

# LASER PULSE

Long-term Assistance and Services for Research (LASER)

Partners for University-Led Solutions Engine (PULSE)

## RESEARCH INTO THE NATURE AND SCOPE OF TRAFFICKING IN PERSONS IN SOUTH AFRICA: PREVALENCE INSIGHTS FROM THE CRIMINAL JUSTICE SYSTEM AND RELEVANT REPORTING MECHANISMS

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## ABOUT LASER PULSE

LASER (Long-term Assistance and Services for Research) PULSE (Partners for University-Led Solutions Engine) is a five-year, \$70M program funded through USAID's Innovation, Technology, and Research Hub, that delivers research-driven solutions to field-sourced development challenges in USAID partner countries.

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## ACRONYMS

CAS	Crime Administration System
CEO	Chief Executive Officer
DHA	Department of Home Affairs
DOJCD	Department of Justice and Constitutional Development
DPCI	Directorate for Priority Crimes Investigations
DSD	Department of Social Development
GAATW	Global Alliance Against Traffic in Women
HSRC	Human Sciences Research Council
IPID	Independent Police Investigative Directorate
ISS	Institute for Security Studies
KZN	KwaZulu-Natal
LASER	Long-term Assistance and Services for Research
LJI	Love Justice International
LJSA	Love Justice South Africa
MCSA	Missing Children South Africa
MMA	Media Monitoring Africa
NFN	National Freedom Network
NGO	Non-Governmental Organization
NHTH	National Human Trafficking Hotline
NICTIP	National Inter-sectoral Committee for Trafficking in Persons
NPA	National Prosecuting Authority
NPF	National Policy Framework
OCL	Open Cities Lab
PACOTIP	Prevention and Combating of Trafficking in Persons
PULSE	Partners for University-Led Solutions Engine
SAPS	South African Police Service
SORMA	Sexual Offenses and Related Matters Act
SWEAT	Sex Worker Education and Advocacy Taskforce
TIP	Trafficking In Persons
USAID	United States Agency for International Development
VOT	Victim of Trafficking / Victims of Trafficking



## EXECUTIVE SUMMARY

Khulisa Management Services (Khulisa), in partnership with the University of the Witwatersrand (Wits), was contracted in May 2020 to conduct research on Trafficking in Persons (TIP) in South Africa. The contractual mechanism is a Buy-In Agreement: 7200AA18CA00009 (LASER) with USAID/Southern Africa and USAID/LAB/CDR in collaboration with the Department of Science and Innovation (DSI), South Africa through Purdue University/LASER PULSE. The Buy-in Agreement objective is to collect robust and empirically-based qualitative and quantitative data to reveal the nature and magnitude of TIP in South Africa. This research will support efforts to have the data play a more prominent role in public-policy debates, particularly given the hidden and subversive nature of TIP.

### PURPOSE OF REPORT

The overarching aim of this report was to explore available data and/or lived experiences related to incidents of TIP in South Africa that overlapped, connected with, and/or were reported to any aspect of South Africa's Criminal Justice System. Given the lack of a centralized database on South African TIP data, this mosaic of evidence was deemed necessary for relevant insights into the nature and prevalence of TIP in South Africa. The report begins by exploring the prevailing 'evidence' dissonance regarding TIP in South Africa, particularly as it relates to persistent claims of 'little evidence' and the framing of child trafficking and sex trafficking as 'myth' in some research. The framework of the *Palermo Trafficking Protocol* and the *Prevention and Combating of Trafficking in Persons Act (PACOTIP) Act 7 of 2013* was employed as the yardstick to understand the basis of this skepticism towards South Africa's TIP phenomenon, and the arguments to support these claims are questioned. This analysis is then positioned as the background to this study and juxtaposed with evidence collected in this research. On the one end of the spectrum, this includes actual cases or information containing reasonable grounds to infer that a TIP crime or threat exists, and that was reported by civil society organizations to either the South African Police Service (SAPS) or formalized TIP Task Teams (Provincial or National) for further investigations. On the other end, the data includes ongoing and successfully prosecuted TIP cases in South African courts. A cursory, yet insightful analysis of TIP reporting in the media is also explored. The data collected was considered essential as it underwent a continuum of review iterations by a range of actors to establish whether there are reasonable grounds to believe that a case of TIP was perpetrated or not. An established TIP legal framework was used to reach these conclusions. Finally, the data and perspectives originated from sources that are operationally involved in the investigation, prosecution and adjudication of cases, frontline responses to calls for service, and victim-centric interventions and support services. They were therefore able to provide a first-hand account and an informed interpretation of the data.

### RESEARCH QUESTIONS

The research questions relevant to this study are:

- What is the scope of trafficking, and how does it manifest in South Africa?
- What are the experiences of TIP victims, and is policy shaped to reflect their voices?
- What past and present factors have constrained both available data and an understanding of TIP prevalence in South Africa?
- Who are the role-players involved in TIP, and is the response to counter-trafficking appropriate? In what ways does the criminal justice system require improvement to

better manage trafficking crimes? What can be learnt from programs to strengthen the response?

- What are the key pathways to impact addressing TIP in South Africa? What are the gaps and recommendations?

## KEY FINDINGS

The evidence convincingly shows that South Africa is a source, transit, and destination country for TIP and that both victims and perpetrators are significantly undercounted in both research and practice. Sex trafficking continues to make up the overwhelming majority<sup>1</sup> of detected, reported, and prosecuted TIP cases, while labor trafficking prosecutions, similar to trends observed internationally, remain limited. The number of ongoing- and successful TIP prosecutions by the Government of South Africa is disproportionately low when compared to calls for response services and data from civil society, available police statistics, media coverage, and practitioner perceptions related to the nature and prevalence of the phenomenon in South Africa. Evidence shows that TIP is fueled by several factors. This includes South Africa's relentless structural inequalities, unconstrained consumer-level demand for commercial sex and forced labor, corruption and widespread indifference, and several crippling response deficiencies. Historical and ongoing research claims that TIP is "*rarely encountered*" and that there is "*little evidence of sex trafficking*" are misleading, obfuscate the day-to-day realities of adult and child trafficking victims, and fail to employ the legally binding definition of the PACOTIP Act in research. Methodological problems include the unjustifiable use of truncated definitions and conceptualizations of TIP, the undercounting of TIP victims, and the rationalization of harm. The study concludes that the cumulative effect of the aforementioned problems significantly constrains a forthright assessment of the nature and prevalence of TIP in South Africa and results in disconnected claims and harm rationalizations that are incongruent with existing laws and, chiefly, incongruent with the evidence presented in this study. The empirical basis in this research includes both quantitative insights and qualitative themes from the following data points:

- Reporting by three national TIP Non-Governmental Organizations (NGOs) who have a presence on the provincial and national TIP Task Teams, and one national NGO that works in the area of missing persons
- Available statistics by the SAPS for the period 2007 to 2021
- Ongoing TIP prosecutions in South African Courts during 2021
- Successfully prosecuted TIP Cases in South African Courts for the period 2007 to 2022

When considered as a 'mosaic of evidence' and a 'constellation of circumstances'<sup>2</sup>, the evidence in this study not only accentuate the consistency and coherency of previous TIP research themes (including reports, journal articles, doctoral studies, masters studies, evidence-based

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<sup>1</sup> The data collected in this study slant significantly towards the issue of sex trafficking. Labor trafficking investigations and prosecutions continue to receive scant attention in South Africa and only two labor-related TIP matters (both child labor) were successfully prosecuted in South African courts (*S vs Nancy Eze Light & S v Judite Augusta Nantumbi*). Ongoing labor trafficking prosecutions include *S v Ye* and *S v Shu-Uei Tsao & 6 others* ('Beautiful City' case). This limitation to the research is discussed further in the 'Limitations and Challenges' section of the study, and contributes to diminished prevalence insights and the significant undercounting of TIP victims and perpetrators in South Africa.

<sup>2</sup> United Nations Office on Drugs and Crime (UNODC) (2017) Case Digest: Evidential Issues in Trafficking in Persons Cases. Vienna: United Nations.

media reports, and lived experience survivor autobiographies) but presents a more nuanced perspective on the nature and prevalence of TIP in South Africa. Evidence that hitherto has not been documented is introduced, and recommendations are made for criminal justice practitioners, policy-makers, institutional review boards, government data management, the media, communications and messaging strategy, local and international research funders, counter-corruption, and consumer-level demand reduction for commercial sex and forced labor.

### **Quantitative findings from civil society**

*For the period between January 2018 and December 2021, the following findings have been reported:*

- The National Human Trafficking Hotline (NHTH) has received 7,554 trafficking-related cases<sup>3</sup> that were registered through its online webforms, emails and calls. Collectively, Red (Crisis Calls) and Green (Tip Off's) cases for 2020 were 687 reported cases, and 513 reported cases for 2021.
- NHTH-facilitated interventions resulted in the identification of 754 adult TIP victims from at least 28 countries.
- NHTH-facilitated interventions resulted in the identification of 98 child TIP victims from at least four countries.
- At least 83 alleged perpetrators were identified in 63 reported TIP cases received by the NHTH where victims were rescued. Alleged perpetrators are nationals from at least 11 different countries.
- Love Justice International (LJI) have identified at least 490 potential victims of TIP from at least 29 different countries (nationalities).
- Alleged perpetrator nationalities identified by LJI include suspects from at least 22 different countries.

*For the period between October 2011 and November 2021:*

- The National Freedom Network (NFN) has dealt with more than 850 TIP-related calls for service.

### **Quantitative data from SAPS<sup>4</sup>**

- For the period 16 December 2007 to 8 August 2015, at least 257 TIP cases were reported to SAPS under the interim pieces of TIP legislation.
- For the period between 9 August 2015 and 17 January 2022, at least 10,820 TIP cases were reported to SAPS under the PACOTIP Act. Adult victims were documented in 7,140 of these cases, child victims were recorded in 1,463 cases, and the age of the victims was 'unknown' in 2,217 cases.

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<sup>3</sup> Trafficking related cases are classified by the NHTH into 5 color coded categories, Red (Crisis Calls), Green (Tip Off's), Blue (Training and Technical assistance), Purple (referrals), and Yellow (general information). Typically, the Red and Green categories pertain to victims or cases reported to authorities.

<sup>4</sup> Due to issues related to data integrity, SAPS explicitly stated that these cases are not an accurate reflection of TIP cases in South Africa. Reasons include that TIP is dependent on police action and are "under-reported which makes it difficult to measure." (SAPS, 2022a), and due to "incorrect incident allocation and the lack of a specific TIP crime code" (SAPS, 2022b). A process of filtering information to avoid these inaccuracies, is undergoing by SAPS.

- For the period between 9 August 2015 and 17 January 2022, 91 TIP reports were received by the National Directorate for Priority Crimes Investigations (DPCI) Nodal Point involving TIP from all organized crime units within the DPCI. In these cases, 522 adult victims and 102 child victims were identified. The age of victims was unknown in 6 cases<sup>5</sup>.
- For the period 2018 to 2021, 781 South African children were recorded by SAPS<sup>6</sup> as victims of child trafficking.
- The nexus between missing persons and TIP remains largely unexplored in South Africa yet shows evidence of overlap in some successfully prosecuted TIP cases analyzed in this research. Available SAPS missing person data shows at least 23,803 adults that are still missing or unaccounted for (between 2000 and 2015) and at least 3,957 children for the same period (Van der Watt, 2018). In an ongoing study (Van der Watt, 2022), statistics made available by SAPS for the period 1 January 2000 to 1 January 2020 indicate that a grand total of 94,252 persons have been circulated as missing over a period of 20 years of which 31,545 people are either unaccounted for or still missing.

### Quantitative data from ongoing prosecutions

- A total of 79 TIP-related prosecutions were ongoing in South Africa's Criminal Justice System during 2021.
- Of these, sex trafficking prosecutions made up the overwhelming majority of cases at 53, followed by forced marriage (5 cases), labor trafficking (4 cases), slavery (4 cases), illegal adoptions (1 case), attempted removal of body parts (1 case), involvement in TIP (1 case), servitude (1 case), and unknown forms of TIP (9 cases).
- A total number of 400 TIP victims were identified in the 79 TIP-related prosecutions that were ongoing in South Africa's Criminal Justice System during 2021.
- Of these, females made up 226 of those identified and males made up 163 of those identified. The gender of victims was unknown in 11 cases.
- Adults made up 331 of those identified as victims of TIP, and children made up 64. Ages were unknown in 5 cases.
- Victim nationalities include South Africa (143), Malawi (105), Lesotho (54), Zimbabwe (43), Eswatini (21), Bangladesh (21), Mozambique (5), Ethiopia (3), Zambia (2), Nigeria (2), and unknown (1).
- A total number of 176 accused were identified in the 79 TIP-related prosecutions ongoing in South Africa's Criminal Justice System during 2021.
- Of these, males made up 123 of those charged with TIP and females made up 52 of those charged with the crime. In one case, the gender of the accused is unknown.
- TIP Accused's nationalities include South Africa (73), Nigeria (44), China (11), Bangladesh (10), Zimbabwe (8), Ethiopia (4), Mozambique (4), Lesotho (3), Pakistan (3), Malawi (2), Cameroon (2), Eswatini (1), Ghana (1), and unknown nationalities (10). Nigerian nationals are disproportionately represented in ongoing sex trafficking prosecutions.

<sup>5</sup> Importantly, when considering the number of victims identified in the DPCI Nodal Point cases (630 victims in 91 cases), the likely number of victims in the 11,077 TIP cases reported to SAPS is substantial.

<sup>6</sup> This number was reported by the Minister of Police, Bheki Cele, in response to a parliamentary question.

## Quantitative data from successful prosecutions

- A total number of 44<sup>7</sup> successfully prosecuted TIP cases between 2007 and 2022 were identified in this research.
- Of these, sex trafficking made up the overwhelming majority of cases at 36, followed by adoption scams (2), the selling of a baby or child (2), the buying of babies (2), and labor exploitation of a child (2).
- A total of 78 primary victims (Cohort 1) were identified in these cases. These are victims that testified in the trial or who were considered a victim of trafficking but were too young to provide testimony;
- Of these, 72 were female and 6 were male.
- Children made up the majority of the TIP victims in Cohort 1 at 46, and adults at 32.
- The majority of victims were South African (61), followed by Mozambican (11), Zimbabwean (4), Eswatini (1) and Nigerian (1) nationals.
- Additionally, at least 25 victims (Cohort 2) were identified in the research who were positively screened and/or submitted statements but did not testify (illness, death, absconding from place of safety) in the trial.
- A conservative number of at least 130 possible TIP victims (Cohort 3) were enumerated in the research. These are persons that have not been formally screened as victims of trafficking but were referred to either by name or otherwise as persons who were observed and/or interacted with [in similar circumstances] by victims or witnesses during the investigation or trial.
- In 10 cases, multiple possible victims (Cohort 4) of trafficking were identified that could not be enumerated. They too were persons who were observed and/or interacted with [in similar circumstances] by victims or witnesses during the investigation or trial.
- A total of 77 traffickers were convicted in the 44 successfully prosecuted TIP cases.
- Of these, 39 were male, and 38 were female.
- The majority of the convicted traffickers were South African (50), followed by Nigerian (15), Mozambican (6), Lesotho (2), Burundi (1), Bangladeshi (1), Zimbabwean (1), and Chinese (1) nationals.
- At least 108 persons of interest were identified in the 44 successfully prosecuted TIP cases who played a direct or indirect role in facilitating TIP crimes yet were not arraigned before court.
- Several sex buyers, potentially multiple thousands, who used the 'services' of TIP victims in just 10 of the 44 cases, were not investigated, arrested, or prosecuted. This is the case despite relevant sections in the PACOTIP Act and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* that criminalize these actions. In one example of online sexual exploitation (*S v Seleso*), the child victim was exploited through the use of a live streaming platform employed by her traffickers. The child victim's profile had more than 6,000 log-ins from sex buyers who spanned the globe.

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<sup>7</sup> Three further successful prosecutions were secured after the data analysis for this study were finalized. Two were sex trafficking cases (*S v Fezeka Precious Mbambo* & *S v Xolani Mkhize* Case) and the third relates to the selling of a child (*S v Wayne & Justine Loubser*). Case references are included in the reference list.



## Qualitative Thematic Findings

Five thematic findings were identified from the evidence in this study:

### *Finding 1: The PACOTIP Act as a "Sharp Prosecution Sword"*

South Africa's *Prevention and Combating of Trafficking in Persons Act 7 of 2013* (PACOTIP Act), came into effect on 9 August 2015, and gives effect to South Africa's international obligations under the *Convention on Transnational Organized Crime* and its *Trafficking Protocol* by criminalizing all forms of trafficking and securing protection for victims. This study confirms notable successes in prosecuting TIP perpetrators. Considered to be a "sharp prosecution sword" (Kruger, 2016), stringent penalties for TIP offenses as provided for in the PACOTIP Act, have been imposed by courts. The courts are the watchdogs to ensure that TIP is not confused or conflated with prostitution, immigration offences, related sexual offences, kidnapping or any other offences, but that a conviction on TIP will only result if all elements of TIP, required by the PACOTIP Act, are proved (Kruger, 2022). Several prosecutors developed expertise in applying the PACOTIP Act and courts made some crucial decisions to interpret and clarify its provisions. Legislation, such as the PACOTIP Act, is therefore legally binding and must be used as the yardstick for determining what satisfies the elements of TIP, and what doesn't.

### *Finding 2: A spectrum of TIP perpetrators: From single traffickers to loosely connected networks of criminal actors*

The study confirms that TIP is a multi-layered and complex criminal phenomenon committed by a spectrum of perpetrators. This includes single traffickers who repeatedly sexually exploit their victims, traffickers who subjugate minors in situations of forced labor and/or domestic servitude, and an example of a South African mother using an online marketing platform to advertise her baby for sale. Perpetrators also include loosely connected networks such as that of more than 20 Nigerian traffickers responsible for selling and moving sex trafficking victims between multiple residential brothels. In *S v Matini* the court observed that "traffickers could be family members, parents, partners, friends, acquaintances, pimps, business contacts, strangers or any other person", and in *S v Dos Santos* the court confirmed "a feature of this case is that the abuse of these young complainants (and the appellant's other victims) was the result of an elaborate and organized criminal enterprise." Several role-players, including police and immigration officials, drug dealers, drivers, photographers (i.e., Red Velvet), and security guards form part of the broader network of criminal actors that directly and/or indirectly perpetrate trafficking crimes.

