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**COMBATING HUMAN TRAFFICKING IN SOUTH AFRICA: BEYOND
LEGAL ARSENAL**

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COMBATING HUMAN TRAFFICKING IN SOUTH AFRICA: BEYOND LEGAL ARSENAL

Abstract

This study evaluates the effectiveness of current anti-trafficking legislation in combating the perennial scourge of human trafficking in the Republic of South Africa. Several States, including the Republic of South Africa, are signatories to the United Nations conventions against human trafficking and the country has taken radical steps to domesticate part of these international standards by introducing comprehensive law that criminalise human trafficking. Nonetheless, in reality, these legal arsenals have not been effective in combating the crime. This article is drawn from the analysis of a broader study on examining human trafficking and the response of the South African criminal justice system. The study utilised qualitative approach. Twenty (20) criminal justice stakeholders were interviewed, comprising eighteen (18) justice, crime prevention and security cluster officials (JCPS) and two (2) non-governmental organisation (NGO) officials in Limpopo province of South Africa. Findings from this study suggest that for an effective or result-oriented approach, the South African government should focus on the enforcement of the law and in addressing the socio-economic, political and cultural factors which strengthen the growth of the illicit trade. The study further made recommendations based on the findings.

Key words: *human trafficking, combat, legal, South Africa.*

INTRODUCTION

For decades now, human trafficking has been a reverberating issue of concern on the international diplomatic table (Krieg 2009:775). The egregious nature of the crime and its attendant abuses on the most vulnerable groups, especially women and children, engendered world leaders into bringing to force, conventions and protocols to stem the wave of the crime at the international level. To this end, the United Nations Convention against Transnational Organised Crime (UNTOC) was introduced in Palermo Italy in 2000. Three additional protocols were also introduced to supplement it, especially in criminalising specific arm of the transnational organised crime. However, relevant to this article among other issues, is the United Nations Convention to Prevent, Suppress, and Punish trafficking in Persons, especially women and children, supplementing the UNTOC (United Nations 2000).

Profoundly, the trafficking convention was a watershed in the global fight against human trafficking. Besides criminalising the trade in human commodity in a comprehensive manner, it also sets forth the first comprehensive and widely acceptable definition of human trafficking (Gallagher 2001:981–982, Clinton, 2009, Roelofse, 2011). State parties to this historic international legislation were obliged to criminalise human trafficking in their respective countries. Hence, efforts were made at the continental, regional and national levels to

criminalise human trafficking in several parts of the world through the introduction of legal standards. South Africa ratified the Palermo Protocol on 20 February 2004 (SALRC 2006:12; IOM 2008:19; HSRC 2010:2).

As part of her obligations as signatory to this convention, South Africa took a radical step to criminalise human trafficking by signing into law a comprehensive anti-trafficking law, otherwise known as the Prevention and Combating of Trafficking in Persons Act (2013). However, despite this measure, in addition to a range of other policy and institutional frameworks, the crime of human trafficking has persisted.

Regrettably though, the dilemma South Africa is faced with today is not necessarily the threat posed by the menace in the real sense of it, or the dreadfulness of the criminal gangs that dominate the trade in a globalised world. It is essentially about the choice of a comprehensive and enduring approach that will help dislodge the artificial structures and markets established by traffickers to fuel the illicit trade in the country. This is in addition to ensuring there is no safe haven for this criminal enterprise in the Republic (*Jezile vs. The State*, 2015). However, in recent times, much of the strategies adopted by South Africa to combat this menace oscillate between the legal and restrictive immigration approach. Unfortunately, it has not yielded the desired results. Why has it been challenging to come out of this quagmire? Are there alternatives to these approaches that could be explored?

Against these backdrops, the objective of this article is to discuss the ineffectiveness of current legal standards in combating the crime of human trafficking in South Africa. Usually, legislations are mere stopgap as opposed to the veracity of the realities in the contemporary crime theatre. Despite various criminal legislations in the various spectrums of human life, crime generally (including human trafficking) continues unabated. This perhaps was part of the reasons which made Olutola (2013) to argue that crime prevention by the criminal justice is a hopeless case. The aim of this article is to principally highlight and criticise the Palermo Trafficking Convention and the Prevention and Combating of Trafficking in Persons Act (2013) of South Africa, and offer suggestions on pragmatic measures that could be adopted for an enduring outcome. However, to set the wheels in motion, it is expedient to first discuss the concept of human trafficking and its various conceptualisations for proper understanding.

Conceptualisation of human trafficking

The term human trafficking is somehow imprecise and contentious. Di Nicola (2007:51) sees the debate on the definition of human trafficking as a ‘never-ending one’. This imbroglio has often made researching into the phenomenon a difficult task. The challenge is further exacerbated by the clandestine and multifaceted nature of the crime, in addition to the broad range of activities involved in it. This possibly suggests why Gould (2006:19) considered it as “a slipping concept” that is very difficult to pin down.

