperation or information exchange programmes on human trafficking, respondents reported a number of cooperative arrangements with prosecutors’ offices and international organisations based in South Africa, as well as foreign embassies. One respondent explained that the KwaZulu-Natal task-team has several international organisations as members. Some of these organisations have come on board to do training. The task-team also works with certain embassies.

Another respondent related that cooperation between South Africa and the UK, regarding persons trafficked from India and Pakistan transiting through South Africa to the UK, allowed a number of cases to be tried in the British courts. South African officials went to testify in some of those cases. He described the informal information networks that facilitated this cooperation:

It is the way our cases go forward, that you need something and then you get to know someone again and when you get to know that guy, when you have a case again you will phone him and ask him.

Another respondent pointed out that this informal method of enlisting international assistance is not always ‘plain sailing’. He had managed to establish a direct contact with a law enforcement agency in the US, and once the contact had been made, he could phone this person directly to obtain the background information that he needed about certain persons. Unfortunately, he was subsequently instructed that this direct access was not permitted, and that he had to follow the official (and time-consuming) channels.

More than one respondent indicated that increased international liaison could be useful, but cautioned that one would have to be guided by the requirements of each individual case – that such cooperation ‘just for the sake of it’ would be of limited use. Another respondent proposed that it would be helpful to trace back how witnesses get here from elsewhere. This was confirmed by another respondent, who pointed out that the cases she dealt with so far had mainly stemmed from ‘simple’ prostitution and related businesses – and stopped there. Prosecutors did not have the evidence to go outside these activities and look for more, for example, money laundering or racketeering.

Another respondent pointed out that since trafficking is so new to prosecutors, it would be valuable to learn about investigation and prosecution techniques from prosecutors elsewhere. It was further noted that communication is required in order to pick up trends and commonality of suspects.

Certain respondents also indicated that it might be necessary to establish contact with victims’ country of origin, for a range of reasons. The first may be simply to trace victims who return to their countries of origin and in effect ‘disappear’ as witnesses in the country of destination. A second reason may be to check with the families of suspected victims to see if the victims are in danger, since they rarely cooperate when rescued. International cooperation is also required where the recruitment takes place in one country and the exploitation in another, with the recruiter, a citizen of the country of origin, remaining in that country.

3.9.4.5 Challenges Encountered

3.9.4.5.1 Poor Quality of Investigations

Several respondents listed the poor quality of investigations as one of the challenges in these cases. One respondent commented that it is important for investigations to be handled competently from the start. The first 24 hours is the critical period. In his experience, the prosecutor often only saw the docket much later, and by then it was too late to do ‘damage control’. The problems created by poor work at the outset have dire implications right through the trial, since badly-taken police statements can impact on the credibility of a witness in court. For this reason, this respondent strongly felt that trafficking cases should be handled by specialist investigators from the start. Another respondent confirmed that police investigators are often inexperienced, and that is why they (as prosecutors) do as much training as possible. The heavy workload of police investigators was also listed as a negative factor.

3.9.4.5.2 Lack of Cooperation from Victims

Respondents explained that it is difficult to persuade victims of human trafficking to cooperate with the criminal justice process. One of the problems experienced by prosecutors was that witnesses did not want to testify. This may be because of the long time it takes to finalise criminal cases. A respondent explained that especially where the trafficked victims had worked in the sex industry at the time when the offences were committed, they will likely have ‘moved on’ by the time that the trial takes place and may not want their families or new employers to know about their erstwhile involvement in the sex industry. This may contribute to their reluctance to testify.

The unavailability of witnesses was mentioned as a challenge by a respondent who explained that (potential) witnesses tended to simply ‘disappear’. Another respondent noted that prosecutors do not always have easy solutions to the practical difficulties confronting them when there are lengthy delays in finalising criminal trials:

How do you prevent that the person doesn’t become a victim again? How do you prevent that she doesn’t go out of the country, because then my witness disappears? That type of thing, I think, is a problem that one doesn’t necessarily know what to do with.

The disappearance of, or unwillingness of key witnesses to testify, places the prosecution in an unenviable position. Even where principal suspects have been arrested, the evidence of these witnesses is necessary to ensure their conviction. In the words of one respondent, ‘they need to tell what’s happening in the business’. When witnesses are not available, the prosecutors can only proceed against the suspects on minor offences, or

in some cases, they have to withdraw the charges altogether, as is apparent from our analysis of individual cases (see below).

3.9.4.5.3 Identifying Key Suspects

Respondents noted that while the investigators and prosecutors are successful in arresting minor figures in the trafficking operations (pimps, brothel owners, etc), the lack of cooperation from victims has meant that they are not getting to the 'kingpins' or 'bosses' behind these operations.

A member of the KwaZulu-Natal task-team explained that in order to counter this problem, the task-team has an intelligence subcommittee that is currently working to identify these kingpins.

3.9.4.5.4 Language Barriers

Respondents reported that language differences could be a difficulty, especially where trafficking victims are foreign nationals. Although the local embassies readily try to make interpreters available when requested by police or prosecutors, such interpreters are not always accessible when an emergency arises, for example, in the context of the witness protection programme. Also, the witness protection situation has additional security concerns that need to be taken into consideration when selecting interpreters.

3.9.4.5.5 Lack of Psychosocial Support for Trafficking Victims

A research participant recounted that, in one case he had dealt with, it had been very difficult to obtain the necessary psychosocial support for the victims. This was partly because these witnesses saw themselves as prostitutes rather than 'victims' and there wasn't any form of intervention available to assist them at the time. He added that this was some years ago and that the position has subsequently changed, with support now more readily available.

3.9.4.6 Development of Criminal Cases

A further theme emerging from the responses was the apparent 'gap' between anecdotal evidence that human trafficking is occurring and the development of this information into concrete criminal cases. As one respondent noted –

The information that apparently is all out there that... [is] not materialising into charges being laid or complainants coming forward and information and dockets being investigated, that is what is, for me the gaps between the allegation that is happening and the concrete cases that are not appearing on our desks as prosecutors.

This phenomenon may be partly explained by the comment from one respondent who noted that human trafficking investigations need to be intelligence-driven as victims are difficult to find. The intelligence-gathering capacity of investigators needs to be expanded accordingly.

On the other hand, respondents also indicated that they are aware of potential cases, reported to SAPS, which have not progressed due to an apparent lack of investigative capacity on the part of SAPS members.

3.9.5 Policy Changes and Other Recommendations

3.9.5.1 Specialised Units

Invited to offer recommendations to the prosecuting authority for policy changes, respondents had several views. One recommendation, put forward strongly by several respondents, was that human trafficking should be assigned to specialised units, both in terms of investigation and prosecution. It was further suggested that dedicated police officials should conduct proactive investigations and should receive in-depth training on investigative techniques, intelligence-gathering and financial investigation techniques in order to follow 'money trails'.

Another respondent suggested that such specialised trafficking units would also be able to focus on trafficking of men and different forms of exploitation (in addition to sexual exploitation). This respondent argued that since human trafficking is such a new crime, is it important to give it focused attention and then evaluate the results.

A third respondent proposed that specialised human trafficking courts should be established on all of South Africa's borders.

3.9.5.2 Training and Sensitisation of Officials

The training and sensitisation of specifically police officials and immigration officials also emerged strongly as a theme from the responses. One respondent explained that if an investigator is inexperienced and doesn't realise that the victim has been trafficked (and believes that she is 'just a prostitute'), he will treat her that way and she won't cooperate.

3.9.5.3 New legislation

Several respondents indicated that their task would become easier once the new comprehensive legislation has been introduced and becomes operational. This would relate, amongst other aspects, to inter-sectoral cooperation and policy development.

3.9.5.4 Compensation for Trafficking Victims

Respondents explored the prospect of compensation for victims of human trafficking. One suggested that such compensation could be obtained by means of a civil claim (brought by the victim against the trafficker, in parallel with the criminal trial). An alternative proposal was for victims to access the proceeds of crime that have been forfeited in terms of the Prevention of Organised Crime Act, 1998. (The respondent conceded that in the latter instance, calculation of a compensatory amount may prove difficult if one wanted to claim for more than actual monetary loss.)

3.9.5.5 Aspects Still to be Explored

Asked which aspects of human trafficking still remained to be explored in South Africa, respondents had several views. Some noted that the different forms of exploitation (other than sexual exploitation) should be looked into more comprehensively: child trafficking, illegal adoptions, organ trafficking and forced labour (including so-called 'sweat shops'). Respondents also suggested that the links between human trafficking and child pornography and between trafficking and the advertising of the services of under-age sex workers should be explored.

The impact of the 2010 FIFA World Cup, and the role of prosecutors in prevention, was mentioned by a respondent as an aspect that should be considered. But another noted that corruption and involvement of state agencies should be looked into. One offered an insight about the impact of legislation:

I think the moment we have the legislation I think we will notice that we have a lot more problems than we have answers for... like with racketeering.

3.10 INDIVIDUAL CASES

The second part of the individual interviews consisted of documenting the cases of human trafficking that the respondents had dealt with. Thirteen cases were considered suitable for analysis. Twelve of the cases were documented during the individual interviews with prosecutors, while one was submitted by a participant as part of the initial pilot of the prosecutors' survey. The interview set out to gather the following information about each case:

- Purpose of the human trafficking (eg exploitation of prostitution, forced labour, etc);

- Description of how the trafficking took place (from where to where) and whether it happened inside South Africa or across its borders;
- Description of when the act(s) of trafficking took place and when the case first came before court (approximate year);
- Description of the accused person(s) – number, nationality and sex;
- Description of the victim(s) (trafficked person(s)) - number, nationality and sex;
- Description of the current status of the case, including the nature of the charges against the accused;
- Indication of whether the victim(s) had testified, and if so, whether protective measures were used during their testimony;
- Indication of whether the victims(s) were accommodated in the Witness Protection Programme or other protective facility;
- Whether the respondent had encountered any challenges in this case unique to trafficking cases; and
- Whether the respondent had come up with any innovative approaches that may be useful to other prosecutors dealing with trafficking cases.

3.10.1 Summary Findings

3.10.1.1 Sequence of Events

The first factor examined was the timing of the key events (from a criminal justice perspective), especially, when the acts of trafficking took place and when the case came before court for the first time. Assembling responses was impeded in two ways. Firstly, as is evident from Table 3.2, in some instances the acts of trafficking were ongoing and covered a number of years. Secondly, some respondents found it difficult to recall the timeframes with accuracy especially in cases that did not go to trial.

3.10.1.2 Purpose of Human Trafficking

Regarding the purpose of the trafficking (aligned with the definition in the Trafficking Protocol), respondents noted in twelve instances that the purpose of the trafficking was ‘exploitation of prostitution or other form of sexual exploitation’. In one instance, the purpose was forced labour or service and in another it was suspected that the victims (two young children) had been abducted for removal of body parts.

3.10.1.3 Domestic or International

Asked whether the trafficking happened inside the country or across the borders of South Africa, respondents mentioned the following cases as instances of inter-country trafficking:

- Victims moved from one suburb in Cape Town to another;
- Victims moved from Free State to Johannesburg, and from Mamelodi to Marabastad (Pretoria);
- Victims moved from Welkom, Free State to Johannesburg;
- Victims who had disappeared from their homes in Tonga, Mpumalanga;
- Victims moved from Johannesburg to Pretoria.

Other cases included examples of cross-border trafficking:

- Victims moved from Thailand to Durban;
- Victims moved from Eastern Europe (Romania, Ukraine, Russia, Bulgaria, Hungary) to South Africa;
- Victims moved from Zimbabwe to Nelspruit; and
- Victim moved from Mozambique to South Africa.

Table 3.2: Sequence of Events – Trafficking Cases

Act(s) of Trafficking (Year and Month)	Case Before Court? (Year and Month of First Appearance)
1996	2002-2004
1998 - December 2006	December 2006
Before 2000	December 2000
Approximately 2001	Approximately 2002
2005	2006
April 2007	April 2007
2007	2009
Introduction of new Sexual Offences Act (with definition of trafficking for sexual purposes): December 2007	
Early 2008	Around February 2008
First half of 2008	First half of 2008
July 2008	July 2008
2008	2008
Second half of 2009	August 2009
Early 2009	Scheduled for court in Nov 2009

3.10.1.4 Profiles of Alleged Traffickers and Victims

Respondents offered some details about traffickers and their victims, presented in Table 3.3. However, respondents also advised that not all suspects were apprehended. In other cases, not all victims were prepared to testify and therefore the criminal charges had to be limited to those complainants who were willing to give evidence. Only the latter category (i.e. victims in respect of whom formal charges were brought) is reflected here.

All the complainants in all the cases analysed were women, but alleged traffickers included both men and women. The ages of the complainants ranged from young teenagers (13-14 years) to mid-thirties (with the exception of the two toddlers who were allegedly murdered for removal of body parts). The nationalities of the alleged traffickers reported here broadly correlates with the general trends distinguished by prosecutors in the individual interviews.

3.10.1.5 Criminal Cases

From the perspective of the criminal justice process, two aspects were reported as particularly important. First is the time period, as acts that took place before the introduction of the new legislation had to be prosecuted under older legislation (i.e. the common law and previous statutory law), even if they were arrested after the new legislation had come into operation. The second aspect is whether particular obstacles impeded the successful prosecution of trafficking cases. Figure 3.2 shows the findings in this regard: notably, four cases were withdrawn. Significantly, two cases were withdrawn because witnesses disappeared prior to the case going to trial.

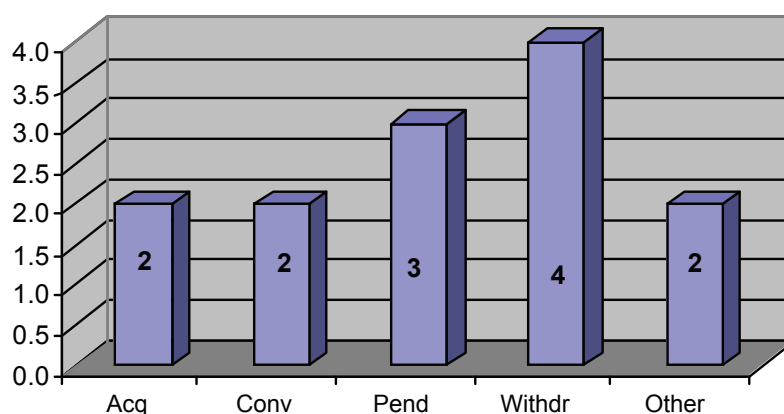
Fig. 3.2: Current Status/ Outcome of Cases

Table 3.3: Profiles of Alleged Traffickers and Victims

Accused			Victims (Complainants)			
Number	Nationality	Sex	Number	Nationality ⁷⁰	Sex	Age
5	South African	3 men 2 women	2	South African	2 women	13-14 14-15
30	Thai & South African	4 men 26 women	4	Thai	4 women	18-35 yrs
2	South African	2 men	20	East European	All women	20-30 yrs
1	South African	1 woman	2	South African	2 women	16-18 yrs
2	South African	1 man 1 woman	1	South African	1 woman	15 yrs
10	Thai & South African	1 man 9 women	3	Thai	3 women	20-34 yrs
4	Thai & South African	3 men 1 women	4	Thai	4 women	18-35 yrs
1	Unknown	1 man	1	Unknown	1 woman	In twenties
1	Malawian	1 man	1	Unknown	1 woman	Approx. 20 yrs
1	Mozambican	1 man	1	Unknown	1 woman	16
1	Nigerian	1 man	3	South African	3 women	Early twenties
4	South African	3 men 1 woman	2	South African	2 girls	Under 3 yrs
4	Thai	4 women	4	Thai	4 women	Adult

3.10.1.6 Protective Measures for State Witnesses

Respondents affirmed that witnesses testified during the trial in five cases. Responses on whether the prosecution had applied for any protective measures regarding the evidence and whether witnesses were accommodated in the Witness Protection Programme or other safe facility (such as a victims' shelter) before or during the trial are provided in Table 3.4.

⁷⁰ Regarding this category of victims' nationality: it should be noted that this question was not initially part of the interview schedule, but was only added subsequently, which is why this data is unavailable in respect of certain complainants.

Table 3.4: Protective Measures Used Towards Witnesses

Trial: Did Victim Testify?	Protective Measures – Evidence	Other Protective Measures Before and During Trial
Yes	<ul style="list-style-type: none"> • Victim's evidence to be given in camera • Victim's identity to be withheld ✓ Yes • Molo Songololo wanted to sit in court during testimony of victims ✗ No 	
Yes	<ul style="list-style-type: none"> • Victim's evidence to be given in camera ✗ Application refused 	Accommodated in NPA Witness Protection Programme; also in women's shelter
Yes (partially)	<ul style="list-style-type: none"> • Victim to testify by means of closed-circuit TV • Victim's evidence to be given in camera ✓ Yes 	
Yes	<ul style="list-style-type: none"> • Victim to testify through an intermediary ✓ Yes 	
Yes		Accommodated in NPA Witness Protection Programme; also in women's shelter

The reports submitted to the Constitutional Court by the Director-General of Justice and Constitutional Development and the NPA on the availability of closed-circuit TV systems and intermediaries in the so-called *Phaswane*⁷¹ case indicate that serious concerns remain about victims' access to these protective measures when giving evidence in court.

⁷¹ Reported as *The Director of Public Prosecutions, Transvaal v The Minister of Justice and Constitutional Development and Others 2009 (4) SA 222 (C)*. The Constitutional Court held that the rights of child complainants in sexual offence cases are threatened by the non-availability of intermediaries and related protective facilities. It therefore called for information as a first step of a supervisory order (para 203- 208) and the Director-General of the DoJCD was ordered to provide a report by 1 July 2009. (Copies of report and subsequent NPA comment on file with author.)

CHAPTER FOUR: COUNTER-TRAFFICKING RESPONSES IN THE SADC REGION

RESULT AREA 4

INTRODUCTION

A comprehensive assessment of counter-trafficking responses in the SADC region is essential when composing effective responses to human trafficking in South Africa. Such information is necessary to ensure the regionally integrated approach that is needed to combat this frequently transnational crime. A proper comparative study towards this goal would include an assessment of legal instruments, their effectiveness, and the social environment of public awareness and best practices, as noted in the original terms of reference for this study.

Such a comprehensive review was beyond the scope of the present report, partly due to extensive delays (as detailed elsewhere) and partly because the scope of the study was limited by the time constraints of the research project. Hence only a compilation of relevant legislation and criminal justice initiatives is provided for general reference.

The following list includes all SADC countries except Seychelles. Text is taken from cited sources, particularly the US Department of State's Trafficking in Persons Report 2009, with data up to March 2009. As some legislation on human trafficking was being drafted at that date, the status of relevant laws cited here should be taken with caution until more current information can be assembled directly from the respective countries' governments.

'Tiers' noted here reflects the system used by the US Department of State's Office to Monitor and Combat Trafficking in Persons.

TIER 1: Countries whose governments fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards.¹

TIER 2: Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

TIER 3: Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so.²

LIST OF COUNTRIES:

4.1 ANGOLA (TIER 2)

- No comprehensive law prohibiting trafficking in persons as of March 2009; no specific provisions criminalising human trafficking.

Relevant Legislation

Draft revisions to the Penal Code, which would criminalise trafficking of children for commercial sex or forced labour, are not finalised. No draft amendments would specifically prohibit trafficking adults. Meanwhile, constitutional provisions and other Angolan laws prohibiting forced and bonded labour,³

¹ 'Trafficking Victims Protection Act' refers to US legislation, H.R. 3244 of 2000. The full text of this law is available at: <http://www.state.gov/g/tip/laws/61124.htm>.

² US Department of State, 'Tier Placements': available at: <http://www.state.gov/g/tip/rls/tiprpt/2009/123132.htm>.

³ The General Labour Law prohibits compulsory work and includes provisions on the prohibition of forced labour (UNODC 2009: 120).

rape, prostitution, pornography, kidnapping, and illegal entry could be used to prosecute trafficking cases (US Dept of State 2009: 62). Penalties of up to eight years imprisonment for such crimes are sufficiently stringent and commensurate with those prescribed for other serious crimes.

Criminal Justice Initiatives

In December 2008, the Ministry of Interior, in partnership with the International Organisation for Migration (IOM), conducted several training seminars for counter-trafficking investigators and agents from the Directorate of National Criminal Investigations, the Frontier Guard, and the Migration and Immigrant Service. In consultation with NGOs, the government continued to work on an anti-trafficking National Action Plan (US Dept of State 2009: 62). The country also has an inter-ministerial committee to combat child labour (UNODC 2009: 120).

4.2 BOTSWANA [TIER 2]

- No comprehensive law prohibiting human trafficking; no specific provisions criminalising human trafficking.

Relevant Legislation

Botswana has no comprehensive law prohibiting human trafficking, but the Botswana Penal Code of 1964, through its sections 155-158 covering procurement for prostitution and sections 260-262 covering slavery, prohibits some forms of human trafficking (US Dept of State 2009: 84; UNODC 2009: 121). The sufficiently stringent penalties prescribed for these offences range from seven to 10 years imprisonment, and are commensurate with those prescribed for other serious crimes, such as rape. The Penal Code also prohibits abduction and kidnapping (UNODC 2009: 121).

Criminal Justice Initiatives

The US Department of State (2009: 84) reports that, although Botswana shares its long and porous borders with countries experiencing serious trafficking problems,⁴ only ten investigators from the Immigration Department covered transnational trafficking and all other migration-related crimes. Immigration and law enforcement officials do not consistently differentiate between smuggling and trafficking, which continues to obscure the nature and extent of the trafficking situation in Botswana. The National Central Bureau of Interpol created a full time position for a desk officer who works exclusively on trafficking issues and education.

Evidence presented in three criminal cases currently being prosecuted suggests that the defendants may have engaged in trafficking (US Dept of State 2009: 84). The defendants were originally investigated, arrested and charged with kidnapping, immigration, and fraudulent document offences.

4.3 DEMOCRATIC REPUBLIC OF CONGO [TIER 2 WATCH LIST]

- No comprehensive law prohibiting human trafficking; no specific provisions criminalising human trafficking.

Relevant Legislation

The DRC has no comprehensive legislation regarding human trafficking but the July 2006 sexual violence statute (Law 6/018) specifically prohibits sex trafficking, child and forced prostitution, and pimping. It also prescribes penalties of 10 to 20 years imprisonment for these crimes (US Department of State 2009: 110). The Child Protection Code (Law 09/001, enacted in January 2009) criminalises and prescribes penalties of five to 20 years imprisonment for child trafficking and commercial sexual exploitation. It also specifically prohibits the recruitment and use of children by the armed forces, with

⁴ These countries are Namibia, South Africa and Zimbabwe

penalties prescribed for other serious crimes. Existing laws do not prohibit all forms of labour trafficking, armed groups, and the police. The new constitution also forbids child soldiering (UNODC 2009: 122). The aforementioned penalties prescribed by both laws are sufficiently stringent and commensurate.

Criminal Justice Initiatives

The Congolese government made concerted efforts to address the illegal conscription and use of child soldiers by armed groups and government forces through prosecutions and convictions during the period April 2008 to March 2009 (US Dept of State 2009: 110). Convictions were noted for the 'unlawful recruitment of child soldiers' and for war crimes and crimes against humanity in connection with the recruitment of child soldiers and sexual slavery. In the latter case, these episodes are under the jurisdiction of the International Criminal Court. The government, however, demonstrated minimal efforts to bring to justice to those committing other types of trafficking crimes (US Dept of State 2009: 110). It lacks judicial presence in many areas of the country where human trafficking occurs, and remains hamstrung by a critical shortage of magistrates, clerks, and lawyers.

4.4 LESOTHO (TIER 2 WATCHLIST — SEE ALSO DISCUSSION OF LESOTHO IN CHAPTER 7)

- No comprehensive law prohibiting human trafficking; no specific provisions criminalising human trafficking.

Relevant Legislation

No current or draft laws specifically penalise the trafficking of adults, although slavery and forced labour are constitutionally prohibited. The Child Protection Welfare Bill, drafted in 2005, is aimed at dealing with the protection of children. It defines child trafficking and prescribes penalties of 20 years imprisonment for convicted offenders (US Dept of State 2009: 187). This bill is currently under final review with the Office of the Attorney General.

The Child Protection Act of 1980, the Sexual Offences Act No. 29 of 2003 and the provisions of the Labour Code Order No. 24 of 1992 may be applied to prosecute some forms of trafficking for sexual exploitation and forced labour (UNODC 2009: 123; US Dept of State 2009: 186). These laws prescribe penalties of at least five years imprisonment for trafficking crimes, which are sufficiently stringent and commensurate with penalties prescribed for other serious crimes (US Dept of State 2009: 186).

Criminal Justice Initiatives

The Child and Gender Protection Unit (CGPU) was established by the Lesotho Mounted Police in November 2002 (US Dept of State 2009: 187). Currently, the CGPU has an office in each of the 11 police districts in Lesotho; three officers (male and female) are assigned to each office. Cases of trafficking of women and children fall within the jurisdiction of this unit.

Existing laws governing abduction, kidnapping, labour exploitation, immigration and sexual abuse of children have been used to prosecute trafficking-related crimes in the past (US Dept of State 2009: 186). Three convictions were recorded in 2005 for sexual exploitation and one conviction was recorded in 2004 for child stealing.

Other sources stated that investigations of trafficking-related situations are rare because trafficking is not specifically defined as a crime under existing laws, and law enforcement resources and capacity are limited.

Some police and customs officers and members of the Lesotho Mounted Police Services' Child and Gender Protection Unit (CGPU) received training on detecting and curbing a range of illegal activities at border posts, including human trafficking. Law enforcement officers did not proactively identify trafficking victims used for prostitution among vulnerable populations such as women and children, or illegal migrants. They have not been adequately trained to recognise victims they may encounter as part of their normal duties.

4.5 MADAGASCAR (TIER 2)

- Anti-trafficking legislation enacted in January 2008

Relevant Legislation

Anti-Trafficking Law No. 2007-038, adopted in January 2008, prohibits all forms of human trafficking, although the law only prescribes punishments for sex trafficking. These penalties range from two years to life imprisonment, are sufficiently stringent and commensurate with those prescribed for other grave crimes (US Dept of State 2009: 194).

Article 262 of the Labour Code criminalises labour trafficking, for which it prescribes inadequate penalties of one to three years imprisonment. Decree 2007-563 prohibits various forms of child labour, including prostitution, domestic slavery, and forced labour (US Dept of State 2009: 194-195).

Criminal Justice Initiatives

The Ministry of Justice disseminated copies of the new law to all 22 regions in 2008 and magistrates received training in its use. However, the government has yet to use its January 2008 anti-trafficking law to punish traffickers. A lack of case precedent, poor coordination among ministries, lack of systematic information, lack of data shared between the regional and central levels, and the lack of a presidential decree mandating and codifying its use are likely to hinder the new law's implementation. Several alleged sex trafficking cases came to trial in 2008, but only two reportedly made use of the anti-trafficking law, and neither has reached a resolution. The remaining cases were tried under other laws, and either dismissed or punished with suspended sentences (US Dept of State 2009: 195).

4.6 MALAWI (TIER 2)

- No comprehensive law prohibiting human trafficking; no specific provisions criminalising human trafficking.

Relevant Legislation

The Malawi Law Commission has continued to draft comprehensive anti-trafficking legislation to specifically outlaw all forms of human trafficking. The Child Care, Protection and Justice Bill, which defines child trafficking and sets a penalty of life imprisonment for traffickers, has been drafted but was still awaiting approval in March 2009.

Some provisions of the Penal Code (Articles 257 to 269) and the Employment Act (Articles 135 to 147) might be used to prosecute some forms of trafficking for sexual exploitation and forced labour through the prohibition of actions such as abduction, procuring, maintaining a brothel, forced labour and slavery (UNODC 2009: 124; US Dept of State 2009: 196). Prescribed penalties under the aforementioned statutes range from small fines to 10 years imprisonment; these penalties are sufficiently stringent and commensurate with punishments prescribed for other grave crimes.

Criminal Justice Initiatives

Authorities reported about 10 convictions for forced child labour between 2004 and 2007. In these cases, the convicted offenders were citizens of Malawi and Zambia. Additionally, six Malawian citizens were arrested for organ removal in 2006. In 2008, the government used laws against child labour, kidnapping, and profiting from prostitution to convict trafficking offenders. As in past years, the majority of trafficking cases involved forced child labour in the agricultural sector. According to the Ministry of Labour, the government conducted at least 24 such child labour trafficking investigations and prosecuted three cases under the Employment Act in 2008. However, punishments for trafficking offenders remained weak, inconsistent, and highly dependent on the knowledge level of the judges and prosecutors involved in the case.

Authorities report that about 400 child protection officers have been appointed to monitor trafficking and child labour. A Victim Support Unit established within the police deals with abuse cases in general, including trafficking in persons.

4.7 MAURITIUS (TIER 1)

- Child trafficking is specifically prohibited; trafficking in persons over the age of 18 years is not covered as such. Comprehensive anti-trafficking legislation has been drafted and passed by Parliament.

Relevant Legislation

The Child Protection Act of 2005 prohibits all forms of child trafficking and prescribes punishment of up to 15 years imprisonment for convicted offenders. In November 2008, the government passed the Judicial Provisions Act, which provides for increased penalties for various offences. The Act prescribes punishment for child trafficking offences of up to 30 years imprisonment (US Dept of State 2009: 205).

Episodes of trafficking could also be investigated and prosecuted by linking them to the following offences: 'soliciting for immoral purposes', 'brothel keeping', 'prostitution' and 'debauchery' (UNODC 2009: 115).

During the year, the State Law Office drafted the Combating of Trafficking in Persons Bill and the Office of the Attorney General held consultations with relevant ministries and government agencies, including the Prime Minister's Office, Ministry of Women's Rights, Child Development, and Family Welfare (MOWCD), and the Mauritius Police Force on the law's implementation. The law, which was introduced in the Cabinet and passed by Parliament in April 2009, prescribes punishment of up to 15 years imprisonment for convicted offenders, penalties which are sufficiently stringent and commensurate with those prescribed for other grave crimes (US Dept of State 2009: 205).

Criminal Justice Initiatives

The Police Family Protection Unit (PFPU) and Brigade pour la Protection des Mineurs (BPM) work in close collaboration with the Ministry of Women's Rights, Child Development and Family Welfare and the Ombudsperson for the Children's Office in protecting victims of sexual abuse, prostitution and all other forms of exploitation involving child victims (UNODC 2009: 115).

In 2007, three persons were arrested for child trafficking, and two persons were convicted of child labour (UNODC 2009: 115). The government reported eight child sex trafficking convictions during 2008. Ten trafficking cases remain under investigation. These are all under previous legislation, not newly drafted law (US Dept of State 2009: 205).

4.8 MOZAMBIQUE (TIER 2)

- Comprehensive anti-trafficking legislation has been passed.

Relevant Legislation

In April 2008, the National Assembly passed the final version of a comprehensive human trafficking law. In June, the president signed the bill into law and it came into operation in September 2008 (US Dept of State 2009: 215). This law provides for penalties of 16 to 20 years imprisonment for those recruiting or facilitating the exploitation of a person for purposes of prostitution, forced labour, slavery, or involuntary debt servitude. These penalties are sufficiently stringent and exceed those for other grave crimes.

Criminal Justice Initiatives

The government budgeted \$360,000 to support the enforcement of this new law, although the US Dept of State (2009: 15) reports that this funding has not yet been allocated to any government entity. Following passage of the law, the Mozambican Police created a six-person anti-trafficking unit to

apprehend trafficking offenders, investigate cases, and reintegrate victims. This unit began developing procedures for interviewing potential victims and transferring them to the care of other organisations. In 2008, the Ministry of Justice launched a juvenile court system in Maputo specifically designed to handle trafficking cases, as well as other sensitive cases involving children. This new court has yet to hear a child trafficking case (UNHCR 2009a).

Child Protection Units were established in a few police stations by the Association of Defenders of Child Rights (ADDC) (UNODC 2009: 125). These 'gabinetes de atendimento', as they are commonly known, are help desks stationed in most police stations where victims of trafficking and domestic violence can report their cases and get assistance. There are currently 184 gabinetes de atendimento. A National Action Plan for Children, which considers many forms of child abuse, has been adopted by the Social Welfare Ministry.

On a less encouraging note, many low-ranking police and border control agents reportedly accept bribes from traffickers, severely hindering Mozambique's prosecution efforts (US Dept of State 2009: 215). In response, the government institutionalised training on human trafficking as a standard part of the mandatory training programme for new border guard and police cadets. In addition, the Ministry of Interior's Office for Assistance to Women and Vulnerable Children began implementing a plan to augment trafficking awareness training for police officers. It also increased the availability of victim support services in each of the country's police stations, as described above.

4.9 NAMIBIA (TIER 2)

- Provision criminalising human trafficking in legislation; no comprehensive anti-trafficking legislation by 2009.

Relevant Legislation

The Prevention of Organised Crime Act of 2004, implemented in May 2009, has a provision that criminalises human trafficking and prescribes up to 50 years imprisonment or fines of up to \$140,000 for those convicted (US Dept of State 2009: 216). Section 4 of Namibia's Labour Act of 2007, which was signed into law in 2007 and came into force in November 2008, prohibits forced labour and prescribes penalties of up to four years imprisonment or a fine of up to \$2,000, or both. Section 3 of the Labour Act prohibits various forms of exploitative child labour, prescribing penalties equal to those for forced labour offences. Kidnapping, child labour, enticing a woman to a brothel for the purpose of prostitution and other offences can be used to prosecute some forms of trafficking in persons (UNODC 2009: 126). Existing laws prohibiting child prostitution, pimping, and kidnapping could also be used to prosecute trafficking cases (US Dept of State 2009: 216; UNODC 2009: 126). Prescribed penalties for the above crimes are sufficiently stringent and commensurate with those prescribed for other grave crimes.

The Child Care and Protection Act is awaiting adoption and contains specific references to child trafficking (UNODC 2009: 126).

Criminal Justice Initiatives

In mid-2008, before the November 2008 implementation of the Labour Act, which prescribes criminal penalties for forced and child labour, the Ministry of Labour issued three administrative compliance orders to potential child trafficking offenders under the 2004 Labour Act (US Dept of State 2009: 216). During the year, the police initiated various investigations into suspected cases of pimping and brothel-keeping, but the lack of appropriate anti-trafficking legislation prevented the prosecution of alleged perpetrators.

4.10 SWAZILAND (TIER 3 – SEE ALSO DISCUSSION OF SWAZILAND IN CHAPTER 7)

- No comprehensive anti-trafficking legislation; no specific provision on human trafficking.

Relevant Legislation

A draft law, the Sexual Offences and Domestic Violence Bill, aims to criminalise sex trafficking specifically and mandate psychological services for victims (US Dept of State 2009: 270; UNODC 2009: 129). It is now in its fourth year of review and has not yet been presented to Parliament.

Existing statutes prohibiting acts such as kidnapping; forced and compulsory labour; confiscation of passports; aiding and abetting 'prohibited immigrants' to enter the country; brothel-keeping; procurement for prostitution, sex or solicitation of sex with an underage girl; and employing children under the age of 15 could be used to prosecute trafficking offences (US Dept of State 2009: 269-270).

Criminal Justice Initiatives

Under traditional Swazi law, many such cases are resolved within the chieftdom via customary, rather than civil law and cases reviewed under customary law are not generally reported to civil authorities, or the media. Because plaintiffs in these cases tend to be reluctant to bring additional civil or criminal charges against the suspected offender, the government has no information on whether any of these cases do or could involve trafficking. The Sexual Offences and Domestic Violence Bill, (see above) would criminalise sex trafficking and mandate psychological services for victims, but it has not yet been presented to Parliament (US Dept of State 2009: 270).

The Royal Swaziland Police Service has a Domestic Violence, Child Protection and Sexual Offences Unit dealing, inter alia, with trafficking cases (UNODC 2009: 129). In the past year, law enforcement officials made no effort to proactively identify cases of children trafficked for labour (US Dept of State 2009: 270).

4.11 TANZANIA (TIER 2)

- Anti-trafficking legislation has been enacted.

Relevant Legislation

In June 2008, the Parliament passed the comprehensive Anti-Trafficking in Persons Act of 2008, which came into effect in February 2009 after official publication and translation into Swahili (US Dept of State 2009: 278). This statute prescribes punishments of one to 20 years imprisonment depending upon the severity of the crime, punishments that are sufficiently stringent and commensurate with those prescribed for other grave crimes. However, as no specific anti-trafficking law existed as of March 2009, existing statutes criminalising the sale of people, forced labour, child labour, and various sexual offences were applied to human trafficking cases.

Criminal Justice Initiatives

The Tanzanian government enacted anti-trafficking legislation and received significant amounts of training from outside entities during the period April 2008 to March 2009. However, it reported no prosecutions or convictions of trafficking offenders, either under the new law or the previous legislation listed above (US Dept of State 2009: 278; UNODC 2009: 119).

Although the Ministry of Labour reportedly conducted inspections and issued warnings to violators of child labour statutes, there were no reported forced child labour cases brought to court in 2008 (US Dept of State 2009: 278). Likewise, Zanzibar's Ministry of Labour did not take legal action against any cases of forced child labour.

In February 2009, the government transferred responsibility for all anti-human trafficking law enforcement efforts from a specific Anti-Human-Trafficking Unit to the police's INTERPOL office,

which has broad responsibility for transnational crimes. The police Cyber Crimes Unit estimated that it had investigated 200 trafficking-related cases since its establishment in 2006; however, no arrests have resulted from these efforts.

In December 2008, the government opened the East African Regional Training Academy for immigration officials. Approximately 60% of this facility's funding is provided by the Tanzanian government. The academy's curriculum includes a module devoted to anti-trafficking education.

4.12 ZAMBIA (TIER 2)

- Comprehensive anti-trafficking legislation has been introduced.

Relevant Legislation

Zambia's President signed the comprehensive Anti-Human Trafficking Act of 2008 into law on 19 November 2008 (US Dept of State 2009: 303). The new law criminalises all forms of trafficking and prescribes sufficiently stringent penalties for trafficking, which are commensurate with those prescribed for other serious crimes, such as rape. These penalties range from 25 years to life imprisonment, depending on various circumstances.

Criminal Justice Initiatives

In the months since the entry into force of the new Act, no investigations or prosecutions have been started under its provisions (US Dept of State 2009: 303). A lack of financial resources, trained personnel and technical capability, coupled with petty corruption at borders, police stations, and other lower-level government offices, constrain the government's ability to combat trafficking.

The Zambia Law Development Commission has published a manual on the new anti-trafficking law for police and prosecutors and began training officials in February 2009. The government worked with NGOs to train police nationwide on human trafficking issues, and to develop a cadre of trainers within the Zambian Police Service (ZPS). One such trainer and an immigration official conducted four months of follow-on anti-trafficking training at border posts around Zambia. The ZPS also instituted a national hotline for police officers, to connect them directly with ZPS officers trained to identify and investigate trafficking (US Dept of State 2009: 303-304).

The Task Force on Human Trafficking, chaired by the Ministry of Home Affairs, was established within the Police Victims Support Unit (VSU) (UNODC 2009: 130). The VSU's mandate is to offer victim support in cases relating to sexual violence, property grabbing and trafficking in persons and to offer legal advice to victims. Additionally, the Child Labour Unit, working under the Ministry of Labour, is composed of 50 officers and monitors the worst forms of child labour, including that of girls forced into prostitution.

4.13 ZIMBABWE (TIER 3 — SEE ALSO DISCUSSION OF ZIMBABWE IN CHAPTER 7)

- No specific provisions on human trafficking.

Relevant Legislation

Zimbabwe does not prohibit all forms of trafficking in persons, although existing statutes, such as the Zimbabwean Criminal Code, outlaw numerous forms of sexual exploitation as well as forced labour (UNODC 2009: 131; US Dept of State 2009: 305). Forced labour offences are punishable by a fine or two years imprisonment or both; these penalties are not sufficiently stringent or commensurate with those prescribed for other grave crimes.

The government reported in 2007 that it was drafting comprehensive trafficking legislation; however, the draft was neither publicly available nor introduced in Parliament by March 2009 (US Dept of State 2009: 305).

Criminal Justice Initiatives

The government failed to provide information on anti-trafficking law enforcement activities conducted during the period April 2008 to March 2009 (US Dept of State 2009: 305). The Ministry of Justice reported that none of the cases investigated in 2007 were brought to trial during 2008. One Zimbabwean citizen was convicted of sexual exploitation in 2006. The government did not provide specialised anti-trafficking training for law enforcement officials.