### *Finding 3: The Great Undercount*

Evidence from all data sources in this study suggests a significant undercounting of TIP victims in South Africa. Both ongoing prosecutions and successfully prosecuted TIP cases suggest that there are frequently more victims of trafficking than the complainants that were screened, submitted statements and/or testified in these cases. The concentric mapping of TIP victims from available data stemming from successful prosecutions provided useful insights. This exercise was based on the premise that many TIP cases, from civil society data and police investigations to ongoing and successful prosecutions, are 'more than the sum of its parts'. TIP victims who provided testimony and those who were positively screened and participated in the spectrum of criminal justice processes were significantly eclipsed in numbers by those who remain unscreened and undetected as possible victims of trafficking. The unjustifiable use of

truncated definitions and conceptualizations of TIP in some research studies contributes to the significant undercounting of TIP victims in South Africa.

*Finding 4: The Commercial Sex Trade as a Vortex of Violence, Child Trafficking, and (Un)Constrained Demand*

Sex trafficking and excessive sexual, physical, and psychological violence perpetrated against women and children in South Africa's sex trade was documented in several ongoing TIP prosecutions, as well as in successfully prosecuted TIP cases. Overwhelming evidence adduced in several cases related to the commercial sex trade shows that perpetrators prey on victims' vulnerabilities, deceiving and exploiting them at any cost to make money. Not only traffickers inflict violence and harm, but also sex buyers who violently exploit children and show very little regard for issues of agency and clear third-party control. Evidence from numerous cases in the research reflects the complex life stories of TIP victims that come from different backgrounds and age groups and whose trafficking experiences overlap in the sex trade. The role and complicity of prominent online adult websites, child trafficking, drug abuse, police corruption, and egregious violence are commonplace in these cases. Commercial sexual exploitation is fueled by sex buyers who represent the demand component. It was also clear that sex traffickers may be the financial beneficiaries of sex trafficking operations, but that it is sex buyers who pay the money. Save for one TIP conviction (*S v Obi*), no other cases could be traced where the 'demand' or sex purchasing dimension of cases were prosecuted. When considering the protracted lifespans of numerous brothels implicated in successfully prosecuted TIP cases, and the evidence of multiple sex buyers who violated and exploited both the known and unknown victims in these cases, it may well be inferred that several thousands of male sex buyers were not held accountable. This is the case in a mere 10 prosecutions where multiple brothels, in separate cases, were active over a protracted period.

*Finding 5: Indifference, Corruption, and Official Complicity*

Overwhelming and persistent evidence confirms that corruption is an ever-present reality in South Africa with far-reaching consequences. Equally, the corruption 'footprint' is by no means foreign in South Africa's TIP landscape. The issue has become an established concern in South Africa's annual US Department of State TIP Profile (currently on the Tier 2 Watchlist), with "official complicity in trafficking crimes, especially by police" persisting and well-known brothels historically identified as sex trafficking locations continuing "to operate with officials' tacit approval." (US TIP Report, 2021, p. 511). Evidence in several successful prosecuted TIP cases confirmed indifference, corruption and complicity by law enforcement officials (i.e., *S v Eze*, *S v Dos Santos*, *S v Seleso*, *S v Bridger*, *S v Obi*, *S v Odii & Another*, *S v Palan & Another*). In one ongoing prosecution (*S v Islam*), four SAPS members are on trial for TIP-related charges related to the kidnapping of 10 Bangladeshi nationals. At the time of their arrest, the accused persons had a pending Independent Police Investigative Directorate (IPID) investigation for kidnapping and related charges which suggests that their actions were not novel. All four SAPS members were still on duty at the time of this report's writing. From existing research and evidence from the various sources in this study, it is clear that experiences related to indifference, corruption and/or complicity are manifold. Not only do these problems inhibit the investigation process and compromise the potential for success, but they also perpetuate and enable the crime of TIP, adversely impact prevalence data, and contribute to the undercounting of TIP in South Africa.

**'South Africa as a transit country for TIP'** and **'the link between missing persons and TIP'** are discussed as two supplementary findings in the report. Some senior government officials

question whether South Africa is a transit country, and some dismiss or treat with skepticism the reports by civil society and conclusions reached in the annual US TIP Report. When considering the relationship of corruption with irregular migration, pervasive travel and transit irregularities at South African ports of entry, and missing persons and kidnapping – all within the ambit of TIP – there is little doubt that these crimes, and the people who perpetrate them, pose a significant national security threat and diminishes the integrity of the country's borders. Not only do they severely constrain TIP prevalence insights, but they damage South Africa's international obligations to prevent TIP, protect the victims of TIP, and prosecute those who perpetrate the crime.

## Recommendations

1. Prioritize and elevate efforts to increase the multi-disciplinary detection, criminal investigation, and prosecution of labor trafficking cases in South Africa.
2. Comply with requisite policy guidelines related to the functioning of Provincial TIP Task Teams, Provincial Rapid Response TIP Task Teams, and the National Inter-sectoral Committee for Trafficking in Persons (NICTIP), and take action against non-compliance.
3. Employ Section 7 of the PACOTIP Act and Sections 11 and 17 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* as a legislative intervention to discourage the demand that fosters trafficking for sexual exploitation.
4. Promulgate the immigration provisions in Sections 15, 16, and 31(2)(b)(ii) of the PACOTIP Act.
5. Review the PACOTIP Act to remove sentencing provisions that allow fines in lieu of imprisonment, especially for sex trafficking crimes.
6. Prioritize the legally binding TIP definition and 'abuse of vulnerability' as defined in the PACOTIP Act in research and policy discussions related to prostitution, gender-based violence, child abuse, labor violations, and irregular migration as a means to correctly identify and prevent the undercounting of TIP cases among these phenomena.
7. Fully implement and comply with SAPS National Instruction 4 of 2015 related to detectives at police stations, data integrity, and the capturing of TIP and related matters on the SAPS Crime Administration System (CAS).
8. Create dedicated capacity for proactive, intelligence-led, and prosecution-led investigations in parallel with financial investigations, asset forfeiture, and a counter-corruption strategy.
9. Recognize the NHTH as an official TIP reporting mechanism that augments other official reporting structures in South Africa.
10. Establish the long-outstanding integrated information system to provide evidence on TIP prevalence, facilitate the effective monitoring and implementation of the Act, and commence TIP interventions by collating and analyzing the specific information as detailed by Section 41(1)(b) of the PACOTIP Act.
11. Institutional Review Boards, Ethics Committees, Postgraduate Research Supervisors, and Local and International Research Funders to be cognizant of the research pitfalls that stem from the use of truncated definitions of TIP, instead of the legally binding PACOTIP Act definition, and the omission of important sources of information that is vital for evidence-based findings and policy recommendation.



## SECTION 1: INTRODUCTION

Few social phenomena have evoked so much sensation, paranoia, and speculation as South Africa's human trafficking 'scourge'. More than 18 years have passed since the South African Government ratified the Palermo Trafficking Protocol on 20 February 2004. In doing so, it agreed to domesticate laws that prevent TIP, protect the victims of TIP, and prosecute offenders of the crime (Bermudez, 2008; Kruger, 2010). After two interim pieces of legislative instruments that only partially addressed the crime, the comprehensive PACOTIP Act 7 of 2013 was operationalized on 9 August 2015. Whereas the interim Sexual Offences Amendment Act of 2007 focused predominantly on TIP for sexual exploitation, the PACOTIP Act now addressed the full spectrum of forms and purposes of TIP.

Despite numerous calls over the past 15 years for the South African government to create and manage a centralized TIP evidence database in South Africa (Horne, 2014; Human Sciences Research Council (HSRC), 2010), an official answer to the 'how big is the problem?' question, remains elusive (Van der Watt, 2015). This challenge is not unique to South Africa, as many countries and researchers continue to grapple with the multilayered complexities inherent to documenting a crime which does not lend itself to rigorous statistical 'counting' (Farrell & De Vries, 2020; Fedina & DeForge, 2017; Raphael, 2017; Zhang, 2022). Factors constraining a matter-of-fact assessment of the nature and prevalence of TIP in South Africa are manifold, and many have been documented. These include overlapping systems of violence that obscure TIP victims (Emser & Van der Watt, 2019), corruption and official complicity (Frankel, 2016; Motseki & Mofokeng, 2020; Van der Watt, 2019a; Whittles, 2017), and significant shortfalls in coordination, case recording, and official responses to TIP complaints in South Africa (Emser, 2013; Frankel, 2016). The annual United States Trafficking in Persons Report (US TIP Report) has consistently referred to South Africa as a source, transit and destination country for the trafficking of men, women and children exploited for commercial sex and forced labor. After spending two consecutive years on the tier two watch list of the US Department of State ranking list in 2018 and 2019, South Africa made a short-lived return to a tier two ranking in 2020, before being downgraded again to the tier two watch list in 2021 (U.S. Department of State, 2021). Despite notable successes in prosecutions, the sentencing of traffickers to substantial prison terms, and active citizenry and leadership on the part of South African NGOs, the US TIP Report paints a bleak picture of South Africa's efforts to combat TIP, "*even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity*" (U.S. Department of State, 2021, p. 508).

The background to this study begins by positioning South Africa's PACOTIP Act as the yardstick for determining what is and what is not TIP. Next, the prevailing 'evidence' dissonance regarding TIP in South Africa, particularly as it relates to persistent claims of 'little evidence' and the framing of child trafficking and sex trafficking as 'myth' in some research, are explored. Legal methods (see Dempsey, 2017) are employed to understand the basis of these claims in selected scholarly works, and it is shown, firstly, how TIP is undercounted or ignored among research participants in South Africa, secondly, how this undercounting stems from researchers' flawed employment of both the Palermo Trafficking Protocol and the PACOTIP Act, and, thirdly, how problematic data collection and sampling criteria ignore available evidence, lived experiences, and prevalence insights. The cumulative effect of these problems significantly constrains an even-handed assessment of the nature and prevalence of TIP in South Africa and result in an archipelago of claims and harm rationalizations that are incongruent with existing laws and the evidence presented in this study.

The aforementioned research problems and TIP skepticism is then juxtaposed by the empirical basis for this study. This includes a spectrum of documented information and evidence stemming from the continuum of criminal justice system engagements. It is premised on the notion that the constellation of TIP perceptions, anecdotes, experiences, and evidence in South Africa - from initial reporting by the public and NGOs, to conviction and sentencing of traffickers – congregates in South Africa’s criminal justice system where it is tested. The following data points were explored for qualitative and quantitative prevalence insights from the criminal justice system and relevant reporting mechanisms:

- Reported incidents and calls for service managed by three well-established NGOs that are part of official government reporting structures and TIP task teams.
- Police statistics and available data from the SAPS CAS as it relates to all forms of TIP matters.
- A snapshot of all TIP-related prosecutions ongoing in South African courts in 2021.
- An analysis of successfully prosecuted TIP cases in South African courts.

In steering away from myopia, this study embraced Moloney’s (2015, p. 28) perspective of TIP as a diamond with multiple facets. In doing so, an attempt was made to pick up and analyze each data point, followed by flipping it over, turning it around, and rotating it to reveal and inspect a new facet. Both quantitative and qualitative insights are drawn from the evidence, and a novel and nuanced perspective of the nature and prevalence of TIP in South Africa, are offered. Wide-ranging recommendations are made for the spectrum of criminal justice practitioners, NGOs, policy makers, journalists, researchers, international funders, and institutional review boards. The study concludes with a reaffirmation of the consistency and coherency of historical and contemporary claims of TIP as deeply embedded in South African society and warns against the implications of harm rationalizations and undercounting of TIP victims in some research (see Raphael, 2017). The words of Deputy Minister of Justice and Constitutional Development, John Jefferey, during a 2020 virtual webinar, has much relevance to this study. He reminded delegates that

*“...we can be here all afternoon arguing about statistics. But we are not discussing statistics – we are talking about people” (Jeffery, 2020a)*

People are indeed at the nucleus of every case considered in this report. They, too, have names, dreams, and aspirations. Many have lived to tell their stories and continue to journey with the fingerprints of incomprehensible trauma that stem from their exploitation. Others, however, have not been so fortunate. Alive or not, their lived experiences, court testimonies, and exploitation cannot be diminished to mere numbers. It forms part of a much larger whole that must be valued, confronted, and ‘counted’.

## SECTION 2: METHODOLOGY

### METHODOLOGICAL APPROACH

The multi-layered complexities of TIP in South Africa, as well as the type of evidence gathered, analyzed, and interpreted in this study, made a qualitative approach to this research the most obvious. No official centralized database or databases dedicated to TIP data is in existence in South Africa. The integrated information system required by Section 41(1)(b) of the PACOTIP Act is yet to be implemented and is supposed to provide evidence on TIP prevalence, facilitate the effective monitoring and implementation of the Act, and commence TIP interventions by collating and analyzing the specific information as detailed in this section. The lack of established information systems, therefore, required an explorative, flexible, and iterative process of data collection and analysis that was made possible with a qualitative approach. This choice was furthered by the researcher's embeddedness in the South African counter-TIP community and his familiarity with available TIP evidence and lived experiences, albeit diffused in the counter-TIP community, that have yet to be documented in a South African study (refer to Annex 1 for bio and autobiographical problem statement). The main objective was, therefore, to present the 'essence' of available corroborating evidence from a plethora of sources that allow for both a more even-handed understanding of TIP in South Africa and assess ongoing claims in some research that TIP is not prevalent. Representative of the oppositions around the issue of TIP 'evidence' in South Africa, Denzin and Lincoln (1994, p. 15) describes qualitative research as:

*"...a series of tensions, contradictions, and hesitations. This tension works back and forth between the broad, doubting postmodern sensibility and the more certain, more traditional positivist, postpositivist, and naturalistic conceptions."*

As both naturalistic and holistic, a qualitative approach allowed for 'thick' descriptions (Durrheim, 1999, p. 43) of TIP data and enabled a flexible, open, and unstructured mode of enquiry (Kumar, 2014, p. 14). Insights from quantitative data were complemented by the experiences of counter-TIP practitioners and the lived experiences of witnesses and TIP victims stemming from consultations and court case data. Conceptually, complex system theory and thinking about TIP as consisting of multiple and overlapping 'systems of systems of systems' provided helpful insights into South Africa's TIP phenomenon. Complex systems thinking has been applied to TIP research in South Africa and allowed for the TIP phenomenon to be considered as 'more than the sum of its parts' (Emser, 2013; Van der Watt, 2014, 2018, 2020a; Van der Watt & Van der Westhuizen, 2017; Van der Westhuizen, 2015). A system is considered as a set of relationships between subtle things that together form some kind of coherent pattern and/or whole that is capable of maintaining itself through time (Hammond, 2003, p. 17). Simply put, a system is a set of interacting units or elements that form an integrated whole intended to perform some function (Skyttner, 2005, p. 57). This conceptual approach allowed for TIP to be considered as part of multiple overlapping systems of violence and social phenomena that conceal, enable, and reinforce it. The 'mosaic of evidence' gathered in this study, and the 'constellation of circumstances' (UNODC, 2017) that illuminates it, show that much TIP evidence remains unexplored or undocumented due to overlapping operational, methodological, ideological, and socio-political factors.

### SAMPLING AND DATA COLLECTION

Any available data, emic insights, and/or lived experiences related to incidents of TIP in South Africa *and* that overlapped, connected with, or were reported to any aspect of South Africa's

criminal justice system, were considered of value in this study. Both requirements for data collection were considered necessary for several reasons, including 1) to avoid unsubstantiated claims about TIP prevalence, 2) confirmation that knowledge and evidence are not new but that it was officially brought to the attention of criminal justice practitioners, and 3) to enable *any* form of official follow-up, investigation, or response to the evidence in this study. Data was sourced from those closest to the study phenomenon. This included a spectrum of participants from civil society and the National Prosecuting Authority (NPA), who were able to provide detailed insights into TIP case reporting and prosecutions. Purposive sampling enabled the deliberate choice of participants who purposefully informed an understanding of the TIP phenomenon in South Africa (Creswell, 2013, p. 156) and who provided the most relevant and plentiful data (Yin, 2011, p. 88). Access to a range of different documents and people was a prerequisite for this research (Denscombe, 2002, p. 70) and provided important insights into issues related to the nature and prevalence of TIP in South Africa. Insights from courts, police statistics, and experiences from those at the forefront of counter-TIP activities, were important to include for an evidence-based understanding of the nature and prevalence of TIP in South Africa. Whatever sources seem to offer productive methods or evidence (Leedy and Ormrod, 2013, p. 74) were included to answer the research questions. The four basic types of information (Creswell, 2013, pp. 157-158): observations, interviews, documents and audio-visual materials, were considered in this study. The diversity of participants, their experiences and perspectives, and the plentiful documentary evidence accumulated over a period of 20 years, offered added validity to the findings of the research through triangulation (Creswell, 2013, p. 251).

It was important to gain insights and evidence relating to the spectrum of TIP incidents reported to SAPS, and document the concomitant numbers related to registered SAPS cases and investigations. The study then sought to gain prevalence insights from the translation of registered SAPS cases into active TIP prosecutions in South African courts and finally, to study the contents of successfully prosecuted TIP cases. Both the numbers (quantitative) and documented experiences and dimensions of TIP (qualitative) were important for prevalence insights from available criminal justice system data (including transcripts, judgments, and charge sheets). For this reason, the following data points were important to consider as they reflect the continuum of criminal justice system engagements, operations, and outcomes.

## CIVIL SOCIETY REPORTING TO THE CRIMINAL JUSTICE SYSTEM

The A21 National Human Trafficking Resource Line, Love Justice International, and the National Freedom Network (NFN) were approached for available data related to TIP incidents reported to them. These organizations are established role-players in South Africa's counter-TIP landscape and, respectively, use various methods for data collection, data aggregation, and reporting to SAPS, Provincial Task Teams, and the National Task Team. The data request to these organizations included:

- The number of TIP incidents (all forms) reported to the organization or initiated by the organization for the period between January 2018 and December 2021.
- A breakdown of these incidents in terms of 1) Forms of TIP, 2) The number of possible victims (such as, adults, children, and nationalities), and 3) Available information related to alleged perpetrators (traffickers).
- Available insights into the response rate by authorities to TIP reports.

