

Response to Human Trafficking in South Africa: Beyond the Criminal Justice System

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Abstract

This article evaluates the efforts of the South African criminal justice system in combating human trafficking. The phenomenon of human trafficking has been a resonating issue of concern to the South African State. Several women, children and, to a lesser degree, men have been entrapped in the web of exploitation produced via trafficking in the country. Steps have been taken by the State to combat the scourge by listing human trafficking as a crime that requires an effective criminal justice response and by enacting an anti-trafficking law. But despite these steps, this menace is increasing instead of diminishing. The findings of a broader doctoral study on examining human trafficking and the response of the South African criminal justice system (a study that used a mixed-method approach) revealed, for example, that the South African criminal justice system was unable to effectively combat human trafficking in the country. Specifically, the study found that the triggering factors that engendered the vulnerability and eventual exploitation of people through trafficking fell outside the scope of the justice system. The findings also indicated a strong linkage between the failure of social institutions and a rise in human trafficking in the country. This article provides recommendations for an approach that has enduring effects.

Keywords: human trafficking; criminal justice system; combating; South Africa

Introduction

Globally, researchers have through different lenses explored human trafficking as a criminal enterprise and have also recommended a number of measures to combat this scourge. These measures include, but are not limited to: the tightening of frontiers



Politeia

<https://upjournals.co.za/index.php/Politeia>

Volume 38 | Number 1 | 2019 | #4184 | 18 pages

<https://doi.org/10.25159/2663-6689/4184>

ISSN 2663-6689 (Online)

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through restrictive migration policies; the introduction of legal frameworks; and public sensitisation and enlightenment campaigns (Aronowitz 2009; Clark 2003; Fitzgibbon 2003; Mollema 2013; Watson and Silkstone 2006). While all these could pass as stop-gap strategies, they do not offer a comprehensive solution to the crime, given its rising wave in different parts of the world today, including South Africa.

In South Africa, the perception of human trafficking as a threat to internal safety and security has prompted policy-makers and other relevant stakeholders in the country to label the menace as a “law-and-order” problem that requires an effective criminal justice approach to address (Bello 2015, 1). To this end, the Prevention and Combating of Trafficking in Persons Act No. 7 of 2013 was ratified and implemented. Criminal justice institutions were also authorised to investigate, prosecute and convict traffickers, while ensuring victims’ rights were protected (Bello and Olutola 2017, 4-5). To achieve the goals referred to above, enormous sums of money have been expended by justice institutions and other relevant law enforcement institutions (e.g., the Department of Home Affairs) (Bello 2015). Despite all the support and the wealth of resources in combating the menace, South Africa is yet to see an appreciable reduction in the rate of human trafficking. Since the implementation of the country’s anti-trafficking law in 2015, relatively few arrests have been made (Bello and Olutola 2017, 1; United States Department of State 2016). Moreover, there are wide margins between the number of cases that were prosecuted and the increasing rate of human trafficking in the country (Bello and Olutola 2017, 1; United States Department of State 2016). These gaps raise a major concern about the ability of the South African justice system to combat the menace in the country.

At criminal justice institutional level, a number of efforts have been made to combat human trafficking. Notably, units and spectrums of structures have been established under some of these institutions, including the Department of Home Affairs. For instance, in 2014, this Department introduced two policy documents. The first was targeted at containing illegal migration into South Africa, whereas the second specifically prescribed new migration requirements for children travelling into and out of South Africa through the different points of entries (Department of Home Affairs 2015). However, the latter policy document has been revised: While parents with minors travelling into South Africa through an entry point do not necessarily need to produce their children’s abridged birth certificates and proof of parental consent, South African minors are still bound by these requirements when travelling out of the Republic. The Human Trafficking Unit was established under the Organised Crime units of the South African Police Service (SAPS) and under the National Prosecuting Authority (NPA) to address the menace of human trafficking. Regrettably, despite many policy frameworks, human trafficking still lingers.

