



## The 2021 Report on Trafficking in Persons

### 1. Introduction

Every year since 2000, the US State Department has issued a comprehensive analysis of the scourge of human trafficking and the attempts of various countries to combat it. The report seeks to “improve our collective efforts to comprehensively address human trafficking”. Each year the report assigns a tier ranking to various countries based on their policies, commitment to carrying out the Palermo Protocol, protecting victims, securing convictions and prosecutions, and establishing partnerships with other agencies to combat this crime.

In his opening remarks, Secretary of State Anthony Blinken rightly situates the reality of human trafficking in the context of the COVID-19 pandemic and the realities of injustice. He writes:

“Global crises, such as the COVID-19 pandemic, climate change, and enduring discriminatory policies and practices, have a disproportionate effect on individuals already oppressed by other injustices. These challenges further compound existing vulnerabilities to exploitation, including human trafficking. We must break this inhumane cycle of discrimination and injustices if we hope to one day eliminate human trafficking.”<sup>1</sup>

And goes on to say:

“Systemic discrimination creates inequities between communities, whether the discrimination targets perceptions of race,

ethnicity, sexual orientation and gender identity, or any other social identities. It manifests in societal exclusion and prejudices against those communities, which help perpetuate an imbalance of opportunity and support. These inequities undercut our goal of combating human trafficking and embolden traffickers.”<sup>2</sup>

These comments clearly locate human trafficking and its associated pathologies in the broader human rights framework and the quest for dignity. The report is constructed around four Ps, namely: prevention, protection, partnerships and prosecution. Pope Francis has also arranged his commitment to combatting trafficking around the same Ps.<sup>3</sup>

With regard to the pandemic, the report states:

“If there is one thing we have learned in the last year, it is that human trafficking does not stop during a pandemic. The concurrence of the increased number of individuals at risk, traffickers’ ability to capitalize on competing crises, and the diversion of resources to pandemic response efforts has resulted in an ideal environment for human trafficking to flourish and evolve. Yet, despite the added challenges and risks that the pandemic has presented, we have also witnessed the adaptability among those continuing to combat human trafficking and their dedication to ensuring the continuation of anti-trafficking efforts to minimize the effects of the pandemic on victims and the broader anti-trafficking community.”<sup>4</sup>

Pope Francis, during a talk in 2020, also situated his condemnation of trafficking within the same paradigm, insisting that the “contemporary world is sadly marked by a utilitarian perspective that views others according to the criteria of convenience and personal gain. This selfish point of view prevents others from experiencing the fullness of their unique and unrepeatable humanity.”<sup>5</sup>

In a critical analysis of the recent report, G E van der Vink argues that alongside these commitments to a rights culture a bigger investment into democratic institutions, cultures and policies needs to occur.

“Our analysis indicates that investments in democratic institutions and individual rights may be significantly more influential than law enforcement, and the traditional economic theory for TIP vulnerability may be an oversimplification. Most significantly, the large number of attributes with small but statistically significant correlations with TIP tier levels confirms that TIP has many causal relationships.”<sup>6</sup>

This report also pays special attention to the sharp rise in factors such as family involvement in recruitment of victims, the vulnerability of LGBTQI+ persons, the increased usage of technology, and corruption within government bureaucracies and financial institutions.<sup>7</sup>

While no one denies the importance and thoroughness of the report, there are voices that accuse the State Department of political bias, partisan assessments and political interference.<sup>8</sup> These are not simply empty threats, as countries on Tier 3 face the suspension of funds and other means of support from the USA government, which could have serious implications for those countries. One of the contested political assumptions in this report with regard to the three countries being analysed here is that Cuban medical personnel working in our region may have been forced by their government to come to work here, and that this constitutes trafficking. This assertion is contested and felt by some observers to be part of the USA’s political narrative, and not necessarily understood by all to be true.

## 2. The Ranking System

The report places each country into one of four tiers, as mandated by the USA’s ‘Victims of Trafficking and Violence Protective Act of 2000’ (TVPA). This placement is based not on the size of a country’s problem but on the extent of government efforts to meet the TVPA’s minimum standards for the elimination of human trafficking, which are generally consistent with the Palermo Protocol.

*Tier 1* ranking indicates that a government’s efforts to address the problem meet the TVPA’s minimum standards. To maintain a Tier 1 ranking, governments need to demonstrate appreciable progress each year in combating trafficking. Tier 1 represents a responsibility rather than a reprieve. Namibia is the only African country in this category.

*Tier 2* includes countries whose governments do not fully meet the TVPA’s minimum standards but which are making significant efforts to bring themselves into compliance. Several neighbours of South Africa feature in this category, including Mozambique, Malawi, Botswana and Eswatini.

*Tier 2 Watch List:* What distinguishes this tier is that there is an increase either in numbers or severity of trafficking, with no proportionate response from the governments concerned. It is also noted that there are significant failures to increase investigations, prosecutions, convictions and services to victims, especially those connected to protection. South Africa is joined in this category by neighbours Lesotho and Zimbabwe.

