



Trafficking in Persons

1. Introduction

There are two days specially designated on the UN Calendar with regard to the scourge of trafficking in persons (TIP). The first, observed since 2010, is 11th January, which is designed to develop awareness of TIP; the other, closely related, is the World Day against Trafficking in Persons, which is observed on 30th July. The overarching theme for 2018 centered on the plight of children in this regard. It is estimated that about a third of all trafficked persons are children.¹

The Roman Catholic Church worldwide focuses its awareness and response to trafficking in persons on the feast of St Josephine Bakhita, 8th February. Josephine Bakhita was a Sudanese woman trafficked from the Sudan to Italy, where she endured all forms of dire exploitation and dehumanization. Later in life she was freed and eventually became a nun in Italy.²

TIP is one of the three top generators of illegal financial profits worldwide, and is estimated to generate \$150 billion annually. This, alongside the illegal arms and drug trades, constitutes a triad of illegal profits.³

It is generally acknowledged that there are five main categories of trafficking in persons. There is **bonded labour**, where a person is compelled to repay a debt and cannot leave until the debt is fully repaid. Then there is **forced labour**, where a person works for no or very little pay or under violent threats. Thirdly there is **sex-slavery**, which takes many forms ranging from prostitution to pornography. Fourthly there is **child slavery**, where children are forced to work in a variety of situations. Finally there is **domestic servitude**, where persons work in often hidden, hugely exploitative circumstances with no chance of escape. Former US President Obama stated the

rationale for these international observances when he said:

“From factories to brothels, from farms to mines, millions of men, women, and children in the United States and around the world are exploited for their bodies and their labor... In order to rid the world of modern slavery we must do everything in our power to combat these violations of human decency.”⁴

2. The Annual Report on TIP

One widely acknowledged instrument for assessing the progress or lack thereof in the fight against TIP is the annual Trafficking in Persons Report compiled by the US Department of State.⁵

While the Report is not free of contestation, and is criticised for bias of various sorts, it is a useful tool in an arena where much of the dynamics remains concealed, where empirical data is notoriously difficult to verify, and where methodological challenges add levels of complexity to any study. It also has to be acknowledged that various other studies exist with similar or different foci.⁶

Countries are classified, in this Report, under four groupings, with a fifth category of Special Cases which is normally reserved for countries caught in the grip of war and conflict.

- Tier 1 countries are those that fully comply with the USA's benchmarks under the Trafficking Victims Protection Act (TVPA).
- Tier 2 consists of countries whose governments do not fully meet the minimum standards of the TVPA, but which are making significant attempts to

do so. In our region, Botswana is slotted in this category.

- a) The third level is the Tier2 Watch List. In addition to the description under Tier 2, they are assigned the following caution: The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;
 - b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or
 - c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.⁷
- Tier 3 refers to those countries which do not fully comply with the minimum standards of the TVPA and which are making very little effort to do so.
 - There is also a Special Case category for countries in deep conflict. Somalia, the Yemen and Libya are currently in this category.⁸

2.1. Findings on South Africa

It is to be noted that in terms of its profile, SA is understood as a source, transit and destination country. More specifically, as the Department of Social Development noted in November 2018, there are four patterns of human trafficking contained within this profile for South Africa. They are, firstly, trafficking to South Africa from outside Africa; secondly, trafficking from outside South Africa but from places of origin in Africa; thirdly, trafficking within the borders of South Africa (domestic human trafficking); and fourthly, trafficking which uses South Africa as a transit point. As the Department notes,

“Research also shows an inextricable connection between human trafficking and other forms of human rights violations, including prostitution, pornography, forced marriage, domestic servitude, forced labour, begging, and criminal activity including drug trafficking.”⁹

According to the US Report South Africa has, in 2017/18, slipped from Tier2 to Tier2 Watch List. The Report noted some positive aspects but also noted other issues as a justification for the downgrade. The key line in the Report substantiating the downgrade is that “the [South African] government did not demonstrate increasing effort overall compared to the previous reporting period.” So the critical issue for grading is that of increased effort.