The above concerns prompted the researcher to raise the following questions: (1) Why has it been challenging for the South African criminal justice system to combat human trafficking despite the measures already taken against it and the resources expended on

the fight? (2) Are the units established under these institutions formidable enough to dismantle the structures created by human traffickers in South Africa? (3) Is the enacted anti-trafficking law in the country adequate to stem the tide? (4) Should the justice institution be blamed for the rising spate of human trafficking in the country, or are there other institutions that should consider joining the fight? Against this backdrop, this article evaluates the efforts of the South African criminal justice system to combat human trafficking. It is expected that findings from this study will contribute to the debate on an effective response to human trafficking in South Africa and will also bridge the gap in existing knowledge.

A Concise Historical Background to Human Trafficking in South Africa

Human trafficking is not a recent occurrence in South Africa (Allais 2013; Bello 2015; Mollema 2013); it is an age-old phenomenon that dates back to bygone days. The history of human trafficking in South Africa cannot be explored in isolation from the broader Southern African context. In the distant past, human trafficking took the form of human slavery in Southern Africa (Martens, Pieczkowski, and Vuuren-Smyth 2003). The dominance of human slavery in the Southern African sub-region between the 17th and 18th centuries, with similar practices in other regions of Africa, has been reported (Martens, Pieczkowski, and Vuuren-Smyth 2003).

Fundamentally, it is instructive to note that while there were practices akin to slavery in Southern Africa, there was no distinct documentation on human trafficking between the 16th and 17th centuries in South Africa. The first pronounced incidence of human trafficking in South Africa occurred in 1810, shortly before the abolition of slavery. This incidence concerned a South African lady—Saartjie Baartman—a 21-year-old servant who, in search of greener pastures, consented to travel to London with Dr William Dunlop. Upon her arrival in London, she was treated in a gruesome and dehumanising manner. In fact, she was exhibited in the nude before crowds in London who paid one shilling a person to “gawk at the Hottentots Venus from Africa” (Bello 2015, 67; Mollema 2013, 382; Martens, Pieczkowski, and Vuuren-Smyth 2003, 5). In her quest for survival in the face of financial constraints and linguistic and cultural barriers, she turned to prostitution. She died six years after leaving the shores of Cape Town. According to Martens, Pieczkowski, and Vuuren-Smyth (2003, 5) “her body was dissected, her skeleton was removed, and her brain and genitals were pickled and displayed as curiosities in the *Musee de l’Homme* in Paris for the next 160 years.”

The sad experience of this young lady represents a pseudo-narrative of the horrendous experiences of several South African women and children at the hands of traffickers centuries ago (Bello 2015). Over time, human slavery in South Africa has transformed into what is known in modern times as human trafficking. Though human trafficking is different from human slavery, it still contains some “structural practices” that are akin to slavery (Bello 2015, 68).

In post-apartheid times, South Africa has become a source, transit, and destination country for men, women, and children who are trafficked for various exploitative purposes (Bello 2015; Human Sciences Research Council (HSRC) 2010; Mollema 2013; United States Department of State 2016; Watson and Silkstone 2006, 112). A combination of demand for cheap labour and commercial sex, propelled by extreme poverty, poor education and high levels of unemployment, have made some South African women, children and, to a lesser degree, men susceptible to trafficking (Allais 2013; Mollema 2013). The typology of trafficking in South Africa has two dimensions—internal and external. The internal dimension involves the recruitment and transportation of persons, mainly children and young ladies, within the country, especially from poor rural areas to cities or urban centres, such as Johannesburg, Pretoria, Bloemfontein, Cape Town and Durban, for the purpose of exploitation (Bello 2015). While most of the trafficked girls work as domestic servants in wealthy homes, most of the trafficked boys serve as street vendors, waiters, beggars on the roads, street urchins, labourers on farmlands and plantations, and labourers in other labour-related activities (Bello 2015). The external dimension involves the recruitment and transportation of persons from the Republic to other countries for the purpose of exploitation (Mollema 2013). The external dimension also involves trafficking from extra-South African territory into South Africa (HSRC 2010).

