

Searching for Best Practice

A Study on Trafficking in Persons in West Africa and South Africa

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Abstract

High levels of human trafficking remain a serious cause for concern, both globally and in many regions. On the African continent, Southern African countries, specifically South Africa, and countries in West Africa, are susceptible to human trafficking, because of their status as countries of origin, transit and destination. Employing an exploratory and comparative qualitative research design, the purpose of this study is to show why legislation alone is not enough to combat trafficking in persons. By sharing best practice in the regions and acknowledging that the fight against trafficking cannot be seen as an isolated domestic issue, this article advocates for a transnational collaborative approach in combating trafficking. A key finding is that African countries must include and build on the strength of global anti-trafficking initiatives, yet supplement this work within African-driven initiatives, whilst supporting and facilitating the integration of a human-rights perspective into national and regional interventions.

Introduction

Despite global attention and regulation,¹ trafficking in persons (TIP) is a growing trend² that affects millions of people.³ It is an offence that is often closely linked to other serious crimes,⁴ like drug trafficking,⁵ smuggling⁶ and terrorism.⁷ The transnational nature of these offences consequently links all countries and areas in a network of international crime.⁸ Considered to be one of today's leading criminal activities,⁹ TIP transforms victims into objects of exploitation,¹⁰ with girls, boys, men and women being sold for various exploitative reasons.¹¹ Transnational crimes like TIP may be an 'older phenomenon', but with globalisation, the 'power vacuum' of criminal networks has increased to such an extent 'that assaults on human dignity continue to increase proportionally to the (evolution of) globalization'.¹²

Countries involved in TIP fall into three categories: countries of origin – where persons are commonly found and recruited; countries of transit – which are chosen for their geographical location (such as proximity to destination countries) and which are generally characterised by weak border controls;¹³ and countries of destination – which are seen as more economically prosperous countries that have an established commercial sex industry.¹⁴ A country may be included in more than one category or it may be included in all three simultaneously. This categorisation has the consequence of potentially governing the manner in which policies and programmes relating to TIP are governed. For example, whether in countries of origin, transit or destination, it has been reported that TIP is likely never acknowledged as a trans-border problem.¹⁵ This narrow view of TIP limits a state's responsibility to develop programmes aimed at inter-country collaboration.¹⁶ Governments are then more likely to transfer responsibility for the movement of trafficked persons to neighbouring countries, whereafter there is little enquiry about the inter-country 'cause and effect' patterns that contribute to the increase in TIP.¹⁷ The lack of accountability and acknowledgment of the global and regional reach of TIP¹⁸ is a major challenge to combating this problem.

Problem Analysis

The level of TIP in many African countries remains high, despite various international, regional and national measures.¹⁹ On the African continent, Southern African countries, and more specifically South Africa (SA),²⁰ and countries in West Africa (WA),²¹ are susceptible to human trafficking, because of their status as countries of origin, transit and destination.²² Moreover, the late adoption of anti-trafficking laws in most sub-Saharan African countries²³ and their inadequate implementation²⁴ constitutes a major challenge in the fight against TIP. SA has only recently implemented anti-trafficking legislation, and whilst such legislation is a minimum tool in the fight against human trafficking it is not effective on its own.²⁵ In WA, various pieces of anti-trafficking legislation have been in force for many years. The experiences of the countries in WA have shown that human trafficking legislation alone has not been effective in eradicating this human rights violation.²⁶ This begs the question: What supplementary measures must be instituted to eradicate such abuse?

Purpose of this Article

This article recognises that even though legislation may be implemented to improve the rights of victims, there is no guarantee that it will be enforced or that it will curb the prevalence of human trafficking. Employing an exploratory and comparative qualitative research design, involving desktop review, the purpose of this study is to show why legislation alone is not enough to combat TIP.²⁷ The first aim of this article will consequently be to explore (in conjunction with legislation) other interventions that are necessary to curb what has become known as the scourge of human rights.²⁸ It will advocate for the following: awareness raising and the promotion and protection of victims' rights on a continuous basis;²⁹ measures such as a database of proper statistics; an

acknowledgement of the severity of this global and regional phenomenon; and endorsing domestic commitment towards its elimination.

In WA, the phenomenon of TIP is so developed and widespread that various initiatives have been developed – within the framework of the Economic Community of West African States (ECOWAS) – to address it.³⁰ It is noted that whilst the implementation of anti-trafficking measures are country-specific,³¹ looking across borders will assist in developing measures to combat TIP more effectively and holistically.³² The second aim of this article is to analyse these good-practice initiatives, to inspire more effective policy responses in other regions in Africa, specifically SA. The basis for this analysis is that WA is plagued with similar demographic and economic problems as are its neighbours to the south³³ – countries of the Southern African Development Community (SADC) in general – and SA in particular. Furthermore, the sharing of best practice is an important step towards: opening conversations regarding existing methodologies; building consensus on ‘statistical definitions and a standard list of criteria, survey tools and estimation methodologies’ that could be used to develop future anti-trafficking measures.³⁴ Whilst acknowledging that trafficking is not an isolated domestic problem but a transnational issue, examples of good practice are included. The potential for greater cooperation between regions and international agencies will be investigated. To this end, the policy trends developed for West African countries like Benin, Burkina Faso, Cameroon, Côte d’Ivoire, Gabon, Mali, Nigeria and Togo will be examined.