*Tier 3* comprises countries whose governments do not fully meet the TVPA’s minimum standards and which are not making significant efforts to do so. This tier also takes into account issues such as poor budgetary allocation, issues of complicity of officials with perpetrators, and curtailment of investigations and legal processes.

## 3. Country Profiles

The report has placed the three countries reported on here as follows: South Africa is placed in Tier 2 watch List, while both Botswana and Eswatini are in Tier 2. In looking at these countries we quote the summaries as given in the report, so that in the realm of contested ideas our paper captures the judgements accurately as they stand,

and they are thus allowed to speak for themselves. It is worth adding that, while South Africa is a key country of destination, much more than the other two even if some aspects of destination are present there, all three countries are critical transit routes. Trafficked persons are used for sex-slavery but also increasingly in forced labour. An increasing number of men are being trafficked, especially to provide cheap labour. The Bergen Report in 2021 mentioned that the bulk of people trafficked in South Africa are South Africans trafficked internally.<sup>9</sup>

### **3.1 South Africa**

The critique of the South African response and the reason for keeping it in Tier 2 Watch List is captured in the following paragraph.

“The Government of South Africa does not fully meet the minimum standards for the elimination of trafficking, but is making significant efforts to do so. These efforts included continuing to prosecute and convict traffickers, sentencing convicted traffickers to substantial terms of imprisonment, and continuing a few investigations into officials allegedly complicit in trafficking. In addition, the government passed and began implementing, including training officials on, standard operating procedures (SOPs) for referring trafficking victims to care. However, the government did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity. Corruption and official complicity in human trafficking remained a significant obstacle, and the government did not take action in most reported cases. Law enforcement was notably less engaged on trafficking during the reporting period, and multiple observers reported that agencies did not investigate some reported trafficking cases, even when they had the resources and co-operative survivors to help build cases. While the government maintained modest shelter and protection services for victims, it identified substantially fewer victims and only referred approximately half of those identified to care. Moreover, some law enforcement continued to inappropriately arrest and detain suspected sex-trafficking victims during raids targeting commercial sex establishments. The government removed, and did not replace, a key official who led

inter-ministerial anti-trafficking efforts, which hampered co-ordination. For the eighth consecutive year, the government did not promulgate implementing regulations for the 2013 Prevention and Combating of Trafficking in Persons (PACOTIP) Act’s immigration provisions. Therefore South Africa was downgraded to Tier 2 Watch List.”<sup>10</sup>

The report also prioritised the following recommendations:

Increase efforts to investigate, prosecute, and convict officials complicit in trafficking crimes, and traffickers within organized crime syndicates

- Increase efforts to identify human trafficking victims and, using the victim referral SOPs, systematically refer them to care
- Increase human trafficking training to SA Police Service officers throughout the country, to include strengthening SAPS capacity and computer forensics to investigate child exploitation leads
- Fill the role of Chair of the National Intersectoral Committee on Trafficking in Persons (NICTIP) to lead interagency anti-trafficking efforts
- Pass Department of Home Affairs implementing regulations
- Increase resources and training for front-line responders to identify trafficking victims, including by screening for trafficking indicators among vulnerable populations, such as women in commercial sex, children, LGBTQI+ persons, including refugees and migrants, and Cuban medical workers
- Promulgate the immigration provisions in Sections 15, 16, and 31(2)(b)(ii) of PACOTIP
- Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex-trafficking crimes
- Ensure victims are issued appropriate immigration identification documents to receive protective services
- Extend the availability of drug rehabilitation services to trafficking victims
- Accredite or establish additional trafficking-specific shelters for male, female, transgender, and child victims
- Reduce demand for commercial sex, including by prosecuting individuals, including police, who purchase commercial sex, and launching an education campaign
- Establish a channel for civil society to safely report allegations of official corruption and complicity to the government.<sup>11</sup>

### **3.2 Botswana**

“The Government of Botswana does not fully meet the minimum standards for the elimination of trafficking but is making

significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Botswana remained on Tier 2. These efforts included referring all identified victims to NGOs for care and providing some funding to the NGOs, funding and implementing the anti-trafficking national action plan, and providing additional services to victims who participated in trials against their traffickers. However, the government did not meet the minimum standards in several key areas. The government did not convict any traffickers and identified significantly fewer victims than the previous reporting period. Despite officials' acknowledgement of forced and child labor among the San community on cattle farms, neither law enforcement nor labor inspectors made concerted efforts to investigate or address the issue. The government continued to lack formal procedures to identify and refer victims to care and devoted substantially less funding for victim care than in the previous reporting period."<sup>12</sup>

The prioritised recommendations for Botswana ran as follows:

Significantly increase efforts to investigate, prosecute, and convict traffickers • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment • Conduct comprehensive trainings for prosecutors and judges on Botswana's 2014 anti-trafficking law so they can more effectively try and adjudicate cases • Create procedures to identify trafficking victims and train stakeholders on them, including front-line law enforcement and immigration officials • Routinely inspect cattle farms, including in Ghanzi, to ensure children are not engaged in forced labor • Provide funding to the NGOs to which the government refers trafficking victims for shelter and services • Formalize and implement procedures to refer trafficking victims to care • Disallow suspended sentences for convicted traffickers • Fund and implement the anti-trafficking national action plan • Work with NGOs to increase freedom of movement and work opportunities for trafficking victims residing in shelters • Screen for indicators of trafficking among vulnerable populations, including cattle farm workers, refugees, and Cuban medical workers • Develop formal care

procedures that incentivize victims to participate in trials against their traffickers • Continue to conduct public awareness campaigns, particularly in rural areas.<sup>13</sup>

### **3.3 Eswatini**

"The Government of Eswatini does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. The government demonstrated overall increasing efforts compared to the previous reporting period, considering the impact of the COVID-19 pandemic on its anti-trafficking capacity; therefore Eswatini remained on Tier 2. These efforts included investigating and prosecuting suspected traffickers, convicting an official for sex trafficking, and sentencing him to a 55-year prison term. In addition, the government identified trafficking victims, referred them to care, and allocated funding for victim services. However, the government did not meet the minimum standards in several key areas. The government did not have adequate shelter facilities or guidelines to ensure quality of care for trafficking victims, and officials demonstrated an inconsistent understanding of victim protection, at times further traumatizing victims. The government did not make efforts to implement its anti-trafficking national action plan. Labor inspections, particularly in the informal sector, and oversight of the labor recruitment process remained insufficient."<sup>14</sup>

The list of prioritised recommendations is as follows:

Increase investigations, prosecutions, and convictions of trafficking, including internal cases and allegedly complicit officials • Improve shelter and care for trafficking victims, including by developing shelter policies or guidelines and allowing victims freedom of movement • Cease the practice of forcing victims to remain in the country to assist with law enforcement efforts • Implement the national anti-trafficking action plan • Address leadership issues at the anti-trafficking secretariat and enable the taskforce to fulfil its statutory responsibilities • Identify key NGO partnerships for protective services and strengthen coordination • Train law enforcement, social workers, and other front-line officials to proactively identify trafficking victims among vulnerable populations, including Cuban medical

workers • Improve trafficking data collection and analysis of anti-trafficking law enforcement efforts • Conduct anti-trafficking public awareness campaigns.<sup>15</sup>

#### 4. Conclusion

As was to be expected, the COVID-19 pandemic has impacted the fight against TIP significantly, not least with regard to the redirecting of funding and capacity. It should however be acknowledged that even under restricted circumstances many groups and individuals found creative ways of continuing this necessary fight. It is also to be noted that across the spectrum of vulnerable people, whether they be trafficked persons, migrants or the survivors of abuse, the issue of protection is becoming a more prominent feature. This is to be encouraged. This includes campaigns to popularise the indicators of trafficking, boycotts of products using child labour, and advocacy for better budgetary and law enforcement allocations to issues of protection. It does not diminish the

importance of prosecutions, but does provide a focus for all the other aspects of the fight against trafficking.

In a speech on 5<sup>th</sup> December 2021, Pope Francis spoke of the fundamental call to return agency to enslaved persons so that they could build their futures. “The focus of the World day of Prayer Against Human Trafficking is for every enslaved person to return to being a free agent of his or her own life and to take an active part in the construction of the common good.”<sup>16</sup> This, perhaps, is the most important contribution we can make, built on the foundations he mentioned in the same talk, namely prayer, engagement, study and reflection.<sup>17</sup>

There is no easy solution to this ‘crime against humanity.’ One important aspect is to ensure that the national infrastructure to fight it remains rigorous and that a multiplicity of partnerships are put in place, and then ensure that every small step gives us greater capacity to dismantle the monster.

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**Peter-John Pearson**  
Director  
[pearson@iafrica.com](mailto:pearson@iafrica.com)

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<sup>1</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/>

<sup>2</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/>

<sup>3</sup> <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2017/09/28/170928c.html>

<sup>4</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/>

<sup>5</sup> <https://www.vaticannews.va/en/pope/news/2020-08/pope-francis-human-trafficking-scourge-against-dignity.html>

<sup>6</sup> <https://www.tandfonline.com/doi/abs/10.1080/23322705.2021.1897759?journalCode=uhmt20>

<sup>7</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/>

<sup>8</sup> <https://www.reuters.com/article/us-usa-humantrafficking-disputes-special-idUSKCN00821Y20150804>

<sup>9</sup> <https://borgenproject.org/human-trafficking-in-south-africa/>

<sup>10</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/south-africa/>

<sup>11</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/south-africa/>

<sup>12</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/botswana/>

<sup>13</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/botswana/>

<sup>14</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/eswatini/>

<sup>15</sup> <https://www.state.gov/reports/2021-trafficking-in-persons-report/eswatini/>

<sup>16</sup> <https://www.vaticannews.va/en/pope/news/2021-02/pope-francis-human-trafficking-world-day-prayer.html>

<sup>17</sup> <https://www.vaticannews.va/en/pope/news/2021-02/pope-francis-human-trafficking-world-day-prayer.html>

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