The frequent controversies between traditional practices and modernisation have further blurred the understanding and definition of the concept. For instance, what is perceived as child

trafficking in the developed world is viewed as part of the normal placement of child with relatives or family friends, otherwise referred to as child-fostering in the less developed countries. The latter assumption is not uncommon to most African countries. This confusion played out even in South Africa's criminal justice system efforts to combat the menace of human trafficking. Most officials of the criminal justice institutions of countries do not really understand what human trafficking is (HSRC 2010:134; Mofokeng & Olutola 2014: 126). They often confuse it with human smuggling, migration or prostitution, to mention but a few.

The issue of hiding or disguising under custom to perpetuate human trafficking came before the court in the South African case of *Jezile vs. The State* (2015). In that case the court held on pages 27 to 28:

“At the outset we wish to express our gratitude and appreciation to the amice and the parties for their assistance to the court in dealing with the complex and contested issue of ukuthwala under customary law. We are particularly mindful that the practice of ukuthwala has in recent years received considerable public attention and is the subject of much public debate, inasmuch as its current practice is regarded as an abuse of traditional custom and a cloak for the commission of violent acts of assault, abduction and rape of not only women but children as young as 11 years old by older men. These practices – under the guise of custom – have been described by several organisations as a “harmful cultural practice”.

As mentioned in the introductory paragraph, the Palermo Trafficking Convention offered a comprehensive and generally acceptable definition of human trafficking (Rijken 2003:66; Aronowitz 2009:1; Laczko & Gramegna 2003:180). In Article 3 of the Protocol human trafficking is defined 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. The consent of a victim of trafficking in persons to the intended exploitation...shall be irrelevant where any of the... [fore-mentioned] means...have been used. The recruitment, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons,' even if it does not involve ... [any of the above-listed means].

“Child” shall mean any person under the age of eighteen years old
(Article 3).

A review of the Palermo Protocol on human trafficking will be made in one of the subsequent sub-sections. However, for the purpose of this article, the researchers define human trafficking as the recruitment, transportation and transfer of persons by whatever means for the purpose of exploitation.

Beyond the definition of the concept itself, human trafficking has been conceptualised in various forms. The phenomenon of human trafficking has been conceptualised as a form of slavery (Pearson 2002:12; Picarelli 2007:26; UNODC 2009:8–12; UN.GIFT 2008:5). Meanwhile, slavery itself has been advanced as the vilest form of exploitation in human history (Lee 2007:1). Earliest records on human slavery were traced to the *Code of Hammurabi* in 1750 BC (Mollema 2013:1).

Two forms of slavery characterised the ancient era: the chattel slavery and the indenture slavery. Chattel slavery depicts a situation where labourers or workers were legally owned or possessed as property and therefore can be bought, sold or exchanged like any other commodity (Picarelli 2007:27). Indentured slavery is a situation or condition wherein a subject agrees to work for a specified term in return for means of access and boarding (Picarelli 2007:27).

Moreover, contrary to popular views by scholars, Picarelli argued that ‘slavery’ was not abolished in the 1800s, but continue to develop and metamorphosed into new dimensions that international trade in human beings presented (Picarelli 2007:27). Chattel slavery did not only continue, but has transformed through the ages into what is now referred to as human trafficking, where people work to cancel-off debts, whether known or unknown to them. Such debts are often in the form of financial resources traffickers expended on the victims during the trafficking process, including visa fees (for international bound exploitation), feeding, clothing and shelter, to mention but a few.

In contemporary times, human trafficking as a form of slavery is no longer branded by legal ownership as epitomised by the chattel form, but by temporary ownership. A situation where slaves (trafficked victims) are exploited degraded and disposed-off as used commodities, once they are unable to yield economic returns to their masters as they should.

The concept of human trafficking has further been viewed from the lens of prostitution (Adepoju 2005:86; Ali 2005:141). The perception of human trafficking as equal to the recruitment and transfer of women as commodities for commercial sex exploitation dates back to the era of public apprehension regarding “white slave trade of women and young girls into prostitution at the end of the nineteenth century” (Lee 2007:4). However, in contemporary times, there seems to be a growing perception of the human trafficking as a form of prostitution. Perhaps this is because most victims of human trafficking (though debatable) are often assumed to be forced into prostitution (Salt & Stein 1997:467, Mofokeng & Olutola, 2014). Such over-

emphasis on the definition and/or conceptualisation of human trafficking as absolutely linked to prostitution presupposes that other forms of exploitation are likely to be overlooked in several anti-trafficking campaigns and initiatives (Lee 2007:4). Unfortunately, there are escalating evidences that suggest human trafficking for other forms of exploitation other than prostitution abound globally (Adepoju 2005:86). Buttressing this position, Salt & Stein (1997:467, Mofokeng & Olutola, 2014) argued that as opposed to public opinion and sensation that most trafficked persons into United States end up as sex slaves, or in sex industries, the labour industry is what absorbs the larger percentage of them.

The concept of human trafficking has been linked with, and viewed within the context of migration flows, policies and migration control (Aronowitz 2009:6–7). Although most research results on migration-human trafficking nexus have shown that they are very difficult to distinguish both on empirical grounds. Human trafficking could be perpetrated during human smuggling processes. This largely explains the reasons why the problem of human trafficking is unlikely to be solved except when the propellers of international migration are first addressed (Rao & Presenti 2012:232; Aronowitz 2009:7–8).