Definition of TIP

The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children³⁵ (Trafficking Protocol), which is widely recognised as being the first global legally binding instrument that deals comprehensively with human trafficking,³⁶ uses the terms ‘trafficking in persons’, ‘human trafficking’ or ‘modern slavery’ as umbrella terms to include the act of recruiting, harbouring, transporting, providing, or obtaining a person for compelled labour or commercial sex acts through the use of force, fraud, or coercion.³⁷

SA’s legal position on TIP is defined in the Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PACOTIP). The Act adopts a broader definition of human trafficking than the Trafficking Protocol.³⁸ PACOTIP states that a person will be guilty of human trafficking if he or she delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of SA, through various means, including the use of force, deception and coercion,³⁹ aimed at the person or an immediate family member for the purpose of exploitation.⁴⁰ TIP is consequently seen as the transfer of persons by *any* means for exploitative purposes and will be the definition adopted for the purposes of this article.

It should be further noted that TIP may include a combination of different exploitative purposes, as mentioned above.⁴¹ However, despite various manifestations of TIP⁴² having been recorded in a number of research reports,⁴³ there remains no rigid distinction, and trafficked persons may be subjected to more than one of the various practices.⁴⁴ For example, women and children are trafficked for various exploitative reasons,⁴⁵ but it is reported that they are predominantly trafficked

for the purpose of sexual exploitation and forced labour.⁴⁶ References to child trafficking and other forms of trafficking in this paper refer to TIP for the specific purpose of sexual and labour exploitation, since persons are trafficked into, through and out of Africa for the main purpose of sexual exploitation and/or forced labour.⁴⁷

Scale of TIP

The clandestine nature of TIP gives rise to concerns regarding data reliability⁴⁸ and its limitations, as well as our understanding of its nature and severity.⁴⁹ Despite these concerns, several reports have estimated that approximately 12.3 million people are trafficked worldwide annually. Eighty per cent of victims trafficked internationally are women, while 70 per cent of these women are trafficked for sexual exploitation,⁵⁰ and 1.2 million children are exploited through trafficking, both domestically and internationally.⁵¹ Although TIP violates the human rights guaranteed to all persons, it especially violates the rights of women and children,⁵² and these vulnerable groups form the majority of trafficked victims.⁵³ Statistics show that between 200 000 to 300 000 children are trafficked each year for forced labour and sexual exploitation in West and Central Africa alone.⁵⁴

International Legal Framework

At the international level, standards are already in place to address TIP. In particular, the United Nations Convention on the Rights of the Child 1989 (CRC)⁵⁵ and its Optional Protocol on the Sale of Children,⁵⁶ the ILO Convention 182 of 1999, the United Nations Convention Against Transnational Organised Crime⁵⁷ and, importantly, the Trafficking Protocol.

The Trafficking Protocol is widely recognised as being the first global legally binding instrument that deals with human trafficking comprehensively. Although the Trafficking Protocol is the principle instrument of TIP, it must be read with the Convention against Transnational Organised Crime, as this Convention requires State parties to legislate on various matters relevant to TIP.⁵⁸ The Trafficking Protocol addresses the crime of TIP on a transnational level by establishing a framework for a coordinated international effort against human trafficking. A common definition of the practice of TIP forms the basis for this framework.⁵⁹ Its main purposes are: to prevent and combat trafficking, paying particular attention to the protection of women and children; and to promote and facilitate cooperation among state parties in order to meet this objective. A further objective of the Trafficking Protocol is to protect and assist the victims of TIP, whilst giving full respect to their human rights.⁶⁰

There are a number of UN agencies and regional programmes that already deal with many aspects of human trafficking,⁶¹ but which will not be discussed here. It suffices to acknowledge that, at the international level, many efforts are being made to deal with the global phenomenon of TIP. These international protocols and conventions are meant to provide 'preventive, protective as well as prosecution-focused responses to human trafficking as a means of guaranteeing the human rights of victims'.⁶²

African Legal Framework

On the African continent, the regional legal framework for the fight against TIP is governed by the instruments of the African Union (AU).

The African Charter on Human and Peoples' Rights, 1981 is the foundation document in the African human-rights system. A number of rights set out in the Charter are important in the context of TIP. For example, Article 4 provides that all persons are entitled to respect for their life and the integrity of their person. Article 5 gives every person the right to human dignity and prohibits all forms of exploitation and degradation of persons, particularly slavery; slave trading; torture; and cruel, inhuman or degrading punishment and treatment. Article 18(3) requires states to ensure the elimination of discrimination against women and to ensure the protection of the rights of women and children. The biggest problem with this Charter is that it does not specifically speak to TIP. The Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo Protocol)⁶⁵ was adopted to expand on the rights set out in the Charter, with particular reference to Article 18(3). The Maputo Protocol deals with human trafficking under Article 4, which guarantees the right to life, integrity and security of the person, although certain other provisions are also applicable to TIP, such as Article 3, which sets out the right to dignity.

