

# Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the critical role of legislation

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## Summary

*This article examines the perspectives of governmental and non-governmental stakeholders in South Africa on the dynamics of human trafficking in South Africa, and on efforts to protect the human rights of rescued victims of human trafficking prior to the promulgation of human trafficking legislation in the country. The authors seek to understand the range of views and approaches of stakeholders to trafficking, including possible links to HIV, as human trafficking is commonly discussed in the media, but empirical research on the scale, dynamics, and impacts of trafficking in South Africa is scarce. This exploratory situation analysis involves desk review and 24 key informant interviews, using purposive and sequential referral sampling. Respondents included government departments and non-governmental organisations working at a border-crossing site (Musina), and two major destination sites for irregular migrants, including trafficked people (Johannesburg and Cape Town).*

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*Almost all respondents reported that human trafficking is significant and complex, and that both cross-border and internal movement of trafficked victims violate victims' rights in several ways. While they suffer at the hands of organised crime syndicates, their rights are further violated even after rescue, prior to the recently-promulgated human trafficking legislation in the country. Victims' access to justice is also either delayed or denied in many cases due to the inability to prosecute the perpetrators. The study concludes that, despite the recent giant step in the right direction in promulgating human trafficking legislation in South Africa, there is a need for further efforts by the South African government to take additional proactive and practical measures for optimum effectiveness of the law without which the goal of the Act may remain a tall dream.*

**Key words:** *Migration; irregular migration; human trafficking; human trafficking law; South Africa*

## 1 Introduction

Human trafficking is attracting global concern. Article 3(a) of the United Nations (UN) Convention Against Transnational Organised Crime (UNTOC) defines trafficking in persons as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of 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 purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of 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.

Human trafficking and smuggling have various human rights consequences.<sup>1</sup> Victims are subjected to various physical, sexual and emotional abuses.<sup>2</sup> The UN Convention added two Protocols

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- 1 J Bhabha 'Trafficking, smuggling, and human rights' *Migration Information Source: Fresh thought, Authoritative data, Global reach* 2005 [http://www.childtrafficking.com/Docs/migration\\_funda\\_1007.pdf](http://www.childtrafficking.com/Docs/migration_funda_1007.pdf) (accessed 4 July 2012); J Fitzpatrick 'Trafficking as a human rights violation: The complex intersection of legal frameworks for conceptualising and combating trafficking' (2003) 24 *Michigan Journal of International Law* 1143; A Gallagher 'Human rights and the new UN Protocols on Trafficking and Migrant Smuggling: A preliminary analysis' (2001) 23 *Human Rights Quarterly* 975; AD Jordan 'Human rights or wrongs? The struggle for a rights-based response to trafficking in human beings' (2002) 10 *Gender and Development* 28-37; K Kim & K Hreshchshyn 'Human trafficking private right of action: Civil rights for trafficked persons in the United States' (2004-2005) 16 *Hastings Women's Law Journal* 1-36; J Salt 'Trafficking and human smuggling: A European perspective' (2000) 38 *International Migration* 31-56.
- 2 F Curtol *et al* 'Victims of human trafficking in Italy: A judicial perspective' (2004) 11 *International Review of Victimology* 111-141; C Friesendorf 'Pathologies of security governance: Efforts against human trafficking in Europe' (2007) 38 *Security Dialogue* 378-402; A Gallagher & P Holmes 'Developing an effective criminal justice response to human trafficking' (2008) 18 *International Criminal*

(Palermo Protocols) to UNTOC in the year 2000.<sup>3</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children consists of 20 articles, starting with general to specific provisions in relation to human trafficking. Specifically, article 5 criminalises trafficking in persons and mandates state parties to enact legislation to criminalise human trafficking. Article 6 provides for the assistance and protection of human trafficking victims through the provision of physical and psychological needs, as well as the social recovery of victims, including housing, counselling, information, safety, medical care, employment, educational and training opportunities. Also, article 7 provides for the conferment of refugee status on rescued victims at the receiving countries, while article 8 states procedures and responsibilities for the repatriation of rescued victims. In article 9, state parties are mandated to prevent human trafficking through research, information, mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons. State parties are also to initiate bilateral and multilateral co-operation with affected countries for the effective control of the crime. Article 10 encourages information exchange among affected countries, while article 11 mandates state parties to strengthen border control as one of the means of preventing human trafficking.

In addition to this, the Protocol against the Smuggling of Migrants by Land, Air and Sea also provides clarifications on human smuggling and trafficking and prohibits human smuggling and trafficking by land, air and sea. Article 3 of the Protocol states:

‘Smuggling in migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident.