Scholars have contended that the rising incidences of migration flows across the regions of the world, either voluntarily or forced, are largely fuelled by a myriad of factors. Such factors include, but are not limited to, political upheaval, economic crises, ethnic discrimination, communal inequalities, civil wars, lack of viable means of livelihood, corruption, and a range of other restrictive migration policies (Agbu 2003:3; Ejalu 2006:171–173; Adepoju 2005:83; Aronowitz 2009:11; Lee 2007:7). For several persons ensnared by hunger and poverty, migration through what Maggy Lee described as “irregular channels of smuggling and trafficking” become an alternative escape route (Lee 2007:7).

The phenomenon of human trafficking has also been fluxed around the issue of organised cross-border crime (Shelley & Stoecker 2005:1). Trafficking in persons by organised criminal group has been widely reported in literatures (Aronowitz 2009:70; Shelley 2010:3; Lee 2007:5). It is an issue that has threatened the security and territorial integrity of states for decades contemporarily; most states are still struggling to grapple with it. Certain criminal gangs who operated at a transnational level are a force to be reckoned with in both the smuggling and commodification of human beings across international frontiers for exploitative purposes. According to Shelley, a combination of criminal gangs and organisations such as the Thai mafia, Indian criminal rings, Nigerian gang, Mexican group, Russian-speaking criminal ring, Albanian group and the Balkan criminal gang dominate the general human trafficking trade on a global scale (Shelley 2010:6). Human trafficking entrepreneurs specialising in sexual exploitation across the globe includes the combination of Italian mafia families, Russian-speaking gangs, Thai gangs, Japanese Yakuza, the Triads, Jaotou, Indian groups, Sindikets (syndicates in Malaysia), Fuk Ching in the United States, mafia groups in the Dominican Republic (to a lesser extent) and Filipino and Turkish gangs (UN.GIFT 2008:10; Shelley 2010:6).

Finally, human trafficking has also been conceptualised as a form of human rights violation (Aronowitz 2009:44). The gruesome nature of exploitations which take place during the trafficking process often results in a myriad of victims' human rights violations. As earlier mentioned, those traumatic experiences contributed to the proliferation of human right institutions and spectrum of human rights instruments on a global scale. While such human right institutions include Amnesty International and Human Right Watch, human rights standards include the Universal Declaration of Human Rights (UDHR) and its ancillaries, the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Rome Statute of International Criminal Court (Rome Statute) (Mollema 2013:151–162).

Several fundamental human rights that are contained in the UDHR, such as right to education, freedom, expression and movement, are often violated during and through the human trafficking process. A number of reports by Amnesty International have also revealed the issue of human rights violations during peace-keeping operations (UNICRI 2006:25). It was alleged that peace keepers sometimes violate the rights of people, especially the most vulnerable group of women and children who take refuge around their stations during conflict periods (Johnston 2004:41; UNICRI 2006:25; Allred 2005:65; Aronowitz 2009:142).

OVERVIEW OF LEGAL MEASURES TO COMBAT HUMAN TRAFFICKING

Legislations introduced to combat human trafficking from either human right or criminal justice angle are historically many and complex. These laws are instituted at the international, continental, regional and national levels. As such, it will be an impossible task to explore all these laws in this article. To this end, this article only considers the Palermo Protocol on human trafficking and the South African comprehensive anti-trafficking law – the Prevention and Combating of Trafficking in Persons Act (2013). The choice of these two is premised on the fact that while the former is considered as comprehensive legislation from an international angle, the latter is considered in the same vein from the South African perspective. Moreover, the Palermo Protocol laid the foundation upon which state signatories build their national legal framework (either directly or indirectly). It sets forth the guidelines for the criminalisation of the illicit trade. However, this article is essentially a critique of the feasibility of these two legal standards in combating human trafficking in contemporary times.

▪ The Palermo Trafficking Protocol

The Palermo Protocol on human trafficking was introduced in response to the absence of an international legal standard that directly addresses all aspects of the crime. Moreover, it follows the logicity that effective measures to prevent and combat trafficking in persons require a comprehensive international approach. The purpose of the trafficking protocol as contained in (Article 2) hinges on three fundamental focus areas in the fight against human trafficking: the prevention, protection and promotion of cooperation among state parties. Its scope as contained in Article 4 is limited to transnational trafficking and organised criminal group (United Nations 2000:1–3).

As earlier mentioned, besides criminalising human trafficking in a comprehensive manner (Gallagher 2001:981–982), the Palermo Protocol also offered a broad definition of human

trafficking. However, there are still fundamental gaps in this definition. Truong and Angeles (2005:17) argued that notwithstanding the wide acceptability of the definition of trafficking contained in the Palermo Protocol, the issue of trafficking definition remains knotty. They argued that issues of human trafficking are peculiar and are products of diverse social relations. Hence, this suggests that the international definition may not really fit into a typical African situation (HSRC 2010:3).