Another important instrument is the African Charter on the Rights and Welfare of the Child, 1990 (Charter RWC). Whilst addressing various issues,⁶⁴ the problem is that the Charter RWC fails to state what constitutes trafficking in children.

Context of TIP in Africa

The problem of TIP in Africa is enormous, because of the clearly-established routes that encompass countries such as Benin, Côte d'Ivoire, Gabon, Mali, Nigeria, Togo, Cameroon, Burkina Faso, Guinea and Niger (countries in West Africa) and in Southern African countries as well,⁶⁵ specifically established routes surrounding SA.⁶⁶ Many of these countries in the regions are both suppliers and receivers of trafficked persons.⁶⁷ Many factors have been identified as contributing towards the high rate of TIP in Africa.

Human Trafficking in Africa – Vulnerability Factors

The UN Office on Drugs and Crime (UNODC) reports that TIP is usually described in terms of the supply and demand factors that lead children and adults to leave or be removed from their place of origin to a foreign place.⁶⁸ Both the supply and demand factors are usually seen as factors in society that make people particularly vulnerable to human trafficking.⁶⁹ A discussion of some of the major factors that are common throughout Africa follows.

Poverty and high unemployment rates are a major contributing factor to TIP.⁷⁰ These are considered to be the primary causes of TIP supply-and-demand factors.⁷¹ Poverty and the lack of economic opportunity allows traffickers to succeed in making false promises of higher wages and better

working conditions to lure persons to foreign countries.⁷² As most victims are unaware of the risks involved, they naively accept offers of 'employment opportunities'.⁷³ The inadequate welfare support system, or non-existent system, is another contributing factor. A typical example is where impoverished parents who cannot provide for the basic needs of their families⁷⁴ are coerced into voluntarily selling their children to traffickers, in order to escape debt and the cycle of poverty.⁷⁵

Different religious and cultural practices create a climate in which TIP can thrive.⁷⁶ For example, the mistaken cultural belief that sex with virgins can cure diseases has led to an increase in young girls being trafficked for the purpose of sexual exploitation.⁷⁷ Even though outlawed in SA,⁷⁸ the practice of *ukuthwala* continue. (This is a traditional practice of abducting young women with the intention of forcing them into marriage.)⁷⁹ In Africa as a whole, the cultural belief of the extended family and tribal affiliation practices,⁸⁰ blind parents to the 'risks involved in entrusting their child to other persons in this era of a greedy race for economic achievement'.⁸¹ This belief system of family solidarity is so entrenched that many parents overlook the values of the persons to whom they entrust their kin, thereby leaving the children vulnerable to being trafficked.⁸²

The demand factors identified⁸³ include: the growing involvement of criminal syndicates in the sector; globalisation, migration and development; an increased demand for cheap labour; an increase in demand for sex with children;⁸⁴ and a high demand for children within the informal economic sector.⁸⁵ The decrease in job opportunities often forces people to migrate to so-called greener pastures.⁸⁶ This increase in the movement of people makes it easier for traffickers to transport women and children across borders.⁸⁷ Although migration itself does not necessarily lead to trafficking,⁸⁸ it can create the conditions that make migrating women and children more susceptible to being trafficked into different kinds of bonded labour, including sex work.⁸⁹ Other factors contributing to the increase in trafficking is political change, economic collapse, civil unrest, internal armed conflict and natural disasters.⁹⁰ Efforts to fight TIP in Africa must make provision for the reduction or elimination of these factors, in order to significantly reduce the risk of TIP.

Human Trafficking in SA

In general, TIP is seen to be lower in the Southern African region than elsewhere on the continent. However, in Zimbabwe, Mozambique and SA, it is estimated that TIP remains widespread.⁹¹ These SADC countries are considered source, transit and destination countries, with SA being designated as *the* country of origin, transit and destination for trafficking victims⁹² in the African region.⁹³ This is because SA is perceived as the economic heart of Africa and therefore a profitable market for traffickers.⁹⁴ On the assumption that there are abundant opportunities in SA, victims are lured with promises of jobs, education or marriage, only to be sold and sexually exploited in the country's major urban centres,⁹⁵ or in small towns and more rural environments.⁹⁶ The victims are then exploited and become domestic workers, miners, sugarcane farm workers, farmers, drug couriers and prostitutes.⁹⁷

