

Human trafficking: some research challenges for South Africa

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Human trafficking has become a significant component of the illicit global economy and is internationally acknowledged to be a growing problem. While there have been various attempts to provide estimates of the scale of global trafficking, the real extent of the problem remains unknown. Despite widespread calls for more accurate estimates of the problem, statistics of any value remain elusive. There are numerous challenges involved in researching trafficking, in general, and obtaining sound estimates of human trafficking, in particular. South Africa's response to trafficking is still in its infancy and the current law regarding trafficking in South Africa is fragmented. At present, the greatest impediment to the collection of quantitative data on trafficking (with particular reference to the number of victims in the identified trafficking streams) is the lack of a comprehensive stand-alone national law on human trafficking. Once promulgated, such a law would allow for a human-trafficking database or human-trafficking information management or reporting system which would allow various stakeholders working collaboratively to enter information about cases of trafficking.

Mensehandel: enkele uitdagings vir navorsing in Suid-Afrika

Mensehandel het 'n betekenisvolle komponent van die onwettige globale ekonomie geword, en word wêreldwyd as 'n groeiende probleem erken. Hoewel daar verskeie pogings aangewend is om die omvang van globale mensehandel te skat, bly die ware omvang van die probleem onbekend. Ondanks wydverspreide krete vir meer akkurate skattings van die probleem, ontwyk enigszins waardevolle statistieke steeds. Daar is verskeie uitdagings rakende navorsing in mensehandel in die algemeen en om korrekte getalle van mensehandel te probeer verkry is veral moeilik. Suid-Afrika se reaksies op mensehandel is nog in hul kinderskoene en huidige wetgewing betreffende mensehandel in Suid-Afrika is uiters gefragmenteerd. Tans is die grootste hindernis met betrekking tot die versameling van kwantitatiewe data oor mensehandel (met spesifieke verwysing na die getal slagoffers in die geïdentifiseerde mensehandelstrome) afwesigheid van omvattende, losstaande nasionale wetgewing oor mensehandel. Wanneer so 'n wet uitgevaardig word, sal dit 'n databasis vir mensehandel of bestuursinligting van mensehandel, of 'n bekendmakingsstelsel daarstel wat verskeie belanghebbende partye in staat sal stel om inligting aangaande gevalle van handel te deel.

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Human trafficking¹ is commonly understood to involve a variety of crimes and abuses associated with the recruitment, movement and sale of people (including body parts)² into a range of exploitative conditions around the world (Lee 2007: 1).³ It is an issue both of labour rights and labour protection and of human rights and criminal justice (UN.GIFT 2008a: 1). The impact of trafficking on individuals is devastating. Men, women and children are exposed to rape, torture, violence, dangerous working conditions, poor nutrition, as well as drug and alcohol addiction (Bales 2004, UN.GIFT 2008; US Department of State 2012). They are also exposed to HIV/AIDS and other sexually transmitted and infectious diseases (Lindquist & Piper 2007). Naim (2005: 89) describes the trade in people as “... surely the most morally repugnant of all the illicit trades that flourish today”.

The trafficking of human beings is a complex phenomenon that takes place across and within national borders, with primary international trafficking flows taking place from developing countries to more affluent countries. Trafficking flows within national borders are typically from rural to urban areas. Many forms of exploitation exist, including trafficking for prostitution, pornography, forced marriage, domestic servitude, forced labour, begging, criminal activity (including drug trafficking) and the trafficking of body parts (HSRC 2010: vi).

Human trafficking has become a significant component of the illicit global economy. It is believed that after arms and narcotics trafficking, the trafficking of persons is the most lucrative aspect of transnational crime (The Protection Project 2008: 3). The past few decades have seen an enormous growth in organised human trafficking and the smuggling of migrants (Shelley 2010: 2). As globalisation

- 1 Also referred to as Trafficking in Persons (TIP).
- 2 Trafficking in persons for the purposes of organ removal is addressed by the UN Trafficking Protocol. The inclusion of this form of exploitation is intended to cover situations where a person is exploited for the purposes of obtaining profit in the organ market and for the removal of organs and/or body parts for purposes of witchcraft and traditional medicine (UN.GIFT 2008b: 12).
- 3 Lee (2007: 1) describes human trafficking as a diverse form of trade that is “as old as trade itself” and points out that, while human trafficking has attracted considerable public and political concern in recent years, the trade in human beings has existed for centuries.