The definition offered by the Palermo Protocol suggests that the forces behind transnational trafficking are organised criminal gangs. Whereas in much of the experiences in Africa (though debatable) human trafficking are perpetrated by parents, relatives, family, friends, neighbours, to mention but a few, often in closely-knitted settings (HSRC 2010:3).

Fundamentally, the Palermo trafficking definition has been examined from its three essential components: the process (activities involved in trafficking), the means, and the purpose of trafficking (UNODC 2006:50; UNODC 2006:21; Mollema 2013:35). However, from the definition offered by the researchers and that of the Protocol, it is evident that one prerequisite for trafficking crime to be committed is that there must be a movement (transportation) of persons (victim) from one place to another. Nonetheless, the concept of (transportation) movement was not explicitly defined or described in the Protocol. Such ambiguity has plunged many states and policy makers into realms of confusion and arguments on whether the type of movement that should be considered as trafficking are those that take place across national frontiers or the ones within national borders (HSRC 2010:4). The Protocol limits its scope to transnational (international) human trafficking dimension, without making any reference to the internal form. Unfortunately, much of the realities in the trafficking world in contemporary times suggest its internal dimension.

Similarly, regarding the means of trafficking as highlighted in the trafficking definition, one controversial issue spotted by the researchers in this article, among others, has to do with whether all acts of trafficking actually involve some forms of coercion. Piercing through this veil, Chuang (2006:141) argued that “contrary to popular, sensationalised image of trafficked persons either kidnapped or coerced into leaving their homes, more often than not, the initial decision to migrate is a conscious one”. It is, therefore, not out of place to argue that the means of trafficking do not always involve coercion. Human trafficking itself is a complex phenomenon that sprouts out of certain socio-cultural, economic, political and technological milieus.

The Palermo Protocol also identified exploitation as the purpose of trafficking. However, it fails to define the concept of exploitation. Moreover, it focuses on three broad categories of exploitation: sex, labour and organ trafficking. However, all the elements of exploitation highlighted in definition under these three categories cannot be concluded to be comprehensive. Exploitation varies, so also are its modes. Contemporary research findings on human trafficking identified varying forms of exploitation not covered in the Palermo Protocol’s

definition. For instance, the issue of body parts (often for ritual purposes); rising menace of baby factories and other ancillaries are not covered by Palermo's definition (Huntley 2013).

Another controversial issue in the Palermo trafficking definition has to do with is consent of victims. Article 3(b) in particular focuses on the issue of consent and holds that the consent of trafficked victims shall be irrelevant where any of the *means* contained in the definition are present. Unfortunately, much of the researches conducted in recent times have proven this provision wrong. According to Bello (2009:96) most victims of human trafficking (especially for prostitution) more often than not consent to the trafficking arrangement willingly, although, they are often unaware of the gravity of exploitation that awaits them.

The focus of Article 6 of the trafficking protocol was on the protection of trafficked victims to avoid: re-victimisation, reprisals, including threats to their lives and families. Provisions were also made for a reflection period for victims' recovery, shelter and a range of other assistance.

In Article 9, provisions were made for some forms of bilateral and multilateral cooperation among states to address factors that make people susceptible to trafficking, such as: poverty, underdevelopment and lack of equal opportunity.

Further on the issue of cooperation among states, provisions were made in Article 10 for an exchange of information between law enforcement agencies and state parties (especially States Immigration institution) as part of the measures to combat cross-border trafficking. Article 11, 12 and 13 focus more on security measures. While Article 11 specifically focuses on border control measures, Articles 12 and 13 focus on security and control of documents (legitimacy and validity).

In spite of the merits of this standard, one grey area, in addition to some that were earlier pointed out, is its language clause. The language of the protocol is more of an appeal than a compelling one, especially in relation to provisions for the protection and assistance to trafficked victims. According to Olateru-Olagbegi and Ikpeme (2006:12), the language of the protocol gives discretionary powers to state parties through the use of words like "appropriate cases and to the extent possible..." [Article 6(1)]. "Each state party shall consider taken measures..." [Article 11(5)]. Such words give room to state parties to manipulate and legally avoid their obligations under the Protocol.

▪ **The Prevention and Combating of Trafficking in Persons Act (2013)**

As earlier mentioned, South Africa is a signatory to the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)*, *Supplementing the UN Convention Against Transnational Organised Crime*, and had ratified it. However, in the wake of pressure from both within and outside South Africa, given the negative impacts of trafficking and the excruciating experiences of trafficked victims; the South African Law Reform Commission (SALRC) in 2008 sponsored a bill to the South African Parliament – *Prevention*

and Combating of Trafficking in Persons Bill. The bill was subsequently passed, and eventually promulgated after the assent of the nation's president on 28 July 2013. The Prevention and Combating of Trafficking in Persons Act (2013) eventually became the first comprehensive law to combat human trafficking in South Africa and indeed from a criminal justice perspective.

