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LANDSCAPE REVIEW
RESEARCH ON THE NATURE AND SCOPE OF TRAFFICKING IN PERSONS (TIP) IN SOUTH AFRICA

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OVERVIEW

The Trafficking in Persons (TIP) Landscape Review provides an analysis of the current evidence and knowledge in South Africa, as part of a national study conducted by Khulisa Management Services (Khulisa) and the University of the Witwatersrand (Wits). The Review provides qualitative and quantitative data to reveal the knowledge base to inform the nature, magnitude and response across the four domains of prosecution, protection, prevention and partnerships in South Africa. The research is funded through 7200AA18CA00009 (LASER) by USAID/Southern Africa and USAID/LAB/CDR through Purdue University/LASER PULSE, in collaboration with the Department of Science and Innovation, South Africa (Award # DST/CON 10/2/3/2020).

A review was undertaken to identify, summarize and interpret previous published academic and grey literature, legislation and policy and empirical evidence. Over 386 publications were reviewed. Gaps in TIP policy, practice and research in South Africa were identified.

Key findings:

- South Africa's policy fell short of identifying intervention strategies in the overall response including insufficient funding; irregular and inaccurate reporting; problems with identifying victims; lack of consistent training; movement between borders and a substantial measure of official complicity.

- South Africa's accomplishments since the ratification of the Palermo Protocol in 2004 was "nominal, sporadic, and diffident" due to lack of sufficient dedicated resources. Improved collaboration of services and international partners is required.

- There is a lack of reliable TIP prevalence statistics which is of urgent concern. A fraction of reported cases translate into actual prosecutions.

- Several significant shortcomings around protection for victims were found including the need for legal right to social assistance, to address gender-based economic and socio-cultural structures, biased services and a need to re-think how child victims are managed. Further effort is required to reduce the demand for commercial sex and forced labor.

- The highly convoluted relationship between migration and smuggling adversely impacts the state's ability to curb and prevent trafficking.

Research on TIP is multihued and transdisciplinary. Despite this review of evidence, and in the absence of consolidated and accessible data and evidence, it is difficult to determine if TIP incidents in South Africa are increasing or decreasing, and if the prevention, protection, prosecution and partnership response is effective. It is therefore difficult to make evidence-based decisions regarding policy and practice and determine the effectiveness of the response – albeit the relatively short time frame since implementation of the NPF.

There is a need for a more comprehensive understanding of the scope and nature of TIP that makes the research that will follow of critical importance for both policy makers and practitioners. The research study aims to support efforts for data play a larger role in public-policy debates on human trafficking, and to amplify South African institutional capacity to participate in and lead this process.

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ACRONYMS AND ABBREVIATIONS

3Ps	Prevention, protection and prosecution
3Ss	Stigmatization, shame and silencing
4Ps	Prevention, protection, prosecution and partnerships
APA	Africa Prosecutors Association
AU	African Union
CAN	Community Action Network
CBO	Community-based Organization
COVID-19	Coronavirus (SARS-CoV-2 (2019-nCoV))
CSO	Civil society organizations
CYCC	Child and Youth Care Centre
DHA	Department of Home Affairs
DOEL	Department of Employment and Labour
DOH	Department of Health
DOJCD	Department of Justice and Constitutional Development
DSD	Department of Social Development
ECPAT	End Child Prostitution and Trafficking
FIFA	Fédération Internationale de Football Association
GBV	Gender based violence
GLO.ACT	Global Action against Trafficking in Persons and Smuggling of Migrants
GOSA	Government of South Africa
HRW	Human Rights Watch
HSRC	Human Science Research Council
ILO	International Labour Organization
IO	International Organization
IOM	International Organization for Migration
JTIP	United States Office to Monitor and Combat Trafficking of Persons
KII	Key informant interviews
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual
NAPTIP	National Agency for Prohibition of Trafficking in Persons
NC	National Anti-trafficking Coordinator

NFN	National Freedom Network
NGO	Non-government Organization
NICTIP	National Inter-sectoral Committee on Trafficking in Persons
NPA	National Prosecuting Authority
NPF	National Policy Framework
NPO	Non-profit Organization
ODIHR	Office for Democratic Institutions and Human Rights
OHCHR	Office of High Commissioner for Human Rights
OVCTTAC	Office for Victims of Crime Training and Technical Assistance Centre
PACOTIP Act	Prevention and Combating of Trafficking in Persons Act No. 7 of 2013
PPP	Public-Private Partnership
PTT	Provincial Task Team
ROLI	American Bar Association Rule of Law Initiative
SADC	Southern Africa Development Community
SANDF	South African National Defense Force
SAPS	South African Police Service
TIP	Trafficking in Persons
TVPA	United States Victims of Trafficking and Violence Protection Act of 2000
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commission for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organized Crime
US/USA	United States of America
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Khulisa Management Services (Khulisa) in partnership with the University of the Witwatersrand (Wits) received a subaward through Purdue University/LASER PULSE in association with the USAID-funded Long-Term Assistance and Services for Research Award (7200AA18CA00009 LASER) in May 2020 to conduct research on Trafficking in Persons (TIP) in South Africa. This work represents a collaboration between USAID/Southern Africa,USAID/LAB/CDR, and the Department of Science and Innovation, South Africa. The objective of this collaboration is to collect robust and empirically-based qualitative and quantitative data that will reveal the nature and magnitude of TIP in South Africa. This research will support efforts to have the data play a larger role in public-policy debates, particularly given the hidden and subversive nature of TIP.

TIP is on-going but has its roots dating back at least four centuries. The physical, psychosocial, emotional, and symbolic violence implicit to TIP, and the elements of the crime defined internationally have been part of South African history.

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) came into force on December, 25 2003 and was ratified by South Africa on February 20, 2004. South Africa was therefore bound to develop laws to protect the victims of trafficking and prosecute offenders in a manner proportionate to the seriousness of the offence. However, South Africa's record of fulfilling its Palermo Protocol commitments towards prosecution, prevention, and protection was characterized as fragile and inconsistent. The Prevention and Combating of Trafficking in Persons Act (7 of 2013) (PACOTIP Act), and its subsequent operationalization on August 9, 2015, addresses some of these gaps. The PACOTIP Act criminalizes all forms of trafficking, including labor trafficking. The PACOTIP Act is a significant improvement on interim legislative instruments such as the Sexual Offences Amendment Act 32 of 2007 (The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007).

South Africa's National Policy Framework (NPF) on the Management of Trafficking in Persons Offences, was released in 2019. The NPF provides a multidisciplinary and coordinated response to achieve TIP prosecution, protection and prevention in South Africa. As a planning tool, the NPF aims to rationalize resource use and provide an effective response to TIP. The NPF sets up structures to measure progress and monitor overall implementation. The NPF seeks to hold stakeholders accountable for complying with PACOTIP Act mandates.

Like elsewhere, both the perception of and legal definition of TIP has proven to be imprecise and has led to much confusion amongst lay persons, policy-makers, practitioners, and academics (Dempsey, 2017). This is, arguably, one of the most pertinent factors contributing to South Africa's prevalence and number counting dilemma.

The media has played a significant role in informing public perception regarding the scope and nature of TIP. Media reports of women and children with "lucrative price tags" (Laganparsad, 2010), sensationalist and fear-inducing stories of sexual slavery, and monster-like characterizations of traffickers have dominated media coverage (Wilkinson & Chiumia, 2013), especially leading up to South Africa hosted 2010 Soccer World Cup (Tacopino, 2010; Sanpath, 2006).

In a parallel, an alternative viewpoint on South Africa's human trafficking 'problem' emerged. A 2008 research report suggested that TIP in Cape Town's sex trade was not significant (Gould & Fick, 2008). The same research was one of two studies cited in a 2014 publication in which findings were generalized to the entire South African context (Gould, 2014). This publication concluded that international pressure to comply with the Palermo Protocol may have contributed to the creation of sex trafficking as a social problem in South Africa. Widespread confusion and conflicting narratives about the scope and nature of TIP in South Africa became common (Van der Watt, 2015; 2018). This further complicated the work of policy-makers and those responsible for resource allocation and financial investments.

The lack of reliable TIP prevalence statistics in South Africa is of urgent and persistent concern to the government, non-government organizations (NGOs), researchers and policy-makers. South Africa still does not have a national database containing accurate and aggregated data on TIP. Notwithstanding the lack of TIP prevalence numbers in South Africa, only a fraction of those reported translate into actual prosecutions. There were 2,132 TIP cases registered on the South African Police Service (SAPS) Crime Administration System (CAS) between August 9, 2015 and December 12, 2017. At the time of writing, data gathered relating to cases on the court roll indicated 47 successful TIP prosecutions, and 21 child trafficking cases prosecuted. The TIP knowledge deficit, coupled with a range of overlapping structural and organizational complications, continue to inhibit accurate scoping of the problem.

TIP cases are frequently subsumed under a range of other crimes that include rape, kidnapping, abduction, domestic violence, civil- and labor disputes (Dempsey, 2017; Van der Watt, 2018). A poor understanding of TIP and the lack of consistent training continue to hinder South Africa's counter-TIP efforts (U.S. Department of State TIP Reports, 2019). Frontline law enforcement agencies including the South Africa Police Service (SAPS) and Department of Home Affairs (DHA) are implicated in failing to identify adult and child trafficking victims. Child trafficking victims are sometimes incorrectly categorized as 'children in need of care' (Save the Children, 2016).

The annual United States Trafficking in Persons Report (U.S. Department of State TIP Report) is considered the most comprehensive global report on governments' efforts to combat severe forms of human trafficking. The U.S. Department of State TIP Report has consistently identified South Africa as a source, transit and destination country for the trafficking of men, women and children exploited for commercial sex and forced labor. The 2020 U.S. Department of State TIP Report points out that the South African Government does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government's demonstration of an overall increase in efforts, compared to the previous reporting period, prompted the upgrade to Tier 2 from Tier 2 Watch List in the previous two years.

The U.S. Department of State TIP reports note improvements such as increasing prosecution efforts and proportional sentences imposed for trafficking crimes such as multiple life sentences. Other improvements include identifying more trafficking victims who were referred to care and provided with protective, rehabilitative and remedial services, in partnership with NGOs and international organizations. Ongoing concerns raised include corruption and official complicity in TIP crimes, and the lack of government efforts to reduce demand for commercial sex or forced labor. Noteworthy is that the role of 'demand' is explicitly recognized in the PACOTIP Act (2013) preamble, and considered a contributor to making persons vulnerable to becoming victims of trafficking. In addition, a high rate of unemployment, and few job opportunities further make individuals vulnerable and provides

them with fewer economic options (Warria, forthcoming, 2020). A persistent shortfall is the Government's failure to promulgate the PACOTIP Act immigration provisions in Sections 15, 16, and 31(2) (b) (ii).

Several significant shortcomings around protection for victims were found including the need for the legal right to social assistance, to address gender-based economic and socio-cultural structures, biased services and a need to re-think how child victims are managed. Further effort is required to reduce the demand for commercial sex and forced labor.

Over 386 documents were reviewed. South African literature, research and empirical evidence has, to a large extent, reflected the observations documented in the U.S. Department of State TIP Reports since 2004. TIP for sexual exploitation continues to be the most documented form of trafficking in South Africa. Harmful and distorted cultural practices, most notably *ukuthwala*[1], has been closely linked with TIP-related crimes and at least two successful prosecutions in South African courts (Van der Watt & Ovens, 2012; Prinsloo & Ovens, 2015).

There is a clear gap in the evidence-based knowledge of other TIP crimes related to labor, domestic servitude, adoption, organ- and body parts. One study found that organ trafficking in South Africa is mainly used for two purposes: traditional medicine or *muthi*,[2] and medical transplants of organs (Watson, 2006). A 2009 case of organ trading in South Africa was published in the South African Journal of Bioethics (Khoza, 2009: 1).

Empirical evidence, based on multiple studies conducted by the researchers, highlights widespread labor trafficking (Frankel, 2016). Labor trafficking and indentured labor supply chains in South Africa relate to industries such as mining, agriculture, fisheries and the widespread informal labor sector. Corruption in the illicit mining sector and its nexus with TIP is characterized by syndicated criminal networks, and multilayered forms of exploitation (Capazorio, 2017).

The impact of immigration on the South African economy is well documented by organizations including the International Labor Organization (ILO), International Organization for Migration (IOM) and Ford et al. (2012). In addition to being a source and transit country, South Africa is a destination for both poor and low-skilled people, as well as highly skilled workers from neighboring countries. Large numbers of undocumented migrants flow with relative ease across South Africa's expansive maritime and land borders, described in one study to be more porous than a 'tea strainer' (Van der Watt, 2018: 279).

Stemming from the characteristic push-and-pull dynamics of human movement, are unintended consequences of criminal networks, including traffickers that move freely between South Africa and its neighboring countries with South African authorities lacking the capability to constrain the flow. The flows are aided and abetted by challenges in cross-border policing, despite efforts at formal cooperation through mutual legal assistance agreements, and informal cross-border efforts on training. These often succumb to aspects of under-resourcing, poor coordination, lack of oversight and high levels of corruption (Tait *et al*, 2010; Hennop *et al*, 2001).

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[1] According to the Department of Justice, *ukuthwala* is a form of abduction that involves kidnapping a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman's family to endorse marriage negotiations.
[2] A term used to refer to traditional medicine in Southern Africa

The overlap between TIP, smuggling and migration flows is of pertinent importance to consider (Skeldon, 2000 in Ford, Lyons & Van Schendel, 2012). What starts as a smuggling operation, could become trafficking due to the illegal migration channels, deficits in legitimate migration opportunities, and unsuspecting individuals deceived or coerced into exploitative situations when in transit. On the other hand, undocumented migrants may arrive in South Africa and find themselves in slave-like conditions.

Since the PACOTIP Act operationalization in August 2015, there has been considerable evolution in the counter-TIP landscape. The National Freedom Network (NFN) is the representative and coordination body for civil society working in anti-trafficking efforts. Provincial and Rapid Response Task Teams are mandated to operate in all nine provinces, yet are said to be operational in but five of the provinces. The interface between NGOs and Government is not without conflict as each role-player to task teams brings their motivations, expectations and agendas. Much of the grassroots tension is concerned with issues of victim identification, referral and response to actual cases or incidents in progress.

Despite this review of the evidence, and in the absence of consolidated and accessible data and evidence, it is difficult to determine if TIP incidents in South Africa are increasing or decreasing, and if the prevention, protection, prosecution and partnership response is effective. It is therefore difficult to make evidence-based decisions regarding policy and practice and determine the effectiveness of the response – albeit the relatively short time frame since the implementation of the NPF.

Establishing the nature and magnitude of TIP remains an important endeavor, and to use this empirical data for public-policy TIP debates. Several evidence-based knowledge gaps are deduced from anecdotal evidence, media reports, and engagement with the operational TIP environment. This includes the need for empirical research on the:

- Scope, nature and extent of labor trafficking in agriculture, mining, and fisheries
- Alleged complicity of social workers and child welfare organizations in adoption and foster care irregularities, and the
- Possible intersection with crimes related to fraud, corruption and TIP.

Recommendations are provided to strengthen the evidence and knowledge base:

1. Improve the administration of data by government by integrating TIP into existing data management systems, and develop and maintain a national, centralized database (Farrell and De Vries, 2020; Frankel, 2016; Horne, 2011; Van der Watt, 2020, 2015; UNODC & SADC, 2014).

2. Develop and use standardized TIP definitions to guide identification and reporting (Farrell and De Vries, 2020).

3. Include new data collection methods through for example digital methods and community research (Farrell and De Vries, 2020).

4. Prioritize research to target gaps in the TIP knowledge base.

5. Confirm measurable indicators for relevancy, accuracy and prioritization of reporting and accountability purpose; the quality of service delivery and to measure outcomes. In addition, conduct evaluations of services to inform policy and the response model.

SECTION 1: INTRODUCTION

1.1 BACKGROUND

The research will provide evidence on the nature and magnitude of TIP to the Government of South Africa (GOSA) and the United States Agency for International Development (USAID). In turn, the evidence will support efforts to have the data play a larger role in public-policy debates. Thus, it will amplify South African institutional capacity to participate in and lead this process through partnership with United States (U.S.) institutions and engagement with the GOSA.

This Landscape Review provides an examination of the current evidence and knowledge in South Africa pertaining to TIP and is part of a national study conducted by Khulisa, the University of the Witwatersrand and experts in the sector.

The national study aims to develop an evidence-based framework which:

a) Addresses gaps and delivers reusable TIP indicators for future longitudinal analysis;
b) Scopes the magnitude and nature of trafficking (especially labor trafficking) based on available evidence;
c) Assesses the current nature and TIP response based on data extracted from the field at provincial and national level; and
d) Identifies where the GOSA can develop or strengthen multi-sectoral counter-trafficking interventions.

The research questions of the national study are:

1. What is the scope of trafficking and how does it manifest itself in South Africa?
2. What are the experiences of victims of TIP and is policy shaped to reflect their voices? What are the gaps in support services for victims and how can these be developed, implemented and improved?
3. What are the past and present factors that have constrained both available data, and an understanding of TIP prevalence in South Africa?
4. Who are the role-players involved in TIP and is the response to counter trafficking appropriate? In what ways does the criminal justice system require improvement to better manage trafficking crimes? What can be learnt from programs to strengthen the response?
5. What is the capacity among the key stakeholders and structures in counter-trafficking, in the field, at provincial level and in central government, and how is /should capacity be built?
6. What are the key pathways to impact to address TIP in South Africa? What are the gaps and recommendations?

In dealing with these questions, this Landscape Review informs the key research activities, instruments, analysis and final research report.

1.2 Purpose and Scope of the Landscape Review

This Landscape Review of TIP in South Africa sets out to provide a condensed summary of available literature and research conducted on the phenomenon since the advent of South Africa's Constitutional democracy in 1994. It also provides information about the operational aspects of TIP, including the requirements to improve the management of TIP.

Multidisciplinary perspectives are increasingly evident in South African TIP research. Available scholarship is positioned in South Africa's historical context that is not only foundational to the phenomenon, but also intractable from contemporary conversations about TIP.

The review is structured as follows:

A brief history of TIP which provides an overview of the 'predisposition' that South Africa has as a trafficking country in the post-apartheid years as a consequence of globalization, regional developments around South Africa, and the historical heritage due to racial segregation.

A discussion of past and present legislative frameworks followed by a focus on South Africa's Prevention and Combating of Trafficking in Persons Act No. 7 of 2013 (PACOTIP Act). The PACOTIP Act, positioned as a *"sharp prosecution sword"* (Kruger, 2016: 84), serves as the yardstick for determining what is trafficking, what is not, and what is prosecutable in terms of TIP-related offences. Available policy documents are also considered in this section, particularly the current National Policy Framework (NPF).

The difficulty in developing accurate statistics about TIP prevalence of TIP both in the global and domestic context, is explored in the analysis of the Research Environment of TIP in South Africa. The extant research is then discussed based on a knowledge base of, *inter alia*: books, articles and reports pertaining to TIP in South Africa. This includes an overview of the different themes, aims and findings of scholarship, with an attempt to highlight the differing perspectives that further constrain responses to an already complex phenomenon.

The Annual U.S. Department of State TIP reports complement available literature with insights to outline the operational counter-TIP environment in South Africa - utilizing the 4P paradigm (Prosecution, Protection, Prevention and Partnerships). Strengths, weaknesses, and opportunities for the operational environment form part of the discussion with data drawn from the latest U.S. Department of State TIP reports, especially those of 2019 and 2020.

The impact of COVID-19 and TIP, albeit partially speculative.

The Landscape Review then concludes with a short summary of the scholarly works that were discussed, gaps and challenges in the research, and recommendations.

The methodology of the Landscape Review is provided in Annex 1, and Annex 2 provides details on terminology used in the report. Annex 3 details the researchers' biographies. The bibliography is provided in Annex 4.

SECTION 2: BACKGROUND TO TIP IN SOUTH AFRICA

Trafficking in persons is rooted in South Africa's historical landscape. Literature on aspects related to slavery and trafficking in South Africa is limited but there is information that indicates their existence. According to Obokota (2019), the concepts "human trafficking" and "slavery" or "exploitation" are not necessarily synonymous, but they all speak to rights violations.

What we know and understand as "trafficking in persons" today dates to the first forms of social organization. From time immemorial, men have been enslaved as loot following defeat in war, and women forced into concubinage. When Vasco da Gama, the Portuguese explorer, seeking a route to India, rounded the Cape of Good Hope in 1492, he anticipated the capture and use of indigenous people, but then moved on too quickly from his Southern African way-station (Williams, 2016). Classical slavery, nonetheless, took root with the arrival of Jan van Riebeeck at the Cape in 1652, reputedly with two enslaved Abyssinian women aboard ship (Williams, 2016). The political economy of the small settlement established at the foot of Table Mountain, thereafter a Dutch colony, was fueled almost immediately by the extermination of the indigenous people, many of whom were forced into what we would today be termed bonded labor.

In the first known case of TIP involving South Africa, Sara Baartman was trafficked from South Africa to Britain and later to France. In years to come during the 1810 trial, "*she denied that she was a slave; she stated that she was happy in her present situation and wished to remain in London*". However, according to Kaserboom, when Baartman spoke, her voice cannot be removed from the context of power relations (2011: 65) which is typical of victims of trafficking. Sara Baartman's story has been linked to the dilemmas that face(d) indigenous communities and tied to the narratives on dehumanization, rights violations and the misfortunes that especially black women in colonial states went through (Kaserboom, 2011). Parkinson (2016: np) supports this assertion that Baartman "*become the landscape upon which multiple narratives of exploitation and suffering within black womanhood have been enacted*" although she largely remained invisible.

The system of subordination involving both men and women continued under British colonialism starting with the importation of slaves from Mozambique, Madagascar, and the East Indies (Williams, 2016). The use of forced agricultural labor continued even after the abolition of slavery, resulting in the eventual migration of mainly Dutch farmers into the unexplored northern interior. With the discovery of diamonds and gold north of the Orange River from the 1860's onwards, more modernized types of indentured servitude fueled the growth and development of the South African economy. This was especially egregious in the mining sector whose productivity depended on the various forms of entrapment of local people into forced labor well into the period after the Second World War (Wilson 1972; Crush, Jeeves & Yudelman 1991; James 1992; Frankel 2013).

When writing about the history of slavery and trafficking generally, Mollema (2013: 24-5) indicates that labor exploitation was mainly linked to slavery, but later young European women were brought to Cape Town as prostitutes or as wives for the white mine workers. Martens et al. (2013) write about sexual exploitation and reports that African girls were transported to Europe to be exploited as sex slaves in 1966 (Obokata, 2019). In summary, trafficking shifts can be observed within international law – for example change in focus from

prostitution of white women to acknowledging broader experiences of exploitation in more diverse populations (Obokata, 2019).

The presence of organized crime in Southern Africa, including in South Africa, dating back to the 1990's has been acknowledged – including regional flow of illicit goods and movement of individuals (Martens et al., 2013). These networks vary in size, composition, and operations and have been bolstered by the civil and political arrests and socio-economic disparities that exist in these settings.

Today, the global TIP phenomenon persists in South Africa, due in large part to complex, dense and deep structural conditions dating back to apartheid (Van der Watt, 2020). In South Africa, TIP is linked to socio-economic factors (Hamman, 2011: 20). This is an aspect that has strong ties to South Africa's history of segregation. The exploitation of Black people, break up of families and communities based on the migrant labor system, and the subsequent trauma is still being felt. All these continue to contribute to vulnerability to trafficking. In reality, TIP in the last twenty-five years, has been sustained by a combination of global, regional and social problems resulting from the post-apartheid system, in particular the more outward focus of the democratic South Africa.

