

LASER PULSE

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Partners for University-Led Solutions Engine (PULSE)**

LANDSCAPE REVIEW

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

SUPPLEMENT TO AGREEMENT NO. AID-7200AA18CA00009

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AUTHORS

Ms. M Roper, Principal Investigator and Evaluator, Khulisa Management Services
Dr. A Warria, Co-Principal Investigator and Research Expert, University of the Witwatersrand
Prof. P Frankel, St Augustine's College of South Africa
Dr. M van der Watt, University of South Africa
Prof. J Makhubele, University of Limpopo
Ms. Susan Marx, Independent Policy Expert

EDITORS

Ms. H Dixon, Research Associate, Khulisa Management Services
Ms. J Bisgard, Director, Khulisa Management Services
Ms. N Mabhena, Data Visualization Specialist

CONTACT DETAILS

Principal Investigator: Margaret Roper
26 7th Avenue
Parktown North
Johannesburg, 2196

Telephone: 011-447-6464

Email: mroper@khulisa.com

Website: www.khulisa.co

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LASER PULSE is a five-year USAID-funded consortium, led by Purdue University and also comprising Catholic Relief Services, Indiana University, Makerere University, and the University of Notre Dame. LASER PULSE supports 'embedded research translation' through a global network of 2,000+ researchers, government agencies, non-governmental organizations, and private sector representatives, to support the discovery and uptake of field-sourced, evidence-based solutions to development challenges spanning all USAID technical sectors and global geographic regions.

The LASER PULSE strategy of 'embedded research translation' ensures that applied development research is co-designed with development practitioners, and results in solutions that are useful and usable. LASER does this through research awards mechanism, by involving development practitioners to collaborate with researchers on sector gap refinement, research question definition, carrying out and testing research, and developing translated research products for immediate use. We support this process with capacity building and technical assistance to enable the researcher/practitioner partnerships to function effectively. For more information, please visit laserpulse.org.

EXECUTIVE SUMMARY

Khulisa Management Services (Khulisa) in partnership with the University of the Witwatersrand (Wits) were contracted in May 2020 to conduct research on Trafficking in Persons (TIP) in South Africa. The contractual mechanism is a Buy-In Agreement: 7200AA18CA00009(LASER) with USAID/Southern Africa and USAID/LAB/CDR in collaboration with the Department of Science and Innovation, South Africa through Purdue University/LASER PULSE. The Buy-in Agreement objective 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 &

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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 ongoing cases on the court roll indicated 47 active cases, of which 21 matters involved minor victims. 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

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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).

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

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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).

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).

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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.