CONCLUSION

In conclusion, the legislative and criminal justice actions taken against human trafficking in the SADC region range from the first-tier response of Mauritius to the far less inspiring efforts of third-tier rated Swaziland and Zimbabwe. On the whole, it is encouraging to note that there is a general trend in the subregion to review and update legislation, moving towards a comprehensive anti-trafficking regime (as seen, for example, in Madagascar, Malawi, Mauritius, Mozambique, South Africa, Tanzania and Zambia). Similarly, efforts are underway in a number of jurisdictions to strengthen the criminal justice response through initiatives such as training, establishment of specialist units and increased prosecutions. These developments provide ample basis for cooperation and exchange of 'promising practices', especially where South Africa shares particular concerns, such as national borders or migratory trends, with other SADC countries.

CHAPTER FIVE: PSYCHO-SOCIAL PROFILE OF VICTIMS

INTRODUCTION

This chapter focuses on positive factors that can help victims to recover and concludes with recommendations on how services can be improved. As noted in Result Area 4, identifying support structures for victims of human trafficking, recommending standards of treatment for victims and assessing problems of 're-cycling' or re-trafficking of rescued women and children involves psycho-social dimensions. These dimensions of human trafficking require a special approach.

An ecological approach, which considers interrelationships among the individual, family, culture and the larger social environment, is often used to study violence against children, women and the elderly (Bronfenbrenner 1979; Garbarino 1985; Garbarino & Crouter 1978; Heise 1998; Schiamberg & Gans 1999; World Health Organisation 2002). This approach is used here because it allows consideration of 'multiple spheres of influence' that have an impact on the psychological and social needs of victims of Human Trafficking. Five different levels or systems and their interrelations are considered: these include (1) the *individual*; (2) the *microsystem*, which involves interpersonal relationships; (3) the *mesosystem* or interplay among different aspects of the individual's environment; (4) the *exosystem* or community; and (5) the *macrosystem* or culture at large (Heise 1998). This approach allows for a better understanding of the complex multiple causal nature of violence and suggests effective ways to intervene on different levels.

5.1 METHODOLOGY

Due to the sensitive nature of this research, additional information is included here regarding methodology. Qualitative and quantitative methods were used for different parts of this study. Data was collected in several ways:

- Desktop literature review;
- Survey questionnaire of 15 organisations and 64 service providers, through telephonic interviews averaging 30 minutes each;
- Focus group discussions with administrators of shelters and other service providers (ranging from 60 to 90 minutes in length);
- Confidential in-depth interviews with four adult victims of trafficking (lasting on average about 120 minutes each, including administering the structured questionnaire);
- Confidential in-depth interviews with 12 child victims of trafficking were conducted using drawings to elicit a conversation (between 20 to 30 minutes each);
- Confidential record review and interviews with guardians of child clients (approximately 20 minutes each).

Due to the sensitivity of interviews with child victims of trafficking, special measures were put in place to ensure that the interviewees were not harmed in any way. The recall of experiences (and possible negative emotional reactions) was reduced as far as possible (by interviewing guardians rather than the victims as regards to some information). The team consisted of a team expert (research psychologist with experience in gender based violence), two fieldworkers (both working in the field of ethics and one a registered counselling psychologist with specific experience in child interviews) and a telephonic interviewer with an international law background. In addition, an independent observer accompanied the team on the data collection trip and observed interviews with children to ensure that children did not suffer any emotional or psychological harm.

As this study focuses on the provision of services, it is significant to note here that researchers conducting this study encountered significant obstacles in gaining access to victims of trafficking for interview purposes. First, shelters tended to restrict access to victims, ostensibly to protect them. In some cases this was related to distrust (victims themselves are ordered not to speak to visitors) and in other cases, it became clear that the number

of victims had been over-reported initially. But in most cases, service providers appeared genuinely concerned for the welfare of the victims of trafficking. Shelters also claimed to be restricted by policies that do not allow research teams to interview victims of trafficking. There was a high level of distrust of the research team. This was understandable considering the circumstances, and the dangerous situation the victims of trafficking are in. The circumstances changed after the first visit once the objectives and good intentions of research staff members were established.

Second, shelters face challenges in identifying victims of trafficking. Some victims were accidentally misidentified, due to a general lack of awareness. Sometimes service providers tried to help the researchers by providing victims of other kinds of exploitation, as they did not have trafficked victims residing in the shelter at the times of the interviews. This pattern reflected the fact that victims often do not stay long at shelters. Some are regularly moved between shelters for safety while others had been repatriated or deported to their country of origin. Consequently, not many victims of trafficking were being serviced and housed at shelters.

Nonetheless, most of the service providers were helpful and eager to share knowledge and information that would enhance their own service delivery. It was clear that the service providers, who had had positive experiences with research teams during previous studies, were more likely to recruit clients for the present study. The service providers who seemed more confident about the quality of their service provision were also more likely to recruit clients. In most cases the persistence of the team was rewarded.

5.2 PROFILE OF SERVICE PROVIDERS

Of the service providers interviewed for this study, 44 work in the field of child care and abuse, 33 work on gender-based violence, and 33 work on domestic violence or combinations of these areas. Figure 5.1 illustrates their distribution among provinces.

Service providers reported their impressions about their clients' countries of origin, although only some of these cases were documented in their records. See Table 5.1. About one-third of victims were cited as coming from South Africa. The second largest percentage (16%) was reported to come from Zimbabwe. Service providers mentioned a total of 74 cases from southern Africa excluding South Africa and 11 were reported to come from other African countries. Of source countries outside Africa, Thailand was mentioned the most (6), followed by China, Eastern Europe and Pakistan. The vast majority of victims being serviced are female adults. The males are mostly children.

Most of the clients were supported by service providers for up to three months (56%), 28% were supported for between 3 and 12 months and 16% for over a year (see Figure 5.4). Most service providers felt that some client needs were met but few believed they were addressed adequately (Figure 5.5).

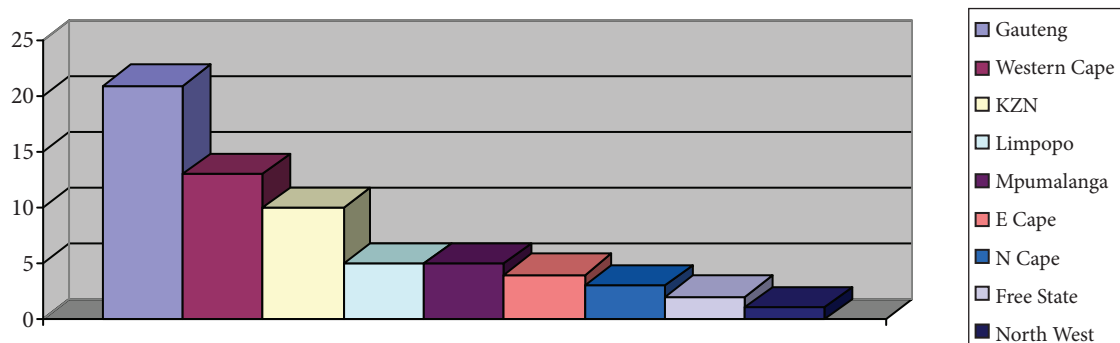


Figure 5.1: Provincial distribution of interviewed service providers

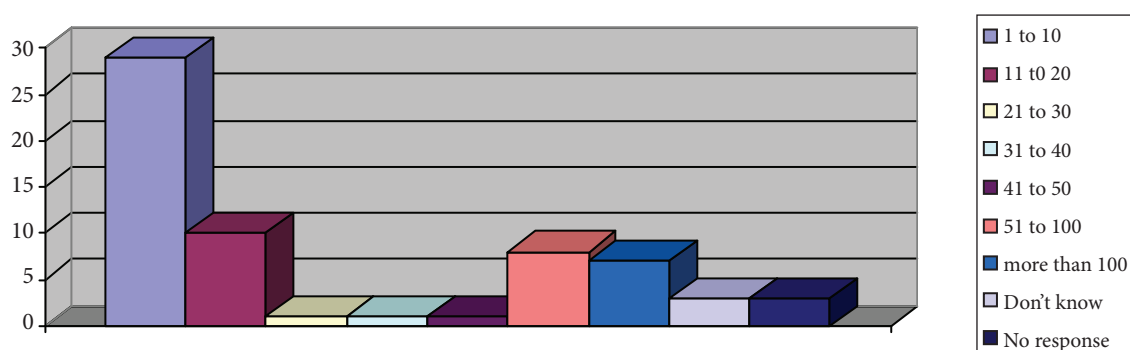


Figure 5.2: Total clients 'ever' serviced

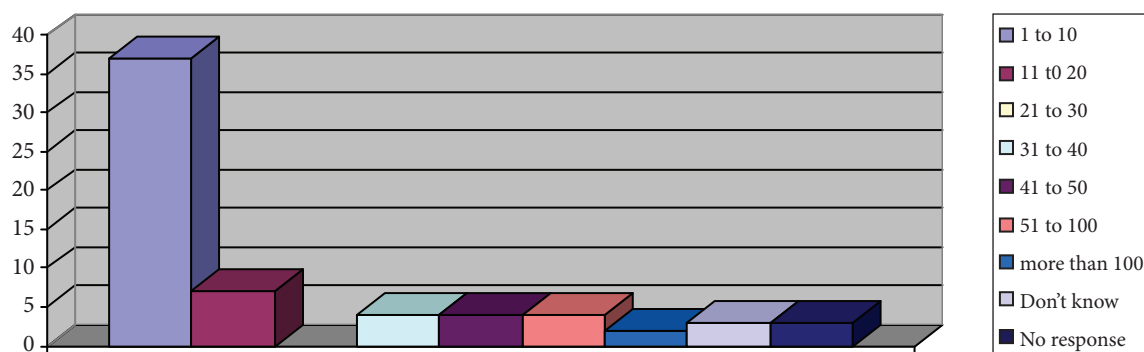


Figure 5.3: Clients serviced in the 'past 12 months'

The majority of the service providers regarded the problem of human trafficking as serious (80%), while 20% regarded it as a problem. None of the service providers regarded it as 'not a problem'.

It is clear, however, that most service providers have only assisted a limited number of clients. Figures 5.2 and 5.3 show the number of clients served for the periods 'ever' and 'past 12 months'. The service providers reported that they identify victims of trafficking mostly through the presenting problems (42%), as well as self-identification by the client (24%) and the legal status of the client (6%). Twenty-eight percent based the identification on other criteria.

Table 5.1: Countries of Origin of Victims of Trafficking as reported by Service Providers

Country of Origin	Number of Clients	% (rounded up)
SA	50	32
Zimbabwe	25	16
Mozambique	11	7
Swaziland	8	5
Zambia	6	4
Lesotho	4	3
Malawi	4	3
Namibia	2	1
Other SADC	14	9
Rest of Africa	17	11
Thailand	10	6
China	3	2
Former 'Eastern Block'	3	2
Pakistan	1	1
TOTAL	158	100

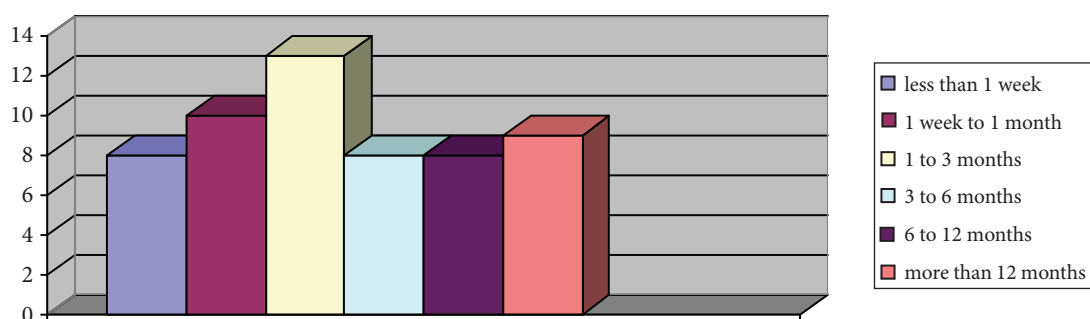


Figure 5.4: Length of service provision

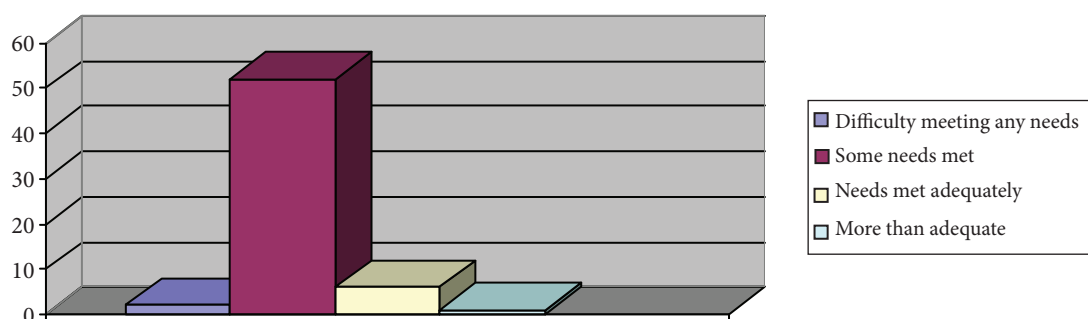


Figure 5.5: Level of service quality

5.2.1 Strengths of Service Providers

The following ten strengths were identified from the 15 service providers included in the study:

1. The service providers placed a high value on taking care of the caregivers. This positively contributed to their success in dealing with the very demanding situation of caring for victims of trafficking.
2. The most important services focused on providing for the basic needs of the clients (safety, shelter and food, and also a caring and loving environment). The length of involvement with a client was directly related to a positive outcome. Shorter interventions did not have the same effect even if the client was referred to a service provider with better skills.
3. Responding to a client (or community's) specific needs rather than providing standard generic types of services also contributed to better outcomes. Different types of service providers had different theoretical frameworks (e.g. victim centred, human rights, faith based approaches) and offered different types of services, but responded to the specific needs of each client and in a holistic way. The services and staff members involved are flexible and adapt to the clients with their own specialised knowledge, experience and skills. An approach that is too formal and rigid might hamper creative solutions. This focus on the individual is possibly due to the feeling of many service providers that they lack specific skills in dealing with human trafficking, but this focus in fact appears to be a main strength.
4. The victims of trafficking are not isolated as a special group.
5. The value of teamwork was expressed by all service providers. The focus was on utilising diversity in experience, training and personalities. Although organisations had a specific goal and methodology, most teams consisted of multi-disciplinary professionals.
6. Good communication internally, as well as between different service providers and networks, was listed as a key factor.
7. Networking and referral between service providers (e.g. shelters, SAPS, health care providers and social services) were often mentioned as a key strength. Provincial Human Trafficking Tasks Teams provided networking and lobbying opportunities as well as recognition.
8. Most of the service providers used formal records and administrative guidelines. Those with formal strategies and monitoring systems performed even better. These systems included extensive and clear referral systems. (This finding was supported by the information gained from the telephonic interviews.)
9. Methods used to raise awareness included the use of the printed media, radio, development of media publications and materials, CDs and DVDs. Electronic media (e.g. Mixit, Facebook and Twitter) were also used. Sport and recreation activities were used not only to raise awareness but also in therapeutic interventions. The focus of these prevention strategies was not only at community level, but often involved families.
10. The availability of training and training material especially from the International Organisation for Migration and FAAST (Faith Alliance against Slavery and Trafficking) was widely praised.

5.2.2 Needs of Service Providers

Common needs were also expressed by the participating service providers:

1. More shelters and safe houses. This need includes more private space (a need often identified for victims of trafficking) and different types of shelters to suit the stage of recovery of the victim, including 'reception' shelters, longer-term homes and half-way or re-integration shelters.
2. More human resources, mostly social work professionals and psychologists. Volunteers were listed less often.
3. Integrated services that will provide legal, mental and physical health care focused on individual needs.

4. Feedback regarding the progress of clients. The services were often fragmented, or clients moved between service providers or different locations. Recognition, appreciation and being able to see positive outcomes were the most important driving factors for service providers functioning in difficult situations. Feedback and regular updates on clients is therefore crucial.
5. A national monitoring and information system. This will enhance referral and feedback, but also improve data capturing and usage.
6. Political will to pass legislation, arrange funding, help build collaborative agreements and support efforts to integrate and reintegrate victims. Cross border and multi-country initiatives need to be driven from a high level.
7. Networks on national level and between countries are needed.

5.3 VICTIMS OF TRAFFICKING

5.3.1 Adult victims

Only four adult victims of trafficking were recruited to participate. (The challenges in accessing victims are outlined later in the report) They included two South Africans, one from Burundi and one from Congo. All were women and their ages ranged between 21 and 38 years (average: 27.8 years). All had at least three siblings. Three were single and one had a partner, but was not married. One of the single women had children (a boy and a girl child). None of them had completed school and two reported having careers before being trafficked (a bookkeeper and beautician).

Both the South African participants were rescued by friends while NGOs assisted the victims from other African countries. All were rescued within a year of being trafficked. The South Africans did not want to return to their place of origin, while the other participants wanted to return home.

The circumstances at the place of origin seemed to play a major part in the participants being vulnerable to trafficking. One participant was kidnapped while the rest were deceived, all of them by a person known to them. They were promised a job, but none were told any specifics about the type of job or the working conditions, and none signed a contract. Two were told about their destination, but not accurately, while the others did not know. In the same manner one was given an indication of the salary (but not accurately).

The non-South Africans travelled with their own travel documents. In one case, the trafficker still has the document. They did not spend time in transit or perform any legitimate work during the journey. One of the South Africans was moved five times.

The South Africans were both forced to perform sex work (without prior knowledge). One of the South Africans and both the non-South Africans were forced to sell (drugs or beer). The time before these activities started ranged from 2 days to 1 month. They received no compensation (only one received drugs as 'payment'). All of them had to pay debts mostly for drugs, safety and lodging. They were forced through the use of physical violence, sexual violence and verbal threats. Three were denied any freedom of movement while the fourth could move around only when accompanied by a trafficker. Only one received a medical examination (after being rescued). The conditions of exploitation varied, but in all cases more than three different kinds of exploitation were experienced

5.3.1.1 Factors influencing adult vulnerability and recovery

This study considers the psychological needs of trafficked persons on the following five levels:

Individual level: aspects of a person such as biology, personal history, age, education, income, psychological and personality disorders and substance abuse.

Microsystem: the immediate interpersonal and social context, including abusive relationships and other important relationships that shape the individual's responses to abusive circumstances, including intimate partners, friends and peers, and family dynamics.

Mesosystem: the interplay between aspects of the person's socio-cultural environment, such as associations and relationships between the immediate family and the extended family, the neighbourhood and the workplace, and links with social support institutions such as non-governmental organisations, social services, the police service and courts.

Exosystem: the socio-physical environment (e.g. institutional, social, work environments and home neighbourhoods) and risk factors including high population density, unemployment and low socio-economic status, and isolation of victims.

Macrosystem: all socio-organisational structures that shape a person's life, including legislation and policies, the general norms of what constitutes 'acceptable behaviour', a patriarchal system, and social and economic inequalities, and the effects of collective violence such as wars, unrest and political conflict.

Figure 5.6: Vulnerability and recovery factors for Adult victims of trafficking

Phase	Positive influences					Negative influences				
	Macro	Exo	Meso	Micro	Indiv	Indiv	Micro	Meso	Exo	Macro
Pre-departure										
Travel + transit										
Destination (Exploitation)										
Rescue, detention, deportation										

Figure 5.6 summarises the factors found to be important for the four adult victims. The figure illustrates both positive and negative influences for the time periods included in the investigation. It seems that the macro factors were more prominent in creating vulnerabilities, while individual factors played a larger role in the recovery phases. All the women interviewed were still housed at shelters so the re-integration phase was not included in the analysis.

Due to the differences in the different phases, factors will be discussed according to the timing of events.

5.3.1.2 Pre-departure phase

Although no personality tests or in-depth psychoanalytical analyses were conducted with any of the participants, it seemed that on a personal or *individual level* the victims were vulnerable due to the desperation their immediate situation created for them. The two non-South Africans were influenced to believe in a better situation in South Africa, but were also made to believe that their own situation would not improve in future. It was clear that the deceit was well planned and structured. The recruiters did not merely target obviously vulnerable women, but systematically presented arguments (mostly approaching their targets on more than one occasion) not only in favour of the move, but also making staying look impossible. This was a very structured psychological approach. The targeted victims were not merely selected randomly or due to their social vulnerability, although *macro level* influences such as poverty contributed significantly to their vulnerability.

The South African victims in particular reported more factors on the *micro level*, for example dysfunctional families and abusive personal relationships. This finding could be biased in that the other participants were less free to express themselves due to language barriers or not feeling free to talk to the research team.

The factors playing a positive influence during this phase were focused on individual strengths. It is recommended that interventions focusing on prevention and the early phases become more individually focused.

5.3.1.3 Travel and transit

The factors that played a role in this phase were more aggressive and still focused on *individual* factors and vulnerabilities. The victims were made to feel alone and abandoned and the traffickers mostly acted as the 'saviours' or rescuers.

5.3.1.4 Destination and exploitation

The main influencing factors remained the *individual level* while contributing factors were higher level including closer relationships (micro), service providers (meso) and the macro level influences.

On an individual level the exploitation involved all the well-documented aspects, such as physical isolation, deprivation of basic needs and mental manipulation. Violence (physical and especially emotional) was used in all cases. This was a sudden change from the coercion and manipulation in the previous phases. These factors were further influenced by a seemingly apathetic environment. Even when the victims escaped and approached service providers (including South African and their own government structures) they were left abandoned which reinforced the images created by the traffickers. These are not mere coincidences, but well organised and planned activities indicating a certain level of sophistication and high level of knowledge in organised crime groups.

5.3.1.5 Rescue and recovery

During this phase the *micro and meso* level factors played a major role, as the most critical factor that enabled escape was close relationships. Most victims became aware of the possibility of escape through relationships with clients or neighbours. Individuals created opportunities for escape and provided solutions and referrals such as appropriate (and competent) service providers to approach.

5.3.1.6 General Themes

Additionally, common themes were identified:

1. The same modus operandi used by the traffickers (of isolating victims and moving them between locations and to new unknown destinations) was also followed by the service providers. Victims are moved between shelters in different locations in an attempt to ensure their safety and prevent the traffickers, who are actively following and searching for them, from finding them. This reinforces the feelings of victims that they have to adjust to new circumstances, adjust to new people (staff and fellow victims) and cannot find the sense of security they so desperately need. As one victim expressed: 'Then the other thing, the shelter is very nice, where I stay it's actually very nice, people are understanding, what can I say, you get support from them, yet the only thing is that you are like socially isolated and I mean it's not that ... Yes, it's like being socially isolated, not being able to be in contact with the outside world, so you are feeling like oh yes, you're really an alien.'
2. The traffickers value the victims as property to the extent that they will follow them from shelter to shelter to try and recapture them. This is a continuous and long-term reality for the women. One woman explained, 'they'll track me down, that's how I live, I can't, I don't know what to do anymore, so now I live at the shelter.'
3. 'Adoption of stories.' In some cases it was clear that victims of trafficking 'adopt' each other's stories⁵ (even across provinces). This could be a common coping mechanism as it seems to be more prominent in those who struggle to cope with the trauma and who are slower at working through the different phases of the recovery process.

⁵ A number of victims, for example, claimed that they had been thrown from balconies by their traffickers.

4. Some service providers reported that victims of trafficking abscond and return to the traffickers out of choice. A few explanations are possible. Some of the better service providers did not report this and have a low 'drop-out rate', while it seemed to be higher with less experienced service providers. 'Stockholm syndrome' is also often used to describe the behaviour of abused women. Women relinquish all control and see no way out of the abusive situation because of the physical and psychological threats made by the abuser. The loss of control is mostly due to the influence of occasional displays of kindness and support from the partner. The interpersonal isolation to which these women are subjected makes them emotionally dependent on the abuser (O'Leary & Maiuro 2001).
5. The victims all expressed a feeling of being responsible for educating others (especially in their places of origin) regarding trafficking. To some extent this was related to a feeling of gratefulness and a need to contribute to prevention strategies, but it also seemed to be therapeutic and part of their coping mechanism. This included a wish to document their experiences and publish a book to reach people on a global scale.

5.3.2 Child victims

5.3.2.1 Profiles of child victims of trafficking

The research included 12 child victims of trafficking. (Another two participants were recruited by a service provider, but were not interviewed because they were considered too young, at less than 5 years, to participate in the study.) The sample included ten female and two male participants of whom six originated from Mozambique, two from Swaziland, one from Zimbabwe and three from South Africa. Their ages ranged between 9 and 17 years and averaged 13.4 years. Five participants had siblings but five others said they did not know whether they had any. Eight were in primary school and four were busy with secondary school.

Seven of the victims were rescued by the police, while two were rescued through combined efforts of the police and social workers, and another by the police assisted by the community. One victim was identified and rescued by the health clinic and another by an NGO. Although information regarding the exact date of trafficking is difficult to verify, it seems that most participants were rescued within a year of being trafficked. Seven of the victims had been assisted by the service providers for longer than a year. Only one victim was treated for less than one month. Eight of the participants wanted to return to their original location, including all the non-South Africans.

It is not possible in all cases to determine the exact circumstances of the children at their places of origin, especially as a lack of education seemed to play a major part in their vulnerability to trafficking. In three cases, family members were involved in the recruitment and in four cases the children were trafficked with their mothers. Being promised a better life, especially better and free education in South Africa, was also an important factor. Although some children were promised jobs, most were seen as a package with the mother and ended up doing domestic work and babysitting for the trafficker's children. None of the child victims were paid for these tasks. All of the participants were transported from their original location and five of the children were transported concealed in trucks. None of them had legal travel documents.

Hearing the voices: Advice from the victims

'Actually to know that I can actually trust cops, like going to them and telling them what's happening, maybe they could have done something to help you know, that's one thing, and also by knowing that if there was a place available I was going to actually leave that place.'

'I know that girls in my situation need a lot of therapy, because when I came here it was very hard and I was having therapy now... ..the hospital, all they do is give me drugs and I'm either sleeping or zonked out the whole day and that's not helping. You know, follow up on the girls, find out, help her get back on her feet you know, show her that people do care, people do want to help you, don't just dump the person there.'

Five of the victims were forced to do sex work. Eight were forced to cooperate through the use of verbal threats and four were forced by physical violence. Eleven of the participants were denied any freedom of movement while one (the oldest participant who was also rescued at the clinic) could move around only when accompanied by a trafficker. Five participants underwent medical examinations after being rescued. The conditions of exploitation varied, and in seven cases included more than three different types of exploitation. No clear pattern was identified regarding a specific type of exploitation.

5.3.2.2 Opportunities to assist child victims

Interviews with children focused on significant relationships and attempted to investigate the service provision available to child victims from the child victims' perspective. Limited value was placed on the actual case histories of the children. The reasons for this were two-fold. It was clear that children created stories especially when interviewed by unknown adult researchers. The level of trust needed to overcome this would take a long time to develop. The main focus of the study was not to determine true (valid and reliable) case histories, but to enable recommendations to be made regarding care and support improvement. The guardians of the children were interviewed to establish the 'true' nature of the trafficking and to ensure that only victims of trafficking were included as participants.

Findings from interviews with the children indicated common and recurrent themes regarding the relationships and influences that they felt were significant in recovering from trafficking:

1. The children placed faith in a significant higher power such as God. Many drawings included a higher power that would be able to rescue him/her, suggesting that limited trust is placed in human beings and in any other close relationships.
2. Parents and grandparents were included but on a level of limited power. They were significant in the sense that they 'have brought me into life' and not necessarily as a 'caregiver' or 'rescuer'. At times, the children's inclusion of parents and grandparents appeared to be forced out of a sense of obligation or guilt (so as not to leave them 'out' or disregard their existence).
3. The sometimes 'deliberate' absence of the family (parent and siblings) was often confirmed by the guardians as cases where family members were instrumental in the trafficking. In many cases, children were sold by the father, or the family was deceived by a family member.
4. There were significant relationships indicated in drawings of caregivers. The significance was mostly related to caring and providing basic needs (such as food, health care and education).
5. Aspects of the drawings were directly related to the service provided by the shelters (e.g. the drawing of a soccer team, as the shelter uses sport as a therapeutic method).
6. Some children included relationships with children who were trafficked with them and who experienced either the same or similar types of exploitation.
7. Many of the children found it difficult to draw themselves. This inability to 'connect' with the self was also evident from the interactions with the interviewers.
8. Some children had no significant relationships. They drew the researcher or animals without names or any apparent relationship.
9. Although this was not confirmed directly by the children, one service provider commented on the usefulness of pets in allowing severely traumatised victims (both adults and children) to initiate contact.

Children victims of trafficking give advice to other children:

- Children should dream big.
- Children should play.
- Don't lose hope.

Child victims give advice to service providers:

- Service providers should listen to children and should not make children who are in similar situations feel different.
- They should play with the children and listen to them.
- Do not isolate the children who experienced trafficking.
- Give children more freedom of movement

5.4 GOOD PRACTICES

The following are some good practices identified during the research study that can be explored further in follow-up research studies:

1. Having a 'bridge' between the service provider and the community. These persons can be crucial for identifying new cases and referring them to the relevant service providers. This is especially important for international cases. Service providers dealing with both refugees and exiles worked through people who know the communities they serve very well (in one case the person was a staff member and the other an external person). As such people play a crucial role in identifying victims, they need to be very knowledgeable about human trafficking and also need to have a good standing in the community. Some service providers make use of 'anti-trafficking officers.'
2. Bobbi Bear uses stuffed bears as a method to collect accurate information from victims in a non-threatening manner. This enables better intervention plans to be developed for each client (especially children) based on more accurate and detailed information. However, the sophisticated counselling essential for the success of this method requires careful training.
3. One service provider works across borders and established networks in neighbouring countries. This enables them to investigate and examine the appropriateness of returning victims to their sites (and families) of origin. Regular monitoring continues after re-integration to ensure the safety and well-being of the victim.
4. With regard to children, the necessary focus on basic needs (e.g. shelter, food and education) is supplemented through recreation and sport activities that allow children to 'just be children.' This dimension of their care is crucial for them to develop optimally. Service provision to children seemed to be much longer, on average, than for adult victims of trafficking.

CHAPTER SIX: PURPOSES FOR HUMAN TRAFFICKING AND KEY DRIVING FACTORS

RESULT AREA 6

INTRODUCTION

The push and pull factors that make South Africa a destination country for human trafficking are complex and interwoven. The following factors, which have been discussed in detail in other parts of this report, are summarised here.

6.1 PUSH AND PULL FACTORS

South Africa has a Gross Domestic Product (GDP) that is four times greater than any other country in the Southern African region and so is a powerful lure for people in the region seeking better lifestyles and economic opportunities. But this perception of South Africa as the land of opportunity places many people at risk of being trafficked. While the view that poverty is the major driver of human trafficking is contested in some quarters, in relation to South Africa it does appear that poverty, and the attendant desperation it engenders, is a pivotal push factor. Industries that depend heavily on migrant workers, particularly male workers, are generally associated with a demand for commercial sex. The trafficking and selling of women to miners as 'wives' or sex slaves is well documented. The demand for sexual services is also linked to sex tourism, particularly for the under-aged sex market.

Commercial agriculture has created a demand for a labour force that is willing to accept low paid and insecure jobs, often of a seasonal nature. Traffickers who recruit children from neighbouring countries have exploited this demand.

While demand for labour is a factor, a strong demand for sexual services is believed to be the most important factor facilitating human trafficking both to and within South Africa. It is also proposed that the demand in some quarters for younger sex workers specifically, is fuelled by the sexual desirability of youth and the perception that younger females (some prepubescent and many drawn from rural areas) are less likely to be infected with HIV.

Cultural, cult and religious practices also put people at risk: forced marriages, the 'placement'¹ of children with relatives or others in the hope that they will become better educated, the demand for body parts for *muti*, and trafficking for religious or satanic rites.

6.2 PERPETRATORS OF TRAFFICKING

Those involved in the trafficking of people either to or within South Africa range from organised crime syndicates with local links to looser networks (for example taxi drivers) to community members and the parents of victims. Recruiters are often people known to the victims – ostensibly trustworthy and successful. They are able to deceive people and parents of children with promises of being able to provide the children with better educational opportunities or a better quality of life. Women appear to be equally involved in trafficking, possibly because they are able to win the trust of potential victims more easily.

¹ Sending children to a relative in the hope that they will be educated or be better off.

Methods of recruitment typically involve deception, but in the case of local victims, kidnapping is also an element. Prior to being recruited victims are often in a situation of vulnerability, with very limited opportunities available to them. While poverty and the attendant desperation is the key driver, there are cases where more affluent victims have been recruited into the sex industry by promises of money, travel and further opportunities.

Traffickers resort to various mechanisms to control victims: narcotics are in many cases used to strengthen control over victims, particularly in the sex industry. (Victims are also involved in selling narcotics to clients). Passports are removed to prevent victims from trying to leave, and victims are made subject to debt bondage.² Victims are subject to both psychological and physical abuse. Instilling fear in victims is routine. Victims are threatened with harm and threats are made against their families. Use is made of armed guards and dogs. The perception may be created that traffickers have close links with the police, thus reducing the likelihood of victims reporting their cases to law enforcement officials. Victims may be subject to rape and physical assault so as to keep them in a constant state of fear. The torture and murder of victims may also be used as a means to intimidate other victims. (Two high profile cases of bodies found in Pretoria (personal communication with a member of SAPS) are believed to be trafficking victims who threatened to go to the police and were then murdered as an example to the others. One body was found in a popular exercise park, and in the second case the headless torso of the victim was found in a public dustbin.)

Failure to report abuse is due to a number of reasons. The shame associated with the type of exploitation people experience often prevents them from coming forward or from divulging information about their exploiters. The stigma of sex work prevents many victims of trafficking from returning to their communities for fear that they will no longer be accepted. In the cases of illegal migrants who have become victims of trafficking, the lack of sympathy towards immigrants prevents them from reporting cases of exploitation to the police. Language barriers are also a factor.

In the cases of victims trafficked for sexual exploitation, a debt bondage may be placed on the victim, depending on the value traffickers place on the victim. It appears that the amount of the debt bondage varies according to the nationality and ethnic group of the victim. For African nationals this can range from as little as 2000 ZAR to as high as 12 000 ZAR for female victims perceived to be from more exotic countries such as Ethiopia, Somalia and Mozambique. It is higher still for victims from non-African countries such as Russia, Ukraine and Thailand, with bondage as high as 100 000 ZAR for Thai victims.

6.3 HUMAN TRAFFICKING AND INTERNATIONAL SPORTING EVENTS

The potential link between human trafficking and large events, particularly international sporting events, started attracting attention in the wake of the 2004 Athens Olympics and the 2006 Germany FIFA World Cup. While there is virtually no research on the impact of international sporting events on human trafficking, linking trafficking for the purposes of sexual exploitation and sporting events is a common response.³ The concern that is generally expressed by NGOs is that the short-term increased demand for prostitution and other forms of sexual exploitation in countries hosting these events will be filled by victims of trafficking, for the most part women and girls. These people then remain in the country and continue to be exploited. There is also a concern that these events also facilitate the entry of trafficked persons as 'visitors' who are then moved to other cities or countries (The Future Group 2007: 9).

² In the context of trafficking in women, debt bondage usually occurs when traffickers assist women in travelling, making illegal border crossings, and finding employment, often in the form of commercial sex work, and then require the women to 'work off' the debt they owe for the services provided. In situations of debt bondage, women become virtual prisoners, as they are unable to ever earn back the amount purportedly owed to the traffickers http://www.stopvaw.org/Debt_Bondage_and_Trafficking_in_Women.html (accessed 03/02/2010).

³ While trafficking for sexual exploitation attracts the most attention, GAATW (2009b) argues that more realistic concerns regarding trafficking and exploitation related to international sporting events include the exploitation and abuse of workers (mostly women) in the global sporting goods industry and construction workers working on sports venues prior to the events.

South Africa's hosting of the FIFA World Cup (FWC) across nine cities (Cape Town, Port Elizabeth, Durban, Bloemfontein, Rustenburg, Pretoria, Johannesburg, Nelspruit and Polokwane) is likely to attract an estimated 2.7 million local spectators and 350 000 to 500 000 visitors to the country.⁴ The fear that this may result in an increase in demand for sexual services, which is likely to lead to an increase in the trafficking of women and children, has been expressed by a range of civil society bodies in South Africa and bordering countries. The vulnerability of children during the 2010 FWC is of particular concern.

6.3.1 Vulnerability of children

Vawda (2008) identifies a range of activities considered to be exploitative and a danger to children. These include domestic child labour, commercial and agricultural work, guarding cars, taxi related work, street entertaining, vending, begging, criminal and drug-related activity, transactional sex, and sexual exploitation – paid and unpaid. The fact that schools will be closed during the 2010 FWC is viewed as a potential risk factor as this will lead to a sharp increase in the number of unattended children (Molo Songololo 2008).

The vulnerability of children, who are particularly at risk in terms of an increased demand for sexual services and an increase in child labour, is highlighted in the Molo Songololo report.⁵ It points out that pull factors specifically related to the 2010 FWC are linked to the fact that poorer communities regard the event as of potential socio-economic benefit (Molo Songololo 2008: x).

An increase in child labour could result from parents sending their children to beg for money from tourists, or children being recruited to sell tourist paraphernalia. Tourists may also lack information regarding the trafficking of children for purposes of child labour, which may exacerbate the problem. The event could lead to an increase in the need for cheap labour, and opportunities for petty crime and begging. The increase in demand for domestic work may lead to girls being recruited from rural areas. It is rumoured that gangs and organised crime syndicates are already operating in the country and this is cause for concern, as it is feared that these criminal groups will target children in order to fulfil the perceived increase in demand for prostitution and drugs (Molo Songololo 2008: x).

6.3.2 Importance of preventative measures

The Future Group (2007) points out that countries that have been most effective in combating human trafficking have (1) adopted a clear legal framework to protect victims and prosecute offenders; (2) devoted sufficient financial resources to enforce their laws and support victim recovery; (3) demonstrated a high degree of cooperation between law enforcement, governmental agencies and non-governmental sectors; and (4) coordinated their international development efforts to deal with root causes of poverty and corruption in source countries. The success of these countries is reflected in the steadily increasing number of trafficking victims who receive protection and the increasing number of traffickers prosecuted each year. They outline a three-pronged approach to effectively combat trafficking:

- *Prevention* of human trafficking by working with source countries to address root causes, including deterring the demand side of the industry in the destination country;
- *Protection* of trafficking victims including rescue, rehabilitation and, when appropriate, repatriation and reintegration; and
- *Prosecution* of traffickers and commercial sex-users in criminal proceedings.

⁴ FIFA 2010 World Cup Research Project http://www.hsrc.ac.za/Research_Programme-Page-80.phtml (accessed 30/09/2009).

⁵ A children's rights NGO based in Cape Town.

6.4 LESSONS FROM PAST EVENTS

The two most cited international sporting events that have come under the ‘trafficking’ spotlight are the 2004 Athens Olympic Games and the 2006 FIFA World Cup held in Germany.⁶

6.4.1 Olympic Games, Athens 2004

A range of anti-trafficking activities was pursued by the Greek authorities, local NGOs and international agencies. Measures taken by the Greek Government to address concerns about human trafficking being facilitated as a result of the Olympics included:

- seminars financed for judges and prosecutors on human trafficking;
- legal aid arrangements put in place to assist victims of human trafficking;
- creation of ‘Human Trafficking Monitors’ to investigate trafficking in children, with units consisting of specialised and mobile personnel; and
- a foreign language programme to prevent a possible upsurge of contagious diseases during the period of the Olympic Games.

6.4.1.1 Greek NGO initiatives to curb child trafficking

Terre des Hommes and other NGOs focused on trafficking from Albania, involving the exploitation of children through forced labour, begging and sexual exploitation. Terre des Hommes, together with a Greek NGO, Arsis, established the ‘Emergency Response against Child Trafficking’ project, and launched several public awareness campaigns and travel leaflets on child trafficking issues (The Future Group 2007: 13).