The Report goes on to state that:

“The government demonstrated significant efforts during the reporting period by investigating 82 potential trafficking cases, prosecuting 23 potential traffickers, and convicting eight traffickers, two under the Prevention and Combating of Trafficking in Persons Act (PACOTIP). The government also arrested several low level officials for complicity in cross-border trafficking. The South Africa Police Service (SAPS) finalized standard operating procedures (SOPs) for implementation of PACOTIP and the government trained front-line responders on its provisions. The government identified significantly more victims over the previous reporting period and referred them to care, upgrading 12 of 14 shelters to provide comprehensive psycho-social assistance to victims. The government also conducted numerous public awareness raising activities. However, the government did not demonstrate increasing efforts overall compared to the previous reporting period. Although the government convicted eight traffickers, four received suspended sentences, which were inadequate compared to the seriousness of the crime. Official complicity and allegations of official complicity affected the government’s prosecution, protection, and prevention efforts and there were significant concerns for victim protection. The implementing regulations for PACOTIP’s immigration provisions have not been promulgated since its enactment in 2013, and officials lacked adequate training on identification measures, which occasionally led the government to arrest, detain, and deport victims. The government sometimes denied foreign nationals protective services, especially if they chose not to participate in an investigation. For the second consecutive year, the government’s lack of sufficient funding for anti-trafficking efforts prevented

front-line responders from fully implementing the anti-trafficking law. Therefore South Africa was downgraded to Tier 2 Watch List.”¹⁰

2.2. Recommendations

The Report made the following recommendations.

- “Investigate and prosecute officials suspected of complicity in trafficking crimes;
- promulgate the immigration provisions in sections 15, 16, and 31(2)(b)(ii) of PACOTIP and cease efforts to deny access to immigration relief, including the asylum process, on the basis of trafficking victimization;
- fund and increase efforts to fully implement PACOTIP and related regulations;
- increase efforts and resources to identify trafficking victims, including to screen for trafficking indicators among vulnerable populations, including potential deportees and women in prostitution, and continue to train law enforcement and social service officials on these provisions and victim identification measures;
- amend anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment;
- increase efforts to investigate, prosecute, and convict traffickers, including employers who use forced labor, under PACOTIP;
- ensure victims are issued the appropriate immigration identification documents in order to receive protective services;
- train law enforcement and social service providers to use a victim-centered approach when interacting with potential victims and recognize that initial consent is irrelevant;
- establish a translator database to expand the capacity to seek justice for foreign trafficking victims;
- replicate the co-ordinated anti-trafficking law enforcement and victim referral mechanisms of KwaZulu-Natal and the Western Cape in all provinces;

- extend the availability of drug rehabilitation services to trafficking victims;
- certify or establish additional shelters for male victims;
- provide anti-trafficking training for diplomatic personnel and troops deployed abroad; and
- institute formal procedures to compile national statistics on traffickers prosecuted and victims assisted.”¹¹

The Report also notes that in South Africa the highest number of victims are in the field of labour, yet the government did not comprehensively monitor or investigate forced child labour, or that of trafficked adults, in the sectors of agriculture, mining, construction or fishing. It also notes that the Department of Labour continued to use administrative provisions within the Basic Conditions of Employment Act as their core enforcement mechanism, and rarely referred cases for criminal investigation.¹²

3. Conclusion

It must be noted that issues such as corruption and, in some cases, the implied lack of political will, issues which undermine our democratic culture and policy implementation generally, are also responsible for undermining solid processes in this area. At a recent conference, an analysis of South Africa’s profile showed that three main issues must be tackled if we are to improve our status. These are: “strengthening sectoral knowledge uptake; improving regulation and encouraging leadership; and promoting information partnerships.”¹³

Without serious action on all three aspects, trafficking in persons seems sadly doomed to continue to the detriment of many millions of people, and will continue to impact destructively on the moral fabric of the human family.

Peter-John Pearson
Director

-
- ¹ <https://www.unodc.org/endht/>
 - ² <http://santamartagroup.com/resources/>
 - ³ <http://collections.unu.edu/view/UNU:6232>
<https://unu.edu/media-relations/releases/un-financial-sector-collaboration-seeks-to-disrupt-human-trafficking-business.html>
 - ⁴ <https://www.globalministries.org/human-trafficking-awareness-day-january-11>
 - ⁵ <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282748.htm>
 - ⁶ https://publications.iom.int/system/files/pdf/global_survey.pdf
 - ⁷ <https://www.state.gov/j/tip/rls/tiprpt/2018/282584.htm>
 - ⁸ <https://www.state.gov/j/tip/rls/tiprpt/2018/282584.htm>
 - ⁹ http://www.dsd.gov.za/index.php?option=com_content&task=view&id=972&Itemid=106
 - ¹⁰ <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282748.htm>
 - ¹¹ <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282748.htm>
 - ¹² <https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282748.htm>
 - ¹³ <http://collections.unu.edu/view/UNU:6232>

This Briefing Paper, or parts thereof, may be reproduced with acknowledgement.
For further information, please contact the CPLO Events and Media Co-ordinator.