The objectives of the ACT:

To give effect to the Republic's obligation concerning the trafficking of persons in terms of international agreements; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for penalties that may be imposed in respect of the offences; to provide for measures to protect and assist victims of trafficking in persons; to provide for the coordinated implementation, application and administration of this Act; to prevent and combat the trafficking in persons within or across the borders of the Republic; and to provide for matters connected therewith. (The Prevention and Combating of Trafficking in Persons Act (2013)).

Worthy of note is that this law contains ten chapters which largely capture the offences and penalties for traffickers; procedures for identification, protection and compensation for trafficked victims, among others. Though the Act did not specifically define trafficking in persons like the UN Protocol, but the variables considered in the description of human trafficking mirrored that of the UN Protocol. However, its elements and scope are broader than those encapsulated in the UN Protocol 2000. Article 4(1) states that "any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of:

threat of harm; threat or use of force or other forms of coercion; fraud; deception; abduction; kidnapping; abuse of power; direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons". (The Prevention and Combating of Trafficking in Persons Act (2013)).

The implication of the wider scope is that it will give the judiciary or the National Prosecution Authority fresh potent arsenal to prosecute trafficking offences both within and outside the Republic (Chapter 4.1). However, most of the factors to be considered in sentencing convicted persons as contained in Article 14 are cosmetic, watery and somehow irrelevant. They are largely insufficient vis-à-vis the gravity of trafficking crime; the suffering, torture and traumatic experiences of victims. For instance, chapter 14(d) considers "the condition in which

the victim was kept”, while chapter 14(f) considers “whether the victim suffered abuse and the extent thereof”. Chapter 14(g) also considers the extent of physical and psychological trauma. How can the law or the judge determine the extent of physical or psychological trauma? What parameter or instrument will be used? Besides, it did not consider some weightier factors such as the health implications, emotional trauma, and the death of the victim.

The Act of 2013 (The Prevention and Combating of Trafficking in Persons Act, 2013) also made provision for the prevention and protection of trafficked victims. However, there seems to be some form of ambiguities in the provisions for protecting child victims of trafficking. For instance, chapter 18(1a) states that “...who knows or ought reasonably to have known...” The adverb ‘reasonably’ is subjective and can be contested in the court of law.

Culturally, the norm of child-fostering, which is inherent in African tradition, undermines the feasibility and credibility of that section of the law. A trafficked child could simply be misinterpreted or mistaken for a child of a surrogate.

It makes provisions for programme offered by accredited organisations such as accommodation, counselling and rehabilitation, to mention but a few. Unfortunately, these are some of the responsibilities the South African government should ordinarily provide for trafficked victims. The agency of the state, in particular the Department of Correctional Services, should have been assigned such a role rather than passing it to an accredited organisation who may be limited in terms of funding and capacity.

Further, as part of the national directives in regulating the Act, a number of tasks and responsibilities were assigned to various State departments and agencies (particularly the South African Police Service - SAPS), as highlighted in Chapter 44(2). Contrastively, such enormous responsibilities should have engendered the establishment of a new specialised agency to enforce and implement the Act. This will help prevent, or lessen the already over-burdened responsibility on the South Africa Police Service, and other state bureaucracies relevant to the entire anti-trafficking campaign.

Despite these gaps, the Prevention and Combating of Trafficking in Persons Act, 2013 is a reflection of the willingness of the South African state (government) to combat the scourge of human trafficking in the Republic. Provisions were made for other crucial factors, such as for services to adult victims of trafficking; compensation to the Republic and victims of trafficking; return and repatriation of trafficked victims. Others include: trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child; national policy framework (coordination of responsibilities, functions and duties relating to implementation of the Act).

The root causes of human trafficking

It is fundamental to state that the phenomenon of human trafficking does not occur in isolation. It is often a product of chains of factors, processes and events that are rooted in the milieu

within which countries operate. There are those peculiar to individual country, and several others that are constant on international terrain. However, in reality, most of the international causes are products of the local. The differences are in the milieu in which they operate (Chuang, 2006:141).

The problem of human trafficking does not actually begin with the traffickers themselves, but grows largely from certain circumstances that propel victims into searching for greener pasture under situations that make them vulnerable to exploitation (Chuang 2006:141). As oppose to a popular, sensationalised image of trafficked persons as either kidnapped or coerced into leaving their homes, more often than not, the initial decision to migrate is a conscious or deliberate one (Chuang 2006:141).

Trafficking businesses thrive in South Africa due to a range of pressing root factors that scholars have grouped into two broad categories – the push and pull factors. However, it is pertinent to state that these factors are not only peculiar to South Africa alone, but are also common denominators in most developing countries where such illicit trade flourishes. While the push factors often overlap with supply factors, the pull overlaps with the demand factors (Horning et al 2013:7; Bales 2007:271, Minnaar, 2001, Mofokeng & Olutola, 2014).

Shelley (2010) and other scholars have often argued that there are broad and non-regional specific push factors that propel the trade in human being for years now. These factors include: globalisation (Bales 2005), fewer employment opportunities in source countries (Wheaton et al. 2010:121) and political instability or civil unrest (Hughes 2000; Wheaton et al. 2010:121). Others are decline in border control, gender and ethnic discrimination, the rise of new or resurgent disease epidemics, increasing severe natural disasters, economic disparities between developed and developing countries (Bales 2000), and increasing police and government corruption (Agbu 2003).