impacts more regions, resulting in a decline of nation states and border controls, transnational organised crime has been escalating (Shelley 2007: 116). In commenting on the new global economy, Graaff (2003: 56) observes that the trade in women, children and immigrants is frequently sourced from those areas of the world which have been excluded from the new economy, where money laundering and a wide range of trafficking profit from the lack of security, and law and order. In the 1960s, most of the growth of organised crime was linked to the growth of the drug trade, but human trafficking is fast overtaking the illicit trade in drugs, and as has been observed, “bodies can be replaced”. While estimates on the extent of the overall trade in human beings vary, the consensus among leading experts is that it is larger than ever and growing at a rapid pace (US Department of State 2012: 4,7). Many criminals have entered this area of transnational trafficking because of growing demand (particularly of women and girls for the sex industry), high profit and low risk (UN.GIFT 2009, 2008b: 1). While many international crime syndicates are perpetrators of human trafficking, the trafficking of persons is also carried out by smaller networks and even by family members, particularly in instances of domestic trafficking.

Improved knowledge of the nature of human trafficking, its underlying conditions and the profile of traffickers and victims is necessary in order to take the right steps to combat trafficking (UN. GIFT 2008b: 1). The International Labour Office (ILO) (ILO 2012: 7) highlights the centrality of data collection and analysis for sustainable action to combat forced labour of adults and children:

Reliable statistics are essential to understand the nature and extent of the problem, its causes and consequences, and to inform policy-makers and other stakeholders involved in action against forced labour. Regular data collection also enables the assessment of progress and impact of the implementation of policy, action plans and specific programmes and projects to eradicate forced labour”.

While human trafficking is globally acknowledged to be a growing problem, and there have been various attempts to provide estimates of the scale of global trafficking, the real extent of the problem remains unknown. Despite widespread calls for ‘more accurate estimates of

the problem', statistics of any value remain elusive.⁴ It is notoriously difficult to collect the exact figures of trafficking victims (ILO 2012: 7), and there are great discrepancies between the estimates of various institutions (Aas 2007: 37; Gozdziaik & Collet 2005: 107-8).

This article provides an overview of the phenomenon of human trafficking and identifies the challenges involved in researching human trafficking, in general, and obtaining sound estimates of human trafficking, in particular. Specific attention is paid to the difficulties involved in obtaining quantitative data on the numbers of trafficking victims. The article concludes with a brief outline of the dimensions of human trafficking in South Africa and an overview of the difficulties involved in generating data, particularly numbers of victims of trafficking, in South Africa.

1. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

Governments are increasingly recognising the growing problem of what has been described as the twenty-first century form of slavery; they are now beginning to acknowledge the methods that are used to force and coerce victims and the impact the trade has on individuals. Ambassador Luis C de Baca observes that, while there is a growing recognition that a modern form of slavery exists in the twenty-first century, the trade in human beings continues to be a reality for millions of people, rather than for an isolated few (US Department of State 2011: 1). While the majority of United Nations (UN) Member States have ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children,⁵ which supplements the UN Convention against Transnational Organised Crime (UNTOC), and other international instruments, human trafficking remains a crime with low risks and high profits (UN. GIFT 2008b: 1).

4 See Di Nicola 2007: 54; Gozdziaik & Collett 2005: 122; Laczko & Gramegna 2003: 28.

5 Hereafter referred to as the Palermo Protocol. <<http://www.unhcr.org/refworld/docid/4720706c0/html>>

The adoption of the Palermo Protocol came into force on 25 December 2003 and may be regarded as the starting point of the modern era of confronting human trafficking. The protocol defines trafficking and contains provisions aimed at addressing the problem, including victim protection measures (UN.GIFT 2008b: 1). The trafficking protocol provided the first internationally accepted definition of the term ‘trafficking in persons’ and remains the primary international legal instrument addressing human trafficking as a crime.