An overview of trafficking patterns in SA indicates that it is the main destination country⁹⁸ for women and children from Kenya, Malawi, Mozambique, Zambia, etc., and from as far away as Taiwan.⁹⁹ It is also a transit point for trafficking operations between developing countries and

developed countries.¹⁰⁰ It has been reported that more than ten different ‘trafficking routes’ were already identified by 2003.¹⁰¹ A survey of research¹⁰² on cross-border trafficking for the purposes of sexual exploitation has revealed that women and children are being trafficked to SA from various African countries, including: Mozambique, Angola, Zambia, Senegal, Kenya, Tanzania, Uganda, Ethiopia, Swaziland, Namibia, Botswana, Nigeria, Lesotho, Zimbabwe and Malawi.¹⁰³ Organised traffickers bring victims from these countries to SA for exploitation locally, or to send them on to other countries.¹⁰⁴

With clearly-demarcated routes,¹⁰⁵ the transportation of women trafficked to SA takes place through a variety of modes, including cars, long-distance trucks, taxis, boats and on foot.¹⁰⁶ Women and children are also being trafficked to SA from Eastern Europe and South East Asia, especially from Thailand and Taiwan.¹⁰⁷ They are trafficked primarily to escort agencies in provinces like Gauteng, Cape Town¹⁰⁸ and Durban.¹⁰⁹ The majority of TIP occurs internally in SA, i.e. from city to city, from rural area to urban area, as well as across provinces.¹¹⁰ Not only women, but also child sex tourism, is highly prevalent within these SA cities.¹¹¹ Evidence shows that most children working in these cities have been illegally trafficked in and into SA.¹¹²

SA’s history of ‘southward migration flows, porous borders, and weak institutions and structures’ makes it vulnerable to a host of migrant human trafficking activities.¹¹³ For example, it has been identified that the big cities (i.e. Cape Town, Durban and Johannesburg) are the receiving areas, whilst the small towns in SA are the sending areas.¹¹⁴ In SA, local criminal rings and street gangs organise child prostitution in a number of SA’s cities (which are also common destinations for child sex tourists) and form part of the global syndicate.¹¹⁵ It was found that children were often forced into prostitution by parents, family friends, taxi drivers, gangs, syndicates and brothel owners.¹¹⁶

SA’s international obligations, as well as its status as both a destination or transit country and a region of origin for trafficked persons,¹¹⁷ has placed a responsibility on the country to combat trafficking.¹¹⁸

SA’s National Legal and Institutional Framework

At the international level, SA has signed or ratified a variety of international instruments that recognise TIP as a world-wide problem.¹¹⁹ However, it wasn’t until 2013 that the first comprehensive legislation that deals explicitly with TIP was signed into law, i.e. PACOTIP, but it only came into effect on 9 August 2015.¹²⁰ Before this implementation date, any cases related to TIP were dealt with under other pieces of legislation, including the Sexual Offences Act of 1957 (SOA).¹²¹ The exact number of successful prosecutions for trafficking offenders therefore remains uncertain and this has the effect of diminishing the actual statistics and the severity of the problem in SA.¹²²

Other Acts that have been relied upon to prosecute incidents of human trafficking prior to PACOTIP include: the Riotous Assemblies Act, 1956; the Immigration Act, 2002¹²³; the Basic Conditions of Employment Act, 1997¹²⁴; the Refugees Act of 1998;¹²⁵ the Intimidation Act, 1982; the Domestic Violence Act, 1998; the Films and Publications Act, 1996,¹²⁶ and the Prevention of Organised Crime Act, 1998 (POCA). Some provisions for human trafficking are contained in the

Criminal Law (Sexual Offences and Related Matters) Amendment Act (SOA)¹²⁷ and the Children's Act.¹²⁸ The SOA makes it a crime to traffic an adult or child in order to exploit them sexually and includes trafficking for the production of pornography. The Children's Act protects children from being trafficked for all purposes.

Chapter 2 of POCA¹²⁹ covers offences relating to racketeering activities. Included in Schedule 1 are the common-law offences of rape, kidnapping, indecent assault, and the statutory offences of Sections 14 and 20 of the SOA. The Immigration Act¹³⁰ could also be used to prosecute those involved in human trafficking, by addressing specific aspects of the crime, but not the crime itself. The focus of the Immigration Act is on arresting and repatriating illegal foreigners residing within South Africa's borders. This means that a trafficker would only be prosecuted for breaking immigration laws by employing an illegal foreigner in SA.¹³¹ In practice, the main targets of this Act were the victims of sex trafficking. This is because sex workers have most likely been brought in from other countries and do not have the necessary valid documentation.¹³²

These various laws have been described as being 'fragmented'¹³³ and were therefore inadequate to address all the essential elements of TIP.¹³⁴ This lack of a single piece of legislation on TIP made it difficult for SA to keep statistical data on the extent of the problem.¹³⁵

The passing of PACOTIP offers the opportunity to address these shortcomings through its wider definition and by providing a coordinated response to all forms of human trafficking. Sections 6 to 9(3) of PACOTIP address the issue of the prevention of TIP and specifically prohibit any act that directly or indirectly facilitates or promotes the crime. The Act seeks to combat TIP within or across the borders of SA for the purposes of exploitation. This may be done, either directly or indirectly, through: the abuse of vulnerability; fraud; deception; abduction; kidnapping; and the abuse of power. PACOTIP contains numerous benefits for potential victims of TIP through the provision of enlightenment programmes¹³⁶ and by advocating an international approach.¹³⁷