According to reports by the United States Department of State (2015) and the HSRC (2010), syndicates in Africa, Asia and Europe dominate the trafficking business in South Africa. Certain West African syndicates dominate the commercial sex business in Hillbrow and other areas, whereas local criminal rings and street gangs control child prostitution in the country (Bello 2015; UNESCO 2007). The Russian and Bulgarian crime syndicates control the prostitution business in the Cape Town axis, whereas Chinese criminal gangs organise and coordinate the sex trafficking of Asian nationals (Bello 2015; UNESCO 2007).

Regarding external trafficking, in 2012, for instance, South African trafficked victims were found in Brazil, and four South African women were reported to have been trafficked to Bangladesh and Thailand to serve as drug pushers (United States Department of State 2013). In the same year, Namibian authorities also apprehended a child sex tourist from South Africa (United States Department of State 2013). All these horrors, reports and statistics portend one thing: that our world is fast becoming what Thomas Hobbes describes in his book *The Leviathan* (chapters XIII–XIV) as “solitary, poor, nasty, brutish, and short.” (Hobbes 1660, 80). Hence, there is a need for urgent intervention.

Criminal Justice System and Human Trafficking in South Africa: A Critique

Crime is invariably one of the major blotches on South Africa in the post-apartheid era (HSRC 2010; Independent Project Trust 1990). It affects virtually all spheres of human

engagement in the country. Its rising waves in recent times have generated much controversy about the effectiveness or ineffectiveness of the criminal justice system (Bello 2015). Similar to the practices in other countries, the South African criminal justice system is legally empowered to ensure crime is prevented and combated in the country (Olutola 2012). However, in reality, such an enormous task is usually very difficult to achieve. Part of the difficulty stems from the fact that crime is a complex phenomenon and that it sprouts from the broader socio-political, economic and cultural nuances in a country's setting. Therefore it will be unrealistic to expect criminal justice institutions to perform magic. Parallel to this standpoint, the description of Olutola (2012, 17) is that it is "a hopeless hope" and unrealistic to expect the South African criminal justice system to perform the miracle of containing crime.

The South African criminal justice system essentially revolves around the following State institutions: SAPS, the NPA, the court, and the Department of Correctional Services. The criminal justice system is configured to function or operate in an interdependent and interrelated manner, such that the success or failure of the entire system hinges on the collective responsibility of these institutions of justice. As specified in the National Crime Prevention Strategy (NCPS) of 1996, the goal of the justice system is to prevent crime, enforce the law, and guarantee the protection of human rights (NCPS 1996). While this goal is desirable in any democracy, its actualisation in a crime-ridden society such as that of South Africa is usually challenging. This view stems from the understanding that crime prevention transcends the arrest and sentencing of offenders. Rather, it requires addressing both the proximate and ultimate causes of crime. As indicated earlier, the actualisation of these two broad goals lies outside the scope and capacity of the criminal justice system (Olutola 2012).

Regarding the performance of the criminal justice system, Schönteich (1999, 9) argues that it can be measured based on two main indicators: first, the number of cases SAPS solves sufficiently well for the prosecutor to decide to take on the case in court; and secondly, the number of cases that results in a successful prosecution. While I hold a brief for Schönteich's argument, I need to point out that the actualisation of these indicators has often been particularly challenging in the country due to a number of factors. These factors include, but are not limited to, the shortage of trained detectives and prosecutors, and the incessant adjournment of court proceedings (Mofokeng and Olutola 2014).

In relation to human trafficking, a number of initiatives were taken as mentioned earlier. In addition to these, a Trafficking in Persons Inter-sectoral Task Team was established in 2003 under the Sexual Offenses and Community Affairs unit of the NPA (HSRC 2010). This task team was made up of members from various state departments, such as the Department of Home Affairs, NPA, Department of Labour, Department of Social Development, Department of Justice and Constitutional Development, and the Organised Crime unit of SAPS. International non-governmental organisations (INGOs), such as the International Organisation for Migration (IOM) and the United Nations

Office on Drugs and Crime, and local NGOs, such as Molo Songololo, were also incorporated (UNESCO 2007). Commendably, the Sexual Offences and Community Affairs unit facilitated the establishment of eight *Thuthuzela*¹ (comfort) reception centres as part of the measures to assist victims of sexual violence who needed both medical and psychological assistance in addition to legal and social assistance (HSRC 2010; UNESCO 2007). In March 2009, the NPA further introduced the *Tsireledzani!*²—a victim-focused approach to combating human trafficking (HSRC 2010).