Article 5 states that illegal migrants themselves must not be held responsible for the crime of smuggling that they are subject to, while article 6 defines the scope of criminalisation of human smuggling to include producing, procuring, providing or possessing a fraudulent

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*Justice Review* 318-343; JC Hathaway ‘The human rights quagmire of ‘human trafficking’ (2008-2009) 49 *Virginia Journal of International Law* 1-59; CRJ Rijken & D Koster ‘A human rights-based approach to trafficking in human beings in theory and practice’ 2008, <http://ssrn.com/abstract=1135108> (accessed 4 July 2012); TD Truong & MB Angeles ‘Searching for best practices to counter human trafficking in Africa: A focus on women and children’ Report commissioned by United Nations Trafficking in Scientific and Cultural Organisation, <http://www.unesco.org/shs/humantrafficking> 2005 (accessed 4 July 2012).

3 United Nations (2000a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, <http://www.unodc.org/unodc/treaties/CTOC/>; United Nations (2000b), Protocol against The Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime [https://www.unodc.org/documents/middleeastandnorthafrica//organised-crime/UNITED\\_NATIONS\\_CONVENTION\\_A\\_GAINST\\_TRANSNATIONAL\\_ORGANIZED\\_CRIME\\_AND\\_THE\\_PROTOCOLS\\_THERE\\_TO.pdf](https://www.unodc.org/documents/middleeastandnorthafrica//organised-crime/UNITED_NATIONS_CONVENTION_A_GAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERE_TO.pdf) (accessed 4 July 2012).

travel or identity document for the purpose of smuggling of migrants and enabling a person to remain in the destination country illegally. Articles 7 to 9 deal extensively with measures related to the smuggling of migrants by sea, including the security and humane treatment of persons on board as well as the rights and obligations of the coastal states, while articles 10 to 18 deal extensively with measures to prevent human trafficking or smuggling, co-operation among state parties affected and other related measures.

The Palermo Protocols, therefore, seek to provide preventive, protective as well as prosecution-focused responses to human trafficking as a means of guaranteeing the human rights of victims. With these Protocols, state parties become obliged to devise preventive measures (including legislation and strengthening relevant law enforcement agencies), to protect the rights of rescued victims (for instance, medical care, to be treated as victims and not criminals, protection from recapturing by traffickers, granted refugee/asylum status in the case of foreigners, and so on) and to prosecute the perpetrators (traffickers, pimps, brothel owners, law enforcement agents who connived with perpetrators, and so on). In order to achieve this, state parties were enjoined to domesticate the Palermo Protocols, as incorporation and domestication of the Palermo Protocols will enable states to co-operate and collaborate more effectively and will promote the protection of victims' rights.<sup>4</sup>

In light of this, many countries of the world, including African countries, have specific legislation which criminalises human trafficking and smuggling in line with the provisions of the Palermo Protocols. For instance, Nigeria,<sup>5</sup> Ghana<sup>6</sup> and Tanzania,<sup>7</sup> among other countries, enacted various laws to combat human trafficking.

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4 SC Inglis 'Expanding international and national protections against trafficking for forced labour using a human rights framework' (2001) 55 *Buffalo Human Rights Law Review* 55-104; A Joshi 'The face of human trafficking' (2002) 13 *Hastings Women's Law Journal* 52; G King & CJL Murray 'Rethinking human security' (2001) 116 *Political Science Quarterly* 585-610; N Ray 'Looking at trafficking through a new lens' (2006) 12 *Cardozo Journal of Law and Gender* 909; J Todres 'Law, otherness, and human trafficking' Georgia State University College of Law, Legal Studies Research Paper 2009-07, <http://ssrn.com/abstract=13625421>; (2009) 49 *Santa lara Law Review* 605-672.

5 Nigerian Child Rights Acts 2003 [http://www.nassnig.org/nass/acts.php?pageNum\\_bill=2&totalRows\\_bill=194](http://www.nassnig.org/nass/acts.php?pageNum_bill=2&totalRows_bill=194) (accessed 23 December 2012); Nigerian Trafficking in Persons Prohibition and Administration Act 2003 [http://www.nassnig.org/nass/acts.php?pageNum\\_bill=2&totalRows\\_bill=194](http://www.nassnig.org/nass/acts.php?pageNum_bill=2&totalRows_bill=194) (accessed 22 December 2012).

6 Ghana Children's Act 560 of 1998 <http://www.parliament.gh/library.php?id=37> (accessed 23 December 2012); Ghana Human Trafficking Act 694 of 2005 <http://www.parliament.gh/library.php?id=37> (accessed 23 December 2012).

7 Tanzania Act of the Child 2009 <http://www.parliament.go.tz/index.php/documents/acts/all/all/> (accessed 4 January 2013); Tanzania Anti-Trafficking in Persons Act 2008 <http://www.parliament.go.tz/index.php/documents/acts/all/all/> (accessed 4 January 2013).