From the axis of the pull factors, Shelley (2010) further identifies: increased demand for cheap labour, the growth and increasing sophistication of transnational crime groups, worldwide capitalism and transnational corporations (Anderson & Davidson 2003). These are in addition to the absence of significant international efforts to address trafficking in persons (Horning et al, 2013:7). Similarly, scholars like Ejalu (2006:171–173), Shelly (2010) suggest poverty, lack of access to quality education, urbanisation and centralisation of educational and employment opportunities, cultural thinking and attitude, traditional practices, domestic violence and difficulty in securing a visa as causes of human trafficking.

Methodology

A qualitative research method was adopted in the study and the interview technique was utilised. Participants for the study were drawn from the South African Justice, Crime Prevention and Security Cluster (JCPSC) in the Limpopo Province. JCPSC as at the time the study was carried out comprises of the SAPS, the Court, National Prosecuting Authority, the Department of Home-Affairs and the Department of Correctional Services. Participants were

also drawn from relevant Non-Governmental Organisations (NGOs) involved in cross border crimes in the Limpopo province of South Africa.

For the study, the researchers utilised a purposive sampling technique. The rationale for adopting the sampling technique was premised on the fact that the researchers were aware of certain categories of experts within the CPJC and NGOs that can provide the most informative facts relevant to the study. Twenty (20) persons were interviewed: 7 SAPS, 3 Home-affairs, 5 NPA / Courts, 3 NGOs, and 2 Correctional Services officers / officials. The researchers like to emphasise that this sample was approved by the Tshwane University Central Research Committee before the researchers could proceed on data collection.

Most of the respondents for this study were seemingly high profile officers and officials of the above institutions and organisation in Limpopo province of South Africa. The interview session kick-started with interviews with two senior officials of the Department of Correctional Service (DCS), comprised of heads of departments, and a director in the same institution (DCS) in Polokwane. These officials had post-graduate qualifications and were of South African black configuration with over ten years' experience in their career in the DCS.

Other participants were interviewed in their institutions. Advocates and Prosecutors were interviewed in the Limpopo High Court, while officials of Home-Affairs and NGOs were interviewed in their offices, in Beitbridge and Polokwane, respectively.

It is pertinent to State that there were delays in securing ethical clearance from the researchers' institution due to the sensitivity of the study. Hence, this delay affects the preparation of the researcher for field work, especially in commencing data collection processes early. Moreover, the distance from the researcher's location (Pretoria) to the research location (Limpopo) was geographically wide. This also contributed to the delay in meeting up with appointments with some of the respondents who often have extremely busy schedule.

Similarly, it was challenging for the researcher to secure approval for interview especially from the Crime Prevention Criminal Justice Cluster (CPJC). Despite the fact that the researcher was able to secure approval from the Provincial headquarters of SAPS in Limpopo – that coordinate the operationalisation of the CPJC, other components still posed some challenges. The researchers also witnessed some discrimination on nationality ground during data collection. However, despite the hitches encountered by the researcher in the field, the exercise was still successful, as the researcher was able to generate valuable and relevant information that are instrumental to the actualisation of the objectives of the study.

In analysing the data for this study, the researchers adopted the verbatim approach. Such approach allows the researcher to make use of the statements of the participants in verbatim. The essence is to bring out the real position of the research participants in their own words using direct quotes, based on their wealth of experience in the criminal justice system and their efforts in combating the menace of human trafficking in South Africa.

This was carried out in Limpopo Province of South Africa. The researchers consider it the most appropriate site for this study, owing to its gateway status (it shares border with Mozambique, Zimbabwe and Botswana); which makes it a major trajectory for human trafficking enterprise. Moreover, all the various institutions that make up the criminal justice system of South Africa, relevant in the supply of information for the furtherance of this study, can be found in the province. Each of the officers interviewed for this article were knowledgeable in the issue under discussion.

Research findings

Fundamentally, findings from the study indicated a number of gaps in legal response to the phenomenon of human trafficking in South Africa, but to put these findings in proper context, themes were generated. In this analysis, the views of each of the selected respondents are indicated by “R” and a number.

Understanding of human trafficking

First, considering the nature of the crime under consideration, the knowledge of the respondents on the subject matter was assessed. However, 12 out of the 20 participants had a comparative better understanding of what human trafficking really is, while the remaining participants do not. Respondents often mix human trafficking with human smuggling and vice versa. Moreover, from a general perspective, the researchers discovered that although there is a variation in their level of understanding or knowledge of human trafficking, they do not have a grasp of its ramifications.

What do you understand by human trafficking?

“...is a form of crime that has to do with taking people across the border to do some dirty jobs (R2).

“It is the recruitment and transportation of people from one country to another for exploitation (R3).

“...human trafficking is the recruitment of women, especially young girls for prostitution (R13).

“...is a cross-border crime, where people are moved across the border by the Maguma-guma” (R16).

