

# A Comparative Study on Human Trafficking as a Crime in South Africa

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## Abstract

With millions of people trapped in modern-day slavery, human trafficking is largely misunderstood, owing to limited data and research. Present-day human trafficking trends are linked to issues such as corruption, funding, public awareness, and poor anti-trafficking coordination. Over centuries, human trafficking has taken on a variety of forms ranging from enslavement in all its forms to organ removal. South Africa's most significant achievement in combatting human trafficking is its own anti-trafficking legislation, namely the Prevention and Combatting of Trafficking in Persons Act of 2013. However, some provisions of this Act remain ineffective, thus impeding the fight against trafficking in the country. This article focuses on South Africa's trafficking trends and anti-trafficking responses. It also highlights the hindrances obstructing the effective enforcement of its legislation by comparison to the first-world country Canada, to gain an understanding of effective anti-trafficking administration and execution to ultimately provide recommendations for South Africa to follow. For example, years before South Africa, Canada had already responded to international pressures regarding its anti-trafficking efforts. The country focused ample resources and funding on its anti-trafficking task team while South Africa followed a piecemeal approach in addressing human trafficking. This stems from a misunderstanding of the crime and policy frameworks, and mismanagement of funds. This article proposes that the South African government should strengthen its anti-trafficking measures by making funds easily accessible to victims and educating front-line responders to communicate effectively with victims.

**Keywords:** human trafficking; comparative law; South Africa; Palermo Protocol; PACOTIP.

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## Introduction

Legislative action for the suppression of human trafficking began after the abolishment of slavery.<sup>1</sup> The earliest legislative measures against human trafficking began in 1904, when states wanted to regulate and suppress the trafficking of white women.<sup>2</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (Palermo Protocol) was created by the United Nations after various political negotiations and debates.<sup>3</sup> This piece of legislation paved the way for the creation of the first internationally recognisable definition of human trafficking. The Palermo Protocol supplements the United Nations Convention Against Transnational Organized Crime of 2000 (UNTOC), and is meant to complement its sister-protocol, the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air.<sup>4</sup> Accordingly, Article 3(a) of the Palermo Protocol defines human trafficking as

(a) ‘Trafficking in persons’ shall mean 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 purpose 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 like slavery, servitude, or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

c) The recruitment, transportation, transfer, harbouring, or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article.

(d) ‘Child’ shall mean any person under 18 years of age.<sup>5</sup>

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1 Lindsey King, ‘International Law and Human Trafficking’ (2013) Tropical Research Digest: Human Rights and Human Trafficking Human Rights Welfare 88.

2 UN, ‘International Agreement for the Suppression of the “White Slave Traffic” (signed at Paris on 18 May 1904) United Nations Treaty Series 11. This agreement focused primarily on the protection of female human trafficking victims and awarded protection to white women only. Because of this, many felt that the document was based on racist and conservative ideals and was amended by UN, ‘Protocol’ (signed at Lake Success, New York 4 May 1949).

3 UNGA, Convention against Transnational Organized Crime (Res adopted by the General Assembly, 8 January 2001) A/RES/55/25 and UNGA, Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (15 November 2000).

4 US Department of State, ‘2021 Trafficking in Persons Report’ 68–73 <<https://www.state.gov/reports/2021-trafficking-in-persons-report/> pdf> accessed 5 June 2022.

5 Palermo Protocol Art 3(a).

Human trafficking world-wide continues because the driving forces of this crime are still rife.<sup>6</sup> Poverty, inequality and transnational organised crime are currently some of the underlining causes of human trafficking globally.<sup>7</sup>

The outbreak of the COVID-19 pandemic heightened the exposure of people to human trafficking situations across the world.<sup>8</sup> It has been argued that the increase in human trafficking during the pandemic was due to a severe economic impact in many countries, which negatively affected their socio-economic situations.<sup>9</sup> This rendered significantly more individuals vulnerable to the risk of being trafficked or exploited.<sup>10</sup> Some COVID-19 restrictions on human movement meant that law enforcement agencies could not provide adequate protection to victims. Also, switching from in-person to online teaching increased the exposure of children to online exploitation such as sexual grooming, pornography, and extortion.<sup>11</sup>

Moreover, COVID-19 led to a high rate of job insecurity, particularly in South Africa with its already high rate of unemployment. According to Stats SA, the first quarter of 2022 showed a 34.5 per cent rate of unemployment meaning that 7.9 million citizens are unemployed, and a total of 30.4 million are living below the food poverty line and are potential prey for traffickers.<sup>12</sup>

The scourge of human trafficking in South Africa remains problematic.<sup>13</sup> Although funds are available to implement responses to human trafficking, they are not sufficiently channelled towards addressing the problem. For example, there are not enough shelters for human trafficking victims and the number of public awareness campaigns are inadequate.<sup>14</sup> The objective of this study is to argue that human trafficking is a societal problem in South Africa, but the country lacks sufficient

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6 Jónína Einarsdóttir and Hamadou Boiro, 'The Palermo Protocol: Trafficking Takes All' (2022) *Icelandic Review of Politics and Administration* 10(2) 387–398, 388.

7 Moses Motseki and Jacob Tseko, Mofokeng, 'An Analysis of the Causes and Contributing Factors to Human Trafficking: A South African Perspective' (2022) *Cognent Social Sciences* 8(1) 1–11, 3.

8 Jonathan Todres and Angela Diaz, 'COVID-19 and Human Trafficking – The Amplified Impact on Vulnerable Populations' (2021) *JAMA Pediatrics* 175(2) 123–124, 123.

9 *ibid.*

10 *ibid.*

11 Catherine Basara Asekenye and Alex Balch, 'This Pandemic Has Opened Another Box of War: COVID-19, Safeguarding, and Research on Human Trafficking and Modern Slavery in Kenya and Uganda' (2022) *Journal of Human Trafficking* 1–17, 4.

12 SA, 'Consensus 2022' <<https://www.statssa.gov.za/?p=15407> Department of Statistics South Africa> accessed 16 February 2023; Staff Writer, 'How Much Money do the Poorest in South Africa Are Living Each Month' *Business Tech.* (September 2021)- <How much money the poorest in South Africa are living on each month ([businessstech.co.za](https://www.businessstech.co.za))> accessed 16 February 2023.

13 US Department of State '2018 Trafficking in Persons Report' accessed 15 June 2022.

14 US Department of State '2022 Trafficking in Persons Report' <<https://www.state.gov/wp-content/uploads/2022/04/337308-2022-TIP-REPORT-inaccessible.pdf>> accessed 16 March 2023 502.

measures to address it and that those have been put in place to eradicate the problem have not yielded satisfactory results.