In the law enforcement (police) sphere, two major initiatives were adopted. First, a Human Trafficking Desk was established within the Organised Crime unit of SAPS (HSRC 2010). Secondly, the Directorate for Priority Crime Investigation (also known as the Hawks) was established under the detective unit (Bello 2015). In addition, the Justice Crime Prevention and Security Cluster, which encompasses all components of the criminal justice system, was created. However, in specific terms, no unit was established under the Department of Correctional Services in relation to the subject matter.

Conversely, despite the merits of the abovementioned initiatives, their impact has not really been felt in the country. Most of the tactics employed by the Justice Crime Prevention and Security Cluster in its combating operations have largely been selective and reactive (Bello 2015). Its tactics have often rested on the tripod stand of arrest, prosecution and incarceration—as is customary to a typical criminal justice system. Unfortunately, arrest, prosecution and incarceration of offenders are not sufficient to prevent crime in society. In fact, it may only lead to overcrowding in correctional centres. Considering the interdependency of criminal justice institutions, it is anticipated that the entire justice system process should flow uninterruptedly, but the reality in contemporary South Africa has shown many contradictions (Bello 2015). For instance, SAPS and the NPA are to work hand in hand in criminal prosecution, but, in practice, their roles and functions differ. However, in the administration of justice they rely on each other to succeed in crime-combating efforts (Bello 2015). But, insufficient evidence or shoddy investigation has often led to unsuccessful trials (Schönteich 1999).

In recent times, many of the approaches of the South African criminal justice system in response to human trafficking still wear the reactive-cum-aggressive look (Bello 2015; Bello and Olutola 2016). Unfortunately, reactive approaches to combating crime have not really been long-lasting. Effective response to crime transcends the reactive approach, or what Bello and Olutola (2016) describe as the stick approach. It sometimes requires the carrot approach. This is not meant to downplay the veracity of the stick

1 *Thuthuzela* is a Xhosa word that means comfort. The centre was established as a radical initiative to care for victims of rape and sexual violence in South Africa.

2 *Tsireledzani!* means 'Protect!' in Tshivenda (one of the eleven South African official languages) and is the name of the Government's initiative to combat trafficking in persons. The programme is headed by the National Prosecuting Authority and involves government departments, international organisations and civil society partners.

approach to combating crime, but facts from contemporary crime scenes suggest that the stick approach may not produce an enduring outcome (Bello and Olutola 2016). The carrot approach offers an investigating officer ample opportunity to explore all the likely causes of crime, including its root causes. It is a problem-solving approach that is essentially tailored along proactive paths. Such an approach is targeted at addressing pressing socio-economic problems that form part of the root causes of crime (including human trafficking) (Bello 2015; Chuang 2006). However, in practical terms, addressing the root causes of crime transcends the realms of the criminal justice system (Olutola 2012).

“A Hopeless Hope”

As elucidated earlier, crime is a complex phenomenon consisting of chains of interlocking factors and forces that are embedded in the environments within which countries operate (Bello 2015; Bello and Olutola 2015). Such factors include, but are not limited to, poverty, high unemployment, a poor standard of living, a high level of illiteracy, the failure of social institutions, and corruption. Combating crime cannot be a rosy venture in an environment plagued by such factors (Olutola 2012). While all these factors are common in African countries, they are endemic in South Africa; perhaps they are spill-over effects of the apartheid regime and of a range of other socio-economic disparities or inequalities in contemporary South Africa (Bello 2015; HSRC 2010; Mollema 2013).

