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A proposed method to effectively combat human trafficking: lessons for the South African Criminal Justice System

Morero Motseki

Faculty of Human Sciences, Legal Sciences Department, Vaal University of Technology, Andries Potgieter Blvd, Private Bag X021, Vanderbijlpark, 1900

morerom@vut.ac.za

Abstract. Human trafficking is generally understood to refer to the process through which individuals are placed or maintained in an exploitative situation for economic gain. Trafficking can occur within a country or may involve movement across borders. Women, men and children are trafficked for a range of purposes, including forced and exploitative labour in factories, farms and private households, sexual exploitation, and forced marriage. Trafficking affects all regions and most countries of the world and South Africa is no exception. This study attempt to evaluate the effectiveness of the South African Criminal Justice System (CJS) in combating human trafficking. This study was carried out utilising a qualitative approach. Forty interviews were carried out among officials deployed in the Directorate for Priority Crime Investigation (DPCI), the South African Police Service (SAPS), the Department of Home Affairs (DHA), the Department of Social Development (DSD), the Gauteng Provincial Office, as well as with the victims regarding their views and experiences on the stakeholder's involvement in combating and investigating human trafficking. The key findings indicated that the challenges are lack of resources, capacity, budget and lack of cooperation from victims of human trafficking in supporting ongoing investigations, in adequate awareness was also a major challenge for law enforcement agencies, training, knowledge and skills to deal with human trafficking was identified to be also a big challenge for the relevant stakeholders, the findings also indicated a lack of clear strategy and response by stakeholders to successfully investigate, prosecute and incarcerate the perpetrators of human trafficking. Based on the findings, the author provided, possible recommendations such as; the South African government should develop internet regulations and policies to regulate the internet, advanced training and better education including improved awareness strategies; and collaboration with community police forums to strengthen partnerships, improve support and ensure relationship between the SAPS and the community.

Keywords. Human trafficking, trafficking laws, law enforcement agencies, Criminal justice system, South Africa

Introduction

Human traffickers prey on people who are poor, isolated and weak. Issues such as disempowerment, social exclusion and economic vulnerability are the result of policies and practices that marginalize entire groups of people and make them particularly vulnerable to being trafficked (Motseki, 2020). Yesufu (2020:2) concurs that human trafficking is a lucrative global crime. Organised criminals continue to ply their trade with impunity. They profit from

this illicit trade. Victims of trafficking are transported from their places of origin to destinations both within and outside their countries. They are promised better life by the traffickers, who sometimes coerce victims to work against their will upon arrival in their destination countries. In some instances, the victim's travel documents are seized by the traffickers.

According to a US Department of State report published in June 2013, 'South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking. South Africans and foreign nationals are subjected to human trafficking within the country. Children are trafficked mainly within the country, from poor rural areas to urban centres, such as Johannesburg, Cape Town, Durban, and Bloemfontein. Girls are subjected to sex trafficking and domestic servitude; boys are forced to work in street vending, food services, begging, criminal activities, and agriculture. Nigerian syndicates dominate the commercial sex trade in Hillbrow and other areas, though local criminal rings and street gangs also organise child prostitution; Russian and Bulgarian crime syndicates operate in the Cape Town sex trade (Motseki, 2018; Yesufu, 2020).

Chinese nationals coordinate the sex trafficking of Asian national. Traffickers control victims through intimidation and threats, including witchcraft, use of force, withholding of passports, debt bondage, and enforced use of drugs and alcohol. Women and girls from China, Taiwan, Thailand, Cambodia, India, Russia, Ukraine, Moldova, Bulgaria, Brazil, the Democratic Republic of Congo, the Republic of Congo, Rwanda, Mozambique, Lesotho, Swaziland, and Zimbabwe are reported to have been transported to South Africa for enforced prostitution, domestic servitude, or forced labour or taken onward to Europe for enforced prostitution' (US Department of State Report 2008; Motseki, 2018; Motseki and Mofokeng, 2020).

Review of literature

What is human trafficking?