A comparative study of the Canadian legal system will reveal its adequate responses to trafficking. It is acknowledged that Canadian policy makers and service providers are continually advocating for the education and training of frontline workers.<sup>15</sup> It is recommended that South Africa learn from Canada by promoting the implementation of its anti-trafficking responses.<sup>16</sup>

## Human Trafficking Trends

In the modern age, crime syndicates dominate the human trafficking industry by transporting people across borders for a profit, which associates trafficking with other criminal activities, such as the drug trade and sexual exploitation.<sup>17</sup> The use of the internet, especially by unsuspecting, poor and unsupervised minors offers traffickers an opportunity to exploit a greater number of victims through false advertising and recruitment on social media sites.<sup>18</sup> This platform is a lucrative one, with approximately 4.39 billion users 3.48 billion connected to social media.<sup>19</sup>

Today, the most common form of human trafficking is sex trafficking with an estimated USD150 billion annual turnover.<sup>20</sup> Women and children are particularly vulnerable to sexual exploitation, as there is a constant demand for commercial sex and sexual entertainment industries.<sup>21</sup> Unfortunately, these women are deceived into sexual exploitation by their traffickers.<sup>22</sup> They are usually promised false employment

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- 15 Anne de Shalit, Emily van der Meulen and Adrian Guta, 'Social Service Responses to Human Trafficking: The Making of a Public Health Problem' (2020) *Culture Health & Sexuality* 10(58) 1–18, 2.
  - 16 Eunice Stoltz, 'Rise in Number of Human Trafficking Victims in South Africa' (20 July 2022) <<https://mg.co.za/news/2022-07-20-rise-in-number-of-human-trafficking-victims-in-south-africa/>> accessed 5 August 2022.
  - 17 Raimo Väyrynen, 'Illegal Immigration, Human trafficking and Organized Crime' (Discussion Paper 20033/72. DP2003-72, World Institute for Development Economic Research (UNU-WIDER). October 2003) <<https://www.wider.unu.edu/sites/default/files/dp2003-072.pdf>> accessed 15 February 2022.
  - 18 Mark Latonero, 'Human Trafficking Online: The Role of Social Networking and Online Classifieds' (Centre on Communication Leadership and Policy Research series, University of Southern California September 2011).
  - 19 Simon Kemp, 'Digital 2019 Global Internet Use Accelerates' <<https://wearesocial.com/uk/blog/2019/01/digital-in-2019-global-internet-use-accelerates/>> accessed 4 October 2019.
  - 20 Joshua Aston, Jun Wen and others, 'Promoting Awareness of Sex Trafficking in Tourism and Hospitality' 2020 32(1) *International Journal of Culture Tourism and Hospitality Research* 1–7 3.
  - 21 Heli Askola, 'Trafficking in Women and Prostitution in the Baltic States Social and Legal Aspects' (IOM 2002).
  - 22 *ibid.*

opportunities that turn into exploitation through abuse and violence.<sup>23</sup> They are kept in isolated conditions and forced into exploitative practices, such as prostitution and pornography.<sup>24</sup> Forced labour as a branch of human trafficking is also on the rise. This is the biggest sector of trafficking in the world with an estimated 27.6 million people exploited through forced labour practices.<sup>25</sup>

Debt bondage is another form of human trafficking that is defined as the exploitation of a victim by using an alleged debt relationship.<sup>26</sup> The debt increases the victims' dependence on the exploiter.<sup>27</sup> This creates a situation of indefinite exploitation that places the victim in a vulnerable position.<sup>28</sup> Finally, human trafficking for the purposes of organ removal include the removal, transporting and sale of body parts to another person for profit<sup>29</sup>—a trade driven by the constant need for human organs around the world.<sup>30</sup> According to Polaris, the estimated number of trafficking victims rose by twelve per cent between 2016 to 2021.<sup>31</sup> The United Nations established that the recent increase of human trafficking in the world is most likely due to COVID-19 and its related implications as explained in the introduction.<sup>32</sup> It is clear that the impact of COVID-19 has created new risks and challenges for victims of human trafficking.

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23 *ibid.*

24 *ibid.*

25 International Labour Organization, 'Forced Labour, Modern Slavery and Human Trafficking' Facts and Figures <<https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>> accessed 10 February 2023.

26 Natalia Ollus and Anniina Jokinen, 'Trafficking for Forced Labour and Labour Exploitation – Setting the Scene' (Research Project, Faculty of Law of Tartu University (Estonia) 2009) 101–101. Also, debt bondage is defined in the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery as: 'the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.'

27 *ibid.*

28 *ibid.*

29 UNODC Trafficking in Persons for the Purpose of Organ Removal (Assessment Tool Kit Vienna 2015).

30 Frederike Ambagtsheer, 'Understanding the Challenges to Investigating and Prosecuting Organ Trafficking: A Comparative Analysis of Two Cases' (2021) Trends in Organized Crime 2 <<https://doi.org/10.1007/s12117-021-09421-2>> accessed 13 February 2022.

31 UN, 'Covid-19 Seen Worsening Overall Trend in Human Trafficking' <[unodc.org/unodc/frontpage/2021/February/share-of-children-among-trafficking-victims-increases--boys-five-times-covid-19-seen-worsening-overall-trend-in-human-trafficking--says-unodc-report.html](https://www.unodc.org/unodc/frontpage/2021/February/share-of-children-among-trafficking-victims-increases--boys-five-times-covid-19-seen-worsening-overall-trend-in-human-trafficking--says-unodc-report.html)> accessed 13 February 2023.