According to the Greek Ministry of Public Safety (cited in The Future Group 2007: 4), there was a 95% increase in the number of human trafficking victims identified by Greek authorities during the 2004 Olympic Games in Athens, where anti-trafficking measures taken were not as extensive as those taken at the 2006 World Cup.

6.4.2 2006 FIFA World Cup, Germany

The German authorities, together with local NGOs and international agencies, pursued a range of activities aimed at preventing the possible exploitation of the World Cup by human traffickers.

6.4.2.1 German national and local government initiatives

Investigative activities by police relating to forced prostitution and human trafficking were focused in and around host cities. Measures included:

- greater police presence (uniformed and plainclothes) at high risk venues;
- raids conducted into known areas involving the sex trade;
- formation of new, and strengthening existing, specialist police task forces;
- contact with police informers in relevant high risk areas;
- increasing awareness among hotel and accommodation staff;
- coordinating with authorities at event sites; and
- liaising with social service agencies and special counselling services.

⁶ The Caribbean Regional Meeting on Counter-Trafficking Strategies also provided an outreach tool to raise public awareness during the 2007 Cricket World Cup. No information regarding anti-trafficking strategies for the 2008 Beijing Olympics is available.

Federal and state police worked with special counselling services, NGOs, host cities, churches, sporting associations and others to identify stakeholders that could assist with public education campaigns, prevention activities, identifying potential victims, and providing protection and services to rescued victims.

At the end of the games, no marked increase in trafficking had been detected in Germany for the World Cup (Tavella 2007).

6.4.2.2 German NGO initiatives to prevent trafficking

A range of activities aimed at preventing forced prostitution and human trafficking was conducted by NGOs and special counselling organisations before, during and after the World Cup. These included:

- public events (discussions, press conferences, interviews, info desks, posters and leaflets);
- mailing campaigns;
- education and information via radio and television;
- telephone hotlines;
- websites; and
- information and assistance at shelters.

6.5 SOUTH AFRICAN ANTI-TRAFFICKING INITIATIVES

The risk of increased trafficking for sexual exploitation, especially the trafficking of children, during the 2010 FWC has engendered a number of government and civil society anti-trafficking initiatives.

6.5.1 South African government initiatives

6.5.1.1 Tsireledzani – 2010 FIFA OC counter-trafficking programme

The formulation of South Africa's response to human trafficking associated with the 2010 FIFA World Cup was initiated at a seminar held in Johannesburg on 17 November 2009. The seminar marked the initiation of a partnership between key role players from government, civil society and international organisations. The task of the partnership, which was jointly led by the Tsireledzani Counter-Trafficking Programme and the 2010 FIFA World Cup Organising Committee South Africa, was to develop a strategy against human trafficking before and during the event and to measure its impact at the conclusion of the event.

6.5.1.2 Monitoring of visitors by Department of Home Affairs

The Department of Home Affairs introduced special measures to prevent the influx of criminal gangs, including human traffickers, during the FIFA World Cup. For example, an advance passenger profiling system was introduced to facilitate improved tracking of people who entered the country. This will at a later stage be updated to include a biometric system where fingerprints are taken from people applying for visas to visit South Africa. This system was only partially implemented to accommodate the visitors for the 2010 event and will later be fully implemented. In addition, ports of entry and information centres at the headquarters of the Department of Home Affairs will make more personnel available for the duration of the FIFA World Cup. Finally, a special 'Event visa', valid for three months, will be issued for the duration of the World Cup, which stipulates that entry conditions in this visa cannot be changed while in the country.

6.5.1.3 Dedicated Courts

As part of the FIFA 2010 administration of justice blueprint,⁷ 56 dedicated courts – 37 district and 19 regional courts – across all nine provinces, and in particular in all the host cities, will be available to hear tournament-

⁷ The blueprint was developed through consultation with, among others, the police, the National Prosecuting Authority, the Legal Aid Board, the judiciary and the Department of Correctional Services.

related offences. The courts will operate for 16 hours a day during the World Cup. Each court will be allocated two magistrates, two prosecutors and clerks, with the first team working from 8.30am to 4.30 pm and the second team working from 4.30pm to 11.30pm. In addition, 1 140 court officials, 35 paralegals, 93 foreign language interpreters and legal aid lawyers will be deployed to all the identified courts:

- Limpopo: four district courts and three regional courts
- Mpumalanga: four district courts and one regional court
- Eastern Cape: four district courts and two regional courts
- KwaZulu-Natal: four district courts and one regional court
- Free State: two district courts and one regional court
- Northern Cape: one district and one regional court
- Gauteng: 13 district courts and twenty three regional courts
- Western Cape: three district courts and one regional courts
- North West: three district courts and one regional court.⁸

6.5.1.4 Law Enforcement National Instruction 3/2008

Instructions to law enforcement officials, regarding rendering professional services to victims, are contained in the National Instruction 3/2008. The framework for these instructions is provided in the Sexual Offences and Related Matters Amendment Act (32) of 2007, which addresses the rendering of professional services to victims in respect of investigating offences and assisting victims.

6.5.2 South African civil society responses

A large number of prevention initiatives, largely in the form of awareness raising campaigns were launched by civil society organisations in the wake of trafficking concerns around the World Cup. Some of the larger initiatives are described below.

The *Red Light 2010 Campaign*⁹ is an initiative of a group of regional organisations working together to combat human trafficking and the exploitation and abuse of women and children in southern Africa. The objective is to create widespread awareness about the risks of trafficking around the World Cup, the recruitment methods and channels used by traffickers, as well as prevention, referral and other mechanisms for protecting the rights of women and children. The primary beneficiaries are women and girls in the SADC region. The campaign is a joint initiative of Women and Law in Southern Africa (WLSA),¹⁰ the Southern Africa Network against Trafficking and Abuse of Children (SANTAC) and Johannesburg Child Welfare. National Working Groups have been established in participating countries, with South Africa as a top priority as the World Cup host and potential trafficking destination. Campaigns have been launched in seven countries – Lesotho, Malawi, South Africa, Zambia, Zimbabwe, Mozambique and Swaziland (Personal communication, Alice Banze, Regional Gender Justice Coordinator, Oxfam).

In January 2008, the Leadership Conference of Consecrated Religions (LCCL) (SA) and the Southern African Catholic Bishops' Conference of the Catholic Church established the *Counter Trafficking in Persons Desk* in South Africa.¹¹ One of its major tasks has been to raise awareness. To this end a number of workshops have

⁸ Information on courts, which are to extend hours during the World Cup was provided by the NPA.

⁹ <http://www.redlight2010campaign.org/>

¹⁰ WLSA is a regional research and educational trust operating in seven countries in southern Africa (Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe) with a mission to contributing to the socio-economic, political and legal advancement of women.

¹¹ Southern Africa Catholic Bishops Conference, 'Human Trafficking in South Africa: 2010 and Beyond': available at: http://www.sacbc.org.za/Site/index.php?option=com_content&view=article&id=286:human-trafficking-in-south-africa-2010-and-beyond&catid=7:weekly-feature&Itemid=111

been conducted around the country. Capacity-building programmes have also been conducted in various dioceses so that trainees can continue the awareness-raising and prevention campaign in parishes and the wider community in their areas (Pretoria News, 12 August, 2009).

The Salvation Army¹² established an anti-human trafficking task team in January 2009. The team is working with the International Organisation for Migration (IOM) to research and report on human trafficking. Their anti-trafficking awareness messages have been heard on radio and TV, and seen in printed media. Billboards are being designed for display on two major highways in Gauteng. Advertising and training materials are being developed for use in other territories in Africa. A 24-hour toll free helpline (0800-RESCUE) for victims and members of the public has been launched as a joint initiative between the Salvation Army and BE HEARD, (a 24 hour disclosure service established by Quiver Corporate Solutions).¹³

The Tshwane Counter-Trafficking Coalition for 2010 was launched on 11 August 2009. The coalition of Pretoria faith-based organisations, local government and civic society, seeks to address the issue of human trafficking in Pretoria ahead of the 2010 World Cup but will extend its efforts beyond the event. The initiative consists, inter alia, of educational programmes, developing outreach teams that will target areas of vulnerability, and ensuring proper care and counselling of victims.

6.5.3 Recommendations regarding 2010 FIFA World Cup

A rapid assessment of the possible impact of the 2010 FIFA World Cup on the abuse, exploitation and trafficking of children undertaken by Molo Songololo (2008) has generated a number of recommendations which, while focusing specifically on children, are applicable to trafficking and persons in general:

1. Integrate a 'Child Safety Plan' into the national, provincial and local 2010 FWC Security Plans and Operational Plans.
2. Educate tourists on the current vulnerable status of children and the problem of trafficking.
3. Enhance the ability of border officials to identify victims of child trafficking and deal effectively with cases of child trafficking.
4. Ensure that the children in vulnerable groups, which include 'unattended children', street children and refugee children are specifically targeted when planning any intervention plan aimed at reducing the impact of 2010 FWC on child trafficking.
5. Establish a routine, co-ordinated data collection strategy in order to monitor the problem of trafficking in children.
6. A clear legal framework for the protection of victims of trafficking and the prosecution of offenders to be finalised and implemented before the 2010 FWC.
7. Develop an integrated and comprehensive strategy to protect children from abuse, exploitation and trafficking for 2010 FWC and beyond.
8. Launch a co-ordinated public awareness campaign targeted towards both the general public and more specifically towards children.
9. Establish a strong network of victim protection and support services for 2010 FWC and beyond.

6.5.4 Gaps in South Africa 2010 FWC anti-trafficking initiatives

It would appear that despite the array of anti-trafficking initiatives in place in anticipation of the 2010 event there are a number of gaps. Most anti-trafficking initiatives focus predominantly on trafficking for sexual exploitation with a strong emphasis on the sexual exploitation of children, and a lesser extent on the exploitation of children for labour purposes. There are virtually no activities focusing on (or which focused on) the trafficking of men and women for labour exploitation. A focus on the trafficking of men and boys would have been apposite during

¹² Salvation Army, 'Human Traffickers Aim to Exploit 2010', available at: <http://www.salvationarmy.org.za/newsroom15.html>

¹³ 'Helpline launched to combat 2010 trafficking': available at: http://www.sagoodnews.co.za/crime/helpline_launched_to_combat_2010_trafficking.htm

the building and upgrading of the soccer stadiums for the event. Concern has also been expressed about the possibility of an increase in the trafficking of body parts, i.e. muti murders for 'good luck' for the participating teams, which is not being addressed in any anti-trafficking activities.¹⁴

While international agencies and NGOs are involved in a number of anti-trafficking activities around the FWC, it would appear that trafficking is of less concern to guest nations visiting the country. A number of high commissions and embassies contacted revealed that there were no activities in place to raise awareness of trafficking among their nationals who might be travelling to South Africa for the FWC.

¹⁴ This concern was, however, met with great scepticism by Mr Greg Fredericks, FIFA Organising Committee.

CHAPTER 7: VULNERABILITY TO HUMAN TRAFFICKING IN SOUTH AFRICA, SWAZILAND, LESOTHO AND ZIMBABWE

RESULT AREA 7

7.1 METHODOLOGY AND CONSTRAINTS

As discussed elsewhere in this study, poverty and economic inequality are considered central contributors to human trafficking. These problems are very grave in southern Africa. South Africa shares borders with Botswana, Lesotho, Mozambique, Namibia, Swaziland and Zimbabwe and has a gross domestic product (GDP) four times greater than any other country in the region. Regional disparities are also reproduced within South Africa, which has one of the highest Gini coefficients in the world (UNESCO 2007). Since the discovery of gold in South Africa in the late nineteenth century, labour has flowed from neighbouring countries into South Africa.

This chapter briefly compares socio-cultural factors in South Africa that contribute to people's vulnerability to human trafficking with those of Lesotho, Zimbabwe and Swaziland.

The focus on vulnerabilities embraced four areas:

- centres of authority and dependence patterns within communities;
- cultural practices and the role of patriarchy in particular;
- broad economic contexts of communities within Lesotho, Swaziland, Zimbabwe and South Africa; and
- politics, institutional arrangements and partnerships that enable and curb human trafficking.

As this chapter was not an ethnographic study but relied on individual interviews and focus groups. The findings here can only be preliminary and should be recognised as limited. Respondents often did not have clear definitions of human trafficking, did not differentiate cases of human trafficking from other kinds of social problems, and gave examples that did not fit the requirements of human trafficking. This confusion, coupled with time constraints, contributed to the difficulty of assessing the problem.

The sensitivity of the topic also impeded the willingness of respondents to discuss the question candidly. Marginal workers such as sex workers were worried about their safety and required anonymity. Truck drivers, taxi drivers, mine workers and others were willing to talk to researchers as private neighbourhood/community members but not in their work capacity as agents, tour guides and hotel workers and did not wish to discuss their own experiences. Consequently, the survey relied on focus groups where possible. Participants were compensated for their travelling expenses and given money for refreshments. Some of the areas visited are known to be high crime spots, such that the research team members had to be concerned about their safety.

Most seriously, some of the border officials and government officials were visibly irritated by the research, extremely uncooperative and in some instances tried to block access to respondents. Future research should seek ways to reduce these obstacles ahead of time.

7.2 HUMAN TRAFFICKING IN SOUTH AFRICA

The economic inequalities in South Africa combined with particular patterns of labour, poverty, and geography stemming from the country's apartheid past, create specific vulnerabilities to human trafficking. These problems have been extensively researched elsewhere, as they are all central concerns for South African public policy and the country's development strategy. Hence they are mentioned here only briefly for their relevance to human trafficking.

7.2.1 Youth poverty

Youth poverty in South Africa reflects the scarcity of jobs after completion of education and low wages associated with entry jobs (Makiwane & Kwizera 2009). Another cause for youth poverty is early childbearing and single parenting, especially among young women who, in most cases, become the main caregivers of children. When young people move away from their family of origin in search of economic opportunities they often move to the cities to seek employment. Young people in South Africa are more likely to migrate in search of employment. Gauteng, followed by Western Cape, are the main destinations for rural young migrants running away from rural poverty. Neither of these urban areas has been able to absorb the high number of unskilled migrants from rural areas and neighbouring countries who flock into the cities. Since 1994, the metropolitan areas of South Africa have also received flows of young people from former homelands who are in desperate search of work.

The few migrant youth with skills can obtain employment in the city, but the demand for unskilled labour in South Africa has been declining and unskilled youth often face long periods of unemployment (Kok et al. 2003). Survival imperatives often lead youth to engage in unlawful behaviour in order to survive. They are easily recruited into gang activity because they lack a family structure and have the need to belong. Some young females find themselves in the sex trade industry. Some young people resort to drastic measures to obtain money for their dependents who reside in the rural areas (Kalule-Sabiti, Kahimbara & Chimere-Dan 2001). Thus, young people are extremely vulnerable to being trafficked, as attested to in these statements:

Some employers exploit immigrants by paying them less, or refuse to pay a wage on the pretext that they are not satisfied with your work.

Some are taken, promised jobs, and at the end are forced to do whatever employees want.

Desperation makes you to take a risk and to follow strangers who might be traffickers.

7.2.2 Rural vulnerability, household structure and vulnerability

Most disadvantaged people reside in rural areas and the heads of household are likely to be women and grandmothers and sometimes children. Furthermore, these households are likely to be dependent on social grants, if they are able to access them (Amoateng & Heaton 2007). The emergence of child-headed and skipped-generation¹ households in South Africa has had an adverse effect on the emerging generation.

7.2.3 Legal context

As noted in earlier sections, South Africa does not currently have specific legislation that addresses human trafficking, and it has no reliable statistics regarding people trafficked into South Africa (Department of Justice and Constitutional Development 2009). However, South Africa does have some of the world's most comprehensive legislation that addresses the associated problems of harmful child labour (including use of children in the drug trade), trafficking of children (including organ trafficking and illegal adoption), and child commercial sexual exploitation (including involvement in the production of child pornography). The Children's Act (No. 38 of 2005) and the Children's Amendment Bill (No. 19 of 2006) create an unprecedented opportunity to develop systems both for monitoring these problems and for provision of relevant services (Cluver et al. 2007).

The South African government has recently taken steps to legislate against Human Trafficking (Gabara 2009). South Africa is one of the 117 signatories of the Palermo protocol. In compliance with the protocol, South Africa

¹ Skipped generation families are families in which grandparents raise children and parents are absent from the household. This is one area in which different subcultures may have different norms. (Rothausen-Vange 2005)

is obliged to introduce a specific legislation which combats human trafficking. In addition to the legislation, signatories of the protocol are supposed to gather information on human trafficking in their countries, and assist victims of Human Trafficking (Gabara 2009).

Furthermore, the proposed legislation makes specific provision for the trafficking in persons for sexual purposes. Due to South Africa's current lack of legislation for human trafficking, police make use of other legislation such as the Aliens Control Act, the Immigration Act, the Child Care Act, the Sexual Offences Act and common law (UNODC 2007). For example, human traffickers can be charged under the Sexual Offences Amendment Act only if the victims were trafficked and used for sexual exploitation. The Children's Act comes into effect for child victims. Since 1994, there has been a clear commitment within the government to address the rights of children (Community Agency for Social Equity 2005). In cases where there is no sexual exploitation or children involved, charges placed are normally categorised as kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder or murder, if committed.

7.2.4 Migration and vulnerability

South African law (Immigration Act² and Refugees Act³) provide for a wide protection of the human rights of migrants. Most migrants come from SADC countries, with the majority of them from Mozambique, Zimbabwe, and Lesotho. Women who are mostly employed in agriculture, domestic work, services and trade, are particularly at risk of been exploited at work. Migrants generally fall into two categories: undocumented and documented.

Undocumented migrants are more generally exposed to human rights violations than documented migrants. Despite of the wide protection that is provided by the South African law for migrants, actual practice is different. Respondents reported that they experience consistent discrimination. The local population identifies them because they are not conversant in local languages and both employers and the police exploit the feeling of vulnerability experienced by immigrants. For example, when some illegal migrants go to a police station to lay a complaint, they report that they are sometimes arrested for being in the country illegally, whatever the nature of the complaint they have come to report. Respondents felt that law enforcers were unsympathetic to immigrants and believed they did not deserve the protection of the law. Testimony to this effect included:

When I went to complain to the police, they were not helpful, because I am a foreigner. Police instead arrest us, especially if you do not have a passport, [we are] sent to jail and given a spot fine of R500.⁴

I could not complain to the police, knowing that I would be arrested and questioned how I got into the country in the first place. I persevered hoping that one day I will get a better job.⁵

Immigrants may receive little support from other workers in their work places if they are perceived by South African citizens to be competing for their jobs. This attitude came out clearly in the interviews with mine workers, who felt that the government was not doing enough to protect them from what they regard as 'unfair' competition.

Documented migrants are permitted to obtain a temporary permit, with a duration that varies according to the applicant's grounds for the intended stay and the applicant's intended activity in the country. For example, visits or holiday permits are only valid up to three months and domestic workers' permits are valid for up to six months for citizens of Lesotho and Zimbabwe (UNHCR 2009a). Taxi drivers transporting passengers from South Africa to Lesotho and from Lesotho to South Africa mentioned difficulties that domestic workers from Lesotho encounter regarding their work permits. One of the taxi drivers narrated:

² Act 13 of 2002

³ Act 130 of 1998

⁴ Interview with a commercial sex worker from Mozambique, Hillbrow, 15 October, 2009.

⁵ Op. cit.

Compared to other types of work permits, domestic workers are only given a six months work permit into South Africa... Even people, who hire women from Lesotho to help them with housework, tend to exploit them by not paying them enough after giving them lot of work. For example, most of these women mention that they are sometimes being paid R800 to R1000. This put these women at risk of been exploited by people who employ them because they end up coming back looking for work hoping to be paid enough in order to maintain their families back in Lesotho. These expenses include renewing of permits, transport money back to Lesotho, food and clothes for their children.

Temporary permits expose immigrants to exploitation. Once the permit has lapsed, many immigrants find it too expensive to return and renew their permits. Although their initial status was legal, it suddenly becomes illegal. Being aware of this, employers use this window period to curtail the rights of employees, making them vulnerable to being trafficked.

Taxi drivers (7 interviewed) mentioned the vulnerability of people they encounter in their daily experiences as drivers. One of them said:

Sometimes you will find that a person does not know anyone in South Africa, often they are being referred to by one domestic worker from Lesotho working for a certain household which a friend to them happens to be in need of a helper...A friend to the other household will be the one making contact with a woman from Lesotho asking her to come to South African as she wants her to help with housework...So they tell her to get off at Bosman station as they will be there to pick her up...Us, as drivers we end up being stuck with such victims who don't know where to go once they can't get hold the people who invited them to South Africa because you will find that their phones are off...When we refer them to the police, they come back saying that the police rejected them...We end up allowing them to sleep in the taxi and the following morning we transport her back to Lesotho because sometimes out of a 22 seat, you will find that we have only 20, depending on how busy it is on the roads.⁶

Such people are at risk of being trafficked by strangers who offer help to the destitute newcomers.⁷ Taxi drivers have referred a number of these cases to the police, although they reported that, in most cases, the police would refuse to get involved.

7.2.5 Vulnerability of casual mine workers

Of 12 mine workers interviewed, eight complained about the casualisation of workers as the root cause of human trafficking in South Africa. They complained mainly about the role played by labour brokers, whom they accused of facilitating exploitation of vulnerable workers. Mine workers spoke about the growth of temporary employment in the mine industry. This is usually facilitated through the sub-contracting of mining companies' non-core functions. These contract workers are prevented from joining unions and made to work long hours. They are exempt from wage rates negotiated by the union. One employee who works in the mines said:

I got a job through a labour broker. ... I worked long hours [with] less pay; had no labour rights, [and was] victimised and made to do small jobs. I could not go back home because I came from a poor family in rural areas. The work conditions made life very difficult for me. We were discouraged from joining unions and threatened with being fired. Sometimes I slept in an open space, as I could not afford accommodation.

7.2.6 The Mozambique-Swaziland-South Africa link

Swaziland is both the final destination of migrants and the principal transit point of immigrants coming from Mozambique. Compared to South Africa, there seems to be a tighter control of immigrants in Swaziland. Many migrants stated that there is virtually no possibility of getting formal employment in the country, and expressed beliefs that law enforcement agents have shut their doors on immigrants. This lack of protection makes many migrants vulnerable to traffickers.

⁶ Interview with Lesotho-SA cross-border taxi drivers, Bosman Taxi Rank, Pretoria, 14 October, 2009.

⁷ Ibid.

Stories of immigrants who experienced being trafficked tell the same story of being vulnerable in a generally inhospitable environment. One of them stated:

I came looking for a job from Zim. I met a 'Nigerian Guy' who took me by force to do prostitution. I tried to escape, but was caught. I had nowhere and no family to go [to].⁸

Refugees from Mozambique state that in some rural parts, there is virtually no government presence and everyone survives on their own. This makes the rural population extremely vulnerable. Many residents try to get out of the situation either by getting temporary permits to reside in a neighbouring country or by crossing the border illegally. The sense of desperation is clearly conveyed by the refugees from Mozambique who crossed the border to Swaziland:

I am a male from Mozambique, who came looking for a Job in Swaziland. When I passed through fences I was arrested, but later I got a passport.⁹

I got a lift from a truck driver at the border while loitering there, did not even have a passport to cross, but gave a false statement to border officials that I was coming to South Africa for business purpose, and I needed emergency passport.¹⁰

The movement from the country of origin may be fraught with danger. Refugees who come from Mozambique to Swaziland have unpleasant stories related to moving across borders. In some areas, borders are not guarded and refugees make use of dedicated smugglers to assist them. This places them at risk of being trafficked as some smugglers also operate as traffickers. One participant explained:

I was forced to work in the farm, and left there, and they kept me in a forest and took my money. My money was also taken from me when I started to complain and to ask questions...we came as a group and we were paid R10 a day for working in the forest. Forest keepers brought us food, threatened to kill us if we leave or try to escape or report to the police.¹¹

7.3 HUMAN TRAFFICKING AND SWAZILAND

In Swaziland, the research team found a general reluctance to participate in the study. There was considerable political distrust, expressed in numerous questions about why the study was being done and what diplomatic initiatives South Africa had embarked upon before commencing the study.¹² While few respondents believed that human trafficking was non-existent, the attitudes and perceptions that dominated interviews ranged widely, from the belief that human trafficking is only a mild problem which does not require the large-scale interventions put in place, to its being rife and a serious problem in South Africa and worldwide. Those who believed it to be a mild problem also believed that addressing human trafficking is significantly influenced by political concerns about prostitution, border control, exploitation and migration. While data collection was aimed at answering questions pertaining to vulnerabilities, respondents would focus on the political influences and agendas dominating advocacy, intervention and legal strategies.

7.3.1 Measuring human trafficking in Swaziland

No respondents were able to provide hard figures on human trafficking in Swaziland. Respondents believed that human trafficking existed, but none were able to compare it to the general population.

⁸ Interview with a commercial sex worker from Zimbabwe, Hillbrow, 15 October, 2009.

⁹ Stories from Mozambique refugees in Manzini, Swaziland, 17 October, 2009.

¹⁰ Op. cit.

¹¹ Interview with refugees in Manzini, Swaziland, 17 October, 2009.

¹² A number of interviews were held with key informants in Swaziland. These included Chief Mgwagwa Gamedze (Minister of Home Affairs, Swaziland); Mandla Mazibuko of Save the Children (Swaziland); Mandla Mkhwanazi, an academic at the University of Swaziland; and Nompumelelo Lukhele from the Public Prosecution Unit (Swaziland).

Those who believed human trafficking to be rife held that, due to its underground and organised-crime nature, it is seriously underreported. This is believed to stem partly from a lack of trust in the police. Victims believe that criminal justice officials are corrupt and possibly involved in human trafficking so they are unlikely to go to the police to report their circumstances.

Informants also indicated that, over the years, many people had gone missing and that their friends and relations believed these individuals had been trafficked.

The inadequate communication channels between family members in different countries also places people at risk for human trafficking. As one informant explained, family members migrate to different countries and are never heard from again. For example, a child who leaves his home to stay with an aunt in another country may never communicate with the family again, but family members assume he is safely with that aunt. This lack of knowledge and inability to obtain information regarding family members places them at risk for human trafficking.

Nobody asks questions from home, because some people have left their home countries a long time, they have been living as refugees maybe in Zambia, or in Malawi, or in Tanzania, and those people want to come to South Africa, they have lost contact with family...they have come across, they have no contact with their family, even when they start travelling down, nobody knows.¹³

Human trafficking cases were identified from the small number of people that had been returned to Swaziland, but this suspicion remains otherwise undocumented. Indeed, most accounts of human trafficking cited secondary accounts or news accounts and even popular movies and television shows.

The contrasting opinion that human trafficking is not a serious problem appeared to be based partly on ignorance. Victims of human trafficking, especially children, are often not aware that their circumstances or experiences are illegal and that they have legal recourse.

7.3.2 Factors leading to vulnerabilities to human trafficking in Swaziland

The vulnerabilities associated with human trafficking victims in Swaziland are similar to vulnerabilities associated with victims found in South Africa. The following factors, associated with vulnerability and with the tricks used to lure victims into trafficking, were identified by respondents.

7.3.2.1 Employment opportunities

The search for employment opportunities provides an easy platform for recruitment by human traffickers. Key informants demonstrated, with a number of cases of human trafficking, that it began when victims followed up on job advertisements. Advertised job opportunities could range from domestic work to modelling careers. Career aspirations and future dreams result in increased exposure to such employment opportunities, while the desire for a better future drives some to accept offers of employment with limited, incomplete or no information. The situation is fuelled by the fact that most of the time, job offers are made by someone whom the individual knows and trusts. It is therefore through a combination of exciting and attractive job offers and the job seeker's attitude of open trust that individuals are easily misled, as suggested in the following statements:

...because that gentleman was a barman and all those girls are used to him, and whatever, and he received the money, and he told them, you are going for a job, a nice job in Johannesburg.¹⁴

In most cases, the persons who recruit them are people that the children know, people that ordinarily come into the community or even live in their own communities.¹⁵

¹³ Director of the Cape Town Refugee Centre, 13 August, 2009.

¹⁴ Ibid.

¹⁵ Patrick Solomons, Director of Molo Songololo Cape Town, 12 August, 2009.

Employers know that they can employ vulnerable people with minimal wages. Due to lack of knowledge, inadequate paperwork and language barriers, such employees are unable to protest. It is easier for them to pay them less, and they can't complain.¹⁶

Working in the sex industry also places victims at risk for human trafficking. While the initial entry into the industry may have been voluntary, the exchange of prostitutes between brothels is not uncommon and, once moved to an area that is unfamiliar, a sex worker can lose freedom of movement and effectively become trafficked.

Poor and degrading employment opportunities in Swaziland also place people at risk for human trafficking if attractive, exotic job offers in South Africa are presented to them:

Most of them would say I would rather suffer in a foreign land, where I am not known, where I can do any job, for a living, otherwise, when they are in their own country, there are jobs that they would not want to do, because they feel embarrassed that they are doing this while their age mates are going to school and the like.¹⁷

7.3.2.2 Poverty as a driver

Unsurprisingly, all key informants identified the core risk factor precipitating human trafficking as poverty. Victims of human trafficking were routinely identified as coming from economic deprivation.

We do know that poverty and poverty conditions make people more and more vulnerable.¹⁸

Poverty is often associated with various social outcomes. Beyond the search for money, poverty results in poverty related conditions such as poor or limited parental care and protective mechanisms for children. As a result, children are often exposed to circumstances for which they are developmentally unprepared, and live in poverty stricken communities and unsafe circumstances with limited ability to defend and protect themselves.

Parents who have more money are probably in a better position to provide or care for their children; parents who have less money or no money are probably not able to do that.¹⁹

If there is poverty then the kid must go work.²⁰

Beyond social outcomes for children in poverty conditions, individuals of all ages are more susceptible to promises of a better life when dealing with the concerns of limited financial support. In very dire circumstances, minimal survival needs provide sufficient reasons for accepting job offers with very little information, even if it requires the individual to move to another area or even country. Poverty forces people to engage in behaviours they are opposed to, simply for survival, and makes them more vulnerable to stories presented to them by traffickers.

People, because of no jobs, no money, people can create stories, that...somebody is looking for you, he wants to kill you, me I can connect you to a certain truck that is going to Swaziland, you better run.²¹

I think it is socio-economic status, because I think, if you don't have money, you are open to any kind of....²²

Most of them come from poor countries...I think the main thing is poverty.²³

¹⁶ Director of the Cape Town Refugee Centre, 13 August, 2009.

¹⁷ HIV/Aids Programme Manager, Swaziland, Save the Children. Mbabane. 18-August-2009.

¹⁸ Director of Molo Songololo Cape Town, 12 August, 2009.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Chief Mgwagwa Gamedze, Minister of Home Affairs, Government of Swaziland.

²² Director of the Cape Town Refugee Centre, 13 August, 2009.

²³ Ms Susan Coetzee, Child Welfare, Kempton Park, 05 August, 2009.

People are getting involved with these things, it appears to be voluntary, because of factors of survival they need to survive.²⁴

Swazi migrants in South Africa were identified as particularly vulnerable to human trafficking because of challenges faced by the country as a whole:

I think refugees are susceptible to such kinds of things, because refugees see that life in South Africa is a little bit tough...the majority are struggling.²⁵

One key informant raised a concern about the lack of availability of good quality information and evidence that supports and explains poverty as a risk factor for human trafficking.²⁶

7.3.2.3 Education Vulnerabilities

Educational opportunity is one of the driving causes of migration. Many African countries do not provide affordable quality education. The promise of education is therefore utilised as a method of recruitment by human traffickers. It is therefore the poor availability of educational opportunities in other countries that increases the vulnerability of children.

Visit the grandmother, that everything is fine in South Africa, can take this child to go and stay with me, I am going to send him to school, but when the child got here, every morning he asked the child to go out and beg, every day, every morning.²⁷

They are brought here to join family members for education.²⁸

The people deceive parents in Congo, that these children, can you give me your children, I am going to send them to school in South Africa...where the parents give the person money to take the children so that they can get to school in South Africa. The gentlemen brought the children here but the children are not going to school...the conditions under which they are living in South Africa are not of the same standard.²⁹

For a long time we had an issue with education and we still have an issue, that we don't have free education in this country...and education in this country is very expensive, such that children who are out of school and then people who come from South Africa say that education is very cheap there, I'll take you there, I'll make sure that you get into school, and also you will get a social grant there so South Africa for us here has always been a land of milk and honey. So whenever somebody promised you something in South Africa... you would want to go.³⁰

As parents are offered education for their children, as well as monetary compensation when the child is able to work, parents often consent willingly and enthusiastically to the offers made by traffickers. Parents make their children vulnerable to human trafficking with their desire to give them quality education and its long-term benefit of financial assistance.³¹

Two key informants mentioned the necessity for children to be in school as a protective measure, as the risks that children face out of school, even just for a day, were seen as a significant vulnerability. Their occupation in school limits their exposure to circumstances and people that may result in human trafficking. Education also provides children with the necessary tools for identifying when they are being recruited. High dropout rates were mentioned as a significant concern and risk factor for human trafficking. This is fed by poor access to school, particularly for children who reside far away from the school premises.

²⁴ Ibid.

²⁵ Director of the Cape Town Refugee Centre, 13 August, 2009.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Mandla Mazibuko, Swaziland Save the Children, Mbabane, 18 August, 2009.

³¹ Ibid.

As for our girls, the majority of those who are prone to being recruited or trafficked are those who are out of school, those that have dropped out of school, those who are not that well informed, not so well educated.³²

Most of the kids are bored...so they hang out on the street corner.³³

Access to school is a big problem for children... because those children who have to walk far distances to school don't get to school. We have all sorts of disruptions with taxis and strikes and children don't get to school and this contributes to children dropping out of school.³⁴

We have to protect them.³⁵

7.3.2.4 Psychological vulnerabilities

Even if people are informed and educated about human trafficking, the shame associated with the exploitation they experience prevents them from coming forward or from divulging information pertaining to their circumstances. This mechanism of shame is utilised by traffickers as a tool to hold people captive and as a tactic to prevent them from divulging information to the authorities about their circumstances and the perpetrators.

Also, when victims look for assistance, they do not usually present themselves as victims of human trafficking. This may be due to the guilt and shame associated with their circumstances. One informant explained this by saying, 'How do you talk about sex?'³⁶

7.3.2.5 Family pressures

Poor parental monitoring and other poor parenting practices place children at increased risk for human trafficking. Support networks that may have broken down in the family or in the community also place children at risk. Social tolerance of violent, abusive and dehumanising behaviours places people at risk for human trafficking. As a result, certain communities are more at risk, as they turn a blind eye towards activities that could lead to human trafficking.

Violence is a way in which people sort out things.³⁷

At one level we have turned a blind eye to the protection of children... for example, sometimes our friends go out with teenagers and stuff like that and we just sometimes turn a blind eye, and this desensitised us and them that it is okay that if you are 25 that you can go out with a 15/16 year old... these are the things that we condone..³⁸

Some families support and encourage exploitation of their offspring if it results in their bringing home money and other forms of resources. Statements made by families, such as, 'when are you going back there', indicate that some families expect children to earn money under these exploitative conditions. Family members, as protective agents for children, place children in circumstances that increase their risk of exposure to human trafficking and fail to intervene when exploitation occurs. Negative home environments, such as those characterised by abuse, encourage children to change their circumstances thereby making them susceptible to offers made by traffickers.

...and the majority of them were not living with their biological parents, they were living with abusive step parents, so life was really tough for them at home, such that, they thought life would be better on the other side of the border, and indeed they were promised a good life.³⁹

³² Mandla Mazibuko, Swaziland Save the Children. Mbabane. 18 August, 2009.

³³ Patrick Solomons, Director of Molo Songololo Cape Town. 12 August, 2009.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Mandla Mazibuko, Swaziland Save the Children. Mbabane. 18 August, 2009.

Kids are on the street because something went wrong with their home environment.⁴⁰

7.3.2.6 Conflicts and war zones

Two key informants highlighted the role played by political circumstances in countries of origin.⁴¹ There is a need to recognise the vulnerability associated with residing in a country that is suffering from political unrest. The prevailing conditions brought about by political struggle are not necessarily conditions that inhabitants are able to live with. Young children and youth may be forced into military service. There may be a lack of safety for residents and a fear of persecution or death which may force residents to search for alternative options, presenting an opportunity for human traffickers.

Most of our clients come from countries that are at war with itself or with neighbouring countries. But I think most of the time it is political unrest within the country, where there are rebels attacking, then those people sometimes become stranded in a refugee camp in a country like Tanzania, and those people are looking for means and ways of getting to South Africa, and most of the time they pay for those services.⁴²

...the soldiers are looking for the youth.⁴³

7.3.3 Services to victims of human trafficking in Swaziland

Very few services are directly aimed at aiding victims of human trafficking. As stated by one service provider 'it is not our focus... it is not our mandate'. Service providers working with victims of kidnapping, abuse, rape, and other forms of exploitation find it difficult to identify cases of human trafficking. Victims may not necessarily present their story as one of human trafficking, especially if they themselves are not aware that their circumstances are classified as such. Language barriers also prevent communication as well as limited time for interaction between service providers and victims of abuse. Contested definitions of human trafficking also prevent accurate identification of human trafficking.

Most of the people when they come to us they don't tell us they have been trafficked.⁴⁴

Talking about trafficking, you need to know what it is.⁴⁵

These problems increase the risk of human trafficking, as perpetrators are not held accountable for their actions.

Services that deal with elements of human trafficking have such limited funding that it is difficult to provide the necessary assistance to the victims. One informant said it was not adequate to send victims of human trafficking to ordinary shelters. It was his belief that they required a specific set of resources, which are not easily available and are very expensive. Providers of services that are not specifically for human trafficking victims are unable to provide the necessary assistance and are usually uncertain about how to assist them.

On the other hand, one key informant argued that it is not necessary to know whether the person was trafficked or not because, once they have accessed social services, they will be taken care of regardless. Some clients are seen to abuse the scarce resources available to victims of human trafficking. One informant expressed that many migrants knew 'how to play the victim' and are 'not as naïve as we think'. It was believed that they were no longer happy with their circumstances in South Africa and in order to gain access to assistance programmes, presented themselves as cases of human trafficking.

⁴⁰ Patrick Solomons, Director of Molo Songololo, Cape Town. 12 August, 2009.

⁴¹ Chief Gamedze, op. cit., and Fwamba Mukole, Councillor, Cape Town Refugee Centre (Wynberg).

⁴² Fwamba Mukole, op. cit.

⁴³ Chief Gamedze, op. cit.

⁴⁴ Fwamba Mukole, op. cit.

⁴⁵ Ibid.

Human trafficking may be obscured when individuals use children simply for purposes of gaining financial aid from the government. They claim money from the welfare system for looking after children but are using the children for domestic servitude or street work and may even be obtaining financial assistance from the children's parents.

[If]the person relies heavily on welfare, the first thing that that person will do is bring the children to us and then we treat them as unaccompanied minors, because we don't know, and then still, we don't know if they are still getting money for the children...and then because those people get paid for that... the parents pay.

7.3.4 Need for improved information

Better awareness of human trafficking was often recommended as the first step that is needed either to prevent or intervene in human trafficking. The following quote is a typical example:

I think the awareness, raise more awareness, more knowledge, because again, the smuggling and the human trafficking is two different things, to differentiate between the two, raising awareness, and becoming more alert, and to know the procedure, if you become aware of it, to know where to report it, what to do, you know, all the procedures yeah, I think it is about gaining knowledge and sharing the knowledge.⁴⁶

Campaigns attempting to address the lack of awareness about human trafficking are not generally aimed at foreigners. For example, they are not presented in languages that foreigners who do not speak English, would understand. As a result, foreigners may not always recognise that they may be in a potentially dangerous situation, or know where to get help.

7.3.5 Policy and the institutional interventions

Presently the government is developing a national strategy, action plan and legislation for human trafficking. The government recently established a task force to establish interim measures for protecting victims, prosecuting offenders, creating public awareness and preventing trafficking.⁴⁷ Meanwhile, the lack of legislation in Swaziland presents difficulties for officials if a case of human trafficking is suspected. They must resort to legislation such as the 'Contravention of Girls Protection Act', which addresses statutory rape, abduction and kidnapping. Otherwise, standard protocols for assisting asylum seekers or refugees are the only available option.