International agreement on what constitutes "trafficking in persons" is very recent. In fact, it was not until the late 1990s that States began the task of separating out trafficking from other practices with which it was commonly associated such as facilitated irregular migration. The first-ever agreed definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking Protocol). That definition has since been incorporated into many other legal and policy instruments as well as national laws (United Nations, 2014:2).

The international definition of trafficking

The Trafficking Protocol defines the term "trafficking in persons" as follows:

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 similar to 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.

What is the relationship between human rights and human trafficking?

According to United Nations (2014:2) explained the links between human rights and the fight against trafficking are well established. From its earliest days to the present, human rights law has unequivocally proclaimed the fundamental immorality and unlawfulness of one person appropriating the legal personality, labour or humanity of another. Human rights law has prohibited discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for non-citizens; it has decried and outlawed arbitrary detention, forced labour, debt bondage, forced marriage, and the sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one’s own country. Different human rights will be relevant at different points in the trafficking cycle. Some will be especially relevant to the causes of trafficking (for example, the right to an adequate standard of living); others to the actual process of trafficking (for example, the right to be free from slavery); and still others to the response to trafficking (for example, the right of suspects to a fair trial). Some rights are broadly applicable to each of these aspects (Motseki, 2021).

Methodology

This paper adopted a qualitative research approach. This approach used a phenomenological design that is both descriptive and exploratory. For this study, the use of a qualitative research approach enabled an in-depth appreciation of the participants’ responses and a detailed understanding of the stakeholders views of implementation of anti-trafficking laws.

Study Population

SAPS	DSD	DHA	DPCI	Survivors of human trafficking	Total
24	3	5	4	4	40

(Source: Researchers illustration)

The population of this study consists of officials from Directorate for Priority Crime Investigation unit which deals with human trafficking, four officials were interviewed and their ranks were Lieutenant Colonel, Warrant Officer, and Captain, all of them were males in terms of gender, and three of them had between 24 and 34 years of experience. In terms of the South African Police Services, 24 officers in total were interviewed from three selected areas of Gauteng Province, namely Pretoria, Springs and Kempton park, the ranks were Constable, Sergeant, Warrant officers, Lieutenant, and Captain, in terms of the gender, it was 8 females and 16 males and their experience were between 10 years to 27 years. In terms of the Department of Social Development, two officials were interviewed from a head office in Pretoria, they were both males, holding the position of Deputy Director: Coordinator of the prevention combating of the trafficking in persons and Director: social crime prevention, and one female from Gauteng provincial office, their position was Social Work Policy Developer (Trafficking in Persons Coordinator).

In terms of the Department of Home Affairs, five officials were interviewed, three of the officials were females and two were males, three were holding positions of assistant directors: analysis, one was the assistant director: immigration service and assistant director: tracing and monitoring, four of them had between 2 to 3 years of experience and only one had 28 years of experience. 4 survivors of human trafficking were also part of the study and were trafficked between 2 to 8 years from different parts of South Africa and other countries.

Sampling Procedures

The selection of participants of this study was conducted using two sampling methods: Purposive sampling and Snowball sampling. Purposive sampling allowed for maximum variation, which was looking for participants who had different ideas concerning the topic and a broad range of experience from each other. This was used to pick participants from the SAPS, DPCI, DSD, and DHA, as these participants are knowledgeable about human trafficking in Gauteng Province. Snowball sampling, is a type of sampling where the researcher gets help from one participant to another. The choice of the participant is guided by the aims and objectives of the study. This method was used to select members of the community who have been victims of human trafficking to ensure that the participants are aware of the phenomenon to be studied. Unfortunately, most of the survivors of human trafficking did not feel safe to participate in the study due to security reasons, fear of victimization, and shame, only one survivor was interviewed.