Considering the discussion so far, it is not out of place to argue that the collective responses or efforts of the various components of the South African criminal justice system are no substitutes for an enduring solution to the age-long socio-economic menace of human trafficking. In buttressing this position, Burger argues that combating crime is an impossible mandate for the police (Burger 2005). By implication, therefore, despite the fact that combating human trafficking in South Africa is officially part of the mandate of SAPS, in reality it is an impossible task. According to Burger, SAPS, as currently structured, cannot combat crime (inclusive of human trafficking) in the country (Burger 2005). Bayley (1994, 4) supports this view by arguing as follows:

The police do not prevent crime. This is one of the best-kept secrets of modern life. Experts know it, the police know it, but the public does not know it. Yet the police pretend that they are society's best defence against crime and continually argue that if they are given more resources, especially personnel, they will be able to protect communities against crime. This is a myth.

Human trafficking is not a one-off criminal enterprise, but a product of certain socio-economic and cultural factors that affect countries today. Therefore, combating it would require addressing these factors. The expertise and efforts of the components of the criminal justice system are unable to address these factors. Putatively, the solutions to these factors are outside the scope of the criminal justice system.

Research Methodology

Data for this study was collected using a mixed-method research approach. The rationale for adopting this approach stems from the epistemological perceptions that hinge on the use of more than one method or source to support the interpretation of obtained research data and deductions drawn from the collected data (Bergman 2008; Yee 2009). However, in this article, I place more emphasis on the qualitative approach. My rationale for doing this is based on the nature of the topic under consideration that requires experts' views or judgements on the menace of human trafficking and the response of the criminal justice system to the crime. While a survey could be utilised to complement the results obtained from a qualitative approach, the richness of the information that is gathered from interviews with experts in a study area outweighs what will be obtained through a quantitative technique (Maxfield and Babbie 2016).

A purposive sampling technique was used. The justification for adopting this sampling technique stems from the researcher's opinion and awareness that a certain category of experts within the Justice Crime Prevention and Security Cluster and NGOs can provide the most valuable information in relation to the objective of the study. The study population encompassed selected staff members of selected criminal justice institutions and NGOs in the Limpopo province of South Africa. The official staff strength of these institutions and of the units created under them that deal with human trafficking was for official and ethical reasons not made available to me. However, I was permitted to interview senior staff of these institutions. For the survey, I decided on a sample size of 150, and I selected 30 participants for the semi-structured interviews. While the survey was administered to both junior and senior staff members, only senior staff members were selected for interviews. The senior staff members were considered based on certain criteria, which included experience (10 years and more in service), position, and rank (where applicable). A breakdown of the strata considered for interviews is as follows: 13 from SAPS (from the Hawks unit), nine from the Department of Home Affairs (Immigration unit), five officials from the NPA/courts, and three NGO officials (dealing with human trafficking). Using a stratified sampling technique, the sample was further classified into four strata, namely: SAPS (members of community police forums), the Department of Home Affairs, the NPA/court, and NGOs. The Department of Correctional Services—although it is a major component of the South African criminal justice system—was not considered because human trafficking issues are outside its mandate.

Research Location

This article draws on a broader doctoral study that was carried out in the Limpopo province of South Africa. The Republic of South Africa has nine provinces, but the Limpopo province was selected as representative of the country. Though Limpopo represents about 10 per cent (10.4%) of the entire South African population based on the 2011 national census, it was considered as an appropriate site for the study, owing

to its gateway status. The Limpopo province shares borders with three Southern African states, namely, Botswana, Zimbabwe and Mozambique, which makes it a major trajectory for human trafficking. While human trafficking thrives in different provinces in South Africa, the Limpopo province was considered for this study because of its porous borders and the volume of the irregular flow of migrants into South Africa from the province's entry points (IOM 2010). Limpopo is also strategic for trade and investment (Bello 2015). The various networks of road and rail in the province are linked to the major seaports. Its commercial status is confirmed by the location of the smaller airports in Musina and Phalaborwa, including the Gateway International Airport in the capital city of Polokwane (IOM 2010).