Furthermore, PACOTIP provides for the prosecution of offenders and imposes appropriate penalties, including a fine or imprisonment.¹³⁸ Section 15 to 23 provides for the protection of victims, as well as access to health services and other basic needs. The Act further provides for the conditions and minimum standards for accreditation of organisations that can provide various support services to the victims of human trafficking.¹³⁹ Sections 29 to 30 recommend appropriate compensation for the victims and sections 31 to 36 require the humane procedure for the repatriation of internationally trafficked victims.¹⁴⁰ Importantly, and in line with the Trafficking Protocol requirements, sections 41 to 44 of PACOTIP provide for procedures to monitor progress and compliance, thereby providing, at least on paper, comprehensive provisions to address the problem of TIP.¹⁴¹

A significant issue with the Act is that it does not provide effective measures for the reintegration of victims. Various economic and social conditions would have made these victims vulnerable to trafficking in the first place, so without the proper support programmes they will be returned to the same susceptible conditions, leaving them predisposed to being re-trafficked.¹⁴²

Human Trafficking in WA

The enormous challenge that WA faces in protecting human rights is demonstrated by the increase in this ‘trade’¹⁴³ and it is reflective of the problems associated with TIP in SA, specifically, its porous borders, poverty and cultural beliefs.¹⁴⁴

In WA, the main victims of trafficking are children, women and migrants,¹⁴⁵ with the vast majority of women and girls being exploited in street prostitution.¹⁴⁶ TIP in WA takes various forms, depending on each country’s supply and demand factors. For example, between Senegal, The Gambia, Guinea Bissau and Mali, children are trafficked for purposes of labour, begging, prostitution and child pornography.¹⁴⁷ In areas such as Ghana, Benin, Côte d’Ivoire, Togo and Nigeria, trafficking occurs mainly for purposes of exploitation of child labour.¹⁴⁸ Côte d’Ivoire and Gabon enjoy relatively prosperous and stable economic and social conditions, thereby making them places of attraction for child trafficking.¹⁴⁹

The United Nations Children’s Fund (UNICEF) has reported that countries in the region are divided into two groups, according to the trafficking flows that are known to link them.¹⁵⁰ The first TIP flow is from Mali and Burkina Faso to Côte d’Ivoire. The second trafficking flow is from Togo and Benin, through transit countries such as Cameroon and Nigeria, to Gabon.¹⁵¹

Reportedly, human trafficking predominantly affects Nigerian women and girls.¹⁵² This is because a great part of the WA trafficking into Europe originates from, or passes through, the Nigerian state of Edo and its capital Benin City.¹⁵³ It is mainly conducted by Edo traffickers, known as ‘Binis’.¹⁵⁴ Victims mainly travel to Europe by plane from Lagos or other international airports from WA.¹⁵⁵ Victims may also have been transported by land and sea across the Mediterranean.

West Africa’s National Legal and Institutional Framework

WA is increasingly being held accountable for the continued high rates of TIP. To this effect, several countries in the region have adopted some sort of legislation for the prevention of TIP, even if the different pieces of legislation do not always use the same definition of TIP and some, are limited to child trafficking only.¹⁵⁶ For example, in Benin, the Transportation of Minors and the Suppression of Child Trafficking Act 4 of 2006 criminalises all forms of child trafficking, but does not prohibit all forms of trafficking.¹⁵⁷ In Togo, the 2005 Law Related to Child Smuggling (supplemented by the Child Code of 2007) does not prohibit all forms of trafficking nor does it criminalise sex trafficking of adults. Burkina Faso’s Combating Trafficking in Persons and Related Persons Act No. 029 of 2008¹⁵⁸ does prohibit all forms of trafficking. However, in 2014, the government passed a law that criminalises the sale of children, child prostitution, and child pornography, but allows offenders to pay a fine *in lieu* of serving prison time.¹⁵⁹ This is disproportionate to the gravity of the crime and inadequate as a potential deterrent.¹⁶⁰

Cameroon’s Act on Combating Child Trafficking and Slavery 2005 criminalises child trafficking and slavery but does not prohibit all forms of trafficking. Gabon’s 2004 Law 09/04 Preventing and Combating Child Trafficking¹⁶¹ also protects children against sex and labour trafficking, but it is not a party to the Trafficking Protocol. In 2010, the government of Côte d’Ivoire passed Law No.

2010-272 Pertaining to the Prohibition of Child Trafficking and the Worst Forms of Child Labour – its first specific law punishing trafficking offences,¹⁶² but the law remains ineffectively implemented. Mali's Combat against Trafficking in Persons and Similar Practices Act¹⁶³ and Nigeria's Trafficking in Persons Law Enforcement and Administration Act 2003¹⁶⁴ prohibit all forms of trafficking of adults and children.