Data Collection Techniques

The researcher used the interviews to collect data. The interviews are gathered from more than one person because the goal is to identify differences and similarities across participants in a sample. In-depth interviews were used by the researcher, and the reason being that in-depth interviews are conducted with unique individuals or a small number of people (Creswell, 2014:15). The advantages of the interviews are:

Firstly, considerable input from each participant and an independent view is obtained on a situation. Secondly, participants can discuss intimate and confidential issues without fear, and no peer group pressure creates bias. Additionally, allows a rapport to build between participants and interviewer and can accommodate widely scattered participants. Thirdly, better for heterogeneous participants who may not gel in a group and allows the interviewer to see the surrounding home or office of the respondent. The study used a semi-structured interview schedule as it allowed the researcher to use the pre-planned schedule, and it allowed for elaborate discussions between the participants and the researcher. The interviews were in-depth and done on a one on one this was done to illicit detailed information. The interviews took place at locations that were chosen by the participants and the duration ranged from 20–40 minutes, this was dependent on how much information the participants were willing to share.

Data Analysis

Thematic analysis is a method for identifying, analysing, and reporting patterns (themes) within data as it organises and describes data in detail (Braun & Clarke, 2006). At the heart of thematic analysis, the familiarisation of data by the researcher is important. Data familiarisation was possible because the researchers personally conducted audio-recorded interviews and transcribed them. This process allowed the researchers to familiarise themselves with the data for expedited and insightful analysis.

Following this thematic transcription, the scripts were analysed using NVivo version 8 software. This software organised the raw data so that it was possible to link and compare thematic issues within and across documents. The list of “starter nodes” was generated from an initial entry in a project journal in the software where the questions and assumptions brought to the report were outlined. The software gave results that allowed for a deeper examination and management of the qualitative data that might not be possible in traditional coding.

Two distinct types of coding were used in the analysis. The first was descriptive coding, which described the cases in this study. This process-related both to the coding of

information in categories and the creation of attributes to clarify them. The second type was analytical coding, which was done by selecting source content to interpret and reflect on the meaning of the data to arrive at new ideas and categories. The process entailed gathering material that could be rethought and reviewed given the growing understanding of the inter-relationship of the categories in the data.

Ethical Clearance

The research received ethical clearance from Tshwane University of Technology (TUT), and permission to conduct interviews was granted by the following organisations: The South African Police Service (SAPS), Directorate of priority crime investigation (DPCI), Department of social development (DSD), Department of Home Affairs (DHA), and National prosecuting authority (NPA).

Modus operandi of perpetrators of human trafficking in three selected areas of Gauteng Province

It should be noted that findings such as those given below were similar among all the selected participants, regardless of the study location. Examples of some of the remarks regarding their experiences in terms of dealing with cases of human trafficking were similar. The participants when asked about the MO of perpetrators of human trafficking in three selected areas of Gauteng province, explained that social media is mostly used by perpetrators to lure the victims. They emphasised that the perpetrators use the media to advise fake jobs, scholarships, modelling opportunities and employment opportunities. These are some of the responses from the participants (related verbatim):

“In human trafficking there is full deception or partial deception. Modus operandi of perpetrators of human trafficking is deception. Debt bondage is involved. Social media is another MO used by perpetrators of human trafficking” (FGDs-10:2:10).

“Most of the victims of human trafficking are being promised jobs at massage parlours, spar, and they get to such its brothel. Advertise fake jobs on social media, newspapers and internet. Fake advertisement on social media” (KII, 10:4:12).

“They advertise on magazine the jobs and opportunities, and they advertise in the media. Stakeholders does not conduct awareness on social media although the traffickers recruit from the media” (FGDs-11:3:12). “Job offer with an attractive salary/package. Glamorous life style abroad. Modelling/ scholarship abroad (Work while you study). We are dealing with traffickers here and they are glued up, if close one tap the other one opens. Modus operandi is very complicated of human traffickers” (FGDs-03:18:15).

Based on your experience, explain what are the strategies in place to combat Human Trafficking in your organisation

The participants clearly indicated that the strategy used to combat human trafficking is awareness campaigns especially the DPCI, DHA and DSD. However, the participants from the SAPS highlighted that they deal with crimes like kidnapping, rape, drugs and murder. The following were some of their responses quoted verbatim, and no corrections of their language were made:

“Human trafficking is very complex crime and DPCI has its investigating team dealing with human trafficking. The main strategy is awareness campaigns at the farms, shopping malls during the week, shopping complex and road shows, and the legislation, before there was no

Act dealing with human trafficking, in 2015 the president signed into law the Act 7 of 2013” (KII-10:1:07).