Human trafficking is defined in Article 3, subparagraph (a) of the Protocol as:

The recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or the use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Protocol, Article 3, subparagraph (c), includes a specific definition of trafficking in children: “Trafficking in children shall mean the recruitment, transportation, transfer, harbouring or receipt of a child for exploitation”.

The provision stresses that the trafficking of children for exploitative purposes, whatever means are used, should be considered a crime.

2. The state of research on human trafficking

The origins of the human trafficking debate date back to the end of the nineteenth century when involuntary prostitution was brought into the international discourse under the term ‘White slave trade’ (Gozdziak & Collett 2005: 100). A renewed interest in modern-day human trafficking was influenced by developments regarding migration flows, the feminist movement, the AIDS pandemic, as well as child prostitution and child sex tourism in the 1980s (Gozdziak

& Collett 2005:101). The trafficking of human beings, particularly women and children, re-appeared on the agendas of the UN General Assembly in the 1990s, the Commission for Human Rights, the World Conference on Human Rights in Vienna in 1993, and the World Conference on Women in Beijing in 1995 (Gozdziak & Collett 2005:101).

Academic interest in human trafficking also started gaining ground in the mid-1990s. In the past decade, human trafficking has become the subject for considerable empirical research, academic debate and advocacy in diverse disciplines and fields such as law, human rights, sociology, criminology, gender studies, public health and migration (Lee 2007: 2). However, Lee (2007: 2) argues that there is still a significant limitation in our knowledge and understanding of human trafficking, and contends that the trafficking debate has been criticised for its “shoddy research, anecdotal information, or strong moralistic positions”(Lee 2007: 2).

2.1 Gaps identified

A global survey of existing research on human trafficking conducted by the International Organization for Migration (IOM) (2009: 5) highlighted a number of gaps and weaknesses in current empirical research on trafficking. Several of these gaps have implications for more accurate estimates of the scope of trafficking. These include: overemphasis of trafficking of women for sexual exploitation; too few studies focusing on trafficking for labour exploitation; lack of research on trafficking of boys and men; small and non-representative samples; lack of external process and outcome evaluations of assistance programmes, and lack of research capacity in developing countries.

One of the first attempts to identify global human trafficking patterns was that of the United Nations Office on Drugs and Crime (UNODC) in April 2006 (UN.GIFT 2009). Their second initiative went a step further by cataloguing and analysing the world's response, based on criminal justice and victim assistance data from 155 countries. The data from these enterprises revealed first, that the number of countries signing and ratifying the Palermo Protocol was increasing. However, there are still many countries, particularly in Africa, that lack the necessary legal instruments. Secondly, the number of convictions

is increasing, but not proportionately to growing awareness and size of the problem. Thirdly, sexual exploitation is by far the most commonly identified form of human trafficking (79%), followed by forced labour (18%). Because it is more frequently reported, sexual exploitation has become the most documented type of trafficking. In comparison, other forms of exploitation such as forced or bonded labour, domestic servitude, forced marriage, organ removal and the exploitation of children for begging are under-reported. Fourthly, a disproportionate number of women are involved in human trafficking, not only as victims, but also as traffickers. Fifthly, most trafficking is national (domestic) or regional and is perpetrated by people whose nationality is the same as that of their victims (*ibid*: 6).

3. Defining the problem

The definition of trafficking has proved to be one of the major obstacles in the collection of reliable statistics on human trafficking. Despite the Palermo Protocol definition of trafficking, Lee (2007: 3-10) points to the fact that human trafficking is an imprecise and highly contested term and that trafficking has variously been conceptualised as

- slavery, whereby human trafficking is viewed as a contemporary form of slavery characterised by temporary ownership, debt bondage, forced labour and hyper-exploitative contractual arrangements in the global economy as opposed to the legal ownership of one human being by another or long-term enslavement;
- prostitution - where definitions of human trafficking have centred around contested positions on issues of prostitution, individual agency, and consent;
- organised crime - human trafficking has been conceptualised within a framework of organised crime. The role of criminally sophisticated, transnational crime groups as a driving force behind the highly profitable trade of smuggling and trafficking unauthorised migrants or asylum seekers has been commented upon widely;

- migration – trafficking has been understood within the context of broader migration patterns, policies and politics of migration control, and
- human rights – trafficking has been conceptualised from a human rights perspective. The consolidation of human rights has gathered momentum in the latter half of the twentieth century through the proliferation of human rights institutions and the rise in the international efficacy of human rights as principles of broad value to all people.