South Africa<sup>8</sup> has also enacted various laws related to child care, child justice and sexual offences and has only recently promulgated the Prevention and Combating of Trafficking in Persons Act,<sup>9</sup> which is meant to comprehensively address the problem. It is important to note that having human trafficking legislation may not eradicate human rights abuses associated with trafficking, although it has the potential to improve the rights enjoyed by any rescued victim. This calls for additional proactive and practical measures to be put in place for optimum effectiveness of the new law. This article aims at providing evidenced-based information and perspectives of stakeholders on the violation of human rights of victims, in general, and the rights of rescued trafficked victims, in particular, in the country prior to the promulgation of the Act, which may serve as a useful guide for such proactive and practical measures. This baseline information and perspectives of stakeholders are also important as it could provide part of the basis for the assessment of the effectiveness of the newly-promulgated law in the future and point to the areas in which additional intervention may be required.

## 2 Study design

### 2.1 Methods

This study employed an exploratory qualitative research design involving desk review and 24 key informant interviews using purposive and sequential referral sampling, as described below, in the context of a programme of Human Immunodeficiency Virus (HIV) and Acquired Immune Deficiency Syndrome (AIDS) Research in Complex Contexts of Inequality (HARICCI), underway at the University of the Western Cape's (UWC) Centre for Research in HIV and AIDS. Migration – including forced migration and human trafficking – and its relationships to HIV and related health and human development issues are some of the areas of focus of the HARICCI programme.

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8 South African Child Care Act 1983 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120); South African Prevention of Organised Crime Act 1998 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120) (accessed 4 January 2013); South African Children's Act 38 of 2005 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120) (accessed 4 January 2013); South African Children's Amendment Act 2007 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120) (accessed 4 January 2013); South African Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120) (accessed 4 January 2013); South African Child Justice Act 2008 [http://www.parliament.gov.za/live/content.php?Category\\_ID=120](http://www.parliament.gov.za/live/content.php?Category_ID=120) (accessed 4 January 2013).

9 South African Prevention and Combating Trafficking in Persons Act 2013 <http://www.justice.gov.za/legislation/acts/2013-007.pdf> (accessed 7 August 2014).

## 2.2 Study setting

The study was an entirely qualitative study with primary data collected through the use of key informant interviews in three locations: Cape Town in the Western Cape, Johannesburg in Guateng and Musina in the Limpopo province in South Africa. Johannesburg, Pretoria and Cape Town are major destinations for irregular migrants to South Africa, while Musina, as a border town, is a major point of entry for irregular migrants into the country.<sup>10</sup> In addition, there are also many non-governmental organisations (NGOs)<sup>11</sup> working on either human trafficking or HIV/AIDS in the locations selected for this study.

## 2.3 Study participants

The study explores the issue of human trafficking, but it is a baseline situation analysis based on key informant interviews with knowledgeable experts who are directly working in this field. The recruitment of key informants for the interviews therefore took place at various levels. At the first stage, a mapping of NGOs and inter-governmental agencies working on human trafficking and/or HIV/AIDS in the study locations was carried out. A combination of internet searching, review of media reports, and 'snowballing' techniques, through which respondents to semi-structured questionnaire interviews (face-to-face or by e-mail) were employed to map relevant organisations. This allowed us to describe the geographical spread as well as the main mandates of the NGOs. Officials at the level of directors, assistant directors or programme managers on human trafficking or HIV/AIDS, who had been working with the organisation for at least two years, were purposively selected for in-depth interviews. The NGOs and inter-governmental agencies included in Cape Town are AIDS Legal Network, Activist Networking Against the Exploitation of Children and Women (ANNEXCDW), Justice Acts, Molo Songololo, and International Organisation for Migration (IOM). In Johannesburg and Pretoria, the organisations are Community AIDS Response (CARE), IOM, Pretoria, Child Welfare South Africa, Johannesburg Child Welfare, MSF (Doctors without Borders), the Red Cross, Right to Care, Sonke Gender Justice and the Treatment Action Campaign (TAC). In Musina, a community leader was selected in addition to organisations such as Centre for Positive Care (CPC), Home-Based Carers, IOM, MSF and the Red Cross.

The second stage of selecting the study participants involved the mapping of all government agencies working on human trafficking and/or HIV/AIDS with a possible link to irregular migration or protection of victims of sexual exploitation. Applications for

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10 International Organisation for Migration (IOM) – Migrants Needs and Vulnerabilities in the Limpopo Province, Republic of South Africa. Report on Phase Two. February–March 2009 [http://www.irinnews.org/pdf/zimbabwe\\_iom.pdf](http://www.irinnews.org/pdf/zimbabwe_iom.pdf) (accessed 15 January 2013).