Factors undermining the measures put in place to combat human trafficking in South Africa

Majority (16 out of 20) of the respondents advanced a range of socio-economic and political factors such as poverty, unemployment and corruption, to mention a few. This is in addition to government not setting its priorities right on a number of issues that borders of national safety and security, including crime, migrations, to mention a few.

When asked about why human trafficking still thrives in South Africa despite measures put in place to combat it: The following answers were received:

“Basically for economic reasons. People who are involved in it know it is a high profit-oriented criminal activity (R1).

“I think it is simply because the government have not placed their priorities right as to deal with the root causes of the problem... (R5).

“For me the reason being the fact that South Africa is the economic hub of Africa. So, wherever you find economic growth and development, criminal activity such as human trafficking will naturally take place there” (R8).

Knowledge or awareness of anti-trafficking laws in South Africa

Although, participants were aware of other laws on this crime the majority of them displayed high levels of ignorance of the comprehensive anti-human trafficking law in South Africa. Specifically, 19 out of the 20 participants had knowledge of various laws (both common and statutory provision). However, only ten had a relatively sufficient knowledge of the comprehensive anti-trafficking law in South Africa – the Prevention and Combating of Trafficking in Persons Act (2013).

When asked whether there are legal measures put in place to combat human trafficking in South Africa and for the respondents to mention them? They replied: “Yes, there are; starting with our Constitution, i.e. the South African Constitution of 1996, and other Criminal Codes (R1).

“Yes, there is the Criminal Act, and recently there is the Trafficking in Persons Act (2013) (R16).

“...the Prevention of Organised Crime Act 121 of 1998; Sexual Offences Act 23 of 1957 (as amended in 2007); Immigration Act 13 of 2002, etc.” (R17)

The effectiveness of the South African comprehensive anti-trafficking law

The rationale behind this question was to get the opinions of the respondents on the propriety of the comprehensive anti-trafficking law in South Africa in combating human trafficking, based on their wealth of experience in the criminal justice institution or system. The researchers hereby want to emphasise that it is only the positions of the ten respondents that had relative sufficient knowledge of the law that were analysed. Therefore, feelers from these respondents suggested that the anti-trafficking Act (2013) alone cannot adequately help combat the menace of human trafficking in the Republic. They, however, submitted that government needs to take

other measures to support the law, such as effective enforcement-intensive awareness campaigns, education, and partnership, to mention but a few.

“It cannot be effective, because if people commit crime, you can arrest and prosecute them on the basis of the crime they have committed, and this will serve as deterrence to others, but has that solve the problem? What causes the crime need to be investigated too (R5).

“I don’t think so. The law is to deter people from committing crime but if what causes crime in the first place are not solved, it will still continue, no matter how many people you jail (R9).

“No. The Act (2013) is to regulate the conduct of people not to commit trafficking and if they commit the crime, it will be used to prosecute them, but it cannot prevent the crime (R11).

“I think the greatest challenge with the trafficking issue in South Africa is that of enforcement. A lot of laws have been introduced, how many, including the Act in question, are being adequately enforced (R13).

“No. The reason has been that crime in the real sense cannot be stopped. Besides, it is not as if people really wanted to commit crime in the first place, but there are certain things that are beyond their control that make them commit it. Some psychological, some it is innate or in their blood line, some due to poverty and lack, etc. So, government need to consider these factors as well (R18).

“No. If it is possible, immediately the law was introduced, there should have been a reduction in the rate of the crime, but is that the case now?” (R20).

Other measures that can be adopted to effectively combat human trafficking

Reports from the respondents indicated that state efforts should transcend the enactment and proliferation of laws into addressing pressing socio-cultural, economic and political issues in the country for the crime to be combated. Specifically, 16 out of the 20 respondents reported that beyond the enactment of anti-trafficking law, the South African government should address the perennial issue of poverty, unemployment, corruption, land demarcation, high cost of living and illiteracy, among others.

“The focus should be on immediate problems facing the country now such as high level of unemployment, inequality, corruption, etc. Government should deal with all these problems first before introducing laws (R10).

“Introduce sustainable developmental programmes at the grassroots level... (R11)

“Societal problems should be addressed too, e.g. poverty, unemployment, gender inequality and unequal distribution of the nation’s resources (R19).

“For me, I think the problem of South Africa and Africa currently is corruption. So, it is high time government stopped deceiving the populace in the name of introducing laws to fight crime. They must look inward and address those issues and factors that people have been accusing them of first” (R20).

Views on the New Immigration Act (2014) in relation to human trafficking

The majority of the respondents reported that they are aware of the law, but have not studied it. To this end, the views expressed here are selections from those expressed by the NPA officials, a magistrate, officials of the Department of Home Affairs and an official of a NGO.

Although the majority of these respondents admitted it will have an impact; it was also considered a mixed blessing.

“Well, I think the control measures that are indicated there will go a long way in the fight against trafficking (R11).

Although a good initiative, its implementation may be very difficult (R15).

“The government shouldn’t introduce law all the time to fight crime; they need to partner with other African countries on how to fight human trafficking” (R17).