TIP is both enabled by and facilitates globalization. As in many other countries, the participation of South Africa in an interdependent world economy has broken down both social and territorial barriers. In an age that has seen the relative decline of the nation-state, South Africa appears to be increasingly susceptible to the human consequences of accelerated technological, economic, and transnational development. Membership of this complex network has many impacts on TIP. Organized crime often participates in human trade, to recruit victims and to rapidly deploy them according to the dictates of supply and demand in the international market (Frankel, 2016). Infiltration of, and increased and cheaper access to the internet into all forms of human activity posits a more efficient system to linking victims with perpetrators (UNODC, 2008). And the new capability to move funding at the click of a button works to the advantage of international criminals, including trafficking syndicates, to whitewash their ill-gotten profits (Luttrell, 2020).

All of these factors largely transcend the capability of any state to effectively counter trafficking operations. In South Africa, this has been aggravated by expansive maritime and land borders across which a large number of mainly undocumented migrants flow. Driven by the characteristic push-and-pull dynamics of human movement, migrant flows across these notoriously porous borders became a permanent fixture in the wake of 1994. One of the results of 1994, was more freedom of movement. An unintended consequence however of this movement, is that traffickers are also more free to move, and South Africa lacks the capability to stem the flow (Frankel, 2016). Given South Africa's position as an economic driver on a continent comprising mainly under-developed and unstable states, it remains a desirable and preferred destination for economic and other migrants from throughout the region. Socio-economic problems in neighboring countries inevitably spill over into South Africa for migration. Research by the International Organization for Migration (IOM) has identified highly articulated TIP networks, staffed by an alliance of human smugglers, dedicated traffickers, riverbank gangs and delinquent members of the taxi industry, responsible for the 'running' of trafficking victims from points of origin north of the Limpopo to our major metropole (Kropiwnicki, 2010; IOM, 2008). Some question whether these networks persist in spite of police action against perpetrators or as a result of police complicity alongside perpetrators (U.S. Department of State, 2018; IOM, 2008).

Socio-economic stressors at the points of origin further undermine any potential success of repatriation efforts by encouraging repeated efforts to migrate vulnerable people within, in and out of South Africa (Warria, 2014).

The perpetual movement of people across South African borders and from rural to urban areas, feeds labor supply chains into manufacturing, mining, agriculture, and other sectors of the economy. All of these sectors are notoriously exploited by informal and sometimes criminal labor brokers who provide cheap undocumented migrant labor who are desperate for employment; on the run from the police; or otherwise demoralized by their own lived experience (Shapiro, 2008). The agricultural sector, including the country's valuable wine industry in the Western Cape, is notorious for its exploitative conditions and human rights abuses that ignore workers' fundamental rights (Human Rights Watch, 2011). Even though farmers are subject to health and safety regulations, the government is unable to enforce these adequately (Devereux, 2019: 20). Human Rights Watch (HRW) found that in 2011, there were only 107 labor inspectors responsible for monitoring over 6,000 farms (*ibid*). Adherence to regulations also vary between farmers who export, and are therefore bound by audits of supplier farms, and those not subjected to this scrutiny (*ibid*). Big commercial farmers generally steer clear of suspect labor because of shareholder pressure at export destinations in places such as the UK or the EU. Smaller agricultural enterprises are more likely to use questionable, including at times, trafficked labor of illegal and opportunistic brokers, near-border areas in Mpumalanga and Limpopo (Frankel, 2016).

According to Warria (Forthcoming, 2020), pre-migration stressors and other conditions in labor migrants' countries of origin result in them taking the unpopular low grade jobs. In as much as most countries will not accept that they are a valuable asset to their economy, the numbers of irregular (labor) migrants will continue to grow (Van Waas, 2007) and the labor exploitation will grow as well and remain hidden.

Ultimately, TIP is underpinned by deep-seated inequality that both maintains and promotes racial, class and gender divisions. These societal schisms promote an enabling environment for perpetrators. They also undermine the ability of vulnerable populations to resist overtures that eventually result in exploitative sexual and other forms of forced labor. These inequalities fundamentally confound governmental (central, provincial, and local) counter-trafficking initiatives; while largely precluding sustainable public education geared toward prevention, protection, and prosecution (Van der Watt, 2018; Van der Watt & Burger, 2018).

Issues with TIP are compounded by the ongoing failure of the government to effectively address the crime. Unfortunately, unless TIP is properly prioritized, adequately funded and effectively coordinated, many ongoing initiatives will remain disjointed and largely ineffective. These lapses in the effective implementation of TIP responses in South Africa is aggravated by failures across the whole TIP ecology including, but not limited to (Van der Watt, 2018, 2019a, 2019b; U.S. Department of State TIP Report, 2019, 2020):

- Inability of the criminal justice system to refine its responses to TIP

- The lack of political will among key government stakeholders

- Under-capacitation and under-funding of civil society in the development of the Public-Private Partnerships (PPP) in the co-production of services to manage TIP; and

- Documented widespread corruption in the state bureaucracy and its law enforcement agencies

SECTION 3: STRATEGIC APPROACHES TO COUNTER-TRAFFICKING

3.1 THE LEGAL AND POLICY FRAMEWORK

3.1.1 INTERNATIONAL LEGAL FRAMEWORK

Globally, agreement on what constitutes "trafficking in persons" is comparatively recent. States only began considering it as a separate crime from other practices, such as irregular migration, as recently as the 1990s (OHCHR, 2014: 9). In fact, international actors only began to draft the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in 1999 (Miko, 2003: 15). This important legal instrument, commonly known as the *Palermo Protocol*, was the first instrument to provide a definition of TIP that was both globally accepted, and binding (United Nations, 2000). The protocol was signed in December 2000 and came into effect on December 25, 2003. To date, the instrument has 117 signatories and 176 parties. South Africa ratified the protocol on February 20, 2004 (United Nations).

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, is one of three Palermo Protocols to the United Nations Convention Against Transnational Organized Crime (UNTOC) and is also commonly known as the Trafficking Protocol, or the UN TIP Protocol. This protocol is intended to address the crime of TIP at a transnational level and is therefore a critical building block to guide states in drafting their own domestic legislation, as well as to assist in the preparation of effective national policies and strategies, and to identify the resources necessary for implementation. The United Nations Office on Drugs and Crime (UNODC) is the responsible agency for enforcing the protocol, which establishes a positive obligation to state parties to prevent and combat trafficking in persons; protect and assist victims; and to promote cooperation between states to achieve these objectives (UNODC, 2009).

3.1.2 REGIONAL LEGAL AND POLICY FRAMEWORKS IN AFRICA AND SADC

Recognizing the impact, and rapid growth of TIP on the African continent, the African Union (AU) launched its own AU Commission Initiative against Trafficking (AU.COMMIT) Campaign in November 2011 with the intent to discuss policy indicators, benchmarks, monitoring mechanisms and to share and disseminate best practices on the continent (African Union, 2011). The *AU.COMMIT* campaign was an effort to take concrete steps to implement the *Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children* which was adopted by the Ministerial Conference on Migration and Development, in Tripoli, November, 22- 23 2006. The aim of this plan was to bolster cooperation and promote best practice to address TIP between Europe and Africa by strengthening mechanisms to simultaneously protect victims and prosecute traffickers (European Commission, 2006).

The Southern Africa Development Community (SADC) is particularly affected by TIP, where it is widely considered to be a serious public security concern (UNODC, 2018). All 15 SADC member states have signed and ratified the Palermo Protocol. Most SADC members have domestic legislation which outlaws the crime, but these states still serve as source, transit, and destination countries for trafficked persons (UNODC, 2018).

One of the biggest obstacles in the region is the lack of accurate data and dearth of overall information concerning TIP. This fact underscores the inability of states to effectively deal both domestically, and regionally with TIP. From the available data, reports, and information from practitioners in the field, all indicators are that the region is failing at effectively preventing, protecting, and prosecuting trafficking crimes (Africa Prosecutors Association, 2019). In response to these significant shortcomings and the general lack of effective coordination, SADC has developed several key policy and legal instruments to manage and prevent TIP, these include:

SADC Protocol on Gender and Development (2008)	**10 Year Strategic Plan of Action to Combat Trafficking in Persons, especially women and children (2009 – 2019)**
Harmonized SADC Regional Strategic Plan on Combating Illegal Migration, Smuggling of Migrants and Trafficking in Persons (2016 – 2020); and	**SADC Strategic Indicative Plan for the Organ (SIPO) on Politics, Defense and Security Cooperation**

In addition, the American Bar Association Rule of Law Initiative (ROLI) partnered with the Africa Prosecutors Association (APA) between 2018-2019 to develop a road map for SADC prosecuting agencies to better identify, define, and collaborate on TIP cases and prosecutions. Working in close collaboration with prosecuting agencies from 13 SADC countries, the resulting *Combating Trafficking in Persons in Africa: A Road Map for Prosecutors in the Southern Africa Development Community* addressed the eight priority areas for addressing TIP in the SADC 10 Year Strategic Plan (APA, 2019).

Many of the TIP instruments in SADC contain specific obligations for member states. Article 20 of the SADC Protocol on Gender and Development for example, require that all parties had enacted and adopted *"specific legislative provisions to prevent human trafficking and provide holistic services to survivors, with the aim of re-integrating them into society…"* by 2015 (SADC, 2008). In addition to the legislative requirements, the SADC protocol also requires states to establish other necessary mechanisms such as law enforcement, data collection and reporting on types and modes of trafficking, and to strengthen regional and international collaboration to interrupt regional and international trafficking networks (ibid).

The *10 Year Strategic Plan* divides TIP interventions in the region into eight priorities, of which *Legislation and Policy Measures* is listed first. The plan identifies the need to "*sign, ratify, and domesticate international and regional frameworks addressing TIP*" (SADC, 2008). In addition, the plan calls for the development of a regional model TIP legislation, in addition to harmonized national policies and legislation, and stricter protocols around travel including for travel and identity documents.

3.1.3 PACOTIP ACT

Following South Africa's ratification of the Organized Crime Convention and the Palermo Protocol, it introduced interim provisions to numerous existing legislations prior to the adoption of the obligatory comprehensive domestic counter-trafficking legislation (Kruger: 2016, 64).

FIGURE 1

South Africa's first comprehensive legislation on TIP was signed into law by then President Jacob Zuma on July 29, 2013 (PACOTIP Act, 2013), after it was placed on Tier 2 Watch List by the U.S. Department of State annual TIP Report (U.S. Department of State TIP Report, 2013) and came into operation on August 9, 2015 (Singlee & Witbooi, 2018: 22). Some argue that the Prevention and Combating of Trafficking in Persons Act No. 7 of 2013 (PACOTIP Act) came about, at least partially, as a result of international pressure for national laws to align with international practice. In particular, prior to the passage of the Act, the U.S. Department of State TIP Report had ranked South Africa as 'Tier 2' for seven consecutive years, denying the 'Tier 1' ranking because the government *"did not comply with the minimum standards for the elimination of human trafficking set out in the United States' Trafficking Victims Protection Act"* (Kruger, 2016: 54).

Figure 1 SEQ Figure * ARABIC 1: U.S. TIP Annual Report Tier Ratings of South Africa

Year	US TIP Tier	Progress
2013	Tier 2	▬
2014	Tier 2	▬
2015	Tier 2	▬
2016	Tier 2	▬
2017	Tier 2	▬
2018	Tier 2 Watchlist	▼
2019	Tier 2 Watchlist	▬
2020	Tier 2	▲

Progress based on previous year rating:
Yellow = stable
Red = warning
Green = progress
Arrows = increase or decrease in rating
Line = no change

The Act also addressed both South Africa's international obligations under various global and regional instruments (Singlee & Witbooi, 2018; Law Library of Congress, 2013), as well as the State's constitutional duty to protect trafficking victims in line with multiple constitutional rights which include (Government of South Africa, The Constitution, 1996: Sections 10, 12, 13, 21, 23, 28):

- The right to human dignity
- The right to freedom and security of the person
- The right not to be deprived of freedom arbitrarily or without just cause
- The right not to be subjected to slavery, servitude and forced labor
- The right to freedom of movement and residence
- The right to fair labor practices
- The right of children to be protected from exploitative labor practices as well as maltreatment, neglect, abuse and degradation.

Furthermore, the State is obliged to fulfill the rights enshrined within the Bill of Rights, by enacting appropriate and necessary legislation and policy (ibid, Section 7(2)). While the PACOTIP Act may not eradicate human rights abuses associated with trafficking, it improves victims' rights. The PACOTIP Act should also be of particular value to under-trained prosecutors (Kruger, 2016; Legget, 2004: 4).

The PACOTIP Act is made up of ten chapters:

- Chapter 1 describes the definitions, interpretation, and objects of Act
- Chapter 2 establishes offences, penalties and extra-territorial jurisdiction

- Chapter 3 discusses the status of foreign victims needed to assist in investigations and prosecutions, while

- Chapter 4 deals with identification and protection of victims, including specific reporting and other requirements when dealing with a child victim of trafficking

- Chapter 5 establishes accreditation and other standards for organizations who provide services to victims of trafficking

- Chapters 6 and 7 handle compensation, repatriation and escorting of child victims of trafficking

- Chapters 8, 9 and 10 provide general provisions, administrative matters of the act and other miscellaneous matters including repealed and amended acts.

3.2 ANALYSIS OF THE PACOTIP ACT

3.2.1 STRENGTHS

Establishing one law that criminalizes all aspects of trafficking in persons, as well as the establishment of a legal framework for reporting, monitoring, and coordinating services for TIP, was an important first step in addressing the crime domestically. While the PACOTIP Act has minor shortcomings, in Kruger's careful comparison of the South African counter-trafficking law with international prosecution standards, she finds that the new South African legislation *"fundamentally complies with the main international prosecutorial standards"* (Kruger, 2016). In fact, Kruger finds that the new law also includes several additional provisions which increases prosecutors' ability to effectively go after trafficking offenders (ibid).

In her analysis, Kruger (2016) confirms that the South African legislation meets all the criteria to meet minimum standards including:

- Criminalization of TIP and associated conduct
- Liability of natural and legal persons
- Definitional elements of the crime of TIP
- Validity of a consent-based defense
- Appropriate punishment

The PACOTIP Act is modeled on the Palermo Protocol and forms a comprehensive framework for the effective prosecution of TIP cases (Blom, 2016: ix).

The PACOTIP Act complies with the minimum standards with a corresponding definition of trafficking (National Freedom Network, 2015) that is contained in Chapter 2 section 4(1) and 4(2) of the Act which defines TIP as:

> **4(1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of –**
> **(a)   A threat of harm**
> **(b)   The threat or use of force or other forms of coercion**
> **(c)   The abuse of vulnerability**
> **(d)   Fraud**
> **(e)   Deception**
> **(f)   Abduction**
> **(g)   Kidnapping**
> **(h)   The abuse of power**

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

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

4 (2) Any person who-

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

(b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence." (Government of South Africa/DOJ, 2013)

The primary objective of the PACOTIP Act was to "*prevent and combat trafficking in persons within and beyond the borders of South Africa*" (Singlee, 2018: 22). Promulgating the PACOTIP Act was a foundational step in South Africa's fight against the scourge of TIP, as it established a "*single codified piece of legislation*" to handle TIP cases (van der Watt, 2018: 78).

According to the 2015 U.S. Department of State TIP Report, the first since its promulgation, the PACOTIP Act officially "*criminalizes all forms of human trafficking, mandates a coordinated government program to prevent and combat trafficking, requires consolidated reporting of trafficking statistics, and outlines victim assistance measures*" (U.S. Department of State TIP Report, 2015: 340)*.*

3.2.2 WEAKNESSES

South Africa faces a multitude of challenges to effectively address TIP, of which implementing legislation is only one. Additional and interconnected challenges include a lack in financial and human resources, low level of knowledge and understanding of TIP, lack of adequate legal and law enforcement capabilities, porous borders, absence of a national database, and many competing priorities. This section will briefly address some of the main challenges for the effective implementation of the PACOTIP Act.

3.2.3 SECTIONS OF THE LAW

The PACOTIP Act, while considered a solid TIP legislation, falls short on several important criteria, especially when it comes to effective implementation. Critics have continuously called for the amendment of Chapter 2 (13) of the law to ensure more stringent penalties by limiting the ability of judges to hand down fines in lieu of prison time (U.S. Department of State TIP Report, 2016, 2017). Further criticism by the first U.S. Department of State TIP report since the promulgation speaks both to the absence of a focus on labor trafficking, while also failing to prosecute any of the international syndicates that are known to operate the sex trafficking in the country.

3.2.4 REGULATIONS

The PACOTIP Act sets out the broad legal principles for dealing with trafficking in persons, the practical implementation and application of the Act must be contained in subsidiary legislation and regulations in accordance with Chapter 9 which establishes that the Minister may make regulations to facilitate the functioning and mechanisms of implementation of the Act.

Given the many government departments and institutions involved in anti-trafficking, which, according to the Act includes the Ministries of Finance, Home Affairs, Health, International Relations and Cooperation, Labor, Police, Social Development, State Security, and Women, Children and People with Disabilities, and the National Director for Public Prosecutions, a host of regulations is required to ensure effective PACOTIP Act implementation.

To date, regulations and/or procedures have been established for certain agencies including South African Police Service (SAPS), Department of Social Development (DSD), National Prosecuting Authority (NPA), and Department of Justice and Constitutional Development (DOJCD) to identify and refer victims (U.S. Department of State TIP Report 2020). Several other regulations including the immigration provisions found in Sections 15, 16, and 31 (2)(b)(ii) and implementing regulations for the Department of Home Affairs (DHA) have yet to be promulgated for the seventh year in a row (*ibid*, 2020), rendering parts of the PACOTIP Act without the necessary implementation guidelines. The result is that implementation between different government agencies remain unclear at times in contradiction with one another, for instance the accountability for the safe repatriation of foreign victims of trafficking (U.S. Department of State TIP Report, 2020).

3.3 COORDINATION

The need for proper coordination is critical and according to the Deputy Minister of Justice, John Jeffrey, could not be overemphasized. In particular, the multidisciplinary nature of TIP will require an integrated approach to achieving the aims of the PACOTIP Act (VM John Jeffrey, 2019 in the foreword of the National Policy Framework (NPF). The NPF itself proclaims that the anti-trafficking coordination structure in South Africa is *"key to ensure the implementation of the NPF through a uniform, coordinated and cooperative approach by all government departments, organs of state, institutions, IOs, NGOs, faith-based and community-based organizations dealing with trafficked persons and TIP matters (*Department of Justice and Constitutional Development, 2019:24).

Notably, the Act required the Minister to table the NPF in parliament within a year after commencement of the Act. While the Act was signed in 2013, and implemented in 2015, the policy framework was finally passed in 2019.

However, given the sheer number of government departments and agencies involved, effective communication and coordination remains one of the main challenges in the effective implementation of the Act, and more broadly for all aspects of prevention, protection, prosecution, and partnerships. The tendency toward a siloed approach means that individual and institutional stakeholders often act independently and without proper regard for the impact of certain actions on other aspects of the TIP ecosystem. Current coordination challenges exist across all spheres and are presently undermining efforts in policy strengthening, training, reporting, monitoring, standardizing operational procedures, law enforcement responses, and prosecution efforts.

The Act, in Chapter 9 introduces the NPF as a key aspect in the coordination mechanism specifically to:

> *(a) ensure a uniform, coordinated and cooperative approach by all government departments, organs of state and institutions in dealing with matters relating to the trafficking of persons;*
>
> *(b) guide the implementation and administration of this Act; and*

(c) enhance service delivery as envisaged in this Act by the development of a plan within available resources.

The Minister of Justice has overall responsibility and oversight for TIP in South Africa (Department of Justice and Constitutional Development, 2019). S/he is supported by the Chief Director of Justice and Constitutional Development or designated nominee who acts as the *National Anti-Trafficking Coordinator (NC)* and leads the *National Inter-sectoral Committee on Trafficking in Persons (NICTIP).* Importantly, the NPF stipulates that the NC should be supported by a *"soundly staffed and funded Secretariat",* either in-house, or outsourced to ensure it can effectively carry out its full mandate (*ibid*: 25). The concept of a *secretariat* has been discussed at length with DOJCD by TIP practitioners, international observers, and other stakeholders and were raised repeatedly during the consultation around the NPF, as well as in subsequent bilateral and other coordination meetings with GOSA.

Some of the main issues cited in the establishment of the secretariat has always been (a) resourcing, and (b) in the instance of an externally supported/seconded expert secretariat, the *ownership* and *buy-in* from the government. In both of these instances, *sustainability* becomes a real concern where it might be beneficial to have a development partner fund the establishment of a secretariat, but funding is always time-bound, and bilateral and multilateral donor strategies and commitments can very well change and result in the withdrawal or reprogramming of funds used for the secretariat. On the other side of the coin is the difficulty in gaining any additional government appropriation for programs, given the severe strain the state is under following a decade of state capture and a very ineffective and non-responsive budgeting process.

The result is that the management and overall coordination of TIP tends to fall on the shoulders of a few very dedicated, overworked, and under resourced staff members. These are scattered throughout government agencies and may include Directors within the DOJCD, prosecutors in the NPA, certain SAPS members, and dedicated and committed members in the office of the Presidency, for example. The challenge with this approach is that none of these actors have TIP as a central part of their job description and key performance indicators, so when they vacate a post, all institutional knowledge, coordination, networking, and pending projects and approvals are stalled and often lost entirely.

Some countries have established stand-alone government bodies to oversee all aspects of that country's TIP response. Nigeria for instance has a National Agency for Prohibition of Trafficking in Persons (NAPTIP). The U.S. has the Office to Monitor and Combat Trafficking in Persons (JTIP). A formalized, structured, dedicated TIP coordinating mechanism is the only way to manage the sector if South Africa has any intention of making true gains in either protection, prevention or prosecution of these crimes.

South Africa has shown little appetite for establishing a separate entity to oversee TIP, which would likely have to be a Chapter 9 Institution (like the Public Protector, South African Human Rights Commission, and the Auditor General), mainly due to lack of funding. Instead, it remains under the direction of the DOJCD. The TIP function lacks a dedicated team with adequate resourcing to fulfill the mammoth task of coordinating anti-trafficking that involves nearly a dozen agencies and other institutions, along with a significant contingent of non-government and other stakeholders at the table.

3.4 FUNDING

The issue of funding to effectively implement the PACOTIP Act is a matter that is consistently raised in U.S. Department of State TIP reports, and at stakeholder meetings, as well as by academics, and non-government organizations (NGOs) tasked with providing services to trafficked victims. The latter accuse the government of *"severely under-budgeting funding for PACOTIP"* (U.S. Department of State TIP Report, 2017: 363; Van der Watt 2018: 4). Whether from within the DOJCD' own office responsible for overseeing and coordinating TIP, down to the funds (both government and donor-sponsored) to service-level Civil Society Organizations (CSOs), there simply is not enough funds to effectively address the issues across prevention, protection and prosecution (3Ps). According to the U.S. State Department, the government had insufficient resources to fund agencies responsible for the PACOTIP Act, thus, there is an uneven enforcement of the law. Subsequently, to a great extent because of the government's lack of sufficient funding for efforts to combat TIP, South Africa was downgraded to Tier 2 Watch List by the U.S. Department of State TIP Report in 2018 (U.S. Department of State TIP Report, 2018: 389).

Challenges range from a lack of resources by police stations to investigate trafficking cases (despite adequate case information shared by NGOs), and law enforcement and other practitioners often lack basic training and understanding of the PACOTIP Act. Even in the presence of the best legislative framework, inadequate funding can have a detrimental impact on;

- Raising awareness if TIP

- Preventing the crime of trafficking through public information and training campaigns

- The ability to fund specialist investigative units and associated training in the intricacies of investigating and building complex cases

- Providing basic services including safe houses, repatriation, mental and physical health care

- Longer-term solutions to enable the derailing of large international TIP networks.

Instead, many of the TIP interventions and responses in South Africa are often either short-term solutions centered on a particular event (such as World Day Against Human Trafficking), or heavily donor-driven, such as a reliance on either UNODC, USAID or the IOM to fund, facilitate or enable. Much of the investment in policy has also been heavily driven by international pressure to improve and avoid a further reprimand on the international Tier system, as illustrated in Figure 1 (U.S. Department of State TIP Report, 2018, 2019 and 2020).

