



Briefing Paper 503

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The US State Department Report on Trafficking in Persons

*"Human trafficking is a heinous crime happening all around us. The victims—and 30% are children—are subject to forced labour, sexual exploitation and other forms of abuse. We must do more to bring criminals to justice and help victims rebuild their lives."*¹

Antonio Guterres, UN SG.

1. Introduction

Increasingly in recent times, the link between trafficking in persons (TIP) and the vagaries of migration has been noted. Maria Giammarinaro, the UN Special Rapporteur for Trafficking in Persons, reminds us that "profound changes are needed in States' approaches to migration and trafficking. Restrictive and xenophobic migration policies, and the criminalisation of migrants, as well as of NGOs and individuals providing humanitarian aid, are incompatible with effective action against human trafficking."¹ Highlighting that what is needed is "safe, orderly and regular migration", she asserts that making provision for the social integration of migrants is "crucial also for victims of trafficking, including women suffering discrimination, gender-based violence and exploitation, and children subjected to abuse during their journey, especially when travelling alone."²

Pope Francis also made the link when said recently, "Migrants and refugees often fall victim to trafficking caused by corruption on the part of people who will do anything for financial gain."³

2. Background

On 16th June this year, the US State Department released its 20th annual *Report on Trafficking in Persons*. The publication of these reports follows on a Congressional mandate and seeks to assess and rank various countries' commitments to

fighting this form of modern slavery. Over the years various criticisms have been levelled against the report, ranging from its failure to consider cultural and contextual factors in its assessments, to the difficulty of quantifying some criteria and a perceived political bias operating in the assignment of various countries to various tiers, especially with regard to countries which are deemed to be friends of the USA.⁴ A Harvard University study also noted that very little research was done to understand the underlying causes of trafficking, especially the socio-economic causes, and that this could skew an analysis of the phenomenon.⁵

Criticisms notwithstanding, it is the one consistent report that allows engagements in this field to be tracked coherently. The report uses the criteria cited in the Trafficking Victims Protection Act (TVPA) as a primary standard for compliance. Four levels of compliance are identified.

Tier 1 denotes full compliance with the minimum standards of the TVPA. The USA, UK, Canada, Australia, Sweden and Switzerland amongst others fall into this category. Only Namibia of all the African countries makes it into Tier 1.

Tier 2 countries do not fully comply with the minimum standards of the TVPA but are recognised as making significant attempts to do so. The bulk of the world's nations fall into this category. In the Southern African region, Malawi,

Zimbabwe, Mozambique, Eswatini, Angola and South Africa are included.

Tier 2 Watch List countries do not fully comply with the minimum standards of the TVPA, but are seen to be making attempts to do so, even where the number of trafficked persons has increased and where there is no evidence to show increased efforts over the past reporting period. Nigeria, Senegal and DRC are included in this group.

Tier 3 consists of countries which do not comply with the minimum standards and show no inclination to do so. Countries in this category are liable for sanctions and funding cuts imposed by the US government. Lesotho is our only neighbour in this group. In some years there is an extra category called 'Special Cases', indicating countries that are wracked by war and internal conflict of very high proportions. Libya, Somalia and Yemen presently feature in this category.

This Report was finalised before the COVID-19 pandemic engulfed the world and thus does not reflect that reality. However, very early on the link between the pandemic and TIP was clearly established. The UN Office on Drugs and Crime noted that the pandemic "is having an impact on the lives of trafficking victims both before, during and after their ordeals."

It went on to say that

"lockdowns, travel restrictions, resource cutbacks and other measures to curb the spread of the new coronavirus are putting victims of human trafficking at risk of further exploitation, while organised crime networks could further profit from the pandemic. [...] With COVID-19 restricting movement, diverting law enforcement resources and reducing social and public services, human trafficking victims have even less chance of escaping and finding help."⁶

3. South Africa

In 2019 South Africa slipped from Tier 2 to Tier 2 Watch List. In 2020 it returned to Tier 2. The report holds that this elevation is due to the increased number of investigations, prosecutions and convictions of traffickers, including those operating in syndicates.⁷

In a landmark case in September 2019, the Gauteng High Court handed down six life

sentences and 129 years imprisonment to a trafficker found guilty of keeping three young girls hostage and forcing them to work as sex workers.⁸ The report refers positively to the increased numbers of victims who have been taken into care, and notes that SA has also introduced a strategic framework to enhance capacity and co-ordination amongst various frontline responders. The country has improved various policy frameworks and has participated in regional strategic plans. Several government departments also hosted awareness-raising sessions. A further positive aspect was that no victims of trafficking were prosecuted for immigration offences.⁹

The report noted, however, that the government did not meet certain key criteria. Corruption and official complicity in various criminal activities and operations promoting trafficking amongst law enforcement personnel and immigration officials remains a very serious problem and undermines several positive initiatives. It allows traffickers to act with impunity. As in previous years, the lack of will to monitor and enforce employment and labour regulations, especially in the agricultural, fishing and construction domains, allowed significant trafficking to take place in these sectors. Also, the implementing regulations of the 2013 *Prevention and Combatting of Trafficking in Persons Act's* immigration provisions were not promulgated for the seventh year running. In a similar vein, the Department of Home Affairs had no written procedures to guide the handling of trafficking cases. The Department had also not approved draft regulations in this regard during the period under review. The failure to provide written, promulgated regulations allowed for diverse malpractices to take root.¹⁰