11 The names of NGOs selected are provided under study participants.

permission to conduct the study were then sent to the agencies, as most departments require official permission before individual staff can participate in research. The government agencies included in this study are the Department of Health (Gauteng Province); the Department of Social Development (Gauteng Province); the Department of Home Affairs (Cape Town); the South African Parliament (Cape Town); the South Africa National AIDS Council (SANAC); and PHC Mobile Clinic, Musina. The permission requested from the South African Police Services was not granted, while the National Prosecuting Authority did not respond to the application despite persistent reminders over a period of five months. These two agencies were therefore not included in this study.

#### **2.4 Data collection**

Before the field work commenced, interview guides for the different stakeholders were developed in English. Information sheets about the study were sent to all the selected organisations in advance, while appointments were booked telephonically with all the organisations. The interview guides were divided into two sections. The first section was based on obtaining basic information about the organisations selected for this study, while the second section focused on the key informants' understanding of human trafficking, the causes of human trafficking, human trafficking and other related problems, and the challenges of combating human trafficking. It also elicited information on any perceived relationship between human trafficking and HIV, and finally invited reflection on strategies that could be used to combat human trafficking and HIV and AIDS in South Africa. Each interview session lasted for an average of 55 minutes. Questions were used to guide the discussion during the course of the discussions.

#### **2.5 Data analysis**

The analysis of data took place in two stages. A rapid analysis of the field notes was done first, and this suggested patterns in the data and helped in developing themes and codes for the second phase of the analysis. In the second phase of the analysis, data collected were transcribed and the transcripts were edited for accuracy. The transcripts were imported to Atlas.ti 7 software for qualitative analysis, and themes were developed in line with the objectives of the study. Transcripts were coded for new categories until the level of saturation was reached (that is, no new ideas emerging from the data). Analysis and presentation include illustrative quotations as well as thematic and network mapping of human trafficking and HIV and other related problems.

#### **2.6 Ethical considerations and implications**

All interviews were undertaken with the informed written consent of participants. Confidentiality and anonymity were maintained through the secure storage of data in password-protected computers and

under lock and key, and by using pseudonyms or generic summarisation of the data. Ethical clearance was obtained from the UWC Senate Research Committee.

No interview was conducted with victims of human trafficking in the course of this baseline study. Research on illegal activities and illegal migrants, including victims of human trafficking and particularly children, raises a number of potential ethical risks for all participants, for instance, illegal migrants' fear of being exposed to and arrested by security agents. For this reason, a baseline situation analysis of publicly-available documentation and interviews with publicly-accessible key informants is essential prior to further research to familiarise the researcher with the field and to have insights into possible dangers and strategies to minimise them. This study itself is unlikely to cause any embarrassment or discomfort to study participants. It will benefit study participants as they will learn about other perspectives and efforts in this difficult field. However, the primary intended beneficiaries are victims, including children who are suffering from the impact of human trafficking.

The study has begun to describe the scale and nature of the problem. Some suggestions on ways to address the problem more effectively have been made. It has also provided the foundation on which a larger empirical study on human trafficking, HIV and various intervention strategies can be developed.

### 3 Study results

#### 3.1 Human trafficking in South Africa

Prior to the promulgation of trafficking law in South Africa, the existence of human trafficking in the country was affirmed by most stakeholders, despite continuous denials by some government agencies, especially parliament. Respondents reported that there was not enough advocacy or campaigns to address the problem. Some stakeholders believed that human trafficking was a serious problem in South Africa, while others continued to query its magnitude due to a lack of data. This, in turn, negatively influenced government's political will to combat the problem. The quotations from key informants below revealed both arguments in favour of and against the existence of human trafficking in South Africa. The quotations supporting the view that human trafficking exists in South Africa include:

Trafficking is something that happens within the country (South Africa) and from other countries to South Africa too. It is a crime that exists and it is a crime that is very silent. There is not much research that takes place. As a result, people think that it doesn't exist.<sup>12</sup>

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12 Interview granted to the authors during field work by an international NGO, Pretoria, South Africa.



We conducted a study looking at trafficking of children in the Western Cape. What we found is that trafficking of children happens often than we would like to believe or than has been identified because of the complex nature. It happens right under people's noses and they don't recognise trafficked victims.<sup>13</sup>

A parliamentarian, however, questioned the existence of the problem:<sup>14</sup>

Unfortunately, it is something [human trafficking] that I have no idea about. As much as it is being mentioned that there is human trafficking, I do not know if this is really a problem in South Africa.