7.3.5.1 Border controls

The strong social and economic relationship between South Africa and Swaziland has reduced the need for strong border control. For example, children may live on one side of the border and go to school on the other, and people cross the border regularly for shopping, health care and other business.

Most people in Swaziland, more especially the places next to Mpumalanga ...do not really recognise the existence of the border. So for them, illegal border crossing, is not an issue, in fact there are some known areas along the border, designated areas, where people just cross...some of our kids in fact go to school in South Africa.⁴⁸

However, most Swazi experts believed that better border controls could assist in decreasing the hazards associated with human trafficking. They cited corruption of border officials as being conducive to human trafficking. However there was no consensus across the interviews, as some believed stricter border control would only make people more vulnerable to trafficking. This is because it increases the temptation to resort to human smuggling and the attraction of promises by trafficking agents.

⁴⁶ Susan Coetzee, op cit.

⁴⁷ Information pending.

⁴⁸ Mandla Mazibuko, op cit..

7.3.5.2 Labour law: Monitoring and enforcement

Respondents noted that national and international policy has failed to enforce the monitoring and enforcement of labour standards that would reduce vulnerability. For example, the difficulties that migrants have in gaining access to work permits force them to accept any type of work. Illegal workers cannot report exploitative working conditions. As noted earlier, domestic workers are especially vulnerable, as their conditions are rarely monitored and their access to information and assistance is often curtailed by isolation.

7.3.5.3 Criminal law enforcement

As Swazi law does not recognise human trafficking as a distinct crime, law enforcement is consequently hobbled. However, ineffective policing can also be traced to a lack of resources and possibly also a lack of institutional will. Files of missing children and people are held by Swaziland law enforcement officials, but police lack the necessary resources and procedures needed to ascertain whether such children ever have returned home. Government agencies charged with intervening and assisting victims by removing them from their exploitative circumstances are inefficient. Respondents complained that police officials fail to take action on information about human trafficking, provided by service providers. These officials also do not provide information on the outcomes of cases that might allow service providers to follow up effectively.

7.4 HUMAN TRAFFICKING AND LESOTHO

Lesotho is predominantly a country of origin for human trafficking, primarily of women and children to South Africa. The country also serves to a lesser extent as a transit and destination country. The regions with the highest levels of poverty, such as Molepolole, Maseru and Leribe are most affected. The mountain regions of Quthing, Tebellong, Qacha's Nek and Mokhotlong are among some of the poorest, but are sheltered from trafficking by the hostile topography which keeps rural people isolated from outsiders. In Lesotho, trafficking hotspots are associated with particular industries as the economy responds to demands for labour from South African border towns and the greater region. For instance, Quthing is the key supplier of farm labourers, while Leribe, Maseru and Butha-Buthe are reportedly key entry regions for mine labourers.

In this study, different regions were chosen for attention because of their specific vulnerabilities (see Table 7.1). Labour migration into South Africa, both formal and informal, serves as a cover for trafficking.

7.4.1 Measuring the extent of the problem

Government departments and civil society groups are still attempting to define human trafficking in order to assess and quantify the problem. In fact, trafficking in Lesotho takes many forms. In some cases, Basotho nationals who are already resident in South Africa or have contacts outside the country recruit victims. Simple forms of trafficking involve girls and young women recruited for sex work and domestic work.

The more complex forms of trafficking involve sophisticated supply chains involving middlemen who are called the 'cables' because of their role in linking demand with supply.⁴⁹ So-called cables prefer to take relatives or people from the same village so that when someone falls ill they can take care of each other. At one farming and mining tent, the 'master' forced males and females to pair up so as to avoid fights over women and men. One such person on their return gave reports of incestuous relationships resulting from these 'officially managed "marriages" of convenience'.⁵⁰

⁴⁹ Shackman Mugari, News Editor for Lesotho Times, Maseru.

⁵⁰ Anonymous Interviewee, Leribe.

Table 7.1: Regions/Districts and hotspot status

Region/District	Key Activities	Status of Research
Quthing	Agricultural labour Farm work	Interviews with labour, DA, Police, Immigration and returning farm workers
Leribe	Commercial Sex Work, Mining, Farm work	Interviews with Department of Labour, Immigration, Police, Commercial Sex Workers, Truck drivers, Social Welfare, Gender organisations
Mohale Dam	Commercial Sex Work , Mining	Interviews with Highlands Authorities, Commercial sex workers.
Thaba Tseka, Motlokhong	Commercial Sex Work, Mining, Farm Work	Following key interview leads

According to the International Organisation for Migration (IOM), street children from Maseru are trafficked out of the country by long-distance truck drivers, for sexual exploitation. These children are taken to South Africa, Zimbabwe and Zambia. (Martens, Pieczkowski and Van Vuuren-Smyth 2003). The IOM (2003) notes that children are either forcibly abducted or are lured to South Africa on false promises of employment. Men against Abuse is a project started primarily by truck and taxi drivers to assist victims and discourage compatriots from behaviour that harms children. Street children from Maseru are also trafficked to the eastern Free State border towns (Martens, Pieczkowski and Van Vuuren-Smyth 2003). In Lesotho as in South Africa, an inter-regional trafficking network moves girls from one region to the regional capitals.

Illegal mining (or those involved in it) in Free State is called 'zama zama' (literally 'try try' – an indication that people are trying their utmost to change their lives). The residents of the northern border towns in Lesotho sometimes voluntarily look for the 'cables' to link them with supply (this is aided movement – called smuggling). In other cases 'cables' use chiefs and parents to recruit young boys. In the village of Maputsoe (located in the border town of Leribe – one of the key hotspots), chiefs were reportedly involved in this practice.

In Leribe, there is an increasing incidence of farm boys being taken and kept captive, drugged and later unleashed into society as gangsters by kingpins. One social worker was concerned that this could be another form of trafficking. These young men are kept together with girls and forced to make money for the kingpin. If they report the kingpin or try to run away, they could be killed.

Respondents' definitions of trafficking varied according to local cultural norms. For example, respondents differed sharply on whether the domestic use of young boys for herding and 'chobeliso' (marriage-related abductions) constitutes human trafficking. Some argued that these are simply traditions, while others argued that they constitute abuse.⁵¹ This study found no reports of muti murders or trafficking in body parts in Lesotho, but the Director of Gender, Ms Matau Futho-Letsatsi, said the illegal removal of body parts for organ transplants 'ho Retla' is reported once in a while.⁵² Respondents reported that people are sometimes taken to caves for witchcraft purposes and some considered this to be a form of trafficking. Inspector Masoabi Thosa said the Witchcraft Suppression Act makes it difficult to deal with these issues because, while the Basotho people believe in witches, the law does makes witchcraft illegal. The Principal Probation Officer, Teboho Ntlakana, worried that if present customs regarding child adoption are not managed and supervised properly, they could lead to other forms of child trafficking.⁵³

⁵¹ Focus Group Discussion, Ministry of Gender, Maseru.

⁵² Interview with the Director Gender, Ms Futho-Letsatsi, Maseru.

⁵³ Interview with Ms Tebogo Ntlakana, Maseru.

7.4.2 Social factors leading to vulnerability to human trafficking in Lesotho

Lesotho is a small country of 30, 344 square kilometres, ruggedly mountainous, landlocked and completely surrounded by South Africa. Nearly 85% of Basotho households live in the rural areas and about 70% make a living from agriculture,⁵⁴ either from crop production or animal husbandry. However, soils are poor as a result of over grazing, over-cropping and serious erosion. Only one-eighth of the land is arable and agricultural output has been falling as erosion and drought reduce crop yields. As agriculture gives very little return, 54% of the people in the agricultural sector live below the poverty line.⁵⁵ Basotho workers have also faced sharply reduced demand for labour, as South Africa's diamond and gold mines decline. Massive retrenchment of Basotho men from South African mines has increased the high unemployment level, estimated at 45% in 2000.⁵⁶ Spatially uneven industrialisation has aggravated rural-to-urban labour migration.

Aggravating these problems is the rising tide of HIV and AIDS. Local statistics on HIV infection vary (even within government departments) between 20% and 60%. Life expectancy in Lesotho is currently estimated at 53 years of age, however, the epidemic has reduced the projected life expectancy to just 35 years. Another consequence in some cases is the abuse of children by caregivers, as described here:

One of the most important, but often understated, impacts of the HIV/AIDS pandemic is the effect it has on the protection of children's basic rights. We are increasingly seeing cases of the same caregivers taking advantage of children in their care, by sexually, physically and emotionally abusing them, exploiting them as domestic workers or depriving them of their rightful inheritance.⁵⁷

These conditions drive more young people to seek survival through sex work. Unable to find employment as a domestic worker or in the factories, sex worker Ntseliseng in Maputsoe explained:

Without sex work I would not survive, I cannot send my young child to school. However in this work the paying client blows the tune. Money is the priority and nothing else in this work. If he gives more money and I am really desperate I will sleep with him without a condom.

7.4.2.1 Patriarchy and gender disparities

A recent preliminary census has shown that, while the total population of Lesotho has dropped, women in Lesotho now constitute more than 50% of the population. Women are legally minors according to traditional customary law, i.e. the laws of Leretholi, and more than half of the population of Lesotho is under 18 years old.⁵⁸ This profile tends to perpetuate established customs regarding male domination and abuse of women. Of the reported rape cases in Lesotho, 50% are among teenagers and 43% of sexual abuse occurs in the home of the survivor.⁵⁹ Non-sexual social abuse also takes place with 29% of children aged 5-17 years involved in some sort of enforced labour.

⁵⁴ Central Bank of Lesotho, 2003: Annual Report for 2002, Government Printers, Maseru.

⁵⁵ Ministry of Economic Planning, 1997: Economic Options for Lesotho, ISAS, Roma. World Bank 1996: Pathway Out of Poverty: An Action Plan for Lesotho, Government Printers, Maseru.

⁵⁶ Central Intelligence Agency (CIA, 2003) — The World Factbook—Lesotho: <http://www.cia.gov/cia/publications/factbook/geos/lt.html>

⁵⁷ Interview with Mr. K. Ketso, Assistant Master of the High Court

⁵⁸ According to the Kingdom of Lesotho *Multi-Sector Country Gender Profile* (2005: 3).

⁵⁹ Figures from Lesotho Child and Gender Protection Unit (CGPU) cited at UNICEF, http://www.unicef.org/evaluation/index_49367.html

7.4.2.2 Conditions for children

Child labour is an embedded custom in Lesotho but the problem has been exacerbated by the impact of HIV and AIDS.⁶⁰ The premature death of parents has increased the number of orphans dramatically from an estimated 73,000 in 2001 to an estimated 180,000, of which 100,000 are thought to have lost both parents to the epidemic.⁶¹ This can place unbearable burdens on the extended family and children are increasingly left to fend for themselves, thus increasing the number of child-headed households. Furthermore, the death of a guardian(s) increases the vulnerability of such children, leaving them open to exploitation and abuse. The elderly face increasing hardship due to the premature death of their children and the burden of caring for orphaned grandchildren.

7.4.3 Institutional responses to vulnerability

The Lesotho government and the NGO community have accepted that human trafficking is a growing problem. A wide range of civil society groups — from church based, community based and multilateral agencies — are involved in dealing with the issue. The three key areas of strategic areas for responding to trafficking are: understanding the extent and nature of trafficking in Lesotho; increasing public awareness of human trafficking and its key elements; and creating the legal framework under which perpetrators would be punished, victims rehabilitated and prevention programmes made effective. See Table 7.2.

Responses to human trafficking include those of community-based organisations such as the Lesotho Save the Children Foundation, the Lesotho Child Counselling Unit, and the Girl Guides Association, which have a long history of dealing with human trafficking through the work they do with communities on the ground. The Sisters of the Holy Names have been working on human trafficking issues since the late 1990s, when it was not fashionable to talk about this problem. In discussions with the researchers, these groups advised that they had tried to approach government departments for help but had received minimal support.

The Sisters of the Holy Names also initiated economic projects after realising the importance of such interventions in mitigating socio-cultural vulnerabilities. It is within this kind of holistic approach that advocacy efforts can begin to yield results. While UNESCO has developed posters, pamphlets and other paraphernalia these are not likely to have much effect if people are still living in conditions of poverty.

A second group involves international multilateral organisations such as UNICEF, United Nations Development Programme (UNDP), the United Nations Population fund (UNFPA), the American Embassy, as well as NGOs such as the Women in Law Southern Africa Trust (WLSA) whose awareness of this problem is linked to the work of IOM. UNICEF launched a desktop study to try and shed more light on the problem.⁶² Units of government have had different and often varied responses to the problem. For instance the Lesotho Mounted Police Services' Child and Gender Protection Unit (CGPU) has focused on the matter more from a child and women protection point of view. The Probation Unit of the Department of Justice has had a longer connection with the issue of human trafficking and has been participating in international and regional symposia on the topic. The Department of Home Affairs and Immigration has recently become involved, as part of the South African Tsireledzani initiative, in a regional process towards understanding and responding to human trafficking. Following this process, the Government of Lesotho through the Home Affairs Department chairs the inter-sectoral committee on trafficking.

⁶⁰ A focus group discussion with the development studies and sociology students from the National University of Lesotho, (NUL).

⁶¹ UNICEF, Op Cit.

⁶² Victor Nkiwane and Lydia Muso, *Report on Human Trafficking in Lesotho* (UNICEF, Maseru 2008).

Table 7.2: Institutional Responses to Human Trafficking Vulnerabilities and their Effectiveness

<i>Vulnerability</i>	<i>Institution</i>	<i>Institutional Responses and their effectiveness</i>
<i>Economic</i>	Ministry of Agriculture and Food Security	Developing rural food security by supporting food production in the remote rural areas.
	Ministry of Gender and Millennium Challenge Account	Improve the legal framework for use of land as source of collateral for rural farmers. Improve the legal standing and recognition of women
	UNESCO Lesotho	Research and project initiatives as well as education for the vulnerable groups
	Regional Hunger and Vulnerability Project	Food sovereignty project and the support of the institutional capacity of rural producers to sustain themselves and produce more food and create agricultural jobs
	Agriculture Investment (ptv) Ltd	The research and investment in agricultural technology for rural communities.
	Embassy of the USA	Research and funding of projects for community upliftment
	Department of Social Welfare	Social development research and policy coordination as well as projects in the rural communities
	<i>Legal</i>	CGPU
Gender		Drives the policy framework for the improvement of the legal status of women from their current legal minor status. This involves addressing issues such as patriarchy and gender equality
<i>Rights of the child</i>	UNICEF	Pushing for legislation for the recognition and protection of the rights of children to human dignity. The Child Protection Bill has seen many versions send around.
	Child Helpline	Provide tips and quick response to children in distress
	Social Welfare	
	LCCU	Provide counselling to OVC and abuse children
	CGPU	Protect the rights of children and effect arrest on offenders
	Maseru Children's Village	Provide accommodation, education and holistic care to OVC and street children
	Lesotho Save the Children	Train groups and teams that work with children and familiarise them with the legal frameworks around the rights and protection of children
<i>Sex work</i>	World Vision International	Work with CSW in the area of hygiene and self-awareness
	Phela	Education on condom use
	Men Against Abuse	Truckers who help victims of trafficking to get back to their homes and take away children from relations with fellow truck drivers

7.4.4 Lack of comprehensive legal framework against trafficking

Government and civil society sources engaged with human trafficking emphasised that the lack of a legal framework impedes effective measures to combat the practice, which would include arresting and punishing perpetrators. This policing framework would not, however, address factors leading to vulnerability. Efforts to create a legislative framework to address human trafficking are underway but incomplete. Table 7.3 lists the existing laws, what they cover and what they do not.

Table 7.3: Existing Legislation in Lesotho and Gaps in Relation to Human Trafficking

<i>Legislation</i>	<i>What it provides for in respect of trafficking</i>	<i>Existing gaps in relation to trafficking</i>
<i>Lesotho Constitution, 1993</i>	Provides for fundamental human rights	Trafficking not specifically covered
<i>Children's Protection Act, No 6 (1980)</i>	Gives power to the police or probation officer to remove children from unsafe place where there is a child abduction, stealing, assault, sexual offences and any other offence involving bodily injury to a child	Does not directly address the problem of trafficking of children
<i>Sexual Offences Act, No 29 (2003)</i>	Recognises that coercion and force amounts to sexual offence; prohibits child molestations, child prostitution, commercial sex involving children	Does not specifically make the luring of a minor a crime, it only becomes one when the child is molested and aiding is not specifically mentioned.
<i>Labour Code Order 24 (1992)</i>	Prescribes the minimum standards regarding the employment of women and children and suitable conditions of work	Does not consider the victimisation of men, who are often victimised in the mining and farming sector
<i>Children's Protection and Welfare Bill of 2004</i>	A section (part viii) is devoted to trafficking and abduction of children and makes it an offence.	

The effort to develop a countrywide legal framework to address human trafficking is impeded by the legal dualism in Lesotho. Under British colonial rule, only white sectors of the society were brought under the Roman Dutch jurisprudence, while rural black society was governed under 'indirect rule' and was left to sustain traditional customary law. Under the Laws of Lerotoli, traditional relations of men-to-women, children-to-parents and other social categories were maintained in the 'tribal lands'. In the context of this framework, customs and traditions that would be considered abusive and undermining of others in another environment continue. The UNICEF study on Human Trafficking identified customs that reflected patriarchy and gender inequality as responsible for perpetuating poverty and vulnerability to trafficking.⁶³

7.4.5 Deficiencies in institutional monitoring

7.4.5.1 Technical factors (Inadequate and poorly monitored procedures)

Respondents reported that the attitude of government officials, in the immigration and passport sections of the Department of Home Affairs and in the Ministry of Labour, aids trafficking and increases vulnerability. Problems include corruption, inadequate procedures, and poor monitoring and follow up of procedures. These problems are considered per departmental function.

⁶³ Victor Nkiwane and Lydia Muso, *Report on Human Trafficking in Lesotho (UNICEF, Maseru 2008)*.

7.4.5.2 Passports, permits and border control

The border between Lesotho and South Africa is porous. In some areas it is not marked and communities from both sides find it easy to move across. The News Editor of the Lesotho Times pointed out that in some cases the Lesotho boundary is as good as non-existent and this makes it easier for recruiters ('cables') to operate at will.⁶⁴ The Lesotho passport is considered one of the easiest to acquire, especially for those with the resources. In a report following the Fifth Meeting on the Special Commission to Review the Operation of the Hague Convention of October 1980 on the Civil Aspects of International Child Abduction, the Principal Probation Officer, Ms Teboho Nthlakana (2006) reported:

Lesotho has been experiencing the problem of international child abduction as early as 1990s. Victims of cross border abduction do not always report their cases to authorities for fear of prosecution because they would have crossed the border without relevant documents. Lesotho does not have a national identity yet, making the passport the most sought after document. However, in some cases the security of the document has been found not [to be] so watertight.⁶⁵

The entry card (a data collection tool) used at the Lesotho border post is not used consistently and, when used, not all sections are utilised. The Maseru and Ficksburg border posts did not seem to use this tool as consistently as the Calendon border post, which links Butha-Buthe with South Africa. At the Calendon border post, the Lesotho Tourism Corporation placed a trained official to capture data of the visitors.⁶⁶

7.4.5.3 Checking of vehicles and cargo

At busy border posts such as Maseru and Ficksburg, not all cargo and vehicles are checked on the Lesotho side. The cargo often comes in sealed containers and, where not, is rarely checked for the possibility of compartments. Border posts do not have sniffer dogs for drugs and other contraband.

Proper checking for drugs and other contraband is better at Moshoeshoe Airport. It is reported that Bangladeshi, Pakistani and Chinese travellers, seeking to avoid the more thorough searches at OR Tambo International Airport in Johannesburg, prefer to travel through Moshoeshoe Airport. They then obtain Lesotho papers in order to then to transit to South Africa and other countries in the region. In this respect, Lesotho is a country of transit for people from Asia who may not easily get access through South Africa.⁶⁷

7.4.5.4 Labour permit and migrant activities

The high rate of unemployment in Lesotho means that the majority of Basotho who cannot find jobs in the government and civil society sectors seek employment in South Africa. This is largely the semi-skilled and non-skilled Basothos. Prior to 1994, the majority of Basotho males worked on the South African mines. Following the end of apartheid, the Basotho lament what they consider to be the infamous Buthelezi immigration laws⁶⁸ that made it impossible for new workers to be employed on the mines. These laws were followed by massive retrenchments which left the Basotho vulnerable to poverty and unemployment. Temporary and clandestine jobs still exist for Basotho in South African regions close to the borders, especially in farm labour and the illegal mining sector, as well as in the domestic sector and the booming illegal commercial sex sector.

The Department of Labour (DOL) in Lesotho plays the role of a recruitment agency. The DOL facilitates the relationship between South African farm owners and Lesotho citizens seeking farm work. In performing this role, the DOL doesn't seem to have the capacity to apply the systems for protection of workers, which are in place. Farm labour in South Africa ranges from day tasks to year-long contracts. The DOL does not ensure that the human rights of farm workers are protected. Interviews with farm workers suggested that in some cases, farmers abuse workers, fail to pay them and subtract recruitment costs from their salaries. In some farms, workers are housed in big open halls or tents with both sexes together.

⁶⁴ Shackman Mugari, News Editor, *Lesotho Times*, Maseru.

⁶⁵ Interview with Teboho Ntlakana, Maseru.

⁶⁶ Interview with Immigration Officer, Clarendon Border Post, Leribe.

⁶⁷ Interview with a South African Police official at Ficksburg border post.

⁶⁸ These laws were created when Dr MG Buthelezi was Minister of Home Affairs in South Africa.

7.4.5.5 Institutional arrangements

The Home Affairs, Public Safety and Parliamentary Affairs (HAPSPA) Ministries chair an inter-sectoral committee (IC) on human trafficking which involves the security, immigration and development cluster of departments and some hand-picked civil society groups. The choice of HAPSPA as the leading ministry on human trafficking is informed by a number of factors. The Minister is also the Deputy Prime Minister of the country, thus giving it a higher place in government and implying that the issues it takes up will quickly get to the Prime Minister and Cabinet. Security and human movement issues are also addressed in the Immigration and Public Safety ministries. However, the inter-sectoral committee has no budget, no specific mandate and no time frames for achieving its terms of reference (which in any case have not been clearly set out). It was the researcher's observation that there are disagreements among members of the committee in terms of what to prioritise, but the need for a credible data system and the development of a legal framework on human trafficking are the primary objectives.

7.4.6 Practical processes to address human trafficking

Both internal and external pressures in Lesotho have helped build public agreement that trafficking is a problem. The American Embassy based in Maseru offered workshops and brought specialists to a workshop for government and civil society on human trafficking. In 2007 and especially in 2008, the South African government began to engage the Government of Lesotho on the matter. Inter-governmental processes tended to target mostly the social development and security cluster of the ministry. Most of the time, high-ranking officials would attend the meetings (if they were in Pretoria) and junior officers (if the meetings were in Lesotho). Even so, these meetings have had limited or negligible effect on the ground.

Problems that arose regarding a UNICEF study conducted on human trafficking in Lesotho illustrate some of the sensitivities of building consensus and a coordinated strategy in the country. UNICEF commissioned a study of human trafficking in Lesotho which was completed in 2002, but the report was not adopted, as many people in government and civil society, including UNICEF Lesotho, felt that the methodology had not been inclusive of local role players. UNICEF Lesotho felt that since UNICEF had awarded the research project and was driving the process, the researcher ought to have included them and talked to them during the research process. Social welfare also felt that as a leading welfare agency in the country they needed to have played an important role. Other NGOs organised under LECONGO expressed similar concerns. Accordingly, the report never proceeded from the draft to a full accepted reference document on human trafficking in Lesotho. A decision was later made that a UNESCO-led task team would interact with the document and address issues of controversy.⁶⁹ This second round of work interacted with a wider range of players and gave more stakeholders the opportunity to give input. But this history, and the demonstrated tendency to politicise action on human trafficking, suggests that more serious leadership is needed in order to translate statistics, reports and committee work into concrete action and effective programmes.

7.5 HUMAN TRAFFICKING AND ZIMBABWE

The IOM has confirmed that Zimbabwe is a source and transit country for human trafficking. Respondents in this study accepted that human trafficking is a problem in Zimbabwe. However, little has been done to combat the problem and the Zimbabwean government and the civil society sectors are not in agreement as to its extent. Indeed, despite certain public-awareness campaigns, the present study found that human trafficking is still not generally understood by the public. For this research, preliminary discussions of the problem and its definition was required before people would relate stories of relatives, neighbours or acquaintances who had disappeared, possibly as a result of trafficking.

⁶⁹ This Lesotho report has been able to go beyond the Nkiwane-Muso report by including more stakeholders and bringing specific examples and anecdotes. It is significant that the field worker for this report engaged other players such as the Sisters of the Holy Names who have been engaging with human trafficking for a long time. The extent to which non-institutional players have been engaged, as well as the focus on vulnerability, makes the context and focus of this report different from and complementary to the Nkiwane-Muso report.

The study of human trafficking in Zimbabwe encountered unique obstacles due to the extreme economic hardship in the country.

7.5.1 Measuring and contextualising the problem

No reliable statistics have been gathered on human trafficking in Zimbabwe.⁷⁰ One attempt to establish the extent and nature of trafficking was led by the IOM. It conducted a situational survey on the extent of child trafficking in the country between 2007 and 2008, titled *Assessment to Establish Knowledge on Child Trafficking* in partnership with the Government of Zimbabwe and the United Nations Children's Fund (UNICEF). This project went beyond identifying vulnerabilities to identifying possible hotspots. During the process of the research, it became clear that hotspots do not exist per se, but that ports of entry (border posts and towns) require special attention as transit points for victims of trafficking. Pending hard data, the scale of human trafficking is difficult to assess. This challenge of quantification partly reflects the long history of migrant labour in Zimbabwe as a central African hub for providing workers to the mining regions of South Africa. Furthermore, it makes it difficult to distinguish victims of trafficking from workers who are smuggled or are merely absent from home for long periods of time. Movement from Zimbabwe into the neighbouring countries – especially Botswana and South Africa as well as Mozambique and Zambia — is often made possible by human smugglers. Police and customs officials at the Beit Bridge Border Post reported that children and women may be trafficked through their border post, but the high incidence of 'aided' (legal and illegal) crossings makes it difficult to identify victims and perpetrators.⁷¹

According to Amanda Porter of the United States Embassy in Matebeleland South, some villagers who had not seen or heard from their men for long periods of time feared that they could have been trafficked to the illegal mining activities in Chiadzwa (outside the eastern town of Mutare) in Marange district. Illegal diamond mining in this area had recently become a major attraction for people from many parts of the country, some of whom were 'forced labourers'.

Notably, the political atmosphere had compromised the integrity of government services and authorities and their capacity to act responsibly regarding human trafficking. It was reported that senior government officials, especially those from the security cluster, commonly conducted raids to extract the unpaid labour of poor people in the diamond sector. Since Matebeleland is dry and the main source of livelihood, agriculture, is in decline, it was easy to attract victims by promising work elsewhere. The *Trafficking in Persons Report 2009* suggested that Zimbabwean security forces consolidated their control of mining in the Marange region by forcing members of the local population to mine for diamonds.

Generally, conditions at border crossings were not conducive to police enforcement. For example, syndicates and entrepreneurs regularly helped people to cross the borders with the express knowledge of officials who, for a 'token', allow this to happen. However, government officials denied involvement in or knowledge of this problem even if many people knew who was involved.⁷² However, even honest officials may have had difficulty in spotting human trafficking because of the high density of cross-border social ties that resulted in young people and women regularly crossing the border in ways that could be legal or harmless. For example, whole villages in areas such as Chiredzi and Matebeleland South were known to have one or more people per family working in South Africa. As a result, girls crossed into South Africa accompanied by elders and the girls claim to be going to join their parents for holidays. A captain at the Musina Police Station, who spoke on the condition of anonymity, indicated that most of the time, border officials were not able to implement the minimum checks that could help identify victims and perpetrators.⁷³ For instance, he mentioned a case where a young girl in the company of a man who claimed to be her uncle did not know the so-called uncle's name. The official phoned the parents of the girl who confirmed that this man had been asked by them to bring the girl for holidays on a pay-forward system. The officials then allowed the girl to proceed. In a case where the parents do not know

⁷⁰ The IOM had done research and data collection but was not able to share the information, as it had not yet been published at the time of writing this report.

⁷¹ Interview with Zimbabwe Republic Police and Customs Officials, Beit Bridge Border Post.

⁷² Interviews, Mutare.

⁷³ SAPS Police Captain, Musina.

the accompanying person, police would call them to come and collect the child. In other cases, however, over-worked and under-resourced officers could not keep such girls for the required time for this, so they were referred to Save the Children.

Although most respondents agreed that human trafficking is a problem and discussed the dynamics enabling it, in Musina, the police declared that not a single case had been presented to them for investigation. Enablers of human trafficking were well known – referred to as *malaichas* or *gumagumas* – some of them even with connections and means to organise official documents illegally. Some enablers were truck drivers that connected commercial sex workers with ‘receptionists’ for brothels in different locations within SADC. Yet arrests and prosecutions appear to be rare if not unknown.

7.5.2 Forms of trafficking, displacement and luring tricks

In Zimbabwe it was difficult to identify trafficking hotspots as the offence is subsumed within general migration, socio-economic and political instability, with citizens highly vulnerable to multiple forms of abuse. The challenge was tracking human trafficking in the border areas and the border communities of Beit Bridge (with South Africa) and Manica (with Mozambique) for this study. Time did not allow for the same exercise to be carried out at the Plumtree border with Botswana and the Kariba border with Zambia. The eastern border regions of Chipinge, Cheche, Chimanimani, Rusitu, Mutsvangwa and Chikore constitute significant recruitment zones for labour for South African mines and farms. Traditional migrant labour communities in Matabeleland north and south, such as Gwanda, Bulawayo and Chiredzi, are also heavy recruitment areas. But in a country of widespread economic difficulties, it was difficult and unrealistic to locate a human trafficking hotspot as people move around a continually in pursuit of opportunities.

Indeed, in a sense the entire country has become a trafficking hotspot. With the inception of wide-scale land grabs and the land occupation movement (LOM), internal displacement in Zimbabwe has become rampant and the lures of human traffickers have special appeal. The notion of South Africa as *Egoli* (the land of gold) makes it an enviable destination with promises of better jobs and a decent life. Promises by traffickers of scholarships, work permits and travel documents that will grant access to a good salary in a distant land are especially tempting in this setting.

Respondents confirmed that perpetrators of trafficking are generally powerful people, known to the victims, and who have political connections. They could be large-scale business people who have money and power to operate cross-border trafficking networks. Others are simply worldly-wise women and smaller-scale entrepreneurs who have the necessary contacts.

A second category of perpetrators is ZANU youth militias, who were activated during the violence associated with the 2002 elections, the March 2008 presidential election and June 2008 run-off elections. These marauding gangs abducted and held an unknown number of women and girls, particularly opposition supporters, in sexual and domestic servitude at command bases. According to the IOM, this extended to several cases of human trafficking.

Zimbabwean women and children are trafficked for domestic servitude and sexual exploitation, including in brothels, along both sides of the country’s borders with Botswana, Mozambique, South Africa and Zambia. Young men and boys are trafficked to South Africa for farm work, often being forced to labour for months in South Africa without pay before ‘employers’ have them arrested and deported as illegal immigrants. Small numbers of Zimbabwean men are trafficked for work in Mozambique’s construction industry. Men, women and children from the Democratic Republic of the Congo, Malawi, Mozambique, and Zambia are trafficked through Zimbabwe en route to South Africa.

Young women and girls are lured to South Africa and potentially to other countries with false employment offers that result in involuntary domestic servitude or forced prostitution. In one case, a businessman from Matabeleland was alleged to be trafficking girls to South Africa for modelling. In some cases, trafficking is difficult to pinpoint as Zimbabwean women come to South Africa looking for jobs and move into the sex

industry or work as domestic servants. It becomes difficult to tell the difference between those who do so willingly and those who have been enticed into it and kept in the sector against their will.

7.5.3 Social factors leading to vulnerability to human trafficking in Zimbabwe

As noted, in Zimbabwe, the main social factor increasing vulnerability to human trafficking is the free-fall economy, which is no longer able to sustain most of the nation's population. In 2008, the UN Office for the Coordination of Humanitarian Affairs reported that unemployment had reached the 95% level. The land reform process cut productivity drastically, throwing hundreds of thousands of workers out of jobs, and new farmers lacked farming equipment. Drought conditions in some parts of Zimbabwe aggravated the rural poverty crisis. In urban areas, many companies have downsized or closed entirely, leaving more workers jobless. In recent years, the Zimbabwean currency has been subject to inflation, sometimes at rates of a million percent and many have lost their savings to the poor banking system. Consequently, levels of poverty have skyrocketed and many people are now engaged in informal trading.

Under these conditions, maintaining historical migrant labour links with South Africa has become a key survival strategy, as Zimbabwe's urban, commercial and rural economies have collapsed. Labour migration to South Africa, estimated at over 3 million (out of a total population of about 12 million), reflects the desperate search by individuals for jobs as well as the urgent need for funds to support families left at home.

7.5.3.1 Children and youth

This situation has drastically affected children and youth in several ways. For example, since 2007 schools have found it difficult to remain open throughout the learning year. Economic hardships force children to buy and resell goods to pay school fees because parents are not employed or earn too little money to sustain the whole family. As millions move around in search of work or undertake desperate measures to support families, normal supervision and protection of children and young people has been compromised and young people's vulnerability to exploitation has increased. The crisis has pushed more young people to seek jobs or any form of income outside the Zimbabwean economy, but without proper documentation children can easily fall victim to those who make promises of assistance.

Shantytowns and townships were established as dormitory zones for workers in urban centres. In the context of unemployment, the prospects of finding employment for young people in these areas is very low so they become prone to vice and vulnerable to abuse. The situation has discouraged the practice of migration from rural to urban areas, with many seeking to leave the country for South Africa instead. Unfortunately, people from rural communities generally lack the information they need to survive the pace of life in big cities and therefore tend to depend more on the goodness of strangers. This often leaves them vulnerable to abuse.

7.5.3.2 Cultural factors

Respondents indicated that, in this dire economic setting, traditional norms in extended families sometimes increase rather than reduce the vulnerability of children to exploitation and abuse. Young girls of 14-15 years, in both rural to urban areas, are sometimes recruited by relatives who force them to work as domestic servants and child labourers as well as perform sex work. Family patronage is exerted here as a system of food for work. The same dynamics were believed to create openings for human traffickers who promise the family various rewards, although this study could not determine the extent of this pattern.

Some cultural practices and beliefs put women and girls at special risk. One such practice in Zimbabwe is virginity testing. The stated aim of the practice is to encourage chastity for purposes of marriage and to curb HIV infection, but sex traffickers are reported to hover around the testing site to identify those who have proved to be virgins. Therefore, apart from forced marriages, such girls face the added danger of being recruited for prostitution or being trafficked within or across the country's borders.

As noted in other sections of this report, controversy arises around whether some traditional practices constitute human trafficking. For instance, in the practice of *kuripa ngozi* (appeasing the dead spirits), a member of the family—usually a girl—is married without her consent.

Finally, the level of political violence has created a political culture in which Zimbabweans are generally cowed into silence against apparent abuse. As complaints can be interpreted by the ruling party as political dissent, people have become fearful to stand up for their rights.

7.5.4 Institutional inaction and lack of comprehensive legal framework

According to the US Department of State *Trafficking in Persons* 2009 Report, the Government of Zimbabwe does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government made minimal progress in combating trafficking in 2008, but the situation worsened when members of the military and the ruling party's youth allegedly perpetrated acts of trafficking on local populations. The government's anti-trafficking efforts were further weakened as they failed to address Zimbabwe's economic and social problems during the reporting period. There is no legislation in place to curb human trafficking. The legal and justice system admitted that no investigation or prosecutions are forthcoming on the subject of human trafficking in Zimbabwe.

In addition to lacking up-to-date qualitative and quantitative data on the subject, the Government of Zimbabwe does not have sufficient mechanisms and resources to prevent trafficking, protect victims and prosecute the perpetrators of trafficking, according to the report. Besides the International Organisation of Migration (IOM), other civil society organisations work with the government on issues pertaining to human trafficking and child abuse. Nonetheless, the general level of awareness about this social issue remains low.

Most child and human welfare organisations in Zimbabwe use IOM information about human trafficking as their point of reference. These civil society organisations which work in conjunction with the IOM include the Musasa project, Oasis Zimbabwe, Childline, Justice for Legal Children's Trust, the Women and Law in Southern Africa Research & Education Trust (WLSA), the United Nations High Commissioner for Refugees, Simukai Centre as well as the United States Embassy. They all display and distribute posters of human trafficking, which are available in the three official languages of Zimbabwe (Shona, Ndebele and English). These posters describe what human trafficking is and explain that it has two forms, internal (local) and international (cross-border). OASIS Zimbabwe runs the 'Stop the trafficking' campaign and together with WLSA has drafted a 2010 signatures document against Human Trafficking.⁷⁴ The gist of their mission is to pressure the Government to criminalise human trafficking and promulgate relevant legislation and mechanisms by the year 2010. The Zimbabwean Republic Police (ZRP) Victim Friendly Unit and the ZRP Interpol office are also working with these civil society organisations.⁷⁵

⁷⁴ Interview at OASIS, November 2009, Harare.

⁷⁵ Interview with Musasa Project Officials, November 2009, Harare.

CHAPTER EIGHT: MIGRATION AND HUMAN TRAFFICKING

INTRODUCTION

This chapter addresses two general questions: the characteristics of cross-border migrants and the extent of migration from neighbouring countries; and the interrelationship between human trafficking and migration, in the context of globalisation.

8.1 METHODOLOGY

The methodology adopted included three stages:

1. Literature review covering both South African and international sources regarding aspects of human trafficking and migration;
2. Statistical survey of data, including data from the Statistical South Africa 2007 Community Survey and the Migration and Tourism Reports to identify rural-urban migration patterns and characteristics of migrants as well as tourism and travel patterns.
3. Qualitative interviews¹ were conducted with:
 - Department of Home Affairs²: 13 officials.
 - Department of Labour³: 21 labour inspectors and team leaders.
 - International organisations: Officials from the International Organisation for Migration and the Southern African Immigration Liaison Team were interviewed.
 - Non- governmental organisations: Interviews were planned with selected NGOs in bordering areas and in Cape Town, Durban, Port Elizabeth and Durban, but due to duplication with other components of the project, only three interviews were conducted with NGOs in Pretoria.
 - Consular officials: Interviews with consular officials of foreign countries in South Africa that had been conducted in another component of the broader study were incorporated into this study.

8.2 CLASSIFICATION OF MIGRATION

Kok et al. (2003: 11) define migration as the 'permanent or semi-permanent movement of households and individuals (sometimes also within a defined time period) ... in different migration-defining areas within the same country or in different countries.' Different kinds of migration can be distinguished according to the motives driving them (economic, family reunion, refugees), or the legal status of migrants. Migration can also be classified based on whether the move was voluntarily or involuntarily, and temporary or permanent. Relevant here is the difference between human trafficking and other kinds of human movement by groups such as illegal migrants, refugees and human smugglers.⁴

¹ Interviews with the South African Police Service were planned in Cape Town, Port Elizabeth, and Durban, but permission was never received so this component could not be completed.

² The initial intention was to interview immigration officials in Mpumalanga, Free State, and Limpopo; at the Cape Town and Durban ports; at the OR Tambo and Cape Town International airports; and at the National Department of Home Affairs. The Department of Home Affairs only granted permission to interview officials in January 2010. They recommended that we only interview immigration officials in Mpumalanga and the Free State, including at the ports of entry with Mozambique, Swaziland and Lesotho, members of the Inspectorate as well as senior and middle level management from the national department.

³ Interviews were conducted with labour inspectors and team leaders in selected areas the Western Cape, Limpopo and Mpumalanga. The provincial heads of the department guided the project team in the selection of the areas. DoL only granted permission to interview their officials towards the end of November 2009, such that planned interviews could not be conducted in Gauteng.

⁴ Truong (2006: 17) however, remarks 'knowledge about the intersection between migration and trafficking has not yet brought about any consensus on the underlying forces and their implications for the well-being of children and women.'