4. Measuring the problem

There are potentially many different types of ‘data on trafficking’, for example global estimates in the number of trafficking victims and the profits made from trafficking; data on the exact number of people arrested and prosecuted for trafficking offences; data from victim support services, and data from surveys of communities about knowledge and attitudes toward trafficking. In each example, the data is very different (HSRC 2010: 158), but the call for better estimates of the problem to inform more effective policies and interventions is becoming more persistent (Lackzo & Gozdzik 2005, Tyldum & Brunovskis 2005). Di Nicola (2007: 49) points out that the need for good research is self evident, and that research to estimate the number of trafficked persons in different countries would not only be an intellectual undertaking, but would also allow for a more efficient allocation of law enforcement and preventative resources and more accurate appraisal of the effectiveness of anti-human trafficking policies. Inaccurate estimates of the problem are likely to result in inappropriate remedies.

There is broad consensus among experts that there is a need for more reliable data to estimate the scale of trafficking, in particular at national levels, but whether or not it is viable and necessary to have global estimates on trafficking is often questioned, given the difficulties involved in generating reliable figures (IOM 2009: 10). The difficulties concerning the collection of data on trafficking have, in general, been extensively documented (see UNODC 2006), as well as the difficulties involved in generating reliable figures (IOM 2009: 10;

Putt 2007: 4). Guinn (2006: 2, 2007: 8),⁶ in attempting to assess the extent of criminal trafficking and slavery in Latin America, argues that it is virtually impossible to obtain reliable data on trafficking anywhere in the world.

There have been several large-scale efforts to estimate and document human trafficking across the world. Much of the information used to underpin estimates relies on case studies, media reports, key informants and, to a lesser extent, official statistics. The most cited global estimate of human trafficking is the Trafficking in Persons (TIP) report produced annually by the US Department of State. Other large-scale attempts include reports produced by the International Labour Organization (ILO) and the International Organization for Migration (IOM) (which focus on forced labour), and a major report produced by the UN Children's Fund (UNICEF 2005). Attempts to generate estimates of trafficking have given rise to criticism from various quarters. The US Government Accountability Office (GAO) (2006) highlights the reporting weaknesses (no sources cited, methodology not revealed) of the four major institutions providing estimates: the US State Department, IOM, ILO, and UNODC. In a similar vein, Putt (2007: 1) argues that the estimates in these reports vary across regions, primarily because trafficking is an extremely difficult activity to investigate. There are also differences in focus and methodologies, and attempts which rely on secondary sources tend to provide a limited and potentially inaccurate picture of global patterns. In commenting on the US Department of State's TIP reports, Putt (2007: 1) states that the methodology employed to produce estimates and attendant claims is unclear. Assessment of individual countries appears to involve US diplomatic missions consulting documentation and key stakeholders, but the number and sources are not revealed. She argues further that very broad

6 Guinn (2006: 3) refers to the "somewhat embarrassing" assessments within the US where estimates of the number of trafficking victims have dropped significantly from the 1999 Central Intelligence Agency estimates of 45.000 to 50.000 to more recent estimates of 18.000 to 20.000. He still believes that these figures are mere "guesstimates". He (Guinn 2006: 13) argues that existing qualitative research on trafficking provides a relatively good overview of trafficking: its victims, perpetrators and methods, and that qualitative research is well suited to providing a deeper and more detailed character portrait of those involved than other types of empirical research.

ranges are often employed for country, regional and global estimates with, for example, annual estimates varying greatly. Makkai (Putt 2007: 3) also points out the large disparity between estimates and the number of known cases. He cites the example of an overview of human trafficking provided by the US National Institute of Justice in 2003 which referred to estimates of 45,000-50,000 women and children being trafficked into the US, while there were 38 documented cases involving 5,500 women in 1999-2003. Putt (2007: 2) cautions that vaguely defined numbers tend to be repeated, thereby reinforcing themselves, and that information may be unreliable in regions where awareness of trafficking is low or where freedom of expression is restricted. It is also argued that the problem with estimates is that they are often without cited sources, or the sources do not reveal their methodology.