Although events may have overtaken these arguments for or against human trafficking, it helps to understand the political environment leading to a prolonged delay in promulgating the enabling law against the crime.

### 3.2 Human trafficking syndicates across and within the borders of South Africa

The respondents' reports help to build a more comprehensive picture of the many role players involved in human trafficking in South Africa. Its complexity makes the crime difficult to combat. The role players include recruiters who often disguise themselves as labour brokers; transporters who may knowingly or unknowingly be involved; and brothel owners, night club owners, massage parlours and other business owners. It may also include medical doctors who help the traffickers to provide basic health care services for the victims, some individual households and other end users of trafficked victims' services. The syndicates reported to be operating within the country include the Russian Mafia, the Chinese Mafia, South African syndicates, Zimbabwean syndicates, Nigerian syndicates and Czech Republic syndicates. There are also pimps who own their girls and have territories where they operate.

At the border between Zimbabwe and South Africa, there are trafficking syndicates called *Ngumaguma* or *Malaisha* (traffickers), who pretend to assist people to cross into South Africa illegally but who in the end exploit them. Human trafficking syndicates have many tactics and are dynamic in their operations. Below are some specific quotations from key informants:

When the Ngumagumas first meet their would-be victims, they will tell them that there is plenty jobs and plenty money in South Africa. They will then ask their victims to pay high prices before they are assisted to cross over because of the presence of the soldiers and the police. The would-be victims are then told to stay in a place while the Ngumagumas do the survey around to know where the soldiers and the police are hiding. When

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13 Interview granted to the authors during field work by a local NGO, Cape Town, South Africa.

14 Interview granted to the authors during field work by a leading member of the South African Parliament.

it is dark, the Ngumaguma comes back and put their victims in a car, van or taxis and that is when the trafficking starts. They are unable to see the road or know where they are travelling to because it is dark until the traffickers stop at a destination where the slavery starts.<sup>15</sup>

The traffickers use misrepresentations with regards to job offers. They use fictitious web pages for job offers. They also use Facebook and electronic media to disguise the enterprise or whatever the job might be. Once recruited, they will tell you that you are coming to work at room 504 for example as housekeeper only to find out when you get to room 504 that you will be working as sex worker generally. This was one of the ways they systematically recruit their victims.<sup>16</sup>

Some key informants narrated their personal encounters or real life stories with traffickers operating at the border and within South Africa, two of which are presented below:

**Case 1: Interview with Home Affairs Department officer, Cape Town**

**Interviewer:** Can you please narrate any 2 specific encounters that you have had with traffickers?

**Respondent:** Yah, there were 3 personal encounters I have had with the traffickers because what happens is that by the time the case got to us as investigators we needed to check the status determination, repatriation for the victims and all those types of things. We don't really deal with frontline interventions. Frontline intervention is done by our counterparts from South African Police Service. There is occasion when I dealt with the traffickers or possible traffickers from a night club where 2 foreign nationals from Yugoslavia were taken to the high court for the interdict inhibiting them from leaving South Africa. The motivation for the high court was that they need to pay the debt to the particular institution. At the moment I cannot divulge the identity of these people. Just to give you a brief rundown of what happens, they got recruited in Yugoslavia. The employer offered to pay them their flights from Yugoslavia to South Africa and promised to pay upfront for their accommodation. Once they start earning from their employer, they start paying back the flight ticket and they have to pay the portion for rent and accommodation. That means they owe their prospective employers and when they wanted to go back the employer is claiming the money they owed him and refused them (victims) boarding to the flight. So that happens in the case of the 2 ladies.

**Interviewer:** I'm sure the court was not aware of the type of bondage they were in.

**Respondent:** Yah, this is why at the moment now migration act has been amended because of certain experiences within our justice system. Like I said there is exploitation of the legal system and if you have the understanding of civil litigation you will know how it could be exploited.

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15 Interview granted to the authors during field work by a local NGO in Musina, South Africa.

16 Interview granted to the authors during field work by an officer in the Department of Home Affairs, Cape Town, South Africa.

### **Case 2: Interview with international NGO in South Africa**

There is this issue that they call pay forward. Pay forward means that you pick up somebody without money and you communicate with the relative at your destination that I have this lady or this gentleman he says he knows you and doesn't have money. Do you agree that we transport him/her and deliver him/her at your house? Our normal fare is R150 from Musina to Pretoria. This is the pay forward and the person may be documented or undocumented.

This communication for some it's genuine where the prices will not change and on delivery you will go. On the other hand, some see more profit in having to do the deal by raising the price before getting to the destination. That communication keeps the victims thinking that they are safe since they have been communicating with my brother or cousin. Sometimes he (the trafficker) is not even communicating with anyone he is just calling an anonymous person but the victim will assume he is calling his/her relative. He doesn't give you a chance to talk to that person. He doesn't give you a chance to say hello I'm fine I have eaten he ask you to give him the number and he makes a phone call. After they have dropped everyone at the destination, they disappear with the victim.