3.5 TRAINING, CAPACITY AND CORRUPTION

Chapter 9 of the Act calls on all the major government stakeholders (including DOJCD, SAPS, NPA, Department of Health (DOH), Department of Employment and Labour (DOEL), and DSD) to each develop training courses which emphasize social context training as well as the use of uniform norms, standards and procedures. Throughout literature on TIP in South Africa, the issues of training, capacity, and corruption is an oft repeated challenge of implementing effective TIP measures. The U.S. Department of State TIP report cites a lack of capacity as well as widespread corruption in the police force to fundamentally hinder law enforcement efforts for anti-trafficking (U.S. Department of State TIP Report, 2016: 340).

Despite several training programs sponsored by both government and development partners, the 2019 U.S. Department of State TIP Report cited the *"poor understanding and of trafficking and the lack of consistent training"* as a key hindrance to South Africa's anti-trafficking efforts (U.S. Department of State TIP Report, 2019: 424).

There is an sense that in addition to lack of financial and other resources, stakeholders across the board including justice and law enforcement, diplomatic personnel, immigration officials, DOH officials and other frontline responders lack a genuine knowledge and understanding of the crime of trafficking as well as the Act, and subsequently lack the skills to effectively prevent, investigate, prosecute and protect against it.

Certain jurisdictions, including many states in the U.S., have a dedicated anti-trafficking unit that comprise an inter-departmental, cooperative effort often involving dozens of government agencies, as well as a liaison-role toward NGOs. One such example is the San Diego Human Trafficking Task Force (California Department of Justice, Office of Attorney General, n.d.). There is a desire from members of SAPS for a similar specialization as expressed by at least one SAPS respondent who participated in research in 2016 expressing that *"a specialized unit is the only way you will deal with it [human trafficking]"* (Van der Watt, 2018: 228).

Unfortunately, because of severe resource constraints, most police departments in South Africa do not have specialized units dedicated to trafficking in persons. Instead, detectives, investigators and frontline officers are assigned to TIP cases when they may very well not have the necessary training, knowledge, or skills to effectively deal with these instances of a very *"messy, dynamic and complex crime"* (Van der Watt, 2018: 6). This leads to incomplete prosecutions of cases, which, while a global reality (Kruger, 2016:54), in many instances also risk not having a victim-centered approach toward a victim of trafficking when an officer does not have specialized training required to deal with their particular trauma and needs.

According to the U.S. Department of Justice Office for Victims of Crime Human Trafficking Task Force e-Guide, in a victim-centered approach the *"victim's wishes, safety, and well-being take priority in all matters and procedures"* (U.S. Department of Justice, OVCTTAC website). These sentiments are similar to those held in the South African National Policy Guidelines for Victims Empowerment Social Service Providers policy. Unfortunately, all of these aspects require money, and intense knowledge and understanding only acquired through targeted training and years of experience in TIP cases.

Responding to the need for a victim-centered approach to effectively deal with TIP cases, the South African DOJCD has committed to incorporating this strategy into governments through the Prevention and Combating of Trafficking in Persons National Policy Framework.

3.6 NATIONAL POLICY FRAMEWORK (NPF)

In response to the specific obligation under the Act, to *"…approve a national policy framework, relating to all matters dealt with in this Act"*, and following a national consultation and socialization with all relevant government, non-government, and international stakeholders, the DOJCD, in collaboration with UNODC under the Global Action against Trafficking in Persons and Smuggling of Migrants (GLO.ACT), launched the Prevention and Combating of Trafficking in Persons National Policy Framework (NPF) in April 2019 (UNODC, 2019).

The framework "*seeks to ensure all government departments and other engaged stakeholders from civil society are collectively guided in the implementation of anti-trafficking responses and of their statutory responsibilities. In particular, the NPF intends to support the implementation of the Prevention and Combating of Trafficking in Persons, 2013 (Act No. 7 of 2013)"* (DOJCD, 2019: 10).

The NPF is comprehensive in nature, setting out implementation both at strategic and operational level. As well, it aims to stagger the ambitious objectives laid out over a medium (3 year) and longer term (5 years). The framework establishes its approach in line with its constitutional, legislative, and international standards and outlines the overall structure for coordinating the response to trafficking in persons in South Africa (DOJCD, 2019: 13).

The framework outlines nearly two pages of guiding principles, addressing matters concerning coordination, cooperation, participation, prosecution, interpretation, empowerment, and data protection. There is heavy emphasis on the need to effectively coordinate, considering that is one of the weakest elements in addressing one of the most complex crimes in an under-resourced, overly bureaucratic operating environment.

The NPF contains a schematic illustration of the anti-trafficking structures in South Africa and a subsequent description of each of the levels and coordinating bodies at national and provincial level. Heavy emphasis is placed on the role of the Provincial Task Teams. These provincial level task teams are ostensibly set up by the DOJCD and NPA, and will incorporate participation of the following government departments in each of the nine provinces:

Department of Justice and Constitutional Development	Department of Social Development	Department of Home Affairs	Department of Labor	Department of Health
Department of Education	Department of Agriculture	Department of Co-operative Governance and Traditional Affairs	National Prosecuting Authority of South Africa	South African Police Service
Premier's Office	Government Communication and Information Systems	Community Safety	NGO representatives appointed by DSD	New members may be added, when necessary.

In reality however, implementation and efficacy varies between provinces, and more often than not rely on a personal commitment and dedication by a particular member of the Provincial Task Teams (PTT), which varies between provinces and can be either a member of a government department, someone from the NPA, or a member of civil society.

Following a discussion of the policy objectives, components and principles, the structure of the NPF follows an approach of 3P+2 – meaning Partnership: National, Prevention, Protection, Prosecution and Partnership: International.

FIGURE 2 SUMMARY OF THE NPF (OBJECTIVES AND OUTCOMES)

Note: The colors used refer to the color coding of the NPF

Notably, due in part because the policy is so new, and no doubt also due to the impact of COVID-19, there is a dearth of academic analysis on the NPF. Admittedly not enough time has passed to assess the level of implementation, let alone effectiveness, and therefore an assessment of the impact of the NPF is not possible at this time.

3.6.1 MEASURING NPF PROGRESS

As stated in the NPF (page 10), the NPF acts as a planning tool for political and financial support, and to *"ensure the rational use of resources and effective responses"*. The NPF includes a high-level over-arching framework to measure progress on achievement and monitor overall implementation (NPF Section 3.1.4). A range of indicators at the output, outcome and impact level (refer to definitions box) are included in the action plan to measure progress and hold stakeholders accountable to compliance within the roles and responsibilities mandated to them by the Act.

Definitions

Evidence-based decision-making - The systemic application of the best available evidence to the evaluation of options and to decision- making in management and policy settings

Inputs - Resources that contribute to the production of activities and services

Outputs - The immediate, short-term results the activity/ intervention (usually products/goods/ services)

Outcomes - The medium-term results for specific beneficiaries, which are the consequences of achieving the outputs. ("What we wish to achieve")

Impact - Results of achieving specific outcomes ("How have we influenced communities/target groups")

Indicators – A Variable used to assess the achievement of results in relation to the stated objective and goals.

The strategic goal in the NPF Section 3.1.4
aims *"To improve regular anti-trafficking responses, adjusting them as needed in time"*. Therefore, it is necessary to have a sound evidence-base on which decisions can be made.

The specific objectives under this strategic goal, include (NPF Section 3.1.4):

To ensure systematic data gathering and analysis of all relevant information and data at strategic and operational level	To ensure regular evaluation of all activities and measures undertaken within the	To ensure the annual review of the NPF

Research is further detailed in a strategic goal (NPF Section 3.2.3), which states the purpose is *"To improve knowledge on trafficking in persons"*, with accompanying specific objectives relating to the use of knowledge: (NPF Section 3.2.3):

To ensure an up-to-date overview on trafficking in persons in South Africa	To improve the anti-trafficking framework	To ensure that research is relevant for policy development and linked to operational needs

Consequently, research, monitoring data and evidence produced needs to be used to inform policy and practice, and guide ongoing improvements to the anti-trafficking framework. This knowledge and evidence-base must ultimately strengthen the prevention and response to trafficking in persons and protect those at risk of trafficking, and protect trafficked persons.

One approach to review the relevance of the approach and activities towards the achievement of the desired results (outcomes), is to determine the pathways to reach the desired goal. Pathways to impact refer to how change occurs to achieve the desired outcomes (the long-term results of the activities undertaken). A theory of action provides a method of articulating the chain of results from the activities to the expected changes. By examining the NPF through the lens of action, the pathways of change and key drivers of change become explicit. In addition, activities that government is accountable for become explicit, and where stakeholders' participation or engagement are identified. Gaps can further be identified in how the framework will affect change focusing.

The effectiveness, efficiency and relevancy of the NPF and pathways to impact are not discussed here, as there are a lack of evaluation reports in the public domain pertaining to TIP (refer to the Knowledge Base) to review. Government departmental reports could provide evidence to inform such an evaluation.

3.6.2 NPF Indicators for Monitoring and Reporting of TIP

The NPF states indicators in the action plan for 2019 to 2020. A review of the NPF indicators against the evaluative criteria of inputs required, measurement of activities by reach, changes as a result of activities and the quality of services is presented in the Annex 5.

The review indicates:

- Monitoring of inputs required to implement the NPF occurs in three indicator clusters:
  - Capacity and resourcing of staff, officials, NGOs, and lists or resource directories;
  - The legislative, policy, regulations, procedures, protocols, strategies and work plans; and
  - Research, programs and materials.
- Indicators focusing on Reporting, for example detailing annual reports, training assessment reports, number of progress reports, yearly evaluation reports and the NPF review report every two years
- The reach of the activities within the NPF (approx. 34 indicators focus on reach)
- 14 indicators focus on changes in knowledge, skills, behavior, and increased response or service delivery (for example investigation, prosecution, sentences, witness protection, identification) however the focus remains on numbers (for example increased numbers of)
- However there is less focus on the quality of services: 9 indicators pertaining to effectiveness, satisfaction, compliance, standards, and monitoring and evaluation mechanisms in place; and
- No indicators directly focusing on dosage (the length or depth of the intervention required to bring about the desired change).

This analysis indicates that the focus is primarily on monitoring activities by determining the reach figures. Reach refers to the number of people or activities who participate, receive or respond to activities.

The extent of the accountability of accredited stakeholders – both government and civil society – in terms of data that they are mandated to collect, is covered in Section 25 of the PACOTIP Act:

(4) *(a)* An accredited organisation must, in the prescribed manner, collect information on victims of trafficking relating to—   40
  (i) the number of foreign victims of trafficking who have accessed a programme referred to in section 26;
  (ii) the number of South African citizens or permanent residents who are victims of trafficking and who have accessed a programme referred to in section 26;
  (iii) the number of victims who have accessed a programme referred to in section   45
      26 and who have not been reported to the South African Police Service;
  (iv) the countries from which foreign victims have been trafficked;
  (v) the countries to which South African citizens or permanent residents have been trafficked;
  (vi) the areas in the Republic to and from which victims have been trafficked;   50
  (vii) the purposes for which the victims have been trafficked;

(viii) the methods used to recruit and transport the victims;
(ix) the methods and routes used for trafficking the victims to and from and within the Republic;
(x) methods used to keep victims of trafficking in exploitative situations; and
(xi) the types of travel documents that victims have used or attempted to use to 5
cross the borders of the Republic and how these documents were obtained.
(b) An accredited organisation must provide an annual report on the information referred to in paragraph *(a)* to the Director-General: Social Development on a date determined by him or her.
(c) The Director-General: Social Development must provide an annual report on the 10
information referred to in paragraph *(b)* to the Director-General: Justice and Constitutional Development, as determined by him or her.

Trafficking could however be measured through indirect indicators, as proposed by (Ogrodnik (2010). Direct indicators include for example, the number of victims, while indirect indicators include;

- The number of missing women and girls
- Incidents of children in pornography
- Number of illegal border crossings
- Number of unaccompanied minors; and the
- Number of people screened for potential trafficking at ports of entry / detained by immigration officials.

These indirect indicators are usually used in estimations of the prevalence of TIP. The pros and cons of using such indirect indicators would need to be considered by government, civil society and academics to determine the relevancy, accuracy and their relationship to trafficking. These would however only provide estimates or approximations, and not actual prevalence data.

The quantitative indicators for reporting must be complimented with evidence gathered from qualitative research (Ogrodnik, 2010) and evaluations to provide deeper insight into the characteristics of incidents, the complexity and interconnectedness of trafficking of persons, and the effectiveness of the response and anti-trafficking efforts.

In summary, the NPF indicators primarily focus on the monitoring of inputs, activities, reach and outputs against the action plan. A few indicators pertaining to the quality of activities are included. However, further research and evaluation efforts are required to measure the effectiveness, efficiency and relevance of the NPF over time and to provide data for reporting, policy and decision-making. In addition, an integrated national database and repository of knowledge, as well as clearer mechanisms for research translation, are required.

International indicators and measurement

Internationally, there is limited research into or standardization of indicators pertaining to TIP. The Canadian Centre for Justice Statistics in 2010 undertook research towards developing a framework to measure trafficking in persons (Ogrodnik, 2010). This document provides a guide towards relevant indicators specific to Canada. However, the emerging indicators could be applicable to South Africa.

Cannon et al. (published by USAID, PEPFAR and Measure Evaluation, n.d) compiled a compendium of indicators pertaining to TIP and Health. This compendium, specifically the

book, recommends that indicators are selected for their validity, specificity, reliability, comparability, preciseness, feasibility of measurement, programmatic relevancy and that they are non-directional (such as worded for awareness levels and not based on increase or decrease of awareness for example). The range of 15 indicators focus on the health sector response, post-trafficking assistance and outreach programs, health status and care received, referrals, and policy. This is a useful resource for the health sector response in South Africa

A statistical report produced for SADC on TIP provides insights into trends and the scope of TIP in SADC, analyzes the criminal justice responses and provides objective information to inform counter-TIP measures and decision-making (UNODC & SADC, 2014). Data sought across the SADC countries focused on the following indicators (UNODC & SADC, 2014:21):

i)   Number of TIP victims by age group and sex
ii)   Forms of exploitation, disaggregated by age and sex
iii)   Number of TIP victims by age group and sex
iv)   Number of traffickers by citizenship
v)   Number of cases identified, investigated, and/or prosecuted per year per country
vi)   Number of convictions and acquittals, and
vii)   Countries of origin, transit and destination

In addition, the U.S. government Tier Placement for countries provides insight into potential measurements of government efforts to meet the U.S. Trafficking Victims Protection Act of 2000 (TVPA) minimum standards and the Palermo Protocol. As stated previously in this Landscape Review, governments must demonstrate efforts made annually in combating trafficking. The U.S. Department of State TIP ratings for a country is based on assessment of the following:

- Enactment of laws prohibiting severe forms of trafficking in persons, as defined by the United States Victims of Trafficking and Violence Protection Act of 2000 (TVPA), and provision of criminal punishments for trafficking offenses;
- Criminal penalties prescribed for human trafficking offenses with a maximum of at least four years' deprivation of liberty, or a more severe penalty;
- Implementation of human trafficking laws through vigorous prosecution of the prevalent forms of trafficking in the country and sentencing of offenders;
- Proactive victim identification measures with systematic procedures to guide law enforcement and other government supported front-line responders in the process of victim identification;
- Government funding and partnerships with NGOs to provide victims with access to primary health care, counseling, and shelter, allowing them to recount their trafficking experiences to trained social counselors and law enforcement in an environment of minimal pressure;
- Victim protection efforts that include access to services and shelter without detention and with legal alternatives to removal to countries in which victims would face retribution or hardship;
- The extent to which a government ensures victims are provided with legal and other assistance and that, consistent with domestic law, proceedings are not prejudicial to victims' rights, dignity, or psychological well-being;
- The extent to which a government ensures the safe, humane, and to the extent possible, voluntary repatriation and reintegration of victims;
- Governmental measures to prevent human trafficking, including efforts to curb practices identified as contributing factors to human trafficking, such as employers'

confiscation of foreign workers' passports and allowing labor recruiters to charge fees to prospective migrants; and

- Governmental efforts to reduce the demand for commercial sex acts and international sex tourism.

Consequently, any monitoring, evaluation, research and reporting system should include mechanisms to provide data on which the country can report and be assessed.

Section 4: The Research Environment

4.1 Factors Inhibiting Research Accuracy

Van Dijk (2020) refers to the collection of TIP statistics as an important tool in the effort to combat the problem. Statistics are important for imbuing cognizance about the scale and gravity of the problem of TIP; they help governments and NGOs to develop evidence-based policies against the problem, and monitors progress with its implementation. Moreover, international statistics enable the embedding of national data within a global and comparative perspective. After two decades of the Palermo Protocol's existence, and 16 years since South Africa ratified it in February 2004, South Africa continues to grapple with its trafficking in persons 'problem' as it navigates, what appears to be, a sense-making journey resembling a garden of forking paths. More specifically, the data and evidence-base problem faced by the country and its researchers, practitioners, policy makers, and politicians, are by no means unique and reflects the experience of the larger global knowledge campaign to better understand and aggregate the TIP issue. Di Nicola (2007: 49) posits that the knowledge regarding TIP develops gradually and sometimes slowly. The deficit in high-quality research on trafficking in persons, and a concomitant shortage of an evidence basis in much of the dialogue, policymaking, and enforcement surrounding the phenomenon, have been documented by a number of scholars (Dempsey, 2017: 61; Raphael, 2017: 1; Greenfield, Paoli & Zoutendijk, 2016: 152; Vandenberg & Skinner, 2015: 7; Weitzer, 2014: 6; Choo, Jang & Choi, 2010: 168). Weitzer (2014: 6), who points to its sensationalistic and anecdotal nature as problematic, has critiqued *"much of the popular writing"* on TIP and pointed out that much of these writings include either general overviews of the problem or a critique of the literature. The call for new and innovative methodologies in TIP research (Goździak & Bump, 2008: 9) and the acknowledgement of TIP as a phenomenon too intricate for adequate knowledge to be generated with only one methodology (Lazos, 2007: 99; Adepoju, 2005: 89), have been raised. *"All types of methods that are available in the social sciences"* (Lazos, 2007: 99) must be employed. Importantly, Weitzer (2014: 6) accentuates the need for micro-level research, which

> *"… advantages over grand, macro-level claims – advantages that are both quantitative (i.e., identifying the magnitude of trafficking within a measurable context) and qualitative (i.e., documenting complexities in lived experiences) – and is better suited to formulating contextually appropriate policy and enforcement responses"*

The factors contributing to the difficulty in measuring the scope, nature and extent of trafficking in persons are manifold. An enduring problem is the use of inconsistent definitions of TIP with the range of activities that are actually considered part of the definition, differing between countries and contexts (Dempsey, 2017; Farrell & De Vries, 2020; Van der Watt, 2020). Trafficking in person's research also epitomizes the problem of hidden populations, and a crime which by nature is characterized as subversive. From a response perspective, victims are habitually failed by police, immigration officials and the prosecution who do not pick up on indicators and, by extension, fail to identify them (Van der Watt & Kruger, 2020; Farrel, Owens & McDevitt, 2014: 139; Shrivankova, 2006: 230). Moreover, victims themselves often do not consider reporting as a choice due to the apparent, and often real, deterrent for approaching authorities (Holmes, 2010: 6) and the levels of trauma. The underreporting of the crime is also exacerbated by the oft-complex relationships that exist between victims and their exploiters (Verhoeven & Van Gestel, 2011: 148; Holmes, 2010: 7). These constraints inevitably spill over as impediments for researchers.

Farrell and De Vries (2020: 148) point out that efforts to estimate TIP often use *"non-systemic and incomplete data"* emanating from the public domain (media reports), police and court records, and case files from victim service providers. Instead of measuring the phenomenon of TIP - including perpetrators, networks and cases - most estimates focus on measuring the number of victims. Implicitly, and at best, such data represents responses to TIP rather than providing comprehensive insights into the phenomenon itself. Measuring both the number of TIP victims, and the prevalence of trafficking in persons operations are thus important as a means to design adequate service interventions and assess the effectiveness of efforts to prevent the problem.

The measurement or estimation of the number of victims can be categorized as (Van Dijk, 2020):

1) Statistics of officially recorded victims and,
2) Statistics on the estimated real numbers.

From a legal perspective, only persons who suffered exploitation for which traffickers were actually convicted in court can be counted as known victims. Therefore, victim statistics emanating from successfully prosecuted TIP cases qualify as *"the purest source of information"* on victims of TIP (Van Dijk, 2020: 1673).

A number of challenges exist when relying solely on existing police and criminal justice records. When considering the issue of prevalence deductions in police reports, Van der Watt (2020: 70) points out that *"each registered case or police enquiry may involve more than one victim of trafficking and can include multiple known victims of trafficking, multiple unknown victims of trafficking, or a combination of the two"*. He underscores that the same principle applies to known and unknown traffickers in a single case reported. In a similar vein, Van Dijk (2020) states that police statistics on recorded cases are almost wholly offender-focused and do not include information on the volume of victims either. Care should therefore be taken not to rely solely on either existing court or police statistics as these often provide only fragmentary information on the victims involved. Statistics on identified victims per country will simply show the tip of the iceberg made visible by authorities or NGOs. For both scientific and policy purposes, Van Dijk (2020: 1682) warns, *"such metrics are not nearly good enough to understand what is really happening on the ground"*.

In his assessment of South Africa's trafficking in persons problem as *"an elusive statistical nightmare"*, Van der Watt (2015) calls for the identification of *"connections between measurable quantities on the one hand and qualities which cannot be counted but should be mapped on the other."* This, he argues, is *"crucial to understand the configuration of relationships in which the problem of human trafficking is rooted"*. Van der Watt continues and underscores the importance of *"unconventional thinking and flexible methodologies to scope the problem"*, and the consideration of every member of society as a *"co-participant in both quantitative and qualitative data collection."* Community based participatory research methods may prove invaluable and could be used to find *"significant themes in the seemingly insignificant events of everyday life"* and shed light on the presence of 'hidden transcripts' related to TIP.

Farrell and De Vries (2020: 158) points to a number of important considerations that can improve researchers' ability to measure the nature and scope of TIP in the future. These include the improvement of administrative data in the hands of government officials and agencies who serve TIP victims in various capacities. Here the integration of TIP into existing data management systems, and the development and use of standardized TIP

definitions to guide identification and reporting, are critical. The shift of a focus on sole reliance on official data and traditional methods, to the inclusion of new data and methods such as information from digital domains, are well worth investing in. Novel sources of data must continually be explored to match the dynamism of TIP as a complex and evolving crime, whilst collaborative efforts among researchers to share research methods and techniques will ensure that the collective learn from individuals' missteps.

4.2 THE PROBLEM OF PREVALENCE

The actual and aggregated scale of TIP in South Africa remains a mystery (Legget, 2004; Van der Watt, 2015; Van der Watt, 2020). Pharoah (2006: 2), in response to the scarcity of TIP research in South Africa in the six-year period following the advent of the Palermo Protocol in 2000, underscores the pressing need for research that establishes the full scope of TIP in South Africa. At the time, Pharoah (2006: 23) reported that no official statistics on TIP in South Africa exist. Moreover, only a small number of studies were found that explored the issue of trafficking in South Africa. A number of authors have pointed to the problematic discourse surrounding the scope, nature and extent of trafficking in persons in South Africa (Van der Watt, 2020; Emser & Francis, 2017; Skosana & Wilkinson, 2017; Van der Watt, 2015; Wilkinson & Chiumia, 2013).

Permeating themes *"that have dominated the discourse around the issues of scope and prevalence of human trafficking in South Africa"* (Van der Watt, 2018: 86) are highlighted by Van der Watt (2018). These include, first, voluminous media statements pointing to incidents of trafficking or trafficking-related exploitation, brothel raids and related law enforcement interventions, and narratives by victims and survivors, that all contribute to a sense that South Africa does indeed have a problem with TIP.