“We (DHA) conduct disruptive operations, where we target certain areas where we feel human trafficking is taking place. We conduct also awareness campaigns at the Bus stops, distribute pamphlets, visit refuge areas, we do go to the borders gates. We also have the hotlines which is open to the public. The hotline focuses on human trafficking and smuggling” (KII-8:2:1).

“Our role is prevention, care and support to the victims of human trafficking as social development. Strategies will be provision of shelters we give to victims and everyone is expected in prevention to create awareness, I think you have noticed that awareness is a challenge in our country so we are expected by the legislation to do awareness” (KII-7:3:2).

“The Department of Social Development has been continuously conducting Training & Capacity building throughout the Gauteng province to various stakeholders i.e professional DSD staff, Non-governmental organisations (NGOs) sectors, faith based organisations, civil society organisations, the SAPS & Johannesburg Metropolitan Police Department (JMPD) members, medical practitioners. Furthermore, the trainings are conducted intergratively with other key role players in the field of TIP. The trainings are aimed at empowering service providers with the relevant tools of trade (knowledge, resources) so that they are able to raise awareness appropriately within the communities they serve. This also serves as part of prevention, awareness and education. The department has on a continuous basis engaged in media interviews/awareness regarding TIP (radio, television) as part of prevention and awareness. TIP Week commemoration month October is dedicated to raising awareness and throughout the year regional offices and NGOs are engaged in activities that are aimed at prevention, education, awareness. The department has dedicated special funding to TIP accredited shelters that accommodate victims of trafficking and renders programmes aimed at restoration and healing i.e toiletries, psychological services, medical needs, clothing, repatriation. The department is also an active member of the Gauteng Provincial TIP Structures namely Rapid Response Task Team and Gauteng Ant TIP Task Team” (FGDs-03:18:1).

When asked whether these strategies have impact in combating human trafficking, these were their views:

“Yes, they are effective although we are not doing the impact level, because prior 2015 were not having the Act, we used to rely on statutory and common laws. In Joburg there was a Nigerian who was sentenced to 20 years, Eastern Cape there was life sentence because of the Act trafficking in Persons (KII-10:1:08). “Legislation has helped a lot, now people can be punished according to crimes that they have committed. Majority of people are still not aware of human trafficking, they don’t know if it’s a crime (KII-10:1:06).

“Those strategies are working although I can’t say its effective, this crime is still new to them so they are still crippling to combat it (KII-8:2:2). “Surely, they do work the strategies, we are complementing the services of other departments (KII-7:3:3).

“The strategies have an impact but this can only depend on the officials carrying out their duties effectively and efficiently. The trainings conducted have a huge impact in that more service providers have included TIP as part of their programme and are rendering the service i.e door-to-door, school visits, etc. They now collaborate with each other in the fight against TIP. Outreach campaigns serve as a platform in enlightening communities to be on the lookout for recruiters. People are now aware that it is possible for one human being to sell another for sole purpose of exploitation. Communities are encouraged to come forward and even report suspicious activities. This platform allows reporting without judging” (FGDs-03:18:2).

Management and policy implications

Expertise about techniques to detect traffickers, identify and care for their victims and prosecute traffickers is yet to be realised in South Africa. Reports of the arrest and conviction of traffickers are frequent yet not from the CJS. The implications based on the findings on human trafficking in South Africa are compelling and require concerted effort from all relevant stakeholders within the CJS. Though the SAPS due to competing priorities, has not yet codify this crime for consumption by the public, it is essential that the official statistics made known to the public. Comparing the number of prosecutions with the number of identified victims would highlight the extent of the problem. The release of official statistics, though argued as unreliable, would nevertheless, provide as an awareness regarding the MO utilised by perpetrators, reported/detected cases in relation to conviction rate to the prospective victims and the public. This would assist all role-players, to develop minimum standards concerning the response of CJS to trafficking cases as well as improved services to the victims. From the physical abuse and torture of victims to the psychological and emotional trauma, to the economic and political implications of unabated crime, the impact on individuals and society is clearly destructive and unacceptable.