At one point when I took a taxi from Musina here, I was meant to drop off in Pretoria, it took another route, a different route; they dropped me in Hillbrow somewhere in Johannesburg. When we got there, there was this huge man who came out from a house to the taxi and started screening the passengers before you can be allowed to go. He said you are not bringing your bags out until you have paid us our money. Did you pay? Yes I have paid. Are you documented? Yes I'm documented. He will check with the driver and if the driver says yes then you are released. You can't stop to see what is happening to others; you can't do anything you just have to go. Anybody who had not paid who was going to pay forward was taken to a building. I was sitting somewhere at the back with a lady carrying her child, they told her to leave her child, the bags and everything and look for her husband to come and pay her transport fare. She said but you spoke to my husband and he said he was going to pay, why can't you phone him and say we are here. They said we can't talk to your husband because we didn't give your husband a ride. I left the scene and quickly called my workmate in Johannesburg. I took the number plate of the taxi and reported to the Police but did not get a feedback. We couldn't do any follow up, because we live in Musina but the incident occurred in Johannesburg. It was hectic and these are the cases that fall within the gaps.

### **3.3 How, specifically, does human trafficking violate human rights?**

All the key informants in this study believed that human trafficking has many human rights consequences well beyond the obvious offence of people being forced to move against their will. The victims are denied free movement, are used and are exploited. The participants noted that trafficked people, especially children, are denied access to schooling and their normal development processes are distorted. They are also removed from social support networks. They have no control over their lives and their labour. Respondents noted that, generally, many trafficked victims are ill-treated and subjected to inhuman conditions by their captors. The quotations below reflect the human

rights consequences of human trafficking from the perspectives of the stakeholders.

Their human rights are violated because they are kept and most of them, especially females, are used for sexual exploitation or are exposed to sexual abuse, which make them vulnerable to STIs including HIV.<sup>17</sup>

Most children who are trafficked have not completed their schooling for example and it removes them from opportunities to complete their education.<sup>18</sup>

### **3.4 Which specific human rights of the victims were violated in South Africa prior to the promulgation of the Prevention and Combating Trafficking in Persons Act?**

Before the promulgation of the new law against human trafficking, the South African Constitution enshrined the rights of all people in South Africa.<sup>19</sup>

Also, the South African Children's Act<sup>20</sup> prohibits the use, procurement or offer of a child for slavery or practices similar to slavery, including debt bondage, servitude and serfdom, forced or compulsory labour or the provision of services, and for purposes of commercial sexual exploitation or trafficking. Sections 15, 16 and 17 of the Criminal Law (Sexual Offences and Related Matters) Act<sup>21</sup> criminalise the sexual exploitation of children in South Africa, while sections 70 and 71 specifically criminalise human trafficking of both adults and children for sexual exploitation and provide for certain services, including access to health facilities and free HIV/AIDS services to victims of sexual exploitation. Efforts therefore were made to ask key informants about specific violations of human rights of the victims in South Africa. Based on the responses from the key informants, the rights of the victims violated can be categorised into three types. These include the denial of justice for many rescued victims, the perpetration of various crimes against victims and their use to perpetrate crime, and the negative consequences of human trafficking on the victims' health and their lack of access to health facilities.

17 Interview granted to the authors during field work by a local NGO in Johannesburg, South Africa.

18 Interview granted to the authors during field work by a local NGO in Cape Town, South Africa.

19 The Bill of Rights in the Constitution of the Republic of South Africa, 1996 <http://www.gov.za/documents/constitution/1996/a108-96.pdf> (accessed 21 November 2013).

20 Sec 141 of the South African Children's Amendment Act 41 of 2007 <http://www.polity.org.za/.../children039s-amendment-act-no-41-of-2007-2008> (accessed 21 November 2013).

21 Secs 15, 16, 17, 70 & 71 of the Criminal Law (Sexual Offences and Related Matters) <http://www.justice.gov.za/legislation/acts/2007-032.pdf> (accessed 21 November 2013).

The majority of the key informants considered the lack of human trafficking legislation as contributing to human rights violations. A key informant expressed as follows:<sup>22</sup>

There were two pieces of legislation that speak to human trafficking. One is the Children Act which defines what it is but does not define the penalty. Then we have Sexual Offences Act which speaks to trafficking for sexual purposes only. If the victim of human trafficking is found and those two cannot be used, we encounter difficulties. For example, when someone is found guilty for labour trafficking, the most they will get is a fine from the Department of labour. Since they have the option of fine, they will say okay I will pay fine. The place will close down but they will open up somewhere else and continue with their business.