Second, with due consideration to the subversive nature and hidden populations implicit to the study of trafficking in persons, there appears to be a lack of rigorous research or any significant efforts to quantify the scope, nature and extent of TIP in South Africa. Equally problematic are the disproportionately low number of arrests and successful TIP convictions comparable to reported cases and the estimated scope of the problem as portrayed in the media and TIP-related literature.

Thirdly, the issue of prevalence is complicated by the opposing positions on whether legalization of the buying/purchasing of sex or criminalization of the buying/purchasing of sex, and which approach would protect individuals more (as discussed prior), the lack of evidence-based research, and the use of conflicting definitions of TIP, which only further challenge the issue of prevalence of TIP.

Existing data on TIP in South Africa, as discussed below, is presented in Table 1 on the following pages.

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TABLE 1: ANNUAL TIP PREVALENCE BY ESTIMATE, REPORTED OR COURT (2011 - 2020)

Number of TIP victims in SA by definition used	Estimate vs. Reported	Source	>2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Persons recruited and/or trafficked into prostitution for 2010 Soccer World Cup	Estimate	Tacopino, 2010; World Cup 2010	40,000										
Predicated victims to fall victim to TIP before World Cup	Estimate	Inaccessible internet source cited in Gould, 2010a	100,000										
Number of children in prostitution	Estimate	Salvation Army cited in The Star (Mkize, 2013)				45,000							
Children trafficked annually, half of them under the age of 14 years	Estimate	Times Live (Masombuka, 2013)				30,000							
LexisNexis Human Trafficking Awareness Index (unique articles) (see figure 2 below for detail)	Approximation based on 437 unique news articles	LexisNexis Human Trafficking Awareness Index, 2015						93					
Living in conditions of modern slavery	Estimate	Global Slavery Index, Walk Free, 2016							248,700				
• 43% were or subjected to commercial sexual exploitation	Estimate	Global Slavery Index, Walk Free, 2016							106,941				
• Victims of forced marriage	Estimate								10,600				
• Forced labour in the country	Estimate								200,000				
Living in conditions of modern slavery	Estimate	Global Slavery Index, Walk Free, 2018									155,000		
Victims	Reported by Government based on detection	Wilkinson, 2015					23						
Victims	Recorded (Hawks)	Parliamentary briefing by Hawks' Major-General Sylvia Ledwaba cited in Capazorio (2017)								176			
Victims accommodated in shelters (April 2014-March 2016)	Reported	Mr Buti Kulwane (DSD), 2017						228					
TIP cases registered on the SAPS CAS system (August 9, 2015 – December 12, 2017)	Registered PACOTIP	Van der Watt, 2018								2,132			
Successfully prosecuted child TIP cases	Prosecution	Van der Watt, 2020						21					
(2014-2019)													
TIP Prosecutions instituted (2014-2017)	Prosecution	Van der Watt, 2020						115					
Successfully prosecuted TIP cases (2014-2017)	Convictions	Van der Watt, 2020						22					
Active cases in courts of which 21 matters related to sex trafficking and 15 matters involved minor victims	Active cases on court roll	Van der Watt, 2020											47

Index:
Yellow = Estimates
Blue = Approximation
Green = Reported

The period leading up to South Africa's hosting of the 2010 Federation Internationale de Football Association (FIFA) Soccer World Cup (South African History Online, 2011) was characterized by significant awareness-raising efforts around the phenomena of TIP, which intensified as the 2010 Soccer World Cup approached. Questionable statistics on the scope of TIP became an area of contention, and so did the claimed 'nexus' between an increase in trafficking of persons and major sporting events. Reports *of "thousands of women and girl-children that are trafficked into South Africa every year"* and concerns raised by NGOs that trafficking numbers would escalate *"drastically"* during South Africa's hosting of the 2010 Soccer World Cup, became a frequent media topic (Sanpath, 2006:120). Claims around TIP and its intersection with the Soccer World Cup continued and included the notion of 40,000 persons in forced prostitution trafficked to South Africa (Tacopino, 2010), and estimations of people that would fall victim to trafficking before the World Cup numbering as many as 100,000 (Gould, 2010a). South Africa's children were said to be *"under threat"* whilst child rights' experts, NGOs and trafficking authorities warned parents to be vigilant for syndicates targeting children - *"particularly those aged five to 15, as 'products' and 'cargo' with lucrative price tags"* (Laganparsad, 2010).
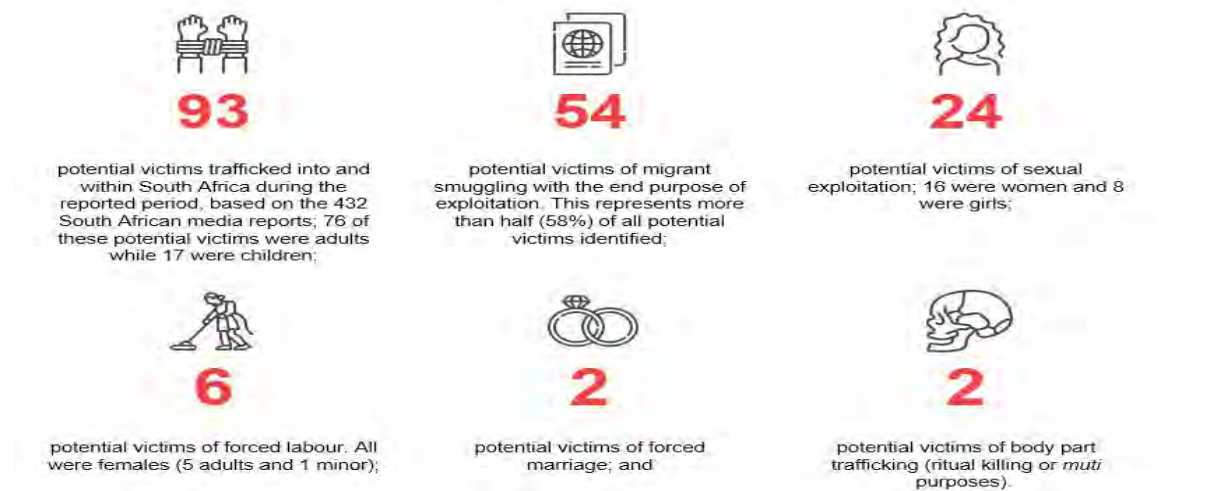
Three years later in another media article published by *The Star*, the Salvation Army bemoaned an awareness deficit around the issue of child trafficking in South Africa, and claimed that the 2010 figure of 20,000 to 30,000 child prostitutes now stood at an elevated 45,000 (Mkize, 2013). A Times Live media report (Masombuka, 2013) cited experts' estimates that 30,000 children were being trafficked in South Africa every year, with half of them said to be under the age of 14. One expert, University of Pretoria Criminologist Professor Christiaan Bezuidenhout, were quoted as stating that Black South African girls were *"trafficked to Germany and the Netherlands, where they are seen as exotic"* whilst *"in Hong Kong, they want white girls"* (Masombuka, 2013).

The scarcity of reliable data on the prevalence and nature of TIP in South Africa, has also seen novel attempts to provide insights into this wicked problem. One such initiative was The LexisNexis Human Trafficking Awareness Index (LexisNexis, 2015: 4) which served as an approximation, by using the Nexis database service to path and analyze the number of news articles related to TIP in South Africa.

For the period January to December 2014, the Index identified 432 unique articles published in South African media with key approximations which include:

FIGURE 2: LEXISNEXIS HUMAN TRAFFICKING AWARENESS INDEX TIP VICTIMS, SOUTH AFRICA (2015)

93 potential victims trafficked into and within South Africa during the reported period, based on the 432 South African media reports; 76 of these potential victims were adults while 17 were children;

54 potential victims of migrant smuggling with the end purpose of exploitation. This represents more than half (58%) of all potential victims identified;

24 potential victims of sexual exploitation; 16 were women and 8 were girls;

6 potential victims of forced labour. All were females (5 adults and 1 minor);

2 potential victims of forced marriage; and

2 potential victims of body part trafficking (ritual killing or *muti* purposes).

Source: LexisNexis, 2015

Another instrument sparking debate and providing insights into South Africa's TIP condition, are the 2016 and 2018 Global Slavery Index (Walk Free, 2016, 2018).

In the 2016 Global Slavery Index (Walk Free, 2016), an estimated 248,700 people were found to be living in conditions of modern slavery in South Africa, of whom 43% were or are subjected to commercial sexual exploitation in a sex trade that thrives on the street, in brothels and in residential properties. Prominent to the sex trade are Nigerian sex trafficking syndicates who were found to operate between the provinces of North West, Gauteng and KwaZulu-Natal (Walk Free, 2016). An estimated 10.600 women as victims of forced marriage and more than 200.000 workers subjected to forced labor in the country were some of the findings included in the report. Of the 200,000 estimated forced laborers, an estimated 11% of victims are exploited in construction, 5% in farming and 8% in drug production.

The 2018 Global Slavery Index (Walk Free, 2018) found that an estimated 155,000 people were living in modern slavery in South Africa - positioned at 110 out of 167 on the Prevalence Index Rank.

The stark disparity between the Global Slavery Index's 2016 and 2018 estimations of modern slavery in South Africa, is visceral and questionable; it provides nominal movement on the knowledge spectrum towards answering 'how big is the problem?', and reinforces the notion of TIP is a hidden crime that does not lend itself to being accurately quantified. Similar to numerous other methodologies that attempted to quantify the TIP problem, the Global Slavery Index was by no means absolved from criticism. An example can be found in a critique of Walk Free's 2014 Global Slavery Index's extrapolation protocol, which, according to Gallagher (2014), *"verges on the ludicrous".* Pointing to flaws in the calculation of slaves in South Africa, the index computed its calculations on the country on the basis that South Africa is 70% like Western Europe because *"historically, South Africa has been culturally similar to western, democratic nations"* and 30 percent like Africa. Ethiopia, Nigeria, Niger and Namibia served as the 30% basis for African extrapolations (Walk Free, 2014).

In 2015, Wilkinson (2015) reported that only 23 victims were detected by the government in a three-year period.

However, the police were said to deal with *"a lot more human trafficking cases"* than the statistics reflected, which again confirmed the perplexing nature of attempts at quantifying the problem (Sello, 2015).

Briefing Parliament's multi party women's caucus in 2017, the Hawks' Major-General Sylvia Ledwaba was quoted as stating that the 2016/17 cycle saw 176 victims being recorded. Of these, 117 were from Malawi, 27 were South African nationals, and the remaining victims came from Mozambique, Congo, Thailand, Swaziland and Zimbabwe (Capazorio, 2017).

The DSD's Mr. Buti Kulwane informed delegates at a 2017 trafficking in persons workshop in KZN, that a total of 228 victims of trafficking had been accommodated in South African shelters between April 2014 and March 2016 (Kulwane, 2017).

Most recently, Van der Watt (2020) provides an overview of available TIP numbers in South Africa.

FIGURE 3

Figure SEQ Figure * ARABIC 3: Cases of child trafficking during 2014 - 2017, which were instituted, finalized and then resulted in convictions

115 Instituted TIP prosecutions

34 cases finalized

22 convictions

These include 2,132 cases registered under the PACOTIP Act which were reported over a 28-month period between August 9, 2015 and December 12, 2017. The forms of trafficking, age and gender of the victims, and the specific sections (offences) that were registered were not made available by authorities at the time the data was obtained. Van der Watt (2020) identified 21 cases of child trafficking which was successfully prosecuted in South African courts and points to the period 2014 to 2017, during which 115 TIP prosecutions were instituted, which resulted in

the finalization of 34 cases, with convictions in 22 cases.

Further investigation and analysis is needed to determine why this was, and is, the case.

At the time of writing, Van der Watt (2020) identified 47 active cases on the court roll, of which 21 matters related to sex trafficking and 15 matters involved minor victims.

Comparable to countries such as the United States, the United Kingdom, Germany, the Netherlands and Nigeria where the highest numbers of both adult and child TIP victims were recorded, South Africa is one of the countries (among Algeria, Australia, Canada, Japan, and Sweden) where the absolute numbers registered for both adults and children, are low. Van Dijk (2020: 1678) posits, suggests *"fundamental insufficiencies in their methods of identifying victims"* of TIP, with some of these latter countries even lacking national identification mechanisms.

The collection of reliable data in South Africa is clearly problematic whilst an urgent need exists for a database that reflects national-level data (Frankel, 2016; Horne, 2011: 26; HSRC, 2010: Van der Watt, 2020, 2015). Notwithstanding the lack of reliable numbers, Van der Watt (2015) posits that South Africa's TIP situation may in fact be far more chronic than estimated. Frankel (2016b) considers TIP as systemic in the country and highlights that South and southern Africa are fast entering the 'club' of the ten biggest and most profitable trafficking routes in the world. Albeit difficult to attain, Frankel (2016b) asserts that exact numbers on the scope of the problem is likely to be substantial.

4.3 AVAILABLE RESEARCH INTO TIP IN SOUTH AFRICA: THE KNOWLEDGE BASE

Despite the problems involved in computing the extent of TIP with exact accuracy, the literature on TIP is relatively diverse and reasonably prolific. This dates back to the late 1990's when an analysis by End Child Prostitution and Trafficking (ECPAT) on child trafficking and sex tourism initiated the beginning of research into TIP in South Africa as we currently understand it (O'Connell-Davidson et al, 1996). Little more happened in the next five years, partially because the triggers for TIP in South Africa, mainly undocumented migration, had not fully crystallized and also because no comprehensive international legislation existed that could be used as a basis for developing legislation by most countries. This changed in 2000 when the United Nations (UN) passed what became known as the Palermo Protocol. One amongst three protocols aimed at transnational crime, this provided a model intended for replication and incorporation into the legal regimes of UN members.

South Africa did not ratify Palermo until 2004 following earlier recommendations on TIP from the Law Review Commission. Pressure was also mounting on the South African government to do more about TIP from external sources, especially the United States of America. In the meantime however two important watershed studies appeared in 2000, conducted by Molo Songololo, a Cape Town based NGO. The first organized around child trafficking and its counterpart focused on women in prostitution, were seminal studies of the South African situation (Molo Songololo, 2000a; 2000b).

From a research perspective, the period from the turn of the millennium until today is divisible into two parts. The first, running up until the promulgation of the PACOTIP Act in 2013, consists mainly of highly idiosyncratic studies many of which called for the introduction of national legislation at a time when the existing laws governing children, sexual offences

and racketeering around TIP were increasingly inadequate. The second, after 2013, studies on TIP in South Africa became progressively refined: many, ironically, are critiques of the PACOTIP Act at implementation level.

4.3.1 METHODOLOGY OF THE KNOWLEDGE BASE

In order to explore the available research material a 'knowledge base' was developed by the authors of this Landscape Review. The methodology involved (a) scanning the bibliographies of available books, articles, conference papers, theses and reports on the multiple aspects of TIP appearing over the last five years (between 2016 and 2020); (b) scanning resources developed by the NFN available on their website; and (c) extracting the material from two works with extensive bibliographies, namely Van der Watt's doctoral thesis on TIP for sexual exploitation and Frankel's work on the general aspects of TIP in South Africa (Van der Watt 2018; Frankel 2016). This was accompanied by a key-word search of the main academic research sites (refer to methodology Section 1.3).

In total, 386 'items' were identified in the form of books, articles, conference papers/reports and theses that were in turn divided into research work focused on:

i)   Sex, child, labor and organ trafficking
ii)   The legal framework around TIP in the Republic
iii)   Issues at the interface between human smuggling, migration and TIP
iv)   Aspects of policing, crime and justice, governance as well as the cultural elements of human trafficking.

The 'items' also covered a contextual literature (not necessarily research on TIP, but essential to its interpretation as cited in the bibliographical references above) as well as a number of works related to regional issues of relevance to TIP in South Africa. There was a small number of 'other' research items that could not readily fit elsewhere. A small selection of media reports on TIP were included, mainly those authored by researchers or journalists on TIP; as well as international, regional and domestic legislation governing the research process (as defined in the NPF). There may be additional research that was not identified and listed during this process.

4.3.2 THE SOUTH AFRICAN KNOWLEDGE BASE

The knowledge base examined the body of literature in terms of surface level content (refer to Table 2), however a deeper, gender transformative approach has not yet been employed on each item in the knowledge base. The knowledge base has not been reviewed with an intersectional, or gendered lens.

TABLE 2 KNOWLEDGE BASE OF TIP IN SOUTH AFRICA

TARGETED RESEARCH IN SOUTH AFRICA					
	Books	**Journal articles**	**Conference Papers, Chapters in Books, Reports**	**Theses**	**TOTAL**
General TIP	1	24	34	3	**62**
Sex Trafficking	3	9	2	5	**19**

Child Trafficking	0	15	10	5	**30**
Forced Labor	0	5	2	0	7
Organ Trafficking	0	4	0	1	5
Legislative Admin Framework	0	22	0	3	**25**
Human Smuggling and Migration	0	8	0	0	8
Policing, Crime and Justice	0	6	0	1	7
Governance and TIP	0	2	1	1	4
Culture and TIP	0	3	1	0	4
Social Work and TIP	0	6	0	1	7
Other	0	0	0	2	2
CONTEXTUAL RESEARCH SOUTH AFRICA					
General TIP	2	7	0	0	9
Sex Trafficking	0	8	0	0	8
Child Trafficking	0	3	0	0	3
Forced Labor	0	19	0	0	**19**
Organ Trafficking	0	1	0	0	1
Legislative Admin Framework	0	0	0	0	0
Human Smuggling and Migration	0	14	0	0	**14**
Policing, Crime and Justice	0	10	0	0	**10**
Governance and TIP	0	0	0	0	0
Culture and TIP	0	2	0	0	2
Social Work and TIP	0	0	0	0	0
Other	0	5	0	0	5
REGIONAL RESEARCH SOUTHERN AFRICA					
General	0	13	0	0	13
Sex Trafficking	0	3	0	0	3
Child Trafficking	0	2	0	0	2
Forced Labor	0	2	0	0	2

Organ Trafficking	0	2	0	0	2
Legislative Admin Framework	0	1	0	0	1
Human Smuggling and Migration	0	0	0	0	0
Policing, Crime and Justice	0	0	0	0	0
Governance and TIP	0	0	0	0	0
Culture and TIP	0	0	0	0	0
Social Work and TIP	0	0	0	0	0
Other	0	0	0	0	0
SUB-TOTAL	**6**	**196**	**50**	**22**	**274**
BAROMETERS					3
SELECT AUTHORED MEDIA					63
NATIONAL LEGAL INSTRUMENTS					18
REGIONAL LEGAL INSTRUMENTS					9
INTERNATIONAL LEGAL INSTRUMENTS					19
TOTAL					**386**

The knowledge base nonetheless allows for a number of generalizations about the state of research regarding TIP issues in South Africa, and highlights current gaps in knowledge based on the categorization used (refer to the gray shaded cells in the above table).

The knowledge base comprises 180 works on South Africa (refer to Table 2), approximately a third of which (N=62) are generalized pertaining to TIP. A large number of these works, especially prior to and immediately after the promulgation of South Africa's comprehensive counter-trafficking legislation, continually cite the same sources without including new, or primary research or lack methodological rigor. The trend is the assertion that TIP in some form exists in South Africa, and seeks to raise awareness to the public and policy-makers that dangers exist and that there is an urgent requirement to pass and then execute national legislation. Much of the existing body of knowledge is subjective and impressionistic.

- There were 30 items on child trafficking
- 25 research items focused the legal environment of TIP
- Sex trafficking was the focus of 19 research products.

The 'general' category covers a relatively wide range of research issues, including five which focused on trafficking during the World Cup in 2010. Allais (2013) wrote the only study of the trafficking of men and considerably more remains to be done in this area with regard to both sex and labor trafficking.

Few books have been written on TIP in a South African context which provide a comprehensive overview of the trafficking scene, including Frankel's 2016 publication which provides an overview of the various forms of TIP in South Africa three years after the PACOTIP Act and the complex problems involved in its effective implementation (Frankel, 2016).

Gould and Fick (2008) book and later Gould's article (2014) explored commercial sex workers in the Cape Town metropolitan area, the later included the work of Richter and Delva's 2010 study. Grootboom's book of 2016 is the recollections of a TIP survivor while Els and Jonker wrote a volume on sex trafficking and satanic practices (Grootboom 2016; Els & Jonker 2000).

Primary amongst the reports is the Tsiriledzani initiative which was undertaken by the Human Sciences Research Council (HSRC) in 2010. Aimed at generating an overview of TIP at the time, it focused on ten areas such as victim profiling, TIP policies in South Africa's neighboring states, the agents of trafficking, demand elements in the market, the purposes of TIP, its driving factors and relationship to the socio-eco economic and cultural environment. While establishing that South Africa is a destination for traffickers, a source of TIP and a trajectory points global, the HSRC study compromised by a number of methodological issues and research 'gaps', most notably it failure to estimate the size of trafficking streams into and out of South Africa (Gould, Richter & Palmery, 2010).

A debate, mostly rooted in the Pre-PACOTIP Act era, questioned whether there is indeed any significant TIP in South Africa at all (Gould & Fick, 2008; Richter & Palmary, 2016; Richter & Delva, 2010; Gould, 2004). This debate has gradually subsided in the wake of an increasing body of research on the topic.

Evidence-based studies that are products of doctoral dissertations or thesis originating from South Africa's universities include:

- Emser's (2013) study of the KwaZulu-Natal provincial task team which explores governance issues in counter trafficking

- Horne's (2014) study on human trafficking for sexual exploitation with a key focus on the identification of the crime

- Warria (2014) considered the ever-expanding burden of child trafficking in South Africa with a study that focused on the development of psychosocial intervention guidelines for transnational trafficked children

- Van der Westhuizen's (2015) study considered TIP as a maze which was mapped in the Eastern Cape

- Curren (2016) focused on a theory of aftercare for human trafficking survivors,

- Visser's (2018) narratives of child trafficking survivors in rehabilitation

- Van der Watt's (2018) work documented the seamless interpenetration of TIP with organized crime, the sex trade, and corruption as systemic realities, and highlighted problematic claims by preservationists around the nature of the sex trade in South Africa

- Sambo (2019) on development of an intervention program for women survivors.

- Khanyile's (2018) work examines the role of NGO's in private-public sector partnerships to counter TIP.

Collectively, the aforementioned doctoral studies included more than 150 empirical interviews with a range of practitioners, including adult and child victims of TIP, and provides deep insights into the complex and multi-faceted reality of TIP in South Africa.

Albeit there is evidence to suggest that labor trafficking is by far the predominant form of TIP in South Africa, it remains the poor relative of TIP in other sectors (Frankel 2016). Frankel devotes a chapter to the subject in his book, but otherwise there is no whole volume on the subject other than Ally's book on domestic servitude (Frankel, 2016; Ally, 2009). The enormous body of research into the mining industry is mainly devoted to general issues of labor exploitation even though there are a few suggestive works about forced or bonded labor (Bezuidenhout & Kenny, 1998; Naidoo, 1995; Rowett, 1995; Shapiro, 2008; Frankel, 2013). According to a 2018 OECD report, South Africa's relationship with its migrant workforce has been complicated throughout the 20th Century. Pre-apartheid there was a clear two-tiered system with 'preferable' migrants welcomed by the apartheid state, while at the same time allowing a steady form of cheap labor to enter through a proverbial 'back door' to feed the industrial needs of the pariah state (OECD, 2018).

The labor sector also includes some ongoing work on mine labor supply chains (Frankel, 2019), the agricultural sector (Bernstein, 2013), and an important if small body of writings on the complex relationship between exploited labor in the extractive sector, poor workplace conditions, TIP and its impacts on public health (Steele, 2013; Stuckler et al, 2013). In a Times Live report, Hawks' Major-General Sylvia Ledwaba was quoted with reference to the "*strong nexus between illicit mining activities*" and suspected TIP or smuggling. In her address to the multi-party women's caucus during a 2017 Parliamentary briefing, she also made mention of minor boys frequently exploited as *"zama zamas"* (illegal miners) (Capazorio, 2017).