The differential treatment of operational categories, as contained in the Palermo Protocol, has a bearing on trafficking research. Guinn (2006: 5) argues that the working elements of the Palermo Protocol – the individual being subjected to force or coercion into a situation of unlawful exploitation – in theory cover any type of trafficking for sexual exploitation or labour exploitation/slavery. In practice, there are three types of operational understanding of trafficking, namely child trafficking, trafficking in women for purposes of sexual exploitation, and trafficking for purposes of labour exploitation/slavery. He states that this tripartite categorisation has developed mainly following the outrage over the sexual exploitation of trafficked women, and especially children,⁷ which provided the initial political impetus to address the problem (2006: 5). These three categories are not treated equally (the sexual exploitation of women and children commanding the largest amount of attention) and, as a consequence, assessing the problem as a whole suffers from this disparate treatment.

7 Out of all forms of trafficking, child trafficking received the greatest attention and condemnation (Guinn 2006: 6).

5. The challenges involved in obtaining reliable information on human trafficking

There are numerous challenges involved in obtaining reliable information on human trafficking. The challenges apply to both those of obtaining data of a general nature, and the difficulties in quantifying the problem of trafficking.

5.1 The context of trafficking

Hamman & Fletcher (2011: 2) refer to the contextual aspects of trafficking. Different nationalities, regions, cultures and cultural practices, religious beliefs, languages, socio-economic structures, political systems, and local laws are all factors that create individual climates in which trafficking occurs and operates. They point to the stark differences between, for example, domestic trafficking in Thailand, between North and South America, and the trafficking that occurs in South and Southern Africa. This is ascribed to respective socio-political and economically differing environments. Political will of governments to create and implement policy; political will and ability to enact and enforce law and effective structures and available human resources for policing, and border security and control are also crucial aspects that would affect the way in which human trafficking functions in any particular area (Hamman & Fletcher 2011: 2).

5.2 Limited or no detection of offenders

Human trafficking presents different challenges from domestic crimes such as sexual assault because of its often transnational nature and the potential involvement of a network of facilitators in a number of countries. Illicit, underground activities may be hard to detect or to disrupt due to the corruption of government officials and the risks associated with tackling organised crime. In addition, it is difficult to secure prosecutions for crimes such as human trafficking (Hamman & Fletcher 2011: 3).

5.3 Under-reporting by victims

Another reason for the lack of reliable statistics is that victims, in particular adult victims trafficked for sexual exploitation, rarely

report their victimisation. The identified number of victims is much lower than estimates. Only a small percentage of victims report their victimisation or come to the attention of the authorities. Victims are often reluctant to provide information or cooperate with authorities due to fear for themselves or their families. The reluctance to come forward is often compounded by cultural and linguistic barriers in transnational trafficking that militate against reporting. Some intergovernmental and non-governmental organisations maintain databases of victims who have been assisted, repatriated and reintegrated, but this represents a small number of victims (UNODC 2006).

5.4 Lack of legislation

Factors that contribute to the difficulties regarding the quantification of trafficking at a country, regional or global level include the lack of trafficking legislation. In countries where there is no trafficking legislation, there can be no registration of a crime that does not exist (UN Human Rights Council 2009: 6). Laws and policies are the framework within which government agencies collect data on trafficking. A lack of clarity or even inconsistency in law and policy will be reflected in the definition of central concepts and data-collection practices. In several countries, there are no clear definitions of key terms such as 'trafficking', 'victim of trafficking', 'exploitation', 'sexual exploitation' and 'recruitment' either in national law or in policy. In the absence of clear and workable definitions, many agencies and individuals are collecting data based on various interpretations of what these terms mean (IOM 2007: 82).