32 *ibid.*

## Human Trafficking in South Africa

South Africa is known as the economic hub of Africa.<sup>33</sup> The country attracts foreigners seeking jobs and security, thus, creating an attractive environment for human trafficking. This is evident in South Africa's trafficking profile in the latest United States Trafficking in Persons Report (TIP Report),<sup>34</sup> which stated that national and foreign adults and children are forced into labour and exploited in the domestic service sector, mining, hospitality services, construction, and the fishing industry, as well as criminal activities.<sup>35</sup> Mugari and Obioha concur that young children are being trafficked from neighbouring borders, including Mozambique and Lesotho with false promises of education, but instead, they become labour trafficking victims in the fishing and farming sectors.<sup>36</sup> Many of these adults and children work long hours for very little remuneration.<sup>37</sup> In July 2022, the South African Police Service (SAPS) arrested two men in connection with the trafficking of thirty-nine women, men and children.<sup>38</sup> The victims were allegedly smuggled from Mozambique to a farm in Mpumalanga for the purposes of forced labour and debt bondage.<sup>39</sup> Furthermore, sex trafficking is also on the rise in South Africa. The TIP Report made a startling statement by claiming that girls as young as ten are being forced into prostitution in South African brothels.<sup>40</sup>

Motseki and Mofokeng point out that one of the factors hindering the plight against human trafficking is bribery and corruption.<sup>41</sup> The lack of control measures coupled with corrupt law enforcement enables traffickers to continue their illicit activities because they do not fear reprisal.<sup>42</sup> Van der Watt posits that corrupt officials are the cause of inadequate victim protection and prosecutions.<sup>43</sup> The TIP Report also identified this problem when it revealed that well-known brothels in South Africa continue to operate because of corrupt officials.<sup>44</sup> This does not mean that all sex workers in brothels

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33 Ishmael Mugari and Emeka Emmanuel Obioha, 'Trends, Precipitating Factors and Control of Human Trafficking in South Africa and Zimbabwe' (2021) *Open Journal Anthropological Studies* 5(2) 37–48 41.

34 US Department of State (n 14) 502.

35 *ibid.*

36 Mugari and Obioha (n 33) 40.

37 *ibid.*

38 Nicole McCain, 'Two More Arrested for Allegedly Holding 39 Human Trafficking Victims, Including Children, on Farm' *News24* (06 July 2022) <<https://www.news24.com/news24/southafrica/news/two-more-arrested-for-allegedly-holding-39-human-trafficking-victims-including-children-on-farm-20220706>> accessed 16 February 2023.

39 *ibid.*

40 US Department of State (n 14) 504.

41 Motseki and Mofokeng (n 7) 8.

42 *ibid.*

43 Marcel van der Watt, 'Trafficking and the Corruption, Collusion Nexus' *Mail and Guardian* (July 2019) <<https://mg.co.za/article/2019-07-26-00-trafficking-and-the-corruption-collusion-nexus/>> accessed 4 August 2022.

44 US Department of State (n 14) 504.

are trafficked victims, however, it is not uncommon that some sex workers are forced into sexual exploitation and prostitution.<sup>45</sup>

In essence, the implementation of anti-trafficking legislation, the creation of long-term victim rehabilitation and re-integration centres, shelters, and public awareness campaigns are futile if the first responders to a human trafficking crime do not fulfil their duties in a competent manner.

Another impediment facing South Africa is funding, a lack of which means that the primary prevention measures are also limited.<sup>46</sup> For example, many NGOs report that they were often given a stipend per victim, per night, however, funds were generally inaccessible due to the unresponsiveness of the SAPS.<sup>47</sup> These NGOs reported that the SAPS usually left victims at the NGO without prior coordination from the Department of Social Development (DSD), which means that NGO's did not receive funding for victims from the DSD.<sup>48</sup> The lack of coordination between the SAPS and the DSD meant that victims were unable to access emergency shelters and services. These NGOs approach civil society for financial aid through charitable drives, donations and sponsors.<sup>49</sup> In their research findings, Sambo and Spies reveal that victims had a lack of knowledge about available resources, therefore, many victims did not have money for additional health care and basic needs such as clothes.<sup>50</sup> Shelters must be accessible to all victims, not only to those who suffer from mental, physical and financial challenges.<sup>51</sup>

Media reports in 2021 and 2022 highlighted the severity of the human trafficking situation in South Africa. On 31 December 2021 the SAPS arrested four traffickers aged between nineteen and forty in Pretoria.<sup>52</sup> The team responded to information received from the Human Trafficking hotline and rescued a seventeen-year-old female who had been drugged and sexually exploited.<sup>53</sup> The traffickers are now facing charges of human trafficking under the Prevention and Combating of Trafficking in Persons Act of 2013 (PACOTIP).<sup>54</sup> On 1 March 2022, five women were rescued from alleged human

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45 Motseki and Mofokeng (n 7) 2.

46 Monique Emser and Suzanne Francis, 'Counter-trafficking Governance in South Africa: An Analysis of the Role of the KwaZulu-Natal Human Trafficking, Prostitution, Pornography, and Brothels Task Team' 2017 35(1) *Journal of Contemporary Studies* 190–211, 196.

47 US Department of State (n 14) 502.

48 *ibid.*

49 *ibid.*

50 Juliet Sambo and Gloudien Spies, 'Consequences Experienced by Women Survivors of Human Trafficking in South Africa' 2019 56(1) *Social Work* 78–87, 84.

51 *ibid.*

52 Robin-Lee Francke, 'Hawks Arrest Four Alleged Human Traffickers, Rescue Two Victims from Brothel in Pretoria' *IOL News* (1 January 2022) <<https://www.iol.co.za/news/south-africa/gauteng/hawks-arrest-four-alleged-human-traffickers-rescue-two-victims-from-brothel-in-pretoria-e87c27bb-1b47-4d55-85a0-0180af62dac3>> accessed 6 June 2022.

53 *ibid.*

54 *ibid.*

traffickers in Durban, KwaZulu-Natal.<sup>55</sup> The women who were lured with the false promise of jobs as call centre agents, were instead informed that they would be involved in the sex trade business.<sup>56</sup> These women were rescued and the investigation is ongoing.

South Africa took a giant leap by creating a definition of the crime with all its criminal elements and the various forms of human trafficking. The Palermo Protocol's international definition of human trafficking formed the baseline for the creation of the PACOTIP. The Palermo Protocol is relevant for this article because it provides the universal definition of human trafficking and obliges member states to criminalise human trafficking in their countries. South Africa signed the Palermo Protocol on 14 December 2000 and ratified it on 20 February 2004.<sup>57</sup> This action accelerated South Africa's anti-trafficking efforts, by implementing specific legislation and prosecuting offenders and providing victim rehabilitation.

### The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (Palermo Protocol)

The Palermo Protocol is the only universal instrument aimed solely at the elimination of human trafficking, with over 117 countries having signed, requiring member states to uphold and enforce its objectives to criminalise human trafficking.<sup>58</sup>

Article 5 of this Protocol compels state parties to criminalise trafficking in persons. It includes the outlawing of human trafficking and organising, participating, or directing other persons to commit the crime of trafficking.<sup>59</sup> This implies that individual states must comply with the minimum standards of the Palermo Protocol when prosecuting traffickers. Articles 6, 7 and 8 include provisions on victim protection and assistive measures. The articles imply that state parties shall protect the privacy and ensure the safety of victims. State parties should consider physical, physiological, and social recovery for victims.<sup>60</sup> These Articles further mention that state parties shall consider the question of allowing victims to remain within its territory in appropriate cases.