In a similar vein, Van der Watt (2018b, 2019b) refers to the realities of labor trafficking, illicit mining, exploitative farm labor and domestic servitude in South Africa that remains largely unexplored. In one case, Van der Watt (2018b:7) refers to illegal mining activities in the Free State area, where photos, videos, maps, and operational details of a Mozambican syndicate was gathered that is implicated in luring men and boys from rural villages in Mozambique for illicit mining operations. In one operation, as many as 50 men and boys are brought across the South African border on a weekly basis – many of whom succumb to operational injuries, suicide, murder and poor health.

Corruption on all levels is reported to enable these criminal activities with similar operations in the Free State and Vaal area reported to be ring-fenced by corrupt police officials, prosecutors and private security companies. In a report on 'Regularizing Informal Artisanal Mining in South Africa' by Ledwaba, Mutemeri and Rutledge (2019), reference are made to *"social issues such as exploitation", "exploitation by middlemen",* and concerns regarding the *"the stigmatization of sex workers"* on illegal mining sites and *"the manner in which they are treated"*. Clearly linked to syndicated and oft-violent criminal elements, no mention is made to TIP in the 71-page report.

There is a relatively large and growing literature on child trafficking. Of contemporary importance is van der Watt and Emser's study of missing children and van der Watt's article which counters the body of earlier 'denialist' researchers (Emser & Van der Watt, 2019; Van der Watt, 2020). There are several reports on child trafficking by ECPAT International: the latest, in 2019, provides a literature review on child TIP in SA, expert analysis of the legal framework and interviews with professionals (ECPAT, 2013; ECPAT, 2019). Social workers attracted to research into child trafficking are also bringing new and different perspectives to

bear, especially on the identification, protection and empowerment of victims (Warria, Nel & Triegaardt, 2015; Warria, 2018; Warria 2019; Warria & Chikadzi 2018).

Research on trafficking in body-parts (as distinct from organ trafficking) is limited to a single post-graduate thesis (Watson, 2006) and a few articles (Allain, 2011; October, 2017; Fellows, 2008; Khoza, 2009; Moosa 2019). Khoza documented the case of three medical practitioners in Durban who were charged with 109 instances of transplants between 2001 and 2003 under the Human Tissues Act No. 65 of 1983 (Khoza, 2009: 1).

In contrast, there have been numerous studies on the legal issues of TIP: these include pre-PACOTIP Act literature and, since 2013, a variety of articles, some critical of the PACOTIP Act, some concerned with its dissection and execution and others are positive (Kruger & Oosthuizen, 2011; Kruger & Oosthuizen, 2012; Kreston, 2007; Kreston, 2014; Prinsloo & Ovens, 2015). Both Bello and Kruger have written widely on the subject, including a thesis and a more current investigation of the PACOTIP Act as a piece of 'sharp-sword legislation (Bello, 2018; Bello & Olutola, 2018; Kruger, 2016). Mollema (2013; 2014) has produced a valuable thesis (and article) focused on how the PACOTIP Act meets SA's international responsibilities as an anti-TIP nation.

The current literature is also diverse and multi-perspective pertaining to literature of TIP worldwide, including sex, child and labor and trafficking. While there is a large body of literature on migration in South and Southern Africa, there are a few key articles of direct relevance that have appeared relatively recently: including a number of articles exploring the interface between sex work and migration (Walker & Oliveira, 2015: Vanyora 2019; Yingwana et al, 2019).

Exploring the world of the perpetrator and the social dynamics of TIP is a high-risk business and explains the relative lack of this key body of literature in the global TIP arena. However, some work has been done on the modus operandi of TIP perpetrators, as well as the responses of the criminal justice system. There is a thesis on policing and TIP as well as the modus operandi of perpetrators (Horne, 2014). In works exploring the nexus of culture and TIP there are some writings that examine the practice of forced marriages "Ukuthwala" as an element of TIP, as well as articles on the relationship between 'juju' and trafficking (Van der Watt & Kruger, 2017; Van der Watt & Kruger, 2020; Van der Watt & Ovens, 2012; Prinsloo & Ovens, 2015).

The NFN has collated almost 3,000 media reports on TIP and are continually working on collating more – these include press releases, articles reporting on incidents of TIP, investigative journalistic articles, as well as contextual articles[3]. The NFN site includes scholarly works accessible via the internet.

Both the regional and international literature is important in setting the context for TIP in Southern Africa. Border and control and intra-regional policing are generally bypassed by TIP researchers and there is a need to conduct these type of studies that examine such issues as border control and regional policing initiatives under the authority of SADC. Regional-oriented research covers a wide range from legislation to TIP in Southern African states (Nshimbi & Moyo, 2019) to organ trafficking (Frankel, 2020).

At regional level both the IOM and UNODC have generated a series of reports (or ongoing reports) that are critical for examining the similarities and differences between TIP in South

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[3] www.nfnresources.yolasite.com

Africa and in the wider region (Kropiwnicki, 2010; Bermudez, 2008). These include special commissioned studies by the IOM as well as periodic overviews of the TIP scene in Southern Africa generated regularly by UNODC. The UN has also weighed in with reports published by the United Nations Educational, Scientific and Cultural Organization (UNESCO), UNODC and the United Nations High Commission for Refugees (UNHCR), which is discussed in South Africa's response to TIP in Section 6. UNODC, for example, has a series of reports dealing with TIP in a number of Southern African countries, including South Africa.

The knowledge base includes three barometers applicable to TIP in South Africa. These are the Lexis-Nexis audit of TIP in the media that has operated intermittently, the Global Slavery Index and the TIP Audit conducted annually by the U.S. State Department. The latter remains the most current and wide-ranging source of ongoing information relevant to the prosecution of perpetrators, protection of victims, and prevention of TIP (referred to as the 3 P's) of trafficking in general.

Annual Reports of governmental line departments including such key stakeholders as the NPA, DSD, the SAPS, the DOJCD and the DHA are also an important source of information. These reports have been included in the knowledge base list. A recent speech by Deputy Minister of Justice John Jefferies is also important for pinpointing aspects of recent government policy (Jeffery, July 30, 2019).

Finally, there are court records, including finalized cases involving prosecution of perpetrators under the provisions of the PACOTIP Act between 2014 and 2017 as well as a further 47 active cases at present (as of July 2020).

SECTION 5: SOUTH AFRICA'S RESPONSE TO TIP

5.1 THE OPERATIONAL COUNTER-TIP ENVIRONMENT IN SOUTH AFRICA

The operational environment for counter-trafficking is generally regarded to have four interdependent dimensions for testing policy effectiveness. In brief, these refer to -

1. The **prosecution** of perpetrators which encompasses the investigation of trafficking crimes, arrest and conviction before the courts.

2. The **protection** of victims including potential victims and the most vulnerable groups in society.

3. The **prevention** of TIP such as, prophylactic policy and other actions aimed at inhibiting all forms of TIP

4. The development of **partnerships** in and between key governmental stakeholders and civil society

Based on the researchers' experience and expertise in TIP, a review of the operational environment is presented below. A gap in the knowledge base of South African research is evidence pertaining to assessing and evaluating the operational environment. Available literature is cited.

5.1.1 PROSECUTION

The lack of successful prosecutions in cases of trafficking in persons is a global reality. The effective prosecution of traffickers is *"a necessary component of any long-term effort to substantially reduce the prevalence of trafficking"* (Boutros & Richmond, 2016: 107). In responding to trafficking, most countries do so by trial and error and *"on the run"* (Gallagher & Holmes, 2008: 318). As of 2010, of the 117 countries that signed the Palermo Protocol, 62 have yet to convict a single trafficker (O'Callaghan, 2012: 67). The U.S. State Department conveyed that only 9,460 trafficking cases were criminally prosecuted globally in 2013, whilst only 135 civil cases were brought by victims against their traffickers in the U.S. between 2003 and 2015 (Vandenberg & Skinner, 2015: 6). In 2014, it was reported that only four in ten countries had ten or more annual convictions. Nearly 15% of these countries had no convictions (UNODC, 2014: 13). Impunity for traffickers are indeed flagrantly rife (Vandenberg & Skinner, 2015; Van der Watt, 2019a).

South Africa's record of accomplishment with TIP prosecutions since its ratification of the Palermo Protocol in 2004 can be characterized as nominal, sporadic, and diffident. However, the 2013 dawn of the PACOTIP Act, and its subsequent operationalization on August 9, 2015, appears to show promise and an increasing measure of enthusiasm from the Criminal Justice System. After being positioned on the Tier 2 Watch List of The U.S. Department of State TIP Report for two consecutive years (2018 & 2019), South Africa was upgraded to Tier 2 for *demonstrating "overall increasing efforts compared to the previous reporting period"* (U.S. Department of State TIP Report, 2020: 453) (refer to Figure 1). Despite these efforts, South Africa still *"does not fully meet the minimum standards for the elimination of trafficking"* (U.S. Department of State TIP Report, 2020: 453).

The PACOTIP Act effectively criminalizes sex trafficking and labor trafficking and prescribed penalties of up to life imprisonment, a fine of up to 100 million South African Rand, or both. The penalties are considered sufficiently stringent.

The South African government prosecuted 71 alleged traffickers in the 2020 reporting period, paralleled to 77 traffickers during the 2019 reporting period. Of those prosecuted, 44 were men and 27 were women. Prosecutors tried 62 alleged traffickers under provisions in the anti-trafficking law, five under the Immigration Act of 2002, and four under other statutes.

South Africa is arguably one of the nations that impose the heftiest sentences for trafficking crimes.

In the 2020 reporting period judges sentenced two traffickers to 19 life sentences, one to three life sentences plus 129 years, two to six life sentences, one to life imprisonment plus 10 years, one to life imprisonment, and one to 10 years' imprisonment.

A persistent concern raised by the U.S. Department of State's TIP Reports over the past four years are the implementing regulations for the PACOTIP Act's immigration provisions found in Sections 15, 16, and 31(2)(b)(ii) which have not been promulgated. Critical sections of the PACOTIP Act therefore remained inactive.

South African law enforcement agencies have reportedly increased efforts to investigate, prosecute, and convict traffickers in the 2020 reporting period. Unlike previous reporting cycles, these efforts included actions against organized criminal syndicates that facilitated the crime. Law enforcement actions included actions directed at more than a dozen brothels, factories, and syndicates that facilitated the creation and distribution of pornography.

The Directorate of Priority Crime Investigation (the Hawks) reported that it investigated 24 potential trafficking cases, 13 for potential sex trafficking, and six for potential labor trafficking.

A welcoming development is the collaborative effort between the Hawks and the NPA, which included a joint operation by the DOEL and SAPS, in which **authorities arrested seven Chinese nationals, four men and three women, for alleged forced labor of 91 Malawian nationals, 37 of whom were children**. A prevailing shortfall, however, is the South African government's lack of comprehensive monitoring or investigation of forced child labor or the labor trafficking of adults in the mining, construction, agricultural, and fishing sectors.

In a rare occurrence comparable to previous reporting periods, the government took action against public officials alleged to be complicit in TIP crimes.

A former Johannesburg Metro Police Department superintendent and an accomplice were charged in the high court for allegedly exploiting several children in sex trafficking, whilst four police officers in Pretoria was arrested for trafficking in persons, kidnapping, and extortion related to 10 Bangladeshi nationals who were smuggled into South Africa. Despite these actions, NGOs and civil society are not convinced of anti-corruption efforts (U.S. Department of State TIP Report, 2020: 454).

Allegations of official complicity remain common and include officials requesting sex acts or bribes in exchange for visas or residence permits. Complicity is also alleged where law enforcement facilitate the deportation of migrants so that farm or factory managers would not have to pay their workers. Police and border control officers allegedly receive bribes from criminal syndicates, and police not pursuing traffickers out of fear of reprisals, are further

concerns raised by NGOs. Observers also reported that some police accepted kickbacks from organized criminal syndicates, which often facilitated trafficking (U.S. Department of State TIP Report, 2020: 454; see also Van der Watt, 2019a).

Perhaps the strongest predictor of trafficking in persons, which also adversely impacts on data accuracy (Van der Watt, 2020), is *"widespread corruption among the police force"* (U.S. Department of State TIP Report, 2014, 2015, 2016) and the *"intersection of the sex trade with organized crime, human trafficking and corruption"* (Van der Watt, 2019a). As pointed out in the 2019 U.S. Department of State TIP report, well-known brothels in South Africa identified as locations of sex trafficking *"continue to operate with officials' tacit approval"* (U.S. Department of State TIP Report, 2019). Moreover, *"systemic indifference and a trust deficit between communities and the police also mean that numerous cases remain undocumented"* (Van der Watt, 2020: 70).

5.1.1.1 PERPETRATORS

According to Save the Children (2016: 27), when it comes to the identification of child trafficking perpetrators, *"developing an accurate picture of the extent … is all the more complex because data on the 'offenders' is not representative."* The limited convictions are attributed to the trafficker's capacity to react and adapt by coming up with new methods and tactics of victimization, using for example, new routes to transport victims.

In cases involving individual perpetrators, it is clear to note that a low level of complexity is involved. Based on the child victim's socio-cultural context, the individual usually has a family connection. The victim's vulnerability is thus heightened by their gender, and social norms – and the only way not to go ahead with this situation is to go against the wishes of the family.

Staying in a prolonged state of trafficking is not in the best interests for the victim – irrespective of the victim being a child or an adult. This state leads to the normalization of violence and with time, the victim might not associate exploitation with wrong-doing and they can easily be *"persuaded to take part in the business side of sex work, even playing an active role … in the whole exploitation phase … with established role and status … she presents herself, or is perceived by her victims, as a model of success to be attained …she also represents one of the few links, or indeed the only link, with the culture or origin in the arrival country, and she is therefore a point of reference for a culture and language"* particularly if she controls other trafficked victims (Save the Children, 2016: 30, 35).

In instances where informal trafficking networks are involved, they are often made of acquaintances or persons with kinship ties. Informal smuggling networks for children are often activated by family members of the child aspiring to make the journey. Smugglers often do not aim to exploit migrants once they reach their destination, but further exploitation might occur with the kinds of contacts activated once they reach their destination.

South African citizens are involved in trafficking networks and furthering exploitation of victims (UNODC and SADC, 2014: 55). Traffickers can be nationals in the country of destination, and are not always, as is often thought, only foreigners or non-nationals. Further investigations, which are beyond the scope of this study, are needed to shed light on the role played by South African citizens in the smuggling and trafficking of victims.

5.1.2 PROTECTION

Trafficking patterns are reported to run from the north to the south of Africa, with **the majority of the victims who are rescued in South Africa originating from the SADC region and Asian countries**. Findings by the United Nations Children's Fund (UNICEF) (2003), Martens et al (2003), Allais et al (2010), and Molo Songololo (2000; 2003) point to the fact that trafficking is not gendered and that the majority of victims are trafficked to South Africa for sexual and labor exploitation.

As noted in the US Department of Health and Human Services (2012):

> *"Social service providers play an important role in helping victims of human trafficking restore their lives. The needs of trafficking victims tend to be complex, often involving interactions with multi-jurisdictional law enforcement personnel, lawyers, and an array of benefit providers. Also, service providers must consider the varying levels of trauma the victim has endured and the victims' cultural background when addressing his or her needs"*

Victims of trafficking can only access the right to social assistance and social services in South Africa based on their immigration status. This requires verification of formal identification and certification of the victim of trafficking. This creates interdependence between individuals and agencies. It should be noted that this relationship or partnership may not always work effectively especially in the long run (Warria, 2020).

Gender-biased economic and socio-cultural structures limit women's choices and increase their risk to trafficking. Gender-biased interventions that are implemented in shelters where victims are accommodated can further feed into these structural inequalities (Botha & Warria, 2020). In addition, interventions should consider the role of the internet and technology in trafficking (Volodko et al, 2019) and craft targeted and digital-influenced interventions. Therefore, the professionalization of victim protection should challenge practitioners working with victims to question the types of interventions available for victims, reasoning behind their provision and the mode of delivering these services.

Repatriation of potential victims to their countries and communities of origin without the necessary needs and risk assessment being fully conducted is bound to fail as a long-term intervention (Warria & Chikadzi, 2018). Intervening with victims from an immigration or criminal justice lens may not be in the best interest of the victim and might be at the expense of the victim's rights. This is because the unique vulnerabilities of that victim have not been addressed. Data from frontline practitioners indicate that these victims are often re-trafficked or make dangerous journeys again soon thereafter in search of better lifestyles. Holistic psychosocial programs are thus recommended (Sambo, 2019) and these should take into consideration legal and immigration positioning. In addition, trauma-informed care and practice and victim-centered psychosocial care principles that acknowledge the victim's cultural background should be applied (Warria, 2015). Thus, immigration, criminal justice and psychosocial lenses should be applied in tandem leading to therapeutic jurisprudence being achieved for trafficked persons.

Shelters in South Africa that take in victims of trafficking are faced with several challenges as highlighted in a paper by Botha and Warria (2020). These include shelters responding to victims with multiple and competing needs; lack of court support and legal counselling; and under-financed skills development programs as a psychosocial-livelihood strategy measure. Similar challenges have been identified with trafficked children in care, with Warria and

Chikadzi (2018) recommending well-thought out interventions that are empowering, participatory and holistic, which facilitate rights advancement, social change and justice and encourage meaningful participation.

Shelters as spaces of psychosocial care and protection through the realization of rights and achievement of therapeutic goals might not achieve the desired results, as articulated by Warria and Chikadzi (2018), if victims with diverse experiences, needs and abuse histories if they are accommodated together. According to Drennan (2014: 116), the mixing of different types of victims might not achieve the intended results because, with varied backgrounds and experiences, there is potential increase in stigmatization, shame and silencing (referred to as the three S's).

The issues of protection of victims of trafficking are diverse and often multiple. It is also worth recognizing that an individual victim might have experienced more than one form of exploitation, for example, poly-victimization, and this needs to take into consideration when developing their individual intervention plan. In light of these, the mechanisms used should definitely involve a multidisciplinary team and approach as constant interaction will be required throughout different phases of service provision – from identification to reintegration and (time-limited) follow up. This approach also calls for trafficked people's involvement in intervention development for the programs to be more supportive, effective and sustainable. The need for development of policy and practice programs that are grounded in trafficked person's experiences is crucial.

Care and protection of victims is intertwined with multi-layered systems of social justice and any intervention must consider these structural factors. In addition, practitioners should regularly *"reflexively negotiate their own ideals [professional and personal], their clients authentic experiences, [aspirations] and expectations, cultural imperatives and the actual contexts and question how their own cultural experiences"*, positions of privilege and positionality impact assistance provision to victims of trafficking (Warria & Chadambuka, 2019: 19). This becomes an ideal worth pursuing in the quest to authentically capture victim's voices, and must be considered when conducting research with victims.

Furthermore, most of the shelters that victims access in South Africa are run by NGOs and some get partial subsidies from the government. The 2018 U.S. Department of State TIP report further highlighted that this lack of funding was a cause for concern in victim service provision. This is so because needs of victims of trafficking vary and often require a continuum of specialized services and programs. If these needs are not fulfilled, it can place victims at risk for or keep them engaged in exploitative activities (Warria 2014).

5.1.2.1 GENDER

Women and men are not trafficked in the same manner, same frequency nor for the same purposes. Furthermore, their experiences can vary. The trafficking cycle appears gendered – from the root causes to policy approaches and practice measures to tackle trafficking.

> **Gender is a key aspect that influences the motives and experiences of migration whether legal or illegal.**

Socially and culturally constructed roles, expectations and power relationships influence both the migration and trafficking processes. Gendered inequalities, gender based violence (GBV), gender-blind policies in countries of origin and discriminatory labor or migration laws in transit and destination countries can be root causes of trafficking, with the earlier noted

reasons being strong motives for migration (Hennebry et al, 2017). An earlier argument by Bastia (2006) reports of the limited women-centered frameworks in trafficking as opposed to addressing migrant women's sense of agency when they start these journeys, as the first step to protection.

In some fragile and/or unstable countries in Africa, the absence of rule of law during crises has led to women and girls' increased vulnerability to exploitation (Save the Children, 2016). In the South African context, although the country has been politically stable, the current COVID-19 pandemic might expose the already vulnerable and poor women and girls to trafficking and further weaken their indigenous social networks, safety nets and social protection initiatives such as stokvels[4] and burial societies.

Feminization of migration talks to the increased numbers and presence of women and girls in migration networks. Gendered patterns of migration have evolved and women migrants become more visible to researchers, policymakers and practitioners – even in South Africa. This, therefore, begs for the development of gender-sensitive policies and practices aimed at empowering women (Hennebry et. al., 2017). However, in embarking on this, it should not be at the expense of men and boys and other individuals identifying with other genders.

Gendered division of labor and gender-segregated employment also reflects in the exploitation of trafficking victims. For example, exploitation of female victims in the prostitution, sex trade and domestic work has received much attention in research and policy in South Africa in comparison to exploitation of men in mining, construction and agriculture industries. This is notwithstanding the two recent U.S. Department of State TIP Reports for 2019 and 2020 reporting that the majority of trafficked victims identified in South Africa are men.

> **Both reports show that trafficking of men is more predominant than that of women – 201 men and 21 women in the 2019 report and 238 men and 79 women in the 2020 report.**

Further studies to unpack the exclusion of men from counter-trafficking initiatives and examine how best to include them in the intervention narratives are required.

In addition, it is necessary to find out other channels men are tapping into to access assistance, as gender stereotypes and discrimination has been reported to undermine the ability to correctly identify male and lesbian, gay, bi-sexual, transgender, queer and asexual (LGBTQIA+) -identifying victims and to provide essential services. Anecdotal evidence in South Africa also points to this. Stereotypical constructions of masculinity and poverty-influenced constructions of work and health (Warria, 2017) may hinder identification processes and also the reluctance to acknowledge trafficking of men and boys and subsequent victimization linked to it.

In South Africa, although there have been improvements, for a long-time vulnerability also stemmed from legal and policy regimes and gender discrimination shaping employers attitudes. This was mainly with regard to the gendered views on domestic work that greatly influenced the under-valuation of this 'private' unpaid work mainly done by women. Most of the domestic workers in the South African context are black and from rural, poor or previously disadvantaged communities. Of late, this profile has expanded to include black

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[4] Stokvels are a South African community-based savings or investment society to which members regularly contribute an agreed amount and receive a lump sum payment.

women from neighboring countries such as Zimbabwe or men from Malawi. Thus, it is clear to see that race and class discrimination (and xenophobic tendencies) further strengthened a lower opinion of domestic work.

Sexual orientation and gender identity may impact an individual's decision to migrate, where to migrate to but also increases their risks. On the African continent, South Africa is known and respected for having progressive laws that embrace LGBTQIA+ rights. These rights are safeguarded by the Constitution. LGBTQIA+-identifying individuals are known to come from other African countries where discriminatory laws punish those with a certain preferred gender identity or sexual orientation. However, a recent special report by the Daily Maverick reported that these LGBTQIA+ asylum seekers face a lethal double challenge - when they encounter both homophobia and xenophobia (Tobias, 2019).

In South Africa and similar to other parts of the world, women and girls account for the majority of the trafficked victims identified and seeking assistance. For most of these victims, the Inter-Agency Coordination Group Against Trafficking in Persons (2017) reports that sexual violence is often used on female victims of exploitation as a means of control and coercion.

5.1.3 PREVENTION

The 2020 U.S. Department of State TIP Report noted the South African Government's efforts to prevent TIP, whilst the NPF is considered instrumental in endeavors to improve capacity and coordination to combat TIP among government agencies. Ongoing TIP training and awareness campaigns by the GOSA stands out as a feature to be commended, however there is often a lack of understanding and translation into practice (U.S. Department of State TIP Report, 2019). On the other hand, poor coordination and communication by NICTIP and the provincial task teams remain a cause of concern, whilst some of the provincial task teams have ceased meeting or functioning. This has also been noted during the Landscaping Review process by individuals and NGOs in the operational environment who bemoan the lack of technology use by Government departments as a means to ensure consistency in task team meetings, especially during the COVID-19 pandemic where social distancing and the lack of movement became the order of the day. Another prominent shortfall pointed out in the 2019 and 2020 U.S. Department of State TIP Report, is Government's lack of efforts to reduce demand for commercial sex or forced labor. Noteworthy is that the role of 'demand' is explicitly recognized in the preamble of the PACOTIP Act. Demand reduction strategies must relate to both commercial sex and forced labor (see Bermudez, 2008; Delport et al, 2007; Frankel, 2016; Horne, 2014; Maluleke & Mabaso, 2017).