Most rescued victims in South Africa, therefore, either have no access to justice or were denied justice due to the difficulties involved in the prosecution of perpetrators. The quotations below show some cases of denial of rights to justice.

Some cases have been in the court for the past 6 years without any meaningful progress. Some of the people that are testifying are married and are no longer interested because their husbands don't know that they were trafficked while some have died.<sup>23</sup>

There are only 2 reported cases that have been prosecuted successfully in South Africa, one in Pretoria and one in Mitchell's plain, Cape Town.<sup>24</sup>

It was also evident in this study that human trafficking either occurs together with, or was associated with, other forms of crime in South Africa. In such crimes, the victims were either used for the crime or the crime perpetrated against them. The key informants noted that trafficked victims were used for drug trafficking, arms smuggling, and gang robbery. They were also victims of gender-based violence, especially sexual abuse, child prostitution, child abuse and xenophobic attacks. The key informants noted that many of the women and children used for sexual exploitation were forced to use drugs and this has led to drug addiction in many rescued victims. They were also exploited as they work long hours for little pay as cheap labour with poor working conditions. The quotations from some key informants show other crimes related to human trafficking in which trafficked victims were either the perpetrators or victims of crime, as reported by the respondents.

The same people are the ones involved in rhino trafficking and drug trafficking.<sup>25</sup>

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22 Interview granted to the authors during field work by a local NGO, Cape Town, South Africa.

23 Interview granted to the authors during field work by the Department of Social Development, Gauteng, South Africa.

24 Interview granted to the authors during field work by an officer of Department of Home Affairs, Cape Town, South Africa.

25 Interview granted to the authors during field work by the Department of Social Development, Gauteng, South Africa.

Some human trafficking victims are also used as gangsters, armed robbers and in other crimes. They are usually put in certain spot so that when people comes they steal and rob them, working for that particular boss.<sup>26</sup>

It's one of the biggest criminal activities that you find in syndicates. They sell drugs, arms and ammunition, buying and selling of human beings.<sup>27</sup>

Finally, the majority of the key informants reported that most trafficked victims suffer from a range of health problems, including physical injuries, depression, emotional shock and post-traumatic stress disorder leading to psychiatric problems. Some rescued victims have been found to be HIV positive. These health problems are combined with the difficulty of accessing health facilities by irregular migrants, including trafficked victims, despite government policy to provide health care to all foreigners irrespective of their migrant statuses. One informant reported:<sup>28</sup>

We know that there were many migrants who could not access public health facilities because they don't have papers especially when the deportation of irregular migrants from Zimbabwe started again.

Furthermore, key informants noted that a lack of legislation on human trafficking was responsible for a lack of resources specifically allocated to the combating of the crime in South Africa, since it was difficult to have budgetary allocation to activities that were yet to be recognised by law. This had further negative effects on the care received by any rescued victims as there was no dedicated shelter for them. The victims were therefore often placed in the same shelter with children in conflict with the law, abused children and juvenile delinquent children, conditions which often do not meet the needs of the victims. All these problems involve the violation of the human rights of the majority of the rescued victims of human trafficking in South Africa. They call for special attention in the implementation of the new law against human trafficking in the country.

#### 4 Discussion

This article examined the human rights of rescued victims of human trafficking violated in South Africa prior to the promulgation of human trafficking law from the perspectives of stakeholders working in the field.

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26 Interview granted to the authors during field work by a local NGO, Musina, South Africa.

27 Interview granted to the authors during field work by an international NGO, Cape Town, South Africa.

28 Interview granted to the authors during field work by an international NGO, Johannesburg, South Africa.

The study affirmed the existence of human trafficking in South Africa, despite a lack of sufficient data,<sup>29</sup> as concluded by earlier studies.<sup>30</sup>

As a state party to most UN conventions on human trafficking, including the Palermo Protocols, 2000, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC), South Africa is obliged to prevent, protect and prosecute human trafficking in all its ramifications. This study revealed that trafficked victims' rights were violated in two ways in South Africa prior to the promulgation of enabling law against human trafficking. While their rights are violated by the human trafficking syndicates by abusing them in various ways, the rights of rescued victims were further violated due to a lack of legislation on human trafficking. The basic minimum protection and care required by the UN conventions (Palermo Protocols) were not available: Justice was either delayed or even denied as they lack access to basic facilities, including health services. This reaffirms the findings of earlier authors that global political determinants of health have negative effects and are unfair to some groups of people, including the irregular migrants, and that there is a need for stronger cross-sectoral global action for health.<sup>31</sup>