Part 3 of the Palermo Protocol deals with prevention and cooperation between member states. The Palermo Protocol is a remarkable accomplishment in creating cooperation

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55 Chris Ndaliso, 'Human Trafficked Women Rescued in Durban North' *The Witness* (3 March 2022) <https://www.news24.com/witness/news/eidos/human-trafficking-women-rescued-in-durban-north-20220303>> accessed 3 June 2022.

56 *ibid.*

57 Republic of South Africa 'Presentation' (10th session of the Working Group on Trafficking in Persons 10 to 11 September 2020) <[https://www.unodc.org/documents/treaties/WG\\_TIP/WEBSITE/STATEMENTS/SOUTH\\_AFRIC\\_A.pdf](https://www.unodc.org/documents/treaties/WG_TIP/WEBSITE/STATEMENTS/SOUTH_AFRIC_A.pdf)> accessed 23 March 2022.

58 Palermo Protocol Status 17 May 2021 <[www.treaties.un.org](http://www.treaties.un.org)> accessed 17 May 2021.

59 *ibid* Art 5.

60 *ibid* Art 6(3).



amongst countries. It enjoys wide recognition amongst states, and its broad nature allows nations to supplement the Protocol into domestic law, criminalising all elements of human trafficking with country-specific factors.

## The Prevention and Combating of Trafficking in Persons Act of 2013 (PACOTIP)

The PACOTIP came into force on 9 August 2015 and section 4(1) of this Act defines human trafficking as

any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of, a threat of harm, the threat or use of force or other forms of coercion, the abuse of vulnerability, fraud, deception, abduction, kidnapping, the abuse of power, the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person or the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons

Bello and Olutola commends the PACOTIP for extending the definition of human trafficking to include illegal child adoption and forced marriage.<sup>61</sup> The most favourable element of the Act is its emphasis on the criminalisation of the exploitation of adults and children. A good example of this sense is seen in the case of *State v Gordon Pillay*.<sup>62</sup> The accused was convicted of offences that include rape, attempted rape, sexual grooming and sexual exploitation of a minor, exhibition of pornography to a minor and creation, distribution and possession of child pornography, trafficking and child abuse.<sup>63</sup> The court relied on various provisions including section 4(1), read with sections 1, 2, 3, 11(1)(a), 13(1)(A), 13(2), 14, 29, 30 and 48 of the PACOTIP.<sup>64</sup> The Judge handed down the maximum sentence of life imprisonment as prescribed by the Act.<sup>65</sup> The maximum sentence for human trafficking is life imprisonment, a fine not exceeding ZAR 100 million, or both. Furthermore, engaging in conduct that causes debt bondage and benefitting from services of a trafficked victim is punishable by up to fifteen years' imprisonment. The facilitation of trafficking of a person is punishable by up to ten years' imprisonment.

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61 Paul Olutwatosin Bello and Adewale Olutola, 'Effective Response to Human Trafficking in South Africa: Law as a Toothless Bulldog' (2020) SAGE 1–14, 7.

62 *The State v Gordon Pillay* (CCD39/2019) [2020] ZAKZDHC 69 (hereafter *State v Pillay*).

63 *ibid* para 1.

64 *ibid*.

65 *ibid* para 219.

Importantly enough, this Act also makes a provision for the offences associated with human trafficking. For example, section 4 of this Act mentions that any person who performs an act aimed at trafficking a person, directs or encourages an act of trafficking or even conspires to trafficking a person is guilty of human trafficking. These provisions were followed in the arrest of two high-ranking Gauteng police officers in late 2021. The officers were arrested for human trafficking after they identified an illegal brothel where a human trafficking victim was reported missing and held hostage for sexual exploitation, but did not follow proper procedure.<sup>66</sup> The officers raped the victim on numerous occasions and then paid the brothel owner.<sup>67</sup> The PACOTIP follows a victim-centred approach, sections 15, 19,22,23, 29 and 30 of this Act provide the protections of victims by offering access to health services, basic care, shelters, homes, and compensation. Furthermore, sections 31 to 36 stipulate the appropriate procedure for the care, repatriation, and protection of foreign victims. These provisions came into action in *Cheba and Others v Minister of Police*,<sup>68</sup> when the court was determining the deportation of a group of Ethiopians.<sup>69</sup>

The facts of the case show that fifteen Ethiopian nationals were found locked in a room by the SAPS.<sup>70</sup> They alleged that they were fleeing from political hostility in Ethiopia, when they were kidnapped and kept in appalling conditions in South Africa.<sup>71</sup> The court highlighted that it is undeniable that the individuals were victims of human trafficking.<sup>72</sup> Therefore, applying the provisions of the PACOTIP took precedence in this case.<sup>73</sup> The court reiterated that curbing human trafficking was paramount and at the heart of national and international efforts to protect humans against any kind of slavery.<sup>74</sup> The judge stated that the provisions and purpose of the PACOTIP need to be fulfilled.<sup>75</sup> The court held that victims were not detainees but witnesses of human trafficking under circumstances governed by law.<sup>76</sup> The judge explained further that the victims held the power to aid the government in identifying their traffickers.<sup>77</sup> He concluded that the Ethiopians should be placed in an accredited place of safety while the Department of

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66 Nomahlubi Sonjica, 'Two High-ranking Gauteng Police Officers Arrested for Human Trafficking' *TimesLive* (14 March 2021) <<https://www.timeslive.co.za/news/south-africa/2021-05-14-two-high-ranking-gauteng-police-officers-arrested-for-human-trafficking/>> accessed 10 January 2023.

67 *ibid.*

68 *Cheba and Others v Minister of Police and Others* (520/2018) [2018] ZALMPPHC (hereafter *Cheba*).

69 *ibid* para 6.

70 *ibid* para 24.

71 *ibid* para 17, 18.

72 *ibid* para 26.

73 *ibid* para 27.

74 *ibid* para 28.

75 *ibid* para 17, 18.

76 *ibid* para 25.

77 *ibid* para 29.

Social Development (DSD) fulfilled their duty according to sections 15 and 22 of PACOTIP.<sup>78</sup>

The court acknowledged that the first respondent failed to perform his duties in terms of section 19(5)(b) and (c) in that he did not inform the victims of their rights to apply for a visitor's visa to remain in the country for a recovery and reflection period in terms of section 15 of the Act.<sup>79</sup> Furthermore, the court reiterated that the strength of PACOTIP depends on the strict compliance of all its provisions including sections 15(1) and 22.<sup>80</sup> These sections relate to the issuance of appropriate immigration status and identification documents for trafficking victims. The non-compliance by front-line responders to the enforcement of the PACOTIP highlights the problem that South Africa faces, namely the lack of trained officials.