5.1.3.1 MIGRATION AND SMUGGLING

Restrictive migration, as recently announced in South Africa, and seen through enforcing tight border security as a solution towards illegal migration can actually facilitate trafficking. This is not only a human rights violation, but it can prove to be an obstacle to lawful migration. The vulnerable and desperate migrants from neighboring countries who are seeking a better life end up seeking the services of smugglers and traffickers – who then resort to underground tactics. Numerous media reports have captured how migrants are smuggled into South Africa (refer to NFN resources list, cited previously). However, there has not been a study conducted on if these smuggled migrants have ended up as victims of trafficking in South Africa. It is recommended that further research is required in this area.

Trafficking can become embedded in migration flows – with manifestations of exploitation in (bonded) labor. South Africa becomes a lure for poor and low-skilled people from the neighboring countries. These vulnerable people are easily deceived and coerced with promises of work and evidence in South Africa shows that they end up in situations of trafficking (Frankel, 2016).

Despite the positive aspects of globalization, it can also contribute to trafficking and exploitation of workers though cheap labor and demand for cheap services. This has been noted especially in countries where there are numerous informal or poorly regulated labor markets and limited opportunities for labor mobility. Certain markets in South Africa are poorly regulated giving rise to employee labor and rights violations (Frankel, 2016).

It is worth noting that exploitation often begins even before the migration process starts, such as when job seekers are deceived about employment prospects, payment of recruitment fees to secure a job. This limits their options once they arrive at the employers – as most likely the migration status or employment condition is linked to a specific employer. Future studies should look at the role of businesses in ensuring ethical recruitment and fair employment practices, and look at government obligations to ensure businesses' respect labor rights.

Conflict situations in Africa make individuals vulnerable to trafficking especially refugees and migrants. It has been noted that *"the groups that manage the recruitment and smuggling of migrants are frequently the same groups involved in human trafficking"* (Skeldon, 2000 in Ford, Lyons & van Schendel, 2012, n.p.). Anecdotal evidence in Southern Africa also points to this.

Trafficking and smuggling are both facets of migration with different elements. However, in the context of mass migration and humanitarian crisis, the relationship between the two is often blurred, usually misunderstood, conflated and challenging to extricate. The consequences of this confusion, which have been noted and reported in some frontline practitioners in South Africa include failure to provide adequate measures, and inadequate services to identify, protect and assist victims, leading to victims falling through the cracks and traffickers increasing their trafficking operations.

What might have started out as smuggling, could end up as trafficking due to the illegal migration channels, lack of legitimate migration opportunities and the individual being deceived into exploitative situations when in transit. At other times, once the illegal migrant arrives at their country of destination, they potentially face barriers to escape when caught up in slave-like situations and in accessing services. This has been previously reported by victims in care.

Border control, immigration and labor legislation such as the recently signed Border Management Authority Bill and now Act. No. 2 of 2020; Immigration Act No. 13 of 2002; and Labour Relations Act No. 66 of 1995 and Amendment Act 8 of 2018 can increase vulnerabilities of individuals to trafficking because of the inability to be able to change employers with easy, safe, legal migration practices, and access to social assistance.

5.1.3.2 TRAFFICKING OF CHILDREN

Trafficking of children remains a concern in South Africa.

According to the 2019 and 2020 U.S. Department of State TIP Reports, 37 children and 60 children were identified respectively and referred for assistance.

Despite South Africa having progressive legislative measures to protect trafficked children, challenges in identification, referral and service provision are evident (Warria et al, 2013; Warria, 2014; Warria, 2016; Warria, 2017; Van der Watt, 2020).

According to the UN Issue Brief #5 (p. 5):

> *"A strong national child protection and social protection systems can contribute to effectively prevent, identify, refer and address cases of child violence, abuse and exploitation, including trafficking in children".*

Smuggling of migrants and trafficking in persons can exist in a continuum, and is applicable to children. Both smuggling and trafficking of children can occur in the context of child migration. Similar to flows of irregular adult migrants, child migration flows are also mixed, for example, some are refugees or asylum seekers, others have been smuggled while others seek improved education and socio-economic opportunities. Stateless children have also been identified as being at risk of trafficking (Warria, Forthcoming, 2020). Even within the cross-border migration system in Southern Africa (and into South Africa), these categories are not exclusive and there is propensity for overlaps. Notwithstanding the category they fall into and their (il) legal status, all children are vulnerable based on their personal and developmental characteristics and the strained special migration circumstances they find themselves in.

Children's vulnerability is not inherent but rather created through structural inequalities and discrimination manifesting as right violations. However, children are not homogenous and neither are they passive – they can express agency and participate in decisions that affect them and they have aspirations. Responding to trafficked children should be tailored to their vulnerabilities, needs, agency and, as stated in the Children's Act No. 38 of 2005, put the best interest of the child first.

The data and trends in child trafficking mirror those of adult trafficking – with no accurate statistics on the actual number of exploited and trafficked children globally, including in South Africa. According to Save the Children (2016: 5), *"the data available are the result of estimates and projections, which tend to underestimate the extent and the impact"* of child trafficking. The UNODC (2020) reports that at least one in five victims of trafficking is a child.

Child migrants are especially vulnerable to exploitation and trafficking. They experience risks and vulnerabilities when in transit. These different categories of migrant children undertake long and dangerous journeys in search of better opportunities but also in the hope of re-joining relatives and friends in destination countries. Unaccompanied minors are often more vulnerable to exploitation and abuse. Exploitation can be linked to the child's vulnerability and can occur during any phase of the migration – including in the country of origin/departure. During the journey, migrant children may be exposed to violence and abuse from traffickers, smugglers and other people that they meet. Upon arrival at destination country, children have often indicated that they do not remember aspects of the journey such as places travelled through. According to Save the Children (2016: 11), these are exploitation markers *"because they typically conceal the contract between the trafficker and the victim."* In addition, few children admit to being trafficked – though this could be tied to several factors such as trauma, developmental age, awareness of trafficking, cultural norms, and use of psychotropic substances amongst other examples.

The arrival of children in the country of destination does not always imply the end of the exploitation, or oppression and right violations. If not processed effectively and fast enough, traffickers exploit this loophole and children further in a bid to keep them invisible to frontline anti-trafficking practitioners. Save the Children (2016) has particularly highlighted the cases where more than 10,000 children are missing upon entering Europe, from 2015 to date. A later South African study by Emser and van der Watt (2019) indicate that more than 16,000 children went missing in South Africa between 2011 and 2019: of which only 25% of these children have been found.

A variety of studies conducted within South Africa reveal that the essential needs of child victims of trafficking requiring assistance may be similar (Save the Children 2016; Warria, 2016; Warria, 2017). However, children are unique and have a sense of agency – elements that should be evident in their development plan during assistance provision. In line with this, assistance provision should not be rigid and restricted, but flexible and accommodating of the child's needs and level of trauma shown.

Challenges in assistance provision to child victims of trafficking in South Africa include the safety of victims, complexity of victim's needs, inability by service providers to match lifestyle provided by traffickers and premature return and reintegration (Warria, 2017) and language barriers (Warria, 2016). According to Warria (2020), case referrals and the management of child trafficking should be improved as evidenced through gaps in aftercare and reintegration.

5.1.3.3 VICTIMS

"Treating 'documented/legal' migrants as 'victims of trafficking' disrupts the categories typically used by governments to regulate temporary labor migration" (Ford et al., 2012). Thus, understanding labor migration using the trafficking approach is indicative of existing tensions and further questions principles underpinning migration and labor discourses and sense of agency (Bastia, 2006).

While donors provide funding to engage with labor abuse cases under trafficking cases, the political will is as a result of international pressure – having ratified the Palermo Protocol and in demonstrating compliance with the minimum standards in the annual U.S. Department of State TIP Reports. This should not be taken cynically, but with an understanding that most individuals who present as trafficked victims are better protected than many other vulnerable groups of migrants who work in slave-like settings. This is also true in South Africa.

According to Malpani (2006: np), *"forced labor is not defined in any detail, making it difficult for law enforcement agents to identify and prosecute the offence. Second, and in consequence of this, there have been very few prosecutions for forced labor offences anywhere in the world [including in South Africa]. A vicious cycle is thereby established; no clear legislation, little or no resources for prosecutions, limited awareness or publicity, thus no pressure for clear legislation…"* and the labor traffickers and brokers exploit these gaps further.

In understanding and addressing the intersection between trafficking and forced labor, ILO recommends a forced labor continuum. Here, three categories of labor are identified (Andrees & van der Linden, 2005):

i) Trafficked victims of forced labor
ii) Non-trafficked victims of forced labor, and
iii) Successful migrants.

By applying this three category continuum rather than the old one with differences between victims of trafficking and irregular migrants, provisions are made for the varying degrees which can make migrants vulnerable to exploitation and thus easier to create intervention strategies.

A focus on women and girls as victims of trafficking often masks other roles females play within and along the trafficking processes either as recruiters or beneficiaries of exploitation (Miccio-Fonseca, 2017; Wijkman & Kleemans, 2019). This is an aspect that requires further exploration in the South African context.

As referenced above, much research and policy in South Africa has focused on trafficking of women and girls. Although certain service providers have reported identifying and intervening with trafficked men, evidence points to lack of data on trafficked men and the general scope and nature of trafficking in men. This lack or limited data in South Africa makes it challenging to formulate adequate interventions and have an understanding on any possible differences existing between trafficked men and women.

The challenges that have been reported in most studies done in South Africa by Warria (2017, 2020), U.S. Department of State TIP Reports (2018, 2019, 2020), van der Watt (2019) and Botha & Warria (2020) regarding service provision include but are not limited to:

- Corruption
- Lack of interpreters
- Deportation of victims
- Lack of specialized training
- Limited accredited shelters
- Immigration identification documents not issued to enable further victim protection.
- Inadequate screening in at-risk populations
- Frontline officials who are not reachable
- General inadequate victim care. and
- Victims not being informed about the status of court cases.

The main consequence of inadequate/inappropriate victims care and protection was found to be victims absconding. Professionals tackling trafficking in persons need specialized training with a gender-based focus and age-sensitive approach to address the challenges and consequences.

Counter trafficking initiatives globally and in South Africa tend to group women and children together, yet there are distinct conceptual and legal frameworks for both women's rights and child rights. Therefore, in intervening with men, service providers should aim to restore feelings of pride, independence and strength – all linked to the notion of hegemonic masculinity that is prevalent in Southern Africa (Warria, 2017). Assistance provision to trafficked victims aims to restore what has been lost.

5.1.4 PARTNERSHIPS

Multi-sectoral approaches are regarded as one of the most effective methods to manage counter-trafficking: all the leading countries on global barometers, (along with some who are not), use multi-sectoral partnering in counter-trafficking efforts (U.S. Department of State TIP Reports). This involves various partnerships between state structures, partnering across the boundary between civil society and the state, inter-departmental alliances between governmental departments and agencies, as well as alliances between NGOs. All aim at

meeting the requirements of the 4P paradigm. In an age of globalization moreover, partnership activity also involves bi-lateral and multilateral international development partners and collaboration between and among international non-governmental actors.

Much the same applies in South Africa. Albeit partnering remains the poor relative of protection, prosecution and prevention (3Ps) in the annual U.S. Department of State's audits of TIP, increasingly more mention is made of partnerships as a critical addition to the 3Ps. More importantly, multi-sectoral (or multi-stakeholder) action is entrenched in the NPF.

Partnering for the purposes of counter-trafficking has many manifestations. These range from highly formalized bureaucratic interchange between state structures on the one hand to, on the other, relatively circumstantial and opportunistic contacts working at different levels of cooperation and collaboration.

Basically, in South Africa, the 'network', (to use another term used interchangeable with partnering), consists of three interdependent trajectories, as well as a number of sub-trajectories, running both horizontally and vertically.

Firstly, along the horizontal the 'net' embraces key governmental stakeholders in TIP. These consist of the line departments of central and regional government that have been designated core actors in relation to TIP (refer to Section 3). Key actors within this group are, among others, the:

- DOH - whose functions include, among others, the documentation of the many foreign migrants within South Africa

- DSD - which has responsibility for the protection and rehabilitation of TIP victims among a myriad of other responsibilities

- This governmental core necessarily includes the main law enforcement mechanisms - the SAPS and the NPA.

The second level involves the horizontal engagement between NGOs, non-profit organizations (NPOs) and community-based organizations (CBOs) dealing with anti-trafficking responses. This sector, (hereafter referred to as the NGO sector), is diverse and ranges from fairly substantial organizations with relatively high capacity to small groups of a few active individuals. Some of these are national entities proximate to state policy-making, others are basically confined to the arena of front-line responses where they often play a major role in the identification and referral of TIP victims. The sector has - or has had - a number of coordinative mechanisms working at regional or national level. Currently, the NFN is the leading platform for both aggregating NGO influence and projecting civil society power on TIP issues into policy making circles.

Thirdly, is the relationship between government and the NGO sector (the above two levels). Some NGO's work with regional representatives from government departments through the NICTIP. This is the coordinating body working from national to provincial level. In this case, there are - at least technically - nine counter-trafficking task teams in each of South Africa's provinces. The PTT reports upwards to NICTIP on a regular basis and each has - again technically - a front-line response team who communicates upwards to the National Response.

The partnering system to-date has not been assessed, barring two doctoral theses and a few articles (Emser 2014: Khanyile 2008). The consequence is that while we can presume the system is geared to the common goal of combating TIP, little is known about the

interactions of various actors working at different levels, their political agendas of the process of selecting tactics or strategies.

While coordination on TIP issues is between key stakeholder government departments has often been competitive, dominated by bureaucratic agendas, or conflicted over responsibilities in the roll-out of the PACOTIP Act, the emergence of the NPF along with NICTIP has to some extent mitigated the silo behavior in the wake of the promulgation of South Africa's first comprehensive anti-trafficking legislation. NICTIP has apparently surmounted at least some of the organizational problems inherent in newly developed governmental institutions, although its coordinating role could do with some improvement (U.S. Department of State TIP Report, 2018). The KwaZulu-Natal Task Team, the first provincial authority to be established, has registered some success according to the only extended exploration of its activities by Monique Emer (2013). Although this work is now dated as it was conducted seven years ago, the success seems to be attributable in part to the circumstances of how it was established, as well as the commitment of its leadership. The KwaZulu-Natal model has been identified by the researchers as warranting emulation in the other provinces. This goes to the fact that in the Western Cape and Gauteng achievements have displayed a relatively lesser degree of organizational excellence.

The notion that effective counter-trafficking requires social participation over and beyond government action has to some extent been institutionalized in South Africa's anti-trafficking culture. In accord with global patterns of counter-trafficking, the number of NGOs either fully or partially dedicated to TIP issues has increased substantially over the last few years. Today, some 300 NFN affiliated organizations and individuals fit this category. Membership of the NFN has increased and this adds into the greater capacity that can currently be brought to the 4Ps by civil society in general and the NGO sector in particular.

At the same time there are various problems in the vertical relationship between government and civil society that undermine overall capability in counter-trafficking. Some of these reflect similar problems encountered by NGOs in building capacity. The NGO's in South Africa, like many of their counterparts in other countries are underfunded in relation to their responsibilities. The provincial structures to which they sometimes belong are also essentially dependent on their own funding-raising efforts and this determines what they can (or cannot) do in relation to the 4P paradigm. The fully inclusive consultation ethic which appears to precede successful PPPs in counter-trafficking in other countries is also not fully-formed in South Africa, notwithstanding multiple meetings, conferences and seminars involving the public and non-governmental sectors.

There also appears, based on anecdotal evidence based on researchers' experience and observations, to be conflicts at the interface between NGOs and representatives of government in the provincial structures where each brings different agendas reflecting their respective social roles. This grassroots tension is frequently concerned with issues of victim identification and referral. They are especially acute in the context of NGO-SAPS relations, since some of the former see law enforcement as insensitive, corrupt or poorly performing in carrying out their TIP functions. Police-community partnerships are overall problematic if varying across different local circumstances. In general, much more could be done to assist 'positive' policing with regard to high-risk categories such as individuals in prostitution and undocumented migrants.

Partnerships within the NGO sector are also imperfect in many respects. Much as elsewhere, South African NGOs arrive at TIP with many different agendas, not all of which are realistic or mutually compatible. Given the absence of state funding there is a degree of

competition between NGOs in solidifying their relationships with local or international sources of funding. Notwithstanding the role of the NFN to align their members, this often undermines capacity and the operationalization of resources by the NGO community overall. This is not to deny the very valuable work being done by NGOs in both protecting and servicing victims, but an unnecessarily high proportion of their work is duplicative, fractured or nominal. NGO participation in the provincial Task Teams is sometimes erratic because of the view that these structures are the compliant agents of government. Many NGOs working in the field were financially unsustainable prior to the current public health crisis due to COVID-19, which with a further economic recession, is likely to further negatively affect counter-trafficking activity.

Based on a consultation with the NFN and observations by the research team, only three of the anticipated nine PTT have materialized: KwaZulu-Natal, the Western Cape and Gauteng. KwaZulu-Natal remains far ahead of its two functioning counterparts and more remains to be done from a financial and administrative perspective if the Western Cape and Gauteng Task Teams to be raised to a comparable performance level. There are six provinces where no substantive attempts have been made to establish anti-trafficking structures in accord with the NPF, or attempts have been made that have foundered. In the latter category are the North-West, Limpopo and Mpumalanga. While the issues informing these failures reflect wider problems of developing governmental institutions on a regional basis, some are also a reflection of local conditions and idiosyncratic factors such as the personal relationships between committee members and, in some cases, party-political agendas.

Albeit that the NFN faces a number of coordinating challenges, the ethic of partnering to counter-traffic is very much entrenched on the TIP landscape. There is however room for improvement when South Africa is seen against the backdrop of multi-sectoral action aimed at TIP on the international landscape. Local authorities in Gauteng and the Western Cape have, for example, supported counter-trafficking initiatives in some cases (U.S. Department of State TIP Report, 2018) but more could be done with these institutions in the process of enhancing governmental leverage. Other than sharing an adhoc inter-agency protocol pertaining to law enforcement and women in prostitution, there appears to be little collaboration and cross-sharing of experience between the functional PTTs. Further efforts are required in the other provinces to activate the PTTs: this will require, *inter alia,* better coordination from the Pretoria-based NICTIP as well as an injection of public funding to ensure sustainability of the various organizations in civil society concerned with counter-trafficking.

5.2 THE EFFECT OF THE COVID-19 PANDEMIC ON TIP

The onset of the COVID-19 pandemic has had an immeasurable impact on the daily lives of people around the world. However, the pandemic and associated measures to flatten the curve, has also further exacerbated existing fault lines within societies with regards to inequality and access to basic human rights. Where there was hunger, there is now dire malnutrition, where there was unemployment, the numbers have skyrocketed and many people face the real prospect of never returning to employment. And where there was a risk of exploitation of certain vulnerabilities, these risks have been greatly amplified as more people lose access to livelihoods, shelter and other social networks and safety nets.

As noted by the United States' Secretary of State, Mike Pompeo, the response to TIP was always marked with urgency, however *"the implications of the COVID-19 pandemic have magnified the need for all stakeholders to work together in the fight more than ever"*

(Pompeo, 2020). He refers to aspects that enable operations of human traffickers during the ongoing pandemic which include the instability and lack of access to critical services, which inevitably mean that the number of people vulnerable to exploitation by traffickers, is rapidly growing.

In a briefer with preliminary findings of the impact of COVID-19 on TIP, UNODC points out that while heightened security measures and increased police presence aimed at enforcing regulations both at the community level and at international land borders has the impression of increased safety, it may in fact be driving crime further underground (UNODC, 2020). In the case of TIP, an already 'hidden crime', the heavy focus on enforcing regulations aimed at curbing indiscretions by ordinarily law-abiding citizens, could provide fertile ground for more seasoned perpetrators to operate undetected.

The UNODC report (2020) highlights increased challenges for both the victims as well as responders under the constraints of the current pandemic. In so far as victim identification, there are additional difficulties, over and above that under normal circumstances, due in large part to the illegal and unregulated nature of most of the industries in which TIP victims are found, such as domestic labor, sex industry, unregulated labor industries. Potential victims are increasing as more and more people face multifaceted vulnerabilities when faced with loss of income, evictions and other limitations on earning potential. Children are particularly vulnerable and require additional resourcing and targeted approaches to deal with an influx of children living and working on the streets and other potential child victims as millions of children around the world lose food and safety of schools. Undocumented migrants and those with temporary immigration status are similarly at higher risk of vulnerability and therefore exploitations. Most of the government-sponsored relief packages are limited to South African citizens, leaving millions of migrants with no refugee status, legal work or study permits out of the safety net and at the mercy of "mashonisas" (loan sharks), landlords, and other potential exploiters.

The pandemic is also adversely affecting regular policing and enforcement mechanisms. While more visible policing has led to a reduction in some crime, it has largely driven organized crime further underground, and online (UNODC, 2020). Law enforcement and judicial services ranging from labor inspections, to court functionality are all impacting on the ability of people to access justice in eviction, labor, and other civil matters. Respondents are also directly affected by the pandemic in that they often lack adequate training, protective gear, and standard operating procedures to effectively mitigate and deal with the unique challenges of policing in a pandemic.

In addition to having claimed hundreds of thousands of lives, COVID-19 has also claimed the livelihoods of millions more. While some countries are more resilient and able to weather the economic storm through a combination of sound policy and firm fiscal stimulus (see Germany) most countries in Africa, and South Africa among them lack both financial and coordination resources to mitigate the devastation. The combination of poverty, poor health care systems, and a weak social contract between government and citizens, aggravated by irrational and draconian lockdown regulations, has led to a backlash in attempts to flatten the curve.

The Global Initiative Against Transnational Organized Crime (Global Initiative, 2020), surmised that the aggravating circumstances surrounding poverty, lack of social and economic opportunity, and limited labor practices will exacerbate vulnerabilities and result in a number of devastating consequences for trafficking victims and respondents during COVID-19 pandemic including:

In terms of mitigating for TIP through effective prevention strategies, the adverse effect of the pandemic on rates of employment in South Africa are already changing the face of the supply side of the TIP market and the severe economic consequences of 'lock-down' are also likely to further shift the South African governmental agenda away from TIP as a policy priority. With the slow recovery rate anticipated for the South African economy that has profoundly serious consequences all down the line of the 4Ps.

Intensifying drivers and root causes of human trafficking

Heightened and changed forms of exploitation

Multifaceted impact on children

Shift towards informality in formal and informal sectors of global supply chains

Increased illegal and irregular migration flows

Disruption in victim assistance and support services

Reduced enforcement, policing, investigation and justice system capacities

Interrupted financial support and funding

From a public health perspective, the onset of COVID-19, has complicated the interface between public health and TIP. In the wake of the pandemic, levels of vulnerability among potential trafficking victims in South Africa's environment of inequality, will almost certainly escalate to the advantage of perpetrators. From all accounts, trans-frontier movement of migrants into the north and eastern parts of the country have increased as the virus COVID has spread through impacted on Zimbabwe and Mozambique: this will, inevitably, swell the numbers of undocumented migrants in South Africa who already constitute an at-risk element among the population because of unsafe migration journeys. The pandemic, (along with climate change in the form of one of Southern Africa's most serious droughts in history), will also increase the demand for human smugglers, many of whom operate on the borders with outright TIP.

Not surprisingly, vulnerabilities affecting potential TIP victims also extend toward public health vulnerabilities since people at risk of TIP are likely also at higher risk of contracting COVID-19. They will live closer to the margins of society, and have fewer resources and a lower ability to isolate and care for the sick. Furthermore, the hunger pandemic is already adversely affecting migrant workers, which is evident through the numbers of migrants currently reliant on the food and other basic necessities being provided through a national network of Community Action Network (CAN) groups.