- Any other relevant quantitative/qualitative data related to the prevalence of TIP in South Africa.

Only anonymized data was requested from these organizations.

## POLICE STATISTICS

The following SAPS statistics were requested on October 21, 2020:

- The number of cases (nationally) on CAS under the interim Section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 'Trafficking in Persons for the purpose of Sexual Exploitation' from December 2007 when the Act became operational, until the date this request is being processed. The request included a provincial breakdown of reported cases.
- The number of cases (nationally) on the CAS under the interim Sections 284, 285 and 287 of the 2005 Children's Act. These are the relevant sections for 'Trafficking in Children'. Statistics under these sections since the Act became operational (2006 or 2007) until the date the request was processed. The request included a provincial breakdown of reported cases..
- The number of cases (nationally) on CAS under Chapter 2 (Sections 4, 5, 6, 7, 8, 9, 10 & 11) of the Prevention and Combating of Trafficking in Persons Act 7 of 2013, since August 2015 when the Act became operational until the date this request was processed. The request included a provincial breakdown of reported cases and, importantly, a differentiation between the number of adult cases, and the number of child cases.
- A provincial breakdown in numbers and a differentiation between the number of adult cases, and the number of child cases.
- Details as to how the matters were finalized and/or closed. (Undetected / successful prosecutions etc.).

Only anonymized data was requested.

## ONGOING TIP PROSECUTIONS IN SOUTH AFRICAN COURTS

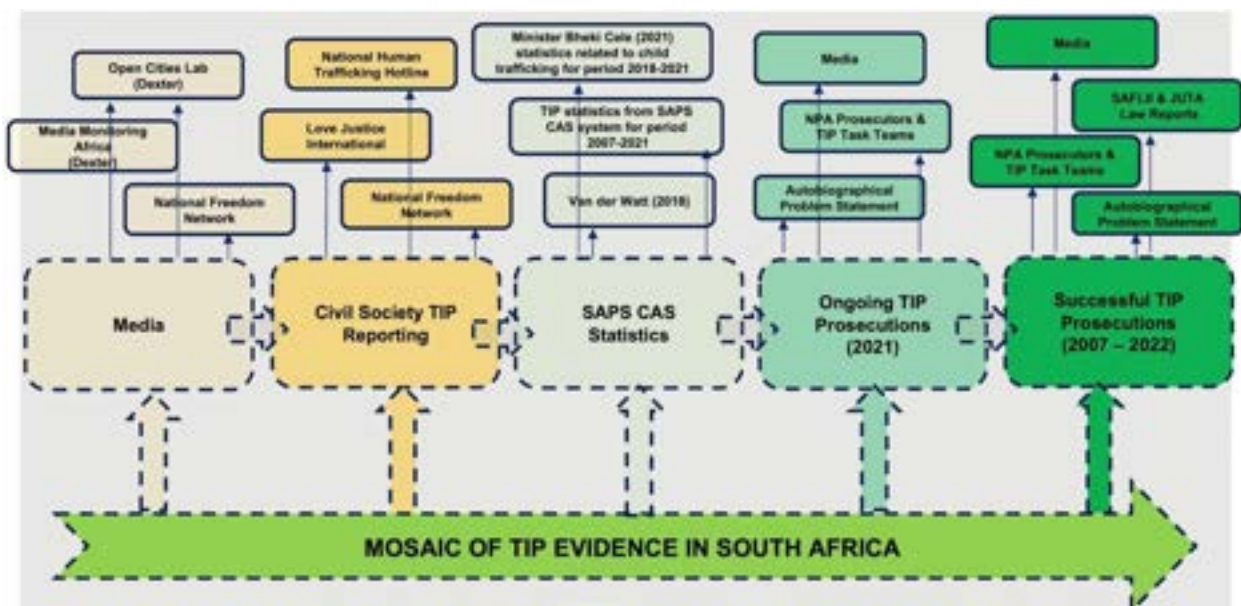
These matters included all those cases stemming from police investigations where suspects were arrested and charged with TIP-related offenses and appeared in court during 2021. Active and ongoing prosecutions were monitored. Since no centralized repository for this dataset is in existence, the researcher and research assistants relied on a combination of media reports, published cases, and emails with fellow TIP task team members and colleagues. This included a breakdown of these incidents in terms of 1) Forms of TIP, 2) The number of possible victims (including adults, children, and nationalities), and 3) Available information related to alleged perpetrators (traffickers).



## SUCCESSFULLY PROSECUTED TIP CASES IN SOUTH AFRICAN COURTS

Successfully prosecuted TIP cases are those matters that progressed through the different stages of the criminal justice system – from the initial reporting and arrest of the suspects to the charging- and conviction of the accused persons for TIP related crimes. This was the final data set sampled for this study. Since no centralized repository for this dataset is in existence, the researcher and research assistants relied on a combination of media reports, published cases, historical email threads with fellow TIP task team members and colleagues, and iterative phone calls and interviews with the prosecutors who were responsible for the successful TIP prosecutions. These included cases reported in official law reports and other published cases (SAFLII reports, Juta’s Daily Reports). All available case information and records were made available by the relevant prosecutors who were successfully contacted (11 Prosecutors), and relevant sections of the data capturing tool were populated during the telephonic interviews. Due to the comprehensive pre-trial preparation that these prosecutors undertake, they were also able to assist in populating relevant sections of several other cases that they were not necessarily responsible for prosecuting. This proved to be invaluable when specific prosecutors were not traced or when access to information were constrained in a specific TIP case. The author of this study officially consulted and testified in several of the sex trafficking prosecutions (Annex 1) and drew on these records to populate the data capturing tool in tandem with engagements with prosecutors. Figure 1 Data sources below represent the different sources of TIP data that contributed to the study.

Figure 1 Data sources



## TOOL DEVELOPMENT

Microsoft Excel was used to capture data from the ongoing prosecutions and the successfully prosecuted TIP cases. The tool and its purpose for the research were discussed with several practitioners during its development, and considerations for its use by practitioners after the conclusion of the study, was kept in mind during development. Together with insights from research assistants, the tool underwent several iterations to ensure that available data was

optimally captured. The table below presents the principal data points included in the Excel spreadsheet that was applied to the ongoing- and successfully prosecuted TIP cases.

*Table 1 Data points in the successfully prosecuted case analysis*

<p>Case details: Case name (including State v Zweni &amp; Others); Court case reference; Name of court; Police CAS number</p>	<p>Charges and court proceedings: Convictions in terms of TIP legislation; Convictions in terms of other legislation; Type(s) of TIP; Judgment date; Sentencing date; Appeal information</p>	<p>Cohort 1 &amp; 2: Victim data: Number of victims that testified; Age of victims that testified; Gender of victims that testified; Nationality of victims that testified</p>	<p>Cohort 3: Possible victim data: Number of possible victims of trafficking (VOT); Description of circumstances</p>
<p>Cohort 4: Multiple possible victims  Description of circumstances</p>	<p>Accused prosecuted, convicted and/or sentenced: Number of accused; Age of accused; Gender of accused; Nationality of accused; Number of persons/suspects implicated, but not arrested</p>	<p>Places, platforms, and facilitators of exploitation: Number of places directly implicated; Number of secondary places; Details of online platforms or websites; Details of television, radio, or print media; Control methods used by accused; Known or estimated period of exploitation; Known or estimated period that the places of exploitation was in existence</p>	<p>Other: Missing persons reports confirmed or mentioned; Evidence of corruption; Statements regarding nature and prevalence of TIP</p>

## CONCENTRIC MAPPING OF TIP CASES

The application of complex systems thinking (Van der Watt, 2020a) to successfully prosecuted TIP cases as being ‘more than the sum of its parts’, and the search for a ‘mosaic of evidence’ and ‘constellation of circumstances’ (UNODC, 2017) that make up TIP cases, made the

concentric<sup>8</sup> mapping of successfully prosecuted cases an important addition to this project. The principle underpinning concentric mapping is a simple one: TIP cases are complex<sup>9</sup>, they often occur over a protracted period and in multiple geographical locations, and there are frequently more victims than those who were positively identified and testified in the trial. The same principle applies to cases reported to the police, cases that are actively prosecuted in South African courts, and cases that are reported to civil society organizations. Albeit a challenge to the positivist worldview that seeks absolute certainty and unambiguous numbers, the concentric mapping of cases makes intuitive sense. It obliges the acknowledgement that far too many victims of trafficking and possible victims of trafficking are simply glossed over, ignored, and not 'counted' by governments, researchers, and other fact-finders. After capturing all available data from successfully prosecuted TIP cases in the Excel data capturing tool, the following five cohorts of victims and possible victims of trafficking were conceptualized and identified:

- **Cohort 1:** Those victims that have testified in the trial, or who were considered a victim of trafficking but were too young to provide testimony. They were enumerated.
- **Cohort 2:** Those victims that have been positively identified as victims of trafficking, submitted statements, and/or consulted with prosecutors but did not testify in the trial for several reasons, including illness, death, or absconding from a place of safety. They were enumerated.
- **Cohort 3:** Possible victims of trafficking that have not been formally identified or screened as victims of trafficking, but who were referred to either by name or otherwise as persons who were observed and/or were interacted with [in similar circumstances] by victims or witnesses during the investigation or trial. They were enumerated.
- **Cohort 4:** Possible victims of trafficking who were referred to as 'others, or 'many others' (i.e., multiple possible victims) who were observed and/or were interacted with [in similar circumstances] by victims or witnesses during the investigation or trial. They could not be enumerated.
- **Cohort 5:** Those possible and unknown victims of trafficking in the digital/online spaces. Based on the nature of successfully prosecuted TIP cases that involve the online environment and the likely substantial number of unknown 'others' that are exploited in

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<sup>8</sup> Even though the principles underlying 'concentric' mapping methodology and the different victim 'cohorts' were used in the researcher's court testimony, consultations, first drafts of this report, and overall mulling over the problem for several years, it was only during a conversation with Dr. Monique Emser that she suggested the nomenclature: "*That way they are interlinked, and does away with the issue of linear temporality*" (WhatsApp communications on 22 December 2021). The researcher is grateful for this important contribution.

<sup>9</sup> "*The complexity of human trafficking results from the interaction of a range of factors which include the nature of the crime (process not event), the range of perpetrators (from single perpetrators to large international organizations), the seemingly endless ways in which humans are exploited (e.g., sex, labor, domestic, baby farms, organs etc.) and the variety of contextual factors (social, economic, cultural etc.)*" (Van der Watt & Van der Westhuizen, 2017, p. 219).



similar circumstances, these possible and unknown victims of trafficking could not be enumerated but were inferred.

A basis for validating the concentric mapping of TIP victims and possible TIP victims in successful prosecutions is fairly obvious: Victims and witnesses were cross-examined, lived experiences and evidence were corroborated and tested, and traffickers were convicted. The value of the concentric mapping exercise was confirmed early in the study when corroboration between two cases was found. In *S v Odii & Others*, a successful sex trafficking prosecution in Durban, KwaZulu-Natal, a block of flats in Pretoria, Gauteng was implicated where the victims were exploited. The same building was implicated in *S v Abba & Another*, a separate sex trafficking matter that was successfully prosecuted in Pretoria, Gauteng. Both cases involved Nigerian traffickers, and in both cases 'multiple' possible victims of trafficking were coded (Cohort 4). Moreover, reports of sex trafficking activities, police corruption, and other crime operations at the same building was also made available by the NFN in the case of *S v Abba & Another* and underscores the capacity of civil society organizations in practical intelligence sharing and contributions to prevalence insights.

## ETHICS

Ethical issues originate from people's interaction with other people and the environment (Mouton, 2001). The Belmont Report (1978) and the Singapore Statement (2010) served as the yardstick for ethical considerations in this study. Ethics clearance was granted by the University of Witwatersrand (non-medical) Ethics Committee. Approval was gained from the National Prosecuting Authority for interviews and iterative telephone conversations with prosecutors for the completion of the court case analysis. Approval was also obtained from SAPS. SAPS Statistics was made available after an extensive and iterative process between the SAPS Ethics Unit and the DPCI. However, due to the cumbersome process and significant delay in obtaining the approval (after more than 17 months), no interviews could be conducted with members of SAPS and only the requested statistics were included in the research. Informed consent was gained from each respondent prior to their participation in the research. Participation by prosecutors in interviews and iterative telephone conversations with prosecutors was voluntary, and they were allowed to withdraw from the study at any time. Interviews with civil society organizations were covered by the main project's ethical clearance. No identifiable information and/or biographical details of trafficking victims and possible victims of trafficking, were recorded during any phase of the research project.

## DATA ANALYSIS AND VALIDATION STRATEGIES

As pointed out by (Silverman, 2013, p. 99), "*good research rarely moves smoothly*" from A, the research topic, to B, the findings. A vast number of documents, court transcripts and consultation notes, media reports, historical emails, and several hundred civil society TIP case reports were combed through over a two-year period. Court transcripts were particularly lengthy, as in the case of *S v Zweni* where the record of the proceeding was over 6,000 pages. Data analysis and concomitant interpretation included multiple iterations of checking and re-checking with prosecutors, civil society participants and, eventually, the broader South African counter-TIP network, who were invited to comment, critique, and offer explanations of the data that was presented. This resembled an "*unending process*" that developed concurrently with the researcher's interviews, observations, and writing (Crist & Tanner, 2003, p. 205). An Excel workbook and its advanced functionalities were the primary data analysis tool (see 'Tool Development' above). Coding for themes, enumerating victims and traffickers, and analyzing the

data for the purpose of concentric mapping, were all conducted with Excel. Preliminary findings and/or member checking (Yin, 2011) presentations for the purpose of data analysis and validation were conducted with counter-TIP practitioners from civil society on 3 March 2022, and with criminal justice practitioners on 4 March 2022. Other presentations for the same purpose include those to NICTIP and the South African Anti Money Laundering Integrated Task Force (SAMLIT).

## COVID-19

The COVID-19 pandemic had a significant impact on the data collection process. The ‘arena’ in which participants in this study worked, and that had to be navigated during data collection and email communications with various role-players, was vividly described by the Deputy Minister of Justice and Constitutional Development, John Jeffery, during the Budget Vote Debate in the National Assembly, on 23 July 2020:

*“Every day we have a number of magistrates and court staff who are not at work due to COVID infections or them being in isolation. Every day a number of court buildings or other facilities have to be closed to allow for full or partial decontamination. Today the figure for closures is in the region of 30. Whenever a court is closed, arrangements are made to ensure that essential justice services can still be rendered. Remands being done in parking areas or under carports are becoming a new type of normal.” (Jeffery, 2020b)*

Several prosecutors that were consulted in this research fell ill and/or lost close friends and relatives during the 18-month research project, and interviews had to be rescheduled on multiple occasions. A combination of WhatsApp, Zoom and Cellphone interviews became the preferred method of collecting data.

## LIMITATIONS AND CHALLENGES

Unambiguous and rigorous statistical data that clearly answers the ‘how big is the TIP problem?’ question, does not exist – not in South Africa, nor anywhere else in the world. This study did not attempt to answer the statistical question but sought to delve into existing knowledge sources to coax prevalence insights. Furthermore, these are knowledge sources that ought to be the foundation of any future TIP prevalence studies. The biggest limitation of this study is, therefore, that it does not offer a ‘dream’ response to TIP as an *“elusive statistical nightmare”* (Van der Watt, 2015) in South Africa. Rather, it shows – convincingly – that South Africa’s TIP problem is vastly underestimated and undercounted. Labor trafficking, as a less visible and under-reported form of trafficking compared to sex trafficking, remain largely undetected from both a research and policing perspective in South Africa (see Allais, 2013; Emser, 2013; Frankel, 2016). This translates into criminal investigation and prosecution deficiencies that inhibit TIP prevalence insights. As a research limitation this must be considered throughout this study’s discussion around the issue of prevalence and the significant undercounting of TIP victims and perpetrators in South Africa.

A diverse range and significant volume of data, reports, lived experiences, affidavits, and other TIP evidence was made available by prosecutors, civil society role-players, and academics over the 18-month period of this study. The data and evidence that was finally included in this report represent but a small fraction of what is available ‘out there’. Several practitioners and organizations bemoaned the fact that much TIP evidence that is generated in their day-to-day work, is either not properly documented by official reporting structures (including TIP Task

Teams), or simply ignored by officials (i.e., members of SAPS, the Hawks and Department of Social Development (DSD)). This was a persisting pattern as was documented elsewhere (Van der Watt, 2018, pp. 292-301). The author was frequently copied (cc'd and bcc'd) into several email communications to different government agencies in matters that included urgent requests for assistance from civil society related to TIP threats and active cases (*see also civil society discussion below*). In following up with the senders of these emails as to whether any responses were forthcoming from these urgent calls for response service, it was apparent that responses were infrequent and inconsistent at best, and absent or indifferent, at worst. These nuances and the dense insights into multi-level system deficiencies that clearly diminish TIP prevalence insights, could not be optimally captured in this study.

Several prosecutors in successful prosecutions were not reached for several reasons, including non-response to requests for their participation in the study, illness related to the COVID-19 pandemic, or leaving the employ of the National Prosecuting Authority (NPA). A challenge during the research was the confusion among prosecutors and participants about the multiple research requests submitted by the larger research team. Several prosecutors responded to requests for data and telephone interviews in the final weeks of the project leading up to the final member checking and validation workshop on 4 March 2022. This resulted in the submission of updated court case data and information that had to be checked, verified, and deconflicted with previous submissions from other criminal justice practitioners. The lack of an integrated information system and centralized repository where TIP prosecution data could be accessed, as well as the lack of data standards for capturing prosecutions data also created significant challenges in ascertaining the correct case references and/or the spelling of names and surnames of accused persons. This led to multiple reviews to avoid the duplication of cases captured in this study. Furthermore, rapport building initiatives with civil society practitioners and organizations to negotiate access to important data, was time consuming. When the data was eventually made available, the details, accuracy, and articulation of the data - with due consideration to anonymity - had to be considered. This resulted in multiple iterations of data validation during the final month of the research.