- *Labour migration* refers to the periodic movements of individuals to take up employment. Labour migrants are usually unaccompanied by their households (Kok, et al. 2003).
- *Irregular/undocumented/illegal migration* is the movement of a person to a new place of residence or transit using irregular or illegal means, without valid documentation or by carrying forged documents.
- *Refugee* refers to a person who 'owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country' (UNHCR Definitions and Obligations, Article 1, in *The 1951 UN Convention Relating to the Status of Refugees*). In 1969 the OAU (now African Union) adopted a broadened definition to include any person who is forced to leave his or her habitual residence due to aggression, external occupation, foreign domination, or events seriously disrupting public order in a part or the entirety of his or her country of origin or his or her country of nationality (UNHCR Definitions and Obligations).
- *Human trafficking* is defined by the Palermo Protocol as 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.'
- *Smuggling* is distinguished from trafficking in that smuggled migrants are assumed to have consented to being smuggled. Legislatively, the two differ also in that smuggling is recognised as a crime only if it occurs across transnational borders, while trafficking legislation includes in-country migration for trafficking purposes. Smuggling is also differentiated from trafficking in terms of the intention of the perpetrator, i.e. to assist someone to cross a border illegally.

These definitions make it clear that migration, trafficking and smuggling are separate but inter-related practices. For instance, irregular migrants may be assisted by a smuggler who will facilitate illegal entry into the country for a fee, but on arrival at the destination the migrants are free to make their own way and normally do not see the smuggler again. Trafficking, however, is fundamentally different as it involves the movement of people specifically for the purposes of exploiting their labour or services. The vast majority of trafficked people are migrant workers who hear about well-paying jobs abroad through family and friends, recruitment agencies or other individuals who offer to find them employment and make the travel arrangements. For most trafficked people, only after they arrive in the destination country do they realise that the work they were promised does not exist and they are forced to work in jobs or conditions to which they do not agree (Kaye 2003).

Trafficked people can enter the country of destination legally, or illegally with false documents, or clandestinely. Even if the migrant has entered legally traffickers normally take away passports and other travel documents so that the migrant cannot prove that they have a right to be in the country (Kaye 2003).

Generally, labour migrants do not belong to the poorest strata of the population, although they may come from very poor countries. The ILO (2005: 56) indicates that trafficked victims, by contrast, come from the poorest countries and poorest strata of the national population.⁵ Migration requires financial and social capital to which many trafficked victims do not have access. They are therefore more vulnerable than other migrants as they have to borrow money from agents, including traffickers, prior to departure. They are badly informed about legal employment opportunities abroad and may come from remote areas and lack social networks.

⁵ Researchers such as Sanghera (see CoRMSA/Consortium for Refugees and Migrants in South Africa 2009) and others cited in Pharoah (2006) find that trafficked victims, as is the case with labour migrants, do not belong to the poorest strata of the population.

8.3 INTERNATIONAL MIGRATION TO SOUTH AFRICA: PATTERNS, TRENDS, NUMBERS AND ORIGINS

South Africa has experienced a long history of immigration but the shape, scope, and scale of migration has changed significantly since the democratisation of South Africa in the early 1990s. The roots of these changes are multiple. The opening of the country's borders after the end of apartheid in 1994 attracted hundreds of thousands of people from across the African continent, Europe and Asia into the country. The mixed flow of migrants who have entered South Africa since the 1990s includes both skilled and unskilled labour migrants in search of better prospects, business persons seeking a lucrative environment for investments, political refugees and asylum seekers fleeing from persecution and wars in their home countries and members of organised criminal syndicates. The new democracy is also attractive to people who would previously never have considered (or been able to) to move to South Africa (Crush & Williams n.d).

Despite the lack of official figures, it seems that women constitute an increasing proportion of migrants to South Africa. They migrate more and more to South Africa of their own accord and not because they are simply following their spouses and partners. They are entering across the spectrum of migrant categories: documented and undocumented, skilled and unskilled workers, and as part of the movement of entrepreneurs engaged in cross-border trade. However, Crush, Williams & Peberdy (2005) note that women migrants are more likely to be involved in less skilled and informal work and may therefore be more likely to be irregular migrants, as it is harder for them to access legal migration channels.

8.3.1 Reasons for international migration

International migration to South Africa is driven by several factors. Deteriorating economic conditions in home countries — e.g. high unemployment rates, low wages, and growing urban and rural poverty — have compelled many migrants to leave their countries of origin in search of better lives. Political tension, marginalisation of minority ethnic groups, civil war and ecological deterioration in some origin countries have also contributed to migration into South Africa (Adepoju 2006). South Africa's dominant economic position in the region has made the country a preferred destination not only for regional migrants, but also for migrants from the rest of Africa. Furthermore, economic prosperity and attempts to embed South Africa into the global economy, coupled with high rates of emigration by skilled workers, have led to increasing opportunities for skilled migrant workers. The impact of HIV/AIDS on rural livelihoods, already threatened by poverty, food insecurity and insecure access to social services, has increased cross-border movements in the SADC region. The existence of social networks linking South Africa and sending countries is another important factor facilitating migration to South Africa (Todes et al. 2007).

8.3.2 Migrant numbers

One of the most contentious issues in the migration debate in South Africa is the number of foreign nationals currently living in the country. Although official figures of legal border crossings are readily available, it is not clear how many people are in the country illegally. There is no reliable research methodology for determining the actual total number of immigrants in South Africa (McDonald 1999). The only hard indicator is indirect: since the 1990s, and especially after 1994, the number of people being granted permanent residence has steadily declined. For example, in 1990, 14 499 immigrants were granted permanent residence, while only 3 817 permits were issued in 2007 (Department of Home Affairs 2008). Crush and Williams (n.d: 4) attribute this trend to 'a shift in policy and implementation of legislation towards a more restrictive fortress stance'. This policy is assumed to favour illegal migration and residence.

The numbers of foreign nationals living illegally in South Africa can therefore only be estimated through indirect evidence, such as deportation figures. For example, in the period 2007/2008 312 733 illegal foreigners were deported (DHA 2008: 62). But these figures refer only to people apprehended and do not distinguish between first-time offenders and people who are deported multiple times when they re-cross the borders illegally immediately after deportation (Landau 2007; CDE 2008a).

The 2007 Community Survey (a national representative survey conducted by Statistics South Africa, and the most recent official source) estimated the number of foreigners in the country as a whole at 2.6% of the population (or 1.26 million people) (CDE 2008b: 3). This may represent an undercount since undocumented migrants often choose to be invisible and will not readily participate in a national census.

8.3.3 Tourism and travel patterns

Since 1980, the number of foreign travellers to South Africa has steadily increased from 650 000 to the 9 728 860 visitors recorded in 2008 (StatsSA 2009b).

Statistics South Africa (StatsSA) provides detailed information on recent tourism and travel patterns of international visitors in its Tourism 2008 report. According to the report, foreign arrivals to South Africa are predominantly residents from the SADC countries with very few from the Middle East and North Africa. Consequently, out of the 9 728 860 foreign arrivals in 2008, 7 226 736 (74.3%) originated from SADC countries; 1 447 823 (14.9%) from Europe; 351 158 (3.6%) from North America; 230 343 (2.4%) from Asia; 122 382 (1.3%) from Australasia; 80 659 (0.8%) from East and Central Africa; 75 315 (0.7%) from West Africa; 65 002 (0.7%) from Central and South America; 39 448 (0.4%) from the Middle East; and 12 704 (0.1%) from North Africa. The country of residence of 77 279 (0.8%) arrivals was not specified. Of SADC foreign arrivals, 30% originate from Lesotho, followed by Zimbabwe with 17% (StatsSA 2009b) (See Table 8.1).

An overwhelming majority (93.3%) of foreign arrivals in 2008 were admitted into the country on visitor's temporary resident permits. In contrast, relatively few visitors came to South Africa for business (1.9%), work (1.4%) and study (1.1%).

Table 8.2 shows the number of persons arriving in South Africa from Thailand, China and Taiwan. The arrival figures⁶ from these countries are given for the years 2000, 2004 and 2008. The number of citizens from China arriving in South Africa in 2008 is more than double the number counted in 2000. Since 2000 the number of people arriving from Thailand increased by 1 400 to a total of 8 200 in 2008.

Table 8.3 shows travellers from the following Eastern European countries: namely, Belarus, Bulgaria, Czech Republic, Hungary, Moldova, Poland, Romania, Russia, Slovakia, and Ukraine. Visitors from Russia and Poland increased substantially between 2000 and 2008 while visitors from other Eastern European countries increased more moderately.

A number of reports indicate that Thailand, China, Taiwan and countries of Eastern Europe are areas of origin for trafficked victims to South Africa. Relatively small numbers of visitors originate from Eastern European and Asian countries, which can simplify monitoring activities of human trafficking to South Africa. Monitoring traffic from African countries is much more challenging due to the large number of foreign visitors that frequent South Africa's borders and the different means of transportation which are used to enter the country.

⁶ Statistics South Africa stopped classifying immigrants by sex after 1994. It is thus not possible to differentiate between genders after 1994.

Table 8.1: Foreign arrivals: Origin of visitors by region (2008)

Source: StatsSA Report (2009b)

Regions	%
SADC countries (Lesotho 30%, Zimbabwe 17%)	74.3
Europe	14.9
North America	3.6
Asia	2.4
Australasia	1.3
East and Central Africa	0.8
West Africa	0.7
Central and South America	0.7
Middle East	0.4
North Africa	0.1
Unspecified	0.8
Total foreign Arrivals	100 (9 728 860)

Table 8.2: Asian travellers to South Africa from selected countries for the periods 2000, 2004 and 2008.

Source: StatsSA Tourism 2002, 2008 and 2009.

	2000	2004	2008
Thailand	6 699	5 911	8 173
China	19 722	46 050	40 275
Taiwan	15 825	16 493	12 879

Table 8.3: Eastern European travellers to South Africa for the periods 2000, 2004 and 2008.

Source: StatsSA Tourism 2002, 2008 and 2009.

	2000	2004	2008
Belarus	4	115	670
Bulgaria	1702	2813	2517
Czech Republic	3338	4363	6947
Hungary	2518	3535	3155
Moldova	none	none	140
Poland	5282	6839	10819
Romania	1008	1196	2447
Russia	6207	8610	13664
Slovakia	807	1060	2264
Ukraine	2101	4101	4968

8.3.4 Human trafficking and sex tourism

Supported by globalisation and the birth of the digital information age, the commercial sex industry has reportedly expanded greatly and became closely integrated with other aspects of modernisation. There is a demand for a constant supply of women and children to the commercial sex industries. This industry is often closely tied to tourism of both domestic and foreign origin, with some countries specifically promoted for their sex tourism attractions. The sex tourism industry is regarded by UNESCO (2007) as one of the main explanatory pull factors of human trafficking.

However, Pharoah (2006) cautions that although many believe that globalisation has led to increased levels of trafficking associated with sex tourism, a recent report by UNICEF on child labour revealed that the impact of sex tourism on trafficking may be overestimated. It is claimed that over a million children are exploited annually in the commercial sex trade, with the growth in global tourism being cited as the main reason why vulnerable children are drawn into high-risk situations in the hope of earning some of 'the tourist dollar' (Global Affairs 2005). Information that children can be obtained for cheap sex spreads fast via electronic means drawing 'sex-tourists' to such destinations (Allais 2006).

Child sex tourism involves people who travel from their own countries to another and engage in commercial sex acts with children. The sexual exploitation of children has devastating consequences, which may include long-lasting physical and psychological trauma, disease (including HIV/AIDS), drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death. Tourists engaging in child sex tourism often travel to developing countries looking for anonymity and the availability of children in prostitution. The crime is typically fuelled by weak law enforcement, corruption, the Internet, ease of travel, and poverty (Global Affairs 2005).

In South Africa, claims by academics are made that the country is becoming a major destination for underage sex tourism especially in Cape Town, Johannesburg, Port Elizabeth and Durban. Although unsubstantiated, estimates of children in prostitution in South Africa range between 28 000 and 30 000, approximately half of whom are said to be between 10 and 14 years of age, and the other half between 15 and 18 years old (Molo Songololo 2000). It is also reported that young girls exploited in commercial sex stem both from within the country and from different parts of the region including Mozambique, Angola, Zimbabwe, Lesotho, Swaziland, Zambia, Cameroon, Malawi, Rwanda, Senegal, Kenya, Tanzania, Uganda and Ethiopia (ILO-IPEC 2002).

The city of Cape Town has on numerous occasions been central in debates on the scope and size of sex tourism in South Africa, as Cape Town is considered as one of the world's top ten sex tourism destinations. The sexual exploitation of children has also received much attention with organisations such as Molo Songololo focusing their efforts against the sexual exploitation of children in the Western Cape. Ways to prevent South Africa and Cape Town in particular, from becoming a preferred sex tourism destination like Thailand and Kenya, have been debated. These debates were sparked by calls from the tourism fraternity in 1999 to increase the city's share of the world tourism market by promoting it as a world-class destination for sex. However, in 2008 the city of Cape Town agreed to adopt an international code of conduct to discourage sex tourism. Measures to prevent the use of hotels and tourist spots for the commercial exploitation of children have been part of Cape Town Tourism's planning and visitor strategy for 2010, when sex tourism is expected to boom.

Johannesburg, as a sex tourism destination, has also received some attention in the media with the prosecution of a Swiss 'sex tourist' caught sodomising a 14-year-old boy from Alexandra township in 2005. However, unlike in countries such as Canada, it is difficult to establish how often sex tourists are arrested in South Africa because these offenders are charged with indecent assault or rape and not on account of sex tourism (Van Schalkwyk 2007).

A report by Pharoah (2006) underscores the shortcomings of sex tourism research in South Africa. She maintains that the majority of sex tourism research reports make a passing reference to the crucial role of demand in driving trafficking networks, but demand-side factors are not explored in any depth. She continues that the authors of reports for the International Organisation for Migration and Molo Songololo make the connection between trafficking and the sex industry's demand for 'fresh faces', but they do not examine in any

detail the perceptions or attitudes of those who use the service. Combining interviews with potential and actual sex tourists, with information from Internet-based sex guides such as the 'World Sex Guide' could provide preliminary data on an issue that remains largely un-researched in South Africa (Pharoah 2006).

8.3.5 Refugees and asylum seekers

Research by UNESCO (2007: 22) indicates that women and children are being trafficked from extra-regional countries amongst others by men established in South Africa as refugees, who exploit their family members on arrival. It is thus useful to provide a short discussion on the refugee population in South Africa.

By the end of 2008 the United Nations High Commissioner for Refugees (UNHCR) estimated that there were 2.1 million refugees in Africa (UNHCR 2009a) of whom South Africa hosted a total of 270 671 refugees and asylum-seekers by the end of January 2009. Of those, 43 546 people were refugees and 227 125 asylum-seekers originating primarily from Angola, Somalia, Burundi, Rwanda, the Democratic Republic of the Congo (DRC,) and Zimbabwe (UNHCR 2009b). However, in 2005 the UNHCR (2005: 5) estimated that as much as 80% of the undecided applications received by South Africa, originated from countries in which there are no conflicts. These people are economic migrants using the system as a way to legitimise their stay in the country. Landau & Wa Kabwe Segatti (2009: 32) note that the prevalence of Malawians, Tanzanians and citizens from other peaceful countries amongst asylum seekers indicates that many economic migrants, unable to obtain immigration documents, use the asylum system to enter South Africa.

The profile of the refugee population in South Africa is not similar to the typical African pattern, but rather resembles refugee situations in some European and other industrial countries (being mainly individuals of working age). South Africa has no refugee camps, but an entirely urban-based refugee population concentrated in the cities of Johannesburg, Pretoria, Durban, Cape Town and Port Elizabeth (UNHCR 2009b).

8.4 INTERNAL MIGRATION

The following section provides a brief overview of internal migration patterns and trends in South Africa. By considering the internal migration patterns in South Africa, in particular the characteristics of the migrants, the size of the movements and the spatial direction of the movement of people, we obtain an overview of the general movement of the South African population.

Documented reports exist of human trafficking occurring within the boundaries of South Africa, i.e. a victim originates from within the country and is trafficked to the same or another area in the country. However, movements as a result of trafficking constitute only a minute fraction of the general movement of people in the country.

By analysing the broad migration trends, one may obtain at most, some idea of the possible areas of origin and destination of trafficked persons.

8.4.1 Context of migration in South Africa

Current urbanisation and migration trends in South Africa remain largely a reflection of past efforts to control the settlement and movement of people, both within and from outside the country. Thus, the pattern and trend of human settlement is based on past policies and is only changing very slowly. Kok et al. (2003: xiv) points out that administrative and structural arrangements in the country have a direct and pervasive influence on migration and that despite political and economic changes, 'migration patterns are essentially a continuation of patterns that predate the abolition of apartheid in South Africa'. One reason is that 'very poor rural people, trapped in the legacy of the apartheid homeland policy, have probably found it difficult to escape from their situation' (Wentzel & Tlabela 2004).

Temporary labour migration was a feature of nineteenth century colonial South Africa as well as of the twentieth century. The system of circular internal labour migration was associated with legislation that inhibited and controlled the urbanization of Africans. An assumption existed that the abolishment of movement control

mechanisms would end migrant labour and that people would rather migrate and settle permanently at the places where they work. However, Posel (2003: 1) suggests that there is no evidence nationally to support the assumption that circular labour migration ended or even declined during the 1990s. On the contrary, temporary labour migration within the country appears to have increased, driven particularly by the rise in female migration.

In the South African context insecure labour market conditions seem to be a key reason explaining why circular migration persists (Posel 2003: 1). While mining is still largely undertaken by migrants, its importance as a source of employment for circular migrants has been replaced by a wider set of usually poorly paid and insecure work, such as domestic work, driving, construction, security and the like (Todes et al 2007). As men's work has declined, women have increasingly become labour migrants (Posel 2003). Although permanent settlement in urban areas is now possible, land in rural areas continues to represent a 'sense of security, identity and history and a preferred place for retirement' (Posel 2003: 1). The high cost of living in urban settlements may also be an important factor, while the care of young children provided by the rural household makes it possible for working-age women to move in search of work (Posel 2005). Although circular migration provides vital income support, the majority of African migrant households in rural areas are poor (Posel 2005). In addition, labour migrants are more likely to come from poor provinces (Gelderblom 2006). With rising unemployment among the unskilled, it was thought that the payoffs for rural workers of moving to the cities would have fallen drastically, resulting in a decline in labour migration from the impoverished rural areas. This has, however, not happened (Posel 2003). An important point made by (Collinson et al. 2005) is that households with a temporary migrant, or those with livestock assets, are the households that survive the legacy of the former 'homeland' system.

The migration literature also points out that the poorest of the poor are unable to migrate, since they do not have the necessary finances or the kind of social networks that migration requires (Collinson et al. 2006: 32; Gelderblom 2006). Social networks allow poor migrants who otherwise would not have been able to move to do so. However, Gelderblom and Adams (2006) indicate that the ability of networks to facilitate the migration of potential migrants may sometimes be quite limited. This applies especially to those who are most in need of network support: the poorest as well as women. If the networks of the poorest are very tenuous and break up, or if past migrants no longer feel obligated to help those who stayed behind, support networks may lose the capacity to help new migrants. Very poor rural women, who face structural limitations to their ability to build support networks, can be in the same position.

8.4.2 Current levels of urbanisation and migration

Urbanisation rates for the coloured, Indian/Asian and white population are nearly complete. It is not expected that these trends and levels will change significantly. Urbanisation will continue, with the African population providing the bulk of future urban growth.

The proportion of the population that migrated over a defined time period reflects the level of migration in a district, province or country. Table 8.4 gives the proportion of migration levels for South Africa for each population group, during the period 1992 to 1996, and 1996 to 2001. During both periods, only about one in eight (11% to 12%) of South Africans migrated (Kok et al. 2006).

The largest migration stream by population group is that of the African population with 3 754 379 of this group having been migrants over the 1996–2001 period (see Table 8.4). In proportion to the total population, the group that has the highest proportion of migrants is whites at 21% of migrants compared to 9% for Africans (see Table 8.4). Over time, the white group has consistently been far more migratory than the other three groups. This is probably as a result of the whites' historically widespread distribution over all nine provinces, giving them access to social (migrant) networks in many parts of the country, and possibly also better access to the economic and other resources needed for longer-distance migration.

Table 8.4: Former migrants by population group, 1992–1996 and 1996–2001

Identity	Number and percentage of migrants (having moved during the 5-year period concerned)					
	1992–1996			1996–2001		
	1996 population	Migrants (1992–1996)	Proportion migrants	2001 population	Migrants (1996–2001)	Proportion migrants
African	31 127 630	2 909 948	9%	35 416 070	3 754 379	11%
Coloured	3 600 447	331 321	9%	3 994 570	500 460	13%
Indian/Asian	1 045 595	125 664	12%	1 115 540	150 087	13%
White	4 434 695	921 514	21%	4 293 597	1 136 722	26%
Total	40 208 367	4 288 447	11%	44 819 777	5 541 649	12%

The 2001-2002 HSRC Migration Survey found that Gauteng dominates the internal migration scene as the province with the highest incidence of both in-and out-migration. Disparities between rich and poor provinces influence the internal migration patterns. Migration from KwaZulu- Natal and the Eastern Cape to Gauteng and the Western Cape is clear from the survey (Wentzel, Viljoen & Kok 2006: 202).

8.4.3 Migration selectivity

In keeping with international trends, younger persons are more likely to migrate than the elderly in South Africa. The highest proportion of migrants is found among those in the younger working ages, i.e. the age range 20-30. In the age group 20-25, almost 19% of the population moved in the four years preceding the 1996 census. From the age of 30, the propensity to migrate gradually declined, and by the age of retirement, only 5% of the population had made a migratory move in the preceding four years.

In South Africa, men remain more migratory than women, although by the late twentieth century the differences were not significant. Apart from children (moving with their parents) and at the older ages, men were more likely to migrate than women, e.g. 15.1% of men versus 11.5% of women in the age group 35-39.

8.4.4 Origin and destination of migrants

Table 8.5 presents the number of lifetime migrants born in other provinces (and from outside the country). This provides a crude measure of the attractiveness of a specific province to migrants. According to the data in Table 8.5, nearly 42% of current residents of Gauteng were born outside the province, making this province the largest magnet for in-migrants with 4.1 million people from other areas. A distant second place is the Western Cape with more than 1.4 million residents born elsewhere (or 28% of the province's current population). The three provinces with the smallest proportion of residents born elsewhere are Limpopo (6.3%), Eastern Cape (6.5%) and KwaZulu-Natal (6.3%).

Table 8.5 also shows the proportion of people from individual provinces that have left their province of birth and been enumerated in another province. This provides a crude measure of out-migration from a specific province. The provinces with the largest number of persons born in that province, who are now living elsewhere, are Eastern Cape (nearly 1.9 million people), Limpopo (1.5 million) and Gauteng with more than 1 million people having left the province since birth.

The most telling statistic in Table 8.5 is the number of movers, expressed as a percentage of the current resident population. Almost 35% of the Northern Cape's population is living elsewhere, followed by the Eastern Cape (28%), Limpopo (27.9%) and the Free State (23.5%). People from the Western Cape (6.4%) are least likely to be found in other provinces.

8.5 LINKS BETWEEN HUMAN TRAFFICKING AND MIGRATION ISSUES

In this section we explore the links between illegal migration, labour migration, smuggling and human trafficking within the context of globalisation.

8.5.1 General overview

Keller-Herzog and Szabo (1997) define globalisation as,

a process through which finance, investment, production and marketing are increasingly dominated by agents whose vision and actions are not confined by national borders or national interests. Global corporate actors are forming complex networks around a hierarchy of technological capabilities, comparative advantage and production practices leading to an increase in cross-border flows of trade, capital and information.

One of the most recognisable traits of globalisation is the ease with which human labour is acquired and moved across international boundaries. Globalisation has also encouraged large-scale movement of goods, services and capital across the globe. However, the impacts of globalisation are mixed, with Bhabha and Zard (2009) reporting that market integration has generated substantial economic growth on a global scale resulting in more jobs, improved livelihoods and an overall reduction in poverty. At the same time increased benefits are brought to individuals and countries already possessing substantial physical and human capital. This has accentuated growing disparities within and between developed and developing countries. Taking this further, globalisation is marked by an increased focus on competitive markets. Such competitive markets tend to be characterised by considerable inequality in incomes and wealth. It is this inequality and disparity, coupled with the rise of consumerism which, as much as poverty, drives migration (Bhabha & Zard 2009). Among the effects of globalisation are increases in urbanisation and cross-border migration. However, in contrast to this trend, is what Robinson (2004) refers to as more obstacles placed in the way of unskilled cross-border migration. A report by the UN Economic and Social Council, the 'Globalisation and Labour Migration' report supports Robinson's observation with the statement that 'Recent globalisation trends have been characterised by the greater integration of global markets for goods, services and capital across borders while their impact on the cross border movement of people and labour remains much more restricted, regulated by immigration laws and policies that uphold the principle of state sovereignty' (Mishra 2007).

The consequence of such state actions is that there is a sharp disjunction between the number of individuals who wish to migrate and the legal opportunities for them to do so. This has proved to be a major driving force behind the rise in illegal migration. Bhabha and Zard (2009) contend that with the increasing disparity between economic opportunities across borders and legal systems, it appears inevitable that the supply of people willing to migrate illegally will continue to grow. Although migration is not a new phenomenon, its rate of growth and dimensions are new, and this should be recognised as one consequence of globalisation (Robinson 2004).

The economic divide between rich and poor nations has a number of 'push/pull' effects that generate migration streams. Mishra (2007) quotes a UN report that states 'globalisation has ... led to widening disparities of employment opportunities, income and living standards across the globe. In some countries, globalisation has adversely affected jobs and livelihoods in traditional sectors. The failure of globalisation to create new jobs where people live is a prime factor in increasing migration pressures'. Robinson (2004) also contends that many of those who cross a border to take up employment, whether in the formal or informal sectors, do so as undocumented or illegal, migrants. For many illegal migrants, migration is nothing less than a survival strategy.

The illegal status of migrants usually increases their vulnerability because they risk deportation when, by seeking legal protection in foreign countries, they come to the attention of the national authorities. Robinson (2004) reports that illegal migrants fear that any contact with the police through reporting abusive working conditions, or taking part in civil formalities such as property ownership, marriage, registration of the birth of a child, or by using schools and hospitals, could result in deportation. This creates marginalised communities, a situation which is not in the interests of the host country – particularly at a time when challenges such as

preventing the spread of HIV/AIDS and controlling malaria and TB, require public information, education and health measures which make no distinction between citizen, legal immigrant and illegal migrant.

According to Jones et al. (2007: 111), those who traffic in the sex industry prey on this very need: 'recruitment tools [offer] the promise of a better life and increased opportunity. Victims of trafficking, who are usually poor and often uneducated, are not in a position to discern beforehand that the promises of economic opportunity are, in fact, lies.' The motivation for human trafficking is an economic one with sex trafficking the most significant stream of trafficking. According to McClain (2007) the trafficking industry is worth anywhere from seven to ten billion dollars a year. Other human trafficking authors such as Martens, et al (2003) and Allais (2006) concur that money is the single most important driving force behind human trafficking. A main feature of globalisation is the large-scale (although mostly temporary) labour migration that has become an integral part of the new means of production and the international economy. At the same time as this potential increase in supply there is an increase in demand. Bhabha and Zard (2009) report that the last two decades have seen a major transformation particularly in the economies and societies of the South-East Asian region. Rapid economic growth in the newly industrialised countries, including more recently Malaysia and Thailand; the graduation of a formerly mostly unskilled labour pool in higher working standards; and declining fertility rates, have brought about a shortage of labourers. This has led the importation of unskilled labour into which irregular migrants are increasingly being drawn.

Asia in particular displays this economic feature. Reportedly, more women than men are exploring work opportunities in wealthier countries. This demand for better opportunities sows some of the seeds for human sex trafficking. Another factor of note is that these women are less educated, with limited or no knowledge of migration laws. The women who move from one country to another often fall into the hands of so-called 'agents' who claim to assist with migration and employment arrangements. These agents are often employed by traffickers or are traffickers themselves. Skolink and Boontinand (1999: 77) sum it up as follows: 'In short, while female labour migration has existed for a long time, globalisation has changed its characteristics. Poverty, unemployment, and lax labour policies all contribute to the growth of traffic in women.'

An unfortunate and dark spin-off of globalisation is sex trafficking where women and children are turned into commodities that can be bought and sold on the international market. O'Grady (2001) highlights the role of improved communication technology such as the Internet in support of human sex trafficking networks. Chat rooms, email, message boards, and group forums all support anonymous and mostly undetected global communication channels. A prime South African example of the global nature of syndicates involved in human trafficking was provided by a respondent from the Southern African Immigration Liaison (SAIL) team. A suspected trafficker of South African origin was found to be trafficking two Mandarin speaking Chinese girls with two false South Korean passports from Asia via South Africa to South America. This case illustrates the global nature and complexity of one case that involved four countries in terms of the nationality of the traffickers, their victims, forged documents, transit and destination.

In O'Grady's opinion, tourism and the Internet are the most significant factors responsible for the transformation of human sex trafficking into a massive money-making industry. The growth in tourism has pressured governments to ease their border controls thereby facilitating the movement of people between countries. More lax border controls in turn allow human trafficking activity between countries. Robinson (2004) also points to increasing evidence that transnational organised criminal groups are using international structures and violating the legislation of more than one country to benefit from the changes in world markets and their regulations.

Jones et al. (2007) remark that sending countries are the focal point of prevention strategies of human trafficking and that economic development, with a special emphasis on women and girls, constitutes the best long-term approach to combating the practice. There is reportedly also a great need for educational outreach programmes to alert individuals and communities to the ploys traffickers use and the dangers of being trafficked. The prosecution of traffickers also has a strong prevention aspect by breaking up trafficking networks and imprisoning traffickers. Unfortunately, this has been the most difficult of the three strategies to develop and implement (UNODC 2006a). Jones et al (2007) maintain that the investigation and prosecution of human traffickers in countries with weak legal systems and corrupt police and courts is a rare occurrence, with

conviction even rarer. However, even in countries where the environment for investigation, prosecution, and conviction is favourable these authors say results have been disappointing.

Economic globalisation fosters both migration and transnational crime. These two aspects of globalisation intersect in the phenomenon of human smuggling, which has in turn drawn the attention of immigration, law enforcement, and foreign ministry officials. The recent global economic meltdown on the other hand, has led to increasingly restrictive immigration policies on the part of some of the more wealthy States such as the United Kingdom, Australia and New Zealand. Robinson (2004) argues that restrictive migration policies play a significant role in forcing individuals desperate for work into the arms of unscrupulous traders, as a result of difficulties in obtaining visas and work permits, people turn to human smugglers.

The increase in human smuggling should be understood in the context of globalisation and greatly increased migration. According to Mishra (2007) quoting Moises Naim, editor of the Washington-based magazine *Foreign Policy*, there has appeared, 'an organised wholesale trading business shipping bulk consignments of humans over long distances, and involving staggering amounts of money'. However, relatively little is known about the systematic organisation of the smuggling process. The idea of an internationally operating, highly organised and centralised, pyramid-like mafia organisation that not only trades in migrants, but also in prostitutes, weapons and drugs, is very popular, but it has not been convincingly verified by police investigations or by research (Içduygu & Toktas 2002: 26; KyIe & Koslowski 2001: 13). However, according to respondents from the Southern African Immigration Liaison (SAIL) team, there are strong indications (although also unverified by law enforcement authorities) that human traffic syndicates operating in South Africa are also involved in the smuggling and dealing of narcotics. Evidence provided by a non-governmental organisation specifically points to the use of narcotics to strengthen control over victims of human trafficking in the sex industry.⁷

According to the Consortium for Refugees and Migrants in South Africa (CoRMSA) (2009), a lack of access to accurate information on migration issues, paired with the availability of human smuggling services appears to play an important role in encouraging undocumented migration and human smuggling to South Africa. Moreover, largely because of a general state of uncertainty about conditions at the border, human smugglers are able to charge high fees for their services. In a number of cases, smugglers also abuse their clients by extorting money or abandoning them in dangerous environments. Smuggled migrants are vulnerable to abduction, rape and murder by criminal elements that are difficult to distinguish from smugglers themselves. CoRMSA (2009) also notes that in South Africa, human smuggling does not seem to be connected to goods smuggling.

In citing India as a case study, Mishra (2007) argues that over the years, a national network of pimps, travel agents, corrupt officials from passport-issuing departments and politicians came into being. It is alleged that even a number of politicians with diplomatic passports and certain immunities and influence have begun ferrying people from, for example, India to Europe and America for hefty fees. Mishra (2007) further argues that corrupt border control and government officials have made it easy for smugglers to obtain both genuine and fake passports to smuggle people to wealthy states. The facilitators of smuggling bear little risk, while the migrants put their lives and property in jeopardy from the very beginning of their trip. Migrants may be arrested any time during the journey, or their vessels may meet with disastrous accidents as happened to 24 North African men, women and children immigrants near Malta in February 2009 in their quest to travel to Spain (New Europe 2009). Thousands of Africans are believed to have died by drowning or from exposure in their desperate efforts to reach Spain.

Mishra (2007) argues that prospects of a better life abroad, poverty, economic marginalisation, political and social unrest and conflict are all incentives to move. Global media and transportation networks also assist the movement of migrants. With push and pull factors that encourage increasing numbers of people to migrate, many legal obstacles that bar entry into industrialised countries are encountered. Two types of migration trends are a direct consequence of this. Firstly, as avenues for legal migration have become increasingly restricted, asylum systems have come under pressure as one of the few options that migrants can use. Secondly, migrants

⁷ Interview, Tshwane Home of Hope.

(including asylum seekers) have increasingly resorted to the use of smugglers to facilitate their travel. This compounds their vulnerability to ill-treatment and exploitation. Bhabha and Zard (2009) contend that migrants compelled or choosing to resort to illegal forms of migration may not easily avail themselves of the socio-economic benefits of regular migration and are also vulnerable to human rights abuses. Many human rights proponents therefore argue for a globalisation process that is values-led and ethical and with the main challenge being to make progress in realising the fundamental rights of people worldwide.

8.5.2 Migration and human trafficking

In this section we discuss issues with regard to migration and human trafficking derived from interviews with officials from the Department of Home Affairs.

8.5.2.1 Human trafficking cases

The immigration officials from the Department of Home Affairs that we interviewed dealt with the following cases of human trafficking in the execution of their duties.

The Inspectorate in Welkom found one case of a Thai women involved in a prostitution ring. At the time of investigating the case, the Welkom inspectorate staff were not trained in trafficking and could not identify and deal with the case as such. Subsequent to receiving training on human trafficking they realised that it was a case of human trafficking that should have been dealt with differently.

A second case of trafficking was found in a club in Durban. Twenty six Thai women, mostly in their twenties, were brought into the country on 30-day holiday permits. Five of the women claimed to have been trafficked. Three accused are currently facing charges of racketeering and money laundering, sexual offences and living off the proceeds of prostitution.

A third case of human trafficking involved Thai women in Rustenburg. The Central Law Enforcement Unit received information from SAPS crime intelligence of possible human trafficking activities in North-West province. Five suspect premises were identified. The information was shared with the Organised Crime Unit in Rustenburg. Unfortunately this information was leaked and the suspects scattered. The operation was thus abandoned. However, another source of crime intelligence provided new information of a house in Rustenburg with possible links to human trafficking. This time around Home Affairs and Crime Intelligence officials applied for a search warrant at a magistrate and they executed this warrant immediately before any information could be leaked. Nine Thai women were found of whom four were positively identified as trafficked victims. One of those arrested, a Thai woman, was positively identified as a trafficker of Thai women.

8.5.2.2 Training

Some immigration officials in the Free State and Mpumalanga received training on human trafficking from amongst others the IOM and Department of Justice. However, not all port-of-entry officials have received specialised training in human trafficking. Due to the difficulty of comprehending the definition of human trafficking, some officers of the Department of Home Affairs expressed confusion between human smuggling and human trafficking, for instance, when dealing with real cases. All members of the Central Law Enforcement Unit (Inspectorate) were trained on human trafficking and are well equipped to deal with such cases.

Since the department is aware of the increase in human trafficking, it is in the process of developing more specialised training modules on human trafficking. This will assist immigration officials in developing skills to profile people who enter the country and thus enable them to be on the look out for possible trafficking victims. Training on the inspection of documents during raids and searches is also planned to enable officers to identify documentary signs and evidence of possible human trafficking cases.

8.5.2.3 Challenges in dealing with human trafficking

Port of entry officials indicated that they have a capacity problem since they deal with thousands of people entering and leaving the country. They are hardly in a position to scrutinise documents in detail. The implication is that possible human trafficking cases can slip through at the ports of entry.

Since there were only a few cases of human trafficking in the past, the department has not introduced standard operating procedures for officials to deal with human trafficking cases. According to an interviewee such procedures may be helpful in assisting officers with identifying and dealing with human trafficking victims.

According to the interviewees, co-operation with social workers from Department of Social Welfare is unsatisfactory. For example, they do not fetch children who are in custody at border posts or with the Inspectorate. The Department of Home Affairs and the police do not have facilities to take care of children. Sometimes the social workers do not respond in time. They mentioned another case where Social Development simply recommended that possible victims be deported immediately.

According to some of the Home Affairs officials that were interviewed, there are lapses in co-operation between Home Affairs and SAPS with regard to human trafficking which need to be remedied. Dockets are often missing and magistrates sometimes throw out cases. Officials also have the perception that courts misunderstand the work of Home Affairs to such an extent that human trafficking court cases may be compromised.

Conflicting interests between Home Affairs and the SAPS have also been highlighted as a potential challenge with regard to the prosecution of human traffickers.

The interviewees mentioned that victims of human trafficking are scared of traffickers and do not want to testify against them. For example, in one case it was mentioned that the traffickers resort to threatening the families of the victim in the country of origin. Victims are also afraid that they will be seen as prostitutes in their home communities and that their communities will not accept them because prostitution is a taboo. This impacted negatively on prosecutors' ability to prosecute traffickers.

Language barriers in communicating with trafficking victims often pose problems since many victims cannot understand English. The Department needs to have interpreters to effectively communicate with potential victims to establish whether they are indeed victims of trafficking. Normally embassies are contacted to provide such services, but interpreters are not always available.

Staff shortages in units such as the Inspectorate are hampering efforts to effectively address the issue of human trafficking.

The lack of general awareness on human trafficking was also identified as a challenge. Not only immigration officials, but also the community should have a better understanding of human trafficking. When people for instance appear or disappear in communities, people need to ask questions.

According to a senior official, the lack of human trafficking legislation poses a major problem. The official mentioned that the Immigration Act only offers the Department of Home Affairs relatively minor charges of facilitation against human traffickers. Sexual and other offences need to be proved before prosecuting authorities, such as the SAPS, can level more charges.

However, another Home Affairs official was of the opinion that existing legislation sufficiently covers the aims and requirements of the Palermo Protocol. He further noted that a Human Trafficking Act has been in the making a number of times and has never succeeded because of the complicated nature of human trafficking and all the requirements that need to be fulfilled before traffickers can be found guilty on a count of human trafficking. He further commented that the Prevention of Organised Crime Act (POCA) should be sufficient to prosecute traffickers due to syndicates' involvement in a number of crimes including sexual offences, smuggling, drugs, money laundering and counterfeiting. This would allow the authorities to legally confiscate the financial proceeds of the crimes committed by human trafficking syndicates and should act as a strong deterrent against

human trafficking. A clause on human trafficking could be written into the POCA that could prescribe heavy minimum penalties.

8.5.2.4 Cooperation: nationally and internationally

The Department of Home Affairs cooperates with the National Prosecuting Authority on human trafficking and has, for example, been working together on the Tsireledzani project. Cooperation with SAPS (organised crime units) is mainly limited to raids where human trafficking might be involved. The Department of Social Development is involved in cases that relate to minors.

The Department of Home Affairs strives to improve co-operation with neighbouring countries via bilateral agreements addressing the flow of people between countries. Special cooperation with European countries takes place at the OR Tambo International Airport. As an anti-trafficking measure, European countries have offered to provide a facility for unaccompanied minors in transit at the airport.

Home Affairs discusses training and shares information on methods to deal with human trafficking with many international counterparts. Interaction and close cooperation with European countries on cases of South African citizens being trafficked to Europe have also taken place.