Notwithstanding this legislative framework, the latest TIP report¹⁶⁵ has noted that none of these laws have effectively dealt with or curbed trafficking in the region. Recognising the importance and need for greater inter-country dialogue to increase national coordination to effectively deal with this problem, WA has implemented regional-level measures with the adoption of the ECOWAS Plan of Action (2002-2003). Member states of the ECOWAS and the Economic Community of Central African States (ECCAS) have adopted a joint bi-regional Plan of Action to Combat Trafficking in Persons, especially Women and Children.¹⁶⁶

Such an approach has the effect of creating an understanding of the national trafficking problem. This can ensure that all-inclusive measures needed to address its underlying causes be taken, whilst at the same time ensuring assistance to its victims.¹⁶⁷ According to the Rapporteur on TIP, 'turning this set of legal instruments into national laws and legal standards and the adoption of effective measures to address trafficking in persons requires a strong political will, shared responsibility and active cooperation between all governments of countries of origin, transit and destination'.¹⁶⁸ Therefore, in order to effectively address TIP, all stakeholders must be involved.

Best Practices – Converging Strategies

Southern Africa's Regional Efforts

The SADC¹⁶⁹ Protocol on Gender and Development (SADC Protocol), brings together African and global goals and aims at finding a 'home-grown' approach to achieving gender equity in the region.¹⁷⁰ The SADC Protocol is considered to be one of the most far-reaching of its kind, as it provides for an implementation framework for mainstreaming gender equality and equity.¹⁷¹ The Protocol aims to bring together 'existing commitments; deepen regional integration; create effective mechanisms for implementation; enhance those through specific time-frames and share best practices'.¹⁷² It intends to 'empower women socially, economically and politically, and achieve gender equality through gender responsive legislation, policies and projects'.¹⁷³

The idea is that the root causes of women being vulnerable to becoming potential victims must be addressed first before the consequences of such vulnerability can be effectively addressed. Regarding TIP, the protocol requires State parties to establish bilateral and multilateral agreements on joint operations against human trafficking in countries of origin, transit and destination.¹⁷⁴

The SADC Protocol is meant to be an important step towards reducing trafficking, by specifically providing for countries to adopt an integrated approach, including institutional cross-sector structures, with the aim of reducing current levels of gender-based violence.¹⁷⁵ The slow rate of progress towards the achievement of its goals remains the main concern regarding its efficacy in the fight against TIP in the region.¹⁷⁶

In line with its mission 'to (further) promote sustainable and equitable economic growth and socio-economic development through ... deeper co-operation and integration ... so that the region emerges as a competitive and effective player in international relations and the world economy',¹⁷⁷ SADC has developed a further initiative. The SADC Regional Indicative Strategic Development Plan (*RISDP*) is a 15-year regional integration development framework that sets out the priorities, policies and strategies for achieving the region's long-term goals.¹⁷⁸ The RISDP identifies the broad participation, consultation and engagement of regional expertise and institutions as being critical to its successful implementation. If vigorously enforced, this SADC agenda could possibly serve as *the* forum to address the TIP problem in Southern Africa. However, thus far, none of these policies have been driven with the commitment needed to categorically implement the strategies to ensure a reduction of TIP in the region.

WA's Regional Efforts

In response to the transnational nature of TIP, one of the solutions for WA was a regional or converging response to the problem.¹⁷⁹ In answering the need for a comprehensive and multi-stakeholder¹⁸⁰ approach, national governments and ECOWAS (with the support of international and local partners) have developed a number of measures, including regional programmes (RPs)¹⁸¹ and plan of action (PoA) documents, to address TIP in the region.¹⁸² The existence of such bodies and their efforts have been key in developing national PoAs to address trafficking, while the adoption and application of legislation has resulted in an increase in awareness, inquiries, prosecutions and convictions.¹⁸³ Importantly, the PoAs are clear in terms of strategies to deal with TIP, as they articulate precise measures on: addressing the legal framework and policy development; victim assistance and protection; prevention and awareness raising; collection and analysis of information; training and specialised capacity building; and the monitoring and evaluation of implementation measures.¹⁸⁴

Research shows that 'inter-country cooperation requires inter-country institutional symmetry'.¹⁸⁵ 'Institutional symmetry' stresses that where two or more countries are linked by the same trafficking flow, they should develop integrated and coordinated policy responses to the problems.¹⁸⁶ In the WA context, this has come to mean having related sectors deal with trafficking in a similar manner across a number of countries, including similar directives, responsibilities, policies and attitudes.¹⁸⁷

In addition to the ECOWAS Plan of Action (2002-2003) and the ECOWAS Plan of Action against Trafficking in Persons (2008-2011), the Joint ECOWAS/ECCAS Plan of Action on Trafficking in Persons, especially Women and Children in West and Central Africa (2006-2009),¹⁸⁸ was also developed.¹⁸⁹ The Joint Plan of Action emphasises the need for the protection of women and children against trafficking in West and Central Africa, and focuses on the legal framework and policy development. In this respect, it underlines that individual member states should ensure the ratification and efficient domestic implementation of international instruments.¹⁹⁰