5.5 Under- and over-reporting of cases

The crime of trafficking involves other major crimes, including fraud, kidnapping, bribery and corruption, and deprivation of liberty. In countries where there is no specific anti-trafficking law, law enforcement officials have to rely on generic offences to prosecute offenders. Law enforcement officers find it extremely difficult to record these cases as 'trafficking' where there is no supporting legal framework. There is also likely to be under-reporting even in countries where there is a specific anti-trafficking law. Data-collection systems

tend to rely heavily on law enforcement officials to make the initial assessment of whether a case is one of trafficking or not. If law enforcement officials are not trained in identifying trafficking cases, or if they make a mistake in their initial assessment, data on these cases may not be recorded or recorded incorrectly. Governments also face the challenge of over-reporting as a result of double counting of cases. Even when agencies have systems to facilitate the secure transfer of case files to another agency, there may be no systems in place to ensure that data collected by one agency is not also collected by another agency. This means that data from single cases may be counted more than once, leading to distortions in statistics (IOM 2007: 83).

5.6 The Palermo Protocol: definitional challenges

Reliable data on trafficking requires clear and workable definitions of key terms (IOM 2007: 82). The sharing of data at regional levels also requires data collection based on common understandings of key terms such as ‘trafficking’, ‘victim of trafficking’, ‘exploitation’, ‘sexual exploitation’, and ‘recruitment’ in national law and policy (IOM 2007: 82). Kruger (2010: 302) posits that, while the Palermo Protocol provides a detailed definition of human trafficking, the understanding of the definition is complicated by the different interpretations that can be given to the range of terms used in the definition, and that the Protocol’s failure to define the terms used in the definition may contribute to terminological confusion. She identifies several attendant issues arising from the lack of definition in the Protocol and the need for definition in domestic legislation (Kruger 2010: 302-14). These include the issues of transportation as a mandatory requirement; interpretation of the concepts ‘transportation’, ‘deception’, ‘abuse of a position of vulnerability’, ‘exploitation’, and ‘removal of organs’.

5.7 Trafficking vs. smuggling

There is still some confusion between human trafficking and the smuggling of migrants. There are key differences between human trafficking and people smuggling in terms of the following elements:

- Consent: Smuggled migrants generally consent to being smuggled (though their consent may be of improper means (the notion of consent is irrelevant with regard to children).
- Transnationality: Smuggling involves illegal border crossing and entry into another country. Trafficking does not necessarily involve crossing a border – the entire trafficking process can occur within one state. When a border is crossed during the trafficking process, the legality or illegality of the border crossing is irrelevant.
- Exploitation: The relationship between the smuggler and the migrant usually involves a commercial transaction and usually ends after the border crossing. The relationship between traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers.
- Source of profit: Smugglers generate profit from fees to move people. Traffickers acquire additional profits through the exploitation of victims (UNODC 2006: xiii).

5.8 Data collection and information management

The collection of data on human trafficking presupposes a definition of trafficking in national (and regional) legislation which makes clear which cases should be labelled as trafficking and which not. This will allow data to be collected accordingly.⁸ The collection of data is part of a larger process. Once collected data is compiled, it must be summarised, analysed and turned into information that can be used to make informed policy and operational decisions. This process requires implementing an appropriate and effective “information system” (IOM 2007: 4). In terms of quantitative data on trafficking victims and perpetrators, an effective Trafficking Information Management System (TIMS), as outlined by the International Centre for Migration and Policy Development (ICMPD) (2007), adopts a framework of data management that uses two databases, namely a victim-centred database, and a trafficker-centred database. The victim-centred database will collect data about trafficked persons,

8 For example, US law provides that a child below the age of 18 who is recruited into prostitution should be categorised as ‘trafficked’, while other countries (for example, the UK) do not categorise boys or girls involved in the commercial sexual exploitation of children as ‘trafficked’.

information that can help in prevention work, as well as protection and assistance of trafficking victims. The trafficker-centred criminal justice database will collect information about perpetrators of the crime of human trafficking and track their cases through the full and legal judicial process. These databases should be kept separately and managed by different sectors of the government.