A lack of role clarity from the relevant role-players related to servicing victims, and uncertainty regarding what measures work and what do not have contributed to a lack of systematic and consistent implementation, and sustainable action. Each calls for different dynamics in policy and programme planning. A focus on vulnerability will enhance the human rights component of trafficking prevention policies. An improved cohesion between relevant role-players, would go a long way to align the day-to-day tactics into a long a long term anti-trafficking strategies and national responses, sharing from their own experiences and identifying elements that constitute best practices. A multi-disciplinary unit within the DPCI is a necessity, which should include amongst others; officials from the DSD, the SAPS, NPA, DHA, as well as the Department of International Relations (DIR). This collaboration enable the unit to be effective in reducing the ever-increasing phenomenon of human trafficking in three selected areas of Gauteng Province.

Emerging themes and recommendations

Theme 1: Insufficient knowledge and application of a clear strategy to combat human trafficking

Recommendation and strategy to improve theme 1

This study recommends that intelligence led approach be used as a strategy to combat human trafficking in three selected areas of Gauteng province. Intelligence led approach can be used successfully and effectively together with other models of policing, and human trafficking can be controlled and combated. The relevant stakeholders should when using intelligence led approach, they should work closely with the National intelligence agency.

Theme 2: Lack of specialised courts to deal or finalise human trafficking cases

Recommendation and strategy to improve theme 2

Human trafficking is a very complex and hidden crime which needs undivided attention of those responsible to combat it. A specialised courts dealing with human trafficking should be established within Gauteng Province and other provinces of South Africa. Human trafficking cases be a priority like other contact crimes for the policy makers as victims of this scourge should not wait months before their cases presented before the courts.

Theme 3: Lack of capacity, resources and training to deal with human trafficking

Recommendation and strategy to improve theme 3

It is essential that more resource allocation provided to the DHA, DSD, SAPS and DPCI to adequately, respond to human trafficking. The authors further, recommend the upskilling of officials with up-to-date training on regularly basis. During data collection, the DSD and the SAPS members especially the visible policing members highlighted that it was difficult for them to differentiate between the victims of human trafficking and those doing prostitution. At the regional and provincial levels, numerous training materials and reference guidelines, be circulated published to inform and train a wide range of roleplayers about what they can do in response to trafficking. The materials are should be translated into official languages, coordinated from the Head Office for the purposes of consistency in the contents.

Theme 4: Limited awareness and information about the human trafficking scourge

Recommendation and strategy to improve theme 4

It was clear during the data collection that all the stakeholders dealing with human trafficking use awareness as the main strategy to fight and combat human trafficking. The study recommends that all the relevant stakeholders should ensure that awareness is done in the areas where there are lot of potential victims of human trafficking. The authors based on the findings, further recommend that the relevant stakeholders utilise social media platforms in terms of raising awareness. Human traffickers use different social media platforms to lure and recruit their potential victims.

Conclusion

The study has made a huge impact in terms of closing the gaps in combating human trafficking in South Africa. The study would significantly help the relevant stakeholders and the role players involved in combating this scourge. The literature review has indicated that human trafficking in South Africa does not have statistics and that SAPS does not release the statistics of human trafficking annually with other crimes committed. The participants of the study highlighted that perpetrators of human trafficking use social media platforms to lure their victims into trafficking ring and they use Uber transport to lure their victims, they target victims who are between the age of 16 and 28 from South Africa, and those who are from abroad their age is between 20 and 32 years of age. The participants highlighted that in South Africa one girl is trafficked every day. Participants also highlighted that budget is one of the major challenges when it comes to human trafficking, lack of training among the officials who deal with human trafficking is also another challenge. Corruption within the SAPS, DHA and DSD was also found to be the major challenge in terms of combating human trafficking.

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