## SECTION 3: BACKGROUND

Apart from South Africa's well documented history of subjugation (Ross, 2010; Tobias, 2002; Williams, 2016), during which 'human trafficking' was not yet an established concept that circumscribed the lived experiences of people, there is a growing body of empirical evidence dating back to the mid-1990's that points to TIP as a systemic reality that cannot be ignored. Albeit not part of this study's scope to unpack, it is important to acknowledge that the collective existing TIP scholarship has convincingly made the case that TIP is a reality in South Africa. This includes the prominence of permeable borders, poverty, lack of employment, and gender discrimination (UNESCO, 2007, pp. 32-38) as enabling factors of TIP, and that sex trafficking – similar to the international arena – remains the most documented<sup>10</sup> type of trafficking (Swart, 2012, pp. 65). Albeit varying in their aims, scope, methodologies and quality, consistent and coherent themes and patterns are undoubtedly evident in existing research. These include research reports (Bermudez, 2008; De Sas Kropiwnicki, 2010; ECPAT, 2013, 2019; HSRC, 2010; Martens et al, 2003; Molo Songololo, 2000a, 2000b; O'Connell Davidson & Sanchez Taylor, 1996; UNESCO, 2007), masters and doctoral studies (Emser, 2013; Everitt, 2013; Hesselink-Louw, 2001; Horne, 2014; Van der Westhuizen, 2015; Van der Watt, 2018; Visser, 2018; Warria, 2014), academic papers (Maluleke & Mabaso, 2017; Motseki & Mofokeng, 2020; Van Zyl & Horne, 2009; Van der Watt, 2020b; Warria, 2018, 2019; Warria, Nel & Triegaardt, 2015; Warria, 2018; Warria & Chikadzi, 2018), books (Frankel, 2016; Friedman, 2014; Zindoga & Luhanga, 2017), and survivor biographies (Grootboom, 2016; Hough-Coetzee & Kruger, 2015). The spectrum of data collected in this body of writings and scholarship includes more than 1,200 empirical interviews with a range of participants, including survivors and frontline counter-TIP practitioners.

Another established and credible source of information about TIP in South Africa is the annual United States Trafficking in Persons Report (US TIP Report) which has consistently referred to South Africa as a source, transit, and destination country for the trafficking of men, women and children exploited for commercial sex and forced labor. Considered the most comprehensive global report on governments' efforts to combat severe forms of human trafficking (see Kruger, 2010, p. 126), the US TIP Report has not been absolved from criticism (see Hübschle, 2009; Wooditch, 2011). The methodology employed for the drafting of South Africa's country narrative in the US TIP Report remains rigorous and includes in-depth conversations and interviews with the diverse range of practitioners involved in counter-trafficking work (government and civil society), the monitoring and validation of media reports, and the transmission of a standardized questionnaire for completion. Data collected from questionnaires is integrated, written-up, and validated through multiple iterations by stakeholders that include multiple officials at the US Embassy in Pretoria and multiple officials in Washington DC (Van der Watt, 2020b). There is significant congruence between both the evidence that stems from existing empirical research and the findings contained in the annual US TIP Reports with that of thematic findings in the current study.

This section continues with a brief overview of the Palermo Trafficking Protocol that operationalized 'Trafficking in Persons' as an international legal concept. This is followed by a discussion about South Africa's legal framework as it is applied in South Africa's criminal justice system – from initial reporting to SAPS to the finalization of successfully prosecuted TIP cases.

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<sup>10</sup> See research limitations regarding the impact on prevalence data when labor trafficking is not afforded the same focus as that of sex trafficking.

Research and the ‘little evidence’ dilemma concerning TIP in South Africa is then discussed as a significant factor in prevailing confusion and ambivalence relating to the nature and prevalence of TIP. This includes research problems relating to the definitional truncation of TIP, the undercounting of trafficking victims in the sex trade, and harm rationalizations by some segments of the research community.

## THE PALERMO TRAFFICKING PROTOCOL

The United Nations (UN) General Assembly adopted the *Convention Against Transnational Organized Crime* along with three protocols that served as additional instruments to supplement the Convention, on 15 November 2000. Trafficking in persons, smuggling, and illicit firearms, were covered by the protocols, which were also opened for signature (Allain, 2014, p. 113). The international community began meeting a year earlier, in 1999, to draft the *Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children* (Miko, 2003, p. 15), which considered that there was “no universal instrument that addresses all aspects of trafficking in persons” (United Nations, 2000). Subsequent to adoption, the Convention and protocols were formally signed in Palermo, Italy, in December 2000 (Miko, 2003, p. 15). It was not until December 2000 that the term ‘trafficking’ was defined in international law (Gallagher, 2010, p. 12). Considered the landmark treaty on human trafficking (Kruger, 2010, p. 190), the Palermo Trafficking Protocol is generally taken as the point of departure when nations (as its signatories) begin to draft their own legislation (Kreston, 2014, p. 21).

Article 3(a) of the 2000 Protocol defines human trafficking as follows:

“‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harboring 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 labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

(United Nations, 2000)

The Palermo Protocol came into effect on 25 December 2003 (Pharoah, 2006, p. 1) and was subsequently ratified by South Africa on February 20, 2004. South Africa was now bound to domesticate this definition and develop laws to protect the victims of trafficking and prosecute offenders in a manner appropriate to the seriousness of the offense (Bermudez, 2008, pp. 19–20; Pharoah, 2006, p. 1).

## SOUTH AFRICA’S LEGISLATIVE FRAMEWORK

Probably the most significant theme addressed by scholars to date relates to South Africa’s legal and legislative arena (Kreston, 2007, 2014; Kruger 2010, 2012, 2016, 2017, 2020, 2022; Kruger & Oosthuizen, 2011, 2012; Mollema, 2014; Mollema & Terblanche, 2017; Prinsloo & Ovens, 2015). The *Children’s Act 38 of 2005* (Children’s Act, 2005) and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (Sexual Offences Amendment Act, 2007) included interim provisions dealing with particular aspects of trafficking in persons pending the promulgation of the PACOTIP Act (Kruger, 2010, p. 482). These transitional provisions were a means for South Africa to domesticate laws and policies consistent with its obligations in terms of trafficking-related international and regional treaties. As



pointed out by Kreston (2007, p. 45), the scope of the mandate of these legislative pieces was inherently constrained. Its limitations include the fact that the Children's Act applied only to child victims of trafficking while the Sexual Offences Amendment Act only covered trafficking for sexual exploitation of both children and adults.

In contrast, the PACOTIP Act, enacted in July 2013, comprehensively addresses all forms of TIP and includes a recognition in its preamble that existing common law and statutory law were inadequate as measures to deal comprehensively with TIP. On 9 August 2015, the law came into effect (Kruger, 2016: 55; President Zuma signs new Trafficking Act into law, 2015) and gave domestic legal effect to South Africa's international obligations under the Palermo Protocol. In comparing the PACOTIP Act with international prosecution standards, Kruger (2016, p. 84) describes the legislation as an *"innovative and invaluable tool"* and a *"sharp prosecution sword"* that equips practitioners to terminate impunity for multiple trafficking agents who profit from the lucrative exploitation of human beings. The protection of TIP victims and the concomitant provision of assistance to them, the prevention of TIP, and the prosecution and appropriate punishment of perpetrators are now effectively enabled by the PACOTIP Act.

The offense of 'Trafficking in Persons' is defined by Section 4(1) in Chapter 2 of the PACOTIP Act as follows:

*"Any person who delivers, recruits, transports, transfers, harbors, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of–*

*(a) a threat of harm;*

*(b) the threat or use of force or other forms of coercion;*

*(c) the abuse of vulnerability;*

*(d) fraud;*

*(e) deception;*

*(f) abduction;*

*(g) kidnapping;*

*(h) the abuse of power;*

*(i) 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*

*(j) 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."*

Noteworthy here is the definition of 'abuse of vulnerability' as described in Section 1 of the Act as a means through which a person can be marshaled for subsequent exploitation. These vulnerability considerations reflect the localized South African social context and feature prominently in existing research, numerous past and ongoing TIP reports, investigations, and successful prosecutions in the country. According to this definition, 'abuse of vulnerability' for purposes of Section 4(1) means:

*"any abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not limited to, taking advantage of the vulnerabilities of that person resulting from–*

*a) the person having entered or remained in the Republic illegally or without proper documentation;*

- b) pregnancy;
- c) any disability of the person;
- d) addiction to the use of any dependence-producing substance;
- e) being a child;
- f) social circumstances; or
- g) economic circumstances.”

Section 1 of the PACOTIP Act provides for a 'victim of trafficking' to mean (a) a child who is found to be a victim of trafficking after an assessment in terms of Section 18 (6); or (b) an adult person who has been issued with a letter of recognition as provided for in Section 19 (10). The crime of 'child trafficking' or 'trafficking in children' is not specifically defined in the PACOTIP Act, but the PACOTIP Act does include this crime which has a lower burden of proof than cases involving adults. Furthermore, the waiver of the 'means' requirement when children are trafficked is also not specifically provided for in Section 4(1) of the PACOTIP Act. However, the means become redundant in relation to trafficking of children, because one of the means listed in Section 4(1), namely the 'abuse of vulnerability', includes 'being a child' as part of its definition. Importantly, neither children nor adults can consent to being exploited. The PACOTIP Act is therefore compliant with international law in that Section 11(1)(a) denotes that the 'means' component does not form part of the definition of child trafficking. This section specifies that a child's consent to the intended exploitation is no defense to a charge of trafficking (see also Kreston, 2014; Kruger, 2016). Similarly, for adults, Section 11(1)(b) becomes pertinent and states that an adult's consent to the intended exploitation is no defense to a charge of trafficking, regardless of whether one or more of the means referred to in Section 4(1)(a) to (j) have been employed. South Africa's National Policy Framework (NPF) (2019) on the Management of Trafficking in Persons Offences provides a definition of a 'trafficked child' that is consistent with the implication of Section 11(1)(a) of the PACOTIP Act. It defines a 'trafficked child' as *“any person under eighteen who is recruited, transported, transferred, sold, exchanged, leased, harbored or received for the purpose of exploitation, either within or outside a country, even if no element of coercion, deception, abuse of authority or any other form of abuse is used”* (NPF, 2019, p. 18). Although the NPF is not legally binding as is legislation, it espouses the spirit of international law's definition of child trafficking as described in Article 3(c) of the Palermo Protocol.

When considering one of the most consistent and pressing areas lacking on the part of the South African government's TIP efforts, namely *“reducing demand for commercial sex, including by prosecuting individuals, including police, who purchase commercial sex”* (US TIP Report, 2021), it is noteworthy that the PACOTIP Act and other relevant legislative instruments are well geared to fulfill this task. For a start, the preamble of the PACOTIP Act recognizes that *“the search for improved socio-economic circumstances and the demand for the services of victims of trafficking contribute to making persons vulnerable to becoming victims of trafficking”*. Section 7 of the PACOTIP Act criminalizes benefiting from the services of a victim of trafficking or using or even enabling others to use such services. This may include sex buyers who know or ought reasonably to have known or suspected that the person is a victim of trafficking. The same principle applies to the procurement and/or use of forced labor. Section 17 of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* is also important to consider. It implies that a child can consent to sex in certain cases, but, as soon as the sex is for payment (i.e., prostitution), the child is deemed to be the victim of the offence of sexual exploitation up until the age of 18. Section 11 of the same act criminalizes engaging in the sexual services of persons 18 years or older for the purposes of the commission of a sexual act.

When legal definitions are not accurately employed to the lived experiences of research participants, or to a specific constellation of circumstances that construct a crime or social phenomenon, the resultant analysis and interpretation of ‘data’ will be skewed, and the concomitant response (i.e., criminal justice, social justice, policy, legal), if any, flawed. The consequences may be unintended, yet could result in serious moral and ethical dilemmas, physical and psychological harm to TIP victims, the unyielding perpetration of TIP without criminal justice intervention, and even the loss of life (Van der Watt, 2020b).

## TIP UNDERCOUNTING AND ‘LITTLE EVIDENCE’<sup>11</sup>

Research findings and claims that conflict with available evidence include those by scholars who posit that there is in fact ‘little evidence’ of TIP in South Africa, and that existing concerns about human trafficking, particularly sex trafficking and child trafficking, stems from widely accepted ‘myths’ and ‘moral panic’ (Gould, 2010, 2014; Walker et al., 2020). Adding to the evidence dissonance are public statements by well-placed South African government officials whose primary responsibility includes a balanced and sober contribution to a polarized discourse that has veered into both<sup>12</sup> extremes of the TIP prevalence issue. In one example, the official National SAPS Spokesperson, stated “*without fear of contradiction*” that TIP is not a problem in South Africa, that there were no active investigations at the time of the television interview in September 2020, and that no TIP-related reports were received by the SAPS besides the false reports that are circulating on social media. He further concluded by stating that South Africa was doing “*far better than Western countries and other African countries*” in its response to TIP (Naidoo, 2020). The ongoing confusion and contestations about the prevalence of TIP in South Africa, and what is considered ‘evidence’ in support of TIP or the lack thereof, presents multiple risks and unintended consequences for governance, policy, law reform, research, and safety and security in the country. Skepticism towards unsubstantiated claims and the ill-informed proliferation of ‘panic’ regarding South Africa’s ‘human trafficking scourge’ is important as these create a “*credibility dilemma, detract from a constructive conversation, and frustrate efforts to understand the multi-layered realities of the problem*” (Van der Watt, 2015). However, it warrants equal scrutiny when skepticism is found wanting and available TIP evidence is ignored, dismissed, and/or misrepresented.

From prevalence estimates to ethical considerations, the study of TIP presents a range of challenges (Cwikel & Hoban, 2005; Fedina & DeForge, 2017; Siegel & De Wildt, 2016; Zhang, 2022). The current study was by no means absolved from these challenges and considerations. These were explicated in the limitations and challenges section of this study. The four studies<sup>13</sup> discussed below likely had similar challenges to navigate, some of which were explicated by their authors. However, they serve as selected examples of South African scholarship that garnered local and international reach, and also raised concerns about definitional truncations of TIP, the absence of both survivors’ lived experiences and insights from dedicated counter-TIP practitioners (investigators, prosecutors, social workers, civil society), generalized claims, and/or the undercounting of TIP victims (Coetzee, 2020; De Kock, 2009; Dempsey, 2017; Frankel, 2016; Swanepoel, 2018; Van der Watt, 2020b; Van der Watt et al., 2020; Trafficking, Sexual

<sup>11</sup> Segments of the analysis and issues raised in this section were documented in Van der Watt (2020b) in tandem with the conceptualization of the current study from February through April 2020.

<sup>12</sup> Part of this problem are the differing agendas regarding the sex trade, and the contentious policy debate about its decriminalization. Raphael (2017, p. 4) accentuates the importance of understanding these agendas and distinguishes between the two opposing orientations (Preservationists vs Abolitionists), the arguments they espouse, and the implications for data related to violence and trafficking in the sex trade.

<sup>13</sup> Gould and Fick (2008), Gould (2014), Yingwana (2018), and Walker et al (2020).



Exploitation, Lies & Deceit: What you haven't been told, 2010). They are critical to consider as they continue to have a direct or indirect impact on the country's TIP discourse, understanding, and response. The evidence presented in these studies will serve as the background for and juxtaposed with evidence collected in this research.

The findings of a two-year study (2006–2008) by the Institute for Security Studies (ISS) and the Sex Worker Education and Advocacy Taskforce (SWEAT) (Gould & Fick, 2008) is arguably one of the most widely cited studies for insights into the prevalence of sex trafficking in South Africa (Africa Check, 2014/2017; Hübschle, 2009; Palmary & De Gruchy, 2020; Walker et al., 2020; Wilkinson & Chiumia, 2013; Yingwana, 2018). It was also referred to by the Africa Check human trafficking factsheet (Africa Check, 2014/2017) as *“the most methodologically sound research”* on the issue of human trafficking prevalence in South Africa. The study claims to dispel *“several myths and popular notions”* (Gould & Fick, 2008, p. 153) about ‘sex work’ and human trafficking in Cape Town (see also Gould, 2014). Notwithstanding the presentation of the Palermo Protocol definition of TIP in the introduction of the study (Gould & Fick, 2008, p. 2), divergence from its essence follows when the researchers state that *“the Palermo Protocol definition of human trafficking may be too broad to be useful”* (Gould & Fick, 2008, p. 5). Noting that this study was prior to the PACOTIP Act, the operational definition of TIP used in the study was then provided:

*“... it is our interpretation, that in order to identify a set of circumstances as ‘trafficking’, all three elements of the definition need to be present, i.e., force, deception, or inducement at the point of recruitment, re-location, and exploitation”*

(Gould & Fick, 2008, p. 6)

The study found ‘widespread evidence’ that *“sex workers based in brothels are subject to various forms of coercion by brothel owners, mainly to force them to remain in the industry and thus to maintain the brothels’ income”* (Gould & Fick, 2008, p. xiii). Notably only eight women of 164 canvassed *“could be said to have experienced trafficking-like practices”*, and *“almost all of these experiences happened in the past”* (Gould & Fick, 2008, p. xiii). Other findings include that few sex buyers *“employ the services”* of *“very young sex workers”* and *“no evidence of children in brothels”* (Gould & Fick, 2008, p. xiii). Gould and Fick (2008, p. xiii) state that over the two-year research period in Cape Town, *“five children<sup>14</sup> were encountered selling sex on the street”*, and *“none of these children were forced by a third party to sell sex”*.