5.8.1 Limited capacity to collect statistics generally and on trafficking

Many regions and countries are hampered by poverty and poor governance that affect the capacity to monitor and respond to illicit activities such as trafficking. As a result, there are limited sources of statistics on migration, in general, and trafficking, in particular. These often consist only of an NGO's records of assisted victims (IOM 2007: 4).

5.8.2 Data integration

There are particular challenges where data is collected on an agency-by-agency basis. It is an extremely difficult and resource-intensive task to combine data from different sources, when agencies are operating different data-collection systems with different definitions of key terms, different capacities, and different formats for reporting (IOM 2007: 82).

5.8.3 Poor communication between agencies

Poor communication between agencies on the issue of data collection on trafficking gives rise to a number of problems. Agencies may not be aware of what data is available from other agencies; agencies cannot reconcile data from other agencies with their own data or data from other sources, and agencies may be collecting and re-collecting data from the same cases, but in different ways. The lack of inter-agency communication results in useful, relevant data not being used to its full capacity and impedes the establishment of a more complete picture of the trafficking situation (IOM 2007: 82).

5.8.4 No oversight on 'data on trafficking'

In countries where there is no centralised knowledge coordinated by government of what data on trafficking is available from the various agencies, there are often major differences in the quantity

and quality of data being collected, compiled and reported by these agencies (IOM 2007: 83). If any data is collected, it is often collected by various institutional actors, including criminal justice agencies, victim support structures, NGOs and/or international and regional organisations. In addition, data on investigations, prosecution and convictions are often scattered across several national institutions (IOM 2007: 82).

6. The dimensions of human trafficking in South Africa

In the past decade or so, there have been some attempts to gain a deeper understanding of trafficking in South Africa and the region. A literature search revealed a limited number of sources.⁹ The most recent comprehensive attempt to assess the dimensions of trafficking in South Africa reveals that South Africa is a country of destination for victims of trafficking and, to a lesser extent, a country of transit and origin (HSRC 2010: iv-v). The four major streams of trafficking flows into the country are:

- Trafficking to South Africa from outside of Africa. South Africa is a destination country for long-distance flows of people (mainly women) trafficked from Thailand, Pakistan, Philippines, India, China, Bulgaria, Romania, Russia and the Ukraine. The main point of entry of this trafficking stream is OR Tambo Airport in Johannesburg.
- Trafficking to South Africa from within Africa. Trafficked persons from within Africa are trafficked across the extensive land borders of the country. The major African countries of origin are those immediately adjacent to South Africa, primarily Mozambique and Zimbabwe, but also Malawi, Swaziland and Lesotho. The victims of these short-distance flows are women, girls and boys trafficked for a variety of purposes. Longer distance trafficking involves victims trafficked from the Democratic Republic of

9 See Molo Songolo 2000; Martens et al. 2003; Pharoah 2006; UNESCO 2006; 2007a; 2007b; Bermudez 2008; Fellows 2008; Horwood 2009 (while this study did not focus on trafficking per se, some evidence of trafficking to South Africa was revealed); HSRC 2010.

Congo, Angola, Burundi, Ethiopia, Senegal, Tanzania, Uganda, Rwanda Kenya, Cameroon, Nigeria and Somalia.

- Trafficking within the national borders of South Africa. The largest movement of domestic trafficking is from rural areas to cities. Women, girls, boys and, to a lesser extent, men are trafficked for prostitution, domestic servitude, forced labour, begging, drug trafficking and criminal activity.
- Trafficking that uses South Africa as a transit point for victims trafficked through Lesotho and Swaziland to other foreign destinations.
- A fifth stream of trafficking people from South Africa abroad is much smaller, with only eight cases from South Africa recorded between 2004 and 2008.¹⁰ The destination countries of these eight cases included Macau, Zimbabwe, Israel, Switzerland, and the Netherlands. Similar findings are reflected in the 2011 and 2012 TIP reports (US Department of State 2011, 2012). While it is evident from all reports that trafficking in various forms is taking place, there is still little knowledge of the extent of the problem in terms of international, regional and domestic streams.