This study was carried out in line with the standard ethical guidelines stipulated in the Tshwane University of Technology's ethical mandates according to which the following must be upheld: avoidance of harm, confidentiality, informed consent, and other ethical issues in line with best practices for conducting scientific research.

Research Findings and Discussion

The aim of this study was to assess the efforts of the criminal justice system in combating human trafficking in South Africa. To this end, study participants were asked a number of questions to meet the objective of the study and also to validate or contradict some of the issues raised in the study.

Using the IBM Social Package for Social Science (SPSS version 23), I did a descriptive analysis of the quantitative data obtained from this study. However, I would like to re-emphasise that although I adopted a mixed method design for the study, my dominant approach was qualitative. For the ease of analysing the qualitative data, themes were generated and grouped as follows: (1) the inadequacy of measures put in place by the State to combat human trafficking; (2) gaps in existing mechanisms adopted by the South African criminal justice system; (3) failure of social institutions; and (4) overdependence on the criminal justice system.

Inadequacy of State Response Mechanisms

It is imperative to indicate that the majority (24 out of 30) of the study participants were of the view that current State counter-trafficking response mechanisms were inadequate. A number of factors were advanced as being responsible for that, including the following: weak political will to combat the crime; overreliance on anti-trafficking legislation and restrictive migration policies; inadequate financial and material resources; inefficient information hub; and institutional corruption. Excerpts from the views of the participants are presented below.

The mechanisms are not adequate. There is still the problem of establishing a communication hub for trafficking issues. Resources (labour, material and financial) are not sufficient. Though there is much labour force, but the resources needed for them to

fight crime given them as at when due? The borders are still porous due to corruption by some state security officials. (P7)

No I don't think the mechanisms put in place have been effective. The challenges are still immense: we have the problem of inadequacy of resources, ineffective information hub, and lack of motivation. (P16)

Specifically, the participants placed emphasis on the overreliance on anti-trafficking legislation as an effective instrument to combat human trafficking in the country. While legislation is often adopted by states as a regulatory instrument to combat crime, it can only succeed when it is complemented by other measures. These measures include, but are not limited to, a strong political will, socio-economic stability, economic growth and development, youth empowerment initiatives, and poverty eradication programmes.

Gaps in Existing Institutional Measures to Combat Human Trafficking (Criminal Justice System)

The study found that although the South African criminal justice system had undertaken a number of initiatives to combat human trafficking in the country, its efforts were not adequate in proffering a long-term, lasting solution to the age-long phenomenon. Findings specifically indicated that a number of factors undermined existing institutional efforts in combating human trafficking in South Africa. These factors include, but are not limited to, the following: corruption; lack of motivation; shortage of detectives in SAPS; incessant court adjournments; and the unwillingness of witnesses to testify in court. Some of the views of the participants in relation to the above were as follows:

Corruption, lack of professionalism, lack of motivation, poor remuneration (relative), long court proceedings, absence of witness in courts, inexperienced magistrates (judges). (P11)

Underreporting or lack of reporting of crime puts undue pressure on the justice clusters to perform magic. (P23)

Failure of Social Institutions

Furthermore, the study revealed that human trafficking flourished in South Africa because of an overreliance on criminal justice institutions, while other institutions, especially the social institutions that are required for effective crime control, were excluded. This finding is consistent with the views of Olutola (2012) on combating crime. Prominent among these social institutions are families, schools, peer groups, religious and traditional institutions, and the media. These social institutions play key roles in shaping attitudes and in helping to maintain social control in society.