8.5.2.5 2010 FIFA World Cup measures

Since the Department of Home Affairs is aware of the potential influx of criminal gangs, including human traffickers, during the FIFA World Cup, special measures, such as passenger profiling systems (outlined in Chapter 6), have been introduced to facilitate the influx of visitors.

8.5.3 Labour migration and human trafficking

This section deals with issues pertaining to labour migration and human trafficking derived from interviews with team leaders and labour inspectors in the Western Cape and Limpopo and Mpumalanga.

8.5.3.1 Knowledge about human trafficking

Many of the labour inspectors that we interviewed from selected labour centres in the Western Cape had only a vague understanding of trafficking. Some of the interviewees only associated trafficking with prostitution while others were under the impression that the victims are brought to South Africa to be involved in crimes such as drug dealing and robberies. Of the labour inspectors interviewed in the Western Cape only two inspectors indicated that they had attended basic training on human trafficking, but could not remember who conducted it. Some of the labour inspectors interviewed in Limpopo had received basic training from the IOM on human trafficking, but complained that the term was still difficult to understand.

8.5.3.2 Migration and labour exploitation

According to the interviewees from the Western Cape, Mpumalanga and Limpopo, workers from South Africa's neighbouring countries and further abroad are mainly employed in the domestic services, and the agriculture, security, hospitality, and retail sector in their provinces. Mozambican workers in Mpumalanga are also employed in the forestry and construction sectors. In many instances these workers from neighbouring countries are undocumented migrants.

The labour inspectors mentioned that they often asked employers about their reasons for employing foreign workers. They gave a variety of reasons. For example, they are reliable and hard working, do not complain about working conditions, work long hours, are more skilled, do not belong to labour unions, and in some instances no service contracts are signed between the employer and the employee.

Labour inspectors in Western Cape, Mpumalanga and Limpopo mentioned incidences of unfair labour practices where both South African and immigrant workers were involved. Normally the working conditions

and payment were not what was promised. The labour inspectors also mentioned incidents where foreign workers' contracts were in a local language that they did not understand.

According to some of the interviewees in the three selected provinces, some employers differentiate between the wages of local and foreign workers. While local employees are generally being paid the minimum wage some employers tend to pay foreign workers less than the minimum wage. However, interviewees in the Western Cape indicated that some farmers pay local and foreign workers the same wages and in some instances all the workers are paid more than the minimum wage. A problem, however, is the involvement of independent labour contractors who also receive a portion of the worker's salary. During the 2009 xenophobic incidents at De Doorns (Western Cape), investigations by the labour inspectors determined that all workers receive the same wages, in many instances more than the minimum wage, but that foreign workers received less money than South Africans due to the involvement of independent labour contractors.

According to the labour inspectors from Limpopo undocumented workers generally do not complain about their wages. They will only complain to the Department of Labour about being paid less than the minimum wage after being dismissed by the employer.

In the past some farmers in Limpopo were accused of calling the police at the end of the month to arrest Zimbabwean workers without documentation. The workers were then deported without being paid. However, measures were adopted to prohibit this alleged practice. Due to co-operation between the Department of Labour and Zimbabwean government departments, a labour recruitment office opened in Zimbabwe where Zimbabweans have to register to be recruited by South African farmers. South African farmers thus recruit legally documented Zimbabwean workers in Zimbabwe to work on their farms.

Apparently it is not only South Africans that exploit foreign workers, but foreigners themselves exploit other non-South Africans. According to the labour inspectors that were interviewed, some of the Chinese, Pakistani, and Somali shopkeepers in their inspection areas in the Western Cape prefer to employ other immigrants, e.g. Zimbabweans, rather than South Africans in their shops. Apparently they prefer to employ immigrants, usually without documentation, that they can control and pay minimal wages knowing that the workers will not lay charges at the Department of Labour. These shopkeepers seem to be unaware of South African labour legislation in terms of working conditions, minimum wages, UIF, etc. They seem also to be unaware that the South African labour legislation also applies to foreign workers. Some of the labour inspectors mentioned that when they explain the South African labour legislation to the shopkeepers they do not, or pretend not, to understand English.

8.5.3.3 Child labour

Labour inspectors interviewed in the selected labour centres in the Western Cape, Mpumalanga and Limpopo claimed to be aware of a few cases of child labour, especially in the hospitality and farming sectors in their respective areas. According to the respondents in Mpumalanga, Mozambican children are also involved in informal labour activities, such as the selling of bananas, maize meal and tomatoes at taxi ranks near the Mozambican border. Apart from the fact that children are illegally employed, they are apparently not properly paid for the work that they are doing, receiving only what the interviewees called 'pocket money'.

According to the interviewees employers are well aware that it is illegal to employ children under the age of 15 years. However, during school holidays parents, especially farm workers, request employers to allow their children to assist with certain tasks on the farms. Since there are no holiday programmes to keep the children occupied during school holidays, the parents prefer to keep them under their own supervision on the farm.

The labour inspectors indicated that cases of children working to earn pocket money during school holidays are quite problematic for them. This is not child labour in the true sense of the word, but if the child is underage it is against South African law and they have to regard it as child labour. They report it to the police who then handles the case as suspected child labour.

The labour inspectors in all three provinces stated that it is difficult to investigate allegations of child labour since there is normally no co-operation from the child, the parents or the employer. Furthermore, there is normally a lack of witnesses. Some of the labour inspectors indicated that they lack arresting powers and need the assistance of SAPS when confronting employers of minors.

8.5.3.4 Challenges in dealing with human trafficking

Most of the respondents indicated that they do not regard themselves as sufficiently qualified to identify potential cases of human trafficking. Furthermore, most of the interviewees do not know what procedure to follow if they suspect a case of human trafficking. For example, an interviewee in the Western Cape mentioned a case where a white Zimbabwean brought black Zimbabweans to the Western Cape to work in a specific sector. The person had paid for the workers' transport and work permits. According to the interviewee everything seemed to be legal, but the white Zimbabwean had taken away their documents and had strict control over their movement. One of the workers complained about the situation, but the other three were apparently too afraid to complain since they did not have their documents with them. The labour inspector suspected a possible case of trafficking, but was unsure if it was indeed a case of human trafficking and also did not know how to handle the situation. A labour inspector in Limpopo described a case in his inspection area where he was unsure whether it was a possible trafficking case, forced labour or a case of illegal immigrants being exploited. However, during a follow-up inspection the farm was deserted.

An interviewee in the Western Cape mentioned that he is aware of a Bangladeshi storeowner employing what he claims to be family members, but the inspector doubts whether that is really the case. Apparently the employees were brought from Bangladesh to the Western Cape by the shopkeeper and are staying at the back of the shop where they work very long hours, e.g. from 6am to 11pm seven days a week. The employees did not want to speak to the labour inspector, possibly because they feared losing their jobs or being homeless in a foreign country. The labour inspector indicated that he was unsure whether he was dealing with forced labour, human trafficking or labour exploitation.

Labour inspectors interviewed in Mpumalanga and Limpopo stated that their routine labour inspections include measures to identify forced labour, child labour and human trafficking. However, due to time and human resource constraints they only interview two or three people per site and sometimes only South African workers. This limits their ability to identify such cases.

8.6 SOUTH AFRICA AS THE MAJOR DESTINATION AND TRANSIT COUNTRY IN THE REGION

The pull and facilitating factors that make South Africa a major destination and transit country for human trafficking in the region are complex and interwoven. It is not possible to identify one specific factor. This section considers a number of factors that act as pull and facilitating factors of human trafficking to South Africa.

8.6.1 Economic prosperity of South Africa

South Africa is a relatively prosperous and stable country in a mainly poor and often unstable continent (CDE 2009). This has made the country a preferred destination not only for regional migrants but also for migrants from the rest of Africa. A mixed flow of migrants including documented and undocumented migrants, skilled and unskilled labourers, business people, political refugees and asylum seekers, and members of organised criminal syndicates have entered the country in search of economic opportunities.

Historical migration patterns in the southern African region have created perceptions of South Africa as a country of opportunities where conditions are better than in the migrants' countries of origin (Wentzel & Tlabela 2006). Some of our interviewees indicated that migrants indeed have high expectations of a 'better life in South Africa'. High expectations regarding opportunities for migrants are often boosted by global media and information found on the Internet (Kaye 2003). Offers of employment or educational opportunities in South Africa would thus seem credible and desirable for human trafficking victims from the continent. In many

instances victims of human trafficking are vulnerable to recruitment tactics of traffickers because poverty, food insecurity and civil unrest leave them with few opportunities in their home countries (Martens, Pieczkowski & Van Vuuren-Smyth 2003).

Due to South Africa's relative economic prosperity compared to the rest of the continent, migrants will earn more in South Africa, even if they find low-paid jobs, than in their countries of origin.

8.6.2 Demand for sexual services

For some of the interviewees included in our study 'a strong demand for sexual services' is the most important factor facilitating human trafficking to and within South Africa.

Bermudez (2008) notes that trafficking of persons has been viewed as both a supply and demand-led operation which requires market-driven forces to encourage the exploitation of cheap labour including sexual services.

In South Africa, it has been postulated that HIV and AIDS play a role in the increased demand for younger, presumably uninfected sex workers, often from rural areas. There is a demand for young girls, especially virgins, who are perceived to be free from the disease and therefore able to 'cure' or delay the infection (UNESCO 2007a).

Researchers suggest that supply of commercial sexual workers is fuelling demand (Bermudez 2008). Davidson (see Bermudez 2008) suggests in an article on the complexities of the demand side of commercial sexual exploitation that demand is determined by social factors, culture, and history and is closely related to supply and availability. It is argued that an abundance of inexpensive sexual services may be stimulating growth in the sex industry (Bermudez 2008).

Industries that depend heavily on temporary migrant workers, particularly male workers, are generally associated with a demand for commercial sex (UNESCO 2007a). The South African mining economy with a substantial male workforce creates a demand for commercial sex workers.

The demand for sexual services may also be linked to sex tourism, a growing industry where individuals seek commercial sex as part of a travel experience (Bermudez 2008). According to some of our interviewees this was particularly the case during the tour of the British Lions Rugby Team to South Africa in 2009. According to interviewees, brothels and nightclubs in cities where test matches were played 'could not keep up with the demand for services.' The upcoming FIFA World Cup in 2010 has sparked specific concerns around both international and internal trafficking for the purpose of sexual exploitation.

8.6.3 Demand for cheap labour

In commercial agriculture in South Africa there is a demand for a labour force willing to accept low-paid and insecure jobs, often of a seasonal nature. Bermudez (2008) notes that there is an incentive for the use of cheap labour particularly when such labour is abundant and social norms encourage such practices. Irregular migrants from Mozambique, Zimbabwe and Lesotho are particularly vulnerable to exploitative labour practices. Impoverished South Africans are also vulnerable and may choose to be employed for low wages under harmful conditions as they see this as the only viable option for employment (Bermudez 2008).

Labour-intensive agricultural practices on farms along the eastern and northern borders of South Africa created a demand for workers, which the Mozambican and Zimbabweans crossing the borders readily supply. In many instances South Africans do not want to do the work or are not prepared to work for the wages on offer.

South Africa is a country with an unequal distribution of wealth. The wealthy segment of South Africa's population generally employs domestic workers. There is thus on the one hand a demand for domestic workers and on the other hand a supply of people with few other alternatives, who are prepared to work for low wages and under difficult conditions (Bermudez 2008). Research by Bermudez (2008) alleged that coloured girls and young women from rural areas of the Western, Northern and Eastern Cape are trafficked into the suburbs

surrounding Cape Town to work as domestic servants. Apparently girls from KwaZulu-Natal and the Eastern Cape are also trafficked to Pretoria to work as domestic workers or child minders.⁸

The growing informal economy, which is characterised by low wages, casual employment, hazardous work conditions, and the absence of collective bargaining mechanisms also contributes to the demand for migrant workers (UNESCO 2007a). However, there is a lack of strong evidence linking human trafficking to the informal sector.

8.6.4 Established migration routes

Established migration routes, especially in the southern African region, and the existence of social networks also facilitate migration to South Africa. Some of our interviewees mentioned that in many instances as soon as one member of a family or a person from of a particular area of origin is employed in a specific area in South Africa, relatives or people from the same area are bound to follow. Previous research by the HSRC (Wentzel et al. 2006) indicates that the tradition of labour migration to South Africa facilitated the creation of migration networks. The study found that miners' children grow up with the idea that they will also be employed on the South African mines. Although there were sometimes no vacancies on the mines people still migrated to South Africa looking for jobs, because the mine migrants created perceptions of South Africa as a country of opportunities where conditions are – in at least some respects – better than in their country of origin.

The active presence of recruitment agencies or contacts willing to facilitate jobs and travelling also encourages migration and thus the potential for trafficking.

The opening up of South Africa to the rest of the world after the democratisation of the country in 1994 has led to fewer constraints on travelling to the country. South Africa offers direct flights to Europe and Asia and competition between airlines ensures cheaper flight tickets that may contribute to human trafficking.

8.6.5 Feminisation of migration

Historically men from neighbouring countries migrated to South Africa in search of employment. However, with increased population mobility and lack of opportunities at home, women are increasingly likely to migrate (UNESCO 2007a). Crush, Williams and Peberdy (2005) note that women migrants are more likely to be involved in less skilled and informal work and therefore may be more likely to be irregular migrants, as it is harder for them to access legal migration channels. Women migrants are thus more vulnerable to being victims of human trafficking.

In some instances women from neighbouring countries, whose husbands are employed on South African mines may also decide to migrate to South Africa to seek employment. According to an interviewee, so-called guardians recruit such women from Lesotho to work as domestic workers in South Africa. Upon arrival in South Africa they find themselves in debt bondage with their passports being taken away.

With regard to rural and urban migration movements in South Africa there has been a growing awareness of increasing female out-migration from rural areas in recent years. These women tend to be employed in less skilled jobs – particularly domestic work, – in urban areas. This may result in a tendency towards risky behaviour since low earnings may push women migrants to rely on transactional sex (South African Cities Network 2006) and thus increase their vulnerability to exploitation and abuse and being the victims of human traffickers.

8.6.6 Porous borders

South African borders are not protected thus facilitating the movement of illegal people and goods. Initially the borders of the country were patrolled by the SANDF, but later the SAPS was made responsible for patrolling

⁸ Interview, Tshwane Home of Hope

the borders. This arrangement does not secure South Africa's borders. Crime syndicates are well aware of the situation and may see it as an opportunity to smuggle people into the country.

The interviewees mentioned that border crossings are taking place at points other than the border posts between South Africa and its neighbouring countries. This occurs, in particular, along the Mozambique, Swaziland and Zimbabwe borders. An interesting case of a farmer who constructed a bridge over the Caledon River facilitating easy and free movement between South Africa and Lesotho was mentioned. The farmer owns a shop on his farm in South Africa where Lesotho citizens come to buy supplies. Border officials have stopped this practice although the farmer claimed that he was given permission many years ago to construct the bridge.

8.6.7 Transit visas

A factor that may facilitate human trafficking to South Africa is the abolition of transit visas in the late 1990s. The result has been that persons who do not qualify to enter South Africa, will later enter the country through a third country. For example, people fly to Lesotho via the OR Tambo Airport and then enter South Africa illegally from Lesotho through one of the border posts. Apparently some citizens from Asian countries such as Thailand, China, India, Pakistan and Bangladesh are involved in this practice.

After the Lesotho riots in 1998 Chinese business people largely live in Ladybrand and travel on a daily basis to Maseru to run their businesses. South African border officials issue three month visiting permits to them to facilitate their movement between South Africa and Lesotho. These permits are regularly renewed. However, according to the Department of Home Affairs these permits are issued illegally, because a South African border official cannot issue a permit to a foreigner to enter South Africa via a third country. According to the Immigration Law, Chinese business people need visas to enter South Africa from Lesotho.

Swaziland has been identified as a significant weakness in terms of policing South Africa's borders. It is alleged that the Swaziland border is a key illegal entry route for illegal Bangladeshi and Somali immigrants and is possibly also used by human traffickers. This situation is worsened by Swaziland Defence Force members who have been observed turning a blind eye to illegal border crossers who walk past a military camp on their way to crossing the border to South Africa.

8.6.8 Visa exemptions

Thai citizens do not require a visa to enter South Africa. This makes it easy to bring in Thai women on visitors permits to work in the sex industry. A visa requirement would enable more thorough checks on the purpose of visits by Thai citizens.

8.6.9 Endorsement of children on parents' passports

According to the interviewees, measures with regard to the travelling of children may sometimes provide an opportunity for human traffickers. For example, children from some African and East European countries do not travel with their own passports, but are endorsed on their parents' passports, with or without accompanying photographs. Even if a photograph is included in the passport it may be a photo taken when the child was much younger and thus be barely recognisable as the child. It will thus be very difficult for immigration officers to establish whether the child is accompanying his/her parents or whether the child has been trafficked. Children travelling, for example, from Lesotho, Swaziland and Mozambique are endorsed on a parent's passport.

In order to try to stop a practice of people bringing children to South Africa and leaving them behind, border officials in Mpumalanga have added a note on the Temporary Resident Permit in passports with a child endorsement stating that the person also has to leave with a child if he/she brought a child into the country.

8.6.10 Culture and tradition

The culture and tradition of people in certain African countries with regard to the care of children after the death of their father may also facilitate human trafficking. For example, in the case of the death of the head of a

household the brother of the deceased will take care of the children. A person applying for refugee status may include many children in the application, and some of these may be claimed to be the children of a deceased brother in the application. However, there is no way to establish whether the children are indeed his brother's children. They may potentially be victims of human trafficking.

8.6.11 Collusion by government officials

Some of the interviewees admit that collusion by government officials may occur. These officials violate South African immigration laws and in so doing may facilitate trafficking. For example, the police in the Eastern Free State near the Lesotho border stopped a suspicious looking vehicle on a public holiday. Inside the vehicle were nine Chinese citizens. Three of them had valid entry permits while six only had blank Chinese passports without any South African temporary residence permits. However, all nine had entered South Africa through the Maseru Bridge Border Post. Clearly a border official had allowed six of them to enter the country illegally. When stopped by the police the three individuals with valid documentation immediately offered the police R10 000 to release them and not detain the six without legal documentation. The police arrested all the Chinese citizens.

A senior official from the Department of Home Affairs admitted that the department is aware of alleged corruption by its officials and has put measures in place to stop it, for example, by establishing the Inspectorate Unit to fight against corruption. Computer system and database access have also been tightened up significantly since 2007. Biometric access with fingerprints is needed to access computer systems. Cooperation with the Hawks has also assisted the department with detecting corrupt officials. One of the messages that the Department sent out during human trafficking week in 2009 was, 'if you are a corrupt official then you are contributing to human trafficking'. Steps have also been taken to integrate various computer systems that will improve access to information and fight corruption among officials.

8.6.12 Criminal gangs

The interviewees mentioned a well known case of a Pakistani criminal gang operating in Lesotho, the Eastern Free State and other parts of the country linked to kidnapping, extortion and murder of other Pakistani nationals. Some of the victims and perpetrators were illegal or smuggled persons. This suggests a link between illegal migration, smuggling, criminality and corrupt officials.

8.6.13 Shortcomings of documents

South Africa, Namibia and Tanzania are the only countries in the region that have computerised immigration systems in the Southern African region. Lesotho and Zimbabwe issue a temporary travel document that lacks safeguards against forgery. Criminal syndicates are aware of this vulnerability and use forged papers to enter South Africa through these countries. Immigration officials at a South Africa Lesotho border control post report that Bangladesh and Pakistan citizens present themselves at the border post with Lesotho temporary travel documents.

8.6.14 Corporate work permits

Corporate permits can be issued to an employer for a number of employees. Corporate permits were also issued to labour brokers and this provided the opportunity for misuse. For example a labour broker obtains a corporate permit for a number of persons for one year at a specific place of work. After three months the contract is finished. In theory all the workers should return to their country of origin. The labour broker, however, hunts around to get another contract for the persons brought into the country. This can lead to exploitation of the migrants. Because of the misuse of the permit, corporate work permits are no longer issued to labour brokers.

8.6.15 Asylum system

According to the interviewees from the Department of Home Affairs people from Bangladesh, Somalia and Pakistan enter South Africa illegally. When caught they claim to be asylum seekers fleeing from their countries. From the facts it appears that the illegal immigrants transit through a number of countries before reaching the

border of South Africa using their documents. At the South African border they crossed illegally using agents in many instances. The intent is therefore not to announce their presence to South African border officials. It is only after being apprehended that they claim to be asylum seekers. In many cases when claiming to be a refugee, they do not have any documents on them. Only after having applied for an asylum permit do their passports appear again.

8.6.16 Non integration of systems

Another factor that may facilitate human trafficking is that the systems of the Department of Home Affairs are currently not integrated. For example, persons that are registered as refugees are not captured in the immigration system. An opportunity thus exists to abuse the system. In addition, the ports of entry are not linked on a real time basis.

8.6.17 Loopholes in the system

Immigration officials claim that many of those that enter the country illegally are making use of a wide variety of loopholes to enter the country or remain in the country. Examples are abuse of the asylum seeking system, arranged marriages of convenience to obtain residency, and payments to Home Affairs officials.

8.6.18 Lack of political will to combat human trafficking.

According to our interviewees not all SADC countries have ratified the Palermo Protocol. Human trafficking is thus not regarded as a high priority issue in the region.

8.7 FACTORS SHAPING THE TRAFFICKING ENVIRONMENT

Internationally the number of migrant workers has increased. Kaye (2003) summarised the push factors for this increase in migration as follows:

- Inadequate employment opportunities, combined with poor living conditions, including a lack of basic education and health provision;
- Political breakdown or economic dislocation, which may be caused by conflict, environmental disaster, structural adjustment policies, mismanagement of the economy, etc. Such crises usually lead to higher unemployment, rising cost of living and fewer public services that may threaten an individual's ability to sustain themselves and their families;
- Family breakdown (particularly sickness or death of one or both parents) which often compels remaining family members to send the children away from their homes to work and/or have better opportunities; and
- Discrimination (gender, ethnic or caste) nepotism and/or corruption, which excludes people from employment or professional advancement.

8.7.1 Poverty

For many of the interviewees of our study poverty is one of the most important factors facilitating human trafficking. Apparently recruiters from home areas seem wealthy, for example they buy a house in the area or wear expensive clothes, when they visit their areas of origin. It is thus easy for them to convince poor local girls that their offers of jobs and accommodation are valid and that they will have a better life in their new destination area. However, upon arrival the girls realise that they have been trafficked into prostitution with no freedom of movement.⁹

⁹ Interview, Tshwane Home of Hope.

South African women have increasingly become labour migrants (Posel 2003) to escape poverty and seek better economic opportunities for themselves and their families. In doing so they become more vulnerable to trafficking.

The Department of Economics of the University of Stellenbosch indicates in a 2008 report on poverty¹⁰ (Armstrong, Lekezwa & Siebrits 2008) that 47.1% of the South African population consumed less than the 'lower-bound' poverty line proposed by Statistics South Africa in 2007, which means 47.1% of the population did not have R322 per month (in 2000 prices) for essential food and non-food items.

The same report (pages 9-11) indicates that the poverty rates of South Africa's provinces differ significantly, as do those of the urban and rural areas of the country. In 2005/06 the poverty rates ranged from 24.9% in Gauteng and 28.8% in the Western Cape to 57.6% in the Eastern Cape, 58.8% in KwaZulu-Natal and 64.6% in Limpopo. KwaZulu-Natal, the Eastern Cape and Limpopo, the provinces with the highest poverty rates, are also relatively populous – in 2005 they housed 47.4% of the South African population. The report indicates that greatest proportion of South Africa's poor (60.1%) live in these three provinces.

The incidence of poverty, however, was much higher in the rural areas of South Africa. The proportion of poor individuals who were rural dwellers was 59.3%, despite the fact that the rural areas housed well below one-half of the South African population (Armstrong et al. 2008: 11)

According to Armstrong et al. 2008: 13) there was a major difference in the poverty rate according to gender: 45% of all female-headed households lived below the 'lower-bound' poverty line, compared to only 25% of male-headed households.

8.7.2 Unemployment

Although South Africa can be characterised as a middle-income economy, the country has high levels of unemployment, slow employment growth, high earnings inequalities, low wages for low skill workers relative to the cost of living and a human development profile normally associated with a poor country (Altman 2006: 5). Until the 1980s low skilled labour was absorbed in industries such as mining and agriculture. These industries have, however, become increasingly unstable with wages remaining stagnant or falling in these sectors (Altman 2006: 13).

According to Statistics South Africa's Quarterly Labour Force Survey, in the Third Quarter of 2009 (xi), the unemployment rate for South Africa was 24.5%. The year-on-year comparison with the Third Quarter of 2008 shows an increase in the unemployment rate of 1.5 percentage points. The survey (StatsSA 2009a) indicates that in the Third Quarter of 2009 28.8% Black/African, 21.6% Coloured, 12.7% Indian, and 4.8% White South Africans were unemployed.

8.7.3 HIV/AIDS

UNAIDS defined South Africa's HIV epidemic as being a generalised epidemic, since more than 15% of the county's population aged 15-49 is living with HIV (HSRC 2009).

UNAIDS estimated that in 2007, 33 million people were living with HIV globally. In that year 2.7 million people became infected with HIV and it was estimated that 1.9 million infections occurred in sub-Saharan Africa. Southern Africa has a disproportionate share of the HIV infections with 35% of infections occurring in the sub-region (HSRC 2009).

The HSRC's South African National HIV Survey (2009) found that in 2008 HIV prevalence for the total population of South Africa was around 11%. However, HIV levels differ substantially by age and sex and also

¹⁰ For the study, the data of two surveys conducted by Statistics South Africa – the Income and Expenditure Survey of Households (2005/06) and the General Household Survey 2006 – was analysed.

show a very uneven distribution among the nine provinces of the country. According to the HSRC (2009) the highest prevalence rates in 2008 were found in KwaZulu-Natal (15.8%) and Mpumalanga (15.4%). The two provinces with the lowest prevalence rates are Western Cape (3.85%) and Northern Cape (5.9%).

Apart from the vulnerability of mobile populations to HIV/AIDS the pandemic is also beginning to exert an influence on migration patterns. For example, loss of household income through the death or disability of a former migrant worker may encourage migration by other members of the household to seek income-earning opportunities. Widows or widowers, often also HIV/AIDS positive, may migrate upon the death of their partners, either to seek support from family members or to search for new sources of livelihood. AIDS orphans, who may also themselves be HIV-positive, may migrate to live with relatives or to seek their own income-generating opportunities (IOM 2005).

8.7.4 Traditional practice

According to UNESCO (2006: 37) traditional practices, such as early marriage, which may be linked to survival needs, is often harmful to girls and women. In very poor communities a young girl may be regarded as an economic burden and her marriage to a much older man as a family survival strategy. In some communities the bridegroom or his family have to pay a bride price (lobola) to the bride's family. There is also a risk of trafficking linked with early marriage when men cannot find young girls in their community.

Women in such marriages are sometimes under extreme physical or emotional stress and may choose to run away. If they do not return to their families they may seek assistance from strangers and thus be at risk of recruitment into human trafficking (Bermudez 2008: 16).

8.8 SOUTH AFRICANS TRAFFICKED ABROAD

In the era of increasing globalisation many South Africans, especially young people, are using the opportunity to work overseas. Since they are willing to migrate to foreign countries in search of such job opportunities, they may fall prey to human trafficking. According to the US State Department Trafficking in Persons Report (2009), South African women are trafficked to Europe and the Middle East for domestic servitude and sexual exploitation. Furthermore, Nigerian syndicates have reportedly begun moving trafficked women from South Africa to the United States for African clients in that country.

However, not many cases of South Africans trafficked abroad are documented. There may be various reasons for this. For example, if a victim in a foreign country is unable to get assistance from, amongst others, NGOs, the police, the South African Mission or the IOM, little will be known about their fate. Furthermore the lack of knowledge and awareness on human trafficking may result in the non-identification of human trafficking cases, e.g. when a victim escapes from his/her situation abroad and then seeks assistance from a service provider in South Africa. This provider may not be familiar with human trafficking and is thus not able to identify it as a human trafficking case.

In the past five years, cases of South Africans trafficked to overseas countries, such as Macau, Israel, Ireland, the United States of America, Switzerland and the Netherlands were reported. The women were mostly lured to the countries with employment or educational promises, but found upon arrival that they had been deceived. In most cases their travel documents were confiscated, they were abused and their movements restricted.

In 2004 a South African woman escaped from her capturers in Macau, an enclave in China. She reported seeing nine other black, white and coloured South African victims in Macau, aged between 18 and 21, who were forcibly prostituted in Macau's saunas. Macau has numerous casinos, nightclubs and saunas to which South African women have been lured with false job offers. They are then forced into prostitution and have little chance of escaping. Apparently the trafficking operation between South Africa and Macau targeting young South African women with experience as strip dancers or sex workers was run by both South African nationals involved in the sex industry and Chinese nationals with links to organised crime networks in Macau (IOM *Global Eye on Human Trafficking* 2004).

In 2006 two South African women responded to a job advertisement in a South African newspaper offering au pair jobs in Israel for older women. The recruiter, a South African woman, told them that they would be working for kind families and promised a good salary, free boarding, and time off over weekends during which they would be able to travel and see the country. (The victims did not realise that it is illegal for foreign nationals to work as au pairs in Israel and that they could be arrested and prosecuted). Upon arrival in Israel they had to work for long hours, with no holidays or sick leave and with little or no pay. They were employed in Nirit, a town about 40 km from Tel Aviv, with a poor transportation system and could not easily leave the town. As soon as they realised that they had been deceived by the agent they wanted to return to South Africa, but their employers told them that they had to buy return tickets for which they did not have the money. One of the women escaped to a shelter for abused women which contacted the Israeli immigration police. They also rescued the other women and both returned to South Africa (IOM *Global Eye on Human Trafficking* 2006a).

In 2007 the IOM assisted three South African girls to return home after being trafficked to Ireland. The girls were promised opportunities to work and study in Ireland, but were forced to work as domestic workers with little pay. Their travel documents were taken away and they had to pay back the cost of their plane tickets while working under difficult conditions. Two of the girls escaped and went to the police while the third girl contacted the South African embassy. At the time of the incidents the IOM's on human trafficking, the *Global Eye on Human Trafficking* (2007a: 7) stated: 'the allegations of these young women suggests that this is an organised operation targeting young South African women.' South African friends living in Ireland invited two of the girls to Ireland while a Nigerian man facilitated their travel arrangements. The third girl's Nigerian boyfriend facilitated her travelling to Ireland to attend school in that country.

In 2007 *Global Eye on Human Trafficking* (2007b) published a narrative from a qualified South African teacher that was lured under false pretences to work as a nanny in the United States. She was promised a daytime childcare work with a good salary. However, the victim indicated that it turned out to be '24-7 on-call domestic servitude' (IOM *Global Eye on Human Trafficking* 2007b: 6) with small remuneration. She could not return to South Africa since her employer took her passport and return ticket and demanded that she first repay the cost that he had incurred for her travel to the United States. She managed to escape and was assisted by a local NGO in the United States.

In the recent past South Africans girls were exploited in both Switzerland and the Netherlands. A South African girl was appointed as an au pair in Switzerland, but it was actually a case of labour exploitation, while another South African girl recruited to work in the Netherlands was sexually exploited (Interview IOM).

8.9 RELATIONSHIP BETWEEN HUMAN TRAFFICKING, ILLEGAL MIGRATION AND HIV/AIDS

Gushulak and MacPherson (2000) argue that the medical consequences of migrant trafficking are important and significant to both migrants and their destination countries. Some of the health risks are personal, while others can affect groups of people or the wider population. The health risks of HIV/AIDS are claimed by Gushulak and MacPherson (2000) to be both personal and of wider significance. See Figure 8.1.

An analysis of the stages of the trafficking process by the IOM (2006) highlights the health risks that victims can encounter. The first stage – *origin or pre-departure* – defines some basic mental and physical health characteristics of the trafficked person at departure, which in turn will affect that person's health-related behaviour. Pre-existing illness or diseases reflect the environment present at the migrant's home, including poverty, lack of knowledge about HIV prevention and its spread, lack of education and poor nutrition.

The *transit or travel* stage is the period beginning with the individual's recruitment and ending with the arrival at the point of destination. Trafficked persons may be exposed to dangerous modes of transportation, high-risk border crossings and arrest, threats, intimidation and violence, including rape and other forms of sexual abuse during this stage.

The *destination* stage is when an individual is put to work and subjected to a combination of coercion, (sexual) violence, forced use of alcohol and other substances, forced sex work, forced labour, debt bondage or other forms of abuse normally associated with trafficking. In addition, victims lack access to health and social care and support. Indications are that trafficked individuals are often faced with multiple infections, injuries and illnesses, and complications resulting from a lack of adequate medical treatment.

Between the destination and the return stage is the *detention, deportation and criminal evidence stage* when an individual is in the custody of the police or immigration authorities for alleged violations of criminal or immigration laws; or is cooperating in legal proceedings against a trafficker, exploitative employer or other abuser. In some detention facilities, the conditions are extremely harsh which could pose further health risks.

The *return and reintegration* stage is a difficult, long-term and often multifaceted process. After escaping from the trafficking situation, people often experience anxiety, depression, isolation, aggressive impulses, self-stigmatisation or perceived stigmatisation through others, difficulty in accessing necessary resources, difficulty in communicating with support persons and family, as well as negative coping behaviour, such as excessive smoking, drinking, or drug use (IOM 2006).

There are various dimensions to the relationship between human trafficking, illegal migration and HIV/AIDS. HIV/AIDS is used as a reason by up to 59 countries to deny entrance to potential migrants (UNAIDS 2009). The main motivation for this is to protect their citizens against entrants posing potential health, dependency, or criminal risks. Immigrants with HIV/AIDS may often encounter increased public and policy hostility, as fear of AIDS may contribute to additional discrimination. Until November 2009 when a United States ban on allowing immigrants who are HIV positive into the country was lifted by the Obama administration, United States immigration policies had considered being HIV positive as grounds for inadmissibility to the country (Johansen 2006). Until recently, every non-citizen entering the US was questioned on whether they have a communicable disease of public significance. A process to undo this policy started in 2008 with the signing of the 'The Tom Lantos and Henry J Hyde United States Global Leadership against HIV/AIDS, Tuberculosis and Malaria Reauthorization Act of 2008'.

Despite changes to US laws, the process that used to be followed provides a typical example of how some countries handle applications for entry of migrants who are HIV-positive. Those applying for permanent immigration must undergo health screening including an HIV test. HIV-positive applicants will be denied entry unless granted an HIV waiver. In order to qualify for HIV waivers, applicants must show: (1) danger to public health is minimal; (2) possibility of the spread of infection is minimal; (3) no United States government agency will incur expense because of admission (Lambda Legal and Immigration Equality 2005: 5).

Health screening could force individuals to enter destination countries via irregular channels in order to evade the highly selective pressures of screening. Gushulak and MacPherson (2000) point out that illegal migrants are often more likely to have those characteristics associated with risk factors for greater disease potential, such as HIV/AIDS.

Human trafficking is regarded as a contributing factor to the spread of HIV. See Figure 8.1. The UNDP Asia and Pacific regional coordinator, Caitlin Wiesen-Antin maintains that 'Trafficking, see figure 8.1, contributes to the spread of HIV by significantly increasing the vulnerability of trafficked persons to infection,' and by threatening human development and security (Sirilal 2009).

It is also true that many trafficked women end up in the sex industry of the receiving country. Those that do not have HIV/AIDS are then at risk of contracting the disease. Trafficked women subjected to forced and unprotected sex are particularly susceptible to contracting the disease. This is borne out by examples such as a Mumbai study that estimated that a quarter of trafficked women in this Indian city are HIV-positive. Another study also showed that 60% to 70% of 218 sex workers from Nepal who were rescued in a raid in Mumbai were infected (Los Angeles Times 2007).

Thus far, it is clear that women and girls are most at risk, but so too are young boys. Girls and women trafficked for the purpose of sexual exploitation are more likely to be forced into unprotected sexual acts with multiple

partners, and this is a significant factor in the spread of HIV. HIV has received little attention in efforts to address trafficking in persons, and therefore at the moment, specific HIV prevention and care services catering for trafficked persons are nonexistent. While many national HIV/AIDS plans include policies and programmes addressing sex work, issues such as trafficking in persons, coercion into sex work, rape and sexual violence are usually not addressed. General responses addressing HIV/AIDS have little impact on trafficked persons due to the clandestine nature of human trafficking, and because people who have been trafficked are not usually reached by services. More focused action plans, specifically addressing people vulnerable to human trafficking, need to be urgently developed and implemented (UNODC 2009).

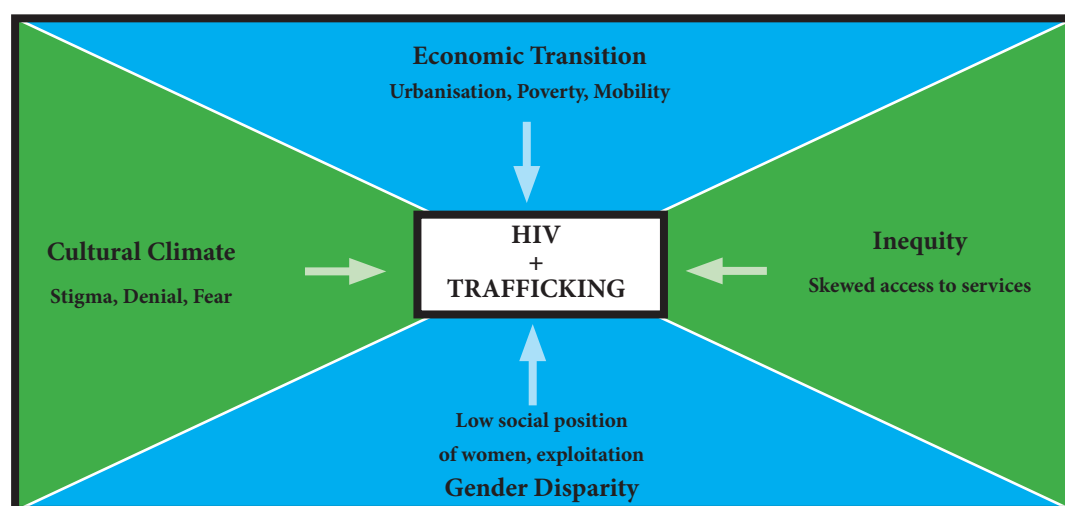


Figure 8.1: Common Factors that Accelerate the Spread of HIV and Human Trafficking.

Source: UNDP 2009.

The UNDP (2007) reports that neither HIV/AIDS nor human trafficking has been integrated or mainstreamed adequately. This is despite the fact that HIV and human trafficking share many causal and consequential factors, including gender inequalities, poverty, lack of economic opportunities for women, stigma and discrimination, rights violations and a life without dignity. Reportedly, one of the fundamental weaknesses in explaining and exploring the linkages between trafficking and HIV is a lack of adequate data (UNDP 2007). This is due to the historical absence of a systematic approach to examining dual vulnerabilities, the highly sensitive nature of both issues and the strong stigma attached both to survivors of trafficking and to people living with HIV. The mixture of these sensitive factors has deterred efforts to examine the links critically and to act proactively on these two closely intertwined issues.

Human trafficking and HIV/AIDS are connected to a wide range of development issues such as socio-economic inequality, migration, education, rights and health. The factors that increase a woman's risk of being trafficked are also the factors that increase her vulnerability to HIV. While there is a need for in-depth analytical studies entailing socio-cultural investigation of individual trafficking processes and HIV risk factors in order to establish 'linked vulnerabilities', the broad factors of vulnerability commonly noted are clear. World Hope (2009) identified a number of central overlapping factors between HIV/AIDS and human trafficking in terms of both target populations and facilitators.

Victims of trafficking in South Africa are at high risk to contract sexually transmitted diseases due to the very high prevalence rate in the country. Generally, very little is known about the prevalence of HIV among trafficking victims in South Africa. Interviews conducted by this study reveal that trafficked victims seldom know or disclose their HIV status to non-governmental organisations such as shelters for victims (interview, Tshwane Home of Hope). The International Organisation for Migration assisted victims with medical examinations that often included an HIV/AIDS test. Victims have the freedom of choice to undergo such a test and to decide whether the IOM official can have access to the results. According to the IOM, it is difficult to establish the exact

point in time when HIV/AIDS infections occur, which makes it hard to determine whether trafficking victims were infected during their ordeal or prior to being trafficked. Some victims originate from countries with a high HIV/AIDS prevalence, such as Mozambique, while others are from Thailand and countries with relatively low HIV prevalence rates and high levels of health spending (IOM 2006).