Conclusions drawn from the study by Gould and Fick (2008) and a separate study by Richter and Delva (2010), are consolidated in a subsequent publication by Gould (2014) entitled ‘Sex Trafficking and Prostitution in South Africa.’ The findings provide *“the basis for a critique of Western rescue missions and the larger anti-trafficking movement”* (Gould, 2014, p. 183). The findings from both studies (Gould & Fick, 2008 and Richter & Delva, 2010) also *“reflect a continuum of working experiences for those involved in prostitution”* (Gould, 2014, p. 199). The main findings from Richter and Delva’s (2010, p. 5) study include no indication of a *“major influx of young sex workers”* and that the data *“does not support fears about an increase of children ... into the sex industry during the World Cup period.”* Now generalizing to the entire *“South African*

<sup>14</sup> In stark contradiction to this finding related to children “selling sex” in Cape Town, a number of original sources, including available police statistics on child prostitution, are cited in Molo Songololo (2000a). It includes a claim by SWEAT that *“25 percent of sex workers (in Cape Town) are children”* (True Love Magazine, May 2000, in Molo Songololo, 2000a: 27). See also O’Connell Davidson and Sanchez Taylor, (1996), Hesselink-Louw (2001), *‘Innocence for sale’* (2001), and *‘Operation Priscilla’* (2005) for a pre-Gould and Fick (2008) glimpse into the nature of commercial sexual exploitation of children, child sex trafficking, and consumer-level demand for commercial sex with children in South Africa’s sex trade.

context”, Gould (2014, p. 199) states that there is “*little evidence to substantiate the popular notions*” that:

- *“It is common for deception and force to be used in recruitment into prostitution;*
- *There are many child prostitutes;*
- *Trafficking results from clients’ demands for young and foreign prostitutes;*
- *Rural women and girls and those from poor backgrounds are attractive targets for traffickers;*
- *The sex industry is dominated by organized criminal groups;*
- *Sex workers are typically controlled through drugs and addiction; and*
- *Foreign sex workers are trafficked in significant numbers into the South African sex sector.”*

***“... it would appear that international pressure to comply with the Palermo Protocol as well as to improve South Africa’s status on the US State Department’s ranking list, contributed to the creation of sex trafficking as a social problem in South Africa.”***

**(Gould, 2014, p. 200)**

The findings and assertions by Gould and Fick (2008) and Gould (2014) of negligible evidence regarding both adults and children being trafficked in South Africa’s sex trade have drawn considerable scrutiny and disbelief from both practitioners<sup>15</sup> and researchers. This ranges from SAPS warning that TIP is “*often overlooked*” and that “*the victims become so entangled in it that they don’t report they’re being exploited*” (De Kock, 2009), to simply “*extraordinary*” (Frankel, 2016, pp. 167-168) and probably based on the fact that “*respondents were asked whether they had been trafficked notwithstanding the inherent dangers in admitting involvement in trafficking circles*” (Frankel, 2016, p. 168). A group of NGOs compiled a response entitled ‘*Trafficking, Sexual Exploitation, Lies & Deceit: What you haven’t been told*’ (2010) in response to Gould and Fick (2008). In it, they expressed deep concern about “*the exploitation of women and children in prostitution*” and stated that they “*disagreed profoundly*” with the report. Most notably is the critique by Michelle Dempsey, Professor of Law at Villanova University in the United States, who identified several shortfalls in the TIP definition employed in both Gould and Fick (2008) and Gould (2014). Dempsey meticulously shows how Gould (2014) has “*radically truncated the scope of the definition*” of human trafficking and even “*excludes cases involving the use of force*” (Dempsey, 2017, pp. 73-74). With reference to three case studies documented by Gould & Fick (2008) as cases not fitting the description of TIP, Dempsey applies the same set of facts to the definition of TIP in the Palermo Protocol and argues that Gould and Fick (2008) incorrectly coded the cases as not being trafficking. In doing so, Dempsey points out that Gould and Fick (2008) “*undercounted the prevalence of trafficking for the purpose of sexual exploitation*” (Dempsey, 2017, p. 75-77) in South Africa.

<sup>15</sup> The author attended the 2009 ISS research presentation in Port Elizabeth. At the time, he was attached to the Hawks and was responsible for a project-driven investigation into a Nigerian syndicate that was implicated in the trafficking of women and girls into the sex trade between Port Elizabeth, Cape Town, Bloemfontein, Pretoria and Johannesburg.

Definitional truncation and the undercounting of trafficking victims in the sex trade are also evident in a country study that documents how SWEAT and Sisonke, the 'national sex worker movement', deal with TIP in the sex trade through their advocacy and organizing (Yingwana, 2018). Yingwana (2018, p. 220) states that the definition of human trafficking that SWEAT works with "... is derived from the PACOTIP Act." Yet, incongruent with the PACOTIP Act, the description of a trafficking victim/survivor is described as "... someone who has been taken away from where they were staying without really knowing where they were going, and without consenting to be taken to that place, for exploitation purposes" (Yingwana, 2018, p. 220). The definitional emphasis on 'movement', which is not a prerequisite for a trafficking offence, is also evident in the fact that "the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement" (Yingwana, 2018, p. 215). The study makes several references to abuse by pimps and brothel managers and women enticed, misled or coerced into prostitution (Yingwana, 2018, pp. 214, 217) but do not appear to consider these within the definitional ambit of TIP. Women in prostitution also made mention of children experiencing harm, yet this is not interrogated or further explored in the study. In the first instance, mention is made of "... the Nigerians" who "sell drugs ... And they use our children" (Yingwana, 2018, pp. 213-214), and in the second instance, reference is made to "stigma and abuse that filter down onto their children because of their sex work" (Yingwana, 2018, p. 215). The references to the 'use' and 'abuse' of children are not explained and the first mention seemingly dismissed as "sex workers drawing from government and media rhetoric about foreigners (specifically Nigerians) bringing corruption and crime to the country" (Yingwana, 2018, p. 214). The study concludes that "other forms of human rights violations, such as police abuse and labor exploitation, are far more prevalent" (Yingwana, 2018, p. 227) than sex trafficking. These 'violations', according to Yingwana (2018), "might have elements of trafficking, such as coercion or deception, but do not fit neatly into the legal definition of human trafficking" (p. 227).

In the final example, a study commissioned by the Centre for Child Law at the University of Pretoria, was developed "out of a concern that the 'moral panic' around 'child trafficking' in South Africa is used to discourage cross-border child migration and impinge on children's rights" (Walker et al., 2020 p. i). With regards to the existing state of knowledge around TIP in South Africa, the researchers claim that it is "largely based on ad hoc studies, questionable and outdated statistics, anecdotal information, and common myths" (Walker et al., 2020, p. 7). For a person to be a victim of trafficking, according to the researchers, "they must have been, firstly, transported across international borders or within a country, secondly, coerced or deceived, and, thirdly, 'exploited' in some way" (Walker et al., 2020, p. 19). The 'key findings' from this report include that "human trafficking is not well understood and rarely encountered," and that what is known about trafficking is "based on hearsay and the media". The report continues to find that "the myths of child trafficking simplify the complex realities of child migration" and that there is "little evidence of sex trafficking" (Walker et al., 2020, p 57).

The legally binding definition of the PACOTIP Act was not presented in the report and was either truncated or incorrectly employed by the researchers. Key definitions such as the "abuse of vulnerability" – critical to consider in a research study involving children on the move who shared multiple accounts of violence and exploitation - were entirely omitted. Identified child victims of trafficking and counter-trafficking practitioners were also not interviewed for the research, and available relevant evidence-based data on the trafficking realities in South Africa, including police statistics and numerous successful child trafficking prosecutions (save for *S v Jezile*), were not cited, or considered. Within two weeks after the launch of the Walker et al. (2020) study, it was offered as evidence in the constitutional court matter (Centre for Child Law

vs DG Home Affairs, case number CCT 101/20) relating to the application that an unmarried father is allowed to notify the birth of his child under his surname in the absence of the child's mother in terms of the *Births and Deaths Registration Act 51 of 1992*. In this matter, Chief Justice Mogoeng Mogoeng raised concern about issues of human trafficking in South Africa, to which Advocate Bhima (Bhima, 2020), on behalf of the Centre for Child Law, made reference to their own 2020 study that “addressed the real concerns with human smuggling and human trafficking”. He submitted that “there isn't much evidence on it” and, “that in many instances where rights are limited on the basis of this argument that child trafficking exists, it is merely speculation”.<sup>16</sup>

Two further examples of definitional truncation (Palmary, 2016; Palmary & De Gruchy, 2020) and one example of likely undercounting of TIP victims (Jewkes et al., 2021) in research related to violence in the sex trade, will be briefly discussed.

In Palmary's (2016) text entitled 'Gender, sexuality and migration in South Africa: Governing morality', the author writes about the 'invention' of- and 'preoccupation' with trafficking in South Africa and the role of international influence and anxiety about migration control that have contributed to legislation that is claimed to be incongruent with South African realities. However, the PACOTIP Act is neither presented nor defined. Instead, Palmary's (2016, p. 55) iteration of the comprehensive definition in Section 4 of the PACOTIP Act, is reduced to the following three criteria:

- That there is some movement or harboring of a person;
- That a level of coercion and deceit is required;
- That this must be for the purpose of exploiting the victim.

Despite the specific reference in the PACOTIP Act to forced labor and “any form or manner of exploitation” (South Africa, 2013), the author asserts that South Africa's legislation “does not take much account for [sic] issues like internal trafficking or labor trafficking” (Palmary, 2016, p. 58). The author continues by highlighting that “women are not deceived and coerced but know perfectly well that their work will be exploitative” (Palmary, 2016, p. 73). The fact that women are exploited “is beyond dispute” according to Palmary, but the author concludes that this exploitation “falls short of trafficking” (p. 73). In a similar vein, the role of 'foreign influence' in the development of South Africa's PACOTIP Act features strongly in the critique by Palmary and De Gruchy (2020). Despite the strong emphasis on the PACOTIP Act, its content, and relevant definitions are also not presented. The authors point to the Palermo Protocol and the option countries have to “adapt the definition in ways that reflect local circumstances” (Palmary and De Gruchy, 2020, p. 57). The PACOTIP Act, its Preamble, and contextual definitions in Chapter 1 will show that this is what has been achieved by the South African government. Yet, it is claimed that the PACOTIP Act employs “an almost identical definition of trafficking to the Palermo Protocol” and that the “only difference is that it extends the definition to include the illegal adoption of a child and forced marriage” (Palmary & De Gruchy, 2020, p. 57). Another variation of a truncated definition of TIP is presented by Palmary and De Gruchy (2020, p. 62), who states that “trafficking has a three-part burden of proof – recruitment, movement, and control.”

In a study where TIP victims were likely undercounted in South Africa's sex trade, Jewkes et al. (2021) conducted a multi-stage, community-centric, cross-sectional survey of 3,005 women in

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<sup>16</sup> See response entitled 'Human trafficking in South Africa: Are the Constitutional Court and public being misled?' by Van der Watt, Kruger, Warria, Emser & Van der Westhuizen (2020).



prostitution in 12 sites across all nine provinces of South Africa. Adult women in prostitution in the preceding six months were recruited for interviews, and survey tools were developed in consultation with peer educators and women in prostitution. As part of the ethical considerations in the study, individuals who were younger than 18 years (children), or who self-reported as being a victim of human trafficking were excluded from the study, *“but otherwise assisted”* (Jewkes et al., 2021, p. 2). The study did not offer much-needed insights into the nature and prevalence of sex trafficking among the women and children with whom the researchers interacted. It remains unclear as to how many children were identified that were exploited in the sex trade, and how many women self-reported as being victims of TIP. Moreover, it remains unclear as to how many of these incidents of TIP were actually reported to the SAPS as required by Section 18 (children – *must* be reported) and Section 19 (adults – *may* be reported) of the PACOTIP Act. With reference to the 3,005 women that were surveyed in the study, Jewkes et al. (2021, p. 3) report that *“few, however, had entered sex work as children (11.1 percent).”* When considering the definition of TIP in terms of the PACOTIP Act, this 11 percent translates to at least 330 children that were exploited and/or trafficked in South Africa’s sex trade, and who now participated in the study as adults<sup>17</sup>. This is not a meager number.

A persistent theme in several studies (and views by scholars) that claim ‘little evidence’ of TIP in South Africa exist, is the continued call for the decriminalization<sup>18</sup> of South Africa’s sex trade (i.e., Gould & Fick 2008; Gould, 2014; Richter & Delva, 2010; Yingwana, 2018). Sometimes explicit, but unavoidably implicit, discursive debates and ideologies around decriminalization have had a significant impact on TIP research and prevalence insights in South Africa. An example is the Gould and Fick (2008, p. 6) study in which the research focus, namely the ‘regulation of the sex work industry’ and ‘labor exploitation in the sex work industry’, rather than TIP, is explicated:

*“What we found is that while one of the conditions of trafficking (exploitation) is not uncommon in the sex work industry, the other features of trafficking are not commonly experienced. Deception is not common in recruitment, most sex workers live and work in the same city and have done so since they started the work, and most enter the work voluntarily. This has led us to question whether, if we are concerned about labor exploitation in the sex work industry, trafficking is a useful concept to use at all. We concluded rather that regulation of the sex work industry would provide a legal mechanism for sex workers to act against exploitative employers.”*

The authors then state: *“Our recommendation to decriminalise the sex work industry may not be popular in some quarters”* (Gould and Fick, 2008, p. 6). Contestations regarding TIP evidence and its intersections with research and advocacy around the issue of decriminalization fits into a global minefield that has been well documented. At the heart of this problem are the differing agendas regarding the sex trade, and the contentious policy debate about its decriminalization (see Feifer et al. 2019; Hughes, 2019; Lachapelle et al. 2019; Raphael, 2018; Shannon et al,

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<sup>17</sup> The case of adult persons in prostitution who were usurped into the sex trade as trafficked or sexually exploited children, and child victims who frequently present themselves to sex buyers as older, yet young women (see Mehta, 2013), remains a research gap in the area of TIP prevalence insights in South Africa.

<sup>18</sup> Open Society Foundations (2015, p.1) defines decriminalization as “the removal of all criminal and administrative prohibitions and penalties on sex work, including laws targeting clients and brothel owners.”

2015). Raphael (2017, p. 4) accentuates the importance of understanding these agendas and the implications for TIP prevalence data that are constrained by positions that “*rest on a benign view of the sex-trade*”. To sustain this position, Raphael argues, researchers “*must minimize the amount of abuse and coercion in the industry*” (Raphael, 2017, p. 4). The implications of contesting ideas (Walker & Oliveira, 2015), incongruent definitions (Dempsey, 2017; Gallagher, 2015; Van der Watt, 2020b), and conflicting evidence related to TIP in South Africa have had far reaching consequences. From concerns around the strict 2015 visa regulations imposed by the Department of Home Affairs to curb child trafficking (Wolfson-Vorster, 2015), to ongoing policy debates regarding prostitution law reform in South Africa (South African Law Reform Commission, 2017), unanimity about what the ‘problem’ is and how it should be addressed will likely remain elusive for the foreseeable future. However, the assemblage of evidence in this study and, in particular, the lived experiences of trafficking victims and the certitude with which South African courts deal with the crime of TIP, will provide much clarity for researchers, policy makers, and practitioners alike.

## SECTION 4: FINDINGS, ANALYSIS AND DISCUSSION

Available quantitative and qualitative evidence and insights related to the nature and prevalence of TIP in South Africa are presented and discussed in this section. The different data points that previously resembled an archipelago of disconnected knowledge wells are used to connect evidence-based interpretation of the data, and a tentative answer to the ‘How big is the problem?’ question. Albeit still existing in isolation and without an effective interface in counter-TIP practice, these data points should, as a matter of urgency, be operationalized as overlapping ‘systems’ of knowledge that reconfigure South Africa’s counter-TIP operations, policy, practice, and discourse. The reference to a ‘mosaic of evidence’ and ‘constellation of circumstances’ will be repeated throughout this section.

### THE MEDIA

Media sources are by no means the gold standard for evidential rigor, and, when taken as the sole source of information, the consumer is at risk of garnering a pixelated view and interpretation of a specific set of facts and/or circumstances. However, the media plays a significant role in *“shaping perceptions and guiding the public conversation about human trafficking...Human trafficking schemes are constantly evolving, and the media’s vigilance helps keep the public informed and engaged.”* (Office to Monitor and Combat Trafficking in Persons, 2017). The prowess of South African media in both nuanced storytelling and the visceral depiction<sup>19</sup> of life and lived experiences involving human rights abuses, exploitation, and criminality, frequently ignored by the South African government, is unmissable. It forms an important part of South Africa’s mosaic of TIP evidence. The wide-ranging manifestations of TIP have been comprehensively covered by South African media for at least three decades<sup>20</sup>. From sex trafficking and the exploitation of children in brothels, to forced labor, the sale of babies, and adoption scams, a substantial gamut of TIP forms and evidence have been documented. Notwithstanding its *“simplistic, messy and, at times, sensationalist”* (Van der Watt, 2020b, p. 68) disposition, the extent of reporting and its clear overlap and congruence with the evidence in this study cannot be ignored.

In response to the scarcity of reliable data on the nature and prevalence of TIP in South Africa, the LexisNexis Human Trafficking Awareness Index (LexisNexis, 2015, p. 4) was created and served as an approximation using the Nexis database service to track and analyze the volume of news articles related to human trafficking in South Africa. The report provided value insights and visual mapping of TIP cases reported in the media and provided the first promising example of a knowledge management model for TIP prevalence data stemming from South Africa and the African region. It included a global analysis of TIP trends and developments relating to the modus operandi of perpetrators, victimology, and prosecutions. Notable trends reported in the LexisNexis Human Trafficking Awareness Index were trafficking for the sexual exploitation of a child or children, forced marriage, ukuthwala and the question of harmful traditional and cultural practices, and the still largely undocumented migration-trafficking nexus. With regards to the migration-trafficking nexus, the index refers to *“increasingly blurred lines between migrant*

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<sup>19</sup> Prominent investigative journalism productions include *‘Innocence for sale’* (2001), *‘Human Trafficking in South Africa’* (2003), and *‘Operation Priscilla’* (2005) by Journeyman Pictures that covered the commercial sexual exploitation of children and sex trafficking; *‘Human Trafficking in South Africa’* (2019) by Special Assignment that documented transnational drug trafficking and its links with TIP; and *‘Human trafficking and illegal border crossings between South Africa and Malawi’* (2019) by Carte Blanche.

<sup>20</sup> See concise exposition in Van der Watt (2020b, pp. 68-69).

*smuggling and human trafficking, as conflict, insurgency, political instability, discrimination and poverty force hundreds of thousands to flee their home countries every year*" (LexisNexis, 2015, p. 11). Many migrants and refugees take significant risks to reach South Africa during which their active complicity in their illicit transit (migrant smuggling) sometimes morph into a situation of debt bondage and trafficking. For the period January to December 2014, the LexisNexis Human Trafficking Awareness Index identified 432 unique articles published by the South African media. Some of the key approximations included:

- 93 potential victims were trafficked into and within South Africa during the reported period, based on the 432 South African media reports; 76 of these potential victims were adults, while 17 were children.
- 54 potential victims of migrant smuggling with the end purpose of exploitation. This represents more than half (58%) of all potential victims identified.
- 24 potential victims of sexual exploitation; 16 were women, and 8 were girls.
- 6 potential victims of forced labor. All were females (5 adults and 1 minor).
- 2 potential victims of forced marriage; and
- 2 potential victims of body part trafficking (ritual killing or muti<sup>21</sup> purposes).