Fundamentally, this study found that there were linkages between the failures of these social institutions and the increase in human trafficking in South Africa. It was reported

that the failure of social institutions posed enormous threats to the crime-combating campaigns and other efforts of the State and its criminal justice institutions in combating human trafficking in South Africa. Specifically, 26 out of the 30 participants shared this view. The remaining four participants summarily indicated that “everyone should be blamed.” The following excerpts from the participants’ responses capture their positions:

First of all, for people to stop engaging in unlawful acts, they need to be informed and corrected. So when parents fail to provide good leadership at home to their children, or when fathers beat mothers in the presence of their children, who do we blame? (P7)

Yeah. Many parents in the first instance are not aware of human trafficking, so how can they warn their children against it? Moreover, we read the dailies [newspapers] where they talk about human trafficking and we are silent about it. The internet is not being censored or regulated for young ladies and children, so they get to be enticed sometimes by what they see and read about, etc. So, you see ... (P12)

In support of the views expressed above, reference can be made to the prevalence of the phenomenon of single parenting, mostly in female- and child-headed households in South Africa today. This kind of family breakdown often places children at risk of being trafficked. Moreover, findings from this study confirmed the vulnerability of children to human trafficking when they were under the care of relatives or surrogates besides the care of their biological parents. Such parental gaps and challenges make these categories of children vulnerable to trafficking. This position is consistent with the position reported in the study of Bermudez (2008, 14).

This study also found a connection between gender-based violence and human trafficking. It was affirmed that children and women from families with a history of sexual violence and physical abuse often escaped to the streets. However, their inability to make ends meet often made them susceptible to trafficking. This finding corroborates the finding from a study carried out by Bermudez (2008, 15). The research conducted by Bermudez on internal trafficking in South Africa revealed that most women who were involved in prostitution had experienced sexual and physical abuses since childhood (Bermudez 2008, 15). A similar study previously conducted by IOM in 2005 also confirmed this standpoint (IOM 2005, 90).

Moreover, studies on the social institution-human trafficking nexus in the developed world indicate a strong linkage between the two. For instance, the United States Bureau of Justice Assistance (BJA) in one of their publications reported that one of the reasons why it was very difficult to combat crime in developing countries was largely due to an overreliance on the criminal justice system (BJA 2000). A range of risk factors were further identified to have fuelled crime in these countries, which include: youth exposure to relative poverty; insufficient housing; gaps in parental and guardian care and guidance; economic exclusion; a culture of violence; exclusion from school; and

family history of violence (BJA 2000, 5). This finding is also in agreement with the finding from the study of Olutola (2011, 237–39).

The effect of harmful traditional or cultural practices on the trade in human beings cannot be ignored. Findings from the current study showed a strong connection between the traditional practice of *ukuthwala*³ and human trafficking. Excerpts from the narratives of participants indicated the following:

Originally, when the culture was introduced, it was for families to marry from each other. So, once you are familiar with a particular family, you can marry from there. However, today, we hear people are being deceived by dubious people to traffic their children. (P13)

It is an ancient culture mostly practised by the Xhosas. Two families, having known each other for years, give their children to each other for marriage for the continuity of the friendly gestures. There was no deceit or suspicion. But today, it has been bastardised. Owing to poverty and greed, parents hand over their daughters to people whom they do not really know well because they are expecting both material and financial benefit in return. (P16)

The argument above lends credence to the findings of Mollema (2013, 85). Generally, traditional practices remind people of their heritage. However, contemporary nuances embedded in the socio-economic and political milieus have often created several platforms for the exploitation of some of these traditional practices. This viewpoint is consistent with the findings from the studies carried out by Bermudez (2008, 15) and IOM (2006, 15).

Overdependence on the Criminal Justice System

The findings of the current study indicated that the challenges faced by trafficked victims in the entire trafficking cycle were not directly linked to the failure of the criminal justice system. Furthermore, the study found that an effective response to human trafficking in South Africa was beyond the scope of the criminal justice system.

Moreover, the findings indicated that delays in crime reporting hampered the efforts of the criminal justice institutions in the country in responding to human trafficking. Consequently, there is not a strong linkage between trafficked victims' experiences and the response of the South African criminal justice system. In the study, eight out of the 30 participants reported a linkage whereas the remaining 22 were of the view that the experiences of victims of human trafficking did not have a direct or indirect link with the failure of the justice system. This was also their response when asked if the

³ Ukuthwala is a form of abduction that involves the kidnapping of a girl or young woman by a man and his friends with the intention of forcing the girl or young woman's family to agree to negotiate marriage. Others scheme or help others to have sex with a child or person in exchange for money or other rewards.

challenges faced by trafficked victims in the entire trafficking cycle had a direct or indirect link with the failure of the criminal justice system. The predominant view of the participants is captured in the excerpt below.