The IOM refers South African victims to government clinics where they are able to obtain HIV/AIDS medication free of charge. Because it is generally a challenge for foreign trafficking victims to obtain treatment from government sources, the IOM provides direct assistance for the victims (IOM interview).

According to an IOM report (2006), Asian and Eastern European women in up-market establishments often have access to private health services. These women are tested regularly for sexually transmitted diseases and strict condom use rules are enforced by most of these establishments. However, women that do contract HIV are likely to end up on the street if traffickers have no further use for them. On the other hand, the IOM states (2006) that African women from countries such as Mozambique are sold as 'wives' in mining areas or end up in the sex industry in downtown Johannesburg where they are exposed to unprotected sex; run the risk of contracting sexual transmitted infections (STIs); and have limited access to health care facilities. A study by the IOM (2006) recorded extremely high levels of STIs and HIV among sex workers at 15 brothels in mining areas in Gauteng province. Trafficked women and foreign African women in particular seldom access specialised health services from government hospitals, but might obtain primary health care assistance from mobile and other government clinics. Accessing health care at clinics can be difficult with individual service providers deciding whether migrant women can obtain medical assistance or not. Certain clinics/hospitals require South African identity documents before attending to patients. According to a respondent from the KwaZulu-Natal Department of Health, human trafficking victims and illegal migrants will receive the same treatment as South African citizens for ordinary illnesses and day-to-day health problems. Apparently all victims of sexual assault and abuse will be treated in KwaZulu-Natal health facilities and given prophylaxes for 28 days for the prevention of HIV/AIDS. However, HIV anti-retroviral treatment is only provided to South African citizens. The medical expenses of victims in witness protection plans are paid for by the South African Police Services.

Mental health problems have been identified by the IOM as one of the major health issues that are not receiving enough attention. According to the IOM (2006) many countries lack specialised mental health treatment for trafficked women.

8.10 CONCLUSION

Migration, trafficking, and smuggling are separate, but inter-related issues. The majority of trafficked people are migrants who hear about well-paying jobs abroad through third parties who offer to find them employment and make the travel arrangements. For most trafficked people it is only once they arrive in the destination country that they realise that the work they were promised may not exist and they are then forced to work in jobs or under conditions to which they did not agree (Kaye 2003). They often face huge debt bondage for the migration move and subsequent arrangements. There are various pull factors drawing people to South Africa, for example, the relative economic prosperity of South Africa, a demand for sexual services and cheap labour, established migration routes and the feminisation of migration. Many of these have the potential to act as facilitators for human trafficking to South Africa.

Findings of the research indicates that the Department of Home Affairs acknowledges the link between human trafficking and migration and has started to put in place measures to combat human trafficking. For example the Department has appointed an Inspectorate Unit to investigate alleged cases of human trafficking and to uncover corrupt officials. The department has also embarked on training programmes for immigration officials to create awareness on human trafficking and is planning more specialised training programmes in future. It is also co-operating with European countries with regard to human trafficking, has improved co-operation with neighbouring countries via bilateral agreements on the flow of people between borders, and is cooperating with the NPA in a project on human trafficking.

Thus far, few human trafficking cases have been prosecuted in South Africa with the involvement of the Department of Home Affairs. Current cases are mostly prosecuted under the Prevention of Organised

Crime Act, due to the involvement of criminal syndicates in a number of crimes including sexual offences, drugs, money laundering and counterfeiting. Human trafficking cases require good cooperation with other government departments such as the SAPS, Department of Justice, NPA and Social Development. From our interviews it seems that cooperation on human trafficking issues has improved over the last years but room for further improvement remains.

The inherent vulnerability of victims of human trafficking exposes them to sexually transmitted diseases such as HIV/AIDS and other illnesses. The mixture of particularly sensitive factors such as HIV/AIDS and human trafficking has deterred efforts to examine the links critically and to act proactively on these two closely intertwined issues. Victims of trafficking in South Africa are at high risk of contracting sexually transmitted diseases due to the very high prevalence rate in the country. Generally, very little is known about the prevalence of HIV among trafficking victims in South Africa.

CHAPTER NINE: HUMAN TRAFFICKING AND ORGANISED CRIME

INTRODUCTION

This chapter focuses on criminal aspects of human trafficking in South Africa with a special focus on organised crime. The Palermo Protocol (Article 10) lays out the responsibility of law enforcement authorities to gather intelligence on human trafficking including organised crime – specifically in Clause (c):

The means and methods used by organised criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

Regarding method, research for this chapter was among the most sensitive of the study. Studies of human trafficking within South Africa have not yet seriously addressed internal policing issues and the role of organised crime. The limited research into the area of organised crime in relation to human trafficking may stem partly from a belief that the majority of the trafficking is being conducted through indigenous informal networks (HSRC 2008: 25). The absence of research also reflects the extreme sensitivity and danger that accompanies research in this field, which requires special methods, including undercover policing skills.

For the initial analysis, a sample group was identified by consulting with the head of the SAPS Organised Crime Unit and confirming contacts through visits to different provinces within South Africa. The same process was followed with other law enforcement entities countrywide, as well as with international and non-governmental organisations. Human trafficking experts from the International Organisation on Migration (IOM) also agreed to participate in the study.

Through this probe, several 'hot spots' were identified. As time constraints precluded random probes throughout the entire country, the study focused on these hot spots:

- Gauteng – with the focus on Pretoria and Johannesburg;
- North West – focus on Rustenburg;
- Free State – focus on Bloemfontein and Lesotho/Maseru border;
- KwaZulu-Natal – focus on Durban and the harbour;
- Western Cape – focus on Cape Town and the harbour;
- Eastern Cape – focus on Port Elisabeth surroundings and the harbour;
- Limpopo – focus on Messina border (Beit Bridge); and
- Mpumalanga – focus on the Lebombo border.

A team of four investigators from varying racial backgrounds was enlisted to address the demographic variations.

9.1 ORGANISED CRIME IN SOUTH AFRICA

The involvement of organised crime in human trafficking was identified by the IOM (Martens et al. 2003; Bermudez 2008), which has tracked the trafficking of people from Thailand, China and Eastern Europe to South Africa. Organised crime includes networks from Russia, Italy, Nigeria, Morocco and China commonly involves the import and export of illicit goods, drugs and illicit trafficking, including that of persons (Williams & Brooks 1999: 81-99).

Molo Songololo (2000) identified elements of organised crime in the trafficking of children to the Western Cape. According to Bermudez (2008: 60), not only are international organised crime syndicates operating transnationally, they are also involved in internal trafficking, often using local South Africans as recruiters.

Bermudez (2008: 60) identified Nigerian organised crime syndicates operating in Pretoria, Port Elizabeth, Johannesburg and Bloemfontein where they are predominantly involved in trafficking local black South African females into commercial sexual exploitation. It was also found that organised crime syndicates operated by foreign nationals use local South Africans as recruiters. They are also involved in the recruitment of boys from rural regions of the Western and Northern Cape provinces for exploitative labour as street vendors in Cape Town. Men and boys are recruited to work on farms under false promises of pay and suitable accommodation. Boys who are not in school or on school holiday are more frequently targeted.

Regarding transnational trafficking, research reveals that the main supply source outside of the African continent for victims destined for South Africa is Thailand. However, respondents also revealed cases of Russian and Ukrainian nationals being trafficking within the borders of South Africa via the same organised crime networks.

9.2 BACKGROUND: PATTERNS OF HUMAN TRAFFICKING

Other chapters in this report have discussed the vulnerability of victims to human traffickers, so these factors will be summarised briefly here. Contributing factors, including poverty, isolation, lack of education and poor job opportunities, make relocation to South Africa – cast as a land of opportunity by traffickers – highly tempting. Potential victims are generally recruited through deception, often being offered what is perceived to be legitimate employment opportunities in South Africa in massage parlours, as cooks/chefs, exotic dancers and even as prostitutes. Based on these possibilities the respective victims often travel to South Africa on legitimate passports with the required visas. This makes it difficult for border control agents to detect any anomalies, unless they have been trained in the area of human trafficking and ask the appropriate questions. It is reported that the debt bondage for Thai women can be as high as 100 000 Rands.

The main port of entry into South Africa for victims recruited from countries such as Thailand, Russia and the Ukraine is via the O.R. Tambo International Airport. Respondents indicated that victims reported that they travel for approximately 30 minutes from the airport in order to be placed in what has been labelled by traffickers as ‘safe houses’. The victims are then exploited as sex workers as well as within the ancillary sideline of selling drugs to their respective clients. Respondents indicated that victims from this group appear to be distributed around three major metropolitan areas: the Johannesburg area/Gauteng, Durban area/KwaZulu-Natal and Cape Town/Western Cape with the main control centre located in Rustenburg.

Respondents reported that human traffickers for the most part target the border nations of Mozambique, Zimbabwe, Swaziland, Lesotho and Malawi in search of potential victims. However, there have been reported cases of victims from various countries on the African continent. The two major source countries for victims trafficked to South Africa are Mozambique and Zimbabwe, which may be due to unstable political conditions and socio-economic deprivation within these countries, as well as the porous borders between them and South Africa.

9.3 CRIMINAL ELEMENTS

Respondents identified criminal elements as being, amongst others, Russian Mafia, Bulgarian crime syndicates as well as individual South African and Bulgarian agents with a predominantly ex-military background. These groups are involved in trafficking of women from Thailand, Russia and the Ukraine and appear to be very well organised from the time of recruitment (usually through some form of deception) to maintaining complete command and control of the victims at and within the destination point of South Africa. As mentioned, victims are often recruited by females of similar nationality and ethnic background, then flown into O.R Tambo Airport, where they are collected by another female of similar nationality and ethnic origin and a white male and are then transported to a ‘safe house’.

The primary form of exploitation is sexual with victims usually operating as prostitutes within brothels situated in Johannesburg, Durban and Cape Town. A number of brothels operated by criminal syndicates in Gauteng and Western Cape were identified by respondents and international organisations. Respondents also reported using and distributing narcotics to their clients.

To maintain strict control over the victims, organised crime syndicates employ a number of tactics. Respondents reported that victims are often beaten and sexually assaulted in order to initiate and control them. A dependency on narcotics is frequently created, the logic being that the victims will rely on the traffickers for their next fix thus reducing the flight risk of the victims.¹ Other tactics include but are not limited to:

1. A debt bondage of anywhere from R60000 to R70 000 depending on the value traffickers place on the victim;
2. Seizure of passports to restrict travel;
3. The use of armed guards and dogs to instil fear;
4. The creation of the perception that the criminal syndicate has close links with the police, whether it be a statement of fact or not, thus reducing the risk of victims reporting their respective cases to law enforcement;
5. Threats of violence towards the victims and or members of their families; and
6. Rape and physical assault to maintain a constant state of fear.

Respondents have reported that organised networks are able to provide victims with legitimate passports and visas. However, information supplied to obtain these documents is fraudulent: for example, temporary resident permits and work permits may be applied for by an organisation acting as a front for a brothel and or human trafficking ring. Respondents reported that it is not unusual for work permits to be applied for under the guise of a dance company employing exotic dancers. Although people who have been trafficked might wish to return to their home countries upon discovering their situation, they do not have the opportunity, as visa extensions are made on their behalf by traffickers.

9.4 MEANS THROUGH WHICH VICTIMS ARE RECRUITED

Not infrequently African nationals looking for better opportunities in South Africa seek out the services of smugglers. However, criminal syndicates often operate in multiple areas including smuggling, weapons and narcotics trafficking. Smugglers sometimes sell their clients to criminal syndicates or the smuggler may be part of the criminal syndicate and searching for potential victims.

Respondents indicated that often victims who are perceived to be runaways or street children, or who come from remote rural areas are kidnapped for purposes of trafficking. Respondents held that organised crime elements within the African continent coordinate with elements outside the African continent. Criminal syndicates, criminals and specific individuals place 'orders' with criminal syndicates for specific types of individuals – distinguished by gender, age, and race/ethnicity – and geared towards the form of exploitation the client may require. Once victims are transported into the country, they are 'sold' to their respective clients. Respondents report that victims may be 'sold' by transferring their debt bondage to other buyers.

9.5 HUMAN TRAFFICKING ROUTES

Respondents indicated that victims recruited from the African continent enter the country via land borders, which include borders with Mozambique, Zimbabwe, Lesotho and Swaziland. Respondents that were interviewed had minimal information on trafficking issues in relation to land ports of entry with Botswana and Namibia. This may arguably be due to the more stable nature of these countries relative to their counterparts located on the north-western border of South Africa.

The destination of trafficked victims within the country differs according to the form of exploitation for which the victims are intended. However, there appears to be no area within South Africa not affected by some form

¹ The IOM maintains that it is not unusual for victims to establish a bond with their captors similar to that labelled as the 'Stockholm Syndrome'.

of human trafficking. Victims are exploited for the purposes of prostitution, begging, criminal activity and drug trafficking in more central areas, while those targeted for forced labour may be sold to clients in more rural locations, such as farms in Mpumalanga. Victims utilised for domestic servitude, or muti and ritual killings are ubiquitous within South Africa.

Victims – generally from Mozambique, Zimbabwe, Malawi and Swaziland, both male and female and ranging in age from thirteen to nineteen – are trafficked to South Africa through the Mpumalanga/Lebombo (South Africa/Mozambique) border, and the Komatipoort and Swaziland border areas. (A number of brothels using Mozambican women have been identified in Komatipoort.) Respondents have labelled the Lebombo border as the busiest land port of entry into South Africa. It accommodates approximately 100 000 persons within a 24-hour period. Respondents interviewed report that Zimbabwean and Malawian children as young as 10 to 15 years of age are being trafficked through the Musina/Beit Bridge (South Africa/Zimbabwe) border. Once across the border respondents the children are sold to crime syndicates (reportedly of Nigerian nationality) operating within South Africa. The victims are then trafficked to clients in other provinces within South Africa. Young girls are forced into prostitution, while boys are used to traffic drugs. Respondents reported that young women from Lesotho between the ages of 17 and 21 are also targeted by human traffickers and transported through the border post situated at Maseru, then on to Bloemfontein where they are forced into prostitution and pornography. Further reports indicated that Mozambique, Malawi, Zimbabwe and Lesotho nationals (women, men and children of varying ages) are also located in Rustenburg in the North West province and in the Gauteng province with a concentration in Johannesburg.

Respondents interviewed in the Cape Town area indicated that children as young as seven years old are trafficked into the area from a wide variety of countries on the African continent including Zambia, Senegal, Tanzania, Uganda, Kenya, Ethiopia and Angola. Once these children are controlled by the criminal syndicates, the young girls are forced into prostitution and domestic servitude where they are repeatedly raped by their respective owners. Young boys are forced into labour in factories, the agricultural sector and drug trafficking. There have even been cases where the corpses of children have been utilised to conceal narcotics across borders. Respondents interviewed in the Durban area echoed statements made by respondents in other parts of the country in terms of the trafficking trends of African nationals as well as Asians. However respondents added that the main criminal syndicates in this area are South Africans of Indian ethnicity. This statement makes sense as a result of the large Indian population in the Durban area. Criminal elements in this area are linked to those in other areas of South Africa, and are simply a small part of a bigger picture.

9.6 TACTICS UTILISED BY CRIMINAL ELEMENTS TO MAINTAIN CONTROL OVER VICTIMS

Threats, physical assault and drugs are used to control victims. Witchcraft and/or voodoo may also be employed to control victims trafficked from African countries. Comparatively speaking, debt bondage for African nationals is far less than for nationals from Thailand, Russian and the Ukraine. Debt bondage can range from as little as R2000 to as high as R12 000 for female victims who are perceived to be more exotic.

9.7 PERPETRATORS OF TRAFFICKING

Respondents revealed that an array of ethnically diverse criminal syndicates and individual opportunistic criminals are involved in human trafficking in the country. However, criminal syndicates operating across the African continent and within South African borders are alleged to be predominantly Nigerian.

The modus operandi of criminal syndicates that deal in victims from the African continent differ slightly from syndicates trafficking non-Africans. There appears to be less command and control in place than for syndicates that traffic non-Africans. Criminal elements and individuals approached by syndicates within South Africa will place orders specifying the type of person they are looking for, taking into consideration the form of exploitation. The syndicates will then fulfil the request by acquiring victims across the African continent. It would appear that the bulk of victims from outside of South Africa are from Mozambique and Zimbabwe.

African victims are sold to the clients to use as they wish and the primary criminal syndicate then relinquishes control over them. This is different to the handling of non-African nationals, who are controlled from the time of recruitment, through exploitation and circulation within the South African area of operation.

Another major difference in the modus operandi of criminal syndicates dealing with Africans and non-Africans is the form of recruitment. In the case of Russian, Thai and Ukrainian victims, deception is the common method used to lure potential victims. However, with African nationals, deception, smuggling and kidnapping are used. Female victims may reportedly be beaten and raped repeatedly during transport to instil fear and compliance. A dependency on narcotics may also be created as a means of control over victims.

One respondent informed us that certain members of an unidentified Nigerian syndicate are bold enough to make offers of sexual services to truck drivers queuing at the Beit Bridge border. One truck driver stated:

I last saw my family six months ago, if someone brings me a child to sleep with, after being away from my women for so long, I won't be able to say no. These girls appear wearing only an overcoat with nothing underneath. Even when you try to ignore them they just open their coats.

9.8 OFFICIAL COLLUSION AT BORDER POSTS

This study found that most African nationals who are trafficked enter through land ports of entry situated on the borders with Mozambique, Zimbabwe, Lesotho and Swaziland. It is argued that the main reason for this is the fragile infrastructure and economies in these border nations, which lead a large number of nationals from these countries to search for prosperity in South Africa. A respondent with knowledge of the operations at the Lebombo border crossing indicated that, during the 2006 festive season, 465 600 people were listed as passing through the border post, but just two years later, in 2008, it was reported that 730 037 people had passed through the same border post – about a 70% increase.

These numbers indicate only the number of persons that have been processed by immigration authorities. Border posts are very porous and people may cross without going through a post. Respondents report that taxi drivers regularly transport persons via the Komati Valley and the Lebombo Mountains to avoid official border crossings. HSRC researchers themselves observed taxis full of people queuing at the Lebombo border post to enter South Africa, with the passengers disembarking and walking through without proceeding through the checkpoint. Once the taxi crosses the border, these passengers again board the taxi and continue to their destination point in South Africa.

Respondents also reported high crime levels associated with the Lebombo border crossing, including bribery of officials, theft, illegal access through the porous border areas and drug trafficking. It is widely held that trafficking syndicates exploit the circumstances prevalent at this border post. One respondent indicated that a number of immigration officials had been suspended and arrested for facilitating drug and human trafficking, as well as car and human smuggling at the Lebombo border crossing, but the problem still persists. Another respondent gave an example of a woman who was attending a court case in South Africa and had to cross the border from Mozambique into South Africa. She informed court officials that she was no longer able to attend because she did not have further funds to bribe SAPS and Department of Home Affairs (DHA) officials at the Lebombo border crossing.

One respondent advocates that the border post should become a one-stop facility with a capacity to deal with pedestrians, taxis, trucks and buses. He further advocates that there should be a revival of the corridor along the N4 and the implementation of bi-lateral policies that could address some of the border issues.

A respondent with knowledge of operations at the Bloemfontein/Maseru border with Lesotho reported that children are permitted to cross the border without proper documentation as long as they are accompanied by an adult. Respondents reported that it is not unusual for an adult to come into South Africa and register, several children under his or her guardianship without documentation. These children are then brought into South Africa and are allegedly often not heard from again. There appears to be no follow-up with the registered guardian at any stage. The researchers observed at this particular border post, on one occasion, a SAPS officer

escorting a woman through the border post without going through the official immigration process. The respondent being interviewed appeared glad that this act had been observed by an external reporting source and the respondent went on to confirm that such activities are a regular occurrence at this border post.

At the Messina/Beit Bridge border crossing a respondent said he was aware that human trafficking was occurring but was not sure of the appropriate measures to take when such an issue was suspected. The respondent indicated that suspected cases were handed over to the SAPS but that the suspects were always set free. He believed that it may be due to the influence of a high ranking corrupt police official. The respondent added that there is a very poor level of cooperation between DHA officials and the SAPS in this area. It is important to note that the researcher himself observed two uniformed SAPS officials sleeping at the main gate while seven others were sitting in the shade under a tree calling people at random in order to verify documentation.

A respondent knowledgeable of operations at the Messina/Beit Bridge border post highlighted a case in which human traffickers appeared to be cooperating with and being assisted by DHA officials. A DHA official at this border crossing was arrested for allegedly facilitating the illegal entry of Malawian children from the ages of 10 to 13. These children, in addition to many others, were discovered at the residence of a local church reverend and community leader in a nearby town, who had allegedly been in collusion with the DHA official who was taken into custody. The community leader in question was taken into custody suspected of trafficking children in order to remove body parts for *muti* purposes.

Based on the primary and secondary data it is clear that corruption of government officials and more specifically those within the DHA and the SAPS are direct enablers within the human trafficking chain. A large number of people pass through the land ports of entry, and the presence of corrupt officials acts as a magnet for criminal syndicates. The trafficking of persons is believed to go hand in hand with the smuggling of persons, narcotics and vehicles at these ports of entry.

9.9 TRAFFICKING INSIDE SOUTH AFRICA

The same syndicates that traffic people from outside Africa and from the African continent also traffic South African nationals within the country's borders, through deception and kidnapping. Trafficking routes can be to any point in the country and criminal syndicates will bus in victims for the purposes of sexual exploitation to events such as business parties, or to hangouts near universities, such as the University of the Free State in Bloemfontein and Nelson Mandela Metropolitan University in Port Elizabeth. Organised criminal networks are especially active in the part of Cape Town known as the Cape Flats. Again, a favoured tactic is debt bondage. The same networks are involved in prostitution rings including child prostitution. Respondents mention that networks 'rent' young children from parents and or guardians. Children, both male and female, from the ages of four to eighteen may be 'rented out' for a few hours to a few weeks to earn money. Profits are recycled back to crime syndicates to purchase narcotics from the same individuals that trafficked their children. Moreover further reports indicate that children may even be debt-bonded to teachers who in exchange for sex will cover the student's school fees.

Respondents report that the Cape Town city centre is controlled by up to 30 street gangs that fight for control of the drug trade and the trafficking of young boys and girls in the area. Gangs, often linked to prison gangs (specifically those known as the 'twenty-sixes' and 'twenty-eights'), are calling in debts owed by families situated in the Cape Flats areas. Debts are often incurred by households that borrow money from criminal syndicates/gangs to purchase life necessities. These debts are collected by criminal syndicates who use the debtor's children as payment of interest and capital by pimping children for prostitution and drug trafficking.

9.10 TRAFFICKING IN BODY PARTS

Respondents interviewed in Limpopo and Mpumalanga observed an increase in the number of cases related to the trafficking of body parts over the last year. Individuals, rather than syndicates, appear to be involved, but they often organise into networks to manage the killing of victims and the trafficking of body parts to sell for African rituals/*muti*. Perpetrators appear to come from all walks of life and in some cases persons who may arguably be viewed as community leaders, such as teachers and the local clergy, are involved.

Respondents indicated that the majority of victims are women and children, although men too are targeted. In many cases, the heart, tongue and genitals are removed, as they are believed to provide the most power in terms of muti rituals. Respondents reported that once the victims are acquired through kidnapping, deception or even through purchasing the child victim from parents or guardians. They may be held in what traffickers label as 'safe houses' then sold to church and faith-based groups for the killing and removal of body parts at a river bank. One respondent was of the opinion that faith-based groups account for the large demand in the area for body parts for *muti* purposes.

The South African Broadcasting Corporation reported that on 29 April, 2008 a man was arrested in Umsinga area of KwaZulu- Natal after he was found concealing a human head, which the suspect attempted to sell to a traditional healer. Seven suspects appeared before the Magistrates Court for allegedly murdering eight women and subsequently mutilating their bodies for what was believed to be *muti* purposes. These cases are just a few examples of similar occurrences uncovered around the country.

9.11 HUMAN TRAFFICKING FOR SATANIC CULTS

The operations of human trafficking networks may have links to the rituals of satanic cults in South Africa. Certain satanic rituals require a human sacrifice, usually that of a child. Respondents indicated that the need for victims leads cults to approach criminal syndicates involved in human trafficking. The respondents who spoke about this problem were former members of satanic cults in South Africa. They reported that these cults are very well connected and can be very dangerous. As ex members of such cults these respondents appeared to be genuinely concerned about their own safety and reported that they had received death threats in the past.

Respondents indicated that the satanic cults operate in all areas of South Africa and have an abundance of financial resources. They revealed that the main operational centre for these cults is in Krugersdorp, Gauteng. In some instances adult men or women may also be sacrificed, depending on the ritual being performed. Respondents said the criminal syndicates that the satanic cults deal with are often Nigerian.

Members of satanic cults are usually white and are often affluent members of society, including doctors, lawyers and businessmen (including women).

One police officer said he had heard of the practice of human sacrifice by satanic cults as well as 'snuff films'² allegedly perpetrated by such cults. The officer said he had also heard that there is talk among prostitutes about snuff films. However he said no concrete evidence has been revealed, possibly due to the secrecy of the cults and the fear they instil; or because such things do not take place.

The respondents said if these cults are unable to acquire victims from local criminal syndicates they resort to kidnapping – often from rural areas. They added that satanic cults generally target street children and prostitutes. If the ritualistic killing requires a male victim, they target gay men in bars and sedate them through the use of drugs, as it is more difficult to kidnap men directly from the street due to the level of resistance.

Respondents said satanic cults often operate with the assistance of corrupt SAPS officials. Cults also focus on other forms of criminal activity such as drug trafficking. One respondent added that some police allegedly bring narcotics that have been seized in police operations for use by the cult. The narcotics are distributed to local criminal syndicates (often of Nigerian nationality) and resold on the street, with the police official and the satanic cult taking their respective cuts. One respondent added that, on one occasion, a police official had in his possession heroin and crack cocaine with a street value of almost R800 000. This was to be supplied to a Nigerian crime syndicate. The respondent emphasised that this is a regular occurrence.

² Snuff films are pornographic films produced on the black market usually involving children and or women, who are killing during the sexual act.

The respondent in question even provided researchers with an opportunity to view a recording of a satanic ritual that involved the sacrifice of a human being. For the protection of the respondents, the video was not released nor were any of the details of the ritualistic killing divulged.

The data obtained thus far, while far from comprehensive, indicates an urgent need for further academic and police exploration.

9.12 CONCLUSION

Over the course of this research, two issues became apparent. The first is the lack of proactive law enforcement both on a general level and in relation to human trafficking specifically. There appears to be a lack of coordination among different law enforcement entities as well as within the SAPS³ itself. Based on interviews with respondents, there appears to be very little communication, command and control. One respondent reported that the issue of human trafficking is not considered a priority within the SAPS. It is therefore it is very difficult to obtain support for counter-human trafficking efforts either from a monetary or a resource perspective. The second issue concerns the repeated allegations of corruption within law enforcement units, specifically the SAPS and Department of Home Affairs (DHA).⁴

³ The SAPS does have an Organised Crime Unit which encompasses counter-human trafficking with the head office located in Gauteng.

⁴ It is noted here that both institutions are on the Intersectoral task team and should have been major contributors to this research, aimed assisting the South African government. However, formal permission from DHA was not obtained until the first week of January 2010, greatly limiting what research could be done, and the SAPS did not give its officials authorisation to participate in this study.

CHAPTER TEN: FRAMEWORK FOR A TRAFFICKING MANAGEMENT INFORMATION SYSTEM

INTRODUCTION

Effective responses to prevent trafficking in humans, protect victims and potential victims, and prosecute offenders depend on the availability of data that is concrete and reliable. The lack of systematic, national-level data collection on the prevalence and trends of human trafficking in South Africa hampers efforts to effectively address the problem. Currently, no statistics are available to accurately quantify the magnitude of trafficking in South Africa or in any country in the region; this is particularly true of the SADC countries. While the challenges surrounding data on trafficking are recognised, effective solutions or strategies to overcome these challenges are less well documented (IOM 2007: 2). This section summarises an approach to data collection on human trafficking that has two advantages for South Africa: it has had expert input and, if implemented in other SADC countries, could help with essential integration of data in the region.

10.1 FROM DATA TO INFORMATION AND KNOWLEDGE

Difficulties surrounding the collection of data on trafficking in persons are extensively documented (UNODC 2006). Like other criminal activity, trafficking is a clandestine and underground criminal activity that cannot be measured by traditional collection methods. Present statistics do not accurately reflect the real incidence of trafficking in persons, as victims are often unwilling or unable to report their experiences to the authorities.

Lack of an effective and comprehensive framework to address trafficking not only limits the capacity of government officials to arrest offenders, and to identify and assist victims, but it also precludes the collection of data about all forms of trafficking. In many countries, trafficking is a relatively new addition to the statute books. As a result, most government officials and agencies are only just learning how to identify and respond to trafficking cases. If officials do not recognise a case as 'trafficking' then data on these cases will not be collected, or alternatively, valuable data about trafficking may be misclassified under other categories of crime such as illegal migration, illegal prostitution or sexual assault.

The collection of data on human trafficking is the first step in a larger process. Once collected data is compiled, it must be summarised, analysed and turned into information that can be used to make informed policy and operational decisions. This process requires implementing an appropriate and effective 'information system' (IOM *Asean and trafficking in persons* 2007: 4).¹ (See Box 10.1)

Some countries have no specific laws on trafficking (UNODC 2008). In addition, the laws in many countries limit the collection of effective data. For example, the laws in some countries cover only certain forms of trafficking, such as trafficking of children for sexual exploitation, trafficking of women for sexual exploitation, or trafficking of women and children across international borders. The trafficking of men and boys and trafficking for labour exploitation are often not covered.

No guidebook or agreed set of principles exists on how to successfully collect relevant, reliable data on trafficking. The lack of guidance on this issue reflects the newness and complexity of the subject and the large number of practical issues that need to be addressed before it is possible to improve data on trafficking.

¹ The framework and best practice principles presented in this report are based largely on the *Handbook on anti-trafficking data collection in South-Eastern Europe: Developing regional criteria*. International Centre for Migration Policy Development (ICMPD) (2007); and *ASEAN and trafficking in person: Using data as a tool to combat trafficking in persons* Geneva: International Organisation for Migration (IOM) (2007).

BOX 10.1**WHAT IS AN 'INFORMATION SYSTEM'?**

An information system is a whole process that allows:

- relevant reliable data to be collected on a regular basis at its source (e.g., from a border post or hospital);
- data to be compiled and summarised;
- summaries of the data to be analysed and interpreted for notable trends and policy or operational implications;
- reports to be generated for managers, including information about trends and policy or operational procedures so that well-informed decisions can be made; and
- system feedback about quality, quantity and usefulness of the data, so that refinement and adjustments can be made to the system as needed. This is particularly important, as laws change and the nature of trafficking changes over time.

White in IOM 2007: 8

Nonetheless, signatories to the UN Trafficking Protocol are obliged to prevent trafficking, prosecute offenders, and protect victims. In order to fulfil these obligations South Africa needs data that can help it to work out how to achieve these results (prevention, prosecution, protection), and measure whether efforts are having the intended effect (monitoring and evaluation).

The requirements for information management are set out in Chapter 6 of the draft *Prevention and Combating of Trafficking in Persons Bill*:

- 24 (1) An accredited organisation must, in the prescribed manner, collect information on victims of trafficking relating to:
- (a) the number of foreign victims of trafficking who have accessed a programme referred to in section 21;
 - (b) the number of South African citizens or permanent residents who are victims of trafficking and who have accessed a programme referred to in section 21;²
 - (c) the number of victims who have accessed a programme referred to in section 21 and who have not been reported to the South African Police Service;
 - (d) the countries from which foreign victims have been trafficked;
 - (e) the countries to which South African citizens or permanent residents have been trafficked;
 - (f) the purposes for which the victims have been trafficked;
 - (g) the methods used to recruit and transport the victims;
 - (h) the methods and routes used for trafficking the victims to and from the Republic; and
 - (i) the types of travel documents that victims have used or attempted to use to cross the borders of the Republic and how these documents were obtained.

² 21. (3) An accredited organisation that provides services to adult victims of trafficking who have children in their care must, in addition to the norms and standards referred to in subsection (1), provide:

- (a) a safe environment for children;
- (b) proper care for sick children or children that become ill; and
- (c) safe storage of anything that may be harmful to children.

- (2) An accredited organisation must provide an annual report on the information referred to in subsection (1) to the Intersectoral Committee established by section 37.

BOX 10.2**Elements of trafficking in persons as defined in the UN Trafficking Protocol.****FOR MEN AND WOMEN**

1. Action by the traffickers, in the form of recruitment, transportation, transfer, harbouring or receipt of persons.
2. Means must include one or more of the following:
 - force or the threat of force;
 - other forms of coercion;
 - abduction;
 - fraud;
 - deception;
 - abuse of power;
 - abuse of a position of vulnerability; and
 - giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
3. Purpose must be for 'exploitation' which includes, at a minimum:
 - the exploitation of the prostitution of others or other forms of sexual exploitation;
 - forced labour or services;
 - slavery or practices similar to slavery;
 - servitude; and
 - the removal of organs.

FOR CHILDREN

1. Action by the traffickers, in the form of recruitment, transportation, transfer, harbouring or receipt of persons.
2. Purpose must be for 'exploitation' including, at a minimum:
 - the exploitation of the prostitution of others or other forms of sexual exploitation;
 - forced labour or services;
 - slavery or practices similar to slavery;
 - servitude; and
 - the removal of organs.

10.2 PRACTICAL ISSUES

A number of practical issues have to be addressed before data on trafficking can be gathered or improved on (IOM 2007: 3-5). The first challenge is to clarify how 'trafficking' is defined in national legislation and the Palermo Protocol.

The international point of departure on this question is the UN Trafficking Protocol³, which entered into force in 2003 as a supplement to the Convention against Transnational Organised Crime. These two documents need to be read together in order to understand the international legal framework for combating trafficking. The Trafficking Protocol provides a comprehensive definition for the trafficking of men and women that requires three elements: *action, means and purpose*. The Protocol recognises that there is a different standard for trafficking in children (boys and girls under the age of 18), however, involving only two elements: *action* and *purpose* (see Box 10.2).

10.2.1 Distinguishing smuggling from trafficking

Under international law, 'trafficking' is distinguished from 'smuggling' such as smuggling of migrant labourers (see also discussion in Chapter Eight). Trafficking, like crimes such as homicide, assault and kidnapping, is a crime against an individual. Smuggling of migrants is generally a crime against the government, as a breach of immigration laws. Trafficking involves exploitation that can continue well after the victim has arrived at their destination. Migrant smuggling generally ends once a person has arrived at their destination. Trafficking involves victims of a crime who have either never consented to migrating for work or, if they did consent initially, such consent has become meaningless due to the deception and abuse they suffer. In contrast, smuggling of migrants involves migrants who have consented to the smuggling. Trafficking can occur within a country (internal or domestic trafficking), and between countries (international trafficking). In contrast, migrant smuggling is always transnational (UNODC 2006a). In sum, trafficking is a crime against an individual, whereas smuggling of migrants is generally a crime against the government as a breach of immigration laws.

10.3 FRAMEWORK FOR THE COLLECTION OF DATA

The first principle for data on trafficking, as outlined in *ASEAN and trafficking in person: Using data as a tool to combat trafficking in persons* (2007), is that data has to be relevant to your objectives, i.e., the type of data needed depends on what information is needed in order to solve a particular problem. South Africa needs data that is relevant to government objectives (prevention, prosecution, protection) and that helps the individual agency to meet its operational objectives. Therefore South Africa needs to develop data on trafficking that is relevant, regular and reliable. There are potentially many different types of 'data on trafficking': for example, global estimates of the number of trafficking victims and the profits made from trafficking; data from some countries on the exact number of people arrested and prosecuted for trafficking offences; data from victim support services; and data from surveys of communities about knowledge and attitudes toward trafficking. Potentially each of these examples involves some form of 'data on trafficking' but the data in each example is very different (see Box 10.3).

The following discussion adopts a framework of data management that uses two databases: a *victim-centred* database and a *trafficker-centred* database. The victim-centred database will collect data about trafficked persons, information that can help in prevention work and protection and assistance of trafficking victims. The trafficker-centred, criminal justice database will collect information about perpetrators of the crime of human trafficking and track their cases through the full legal and judicial process. This database is intended as a tool for tracking, monitoring and evaluating the prosecution of trafficking cases.

The two databases are separate and distinct, collecting different types of information and considering the issue of trafficking from different angles. They are kept separately and managed by different sectors of the

³ <http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

government. However, holistic, consolidated information from the two databases can provide a more complete picture of human trafficking. Data collection efforts for these databases must respond to, and be appropriate for, the national situation of each country but also harmonise with data collection in surrounding countries to permit an effective regional response.

While this framework is targeted at the South African government, it may be a useful resource for other anti-trafficking actors working with data collection and information management, from the perspective of both criminal justice and victim protection and assistance.

This might include:

- source countries in the region;
- anti-trafficking policy makers and planners;
- government departments working on anti-trafficking (both social sector and legal/judicial);
- anti-trafficking practitioners and specialists;
- anti-trafficking NGOs and other agencies working in the areas of prevention, protection and prosecution;
- law enforcement agencies.

BOX 10.3

Best practice for data collection on trafficking

Data is relevant if it provides the government with information about how to effectively prevent trafficking, how to identify, arrest and prosecute offenders, and how to effectively protect victims of trafficking. Data is relevant if it enables the government to monitor and evaluate the impact of anti-trafficking programmes and policies. Data needs to be collected and reported on a regular basis, to allow for tracking of changes over time.

Data needs to be reliable. That is, data needs to be accurate and precise, and the methodology for such collection must be clearly explained and defensible. Data has to be properly protected, with clear policies and procedures that balance the interests of law enforcement with the need to ensure privacy, confidentiality and personal safety of individuals. Anonymous, non-personal data is generally sufficient for policymaking purposes. Specific, personal data may be required for operational reasons. Access to this data should be subject to strict controls.

Data has to be turned into information. This involves implementing an appropriately designed and maintained information system at the agency level and/or at a national level. Information systems are not just computerised databases or spreadsheets. Information systems require hardware, software, people and clearly defined data 'fields'. Information systems involve many steps, from identifying information needs and relevant data, to turning that data into information that is useful information for managers. Information systems have to be properly designed, implemented and maintained. Information systems have to be sustainable.

10.3.1 Victim-centred database

Steps in the collection of data for a victim-centred database include:

1. data type – what information is collected for the victim-centred database;
2. data sources – who collects victim-centred data;
3. data collection methodology for the victim-centred database.

10.3.1.1 Data type – what information is collected for the victim-centred database

The intention of this database is to collect victim-specific information about individual cases, that is, personal information about the victim; details of their trafficking experience (from recruitment, through transportation to exploitation) and also their subsequent identification and assistance. Data is collected about identified victims of trafficking⁴; that is, those who either fall within the legal categories of ‘trafficking victim’ or ‘presumed trafficking victim’.⁵

The recording of all personal information is to be done with due consideration to legal and ethical obligations to protect the victims right to privacy and confidentiality and ensure victim security and the collection of victim data will be done with conformity to national legislation on data collection and the protection of personal information and, where legally required, written consent of the victim.

Compulsory indicators: While full information is not possible or required about each victim for inclusion in the database a minimum amount of information is required to ensure the integrity of the database. The number of compulsory indicators, as well as which indicators will be compulsory, must be decided by each data repository based on their specific needs and the dynamics of how data is collected.

Basic indicators: The minimum information required for a person/case to be recorded in the database should include the following basic indicators. These will allow for adequate identification of a trafficking case and avoid duplication:

- name and/or code;⁶
- date of birth;
- sex;
- contributing agency;
- citizenship;
- country of residence;
- trafficking designation (either a confirmed case or a presumed case);
- form of exploitation; and
- country/area where exploited.