Application of the PACOTIP was also tested in *S v Osabiya*,<sup>81</sup> in which the state had to prove allegations that the accused ran an organised trafficking ring for sexual exploitation.<sup>82</sup> The accused had recruited and sexually exploited a minor Zimbabwean child who was an illegal foreigner in South Africa.<sup>83</sup> The facts of the case are that the accused illegally transported a little girl and women across the border into South Africa.<sup>84</sup> He harboured them in South Africa and sexually exploited them using dominance, threats, and violence.<sup>85</sup> The victims were not allowed to leave the premises unless accompanied by the accused.<sup>86</sup> The accused denied all the allegations.<sup>87</sup> The court relied on section 4(1) of the PACOTIP to determine whether the accused had committed the crime of human trafficking.<sup>88</sup> The court held that the accused contravened section 4(1) of the PACOTIP as well sections 1, 2, 11, 12, 13, 14, 18, 23, 29 and 30.<sup>89</sup> The court commended the victims' testimony and stated that prosecuting a matter such as this depended on the cooperation and courage of victims.<sup>90</sup> The court found the accused guilty on all counts of human trafficking and sexual exploitation.<sup>91</sup>

Judge Ranchod in *S v Obi and Others*<sup>92</sup> explained that human trafficking is not a criminal action but a process.<sup>93</sup> It includes the act, means and exploitation and together,

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78 *ibid* para 50.5.

79 *ibid* para 35.

80 *ibid* para 50.5.

81 *S v Osabiya* (CC47/2019) [2021] ZAGPPHC 716 (21 October 2021) (hereafter *S v Osabiya*).

82 *ibid* para 3.

83 *ibid*.

84 *ibid*.

85 *ibid*.

86 *ibid*.

87 *ibid*.

88 *ibid* para 5.

89 *ibid* para 46.

90 *ibid*.

91 *ibid* para 51.

92 *S v Obi and Others* (CC40/2018) [2019] ZAGPPHC 1045 (18 September 2019) (hereafter *S v Obi*).

93 *ibid* para 9.

these elements form a criminal strategy.<sup>94</sup> This case follows three young female victims who were trafficked, groomed, and raped repeatedly for the financial benefit of the accused.<sup>95</sup> During sentencing, Judge Ranchod stated that the accused had a well-planned strategy on how to lure young girls into drug trafficking and human trafficking and identified the accused as the kingpin in his human trafficking enterprise. As in *Cheba*, the court expressed its distaste about the manner in which front-line responders have approached the situation and specifically mentioned that

... it is a sad indictment of certain members of the police force who were expected to bring perpetrators to book but instead, exploited the situation to their own advantage by taking bribes and themselves taking advantage of the young victims ...<sup>96</sup>

Nonetheless, the court diligently followed its duties and relied on the definition of human trafficking in section 4(1) and 7 of PACOTIP to find the accused guilty of human trafficking<sup>97</sup> sentenced them to life imprisonment.<sup>98</sup>

The success of the application of section 4(1) of the PACOTIP can also be seen in *S v Obono*.<sup>99</sup> A twelve-year-old girl was sold to an older male who raped her and sexually exploited her for financial gain.<sup>100</sup> The court found the accused guilty of human trafficking and sentenced him to life imprisonment.<sup>101</sup>

From these examples of case law, it is evident that corruption and complicity to human trafficking by front-line responders are debilitating for law enforcement.<sup>102</sup> The problems of bribery and the lack of knowledge about legislation hinder the success of identification, processing, investigation and the prosecution of human traffickers. The successes achieved in the prosecution of traffickers by applying the PACOTIP's stringent minimum sentence requirements is telling, and for this, South Africa should be commended.

Aransiola and Zarowsky posit that although South Africa has made significant strides in implementing this legislation, the government still needs to take pro-active measures.<sup>103</sup> They state that the PACOTIP requires further attention and enhancement

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94 *ibid.*

95 *ibid* para 10.

96 Marcel Van der Watt, 'Research into the Nature and Scope of Trafficking in Persons in South Africa: Prevalence insights from the criminal justice system and relevant reporting mechanisms' (Supplement to agreement no AID-7200AA18CA00009 July 2022) *Laser Pulse* 92.

97 *S v Obi* (n 92) para 10.

98 *ibid* para 20.

99 *S v Obono* (CC65/2020) [2021] ZAGPPHC 888 (29 April 2021) (hereafter referred to *S v Obono*).

100 *ibid* para 7.

101 *ibid* para 1.

102 Van der Watt (n 96) 92.

103 Joshua Aransiolaand, Christina Zarowsky, 'Human Trafficking and Human Rights Violations in South Africa: Stakeholders' Perceptions and the Critical Role of Legislation' (2014) *African Human Rights Journal* 14 509–525 524.

to prevent the re-trafficking of victims<sup>104</sup> to ensure that they do not get rescued only to be released in the same criminal environment.<sup>105</sup> Law enforcement play a pivotal role in the fight against Human trafficking.<sup>106</sup> However, this is often being challenged by a misunderstanding of the legislation by the SAPS, corruption amongst law enforcement and insufficient training.<sup>107</sup> To elaborate on the country's anti-trafficking methods, the government implemented a National Policy Framework (NPF).

## The National Policy Framework

The NPF was created on 25 April 2019—four years after the implementation of the PACOTIP.<sup>108</sup> The NPF is a strategic action planning instrument aimed at the implementation and responsibilities of the PACOTIP.<sup>109</sup> In particular, the NPF relates to all matters dealt with in the Act in order to ensure cooperation amongst governmental bodies and state institutions.<sup>110</sup> The NPF strategy recognises and follows the international guidelines and standards including a human rights/victim-centred approach, government initiatives, and sustainability.<sup>111</sup> The NPF comprises various task teams, ranging from front-line responders such as the SAPS to members of the National Prosecuting Authority.<sup>112</sup> More specifically, the NPF has established a National-Inter-Sectorial Committee on Trafficking in Persons (NICTIP). The NICTIP is tasked with contributing to the development of anti-trafficking responses, including proposing improvements to the anti-trafficking legislation when needed.<sup>113</sup> Its other role is to support the NPF in its various anti-trafficking research, training and awareness campaigns.<sup>114</sup> The National Rapid Response Team (NRRT) is the first responding team in the NPF.<sup>115</sup> and consists of a committee tasked with ensuring that all traffickers and trafficking cases are dealt with swiftly.<sup>116</sup> They evaluate new trafficking cases, while enforcing and protecting case law processes including the identification, and protection

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104 *ibid.*

105 *ibid.*

106 Bello and Olutola (n 61) 7.

107 *ibid.*

108 John H Jeffery, 'Keynote Address' (Virtual Conference on a Human Rights Approach to Preventing and Combating Corruption 29 March 2021) <[www.justice.gov.za](http://www.justice.gov.za) on 07/02/2020> accessed 12 February 2023.