A further initiative was the WA Coast Initiative (WACI).¹⁹¹ The aim of WACI is to strengthen the human and institutional capacity of law enforcement officials, initially in selected WA countries, and thereafter to strengthen international cooperation, by building on existing law enforcement

networks and structures. To achieve this objective, it provides advisory services, equipment, technical assistance and specialised training.¹⁹²

To harmonise their actions in an international framework, WACI provides for the establishment of a Transnational Crime Unit (TCU) in every country in the region.¹⁹³ These TCUs act as a national focal point for international cooperation in the fight against this transnational organised crime. Furthermore, each TCU works in conjunction with prosecutorial services to enhance the efficacy of investigations. This has the effect of increasing the number of prosecutions related to human trafficking.¹⁹⁴

A multilateral agreement of cooperation on the prevention of human trafficking was also entered into between nine countries in WA: Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo. Accordingly, these member states agreed to set up direct communication between their border control agencies to expand on efforts to gather reliable data on TIP. The intention is that such data will be collected and shared amongst all ECOWAS countries and the different UN agencies. This integrated approach is designed to minimise 'the siloing of programming in the region', thereby strengthening anti-corruption frameworks and capacity in the surrounding areas.¹⁹⁵

An illustration of successful inter-country cooperation was reported when the UN brought together representatives from Cote d'Ivoire, Guinea Conakry, Liberia, Sierra Leone, ECOWAS, the special court for Sierra Leone, Interpol, and non-governmental organisations, to counter child trafficking in conflict and post-conflict environments.¹⁹⁶ The main consequence of this plan was the combined development of national action plans to eliminate child trafficking and child soldier recruitment in these countries. This plan was aligned to support 'ECOWAS's early warning network' (ECOWARN), which monitors emergency situations like child trafficking in the sub-region.¹⁹⁷ This network is meant to establish an early warning database that would translate into a 'well-developed database, which can be used to predict, forecast and extrapolate on future conflict scenarios'.¹⁹⁸

A major challenge in dealing with TIP is the challenge of managing borders. The WA situation takes this into account; the national PoA for Burkina Faso, for example, is based on inter-country cooperation (both bilateral and multilateral), together with specialised training for its security and border officers.¹⁹⁹ The plan includes collaboration between the national police and Interpol to gather data about trafficking. In this plan, border police stations work as data-gathering centres on interceptions and repatriations, through the completion of forms on every child crossing the border.²⁰⁰ Promising initiatives were also identified in Mali, where bus drivers are helping to monitor the flow of children in the area bordering Côte d'Ivoire. A critical aspect of the efforts is to combine the resulting data so that it can be shared with other partners throughout the region.²⁰¹

What has emerged from these initiatives is that the underlying principle of objectives aimed at TIP must be to support and facilitate the integration of a human rights perspective²⁰² into national²⁰³ and regional policies and interventions.²⁰⁴

A key finding of these measures is, 'In order to allow increased understanding of how criminal networks operate and overlap, ... capacity to provide research and analytical support to all thematic pillars' is required.²⁰⁵ By including and building on the strength of global initiatives²⁰⁶ and supplementing this work regionally, the 'objectives in the region are achieved through synergy

between infra-regional and inter-regional interventions, and multi-country and country-level activities'.²⁰⁷ In summary, given these efforts, what becomes clear is that the regional effort is an indication of the commitment of 'West African countries' ambition to unite and their eagerness domestically and regionally to fight common threats such as transnational crimes and their perverse consequences'.²⁰⁸ These measures have produced new resources to enhance human rights protection for trafficked persons in the region.²⁰⁹

Conclusion and Recommendations

It is clear that TIP is a global human rights problem and the combating thereof remains a challenge. With the promulgation of anti-trafficking legislation, SA now has a solid legal foundation to ensure that justice is realised through prevention, prosecution and protection. Many have argued that in order for TIP to be combatted effectively, the perpetrators of these crimes must be prosecuted to the letter of the law. However, TIP is not just about ensuring the punishment of perpetrators, it is also about: changing the socio-economic conditions of vulnerable groups; entrenching a culture of respect for upholding human rights; reaching consensus amongst governments on how to deal with trafficking; and successfully implementing measures that effectively protect citizens from trafficking.²¹⁰ A comprehensive response to trafficking is therefore required to address the whole range of challenges, causal factors and effects of TIP. The following paragraphs discuss some key aspects for a comprehensive approach to TIP.