No, in the entire trafficking discourse, justice system is not the perpetrator of the crime in the first instance. So, you can't blame any failure on it. Even though the role of the system is to prevent crime, they (SAPS, NPA and DCS) are not the originator of crime in the first instance. We are human beings like other citizens too and as much as possible we perform our duties within the confines of the law. As I said, when crimes are committed and are not promptly reported, do you expect the SAPS or other security agency to perform magic? (P4)

The above findings indicate that even though the South African criminal justice system has initiated a number of initiatives to combat human trafficking in the country, its efforts are not adequate in providing a long-term, lasting solution to this age-long menace. The reason for the inadequacy of the efforts is that crime in general and human trafficking in particular, in the context of this study, are products of varying factors that are rooted in a country's socio-cultural and economic environment (Adepoju 2005; Bello and Olutola 2015; Olutola 2012). Hence, to respond effectively to crime (including human trafficking) is not an easy task and is one that requires a comprehensive and deliberate evaluation of the various factors, forces and processes that fuel criminality in a society. While some crime-combating response mechanisms are generic, others could be specific, depending on the nature and complexities of the crime.

The above finding about the response of the South African criminal justice system to human trafficking, though perturbing, is fundamental in helping to reconfigure the unrealistic but popular view that an increase in crime generally and in human trafficking in particular, in the context of this study, is associated with the failure of the criminal justice system (Olutola 2012). Suffice it to say that it has helped to diffuse the unrealistic pressure often put on the police and other components of the criminal justice system to perform "overnight magic," perhaps through "a quick-fix magical hand" to combat the menace of human trafficking in South Africa. This finding lends credence to the views of Olutola (2012), Burger (2005), Schönteich (1999) and Shaw (1996).

Conclusion

This article sought to evaluate the efforts of the South African criminal justice system in combating human trafficking. While the study's findings have implications for an effective response to human trafficking in South Africa, it is imperative to indicate that the study itself has its own peculiar limitations. Since the study was essentially cross-sectional, it was challenging to draw causal conclusions. Therefore, a longitudinal study may be conducted in order to make broader and more accurate inferences regarding the efforts of the entire South African criminal justice system in combating human trafficking in the country. However, in the current study, the views of the participants

(who were largely experts and experienced professionals in counter-trafficking operations) cannot be disregarded because criminal justice institutions in South Africa often share information and are interrelated. Future studies can explore the response of the entire South African criminal justice system in combating human trafficking in the country. Such studies should target all the provinces in South Africa. A longitudinal study could also be considered for sharing information and incorporating international best practices.

The findings of this study have illuminated some reasons for the ineffectiveness of the South African criminal justice system in combating human trafficking in the country on the one hand but also the impracticability of expecting this system to succeed in such efforts on the other hand. The results thus largely support the fact that gaps exist as regards the measures of both the State and criminal justice institutions in combating human trafficking. Fundamentally, it is evident that while legal measures could serve to deter human traffickers, it is not an all-inclusive approach in combating crime in the 21st century (Bello and Olutola 2015).

The study provided evidence that, although efforts had been made by the criminal justice system via its institutions, many of these efforts were undermined by factors embedded in the sociocultural, economic, political and technological milieus of the country. These factors also double as the root causes of the human trafficking problem in South Africa. It is necessary for the state to address these factors, which include poverty, high unemployment, illiteracy, harmful cultural practices, and institutional corruption.

Moreover, the South African criminal justice system cannot be solely blamed for the prevalence of human trafficking in the country—social institutions share a larger portion of the blame. It is obvious from the findings of this study that an effective response to human trafficking in South Africa falls outside the scope of the criminal justice system. Such a response requires all relevant stakeholders, including social institutions, government, justice institutions, NGOs and the public, to accept collective responsibility for fighting the scourge.

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