109 SA Department of Justice and Correctional Development, 'Prevention and Combating of Trafficking in Persons National Policy Framework' UNODC April 2019 10 <<http://www.justice.gov.za/docs/other-docs/2019-TIP-NPF-10April2019.pdf>> accessed 17 November 2022.

110 *ibid.*

111 Jeffery (n 108).

112 *ibid.*

113 *ibid.*

114 *ibid.*

115 *ibid.*

116 *ibid.*

of trafficking victims.<sup>117</sup> Lastly, the Provincial Task Teams (PTTs) constitute representatives from the numerous national departments.<sup>118</sup> They play an important role in the implementation of the NPF and the PACOTIP.<sup>119</sup> Members include all participants from the DSD, and the departments of home affairs, health, labour and agriculture. They are responsible for contributing to the development of coordinated anti-trafficking responses, such as using available human and economic resources to implement the provincial anti-trafficking action plan.<sup>120</sup> However, the fact that the government waited four years after the implementation of the PACOTIP to initiate the NPF, should be criticised. The time it took for the NPF to be established is an indication of the ineffectiveness of the South African government in dealing with TIP. The delayed response also indicates the country's lack of commitment to addressing TIP with its domestic laws.<sup>121</sup>

The NPF offers a multi-faceted approach on the management of human trafficking in South Africa.<sup>122</sup> Yet, even with a sound legislative framework, front-line responders still have difficulty in understanding the legal concept of human trafficking and exploitation.<sup>123</sup> Implementation of this policy framework is still cumbersome because it is weak and poorly coordinated.<sup>124</sup> It is also mentioned in the TIP Report that coordination and communication challenges between the national and provincial teams in South Africa have impeded effective leadership.<sup>125</sup> Lack of communication amongst the various departments has affected the flow of information between the different levels.<sup>126</sup> The NPF's key role players such as the SAPS were frequently absent from meetings and a lack of technology prevented access to virtual conferences.<sup>127</sup> This means that the NPF cannot run at full capacity because of structural failures in communication and leadership. Case law and scholarly opinion show that the full effect of both the PACOTIP with its NPF could only be achieved after a few years when task teams and national strategies are in full force.<sup>128</sup> However, at the end of the reporting period in 2022, the effectiveness of the NPF remains doubtful. The TIP Report states that the NPF's efforts to prevent human trafficking are haphazard.<sup>129</sup> The government continued to implement the NPF to improve their anti-trafficking measures and began procedures for a renewal in 2023.<sup>130</sup> Furthermore, it has been established that even after

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117 *ibid.*

118 *ibid.*

119 SA Department of Justice and Correctional Development (n 109) 27.

120 *ibid.*

121 Bello and Olutola (n 61) 6.

122 Mugari and Obioha (n 33) 44.

123 *ibid.*

124 Bello and Olutola (n 33) 6.

125 US Department of State (n 14) 503.

126 Motseki and Mofokeng (n 7) 8.

127 *ibid.*

128 *ibid.*

129 US Department of State (n 14) 503.

130 *ibid.*

the creation of the NPF, the country still lacks the resources to effectively investigate and combat human trafficking.<sup>131</sup> This is why South Africa remains a Tier 2 watch list country in 2022 according to the TIP Report.<sup>132</sup>

A National Action Plan similar to the NPF was re-evaluated and renewed in Canada from 2019 to 2024.<sup>133</sup> The Canadian National Action Plan has the same objectives as the NPF and consists of similar role players and structures.<sup>134</sup> However, there is a drastic difference in enforcement between the anti-trafficking policy frameworks of Canada and South. The Canadian Action Plan maintains high priority, with a total investment of CAND 75 million.<sup>135</sup> The creation and renewal of the National Action Plan backed by generous funding demonstrates that Canada is succeeding in the fight against human trafficking.

Through Canada's Action Plan, the country has invested CAND 3.4 million to establish a migrant worker support network.<sup>136</sup> This programme protects migrants from potential mistreatment or abuse<sup>137</sup> and enables foreign workers to receive the same rights and protection as the Canadians.<sup>138</sup> Canada has invested more than adequate funds into fighting human trafficking and creating successful strategies to combat crime. South Africa invested only ZAR 2,5 million to enforce national policy structures such as the NICTIP and institutionalise the PTTs and ZAR 2 million into public awareness and related campaigns.<sup>139</sup> Greater pressure should have been placed on granting adequate funding for the training of front-line responders to combat human trafficking. More funding should have been granted for the protection and rehabilitation of human trafficking victims and survivors. Canada's efforts regarding the communication and management between different law enforcement jurisdictions in its own National Action Plan are commendable.<sup>140</sup> It is evident that South Africa's shortfalls include a lack of enforced anti-trafficking strategies, training, communication, and coordination inside the NPF.

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131 Motseki and Mofokeng (n 7) 8.

132 US Department of State (n 14) 501.

133 Government of Canada, 'National Strategy to Combat Human Trafficking 2019–2024' (2019) Cat. No. PS4-254/2019E-PDF 6.

134 *ibid.*

135 *ibid.*

136 Government of Canada (n 133) 20.

137 Fact sheet, 'Temporary Foreign Worker Programme' (2018) <[www.canada.ca/en/immigration-refugees-citizens/corporate/publication](http://www.canada.ca/en/immigration-refugees-citizens/corporate/publication)> accessed 2 October 2022.

138 *ibid.*

139 Prevention and Combating of Trafficking in Persons National Policy Framework 26.

140 Jaqueline Oxman-Martinez and Fanny Gomez, 'Canadian Policy on Human Trafficking' (September 2005) 43(4) *International Migration* 7–27, 13.