4. Profiles of Victims

The profile of people trafficked in South Africa seems to be following a trend observed last year in a UN report which claimed that in Sub-Saharan Africa, "most victims were trafficked for forced labour and trafficking for sexual exploitation involved less than a third of victims found by the authorities."¹¹

In the past year, 377 victims were identified, compared with 260 in the previous reporting period. 238 were men, 79 were women, 26 were boys and 34 were girls. 312 were foreign nationals and 65 were South African. Traffickers exploited 308 victims in forced labour, and 112 in sex trafficking. The government referred 210 victims

to shelters and provided protective services for 141 victims. 65 victims returned voluntarily to their home countries and 9 were repatriated. These figures give some justification for the claims of the UN about shifts in the demographics of victims and in the causes of trafficking in Sub-Saharan Africa.¹²

5. Recommendations for SA

The report makes various recommendations where SA is concerned:

- The recent increase in investigations, prosecutions and convictions with regard to officials found to be complicit in trafficking should be enhanced and handled with the severity it demands.
- Training within the police and law enforcement structures should be intensified and upgraded.
- There ought to be an improvement in procedures to help identify trafficking victims, including screening for trafficking indicators among vulnerable groups such as migrants and sex workers.
- As in previous years, it is recommended that the anti-trafficking legislation which allows fines in place of imprisonment for sex-trafficking crimes be amended to remove the option of a fine.
- There should be further advocacy with the Department of Home Affairs to ensure that victims are issued with proper immigration documents to ensure that they can receive protective services.
- Finally, that the Department should promulgate those regulations which are still pending.¹³

6. Neighbouring States: Eswatini and Botswana

Eswatini and Botswana are both listed in Tier 2, since both have displayed efforts to curb this form of slavery. In the case of Eswatini, this was apparent from the investigation and conviction of a trafficker, as well as from investment in further training for frontline workers and the provision of a shelter for victims. Eswatini also embarked on a series of awareness campaigns, and the government has continued to identify victims and send them to care. It has also launched a five year

strategic plan to make present efforts more effective. The Catholic Church was singled out for praise in connection with the donation of a shelter and its involvement in ensuring better care for victims. The recommendations for Eswatini centre around the need to enhance processes of investigation other procedural aspects, expanding the awareness campaigns, and improving the quality of the care that is offered. The report also points to the need to sort out leadership squabbles that are impeding effective policing.¹⁴

In the case of Botswana, it seems to fail on the same grounds as SA, in that the failure to amend laws that allow for the possibility of fines instead of prison sentences for convicted traffickers (and in Botswana's case, for suspended sentences), was deemed unacceptable. The need to upgrade training for judicial officers and law enforcement agencies is noted, as is the failure for the second year running to prosecute any trafficker. The police noted the use of social media to recruit potential victims and instances of advertising for fake employment. On the positive side, the government's identification procedures worked well and the number of victims identified increased, as did government spending to fight trafficking.¹⁵

7. Conclusion

This scourge continues to grow and to rank amongst the top illegal profit generators globally, as well as one of the most destructive human experiences. In Pope Francis's words, "the money obtained by traffickers from their underhanded business is blood money. I am not exaggerating, it is blood money."¹⁶ It is obvious that the fight against human trafficking will never be successful unless it simultaneously seeks to deal with the underlying structural issues that force people into positions where they become prey to trafficking. Those who speak now of trafficking as a form of modern slavery are correct. It denudes people of their dignity, strips away their agency, and against their wishes renders them slaves to those who keep them in bondage. This diminishes not only the victims but ultimately all of us.

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Director

¹ <https://news.un.org/en/story/2019/07/1043391>

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- 2 <https://news.un.org/en/story/2019/07/1043391>
 - 3 <https://cruxnow.com/vatican/2020/02/pope-money-from-human-trafficking-stained-with-blood/>
 - 4 <https://www.coha.org/the-trafficking-in-persons-report-who-is-the-united-states-to-judge/>
 - 5 <https://harvardpolitics.com/world/trafficking-in-persons-report/>
 - 6 <https://reliefweb.int/report/world/covid-19-impact-trafficking-persons-protection-gender-inclusion-pgi-technical-guidance>
 - 7 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 8 <https://www.iol.co.za/pretoria-news/news/human-trafficking-kingpin-to-rot-in-jail-33191689>
 - 9 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 10 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 11 <https://www.state.gov/reports/2019-trafficking-in-persons-report/>
 - 12 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 13 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 13 <https://www.2020/02/pope-money-from-human-trafficking-stained-with-blood/>
 - 14 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 15 <https://www.state.gov/trafficking-in-persons-report-2020/>
 - 16 <https://cruxnow.com/vatican/2020/02/pope-money-from-human-trafficking-stained-with-blood/>

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