Prevention, Advocacy and Awareness Raising

Since deterrence can stop an individual from becoming a victim in the first place, investment aimed at prevention may be a more productive approach. One of the key causal factors of TIP is economic inequality. Poverty, unemployment and cultural bias remain widespread challenges that potential victims of trafficking face. Given the issues discussed in this article, a lot more needs to be done to ensure the eradication of the various vulnerability factors that expose people to potential violation of their human rights. Poverty, in particular, remains a major contributor to the human trafficking process. Governments and all stakeholders must collectively create sustainable economic opportunities for the disadvantaged and focus on permanent ways to eradicate poverty. The absence of a systematic poverty eradication strategy or other sustained efforts in eliminating socio-economic inequalities will undermine the impact of any preventative strategy.

The prevention of TIP can also be achieved through rigorous public awareness-raising campaigns. Awareness campaigns can be a key objective in the strategic plan of prevention. Due to a lack of understanding regarding the nature and severity of TIP, awareness raising will not only result in an increased understanding of the problem, but it will serve as a means for recognising trafficking as a crime.

Effective Implementation and Prosecution

Prevention measures must go beyond awareness raising and focus on developmental measures. Developing capacity through research, training and skills development for effective regional, national and international cooperation is a must.²¹¹ Therefore, whilst SA has made advances in the fight against TIP, through the adoption of PACOTIP, it must be wary and not become complacent in the effective implementation and rigorous enforcement of the provisions contained therein. SA must commit to these goals through the allocation of sufficient funds and human resources, and the successful prosecution of these offences. Effective prosecution and sentencing of crimes will set the foundation for a premise that SA has a stance of zero tolerance against TIP.

Creating a Reliable Database

Accurate data collection is essential to the integrity of research and research studies. Analytical studies are required that focus on the profile of criminal groups involved in this crime, their 'trade routes' and their *modus operandi*.

In order to provide crucial quantitative information that can strengthen policies and intervention programmes, countries within regions should create a database that must be shared with all stakeholders. This data must be used to ultimately allow for regional and international comparison and cooperation.

Inter-country Cooperation Agreements

TIP remains a complex issue to address because of its clearly established routes, integrated networks and multi-faceted nature. The approach to dealing with this offence therefore cannot be a solitary approach using one single instrument to successfully tackle all of its dimensions. The improvement of national, regional and cross-border harmonisation and inter-agency collaboration between countries and regions is essential to ensure an integrated approach in the fight against human trafficking. SA, with its established trafficking routes, has been identified as *the* country of origin, transit and destination in the SADC region, and it is therefore obliged to adopt and establish inter-country cooperation agreements with its neighbours. This action is needed to develop joint operations to stem the flow of TIP.²¹² Such agreements must include plans for deterrence and rehabilitation in countries of origin, and repatriation plans that are interconnected with those in countries of transit and destination.²¹⁵

The progress that countries in WA has made with regard to bilateral cooperation provides a useful template for work in the Southern African sub-region, particularly in relation to cross-border trafficking flows.²¹⁴ The best-practice examples discussed above indicate that efforts must be focused on strengthening monitoring mechanisms and border controls. Governing and monitoring borders are vital to ensuring effective prevention. If border controls are not effective and functional, then any efforts by individual countries can yield only limited results. Cross-sector cooperation,

as well as regional and international cooperation, were shown to be key to the success of any programmes aimed at border control.

The PoAs and inter-country cooperation agreements in WA raise awareness of the extent and nature of TIP.²¹⁵ This has the effect of strengthening cooperation between the governments of different countries and therefore this collaboration and harmonisation needs to be extended to other countries in Africa, in order to restrain trafficking flows.²¹⁶ WA has endorsed a combined effort to combat TIP by adopting different ECOWAS PoAs and the consequent implementation mechanisms.²¹⁷ By acknowledging that these policies and PoAs provide an 'overarching instrument that has the ability to supplement the existing provisions (of legislation) ... with a view to safeguarding the efficiency and efficacy of the efforts being made by various stakeholders', they provide a regional response to the problem of trafficking in WA.²¹⁸

Collaborative and Concerted Efforts

Concerted and extensive efforts are required to effectively fight TIP in Africa, especially in sub-Saharan Africa. The global nature of trafficking necessitates greater global effort and collaboration. Ending TIP and addressing the plight of its victims is a collective responsibility. Within Southern Africa, a 'sub-regional Southern African attempt to complement an African-driven initiative' must be followed.²¹⁹ A number of protocols have been developed that aim at addressing various relevant issues in the SADC region. However, one of the 'greatest criticisms of the SADC regional grouping is its habit to make numerous commitments and intentions only on paper, without corresponding practical activity and a drive to implement the plans'.²²⁰ To reinforce its commitment to combating TIP, SA must ensure that policies and programmes are put in place to provide holistic services to victims, with the aim of re-integrating them into society. They must also put in place mechanisms by which all relevant law enforcement authorities and institutions eradicate national, regional and international human trafficking.²²¹

There needs to be a continuous, acute awareness of the importance of bridging and coordinating prevention, prosecution and protection interventions, to ensure efficacy in combatting TIP. If even reasonable strides are to be made in the fight against TIP, a coordinated effort is required that speaks to the root of trafficking, wherein *all* roleplayers work to advance the status of vulnerable people in societies.

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