## Canada's Human Trafficking Responses

Canada has remained a Tier 1 country since 2003 because its government continued to demonstrate serious and sustained efforts during its reporting period in 2022.<sup>141</sup> Even during the COVID-19 pandemic, Canada increased its efforts to protect foreign victims, and identify victims of forced and labour trafficking.<sup>142</sup> The government also increased its efforts in increasing funding for victim services, prohibiting the import of goods produced by forced labour and the launch of a five-year public awareness campaign.<sup>143</sup> As mentioned earlier, South Africa's victim funding was sometimes inaccessible because of unresponsiveness of law enforcement. However, in Canada, the government has implemented a special procedure that ensures victims have access to funds through the Victims Fund.<sup>144</sup> Furthermore, the country finances the Victims Fund account by CAND 3.3 million to support multi-disciplinary, child-friendly support centres and shelters for short, and medium to long-term housing.<sup>145</sup>

In 2005 Canada implemented its first domestic human trafficking-specific legislation under sections 279.01 to 279.04 of the Criminal Code.<sup>146</sup> The Code provided a definition and elements of the crime of human trafficking and criminalised the material benefit gained from trafficking in persons. The Canadian Code mentions two main prohibitions, namely any form of trafficking, including the crime of facilitating or harbouring a victim for exploitation; and receiving benefits and concealing information relating to human trafficking.<sup>147</sup> The Canadian parliament also passed amendments to other relevant legislature to secure prosecution of human trafficking. These amendments include a change to section 268 and 279.02 of the Criminal Code to include a minimum sentence for the trafficking of people under the age of 18.<sup>148</sup> The minimum mandatory punishment is six years imprisonment.<sup>149</sup> In 2012, an amendment was made to afford Canada extra-territorial jurisdiction to prosecute foreign and Canadian offenders who commit human trafficking abroad.<sup>150</sup>

Canada's swift reaction to international pressure is the first lesson South Africa ought to learn. Immediate responses by all levels of the South African government may have saved countless victims from human trafficking offences. Case law reveals how the Canadian legal system deals with trafficking cases. In *R v Alexis-McLymont*,<sup>151</sup> the

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141 *ibid.*

142 US Department of State (n 14) 162.

143 *ibid* (n 4) 164.

144 *ibid* (n 14) 163.

145 *ibid.*

146 Canada Criminal Code (RSC 1985, c. C-46).

147 Criminal Code S 297.01.

148 HC Bill C-268 (3rd session) (40th Parliament 2010); HC Bill Moving Forward the Fight Against Human Trafficking in Canada Report of the Standing Committee on the Justice and Human rights (1st Session, December 2018, 42nd Parliament) 9.

149 Section 279.011 (1st Session, 42nd Parliament 2010).

150 HC Bill 13 9.

151 *R v Alexis-McLymont and Elgin and Hird* 2018 ONSC 1389 16-600 2018/02/27.



accused was convicted of trafficking a victim under the age of 18.<sup>152</sup> The judge mentioned that when a court imposes a sentence involving the exploitation of a person under the age of 18, the court should consider the deterrence of such conduct in the future. The court was influenced by the above amendment and the accused was sentenced to seven years imprisonment for violating section 279.02 of the Criminal Code.<sup>153</sup>

In *R v Reginald Louis Jean*,<sup>154</sup> the court contended that the minimum sentence requirements are disproportional to the severity and circumstances of each case. The offender in this case was found guilty of trafficking two young women.<sup>155</sup> The accused used coercion, manipulation, and deception to control and exploit his victims and kept thousands of dollars per week of their earnings.<sup>156</sup> The court analysed the Criminal Code by stating that the punishment for human trafficking offences should denounce unlawful conduct, separate offenders from society and serve as a deterrent to future crimes.<sup>157</sup> Owing to the circumstances of the case, including the accused's background and that he was a first time offender, he was sentenced to six years imprisonment for two counts of human trafficking and benefiting from them.<sup>158</sup>

In terms of the 2014 amendment containing a new mandatory punishment for receiving benefits, the judge in *R v Reginald Louis Dean* contended that the Canadian government had a valid objective in enacting the provision,<sup>159</sup> to combat human trafficking and protect vulnerable persons.<sup>160</sup> The court mentioned that the mandatory minimum sentence should also concur with the goal of deterring human trafficking offences, thus the legislation should create a more stringent minimum sentence requirement.<sup>161</sup> Of the various human trafficking cases Roots evaluated, she calculated that the average sentencing term for human trafficking is three years.<sup>162</sup> Anti-trafficking advocates criticise the fact that sentences imposed on these cases are too lenient.<sup>163</sup> This creates the impression that the country is not taking a stringent approach to suppress this crime. South Africa can be commended on its strict sentencing requirements under the PACOTIP as compared to Canada's anti trafficking legislation. It is clear that South

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152 *ibid* para 1.

153 *ibid* paras 23, 99.

154 *R v Reginald Louis Jean*, 2020 ONSC 624 16-RD19640 20200109.

155 *ibid* para 8.

156 *ibid*

157 *ibid* para 17.

158 *ibid* para 1.

159 *ibid* para 28.

160 *ibid* para 39.

161 *ibid* para 39.

162 Katrin Roots, 'Trafficking or Pimping? An Analysis of Canada's Human Trafficking Legislation and its Implications' (2013) 28 *Canadian Journal of Law and Society / Review Canadienne Droit ET Society* 1–21, 19.

163 *ibid*.

Africa sends a stronger message to the country by actively prosecuting traffickers with stark prison terms and stronger trials.

Other than Canada's flaws regarding lenient sentences, Macintosh acknowledges that Canada has fulfilled its obligations in terms of the Palermo Protocol, but contends that it had not regarded the Palermo Protocol's discretionary human rights measures into domestic law.<sup>164</sup> This means that Canada did not include clauses such as victim recovery and rehabilitation into their legislation.<sup>165</sup> Even with a recommendation from the International Organization for Migration (IOM), the Canadian government still does not make any special provisions for the mental or physical well-being of trafficked persons.<sup>166</sup> The PACOTIP made a big leap in recognising and accrediting organisations that provide the necessary care for victims, including those for the repatriation of victims.<sup>167</sup> Moreover, the courts have the power to order convicted perpetrators to pay compensation to their victims.<sup>168</sup> In the case of foreign victims, courts have the authority to authorise visitors visas for purposes of assisting with investigations, victim recovery and reflection.<sup>169</sup> It is clear that on paper, the PACOTIP has stronger provisions regarding victim protection and rehabilitation, however, these provisions lack enforcement in practice.

The report also mentions that Canada has created a programme that regularly hosts human trafficking investigator courses at the provincial and federal levels to educate law enforcement officials on intelligence in human trafficking investigations domestically and abroad.<sup>170</sup> The Canadian Police College has introduced a human trafficking investigator course into its official curriculum.<sup>171</sup> Other initiatives such as an open 24/7 hotline, linked to emergency services, rescue, and social services were also enforced. In the digital age, public awareness goes beyond open speaking and conferences. Canada made use of software developers and information technology companies to inform the youth about human trafficking dangers online.<sup>172</sup> Similarly, the South African government can use the internet to increase public awareness. In conclusion, Canada has made significant strides in honouring its international

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164 Constance Macintosh, 'Assessing Human Trafficking in Canada: Flawed Strategies and the Rhetoric of Human Rights' (2006) IHRLR 24 407–435 415.