DISCUSSION

A summary of the above findings suggest that legal measures are not adequate to combat the scourge of human trafficking in South Africa. It is just a reaction to the portrait view of the crime (Bello & Olutola 2015). To start with, a sufficient understanding of the crime itself is fundamental before any response can be effective. Unfortunately, from this study the majority of the respondents, who are apparently experts in crime prevention and combating, displayed a degree of ignorance of trafficking ramifications. This position lends credence to the findings from studies carried out by (Kruger 2010:38; HSRC 2010:134; Chuang 2006:151) to the effect that criminal justice officers often wrongly interexchange human trafficking with some other similar crimes, such as organ trafficking.

Legal arsenals are strategies adopted by states, including the Republic of South Africa vis-à-vis their criminal justice system to combat human trafficking often from these three pronged approaches: the prevention, prosecution and protection (of trafficked victims). While these approaches may possibly pass as reactions to the consequences of trafficking, they seem to ignore its underlying causes. This position is consistent with the work of Chuang (2006:138). Similarly, many successes have not been recorded, partly because these approaches have not been enduring. Moreover, the precipitating factors which fuel the trade in human commodity are often stated in most legislation, but in reality, regimes have failed to address these fundamental gaps. Hence, for any response to be effective, the root causes of human trafficking, like any other kind of crime, must be known and addressed. This position attest to the credibility of the work of (Liebermann & Landman, 2004:4; Adepoju, 2005:80; Nicola 2007:50).

In addition, findings indicated that combating a crime of this magnitude cannot be achieved via a quick fix legal strategy; but requires a deliberate understanding that human trafficking itself is not a one-off event, but a product of a broader socio-cultural, economic, political and technological milieu. As such, the legal approach will only be effective in furnishing temporary solution to the crime. This position is in agreement with the work of (Chuang 2006:138–139).

Another fundamental gap discovered in the study has to do with the implementation of the law itself. The researchers like to emphasise that as at the time this study was carried out, the prevention and combating of trafficking Act (2013) was yet to be implemented. Though the implementation took place a few weeks ago, the time frame between when it was enacted and implemented (though debatable) is too wide, considering the seriousness of the crime. Besides, insufficient training of crime prevention and justice cluster officials on the current modus

operandi of trafficking could affect the success of the entire implementation episode. This position supports the views of (King 2013:90) to the effect that the enactment of law without effective implementation will make the law to be of no use.

The enforcement of laws is pivotal to the effective response of human trafficking. But then, findings indicated there is a wide enforcement gap. Although this is not limited to South Africa, it is often a common dominator even in the developed world on challenges of effective response to human trafficking. Enforcement gaps have often arisen from factors affecting effective law enforcement in the country such as impunity, corruption, capacity problem, lack of adequate resources, motivation, among others. This finding lends credence to the work of (Muntingh & Dereymaeker 2013). However, in the absence of an effective enforcer law simply becomes *a toothless bulldog that can bark but cannot bite* (Bello, 2009).

Reports from the findings also suggested that the recent Immigration Act (2014) might have an adverse effect on the combating campaigns in the long run. In the same vein, the South African (2014) Immigration requirements for travelling with children (into and out of South Africa) may not be effective in the long-run if the underlying causes of human trafficking crime are not addressed. The reactive approach to issues of migration and human trafficking will only create another alternate platform for traffickers to re-strategise on the next line of action, just as it will nurture desperation in migrants who are on a mission to seek greener pastures. Such desperations will result in the inducement of officials of the Department of Home Affairs, the SAPS and other relevant agencies, making them to compromise in their operations. This argument gives credit to the work of Chuang (2006:146).

RECOMMENDATIONS AND CONCLUSION

From the foregoing, legislations could best be described as mere stopgap strategies and are not enduring. Overreliance on laws and restrictive immigration policies suggest there is a deficiency in the understanding of human trafficking ramifications. The focus should necessarily not be on the understanding of the various conceptualisations of the phenomenon alone, but on the consciousness that the crime itself is not a one-off event but a product of socio-cultural, economic, political and technological milieus. Embedded in these milieus are the root causes of human trafficking. Suffice it to say then that the task of combating the phenomenon of trafficking in South Africa will only be effective when the underlying causes are identified and addressed.

The researchers like to emphasise that the South African Government cannot tackle the problem single-handedly; it requires a collaborative effort with relevant stakeholders both in the public and private spheres, including social institutions. Such partnership will foster synergy, which may assist in charting the right trajectories to combating the menace in the long run. Collaboration with other African states on how to address the socio-economic nuances which fuel the illicit trade on the continent and beyond is essential.

In the same vein, the South African Government need to partner with international organisations on how to improve state law enforcement agencies' understanding of human trafficking and the anti-trafficking law for effective performance. There is also a need for the establishment of a specialised and vibrant law enforcement agency distinct from the formal police structure to provide leadership in the enforcement of anti-trafficking law in South Africa.

In conclusion, addressing the crime of human trafficking (either the domestic or cross-border form) from the legal angle or in the broader context of the criminal justice system is just a reaction to the portrait view of the larger problem.

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