The LexisNexis Human Trafficking Awareness Index has shown not only how sociotechnical vulnerabilities, hotspots, and TIP threats can be illuminated, but also how tangible trends and both actual and potential TIP cases can be identified. This becomes invaluable when considering the multilayered shortfalls in frontline response strategies to TIP incidents in South Africa.

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<sup>21</sup> The word 'muti' is a Zulu word which means medicine. The use of muti is usually linked to the belief that it will improve an individual's or community's circumstances (Labuschagne, 2004, pp. 192-193).



Figure 2. Examples of media coverage and representations of TIP and missing children in South Africa



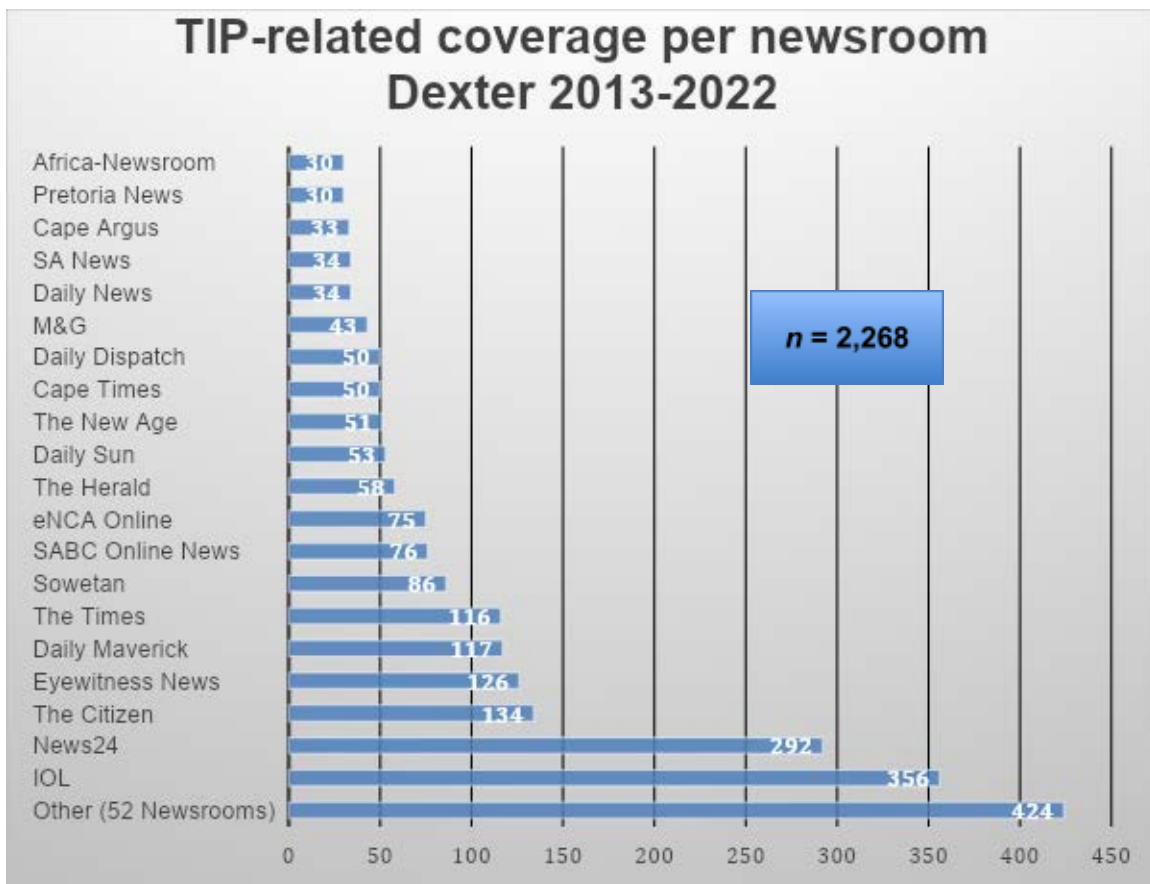
Frontline response deficiencies to TIP incidents in South Africa have been extensively documented by the NFN. These include instances where a TIP matter reported in the media was either not yet receiving attention from relevant counter-TIP practitioners and task teams, or where phenomena that bear the hallmarks of TIP have not been framed as such. In these cases, the NFN and its partners have assisted in bringing these cases to the attention of relevant authorities. The NFN has documented a non-exhaustive list of at least 3,500+ TIP-related media reports between January 2015 and November 2021 using conventional keyword Google alerts for South Africa (Reyneke, 2021).

For this study, Media Monitoring Africa (MMA) and Open Cities Lab (OCL) made available their Dexter System for quantitative insights into TIP-related media reporting in South Africa. MMA is a media watchdog, taking on a role to promote ethical and fair journalism which supports human rights, and Open Cities Lab is a non-profit, open and non-partisan organization that combines the use of action research, co-design, data science, and technology with civic engagement, to enable the development of inclusive cities and urban spaces. The Dexter system, developed by MMA in partnership with Open Cities Lab and Open Up, is a machine learning software tool designed to aggregate digital content published by online media publications. It is a specialized platform that allows for the analysis of media, with a particular focus on African news sources, with the objective of strengthening a free and fair press by holding journalists and media houses accountable for the content that is published. Dexter was specifically developed to focus on: content analysis, reporting on representation and diversity, identification of fake news, monitoring children's issues, and evaluating the credibility and quality of journalists and media houses.

A selection of words and phrases for several TIP-related categories were used to make an initial selection from South African based newsrooms. Filtering was then done only to include those

articles that included South African place names (i.e., StatsSA's denominations of country, province, district, municipality, mainplace or subplace). Dexter's database predominantly has data from 2013<sup>22</sup> onwards, as this was when the system went live. The results below indicate at least 2,268 TIP-related media coverages and the 20 South African based newsrooms mostly responsible for covering the issue:

Figure 3 TIP media coverage by relevant newsrooms



On being asked why media coverage, as an important source of information and evidence related to the nature and prevalence of TIP, cannot be ignored, Dr. Adendorff, Data Lead for Open Cities Lab, responded:

*“Media acts as a representation of national interest and the relative voice of different groups within a society. The prevalence of, or the specific casting of this voice, in the media for a group influences the degree of concern the society has for them and their context. As such, the absence of coverage is effectively the muting of this voice and the manner of coverage dictates how we as information consumers frame or interpret their specific challenges. Consequently, ignoring this coverage for already marginalized groups compounds their sidelining by society even further as in many instances this is the only voice they have. Further, not concerning ourselves with the manner of the*

<sup>22</sup> The possibility of an article predating 2013 appearing in the tally cannot be excluded, however, the number of these will be negligible.

*portrayal of these groups may lead to a societal-level misrepresentation of their struggles."*

In the continued absence of an official TIP information database and case repository as required by the PACOTIP Act, available media and data technologies (i.e., Dexter by MMA and Open Cities Lab and the LexisNexis Human Trafficking Awareness Index) present a significant opportunity to add to available baseline data. These technologies should be invigorated, funded, and mobilized to coax TIP prevalence insights from the plethora of historical and ongoing TIP media reporting. Comparing the Dexter data with that of the LexisNexis Human Trafficking Awareness Index, and using the same set of TIP indicators to identify actual and potential TIP cases in media reports, will in all likelihood reveal valuable prevalence insights.

## TIP AND THE NUMBERS

The sources of TIP data that are discussed here have a direct 'footprint' in South Africa's Criminal Justice System. For the sake of brevity, the TIP responses by these systems and the data that they contribute to this study are presented on a continuum. On the one end, this includes actual cases or sufficient information to infer that a TIP crime or threat exists, reported by civil society organizations to either SAPS or formalized TIP Task Teams (Provincial or National) for further investigations. On the other end, the data includes cases successfully investigated and prosecuted as TIP crimes in South African courts. The data collected was considered relevant and essential as it underwent several review iterations by criminal justice actors and originated from sources that are operationally involved in counter-TIP activities, frontline responses, and victim-centric interventions. Importantly, reasonable grounds to believe that a case of TIP was perpetrated or that a TIP threat existed, had to be present for these numbers to be reported, and the established TIP definition (the PACOTIP Act) were used to reach these conclusions.

## CIVIL SOCIETY

The three organizations discussed here have a national footprint in South Africa's counter-TIP landscape and actively participate in official frontline responses and data capturing. They form part of the National and/or Provincial TIP Task Teams.

## NATIONAL HUMAN TRAFFICKING HOTLINE (NHTH)

The NHTH was launched in August 2016 and receives reports of suspected cases of human trafficking, and in turn, report it to local authorities. Screening of suspected victims of trafficking is also conducted by the NHTH, and recommendations are then made to local authorities based on the information obtained. According to the South Africa Country Manager for the A21 Campaign, the global non-profit organization that operates the NHTH, a key service provided by the NHTH is the guiding of frontline professionals on how to manage suspected cases of TIP based on legislation (Modrau, 2022). As an initiative of the A21 Campaign, the NHTH works to free victims of trafficking and disrupt the demand for commercial sex and forced labor. Modrau not only considers TIP, including child trafficking, as a problem in South Africa but also believes that *"the rates are far higher than is currently reported"* for a number of reasons. These include a host of vulnerability indicators, as per the Global Slavery Index, that is embedded in the livelihoods of people in the South African context. South Africa's escalated rates of sexual abuse and rape are well documented, and the high rates of adult cases of trafficking that the NHTH have worked on involve recruitment and perpetration that took place in victims' childhood. Overlooking clear indicators of trafficking, and the incorrect classification of crimes by frontline professionals such as social workers, often cause child trafficking cases to be categorized as kidnapping, sexual abuse and assault. The lack of training, resources, and

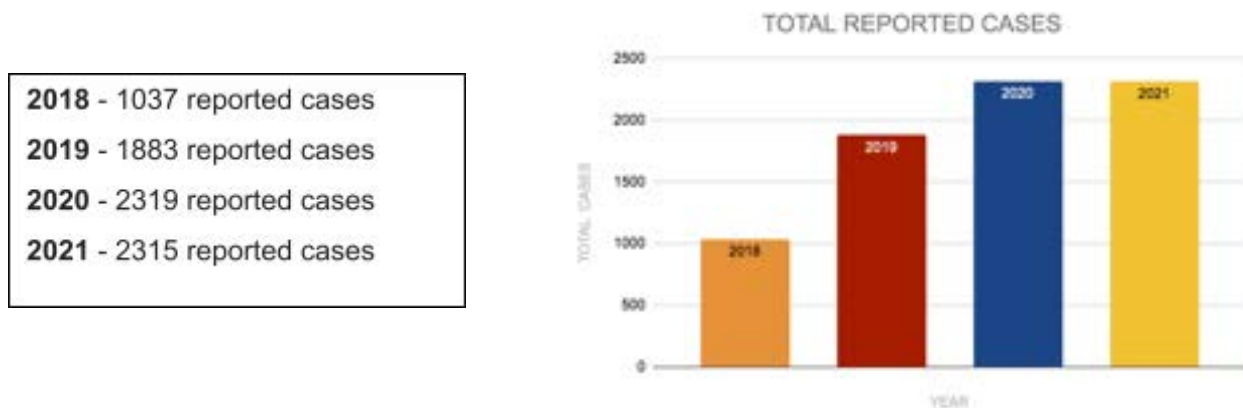
capacity are issues that adversely affect the proper documentation of cases. Statistical inaccuracies also come into play when social workers capture cases as children in need of care and protection, and not specifically as cases of child trafficking. Activating social workers after hours is also a significant challenge, according to Modrau (2022):

*“... we often get feedback that a social worker can only be sent out during working hours and often these cases present themselves after hours. We are then told that the children need to remain where they are, be it a police station or a clinic, and often the response from the police stations is that they cannot keep the children overnight.”*

A significant challenge experienced by the NHTH during the period of its existence in South Africa is that of non-responses or delayed responses to TIP-related information reported to authorities. Data provided by the NHTH for inclusion in a 2020 presentation by the author (Van der Watt, 2020c), indicated that the NHTH had 784 open queries where relevant responses and/or actions were outstanding. For 2019 this included 103 cases that were reported to authorities with feedback outstanding in 82 of those cases, and in 2020 (up until August), 68 cases that were reported to authorities with feedback outstanding in 63 of those cases. For the period January 2021 to December 2022, the NHTH has received no feedback on approximately 55+ cases that have been reported to authorities. When responses to TIP-related cases do occur, the response rate varies between different authorities but usually ranges between response times of one week to about two months.

Data made available by the NHTH for the period January 2018 to December 2021 shows that the hotline received 7,554 trafficking-related ‘cases’<sup>23</sup> reported through its online webforms, emails and calls. A breakdown of these cases includes:

Figure 4 NHTH reported numbers (2018-2021)



The NHTH refers to a ‘trafficking-related signal’ as all forms of incoming enquiries made via various channels, such as telephone, email or other online means relating to a potential human trafficking situation. This excludes reports on high risk crimes, job scams, non-TIP related reports, hang-ups, missed calls, wrong numbers and instances where the caller’s reason for calling is unknown. Collectively, Red (Crisis Calls) and Green (Tip Off’s) cases for 2020 were 687

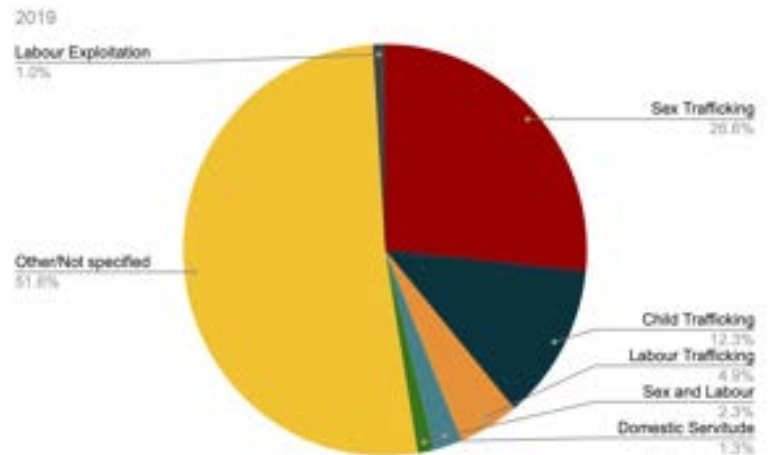
<sup>23</sup> Trafficking related cases are classified into 5 color coded categories, Red (Crisis Calls), Green (Tip Off’s), Blue (Training and Technical assistance), Purple (referrals), and Yellow (general information). Typically, the Red and Green categories pertain to victims or cases reported to authorities.



reported cases, and 513 reported cases for 2021. The number of TIP-related cases are then filtered and tip-off's (or green cases) without substantial data pertaining to human trafficking are filtered out<sup>24</sup>. The remaining cases are then aggregated into the different types of trafficking where the actual or intended purpose of exploitation was concluded and then labeled with a trafficking-related signal. Those cases in which the actual or intended purpose of exploitation remains unknown are allocated an 'Other/Not Specified' label. For the period January 2018 to December 2021, the breakdown into the TIP forms included the following:

Figure 5 NHTH Types of trafficking

2019	
<b>308 Trafficking related signals:</b>	
Sex Trafficking:	26,62%
Child Trafficking:	12,34%
Labor Trafficking:	4,87%
Sex and Labor Trafficking:	2,27%
Domestic Servitude:	1,30%
Organ Trafficking:	0%
Other/Not Specified:	51,62%
Labor Exploitation:	0,97%



<sup>24</sup> These cases are still classified as TIP-related cases as there are some indicators or elements of TIP, however not enough of the categories are populated and therefore not included in the breakdown of statistics as seen above. These cases remain open as further tip-off's regarding the same location/scenario or piece of information is invariably reported.

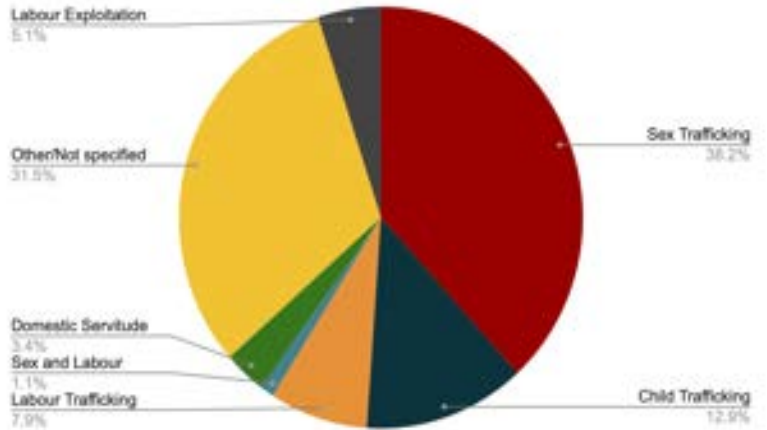


**2020**

**178 Trafficking related signals Total:**

Sex Trafficking: 38,20%  
 Child Trafficking: 12,92%  
 Labor Trafficking: 7,87%  
 Sex and Labor Trafficking: 1,12%  
 Domestic Servitude: 3,37%  
 Organ Trafficking: 0%  
 Other/Not Specified: 31,46%  
 Labor Exploitation: 5,06%

2020

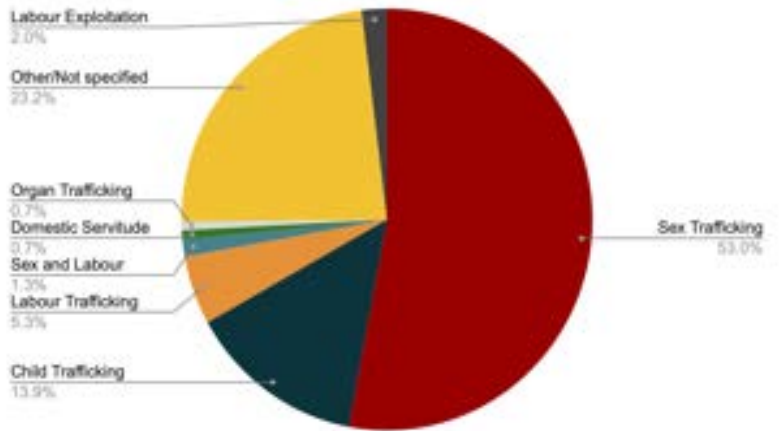


**2021**

**152 Trafficking related signals Total:**

Sex Trafficking: 52,63%  
 Child Trafficking: 13,82%  
 Labor Trafficking: 5,26%  
 Sex and Labor Trafficking: 1,32%  
 Domestic Servitude: 0,66%  
 Organ Trafficking: 0,66%  
 Other/Not Specified: 23,03%  
 Labor Exploitation: 1,97%

2021



For the period January 2018 to December 2021, NHTH-facilitated interventions resulted in the identification of 754 adult TIP victims from the following countries:

*Table 2 NHTH adult victims' country of origin*

South Africa (445)	Zimbabwe (43)	Malawi (10)	Nigeria (17)
Thailand (7)	Congo (6)	India (4)	Tanzania (3)
China (3)	Namibia (2)	Ghana (1)	Somalia (1)
Ethiopia (3)	Uganda (4)	America (2)	Pakistan (2)
Botswana (1)	Bulgaria (1)	Bangladesh (1)	Gambia (2)
Taiwan (1)	Lesotho (1)	Senegal (1)	Columbia (1)
Basotho (1)	Russia (1)	Philippine (1)	Mozambique (1)
Unknown (164)	Other (24)		

For the period January 2018 to December 2021, NHTH-facilitated interventions resulted in the identification of 98 child TIP victims from the following countries:

*Table 3 NHTH child victims' country of origin*

South Africa (59)	Zimbabwe (4)	Malawi (1)
Unknown (32)	Congo (1)	Burundi (1)

Between January 2018 and December 2021, 83 alleged perpetrators were identified in 63 reported TIP cases where victims were rescued. The nationalities of these alleged perpetrators are included in Table 4.