165 *ibid.*

166 Macintosh (n 164) 431.

167 PACOTIP s 3(5).

168 *ibid* s 6.

169 *ibid* s 3.

170 US Department of State (n 4) 166.

171 Canadian Police Knowledge Network 'Introduction to Human Trafficking' <<https://www.cpkn.ca/en/course/introduction-to-human-trafficking/>> accessed 5 August 2022.

172 Government of Canada, 'National Strategy to Combat Human Trafficking' 6.

obligations by criminalising human trafficking and creating and enforcing its anti-trafficking strategies.<sup>173</sup>

## Proposals for Reform

One of the main factors that hinders anti-trafficking methods, as cited earlier is inaccessible funds. Delaying the access to funding in South Africa impedes a variety of response actions in victim centres, NGO shelters and appropriate health care services. The government should invest sufficient funds in accredited shelters and safe houses and ensure that these funds are readily available for victims' assistance. Thus, NGOs can fulfil their duties and protect victims during the investigation and court proceedings. At the same time, shelters should be given resources such as psychological counselling, social workers, medical personal, legal assistance, and recreational activities. They should also establish additional trafficking-specific shelters for male, female victims and LGBTQI+ victims.<sup>174</sup>

International bodies are constantly taking note that South Africa's lack of adequately trained officials deepens the surge of human trafficking in the country.<sup>175</sup> South Africa should learn from the Canadian training programme for law enforcement, by promoting trained officials with the skills to identify trafficking victims amongst vulnerable groups such as prostitutes, factory workers, street beggars, etcetera. Law enforcement officials should be trained in social skills and victim protection programmes to ensure that police stations and courts are secure spaces where victims should feel safe to share their story or report a crime, free of prejudice. The SAPS are required to train officers on how to conduct trauma-informed interviewing. It is recommended that SAPS officers be trained on standard operating procedures (SOPs) and victim identification measures for proper procedures to be followed.

It is recommended that these officers should further receive specialised training on how to conduct victim screening amongst vulnerable populations including, people engaging in commercial sex, refugees, migrants, and the informal labour sector. It is also recommended that law enforcement denotes time, funding, and training for computer forensics to investigate online exploitation.<sup>176</sup> The TIP Report mentions that law enforcement had limited training during its reporting period due to the COVID-19 pandemic.<sup>177</sup> It is understandable that COVID-19 has hindered the government's anti-trafficking resources. However, it is time for the government to pick up the pace and work towards strengthening the training of law enforcement and focusing on the

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173 Veronica Fynn Bruery, 'Human Trafficking and the Law in Canada' in Elisha Jasper Dung and Augustine Avwunudiogba, *Human Trafficking: Global History and Perspectives* (London, Lexington Books 2021) 110–131, 122.

174 *ibid.*

175 US Department of State '2019 Trafficking in Persons Report' 425.

176 US Department of State (n 14) 501.

177 *ibid.*

structural competence of the NPF. The purpose of the NPF was to ensure compliance with the PACOTIP and the implementation of anti-trafficking strategies. However, the TIP Report in 2022 states that the NPF lacks coordination and recommends that the government must increase collaboration between the NICTIP and the various PTTs. The government should create a better referral and response system which includes all the role players to ensure complicity amongst members in the NPF. Furthermore, South Africa does not have dedicated personnel or agencies to address human trafficking besides the PTT's and these remain under-resourced.<sup>178</sup> Civil society plays an important role in reporting bribery and corruption in the NPF and its various PTTs including the SAPS, DSD, and the Department of Home Affairs.<sup>179</sup> However, many of these reports go unnoticed. It is recommended that the government must strengthen the confidential channels to receive such information.<sup>180</sup> It is also recommended that the government place sufficient resources on these aspects to protect whistle-blowers, prosecute corrupt officials and prevent further corruption. Civil society has funded NGOs when the PTTs fell short, in turn, human trafficking victims were able to seek assistance from these NGOs.<sup>181</sup> This means that victims were able to get assistance from NGO's because civil society funded these NGO's through sponsors and donations.<sup>182</sup> Civil society also supported the PTTs in creating awareness campaigns and webinars to address human trafficking.<sup>183</sup> Pressure should be alleviated from civil society and the NPF should play a pro-active role to aid, fund and create anti-trafficking strategies. In order words, the NPF should fulfil their duties and purpose.

In South Africa, the PACOTIP does not contain a provision on corruption and penalties for corrupt officials, however, corrupt activities are criminalised in the Prevention and Combating of Corrupt Activities Act 12 of 2004.<sup>184</sup> Investigations of human trafficking cases should proceed with a higher amount of correspondence between the PACOTIP, the Corrupt Activities Act and effective correspondence with the SAPS.

As discussed above, the PACOTIP came into force in 2015, however, sections 15 and 16 of the Act remained ineffective and must be made effective immediately.<sup>185</sup> Compensation should be awarded to trafficking victims in lieu of the physical and psychological harm caused to them. The right of compensation is highlighted in section 29 of the PACOTIP and is a tool for victims to rebuild their lives and provide self-empowerment. Once again, the South African justice system should liaise with each other to follow through with the provisions mentioned in the PACOTIP and the NPF.

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178 Van der Watt (n 96) 56.

179 US Department of State (n 14) 501.

180 *ibid.*

181 *ibid.*

182 Van der Watt (n 96) 113.

183 *ibid.*

184 Prevention and Combating of Corrupt Activities Act 12 2004 s 3.

185 US Department of State '2020 Trafficking in Persons Report' 454.

In this way, South Africa will not only assist a victim's retribution, but also send a strong deterrent to other traffickers and crime syndicates.

## Conclusion

Human trafficking is a multi-million-dollar global enterprise in the criminal underworld, because of worsening socio-economic circumstances. Many contributing factors, such as poverty, unemployment, and rural-urban movement are present in South Africa. In conclusion, this article serves to underscore the scourge of human trafficking. While South Africa implements the NPF and applies the PACOTIP, the country still witnesses thousands of its own citizens trafficked into lives of exploitation domestically and abroad. By following the above-mentioned recommendations, particularly adequate training and funding and proper management funding, South Africa may stand a better chance of eliminating human trafficking.

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