10.3.1.2 Collection of victim-centred data

Information on victims is to be collected by anti-trafficking actors who come into contact with trafficked persons. Possible sources about trafficking victims are:

- law enforcement (border authorities, anti-trafficking units, police, etc);
- government institutions (social services, labour department, health sector, etc);
- legal professionals;
- anti-trafficking NGOs, CBOs, FBOs and other organisations (shelters, assistance programmes, helplines, outreach programmes, day centres, etc);

⁴ International Centre for Migration Policy Development (ICMPD) (2007: 18) advises that a victim does not have to have been assisted to be included in the database.

⁵ A presumed (or suspected) victim of trafficking is defined by ICMPD as someone who has met the criteria of the Palermo Protocol but who has not been formally or legally identified as trafficked. To fail to document both ‘actual’ and ‘presumed’ cases would be to miss a significant number of trafficked persons (2007:18).

⁶ A code (primary key) is a unique numerical value that is automatically generated by software, and is assigned to each person and case upon record set creation in order to distinctly identify them within the scope of the database (ICMP 2007: 18-19).

- international organisations;
- regional organisations (IOM, ILO, UNICEF, SANTAC, etc.);
- community leaders;
- traditional healers.

Data collection depends on cooperation and coordination between the different data sources.

10.3.1.3 Data collection methodologies for the victim centred-data

The four main steps involved in the collection, transfer and processing of victim-centred data are:

Step 1: Data collection

Data is collected by the various data sources according to a standardised template developed in collaboration with stakeholders based on experience and need. All anti-trafficking actors should complete the standardised template about each victim they come into contact with and who consents to be included in the database. Data is to be collected using comma separated values (CSV) file format.

Step 2: Data transfer

Data collected from the various institutions and organisations is submitted to the national repository in accordance with the rules regarding data transmission of personal data (e.g. prevention of the e-mailing of such data to the repository even when encrypted). Transmission may involve data being sent to the repository in paper form or via memory stick, CD, or stiffer. Where data is imported electronically it is important to ensure that it was successfully and accurately transmitted/imported into the database.

Step 3: Data validation

Validation of the data is effected by the national repository once it has been received from the sources. In the collection and validation of victim-centred data, information about individuals must be cross-referenced with other cases to avoid duplication. The database software must have a mechanism to guard against duplicate cases, notifying the person entering the data about possible duplication based on an overlap of the predetermined identifying indicators (date of birth, area of origin, etc).

In cases where information about a single victim was provided by more than one organisation or institution, the case will be entered into the database once only. Because victims may experience re-trafficking the database must be designed to accommodate multiple trafficking experiences for each victim as needed.

Where a victim exists in the database, entry of the new trafficking experience (recruitment, transportation, exploitation, identification and assistance) will be linked to the existing case file. Where personal information (section 1 of the database) has changed (such as education, area of residence, marital status, etc) this information will also be entered. The trafficked person will, therefore, appear only once in the database, but with multiple trafficking experiences.

Step 4: Data entry

Having validated the data, the dataset will then be entered – manually or electronically – into the database by means of an import function developed as part of the project.

Data entry may also occur at a later stage when additional (or more precise) information becomes available about the individual case. This information may become available when the trafficked person trusts the assisting agency and becomes more willing to reveal additional details.

The database software manual should outline how to (manually) update case files to avoid duplication and problems in the database.

10.3.2 Trafficker-centred database

This section outlines the various steps involved in the collection of data for the trafficker-centred database. These include:

1. Data type – information collected for the trafficker-centred database.
2. Data sources – who collects trafficker-centred data.
3. Data collection methodology for the trafficker-centred data.

10.3.2.1 Data type – information collected for the trafficker-centred database

The point of origin of this database is the traffickers – perpetrators of trafficking crimes or of crimes related to trafficking in human beings. Data is collected according to a standardised template, developed in collaboration with legal and judicial stakeholders in each of the countries/territories. This standardised template should collect personal information about traffickers as well as document their case through the legal and judicial process – from the initial stages of complaint and investigation, through all components of the legal proceedings including the appeal stages and the implementation of sentencing (where applicable).

Data is collected about traffickers, i.e. someone against whom a trafficking or related charge has been registered, either in the form of a complaint or an actual arrest. At a national level and based on the national legal framework, national repositories need to determine if an alleged trafficker needs to have been arrested to be included in the database. Some countries may include data about persons against whom complaints have been lodged and investigations pursued.

The collection of this data will be in line with national legislation on data protection for alleged perpetrators of crime, which generally differs from and is less restrictive than that for general citizens.

Full information is not required about the trafficker for the case to be included in the database. There is, however, a minimum amount of information required about each trafficker to ensure the integrity of the database. The number of compulsory indicators will be decided by each data repository in each country, based on their specific needs and the dynamics of how data is collected in that country and associated legal issues. The minimum information required for a person/case to be recorded in the database might include the following basic indicators. These will allow for adequate identification of a case and avoid duplication:

- name and/or code;⁷
- trafficker aliases;
- date of birth;
- country of birth;
- citizenship;
- country of residence; and
- trafficking/criminal charge.

⁷ A code (primary key) is a unique numerical value that is automatically generated by software, and is assigned to each person and case upon record set creation in order to distinctly identify them within the scope of the database. The code should neither be provided nor changed by the user (ICMP 2007: 23).

10.3.2.2 Collection of trafficker-centred data

Legal and judicial actors involved in investigations and cases against traffickers in South Africa (and in all countries/territories of the region) are required to complete a standardised template about each trafficker that they encounter in the legal/judicial process. Data must be collected by the various institutions using an excel spreadsheet.

Possible sources of information about traffickers are:

- law enforcement (border authorities, anti-trafficking units, prostitution police/vice squads);
- prosecutor's office;
- judicial and court system (civil and criminal procedures);
- legal and human rights NGOs;
- regional organisations (e.g. SANTAC);
- international agencies (e.g. IOM, UNICEF, UNHCR, UNODC).

10.3.2.3 Data collection methodology for the trafficker-centred data

The four main steps involved in the collection, transfer and processing of trafficker-centred data are:

Step 1: Data collection

Legal and judicial actors involved in the investigations and cases against traffickers in South Africa (and all countries/territories in the region) will be asked to cooperate in the data collection process. Data is to be collected by the various institutions using a comma-separated values (CSV) file format. Data about traffickers will come from a range of different sources:

- Investigation stage – law enforcement;
- Trial and appeal phases – prosecutors and courts.

As such, different institutions will be providing information about an individual trafficker(s) at different stages of the legal process.

Step 2: Data transfer

Once data is collected from individual departments and institutions, this information will be submitted to the national repository in accordance with national laws on the transmission of personal data, which, in the case of criminal data can generally be transmitted electronically. Alternately, where electronic transmission is not possible or legally permissible, this may involve sending data to the repository in paper form or in electronic format (via memory stick, stiffy disc).

Step 3: Data validation

The national repository will validate the data upon receipt of the datasets. This involves, inter alia, that the characters come from a valid data set or ensuring that the user has entered valid data. Once all the data is collected, information about individual cases will be cross referenced with data from other sources to avoid any possible duplication of cases. The database itself must have a mechanism that will guard against duplicate cases, notifying the person entering the data about a duplicate case based on an overlap of the identifying indicators (name, alias, date of birth, citizenship, etc). In cases where information about a trafficker has been provided by more than one organisation or institution, the case will appear only once in the database. Traffickers may have perpetrated more than one trafficking crime and may face charges on a range of trafficking-related violations. The database software must therefore be designed to accommodate multiple trafficking crimes for each trafficker. Where a trafficker already exists in the database, entry of the

new trafficking crime/charge must be linked to the existing case file. The trafficker will, therefore, appear once in the database but with multiple trafficking crimes/charges.

Step 4: Data entry

Once the data has been validated the dataset will be entered into the database – either manually or electronically imported, using the import function developed as part of the project.

Data entry may occur at a later stage when more information becomes available about the individual case. Because information is collected from different agencies and institutions at different stages of the legal/judicial process (at the stage of investigation, trial, appeal, etc.) data entry may need to occur for one case on multiple occasions to effectively document and track each case. The database software manual must outline how to update case files to avoid duplication and problems in the database.

10.4 REPORTING OBLIGATIONS AND REQUIREMENTS

The collection of trafficking related-data is not sufficient in and of itself to realise anti-trafficking objectives. This data must be consolidated, analysed and presented to practitioners and policymakers to allow them to make decisions and take actions to combat trafficking. As such, an essential component of the work is to report the on the data collected.

10.5 CRITICAL ISSUES

Among the critical issues which need to be considered in terms of anti-trafficking data collection and information management are:

- the right to privacy and confidentiality;
- consent;
- data storage and maintenance;
- transmission of sensitive data;
- information-sharing and exchange; and
- security issues and considerations.

10.6 CONSIDERATIONS FOR IMPLEMENTATION

Data collection depends on cooperation and coordination between the different data sources and problems in this arena cannot be resolved technically with the implementation of a database. Issues of trust, cooperation and coordination need to be considered as separate and important issues and will need to be resolved as part of the implementation of the project.

CHAPTER 11: RECOMMENDATIONS

INTRODUCTION

The objective of the Programme of assistance to the South African government to prevent, react to human trafficking; provision of services for research on deepened knowledge and understanding of human trafficking and provide assistance to victims of the crime is to ensure full compliance with the Palermo Protocol.

The purpose of this report is to construct a more detailed national picture of the extent and nature of human trafficking in South Africa, based on an initial country assessment.

Drawing on the findings of this study, a number of recommendations¹ are made for the development of a comprehensive approach that can inform effective action to: prevent and combat trafficking in persons; protect victims of such trafficking; and prosecute traffickers. The task of combating human trafficking is comprehensive and multifaceted and efforts to understand and combat trafficking in South Africa are still in the initial stages. The recommendations made in this report are for both short and long term interventions. While addressing the most pressing problems identified in the study, these recommendations by no means comprise an exhaustive list of responses.

SECTION 1: RECOMMENDATIONS

The following recommendations, derived from the research findings, attempt to address some of the requirements for compliance. Following these are further recommendations in Section 2: these arise from the Consultative Workshop held in Pretoria on 16 February 2010 and address the way forward.

11.1 A UNIFORM DEFINITION OF TRAFFICKING

Currently, South Africa has no stand alone legislation that addresses trafficking in all its forms. Existing laws relevant to trafficking in South Africa are fragmented and limited and this contributes to confusion among laypersons and professionals. Trafficking is generally associated with prostitution, or confused with the smuggling of persons. Defining trafficking and its elements in national legislation are critical to identifying cases, developing policies to address the problem and to securing conviction of traffickers.

The Prevention and Combating of Trafficking in Persons bill has been approved by Cabinet and is currently waiting to be tabled before Parliament. The new legislation will ensure that all forms of trafficking – for sexual exploitation, forced labour, forced marriage, debt bondage, servitude and removal of body parts are covered.

RECOMMENDATION 1

- Ensure that the South African government formalises and adopts a national definition of trafficking, which is accepted and practised across all sectors.

11.2 NATIONAL LEVEL DATA

Concrete, reliable data on human trafficking is an essential requirement for all effective programmes, interventions, policy and legislation. Appropriate and effective responses from practitioners and policy makers require an understanding of the extent and true nature of the problem and the complexity of the issues involved.

¹ More specific recommendations pertaining to each focus area are contained in the relevant sections.

There are no official databases containing even basic data on trafficking cases in South Africa. The lack of official statistics is a major obstacle to the accurate assessment of the magnitude of trafficking in South Africa or any country in the region, particularly the SADC countries.

RECOMMENDATION 2

- Implement a Trafficking Information Management System to enable the collection of systematic, national level data that will address the problem in terms of prevention, protection and prosecution.

11.3 COORDINATED CROSS SECTOR RESPONSE TO HUMAN TRAFFICKING IN SOUTH AFRICA

The establishment of the National Task Team in 2008 was a fundamental step in the development of a coordinated cross sector response to the phenomenon in South Africa. The need for cooperative and collaborative action against trafficking in South Africa has been addressed in the following ways: a National Action Plan, Provincial Task Teams and the appointment of a National Coordinator on Human Trafficking.

RECOMMENDATION 3

- Complete the National Action Plan and allocate responsibilities for its implementation.
- Complete the establishment of the Provincial Task Teams in all provinces to ensure the coordination of anti trafficking activities at provincial and local levels.
- Appoint a permanent National Coordinator on Human Trafficking as a priority to establish and facilitate the implementation of National procedures and related activities. The functions of the National Coordinator shall be determined by the National Action Plan.

11.4 VICTIM IDENTIFICATION AND ASSISTANCE

The lack of official referral mechanisms and/or standard operating procedures for referrals has been identified as a major obstacle in the identification of victims and their referral to required assistance. As many human trafficking cases are trans border, it is crucial that not only national but also cross-border referrals and support mechanisms are in place. Currently transnational referrals are not institutionalised but dealt with in an ad hoc manner.² The absence of Standard Operating Procedures and national and transnational referral mechanisms constitutes a serious gap in the protection of and assistance to victims of trafficking. As capacity building and training takes place with State and civil society stakeholders, it is expected that more victims of trafficking will be identified and assisted. At the time of the assessment, South Africa had no national referral mechanisms (NRMs)³. However, the provision of adequate and effective protection to victims of sexual offences is enshrined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act (32) of 2007. The purpose of the National Instruction 3/2008 that was issued to police is to ensure that members render a professional service to victims in respect of the investigation of (sexual) offences and to assist victims in this regard.

RECOMMENDATION 4

- The National Task Team (NTT) must commence with the planning and implementation of a National Referral Mechanism (NRM) and/or Standard Operating Procedures (SOPS).
- The National Task Team must address the gap in the SADC region by completing bilateral or multilateral agreements among SADC governments in order to plan and implement Transnational Referral Mechanisms.

² Personal communication with SANTAC Executive Director (7/12/09).

³ An NRM is a cooperative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, coordinating their efforts in a strategic partnership with civil society (OSCE & ODIHR 2004: 15).

11.5 REGIONAL AND INTERNATIONAL COOPERATION

Cross sector cooperation as well as regional and international cooperation is required for any successful action against trafficking. The Witness Protection Act provides that protection of foreign witnesses in South Africa requires the Minister of Justice and Constitutional Development's approval. This is usually based on an agreement between the requesting and requested countries. Currently South Africa does not have any standing or permanent agreements of this nature with other countries or within bigger organisations such as SADC and the African Union.⁴

Since human trafficking is often regarded as a continuous offence, it will therefore be an offence in both the country where the trafficking started and in the country where it continued to take place. If South Africa investigates such a crime and manages to link a suspect in South Africa to such crime, the NPA would prosecute in South Africa. If South Africa has evidence about the crime but the perpetrators are in a foreign country, such information will be made available for investigative purposes. If a formal request from another country to provide evidence through mutual legal assistance is received, South Africa may oblige (provided either that they have a Mutual Legal Assistance (MLA) agreement with the requesting country or that the country is a member of the Commonwealth, in which case the Harare Scheme⁵ regarding MLA in criminal matters becomes applicable).

RECOMMENDATION 5

- Ensure that South Africa enters into regional, or other international agreements with other countries that provide critical Witness Protection (WP) services for the international criminal justice system.

11.6 ADDRESSING ROOT CAUSES OF TRAFFICKING

Poverty and the lack of social and economic security are major factors that push people into migration and into situations of vulnerability in southern Africa and within South Africa. Alleviating these problems is a national priority and their scale is clearly vast, but their relevance to human trafficking is central and inescapable.

RECOMMENDATION 6

- Promote social, political and economic stability in order to reduce migration and other supply factors of trafficking.
- Improve access to educational and vocational activities, in particular for girls.
- Enhance job opportunities and entrepreneurship skills for women, including through promotion of small and medium businesses.
- Adopt or strengthen legislative, educational, social, cultural and penal legislation – through bilateral and multi lateral cooperation and through other means – to discourage all forms of exploitation of persons, especially of women and children, which may lead to trafficking.

11.7 CAPACITY BUILDING AND TRAINING

- Around 1 200 officials have received training since July 2008 as part of the government's response to trafficking. This included the training of border officials, social workers, nurses, law enforcement workers, labour inspectors and legal NGOs.⁶ However, a fundamental need for more training⁷ was

⁴ Adv. John Welch. National Prosecuting Authority.

⁵ This scheme relates to mutual assistance in criminal matters within the commonwealth, including amendments made by Law Ministers in April 1990, November 2002 and October 2005.

⁶ *Human trafficking is needful*: available at: <http://www.timeslive.co.za/news/article164290.ece> (accessed 7/12/09).

⁷ The Capacity Building and Training component that comprises Result Area 2 of the *Programme of Assistance to the South African Government to Prevent, React to Human Trafficking and Provide Support for the Victims of the Crime* is already underway.

identified through interviews conducted with a broad range of respondents. The need for more indepth training was also expressed by respondents who had already received some training on human trafficking. Training is also an important component both for NGOs providing services to victims of trafficking and for public awareness campaigns.⁸

RECOMMENDATION 7

- Accelerate and expand training – based on the definition of trafficking contained in the Prevention and Combating of Trafficking in Persons Bill – to judges, prosecutors, immigration, police and other law enforcement officials and to all relevant government and civil society institutions.

11.8 ESTABLISHING ‘HOTLINES’

This report supports the recommendation made by Gould and Fick (2008: 165) that the Department of Home Affairs maintain an anonymous hotline for the reporting of instances in which travel documents of foreign sex workers are illegally retained by third parties.

RECOMMENDATION 8

- A dedicated hotline should be established for the reporting of the illegal retention of travel documents of foreign workers and for the reporting of corruption of Home Affairs officials. Information and contact details must be widely disseminated.

11.9 MAINSTREAMING TRAFFICKING AWARENESS INTO EDUCATIONAL CURRICULA

An extensive public education and awareness campaign is being conducted under the Tsireledzani Anti Trafficking Programme.

RECOMMENDATION 9

- Extend awareness of trafficking so that education about trafficking is mainstreamed into primary and high school curricula, in order to empower educators and learners to react properly to situations of risk and enable them to access relevant services.

11.10 DATABANK OF RESOURCES

A multitude of specialised training materials and manuals dealing with trafficking have been developed by national and international agencies.

RECOMMENDATION 10

- A databank of specialised training materials and manuals dealing with trafficking be compiled and an agency identified to facilitate the distribution of these resources.

11.11 FUNDING

A comprehensive response to human trafficking requires long term and cross sector interventions.

RECOMMENDATION 11

- Further funding from donors and the government must be sought to support the creation of a sustained and long term response.

⁸ The *Tsireledzani* Public Awareness Campaign.

11.12 ONGOING RESEARCH

Victims of human trafficking are subject to physical abuse and psychological and emotional trauma. But human trafficking also has an impact on both individuals and societies, and South African society as a whole suffers from the economic, political and criminal consequences.

RECOMMENDATION 12

- Ongoing research is required to increase understanding of trafficking, its changing manifestations and consequences and also to monitor the results of anti trafficking interventions. This research must be undertaken within the context of the South African national interest.

SECTION 2: THE WAY FORWARD

A Consultative Workshop was held on 15 and 16 February 2010 to discuss the findings of the report and suggest a way forward. The recommendations emanating from the workshop have been integrated with those based on the findings made by the researchers. Theme specific recommendations and suggestions for further research are set out below.

11.13 RECOMMENDATIONS: LEGAL

This section formulates recommendations relating to the general management, investigation and prosecution of human trafficking cases in South Africa.

11.13.1 The need for in depth and specialised training

This need was mentioned most frequently by participants in the general prosecutors' survey.

11.13.2 The establishment of specialised units

Specialised units are necessary to deal with human trafficking cases. Improving police investigations was similarly featured in both the recommendations of the general prosecutors' survey and the challenges detailed by individual prosecutors.

The multidisciplinary task team that has been established in KwaZulu-Natal shows promise of being a model that can be replicated in other provinces, subject to local circumstances (including available resources) and the variations in trafficking trends that may be encountered at different sites.

However, on a cautionary note the following measures are recommended:

- The informal protocols currently in place among task team members should be formalised and documented.
- Clear accountability structures should be put in place to ensure that members comply with their responsibilities in terms of the protocols. The consequences of non compliance should be clearly set out.
- Government departments and NGOs that undertake membership of the task team should also commit themselves in terms of allocating the required resources and ensuring that representatives are of sufficient seniority to act with authority. Continuity of representation is important.
- The protocols should take into consideration the particular concerns of task team members, for example, the need for the Office for Witness Protection to liaise with other departments while maintaining confidentiality.

11.13.3 Identification of human trafficking cases

Findings suggest that the current investigative capacity of the SAPS is insufficient to guarantee that all instances of human trafficking will be identified correctly as such from the beginning (or indeed, at all). Information from the prosecutors' survey suggests that this problem may also apply to the prosecution. It may be useful to institute an 'early alert' system that requires all potential cases of human trafficking to be monitored at a centralised point to ensure that these investigations are guided with the necessary expertise. This centralised point may be a senior police officer or a senior prosecutor (or both, preferably), and the location may vary depending on the nature of the case. For example, where the potential trafficking consists of sexual exploitation, the case would be monitored by a specialised sexual offences prosecutor. However, the risk that human trafficking cases are currently being missed implies that better oversight should be devised.

11.13.4 Creation of specialised units

Creating specialised units to investigate and prosecute trafficking cases may involve additional measures to ensure their longer term sustainability, such as documenting the experiences of the specialists in dealing with trafficking cases and training additional investigators and prosecutors. Since documentation and training are time consuming, they should be factored into the formal job description of prosecutors allocated to specialised units.

11.13.5 Recording and monitoring of case information

As long as offences relating to human trafficking are relatively new and prosecutorial methods are 'untried', it may be useful to record the cases that prosecutors encounter in some format for purposes of analysis. This will require some system that will identify and 'flag' trafficking cases, lifting them out from the general prosecutors' caseload. One way to achieve this would be a directive, issued on national or provincial level, requiring all prosecutors to report trafficking cases to the national SOCA office on a prescribed template. (Decisions would have to be made regarding which indicators would be useful for analysis, and the template designed accordingly.) Even if this monitoring is only sustained for a temporary period, it could yield valuable information regarding trafficking trends, the interpretation of new legislation and existing expertise among prosecutors.

11.13.6 Investigation of trafficking cases

Several of the individual participants observed shortcomings in the police investigation of trafficking cases. While some of the recommendations outlined above (such as a coordinated intersectoral approach and an early identification system), may already serve to improve the police response to trafficking, we propose the following additional steps:⁹

- **Pro forma questionnaires:** The pro forma questionnaires developed by prosecutors in KwaZulu-Natal may prove to be of assistance to police officials not only to identify victims of human trafficking, but also when compiling witness statements. While one does not want to encourage a formulaic approach to the taking of witness statements, using such questionnaires as guidelines may enhance the quality of statements by ensuring that all relevant information has been included.
- **Training:** The aspect of training and sensitisation for police officials (and other criminal justice officials) should be prioritised. This will become particularly important once the new legislation is introduced.

11.13.7 Prosecution

Recommendations in this section are limited to the specific themes emerging from the research findings.

⁹ It should be borne in mind that the focus of the Legal and Prosecution component is not specifically police investigations. For this reason, we have not developed in depth recommendations here.

11.13.7.1 Pooling existing knowledge

While several of the respondents dealing with trafficking cases were aware of others working in this area and could provide researchers with their contact details, for the most part prosecutors working in different provinces were not aware of the activities of others. This is a lost opportunity, as combining and sharing knowledge would be a formidable resource. For example, several of the respondents indicated that they rely strongly on internet based research to obtain information; the exchange of this information (useful websites, publications downloaded from the internet) could be extremely helpful. Putting together an email group that would allow prosecutors to obtain quick input or advice from their colleagues may be another way of sharing this expertise. Other innovative ways of combining and developing collective knowledge should be explored.

11.13.7.2 Training of prosecutors

Training should be in depth. The NPA must draw on the existing group of prosecutors with experience in human trafficking cases to compile such in depth training material, including 'case studies' and practical examples based on the cases they have dealt with. A basic aspect of training is to gain fluency regarding the legal definition of human trafficking. The common conflation of trafficking for sexual purposes with prostitution further requires clarification.

11.13.7.3 Resource limitations

Resource limitations emerged as a central problem. When human trafficking cases go to trial, or when victims are accommodated in the Witness Protection programme, they are disproportionately affected by the country's general shortage of legal and human resources. For example, prosecuting cases of human trafficking may require protective measures for witnesses, such as the use of closed circuit television or the use of an intermediary. If these are absent, witnesses may not cooperate out of fear.

11.14 RECOMMENDATIONS: PSYCHOSOCIAL

11.14.1 Service provision

11.14.1.1 Intervention and prevention strategies

A range of macro and micro level intervention and prevention strategies are required. Prevention strategies should be targeted at the individual, while efforts to rescue and mitigate effects on victims should focus on their close relationships and communities.

11.14.1.2 Directed awareness campaigns

Awareness campaigns which enable members of the public to identify and report suspected trafficking cases are necessary. The 'nosy neighbour' and 'customers of brothels' are often the most common assistance seekers, rather than victims themselves.

11.14.1.3. Service provision to clients:

- Individualised treatment: Every victim of trafficking is unique and programmes must accommodate individual differences and needs. For example, programmes directed at victims' needs must take into consideration their specific language and cultural barriers, as well as differences in skills and interests. Ideally, the most effective psychological support would take place in the victim's country of origin where language and cultural barriers are reduced.
- Distinguishing between the needs of adults and children: The trafficking of children presents different vulnerabilities to that of the trafficking of adults. These differences must be addressed in victim assistance programmes.

11.14.1.4 Networking

Networking is crucial for the process of victim assistance. There is strong networking in some areas between service providers; e.g. shelters and referral organisations and SAPS. The provincial task teams are prime examples of effective networking.

11.14.1.5 Sustained public awareness

Trafficking concerns around the 2010 FIFA World Cup have been raised by service providers, task teams and advocacy groups. It is a widely expressed wish that the trafficking awareness momentum created round this event be maintained after the event.

11.14.2 Future research

- In depth research is clearly needed regarding the psychological vulnerabilities of victims of trafficking. Recruiting a large enough sample to include different types of victims, including victims from different locations (those internal to South Africa and those trafficked from Africa or other continents) would be challenging. But this is necessary, as there seems to be major differences, not only in the way they are trafficked and the effects on them, but also in the intervention strategies needed.
- Specific issues arising from the research, which point to further investigation, are the reduction of isolation and movement of victims. Some debate exists regarding the treatment of victims of trafficking as a separate group (due to special needs) or to incorporate services with those of other victims of trauma (e.g. gender based violence and domestic violence). On the one hand, the victims of trafficking are often housed and treated with gender based violence victims due to similarities in their needs. On the other hand, having dedicated services (especially shelters) for victims of trafficking may isolate them even further. One of the most commonly expressed wishes is epitomised in this statement: 'I just need to have a normal conversation with a normal person out there.' Regarding the movement of victims for security reasons, service provision to victims of trafficking in a sense mirrors the trafficking itself. This is especially true if victims are moved often, even between provinces, and if their personal movement and communication are restricted (even though it is for their own safety).
- Research on victims of trafficking must be expanded beyond psychosocial support and address factors such as the resilience of victims, and the success of reintegration programmes.
- Research studies could be conducted in phases to address the problem of accessing victims. This obstacle stems not so much from the victims as from the service providers. An initial lack of trust from service providers is understandable, so a first contact that allows for a trusting relationship to develop incrementally can build the confidence necessary to facilitating in depth interviews. (This approach does, however, have cost and time implications, especially for national studies.)

11.15 RECOMMENDATIONS: SOCIO CULTURAL VULNERABILITIES

11.15.1 Addressing poverty

Amongst the integrated measures that must be undertaken to deal with human trafficking are interventions to curb socio economic vulnerability in the rural areas. The need to address poverty and poverty related conditions is a key factor in reducing vulnerability to trafficking in both countries of origin and South Africa. Rural industrialisation, especially agro industrialisation, has taken place in many countries to combat poverty and unemployment. Many rural industries employ women, which to some degree addresses gender inequality in society. These interventions are also meant to harness the potential natural resources in the rural sector for the benefit of the rural inhabitants.

11.15.2 National and regional multi agency communication and collaboration

Due to the cross-border and multi layered nature of human trafficking, the establishment of national and regional multi agency communication channels and collaborations is essential. The necessity for civil society

and government departments to establish workable networks and relationships will enable communication and further identification of problems and solutions associated with combating human trafficking.

11.15.3 Education and awareness

Campaigns need to be extended beyond the national borders of the country, particularly to the major countries of origin in the region.

There is a need for awareness campaigns for communities directed at cultural practices such as child labour and forced marriages.

11.15.4 Future research

- The impact of authority (male female power relationships) and inter generational relationships must be researched in terms of their impact on trafficking, particularly the trafficking of children and women.
- There is a need for research which examines cultural practices and their relationship to vulnerability.

11.16 RECOMMENDATIONS: MIGRATION

11.16.1 Department of Home Affairs

11.16.1.1 Early detection

Advanced passenger processing and other systems are required for the early detection of trafficking cases.

11.16.1.2 Intelligence

Intelligence/crime intelligence from both the National Intelligence Agency (NIA) and SAPS regarding alleged criminal activities will assist immigration officials in preventing and dealing with human trafficking.

11.16.1.3 Patrolled borders

Since people cross the border at places other than the official border posts, the immigration officials recommended that the border in general be patrolled. According to port entry officials on the border of Mozambique and Swaziland 'only honest people cross at border posts.' Those without papers cross at other points.

11.16.1.4 Cooperation

- Improved co operation must be established between the Department of Justice/prosecutors and immigration officials. It would appear that some magistrates are not familiar with the immigration laws resulting in many cases being lost or only small penalties being given for migration violations.
- Cooperation between Home Affairs and SAPS must be improved. A lack of co ordination between Home Affairs and SAPS with regard to human trafficking results in dockets going missing and magistrates sometimes throwing out cases.
- Home Affairs officials must work more closely with road traffic officials/authorities. In many cases false identification documents and passports are used to obtain drivers licenses that are also used for ID purposes. Ideally, when Home Affairs detect false identification documents and passports, they should detect and nullify drivers licenses obtained with the original false documentation; i.e. the systems should be integrated.

11.16.1.5 Information technology

Home Affairs officials recommend that an additional system be installed to scan details of passports and capture such details. A computerised system – similar to that used by Mozambican passport control, which

immediately detects false passports and identification documents – should be considered for implementation by South African authorities. This will greatly assist officials in recognising illegal and falsified documents.

11.16.1.6. Integrated response

There is no real time integration between different components of the existing information system, for instance between the information gathered at different border posts. For example, if a person enters South Africa at Komatipoort and leaves the country a few hours later at Jeppe's Reef the information about the person's movement across international boundaries is not available in real time. Information systems should be integrated.

11.16.1.7 Transit visas

Home Affairs officials recommend the instituting of transit visas for individuals transiting into third countries in the region. Alternately, border officials next to third countries should be supplied with lists of names of people who are transiting to these third countries.

11.16.1.8 Visas for at risk groups

Thai women appear to constitute the largest group of non African people trafficked into South Africa. Thai citizens are exempted from the requirement of a visa to enter South Africa. However, this makes it easy to bring in Thai citizens on visitors permits to work in the sex industry. A visa requirement would enable more thorough checks on the purpose of visits by Thai citizens.

11.16.1.9 Visas for trafficking victims

Currently there are no permits available to accommodate victims of human trafficking in South Africa while waiting to testify in court cases against traffickers. The 'order to leave permit' is occasionally extended to facilitate the stay of the victim, but does not allow a person to work while waiting to testify in a court case. A special permit or trafficking visa is needed to accommodate victims of human trafficking in South Africa while waiting to testify in court cases.

11.16.1.10 Biometrics

Visa applications at foreign missions should include biometrics.

11.16.1.11 Monitoring of children

Immigration officials have to be trained and systems put in place to ensure that children entering South Africa leave the country with their parents. Trafficked children may easily enter South Africa with adults posing as their parents, but upon departure, the trafficked children are left behind in the country. Children should be in possession of their own travel documents and not be endorsed on their parent's documents.

There should be a clear policy to address the issue of unaccompanied minors.

11.16.1.12 Capacity

Members of the Law Enforcement section of the Inspectorate are in need of more staff, especially interpreters to effectively communicate with potential victims of human trafficking. Additional officers to assist with the investigations on human trafficking are also needed.

11.16.1.13 Training

Although some immigration officials have received some training on human trafficking, all port of entry immigration officers need specialised and in depth training in human trafficking.

11.16.1.14 International/regional cooperation

Close co operation between the Department of Home Affairs and Interpol /SARPCCO is necessary to identify traffickers and smugglers so that they can be identified at South African ports of entry and refused entry into the country. There is also a need for improved cooperation between neighbouring countries believed to be countries of origin for human trafficking.

11.16.1.15 Mainstreaming human trafficking prevention awareness

Human trafficking awareness should be included as a module in public and school training programmes that are conducted by the Department of Home Affairs on xenophobia and human rights, to raise awareness on human trafficking.

11.16.2 Department of Labour

11.16.2.1 Training

Labour inspectors need training to understand what human trafficking entails in order to identify possible cases of human trafficking. This training will also provide them with the skills and knowledge for dealing with potential cases of human trafficking, and the ability to decide which departments and NGOs to involve in possible cases. In depth training and refresher courses are required, with practical sessions.

11.16.2.2 Interdepartmental collaboration

The different role players in the Western Cape (e.g. the departments of Labour, Social Welfare, Home Affairs and Justice) involved in human trafficking cases have to cooperate on both provincial and local level. Structures have to be put in place to facilitate this co operation. (However, according to the interviewees from Limpopo province all relevant provincial departments in Limpopo cooperate in a committee on labour migration.) Interdepartmental collaboration systems for other provinces need to be considered.

11.16.2.3 Awareness raising

Community organisations have to be trained on human trafficking awareness and prevention so that they can be sensitive to possible cases of human trafficking, e.g. in the labour sector and report them to the relevant organisations.

Periodic road shows to create public awareness on human trafficking are needed.

11.16.2.4 Reporting of unfair labour practices

Foreign workers are sometimes afraid to report unfair labour practices due to their illegal status or the xenophobic sentiment in the country. A system has to be put in place where these people can report unfair labour practices without being harassed by their employers.

11.17 RECOMMENDATIONS: ORGANISED CRIME

The following recommendations, strictly from a police and organised crime perspective, arguably should be implemented as soon as possible to assist in mitigating human trafficking in South Africa:

11.17.1 Implement an intelligence led enforcement/proactive programme as opposed to reactive law enforcement. In many instances raw data is obtained by the police without any form of processing, analysis and dissemination. When dealing with organised crime issues, the objective is to gather as much evidence as possible in order to apprehend the key role players within criminal syndicates, as opposed to minor immigration officials and prostitutes being charged, who may in many cases be victims themselves, as defined by the Palermo Protocol.

11.17.2 Adopt an integrated approach to dealing with human trafficking by instituting provincial criminal intelligence analysis units that feed into an effective national intelligence desk. An intelligence led enforcement initiative requires the implementation of counter human trafficking units within each province, which employ effective units of officers who are able to take raw data and put it through the intelligence process and disseminate accordingly. These intelligence reports should be circulated to the head office for further co ordination amongst the provinces.

11.17.3 Establish an independent national task team to deal with corruption, human trafficking and organised crime, with a focus on infiltrating organised crime and human trafficking syndicates (through the use of covert operatives) to assist police organised crime units in apprehending corrupt government officials and crime syndicate leaders. No single law enforcement unit can deal with human trafficking and organised crime on its own due to the multi faceted nature of criminal syndicates, not to mention transnational trafficking operations. It is argued that this team will require operatives from DHA, SAPS, NPA, intelligence, covert operative experts, as well as task team experts/coordinators. Once the team is established, further links will need to be established with other members of SADC, the Association of Chiefs of Police and Interpol. This unit should be responsible for overall coordination of human trafficking prevention operations and covert operations. Once docket are established they are to be transferred to provincial units to execute the tactical responses.

11.17.4 Provide specialised training for organised crime prevention units, border officials, and immigration officials in order to deal with human trafficking.

11.17.5 Create a dedicated national fund to create and operate integrated counter human trafficking units nationwide.

11.17.6 Open dialogue through the chiefs of police within SADC for a SADC approach to counter human trafficking.

11.17.7 Develop protocols/mechanisms to monitor the transport and movement of children, across borders and within the country.

11.17.8 Develop user friendly systems at borders to support children.

11.17.9 Create a database for the profiling of traffickers and users of services.

11.18 RECOMMENDATIONS FOR FUTURE RESEARCH

The scope of this research was very broad in nature with a limited timeframe, and the subject clearly requires more in depth research in the following areas:

11.18.1 Ritual sacrifice: It is recommended that more in depth research be conducted in the area of satanic cults and the use of human trafficking victims in ritualistic killings.

11.18.2 Collusion of officials: Research should focus on practices at the land border areas with Mozambique, Zimbabwe, Lesotho and Swaziland, where ports of entry are 'hot spots' for official corruption regarding human trafficking, in addition to ancillary crimes such as smuggling and drug trafficking. Knowledge would be greatly enhanced if academic research could target one or more of these land ports of entry, such as the Lebombo border, to ascertain more closely the levels of corruption involved in these criminal activities.

11.18.3 Link between human trafficking and smuggling of narcotics: Further research is required to establish the link and dynamics between human trafficking and narcotics, and other criminal activities.

11.18.4 Air and sea ports of entry: Due to time constraints very little information was obtained about ports of entry accessed by air and sea. These sites should be the focus of further research.

11.18.5 Organ trafficking: In addition to tracking the trafficking of persons, such a study could include more in depth examination of the transnational trafficking of human organs.

11.18.6 Trafficking for adoption: Very little information exists on trafficking for adoption in South Africa. This is an area for further research.

SECTION 3: LIST OF KEY ROLE PLAYERS INVOLVED IN HUMAN TRAFFICKING

INTERNATIONAL AGENCIES

INTERNATIONAL ORGANISATION FOR MIGRATION (IOM)
Regional Office for Southern Africa, 826 Government Avenue, Arcadia, 0083
Postal Add: PO Box 9305, Pretoria, 0001
Tel: (012) 342 1961 2789, Fax: (012) 342 0932
E mail: sropretoria@iom.int

IOM SOUTHERN AFRICAN COUNTER TRAFFICKING ASSISTANCE PROGRAMME (SACTAP)

SACTAP activities in Southern Africa
Contact IOM's Regional Office for Southern Africa (Pretoria)
Tel: +27 (0)12 342 2789, Fax: +27 (0)12 342 0932
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IOM Cape Town: +27 (0)21 425 4038
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IOM Harare: 263 (4) 335 044
IOM Kinshasa: 243 (9) 880 1662
IOM Luanda: 244 (2) 370 877
IOM Lusaka: 260 (1) 256 701
IOM Maputo: 258 (21) 310 779
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UNITED NATIONS INTERNATIONAL CHILDREN'S EMERGENCY FUND (UNICEF)

351 Schoeman Street, Pretoria, 0002
Postal Add: PO Box 4884, Pretoria, 0001
Tel: (012) 354 8200, Fax: (012) 354 8293 4 5
E mail: unicefsa@unicef.org.za

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Pretoria (Regional Office for Southern Africa)
8th Floor, Metropark Building, 351 cnr Schoeman & Prinsloo Streets, Pretoria, 0002
Postal Add: PO Box 12506, The Tramshed, 0126
Tel: (012) 354 8303, Fax: (012) 354 8390
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INTERNATIONAL LABOUR ORGANISATION (ILO)

20 Hotel Street, Crestway Block C, Perseuor Park, Pretoria, 0020
Postal Add: PO Box 11694, Hatfield, 0028
Tel: (012) 818 8000, Fax: (012) 818 8085

UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)

Pretoria, 2nd Floor, Southern Life Plaza, 059 Schoeman Street, Hatfield, 0028
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GOVERNMENT DEPARTMENTS

DEPT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

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NATIONAL PROSECUTING AUTHORITY (NPA)

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NPA SEXUAL OFFENCES AND COMMUNITY AFFAIRS UNIT (SOCA)

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DEPARTMENT OF INTERNATIONAL RELATIONS AND COOPERATION (FOREIGNAFFAIRS)

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DEPARTMENT OF LABOUR

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DEPARTMENT OF HOME AFFAIRS

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MINISTRY OF HEALTH

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