It is important to note that the newly-promulgated Prevention and Combating of Trafficking in Persons Act has many benefits to offer to the victims as well as the country while it has the potential to reduce the incidence of human trafficking and improve the rights enjoyed by rescued victims. The three main focuses of the UN Convention on human trafficking include the protection of rescued victims as well as the prevention and prosecution of the crime, and many aspects of these have been addressed by the Act. Sections 6 to 9(3) of the Act address the issue of prevention of human trafficking by prohibiting any act that directly or indirectly facilitates or promotes the crime. These include the confiscation or destruction of travelling documents of victim(s) with the intention of exploitation; the use of services of human trafficking victim(s); the transportation of victim(s); and the provision of facilities to illegally-held victim(s) in bondage, among

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29 International Organisation for Migration 'Breaking the cycle of vulnerability. Responding to the health needs of trafficked women in East and Southern Africa' IOM, Pretoria, South Africa (2006) <http://iom.org.za> (accessed 21 November 2013).

30 A Adepoju 'Review of research and data on human trafficking in sub-Saharan Africa' (2005) 43 *International Migration* 75-98; International Organisation for Migration (n 29 above); SS Kreston 'Trafficking in children in South Africa. An analysis of the pending legislation' (2007) 8 *Child Abuse Research in South Africa* 35-50; HB Kruger 'Combating human trafficking: A South African legal perspective' unpublished LLD thesis, University of the Free State, 2010; V Lalu 'Considering decriminalisation of sex work as a health issue in South Africa' (2005) 8 *The Experience of SWEAT. Research for Sex Work* 11-13.

31 OP Ottersen *et al* 'The political origins of health inequity: Prospects for change' (2014) 383 *The Lancet* 630-667 [http://dx.doi.org/10.1016/S0140-6736\(13\)62407-1](http://dx.doi.org/10.1016/S0140-6736(13)62407-1) (accessed 11 February 2014).

others. Section 37 provides for international co-operation, while section 41(d) provides for an enlightenment programme for potential victims of human trafficking, as part of the efforts to prevent the crime.

Sections 9(4) to 14 of the Act provide for the appropriate prosecution of the crime by stipulating appropriate penalties, including a fine or imprisonment for varying periods depending on the level of involvement of the offenders

Sections 15 to 23 provide for the protection of the victims by prohibiting unauthorised access and criminal prosecution of victims, the granting of access to health services and other basic needs, while sections 24 to 28 provide the conditions and minimum standard for the accreditation of organisations that can provide various support services to the victims of human trafficking. Sections 29 to 30 further recommend appropriate compensation for the victims and the state, while sections 31 to 36 stipulate a humane procedure for the repatriation of internationally-trafficked victims, the safe return of internally-trafficked victims and their protection upon return to the family. The Act finally provides for procedures for monitoring progress and ensuring compliance,<sup>32</sup> thereby having comprehensive provisions to address the problem of human trafficking as envisioned by the Palermo Protocols.

Despite this laudable and giant step already taken in the right direction in promulgating the law, the government needs further proactive measures, especially on the prevention of human trafficking. This calls for urgent attention and careful planning of the South African government to further enhance the recently-promulgated Prevention and Combating of Trafficking in Persons Act. At present, the Act does not provide for a support programme to ensure the proper reintegration of the victims, especially the internally-trafficked after being returned to their families. This is necessary as there may not have been any changes in the conditions that pushed them out of their homes and returning to such conditions without appropriate support may predispose them to re-trafficking. Although the Act provides for the education of the public in languages they will understand<sup>33</sup> and the training of relevant stakeholders who deal with trafficked victims,<sup>34</sup> there is also a need to strategically target the potential victims and returned victims in the case of internally-trafficked persons for economic empowerment. This has the potential to reduce vulnerability and proper reintegration, thereby enhancing the effectiveness of the newly-promulgated law.

There is also the need to incorporate associations of various transporters into South African Anti-Trafficking Task Team for proper

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32 Secs 41-44 South African Prevention and Combating of Trafficking in Persons Act 2013.

33 Sec 41(d).

34 Sec 44(10).



monitoring and checkmating the activities of transporters (land, air and sea). This could encourage measures to control the activities of their members who may intentionally or unintentionally wish to transport trafficked victims. Members of the association may also have better knowledge about the illegal routes of traffickers and may facilitate prompt reports of suspected victims and transporters (members and non-members of their associations) engaging in transporting victims.

## **5 Conclusion**

Despite the recent giant step in the right direction in promulgating human trafficking legislation in South Africa, there is a need for further efforts by the South African government to take additional proactive and practical measures for optimum effectiveness of the law. Without these, the prevention of the human trafficking crime and the protection of the rights of victims – and even rescued victims – as envisioned in the new law will remain a hard dream to achieve in the country.