Table 4 NHTH case identification of perpetrator country of origin

<b>Nationality</b>	<b>Number</b>
South African	24
Nigerian	22
Mozambican	4
Pakistani	2
Madagascan	1
Malawian	1
Thai	1
Congolese	1
Cameroonian	1
Filipino	1
Basotho	1
Unknown	24
<b>Total</b>	<b>83</b>

The NHTH considers TIP to be “*rife and largely unmonitored in South Africa*”, and “*the reports made to the hotline are believed to merely scratch the surface of the scope of the crime.*” The overwhelming majority of cases reported to the NHTH indicate that South Africa is a source and destination country. However, there are sufficient cases showing victims transiting through the

country before their final place of exploitation. Modrau (2022) points out that “*limited or no feedback to a large majority of reports made to the various law enforcement agencies by the NHTH is the norm.*” Even though some reports may not have sufficient evidence to necessitate extractions or immediate arrests, multiple investigative leads are present and “*could result in multiple rescues*” (Modrau, 2022) as well as a more accurate understanding of TIP prevalence in South Africa. A significant problem highlighted by the NHTH is the lack of specialization from the outset when a TIP report is made to the SAPS. In most instances, all initial TIP reports are made to local police stations and are then supposed to be allocated to a designated investigating officer at the station for further investigation. When there is an indication of syndicated TIP activity, the designated investigator is responsible for collaborating with the DPCI. According to the NHTH, this approach makes theoretical sense. However, in practice, local SAPS stations are missing the initial indicators of TIP or lack the specialization needed to appropriately respond to the organized crime dimension of a TIP case. Vital intelligence is therefore either lost or ‘trapped’ at station level and contributes to significant undercounting of TIP in South Africa.

### LOVE JUSTICE SOUTH AFRICA

Love Justice South Africa (LJSA), as a chapter of Love Justice International (LJI) uses a model called Transit Monitoring (see Hudlow, 2015). Monitors work at borders/transit points to identify potential victims at the most strategic point in the trafficking process - whilst they are in the process of being trafficked, but *before* they are exploited. LJI first established transit monitoring in Nepal in 2006. They are now established in 23 different countries, and in 2016 began operations at international airports in South Africa. Since then, LJSA monitors have intercepted 629 potential victims in a three-year period, of which 14 were minors aged between three and 17 years. Additional intercepts were made during LJI’s mobile monitoring project that started in 2020. The organization uses both visual indicators and a question protocol to identify red flags. The definition of a ‘potential victim’ is similar to the NPF (2019: 17) definition of a ‘potential trafficked person’ or ‘person at risk of trafficking’ in that the potential victim will exhibit multiple red flags, “*given her/his profile or the appearance of certain indicators*”, that are weighted and summed to determine the overall likelihood of risk of being trafficked. The highest visual cue is people looking disorientated and impoverished. Once approached, the majority of people intercepted revealed problems such as lacking a planned itinerary, having inconsistent versions (and lies) between the potential victim and their handler, lacking an accompanying direct relative (in the case of children), and lacking any means to support themselves financially upon their arrival at their destination. Four of the 14 minors that were intercepted were found not to have the required birth certificates and affidavits from parents, and three possessed fake passports. According to the Africa Director of Investigations for Love Justice (Sobey, 2022), child trafficking cases go unreported or wrongly categorized when a misunderstanding of the types of trafficking exists or when human trafficking is prevented, and in those cases the exploitation has not yet occurred. LJSA believes that the additional checks and balances required for the travel of children are beneficial and should be considered part of a toolbox of preventative measures to reduce child trafficking. However, it is acknowledged that these measures present obstacles for officials in terms of the time required to do checks and the complexity and collaboration required to deal with cases involving children.

Data made available by LJI for the period January 2018 to October 2020 shows that the organization identified 490 potential victims in this period. Since potential victims are identified pre-exploitation, the nature of the risks and intended forms of exploitation are unknown.

Table 5 below shows a breakdown of the potential victims identified by LJSA:

Table 5 LJSA potential victim profile

Age	Gender	Number
Adult	Female	135
Adult	Male	58
Child	Female	0
Child	Male	4
Unknown <sup>25</sup>	Female	213
Unknown	Male	80
<b>Total</b>		490

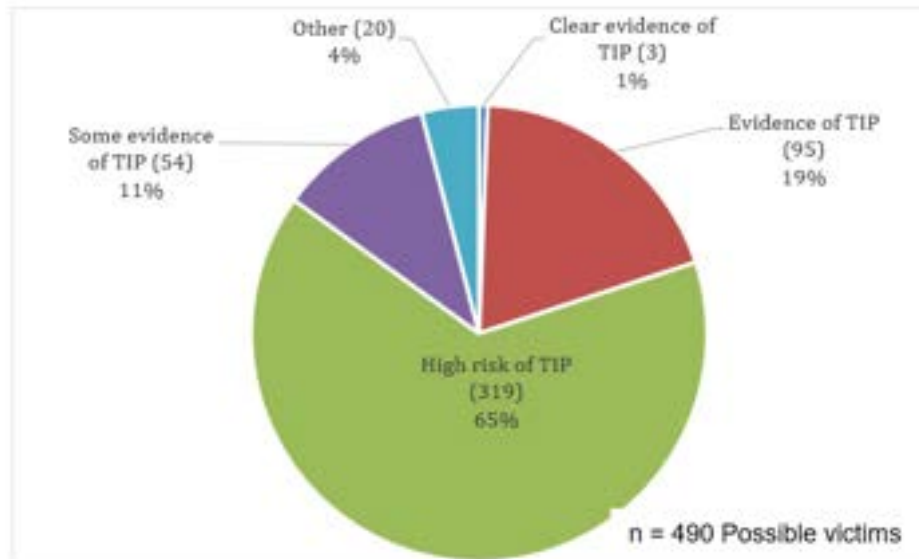
The potential victims are assessed according to four risk categories (Some evidence of TIP, High Risk of TIP, Evidence of TIP, and Clear evidence of TIP).

Figure 6 shows the breakdown of the 490 identified potential TIP victims according to these categories:

<sup>25</sup> 'Unknown' denotes that it was not categorically known whether the potential victim was a minor or adult, or that the data was not captured.



Figure 6 LJI TIP victims by evidence



In terms of prevalence insights, the High-risk vs Evidence categories are of particular interest. High risk cases show that the profile is someone generally targeted by traffickers. Such a person is moving into a place or industry known for TIP, is without the resources to remain safe and/or independent, and/or shows signs of attempts to evade or deceive authorities. A high-risk case shows a high risk that the person traveling is likely to be moved into a situation of exploitation and servitude. Evidence cases have met a threshold of additional evidence that there are illegitimate means of control already evident and indicate a very high probability of trafficking based on the definition of control and/or TIP.

Table 6 below shows a breakdown of the possible victim nationalities:

Table 6 LJI possible victims' nationalities

Ghanaian (188)	South African (87)	Thai (51)	Nigerian (25)
Bangladeshi (18)	Indian (16)	Zimbabwean (16)	Ethiopian (15)
Basotho (11)	Congolese (10)	Pakistani (9)	Cameroonian (6)
None (5)	Gabonese (4)	Malawian (4)	Angolan (3)

Ugandan (3)	Beninese (2)	Chinese (2)	Mozambican (2)
Russian (2)	Senegalese (2)	Gambian (1)	Ivoirian (1)
Jordanian (1)	Liberian (1)	Namibian (1)	Saudi-Arabian (1)
Swazi (1)	Tanzanian (1)	Ukrainian (1)	

Table 7 below shows a breakdown of the suspect nationalities:

*Table 7 Suspected perpetrator nationalities*

South African (63)	Zimbabwean (2)	Ghanaian/South African (16)	Nigeria (9)
Thai (9)	Congolese (1)	Indian (5)	Saudi-Arabian (1)
Chinese (2)	Namibian (1)	Ghanaian (47)	Swazi (2)
Ethiopian (1)	British (1)	Angolan (1)	Pakistani (6)
Egyptian (1)	Mosotho <sup>26</sup> (1)	Bangladesh (4)	Mozambican (1)
Dutch (1)	Italian (1)	None/Unknown (227)	

Responses by various government departments to the possible TIP victim identifications and the cases reported by the LJI investigations team have been extremely low. In most cases reported by the LJI investigations team, no responses were forthcoming except in the case where a raid or arrest was made. The "effective cases", where some success or follow-up occurred, was less about the evidence generated by LJI team members but rather as a result of the right person with the right capacity at the right time that was approached with the information. LJSAs have not been able to secure an agreement with the government to resume operating in airports; however, the Gauteng Department of Social Development (DSD) has supported their mobile monitoring project in Johannesburg. LJI continues to invest in and grow the impact and reach of the project in South Africa while working on government agreements to amplify counter-TIP efforts in South African airports.

<sup>26</sup> A person from Lesotho (singular)

## NATIONAL FREEDOM NETWORK (NFN)

The NFN is the collective of those working against TIP across South Africa. The NFN has been operational since May 2011, and aims to effectively combat TIP through strategic networking, partnership and collaboration. The author of this report initiated the NFN's Case Management component in October 2011, which dealt with more than 850 calls for response service before its discontinuation in November 2021. The overwhelming majority of calls for response service related directly to TIP cases, while others included a spectrum of incidents ranging from missing persons, labor disputes, and public nuisances stemming from brothel keeping, drug dealing, and contact crimes. With an active seat on both the Gauteng Provincial TIP Task Team and the Gauteng Rapid Response Task Team, as well as the National Intersectoral and the National Rapid Response Task Team, the NFN's response to calls for service included multidisciplinary response coordination between role-players, TIP case consultancy (i.e., investigative assistance, statement taking, expert court testimony), and survivor-centric advocacy. In 2013, the NFN engaged in collaborative efforts with the University of South Africa on a data collection and case response community engagement initiative called 'Project Tshireletso'. Project Tshireletso, which remained active until December 2015, was motivated by, amongst others, the lack of statistical and thematic data pertaining to human trafficking incidents, and significant shortfalls in official responses to the crime. It aimed to record any crime or incident information that relates to or suggest the occurrence or possible occurrence of human trafficking in South Africa. By using a 93 variable Microsoft Excel data-capturing tool, combined with a networked response with NFN partners and government departments, the successes of this project in its first year of existence included:

- The identification, rescue and care of local and foreign trafficking victims (from Thailand, China, and Zimbabwe);
- The arrest of perpetrators;
- The identification and disruption of brothels and drug posts; and
- The identification and response to syndicate activity through the linkage of fragmented pieces of information received from the community.

(Van der Watt, 2013)

At the time, the data captured during the 3-year lifespan of Project Tshireletso contained themes, patterns, and perpetrator modus operandi that were remarkably similar to that which has been documented in the media and research studies (i.e., Bermudez, 2008; De Sas Kropiwnicki, 2010; HSRC, 2010; Martens et al, 2003; Molo Songololo, 2000a, 2000b; O'Connell Davidson & Sanchez Taylor, 1996). Numerous cases and reports of TIP and the transnational drug trafficking nexus (criminal exploitation), dealt with by the NFN and its partners, and that coincided with the release of Hazel Friedman's 2014 book entitled 'Dead Cows for Piranhas' on the same topic, was reported to relevant TIP Task Teams and coordinators. This includes credible information and available witnesses (and TIP victims) indicating that "*drug mules are leaving and entering SA on an almost daily basis*"<sup>27</sup>, and corruption by law enforcement officials

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<sup>27</sup> Verbatim statement by a 28-year old South African TIP victim who was picked up by the NFN from a brothel in Elardus Park, Pretoria, on 12 July 2012. She was trafficked into the sex trade as an 18-year old and was subsequently mobilized as a professional drug mule for a Nigerian syndicate who trafficked drugs to/from Afghanistan, Bangladesh, and Peru. Email to South African Government officials on file.

that render these operations<sup>28</sup> largely impervious to criminal justice interventions (see Global Initiative Against Transnational Organized Crime, 2020).

An ever-present challenge faced by the NFN Case Management component, until its discontinuation in November 2021, was the lack of response or indifference by authorities to numerous credible pieces of information, intelligence briefs, and affidavits deposed by survivors, witnesses and elements actively embedded in TIP networks. Non-response examples are plentiful and range from smuggling-cum-TIP networks with reported links to terrorism networks (Reference # MVDW\_01/03/2018 & MVDW\_02/03/2018) to a detailed information note explicating the alleged complicity of government departments with major corporations implicated in fraudulent documents and labor trafficking (Anonymous, 11 February 2012). There were also instances where informants introduced by the NFN to the Hawks were either dismissed or advised to 'let go' of sensitive TIP-related information, and instances where the author of this report were intimidated or threatened with arrest for efforts on behalf of the public that resulted in the NFN opening criminal cases due to the refusal by SAPS to do so (Pretoria West CAS 446/01/2020). In another example, complaints by the community and surveillance photographs (Figure 7) of activities at a residential brothel in Pretoria involving children who were monitored and controlled by traffickers, were not immediately responded to. After a delayed response by law enforcement agencies, it transpired that the house was vacated and the children (and potential adult victims) were moved elsewhere.

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<sup>28</sup> These operations have been comprehensively documented by Patricia Gerber, one of the founders of the organization 'Lockedup' (<https://lockedup.co.za/>). Patricia's global efforts and advocacy around the TIP and drug trafficking nexus have been prolific. She established 'Lockedup' after a personal encounter with human trafficking and its link to drug trafficking in order to support victims and their families.

Figure 7. A surveillance photo progression of a known Pretoria brothel where children were exploited (2014)



*Photo credit: M van der Watt*

Figure 8 below is a January 2016 screenshot depicting an email series of 34 cases reported by the NFN where responses were either outstanding or significantly delayed. In one example, credible TIP indicators implicating a brothel in Johannesburg and reported to SAPS in 2015 did not lead to any sanctions or closure of the premises ('Case follow up 11'), despite brothel keeping being a criminal offense in South Africa. In 2019, South African Springbok rugby star, James Small, "was found naked and unconscious in a strip club" (Hancke, 2019) and died under suspicious circumstances. This was the same brothel reported to SAPS, by the NFN, four years earlier.



Figure 8 Screenshot of emails sent to Gauteng Task Team and TIP Nodal Point

Case follow up 1 MVDW_01122015.msg	2016/01/26 05:47 ...	Outlook Item	296 KB
Case follow up 2 MVDW_02122015.msg	2016/01/26 05:47 ...	Outlook Item	1 367 KB
Case follow up 3 [REDACTED].msg	2016/01/26 05:47 ...	Outlook Item	3 145 KB
Case follow up 4 [REDACTED] incident JHB Central Enq # 01062015.msg	2016/01/26 05:48 ...	Outlook Item	812 KB
Case follow up 5 [REDACTED] incident JHB OC Enq # 04062015.msg	2016/01/26 05:48 ...	Outlook Item	2 071 KB
Case follow up 6 Cameron Court Arcadia Clydesdale.msg	2016/01/26 05:48 ...	Outlook Item	325 KB
Case follow up 7 Hermanstad_NFN # SAPS 201507_01.msg	2016/01/26 05:48 ...	Outlook Item	212 KB
Case follow up 8 [REDACTED] Ave Georginia Roederpoort.msg	2016/01/26 05:48 ...	Outlook Item	215 KB
Case follow up 9 Summit Club Enquiry number 12-10-2015.msg	2016/01/26 05:49 ...	Outlook Item	114 KB
Case follow up 10 Blue Sky (Johannesburg OC Enquiry 262015).msg	2016/01/26 05:49 ...	Outlook Item	3 082 KB
Case follow up 11 The Harem (Johannesburg OC Enquiry 362015).msg	2016/01/26 05:50 ...	Outlook Item	290 KB
Case follow up 12 Anonymous informant Corruption Labour and Sex Trafficking.msg	2016/01/26 05:50 ...	Outlook Item	943 KB
Case follow up 13 Northway News Fourways Trafficking Child trafficking.msg	2016/01/26 05:50 ...	Outlook Item	548 KB
Case follow up 21 Transnational TIP Thai ladies orgy and auction New Years Eve 2012 Kempton Park ...	2016/01/26 05:51 ...	Outlook Item	172 KB
Case follow up 22 11 Alpine Villas/Village Faerie Glen Pretoria (TraffickingKidnappingAbduction).msg	2016/01/26 05:51 ...	Outlook Item	773 KB
Case follow up 26 Possible Child Abduction Missing Children SA hotline information received.msg	2016/01/26 05:52 ...	Outlook Item	316 KB
Case(s) Discussion follow up 35 Drug trafficking and the TIP Nexus.msg	2016/01/26 05:53 ...	Outlook Item	2 322 KB
Case(s) follow up 14 15 16 17.msg	2016/01/26 05:51 ...	Outlook Item	602 KB
Case(s) follow up 18 19 20.msg	2016/01/26 05:51 ...	Outlook Item	602 KB
Case(s) follow up 23 24 25 Brothels Possible ChildHuman TraffickingSyndicated Recruitment activities...	2016/01/26 05:52 ...	Outlook Item	1 288 KB
Case(s) follow up 27 28 Social Media Recruitment Possible HT Threats.msg	2016/01/26 05:52 ...	Outlook Item	361 KB
Case(s) follow up 29 30 31 32 33 34 Possible BrothelsHuman Trafficking.msg	2016/01/26 05:52 ...	Outlook Item	684 KB

Discussions are ongoing with the NHTH for all NFN data analyzed up to December 2015 (269 incidents), and case information received by the NFN thereafter (approximately 581 incidents), to be captured and analyzed by the NHTH starting in 2022. The NFN considers TIP a systemic problem in South Africa that frequently goes unreported or subsumed under a variety of other crimes. *“In our experience many of the cases that were historically reported have been incorrectly dealt with and as such, have fallen through the cracks: police raiding the incorrect address; time delays between reporting and police action; suspicions of corruption and complicity of officials, and tangible fear to report such; role players not understanding their role or mandate, which can make following the national standard operating procedure difficult. It is the experience of the NFN that South Africa’s TIP problem is significant. It eclipses the ability of a poorly resourced and poorly coordinated system to deal with its complexities”* (Wilkinson, 2022).