In a recent meeting [21/07/2020] organized by the Office for Democratic Institutions and Human Rights (ODIHR) and UN Women to present key findings of a global survey on trafficking, the report *"provides guidance to governments in ensuring the implementations of a human-rights based, gender-sensitive, trauma-informed and victims-centered approach to human trafficking during and post COVID-19"* (Organization for Security and Cooperation in Europe, 2020: np).

SECTION 6: RECOMMENDATIONS

Even though South Africa has been upgraded to Tier 2 on the United States State Department Annual Audit – and has been deemed to be making significant improvements in its counter-trafficking initiatives - the 2020 report states that *"South Africa (still) does not fully meet the minimum standards for the elimination of trafficking".*

The 'increased efforts' alluded to in the 2020 Report, as well as those over the preceding five years following the promulgation of PACOTIP Act, encompass 15 inter-dependent recommendations (not necessarily listed in order of importance), and many are supported by the research. These are presented below, followed by recommendations emerging from the Landscape Review

6.1 U.S. DEPARTMENT OF STATE TIP REPORT: RECOMMENDATIONS FOR SOUTH AFRICA

1. **Amend the sentencing provisions of the PACOTIP Act to ensure penalties commensurate with other serious crimes, and in the case of sex trafficking, to preclude an option of a fine in lieu of imprisonment.**

While there are some cases in which perpetrators have been sentenced to life or lengthy terms of imprisonment, or where victims have been able to invoke the restitution clauses in the PACOTIP Act, penalties and sentencing are often insufficiently stringent for sex trafficking (and others forms of TIP) relative to other serious crimes. There are also cases where convicted perpetrators have managed to negotiate a fine in lieu of imprisonment or obtain a plea deal resulting in no jail time.

2. **Capacitate all levels of key governmental departments, especially the DSD and DHA who lack clear operational protocols for managing TIP cases.[5]**

In the case of DSD this implies, inter alia, provisions that facilitate greater access of all victims, irrespective of cultural background, to DSD shelters; improved residential treatment for drug addiction and other psycho-social conditions; enhanced protective services for victims, as well as their preparation for court proceedings and, where necessary, repatriation; the integration of Thuthuzela Care Centers with TIP; encouraging greater sensitivity among DSD officials in dealing with child trafficking cases, and, general improvements in the referral process - in identifying victims, certification and their transfer to sheltered services.

Recommendations to increase regulations that allow the full implementation of the PACOTIP Act are essential. Yet, as noted in the 2020 U.S. Department of State TIP Report, the DHA 'still lacks these vital instruments'. Much remains to be done to, inter alia stream-lining access to the documentation and immigration process; to extend standard operational procedures to allow greater latitude to family and dependents of foreign victims; to ensure the DHA hotline take better cognizance of TIP victims; and more generally, to move towards more humane implementation of the Refugees Act No. 130 of 1998.

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[5] Much also remains to be done to provide anti-trafficking training for diplomatic personnel and troops deployed abroad, especially those operating under United Nations auspices in the Democratic Republic of Congo. This was emphasized as early as the 2017 U.S. Department of State TIP Report

3. **Develop consistent training mechanism across governmental agencies at all levels**

This includes training of front-line responders to assist with the dissemination of information on the push-pull dynamics of TIP, the accurate identification of victims, victim-centered interview techniques, investigation of TIP offences and the existing counter-trafficking legislation.

Government departments at central, regional or local level have conducted many training activities, including amongst others, advertisements, leaflets, outreach, orientation programs, and public broadcasts. These aim to sensitize stakeholders in the public sector and civil society to the complexities of TIP. The government also increased training of national and provincial frontline responders as well as among officers in the SAPS.

Yet the impacts of these initiatives on perception and behavior have not been systematically monitored or evaluated. Since most of these initiatives are inconsistent and unsustainable, operational coherence has often been undermined in the criminal justice system (such as among police and prosecutors); among front-line responders (doctors, nurses, social workers and community leaders); and among other key constituencies that have training targets. The failure of training to fully 'take' is especially problematic in the SAPS which has continued to make unlawful arrests and detentions of trafficking victims.

4. **Empower victims through the provision of dedicated sheltering and other rehabilitative services nationally.**

In particular highly vulnerable groups such as LGBTQIA+ persons, disabled persons, men in forced labor, children in prostitution and individuals in forced prostitution, need to be empowered through provision of sheltering and rehabilitative services.

While GOSA has identified more trafficking victims and referred all to care, providing protective services in partnership with NGOs and international organizations, and increased protective services for victims who assisted ongoing law enforcement investigations, the number of referrals to protective care has remained largely static over the last three years.

TIP annual reports have persistently advocated increased resources and training to identify trafficking victims, including screening for trafficking indicators among vulnerable populations, such as women in commercial sex, migrants, and potential deportees.

There is also no shelter exclusively for trafficking victims, only a single shelter for LGBTQIA+ persons susceptible to social stigmatism, and one shelter reserved for males. Child victims have also been accommodated in Child and Youth Care Centers (CYCC) with no specialized care or trafficking-informed development plans. Accredited and trafficking-specific shelters for male and female victims are sorely needed.

It is also unclear whether people living with a disability receive appropriate assistance. Most shelters lack drug and alcohol related rehabilitation capacity which still needs to be extended. Again, this goes back many years in TIP reporting.

In addition, there is an urgent and ongoing need to train frontline service providers to use victim-centered and human rights-based approaches when interacting with potential and identified victims.

5. **Enhance protection and services available to undocumented migrants**.

This involves both the cessation of cease efforts to deny access to immigration relief, including the asylum. Foreign victims need to be issued with appropriate immigration identification documents as a run-up to receiving protective services.

More effective counter-trafficking involving foreigners also requires providing more translators to assist front-line responders in screening victims, providing psychosocial support as well as supporting the criminal justice system in its investigative and prosecutorial functions. The development and extension of a translator database, called for some years ago, remains an integral part of the process to expand the ability of foreign trafficking victims to secure justice.

Above all there is an urgent requirement to implement the regulations for the PACOTIP Act, notably the immigration provisions in sections 15, 16, and 31(2) (b) (ii). These clauses would protect foreign victims from deportation as part of the broader context of assisting foreign victims to work and assert other rights under the South African Constitution.

The delay over doing so by GOSA, for now over seven years of reporting, is labelled one of more flagrant issues undermining GOSA in its counter-trafficking activity, along with government 'poor understanding' of TIP issues.

6. **Eliminate official complicity and corruption in the process of counter-trafficking which hinders effective law enforcement.**

As noted in the U.S. Department of State TIP Report 2020, the South African government 'did not meet the minimum standards in several key areas': corruption and official complicity among law enforcement and immigration officials remains a significant obstacle alongside lack of commitment to investigate and prosecute officials suspected of complicity in trafficking crimes.

This includes, but is not necessarily limited to, officials requesting sex acts or bribes in exchange for visa or residence purposes, in order to not prosecute TIP crimes, or to facilitate the deportation of migrants so that farm or factory managers would not have to pay their workers. Government allegedly does little to investigate these and sometimes simply transfers accused officials to positions or portfolio's other than trafficking. This increases the risk for whistle-blowers reporting complicity or undermines the capacity of witness protection programs. Members of the SAPS are sometimes alerted by informers prior to raiding brothels while border police also receive bribes from international syndicates. Both often fail to pursue traffickers for fear of reprisal.

7. **Ensure better SAPS performance.**

This includes better identifying victims and perpetrators, separating TIP from human smuggling cases, communicating with DSD in the referral process, and developing accurate data to pinpoint trafficking crimes.

Access to justice is still sometimes undermined by untrained police indiscriminately arresting victims and their perpetrators and/or both interviewed together. While victims are encouraged to help with the prosecution of perpetrators (and do so to some degree), fear of being recaptured and lengthy cases where police misplace dockets create disincentives to victim participation in exacting criminal justice. The occasional ability of traffickers to locate victims, even under police protection, further undermines collaboration.

8. **Improve and extending governmental accreditation**

Specifically for NGOs involved in the provision of safe-housing, shelters, protection and counselling of victims, along with better communication between civil society and government at all levels.

Government provides per-person-per-night stipends to only 14 accredited NGOs running multipurpose shelters as well as partial funding to 17 NGO-run safe houses which provide temporary shelter to victims when required immediately after identification. There are also failures on the part of shelter staff in the provision of protection and counselling.

9. **Increase the number of investigations, arrests, prosecution and conviction of perpetrators in the criminal justice system, especially members of international syndicates dominant in the commercial sex industry, as well as others profiting from the use of forced labor.**

Government is maintaining efforts to investigate, prosecute and convict perpetrators under the PACOTIP Act but this does not necessarily include officials working with or on behalf of international criminal syndicates. This is partially because of language problems in cases involving foreign migrants, (many of whom are undocumented), and because of problems associated with screening and then obtaining testimony from traumatized victims, especially those trafficked by international syndicates.

10. **Replicate anti-trafficking law enforcement and victim referral mechanisms identified by the NPF to all provinces.**

The KZN-Natal Task team works relatively well despite, inter alia, conflicts between governmental agencies with members of CSOs represented on the provincial body, lack of financial capacity and opportunities for coordination and learning with other 'advanced' task teams in the Western Cape and Gauteng. Otherwise, the provincial task teams have either worked intermittently or not at all in places such as Limpopo, Mpumalanga and (to a lesser extent) the North-West.

Considerably more effort needs to be made to extend the task team network to national level as part and parcel of the NPF.

11. **Regionalize counter-trafficking**

Greater South African involvement with the SADC regional trafficking tool is required as well as multilateral policing and military initiatives against TIP activities in the sub-continent.

South Africa has adopted the SADC regional data collection tool and launched a national baseline study but has otherwise done very little (along with its neighbors) to sustainably address Tip as a regional problem.

This is partially because of porous borders that allow the circulation of perpetrators and victims between SADC countries. Even though there are international mechanisms for joint policing and military cooperation, the track-record is poor because of such factors as inter-agency competition, corruption among border police and intelligence failures where syndicates have penetrated national security systems. The South African National Defence Force (SANDF) lacks the human resources for frontier work and is almost entirely reliant on the Reserves for deployment on and near South Africa's northern and eastern borders. This

is likely to worsen as COVID-19 demands a re-deployment of troops for policing and internal purposes.

12. Place greater emphasis on forced labor as a form of TIP at both the research and policy level.

The DOEL instituted mandatory trafficking training for all new labor inspectors, and there has been an overall increased emphasis on trafficking for forced labor in the mining, manufacturing and agricultural sectors.

Research into forced labor is however tentative and government does very little to comprehensively monitor or investigate forced child labor or the labor trafficking of adults in these economic sectors.

13. Invest more resources in the National Human Trafficking Hotline along with enhanced activities to promote public awareness and other preventative and reporting mechanisms.

14. Mobilize civil society participation under the NPF through a system of regular and increased central government funding for key NGOs involved in counter-trafficking, particularly those participating in the provincial task teams

15. Establish a soundly staffed and financially sustainable Secretariat within the NPF with the purpose of providing better communication and coordination between key governmental stakeholders such as the DOJ, the NPA and the DHA.

6.2 RECOMMENDATIONS FROM SADC

SADC provided the following recommendations to South Africa to strengthen the response to TIP (UNODC & SADC, 2014: 58):

- *"Identification and investigation of TIP cases should be enhanced*
- *Capacity of investigators and prosecutors in other forms of exploitation beside sexual exploitation should be strengthened; and*
- *Capacity for investigators, criminal justice practitioners and social service providers in responding to TIP should be strengthened".*

In addition, the research identified the need for a formalized, structured, dedicated TIP coordinating mechanism as a critical way to manage the sector if South Africa has any intention of making true gains in either protection, prevention or prosecution of these crimes.

6.3 RESEARCH RECOMMENDATIONS FROM THE LANDSCAPE REVIEW

This Landscape Review reveals both opportunities and shortcomings in the evidence and knowledge base as well as in understanding TIP within the institutional environment, the effectiveness and efficiency of the response to TIP, and provides an in-depth understanding of the phenomena in South Africa. The evidence available is dispersed across different government departments, provinces, civil society and academic institutions.

Research, monitoring data and evidence produced needs to be used to inform policy and practice, and guide ongoing improvements to the anti-trafficking framework. This knowledge and evidence-base must ultimately strengthen the prevention and response to trafficking in persons and protect those at risk of trafficking, and protect trafficked persons.

A data collection, management and reporting system must be developed - as proposed in the NPF and identified by the UNODC and SADC statistical report (2014) - to enable reliable, relevant and ongoing data. This is challenging given the challenges documented in research and the findings highlighted in this report, which are summarized below:

a) Data integrity and quality if compromised through the incorrect capturing of data against legislation and definitions (Van der Watt & Burger, 2018; Dempsey, 2017; Farrell & De Vries, 2020; Van der Watt, 2020) and the complexity of intersection of crimes (UNODC & SADC, 2014), for example kidnapping, domestic violence, gender-based violence, abduction, rape, assault.

b) Incomplete data and the non-systematic collection of data (Farrell & De Vries, 2020) due to the lack of an integrated data management system and resources required to sustain such a system.

c) Unidentified victims and undocumented cases due to corruption, a lack of awareness by frontline practitioners to identify TIP and lack of trust between communities and police hamper reporting (Van der Watt & Burger, November 2018; UNODC & SADC, 2014).

d) Police statistics focusing on offenders and exclude data on victims (Van Dijk, 2020).

e) Lack of awareness and underreporting particularly by victims (Holmes, 2010), and the underground nature of trafficking and hidden populations which is difficult to reach (Van der Watt & Kruger, 2020; Farrel, Owens & McDevitt, 2014; Shrivankova, 2006).

f) Lack of information sharing due between government departments due to the siloed nature of their work and the confidentiality of data.

The following recommendations emerge from the Landscape Review:

1. Improve the administration of data by government by integrating TIP into existing data management systems, and develop and maintain a national, centralized database (Farrell and De Vries, 2020; Frankel, 2016; Horne, 2011; Van der Watt, 2020, 2015; UNODC & SADC, 2014).

2. Include new data collection methods through for example digital methods and community research (Farrell and De Vries, 2020).

3. Develop and use standardized TIP definitions to guide identification and reporting (Farrell and De Vries, 2020).

4. Prioritize research to target gaps in the TIP knowledge base, and as identified in this Landscape Review, for example relating to social work and governance in relation to TIP, and to understand fears that might prevent victims from seeking services or gaps in service provision.

5. Confirm measurable indicators for relevancy, accuracy and prioritization of reporting and accountability purpose; include indicators on the quality of service delivery and to measure outcomes over time. In addition, conduct evaluations of services to inform the response model.

SECTION 7: SUMMARY AND CONCLUSION

This Landscape Review has brought together some of the foremost experts on TIP in South Africa to provide a concise and condensed summary of available literature and research conducted on the phenomenon of TIP in modern (post-1994) South Africa. Using a multi-disciplinary approach, the landscape analyzes TIP in South Africa from a historical, legislative, and operational perspective through lenses which include human rights, social development, and intersectionality. Examining the phenomenon of TIP from an ecological/systemic perspective, this review endeavors a clearer understanding of the strengths and weaknesses of policy, service delivery, advocacy, and funding as it pertains to prevention, protection, prosecution, and partnerships. Using the 4P approach, the study assesses the gaps and opportunities in the current approach to TIP in South Africa by both government and non-governmental stakeholders.

The landscape reveals several clear strengths and weaknesses in South Africa's response to TIP. From a legislative perspective, the establishment of one law that criminalized all aspects of TIP was a clear breakthrough. The research revealed that South Africa's first comprehensive anti-TIP legislation in the form of the PACOTIP Act, "*fundamentally complies with the main international prosecution standards*" (Kruger, 2016). Modeled on the Palermo Protocol, the shortcomings of the Act were found to be mainly in its implementation challenges as it relates to subsidiary legislation and missing regulations as required by the Act.

The PACOTIP Act was subsequently augmented in 2019 by the NPF to clear up many of the implementation challenges with regards to coordination between government departments. Unfortunately, the policy fell short of identifying solutions for further shortcomings in the overall TIP response including perpetual insufficient funding; irregular and inaccurate reporting; problems with identifying victims; and a substantial measure of official complicity.

Operationally, the Landscape Review found that akin to the global lack of successful prosecutions in cases of trafficking, South Africa's own accomplishments in this sector since the ratification of the Palermo Protocol in 2004 were *"nominal, sporadic, and diffident".* An operating environment that is far more interconnected through the internet and globalization enables perpetrators easy access to victims, networks and financing. In addition, official corruption and complicity was also seen to substantially embolden perpetrators, and subsequently undermine law enforcement efforts around TIP. It is, in part, why South Africa was downgraded from Tier 2 to Tier 2 Watch List by the U.S. Department of State's annual TIP report for both 2018 and 2019. The evidence suggests that there may be an increasing enthusiasm for tackling TIP from the criminal justice system, as is evident in South Africa's subsequent upgrade back to Tier 2 by the U.S. Department of State TIP report in 2020.

The landscape reveals several significant shortcomings around protection for victims of trafficking in South Africa. One of the main challenges relates to the fact that so many of the victims rescued internally originate from other countries in the SADC region. The legal right to social assistance is tied to immigration status which, in turn, is based on bureaucratic cooperation and efficiencies between neighboring African states that are more often lacking (Warria, 2020). The resulting inability to access social assistance places victims at a disadvantage and amplifies vulnerabilities for re-victimization. Warria also argues that a combination of gender-biased economic and socio-cultural structures, and similarly biased services for women victims, perpetuate structural inequalities limiting women's choices.

The highly convoluted relationship between migration and smuggling is seen to adversely impact on the state's ability to curb and prevent trafficking. This research unpacks many of the nuances between the two and highlights for instance the adverse effect that South Africa's restrictive immigration policies has on aggravating circumstances that easily leads to migration turning into trafficking. In the case of child victims of trafficking, Warria provides a strong argument for a complete rethinking in how the state manages child victims. Recognizing that exploitation continues after arrival in South Africa, her in-depth analysis takes a child-victim-centered approach and argues for the agency of the child, in addition to recognition of a need for more adaptive and responsive services in the instance of child victims (Warria, 2020).

The landscape reveals that there remain serious shortfalls in TIP response in South Africa, despite marked progress in some areas including the passing of the comprehensive legislation and subsequent NPF. Most of the literature and empirical research by the team corroborates the findings of the U.S. Department of State TIP Reports that South Africa still does not dedicate sufficient resources toward prevention, protection, or prosecution for TIP. The highly fractured nature of coordinating mechanisms was also found to lead to disjointed responses between the different provinces. Finally, the ongoing challenges with defining and identifying TIP accurately leads to inaccurate data and therefore an insufficient understanding of the exact scope and nature of TIP in South Africa.

This analysis is buttressed by a comprehensive review of existing research on TIP in South Africa. The growing body of research on TIP is more multihued and transdisciplinary than ever before as shown by the number of articles and scholarly thesis produced by academics at South African universities, African institutions, and international contributions from further afield. This confluence of knowledge underpins a growing understanding of the differences and similarities in trafficking between South Africa and the region. It also highlighted that methodological shortcomings continue to perpetuate the inability for the region to get a grasp on prevalence.

While valuable in its own right, it is this need for a more comprehensive understanding of the scope and nature of TIP that makes the research that will follow this landscape analysis of critical importance for both policy makers and practitioners alike. As the foundation for a multi-faceted, comprehensive collection of knowledge products, this landscape analysis explains how the research will impact at three levels: knowledge, policy, and capacity. The landscape lays out the ways in which the research contribution will result in measurable pathways to impact. Specifically, these include enhancing the knowledge economy of TIP in South Africa, while at a more practical level, also finding ways to strengthen evidence-based policy making. Finally, the landscape reveals the need for enhanced public private partnerships in a resource and capacity-constrained operating environment for improved co-production of services.

This landscape analysis was not blind to the role and limitations that COVID-19 has on the prevalence and response to TIP in South Africa, nor immune to the impact that the pandemic has on the production of reliable research. The UNODC and others have already documented the clear and present dangers that the pandemic poses through heightened security measures in which increased security measures could actually drive crime further underground, but also the diversion of attention away from the issue of TIP to pandemic-related aspects of law enforcement. The research itself has also been affected by COVID-19 related restrictions on freedom of movement and by definition access to stakeholders, particularly at provincial and community-level, but has remained agile and

adaptive in thinking and implementation strategies to ensure maximum achievement of the ambitious research agenda.

Through a systematic review of gaps, challenges, and opportunities for TIP response in South Africa within the 4P paradigm, the review identified recommendations corroborated from a combination of the U.S. Department of State TIP reports, and other academic literature. In addition, given that this landscape review will also serve as a *road map* to the subsequent research activities, specific emphasis was added to identifying shortcomings and challenges specifically relating to research, literature, and data of TIP in South Africa.

The research team found that there are significant challenges remaining in the knowledge production of TIP in South Africa. Specifically:

- Low data integrity and quality, including incorrect capturing and incomplete data
- Confusion regarding complexity and intersection of various related crimes (kidnapping, domestic violence, GBV, abduction, rape, assault)
- Inaccurate and incomplete identification of victims as a result of corruption, low capacity of frontline workers, and lack of coordination
- Continued issues relating to key definitions
- Low level of awareness, and underreporting
- Ineffective information-sharing and issues of confidentiality
- Lack of integrated data management system.

The subsequent research to follow under this project will approach the validated recommendations, through the lens of the aforementioned challenges, to produce a set of conclusions and recommendations as it pertains to causes and effects of shortcomings around TIP response in South Africa.

These conclusions and recommendations will be captured in the following research activities under the remainder of the national research project:

1. A thematic analysis of successfully prosecuted TIP cases

2. KIIs with victims to capture lived experiences before, during and after trafficking

3. Conducting comparative analyses of organizational capability of the NPF structures established to manage TIP

4. Reviewing PACOTIP Act, the NPF including a national action plan, and other policies alongside the GOSA.

5. Analyzing migration as a facet of TIP in South Africa

6. Evaluating the effectiveness of purposefully sampled service organizations

Underpinning the potential impact of this analysis and the comprehensive research that will follow is a solid stakeholder engagement strategy to ensure adequate research uptake by policy makers, practitioners, and academics.

Despite this review of evidence, and in the absence of consolidated and accessible data and evidence, it is difficult to determine if TIP incidents in South Africa are increasing or

decreasing, and if the prosecution, protection, prevention and partnership (4Ps) response is effective. It is therefore difficult to make evidence-based decisions regarding policy and practice and determine the effectiveness of the response – albeit the relatively short time frame since implementation of the NPF began.

It is expected that the body of work produced under this project will contribute substantially to the current knowledge and understanding of the scope, nature, gaps, challenges and opportunities of TIP response in South Africa. Grounded in a solid methodology of both primary and secondary research methods, the six aforementioned research activities will add valuable evidence to substantiate and respond to the recommendations and challenges identified in this landscape review. The study will incorporate a gendered lens across all the activities planned, to give rise to gender-influenced conclusions and recommendations for policy and practice. This is because if countries do not have intervention approaches that are gendered, it not only undermines the uniqueness of the male and female victim's experiences, but also those from the LGBTQIA+ population.

While contributing significantly toward a holistic and comprehensive understanding of the scope and nature of TIP in South Africa, the project is limited to a great extent by the lack of reliable, quantifiable data on victims and perpetrators in South Africa. As such, a future prevalence and perpetration study remains a necessity if South Africa is to fully comprehend the scope of the problem and respond with adequate and appropriate policy and resources.

ANNEX 1: RESEARCH METHODOLOGY

The Landscape Review researchers apply the internationally accepted 4P paradigm (prevention, protection, prosecution and partnerships) when analyzing developments and responses to TIP. The addition of the 4th P "partnerships" became official in 2009 by then Secretary of State, Hillary Clinton, in recognition of the fundamental importance that local and international partnerships play in effectively addressing all three of the original Ps (U.S. State Department, 2009).