6.1 South Africa's response to human trafficking

South Africa signed the Palermo Protocol on 14 December 2000 and ratified it on February 2004.¹¹ As such, the government is, therefore, required to pass domestic legislation in order to fulfil its international obligations. The South African draft anti-trafficking legislation *The Prevention and Combating of Trafficking in Persons Bill* was brought before Parliament on 16 March 2010, after a lengthy consultative process by the South African Law Reform Commission (SALRC) since 2003. It has not yet been enacted (Hamman & Fletcher 2011: 14). It has been acknowledged, however, that "The Bill, once it becomes

10 The cases were recorded by the IOM, which works with international trafficking cases.

11 South Africa was assigned a Tier 2 status in the Trafficking in Persons report (TIP) (US Department of State 2012). Tier 2 countries are those whose governments do not fully comply with the Trafficking Victims Protection Act's (TVPA) minimum standards, but are making significant efforts to bring themselves into compliance with those standards.

an Act on Parliament and is fully operational, will be one of the most comprehensive laws in the fight against human trafficking in this country” (DJCD 2010).

The current law regarding trafficking in persons in South Africa is fragmented. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No 32 of 2007) (the Sexual Offences Amendment Act) and the Children’s Act, 2005 (Act No 38 of 2005) (the Children’s Act) contain provisional measures relating to trafficking in persons. The Sexual Offences Amendment Act 32 of 2007 criminalises an act of trafficking in persons for sexual purposes only, whereas the Children’s Act addresses the trafficking of children more comprehensively. The two Acts have limited operational scope. The provisions of the Children’s Act relating to trafficking of children came into operation in April 2010. In addition to the legislation referred to earlier, various components of the crime are criminalised under other pieces of South African law that include the Sexual Offences Act, 1957; the Riotous Assemblies Act, 1956; the Immigration Act, 2002; the Basic Conditions of Employment Act, 1997; the Intimidation Act, 1982; the Domestic Violence Act, 1998; the Films and Publications Act, 1996 and the Prevention of Organized Crime Act, 1998. Under the common law, depending on the circumstances of each case, persons suspected of trafficking could be charged with kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder, and murder (*ibid*). Fragmented and limited laws contribute to confusion regarding the definition of trafficking. Defining trafficking in all its elements in national legislation is key to identifying cases and developing policies to address the problem and secure the conviction of traffickers (HSRC 2010: 166).

Effective responses to prevent human trafficking, protect victims and prosecute traffickers depend on the availability of concrete and reliable data (HSRC 2010: 155). At present, South Africa has no official system of data management which would allow, *inter alia*, for the generation of statistics on trafficking victims and traffickers.¹² The

12 Research conducted by Van Zyl & Horne (2009: 20) reveals, for example, that child trafficking cases are not captured as ‘child trafficking’ for the simple reason that the South African Police Services (SAPS) does not have a crime code for this

only reliable numbers that have been generated are those of the IOM who assist internationally trafficked victims, but this represents a small number of victims. In addition, these statistics are not generally available due to ethical and security concerns. The issue of the lack of promulgated legislation and insufficient record-keeping not only hampers the identification of the crime, but also causes additional problems as cases are not captured and registered as trafficking cases and, therefore, no accurate information relating to the crime is available (Horne 2011: 25).

7. Conclusion

South Africa's response to human trafficking is still in its infancy. Attempts to estimate the size of the problem at both country and regional levels are still a long way off. Better estimates of numbers and flows involve systematic and well-documented collection of data from a variety of sources, on an ongoing basis of agreed core items (in particular, definitions), across regions (domestic and cross-border) and by stakeholders within countries (Putt 2007: 6). At present, the greatest impediment to the collection of quantitative data on trafficking (with particular reference to the number of victims in the identified trafficking streams) is the lack of a comprehensive stand-alone national law on human trafficking. Once promulgated, such a law would allow for a human trafficking database or human trafficking information management or reporting system which allows law enforcement, prosecutors, victim service providers, labour inspectors, and others working collaboratively to enter information about cases of trafficking (IOM 2009: 11).

crime. The cases are captured as abduction or kidnapping, as 'child trafficking' is not found on the system.

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