The researchers conducted the following types of reviews:

i) **Theoretical review: I**n this landscape review, various nexus' are examined whilst using diverse lenses such as human rights, social development, intersectionality and an ecological/systemic lens' to interrogate the TIP position in South Africa. These lenses will be used to shape the review and understand the proposed study. The ordering of the discussion that highlighted the theories was done by relationships and not chronologically.

ii) **Methodological review** was undertaken to highlight the research designs, methods and/ or procedures pertinent to the TIP discussions. The authors highlight the strengths and weaknesses they and others previously have identified – as relates to the methodological approaches, tools and analysis in understanding TIP. This exercise not only informed the research team of potential methodological gaps, but it highlights what could be carried through in the data collection stage of the project. Elements of these will be evident in the review from time to time and at the end of the review when we present the gaps that the project will tackle in the next phase.

iii) **Brief historical reviews** were undertaken to illustrate the development of a particular element of trafficking. For example: the historical background of TIP in South Africa. TIP literature was interpreted in a historical context and the discussions subsequently framed within these historical forces for example TIP or migration policies against socio-political and economic developments in South Africa.

iv) A **state-of-the-art review** applied in this landscape review mainly reflected on recent research (published and unpublished) in thematic areas of trafficking predominantly over the past 20 years. The researchers/authors summarize current and evolving developments, research-advocacy-practice-policy priorities and relevant calibrations. The goal of this was to provide a critical assessment of extensive information produced especially in South Africa since the passing of the PACOTIP Act together with a synthesis of current thinking of TIP in South Africa. The pertinent outcome of the state-of-art review was that it offered new perspectives on TIP in South Africa and further assisted in the identification of priority areas for further research, policy and practice interventions – some of which will be addressed as part of this project.

v) The **thematic review** that formed part of the landscape review was undertaken with the aim of identifying gaps to publicize critical steps for improvement of TIP issues – as aligned to prevention, protection, prosecution, and partnerships. Thus, comparative analysis focused on collecting experiences and inferences from different angles to identify innovative approaches and subsequently providing a wide range of conclusions and recommendations.

The **review of literature** was undertaken to understand the scope and nature of TIP from a variety of perspectives to:

1. Identify the types of available evidence on TIP

2. Clarify key concepts/definitions in the literature

3. Examine how research has been conducted on TIP

4. Identify key characteristics and factors related to TIP

5. Identify and analyze knowledge, practice and policy gaps (adapted from Daudt, van Mossel and Scott, 2013; Khalil et al., 2016; Munn et al., 2018: 143).

Peer-reviewed journal articles and publications that were included covered the period prior to and after the PACOTIP Act, with a specific focus from 2000 onwards. A grey literature search was also conducted in July 2020. Reports commissioned by the United Nations High Commission for Refugees (UNHCR), International Organization for Migration (IOM), International Labour Organization (ILO), United Nations Office on Drugs and Crime (UNODC), United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) and Save the Children were also reviewed.

The initial web-based search for material was conducted using the following key words" "Combating AND human Trafficking AND South Africa", "Gender policy AND human Trafficking AND South Africa", "Human Rights AND human Trafficking AND South Africa", "Human trafficking AND South Africa", "National Policy AND Framework AND/ OR legal AND human Trafficking AND South Africa", "NGOs AND human Trafficking AND South Africa", "Prevalence of TIP in South Africa", "Child Trafficking AND Child Migration AND South Africa", "Prevention AND combating AND human Trafficking AND South Africa", "Protecting victims AND human Trafficking AND South Africa", "Victim-centered approach AND human Trafficking AND South Africa", "Victims AND human Trafficking AND South Africa", "thesis AND Trafficking AND South Africa", "perpetrators AND Trafficking AND South Africa." This list is not exhaustive of the key words used, but added to show depth of search undertaken. The databases that were accessed included but not limited to PubMed, Google Scholar, ScienceDirect, Semantic Scholar, ResearchGate, and EBSCO. Internal reports of governmental and nongovernmental organizations in the public domain were accessed and reviewed. Furthermore, a manual search in the various original documents reviewed led to the identification of additional publications that were subsequently included in this review.

For the purpose of reviewing the legal and policy framework, the focus was on government regulations, acts, and policies that pertain to TIP. Specific attention was given to the Constitution of South Africa, the PACOTIP Act, NPF, and a variety of regulations. Government annual reports were not included in this review unless in the public domain, and the review excluded a focus and review of training manuals and capacity building programs.

Parliament hearings and reports were sourced through web searches from the Parliamentary Monitoring Group, however further review of these reports is required as this could not be undertaken within the timeframe. Formal evaluations of any government or civil society programs or interventions have not been accessed, however efforts will be made to gather such literature during the research and consultative phases of the research and the review updated accordingly. Further information to address these limitations will be gathered during the Key Informant Interviews (KIIs) during the research process.

A review and identification of datasets to determine routine collection of data by government departments will be undertaken as far as possible as part of the research process. The purpose is to firstly inform the scope, nature and magnitude of trafficking in persons, and secondly to reflect on the strengths and limitations of these datasets.

Most of the studies conducted in South Africa have been of a qualitative nature. Therefore, this study hopes to improve data collection, analysis and dissemination of sex and age-disaggregated data using a mixed-methods approach. This is to better understand the problem of trafficking in South Africa from both a gendered and age dimension and to better quantify TIP.

Our research team included various disciplines with the aim of examining TIP in South Africa. Our five person team included expert researchers, with training and practice experience in legal, social work, political science, police investigations and monitoring and evaluation fields. Each team member shares a common interest in TIP and desire to improve TIP interventions in South Africa. Similar to the study by Daudt et al. (2013), the real strength of the team were the varied interests based on professional training and practice and the value when challenging each other's viewpoints and towards identifying complexities within TIP.

The multi- and interdisciplinary team provided the expertise to map TIP in South Africa – a rich experience that is not readily available when one researcher engages with the process. This make up of our team added to the rigor of the landscape review process and the strategic assigning of tasks meant a workable load for each researcher involved. As much as productivity increased, a limitation of having multiple researchers is the inability to reach consensus due to competing opinions and professional and personal interests and schedules. Similar to the study by Daudt et al. (2013: 8), *"we found it helpful to designate one person … to take the lead at various stages … to move the process forward"* to communicate and have regular meetings.

According to Daudt et al. (2013: 7), *"inviting suitable stakeholders to be part of the research team is one way to incorporate the consultation."* A peer review reference group will be established to validate and strengthen the research findings. This Landscape Review will be disseminated to some members of this group for consultative and quality assurance purposes.

Short biographical details of the researchers are included in Annex 3.

ANNEX 2: KEY DEFINITIONS USED IN THIS REVIEW

Varying conceptions surrounding TIP, and the amalgamation of TIP with other phenomena contributes to a confusion surrounding what TIP constitutes of, its manifestation and further serves as a hindrance to successful preventative action, as well as the difficulties of quantifying TIP. The section below seeks to outline and operationalize key terminology used throughout the review, as well as distinguish TIP from these other phenomena. While there is, of course, an intersection between these various phenomena, a distinction is needed to be made.

Trafficking in Persons

TIP is sometimes referred to as human trafficking, the "human trade", or "modern slavery" and although in some ways are interchangeable terms, varying definitions across states and organizations is unhelpful. The Prevention and Combating Trafficking in Persons Act No. 7 of 2013 (PACOTIP Act), defines the offence of Trafficking in Persons in section 4(1) in Chapter 2 and therefore serves as the definition of TIP for the purposes of this report. The definition is as follows:

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

(a) a threat of harm;

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

(c) the abuse of vulnerability;

(d) fraud;

(e) deception;

(f) abduction;

(g) kidnapping;

(h) the abuse of power;

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

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

Trafficking in persons vs. smuggling of migrants

The relationship between smuggling of migrants and trafficking of persons is intertwined and intersects, but the two are not synonymous. Individuals intentionally crossing borders illegally might be more susceptible to trafficking, however, there is an element of consent involved in the smuggling of migrants, and typically involves individuals crossing borders illegally in hope of better prospects. Smuggling does not specifically require coercion or

exploitation, although smuggling might lead to exploitation or the abuse of vulnerability (as defined above).

The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, article 3(a) defines smuggling 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 permanent resident"* (UN, 2000).

Sex-trafficking vs. Prostitution

Quite simply, TIP for sexual exploitation and consensual adult prostitution, or sex-work, cannot be conflated. This is not a contentious statement, and shall remain a distinction throughout this report. More contentious however, are the debates regarding what legislative approach will best protect, and empower vulnerable people and marginalized groups, and prevent exploitation. Less simple, is where the 'hard line' between voluntary and consensual adult prostitution, and, the exploitation of those individuals, or people trafficked for sexual exploitation might be drawn. This review, cannot do justice to the breadth of debate between the so called (neo)abolitionist and preservationist positions and points the reader instead to the original framing of these positions, and other scholars that outline the positions and critiques thereof.[6]

In an oversimplified summary, the abolitionist perspective is that prostitution should remain criminalized, both for the seller and buyer, and the preservationist perspective exists on a varying continuum; either full legalization of the buying and selling of sex (in all forms), or the decriminalization of the buying and selling of sex.

Dempsey (2017) raises the issue that these two positions have on the matter of determining prevalence of TIP. She notes that some scholars use narrow definitions of TIP that do not fit the legislative definitions in their research. This results in the undercounting of TIP cases, which might in some cases be to support the legalization of sex-work and downplay the intersection of trafficking and sexual exploitation. However, she also notes that some advocates and policy makers have used unsound methodology, and extrapolated estimates of TIP from small and non-generalizable studies. These results are then used to assert the existence and prevalence of TIP as a call to action (Dempsey, 2017).

What is clear however, is that both positions note the challenge of quantifying the nature and scope of trafficking for sexual exploitation. Therefore, further research and evidence on the

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[6] For early arguments on the abolitionist perspective/dominanc+e feminist position that always posits any kind of sex work as exploitative and harmful: Barry (1979), Female Sexual Slavery, 9 – 13, Dworkin & Mackinnon, "Pornography & Civil Rights: A New Day for Women's Equality", (1998).
For early critiques of the abolitionist perspective see Vance, S (1992), "More danger, More pleasure: A decade after the Barnard Sexuality Conference" in Pleasure and Danger (Eds. Vance, C), (Pandora Press: 1992)
Authors who summarize these positions include: Abrams, K, (1995) "Sex Wars Redux: Agency and Coercion in Feminist Legal Theory", Theory, 95 COLUM. L. REV. 304, 328–29, and Raphael, J., (2017), "Returning Trafficking Prevalence to the Public Policy Debate: Introduction to the Special Issue*, Journal of Human Trafficking*, 3:1, 1-20
For this debate in a South African context: Ahmed, A., (2011), "Feminism, power, and sex work in the context of HIV/AIDS: consequences for women's health", *Harvard Journal of Law and Gender*, (34), 2, Peters, D., and Wasserman, Z., (2018) "'What happened to the evidence?" - A critical analysis of the South African Law Reform Commission's Report on 'Adult Prostitution (Project 107)' and law reform options for South Africa', Asijiki Coalition.

extent of trafficking, is needed. Both positions agree on the harm caused to those who are exploited, and both positions call for a nuanced approach to the matter.

Ultimately rigorous methodology is needed to be able to better understand the extent of TIP in South Africa. Finally, a response is needed to protect individuals who might be 'victims' to TIP as defined above, victims to exploitation of the abuse of vulnerability, but also empower others who might choose to make their living by selling sex. The research subsequent to this review will seek to provide a nuanced, but holistic perspective on this matter, applicable to a South African context.

This report continually refers to "victims" of trafficking, and notes that this is a decision made in line with the PACOTIP legislation. However, there is also a debate on the term "victim", and that looking at it from a strengths-based, and empowerment perspective, a better term might be "survivor".

ANNEX 3: RESEARCH TEAM PROFILES

Margaret Roper, Principal Investigator and Evaluator

Ms. Margaret Roper is a technical expert with nearly 20 years' experience leading and executing monitoring and evaluation (M&E), social research, learning and development, capacity building and training, social policy and practice assignments. With extensive experience in project management, strategy and process design, program development and implementation, she has particular expertise in the fields of social justice, child protection, children in conflict with the law, child development, behavior change, resilience, early childhood development, and education.

Ms. Roper has worked for various clients, including United States Agency for International Development (USAID), United Nations Children's Fund (UNICEF), United Nations Populations Fund (UNDP), national and local government departments (Department of Basic Education, Department of Social Development, Department of Community Safety and Department of Health), international NGOs, including Oxfam Australia, local NGOs, and the private sector.

She has worked extensively in social research, evidence-based and participatory development of policy, strategy, service delivery programs, advocacy and system-strengthening initiatives; developed accredited and non-accredited capacity-building projects and programs to increase service delivery and achievement of outcomes for organizations; and writing case studies and documenting programs to strengthen cross-program collaboration and share knowledge to inform decision-makers, influence policy and inform practice. Her other key areas of expertise and experience includes: leading and conducting external evaluations to determine efficiency, effectiveness, relevance and impact using participatory and transformative methods, including development of evidence-based recommendations; developing M&E systems, theories of change, instruments, reporting templates and mentoring organizational capacity for implementation. Ms. Roper holds a Master of Social Research from the University of Sheffield. She is based in Johannesburg, South Africa.

Dr. Ajwang' Warria, Co-Principal Investigator and Research Expert

Dr. Ajwang' Warria holds a Doctoral degree in Social Work from the University of Johannesburg; currently working as a senior lecturer in the Department of Social Work at the University of the Witwatersrand (Wits), where she writes extensively on trafficking issues. Prior to joining Wits, she worked in the counter-trafficking field in southern Africa – with victims and training practitioners working in the trafficking field. She has extensive experience managing and coordinating research projects, and has led projects commissioned by the United Nations Children's Fund (UNICEF)-Department of Social Development (DSD), Save the Children, Department of Community Safety, and others.

Dr. Warria's relevant track record in research and publication in Trafficking in Persons (TIP) is demonstrated by eleven (11) years of specialized experience related to TIP and counter-trafficking. Her PhD was on child trafficking and policy development, and she has published 16 articles on child trafficking in peer-reviewed journals (both international and

local) and 3 manuscripts are currently under review. She is a member of the academic network (hosted by the University of Bedfordshire (UK)) researching child sexual exploitation, violence and trafficking.

She was part of working groups (coordinated by South African government departments), which were instrumental in creating anti-trafficking and child protection policy documents such as the South African Child Exploitation Strategy, the Guidelines on the Prevention and Responses to Child Exploitation and co-drafted South African National Policy Framework for Prevention and Combating Trafficking-in-Persons (Zero-draft).

Professor Jabulani Makhubele

Professor Jabulani Makhubele holds a Doctoral degree from the University of the North West and a Master's degree in Social Work from the University of the North. He is currently a researcher, professor, and postgraduate coordinator in the Department of Social Work at the University of Limpopo.

Professor Makhubele has extensive research, and supervision experience as well as significant experience in managing research projects. Recent projects demonstrating his experience and knowledge of trafficking in persons (TIP), include being the project lead for "People on the Move: Migration, mobilities and Social Work", funded by SANORD and the ERASMUS+ Programme, as well as the project lead for "Promoting resilience among children (migrant children) towards education for a sustainable society", funded by Sweden University Forum (SASUF). Professor Makhubele also has a demonstrated history of civic service and seeking to educate and promote human rights in his community.

Professor Philip Frankel

Professor Philip Frankel is a an expert in the field of human trafficking, holding a Doctorate in Philosophy from Princeton University, specializing in Political Sociology and International Relations.   He was Head of the Department of Political Studies at Johannesburg's prestigious University of the Witwatersrand and is currently Head of the Department of Political Science at St. Augustine's College of South Africa (Johannesburg) where he directs the social research and project division.

Prof. Frankel is especially concerned with the interface between TIP, culture and governmental development. He has vast experience of research and project management at the highest levels of government as well as in the transnational corporate sector. He is also executive director of a development agency (ASR) which works across a range of transformative social issues in South Africa and other parts of the African continent. He has lived and worked in Latin America with major mining corporations to explore the social impact of illegal mining and TIP. This subject forms the basis of one of his eleven published books dealing with the political sociology of South Africa, civil-military relations and the role of the mining sector in socio-economic development.

Professor Frankel is currently working on a project sponsored by the corporate mining sector to explore labor procurement and its consequences for behavior in the underground workplace. During the last two years, Professor Frankel has also worked to design and implement nation-wide training courses in TIP for teachers and members of the legal fraternity throughout SA. These initiatives to address the low level of public education about

the issues have been run through various organizations, including the South African Democratic Teachers Union and the National Association of Democratic Lawyers.

Dr. Marcel van der Watt

Marcel is a senior lecturer at the University of South Africa (UNISA); Research Director for the Global Resource Epicenter against Human Trafficking (GREAT); and Case Manager for the National Freedom Network (NFN). He is an ex-member of the South African Police Service (SAPS) where he worked as hostage negotiator and investigator attached to the Hawks (DPCI) and Sexual Offences (FCS) Unit. With a collective 18 years' TIP experience as both practitioner and researcher, it was in his role as police official during 2002 when he first came across the trafficking of women and girls in the sex trade. He has since dealt with numerous manifestations of TIP in South Africa and abroad.

Marcel gained international recognition for his work in human trafficking and received numerous awards for the investigation of crime, including an unreserved endorsement from E. Benjamin Skinner (Harvard CARR Centre for Human Rights Policy, USA) and a position in the Young People in International Affairs (YPIA) Top 35 under 35 Africans for 2014. He provides expert court testimony on issues related to control methods, *modus operandi* and sentencing considerations in human trafficking cases, assistance in on-going investigations and intelligence-gathering activities, and participates on provincial and national human trafficking task teams. Marcel has contributed to more than 200 media engagements on the TIP phenomenon, participated in the creation of South Africa's National Policy Framework on the Management of Trafficking in Persons Offences (NPF), and presented at 32 local and international TIP conferences. Marcel serves on the Editorial Board for the Journal of Modern Slavery, and has published his work on local and international platforms.

Susan Marx

Susan Marx is a senior international development professional with over 15 years of experience in program design and management. Her experience in Africa, Asia and the Middle East are in the areas of access to justice for vulnerable groups, community-oriented policing, local governance and strengthening public policy. Specific programs included ending violence against women. Susan also served as a member of proposal evaluation committee for human rights projects in Afghanistan

A native of South Africa, she has studied and worked abroad for the past twenty years, recently returning to South Africa to implement a JTIP-funded grant for the American Bar Association Rule of Law Initiative (ABA ROLI) aimed at strengthening the capacity of the Africa Prosecutors Association (APA) to enhance anti-trafficking efforts in the SADC region. She holds Masters Degrees in International Human Rights Law from Oxford University and African Studies from the University of California Los Angeles and a BA in Public Policy and International Relations from the University of Southern California (summa cum laude).

Ms. Marx specializes in strategic leadership; organizational change management; program design and oversight and will advise the team on research approaches and support the team on key stakeholder coordination and improved integration of this research into existing government policy.

ANNEX 4: BIBLIOGRAPHY

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ANNEX 5: NPF TIP INDICATOR MATRIX

	INPUTS	ACTIVITIES	REACH	CHANGE	QUALITY
1	Staff, officials	Terms of Reference	Number of dialogues held, initiatives, community engagement events	**Reduced number of TIP victims**	**Increased effectiveness of cooperation according to all stakeholders involved.**
2	Secretariat	Approved memos, appointing decree, SOPs	Number of persons living in poor conditions who accessed livelihood options, health services, employment schemes, education measures	**Increased knowledge on different forms and issues related to trafficking**	**Satisfaction with coordination of all stakeholders involved.**
3	Replacement procedures in place in case of prolonged absence	Existence of NICTIP, NRRT, PPTs, RRTs	Number of persons from at risk group reached	Improved identification skills through a uniform, coordinated and cooperative approach by all anti-trafficking stakeholders	Service standard protocols Research protocols
4	Number of NGOs in the coordination structure	Number of meeting per year	Number of vulnerable women targeted	Higher identification rates of potential/presumed/actual victims	Compliance checks reports
5	Number of traditional leaders involved	Attendance records	Number of engagement initiatives held	**Increased number of victims accessing civil procedures, witness protection and compensation schemes**	Effectiveness of cooperation according to specialized criminal justice practitioners
6	Resource directory of role players	Updated registers of government institutions, Civil society stakeholders, International Organizations, traditional leaders	Number of students/teachers/parents/ traditional leaders/local individuals reached	**Increased number of trafficked person's safely and successfully returned/repatriated home or relocated in a third country and reintegrated.**	Satisfaction of specialized criminal justice practitioners
7	Number of people vetted	Updated list of anti-trafficking focal points	Number of child victims identified	**Increased number of investigations with respect to previous year/s**	Perception of effectiveness of international cooperation to counter TIP
8	Comprehensive laws regulated and enacted	Working tools developed and shared	Number of letter of recognition issued yearly, and	Increased number of confiscation or seizure of assets and proceeds of crime in TIP cases	**Regular monitoring and evaluating mechanism of the NPF in place**
9	New legislation; amended legislation	Number of trainings held per year (NICTIP & Province)	Number of reports indicating problems with issuing of letters of recognition	Penalties and sanctions are appropriate and proportionate to the gravity of the crime	**Perception of improved capacity to response of criminal justice practitioners**
10	Strategy and workplan	Number of newsletters; webpage created	Number of people trained	Increased use of international cooperation tools in criminal matters related to TIP (extraditions, mutual legal assistance,	

				transfer of sentenced persons, confiscation of assets/proceeds of crime)	
11	Regulations	Number of electronic updates of relevance facilitated by NICTIP	Number of victims identify by law enforcement, DSD, NGO and other stakeholders	**Increased resources for the implementation of the NPF regularly allocated**	
12	Communicati ons strategy / concept document	Programs developed and delivered	Number of victims employed	**Increased awareness on TIP and related risks among population and reduced rates of victims**	
13	Research protocols developed	List of diversity and inclusion policies adopted	Number of people (category for example, service providers) trained	**Increased number of prosecutions**	
14	Published research papers / publications	Anti-discrimi nation laws reviewed and enacted	Number of victims/witness in criminal proceedings who access witness protection schemes	Links between trafficking and other forms of organized crime	
15	Lists of shared indicators officially adopted and disseminated, and regularly used	Diversity and inclusion policies adopted and enforced	Number of risk assessment procedures		
16	Number of training programs	Gender equality and human rights included in school curricula	Number of compensation claims lodged		
17	List of services, information materials by language available in shelters	List of publications and distribution	Number of compensation issued / awarded / not awarded and report on why not awarded		
18	Needs assessment report	Number of research delivered	Compensation amount average		
19	Information material for victims	Number of stakeholders involved	Number of confiscations per year and amounts		
20	Guidelines for individual safety plan and in place	Number of persons reached	Number of penal sanctions applied		
21	MOUs and procedures set up at the RRT level	Number of shelters, centers etc. (categories)	Number of sanctions reflecting aggravating circumstances		
22	Personalized plans achieve	Number of victims assisted	Number of additional administrative and/or other non-criminal sanctions use		
23	Number of conferences,	Number of victims	Number of TIP investigations per year		

	seminars, colloquiums, workshops organized; campaigns (national and international)	received legal counselling, psychological counselling		
24	Vetting procedures in place	Number of education / training attended by victim	Number of criminal networks targeted/affected	
25		Number of job inclusion programs attended	**Increased number of victims accessed social protection and support**	
26		Number of judicial officials participating	Number of directives/instructions issued by (category)	
27		Number of training per Province	Number of investigations/year	
28		Number of joint investigative teams established	Number of prosecutions/year	
29			Number of convictions/year	
30			Increased number of TIP corruption related confiscations of assets carried out	
31			Number of TIP corruption related seizures carried out	
32			Number of officials trained on anti-corruption per province	
33			Number of MLA requests processed (received, submitted, responded)	
34			Number of formal agreements or informal arrangements signed	
35			Number of requests made for confiscation related to TIP cases Number of requests executed, where applicable, for confiscation related to TIP cases	
36			Number of requests received	
37			Number of requests executed, where applicable, for confiscation related to TIP cases	