According to the NFN, TIP is a harsh reality in South Africa: from the more well-known forms of sex trafficking and child marriage to the less considered labor trafficking and domestic servitude, to the often-unconsidered trafficking for organs and body parts and forced criminal activities such as forced begging and forced drug muling. A parallel reality that the organization points out is that South Africa is not nearly equipped or coordinated enough to deal with this crime as effectively as it should or could, and that enabling factors such as corruption, complicity and compromise of officials and other counter-TIP role players is a constant stark background to counter-TIP efforts. The prevalence of children being exploited in the sex trade; marriage, often under the guise of traditional cultural practice; labor and domestic servitude; and other forms of exploitation are not reflected in available numbers. Outreach teams have numerous stories and experiences of minors in the sex trade, and often the system to assist these children is almost as complex as the trafficking system in which they find themselves. Over the past decade, both the NFN Team and the Network members have experienced cases that indicate South Africa is a source, transit and destination country for TIP. South Africa’s porous borders can be crossed

with relative ease, and this is done legally or illegally via land, sea and airports. Data remains fragmented between Civil Society and Government as well as between Government departments.

## THE SOUTH AFRICAN GOVERNMENT

The following section will delve into available quantitative and qualitative data from relevant South African Government departments and role-players.

### SAPS Crime Administration System (CAS) statistics

Numerous and persistent concerns (Masiloane, 2014; Gould, Burger & Newham, 2012; Altbeker, 2005) have been raised regarding the reliability of South Africa's crime statistics released annually. It remains unclear where (and if) TIP features in quarterly and annual crime statistics. The ambivalence related to TIP statistics, and the lack of clarity and urgency afforded to make actual numbers available to both the public and the counter-TIP community, were bemoaned by many practitioners during the course of this study. At the backdrop of official police statements "*without fear of contradiction*" that TIP is not a problem in the country and that there were no active investigations (Naidoo, 2020), it is important to reflect on documented prevalence insights - previously reported on platforms outside of this research project - that stem from two separate SAPS CAS datasets. In the first, documented data obtained from the SAPS as it pertains to TIP cases reported on the CAS between 1 January 2006 and 12 December 2017 (DPCI, 2017) were recorded by Van der Watt (2018) in Table 8.

Table 8 SAPS TIP cases on CAS (2006-2017)

Province	Children's Act 38 of 2005 <sup>29</sup>	Sexual Offences Act 32 of 2007 <sup>30</sup>	Prevention and Combating of Trafficking in Persons Act 7 of 2013 <sup>31</sup>
Eastern Cape	0	24	212
Free State	1	15	72
Gauteng	3	63	810
KZN	3	17	378
Limpopo	1	7	160
Mpumalanga	2	19	176
North West	2	13	101
Northern Cape	0	7	33
Western Cape	2	23	190
<b>TOTAL</b>	<b>14</b>	<b>188</b>	<b>2,132</b>

Source: DPCI, 2017 in Van der Watt, 2018

Aggregated data and distinctions between adult and child victims were not made available by SAPS. Cases registered under the Children's Act include only minor victims, and cases registered under Section 71 of the Sexual Offences Amendment Act include both adults and children for the period 16 December 2007 to 8 August 2015. The latter relates only to cases of sex trafficking. The 2,132 cases registered under the current PACOTIP Act were reported over a

<sup>29</sup> The Act has been operational since 1 January 2006. The cases reflected are those committed in terms of Sections 284 of the Children's Act 38 of 2005.

<sup>30</sup> The specific section in the Act was operational between 16 December 2007 and 8 August 2015. The cases reflected are those committed in terms of Section 71 of the Sexual Offences Act 32 of 2007.

<sup>31</sup> The Act has been operational since 9 August 2015. The cases reflected are those committed in terms of Sections 4, 5, 6, 7, 8, 9, 10 and 11 of the Prevention and Combating of Trafficking in Persons Act 7 of 2013.

28-month period between 9 August 2015 and 12 December 2017. The forms of trafficking, age and gender of the victims, and the specific sections (offenses) that were registered were also not made available.

The second dataset stems from a response by the Minister of Police, Bheki Cele, to a parliamentary question posed to him by Ms. L.L. Van der Merwe of the Inkatha Freedom Party. The first of a two-part question posed was (Question 2266 on 10 September 2021):

*“Whether, with reference to child trafficking being a major concern, due to the porous borders of the Republic, his department has statistics in the total number of South African children being trafficked inside and/or outside of our borders; if not, why not; if so, (a) how is the situation of porous borders contributing to children being trafficked in and out of the Republic and (b) what measures have been put in place to prevent children being trafficked”*

Augmenting his ‘Yes’ response to the first of the two-part question, the Minister of Police, Bheki Cele, submitted and referred to Table 9

*Table 9 SAPS response to Parliamentary child TIP question (10 September 2021)*

Province	Trafficking in Children			Grand Total
	2018/2019	2019/2020	2020/2021	
Eastern Cape	30	27	30	87
Free State	15	21	16	52
Gauteng	87	89	66	242
KwaZulu-Natal	33	63	48	144
Limpopo	22	26	21	69
Mpumalanga	19	36	14	69
North-West	17	14	14	45
Northern Cape	2	4	5	11

<b>Western Cape</b>	<b>19</b>	<b>24</b>	<b>19</b>	<b>62</b>
<b>Total</b>	<b>244</b>	<b>304</b>	<b>233</b>	<b>781</b>

For the purpose of this study, the same data parameters in Van der Watt (2018) related to the *Children's Act 38 of 2005*, the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*, and the *Prevention and Combating of Trafficking in Persons Act 7 of 2013*, were requested from SAPS. The specific request included:

- The number of cases (nationally) on the CAS under the interim Section 71 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 'Trafficking in Persons for the purpose of Sexual Exploitation' from December 2007 when the Act became operational, until the date this request is being processed. The request included a provincial breakdown of reported cases.
- The number of cases (nationally) on the CAS under the interim Sections 284, 285 and 287 of the 2005 Children's Act. These are the relevant sections for 'Trafficking in Children'. Statistics under these sections since the Act became operational (2006 or 2007) until the date the request was processed. The request included a provincial breakdown of reported cases.
- The number of cases (nationally) on the CAS under Chapter 2 (Sections 4, 5, 6, 7, 8, 9, 10 & 11) of the Prevention and Combating of Trafficking in Persons Act 7 of 2013, since August 2015 when the Act became operational until the date this request was processed. The request included a provincial breakdown of reported cases and, importantly, a differentiation between the number of adult cases, and the number of child cases.

The data, made available on March 5, 2022, are presented in Table 10 below:

*Table 10 SAPS TIP reported cases*

<b>PROVINCE</b>	<b>Children's Act 38 of 2005 (2006/01/01-2022/01/17)</b>	<b>Sexual Offences Act 32 of 2007 (2006/12/01 - 2022/01/17)</b>	<b>Prevention and Combating of Trafficking in Persons Act 7 of 2013 (2015/08/01 - 2022/01/17)</b>
<b>Gauteng</b>	12	72	3,997
<b>Western Cape</b>	2	23	729
<b>Eastern Cape</b>	2	29	1,228



<b>Northern Cape</b>	0	6	131
<b>KwaZulu-Natal</b>	8	18	1,917
<b>North West</b>	4	13	581
<b>Limpopo</b>	9	7	764
<b>Free State</b>	2	27	489
<b>Mpumalanga</b>	3	20	984
<b>TOTAL:</b>	<b>42</b>	<b>215</b>	<b>10,820</b>

Table 10 reflects all TIP cases reported on CAS according to the legislation requested. Figures were drawn from the date when the individual Acts came into operation (see table headings) until the date they were drawn from the SAPS Global Access Control System. Due to issues related to data integrity, SAPS explicitly stated that these cases are not an accurate reflection of TIP cases in South Africa. Reasons include that TIP is dependent on police action and “under-reported which makes it difficult to measure” (SAPS, 2022a), and due to “incorrect incident allocation and the lack of a specific TIP crime code” (SAPS, 2022b). A process of filtering information to avoid these inaccuracies is underway by SAPS.

Table 11 SAPS CAS reported cases per nodal point (province)

YEAR	GP	WC	EC	NC	NW	KZN	LP	MP	FS
<b>Children's Act 38 of 2005</b>									
<b>2015</b>	1								
<b>2016</b>									
<b>2017</b>									
<b>2018</b>									

YEAR	GP	WC	EC	NC	NW	KZN	LP	MP	FS
2019									
2020									
2021									
<b>Sexual Offences Act 32 of 2007</b>									
2015		4							
2016	2	1		2					
2017	2			1	2				1
2018		1							
2019								1	
2020									
2021	1								
<b>Prevention and Combating of Trafficking in Persons Act 7 of 2013</b>									
2015	1								
2016					4	1	1		2
2017	3	3	3		2	2	3	2	3
2018	5	5			2		1	3	4
2019	1	3				1			1

YEAR	GP	WC	EC	NC	NW	KZN	LP	MP	FS
2020	3	1	2		1		1		3
2021	2				1				2
<b>Totals:</b>	<b>21</b>	<b>18</b>	<b>5</b>	<b>3</b>	<b>12</b>	<b>4</b>	<b>6</b>	<b>6</b>	<b>16</b>
<b>NATIONAL TOTAL 2015-2021:</b>									<b>91</b>

Table 11 reflects TIP reports received by the National DPCI Nodal Point from 2015 to 2021 and reflects all cases investigated involving TIP from all organized crime units within the DPCI.

Table 12 Age-specific SAPS figures

	ADULT	CHILD	UNKNOWN	TOTAL
<b>Prevention and Combating of Trafficking in Persons Act 7 of 2013</b>	7,140	1,463	2,217	10,820
<b>Nodal Point Statistics</b>	522	102	6	630

Table 12 reflects how many victims of TIP reported on CAS (as registered under the *Prevention and Combating of Trafficking in Persons Act 7 of 2013*) were adults, children, or unknown; and how many victims in Nodal Point case records were adults, children, or unknown. The data in this table includes cases from 2015 to 2021.

In summary, for the period 1 January 2006 to 8 August 2015, at least 257 TIP cases were reported to SAPS under the interim pieces of TIP legislation, and for the period between 9 August 2015 and 17 January 2022, at least 10,820 TIP cases were reported to SAPS under the PACOTIP Act. Adult victims were documented in 7,140 of these cases, child victims were recorded in 1,463 cases, and the age of victims was ‘unknown’ in 2,217 cases. The actual aggregate number of victims in these cases was not available. For the period between 9 August 2015 to 17 January 2022, 91 TIP reports were received by the National DPCI Nodal Point involving TIP from all organized crime units within the DPCI. In these cases, 522 adult victims and 102 child victims were identified. The age of victims was unknown in six cases. Importantly, when considering the number of victims identified in the DPCI Nodal Point cases (630 victims in 91 cases), the likely number of victims in the 11,077 TIP cases dealt with by SAPS is substantial. For the period 2018 to 2021, 781 South African children were recorded by SAPS as victims of child trafficking. It could not be established how this number, presented by Minister Bheki Cele in Parliament, relates to the unknown aggregated victim data in the 11,077 TIP

cases. Prevalence insights must consider that *“each registered case or police enquiry may involve more than one victim of trafficking and can include multiple known victims of trafficking, multiple unknown victims of trafficking, or a combination of the two”* (Van der Watt, 2020b:7).

## Ongoing Court Prosecutions

A summary of all active TIP prosecutions in South African courts was compiled from open-source information, news reports<sup>32</sup>, and assistance by members of the TIP community, including the NPA National TIP Coordinator. These matters included all those cases stemming from police investigations where suspects were arrested and charged with TIP-related offenses and appeared in court during 2021. Importantly, the accused persons in these cases were not yet convicted of the crimes charged. Since no centralized repository for this dataset is in existence, the researcher and research assistants relied on a combination of open-source materials, media reports and analysis received from MMA and OCL, and emails with fellow TIP task team members and colleagues. Sections of the data reported below are incomplete for a variety of reasons, including fragmented or deficient details of cases published in the media, a lack of- or incomplete reporting by prosecutors of TIP cases they are responsible for, or detail simply being unknown. Available data were aggregated in terms of:

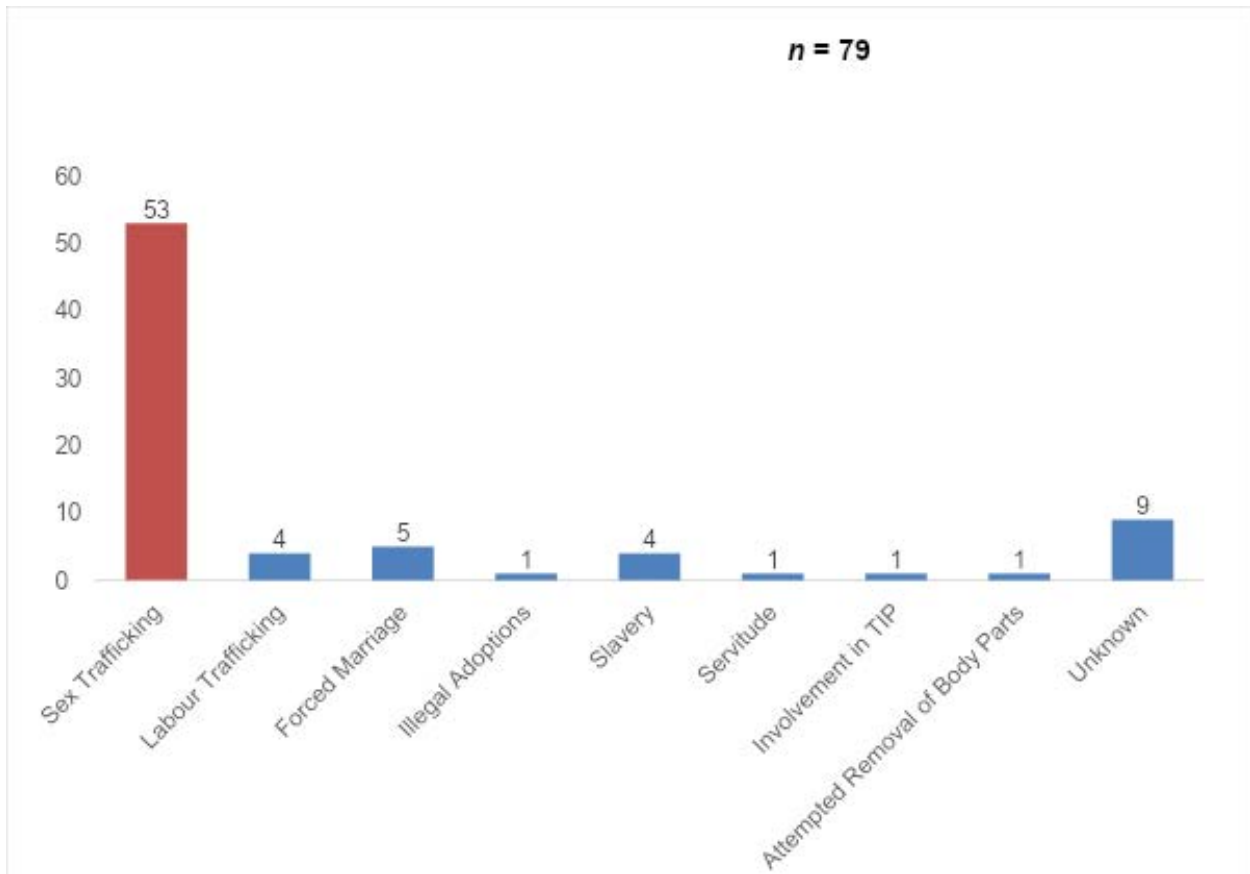
- Forms of TIP
- Victims of TIP (number, adults, children, gender, nationalities)
- Accused persons (number, gender, nationalities)
- Police CAS numbers

A total number of 79 TIP-related prosecutions were ongoing in South Africa’s Criminal Justice System during 2021. Figure 9 below shows the different forms of TIP that make up the 79 ongoing TIP prosecutions:

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<sup>32</sup> The lack of an integrated information system as detailed by Section 41(1)(b) of the PACOTIP Act, or a centralized repository of successful prosecutions data, in some cases necessitated the use of alternative sources of information (i.e., the media). This is considered as one of the limitations to this study.

Figure 9 Type of TIP ongoing prosecutions (2021)



A total number of 400 victims of trafficking were identified in the 79 TIP-related prosecutions that were ongoing in South Africa's Criminal Justice System during 2021.



Figure 10 below shows the gender breakdown of victims in these cases:

Figure 10 Victim gender from ongoing prosecution cases (2021)

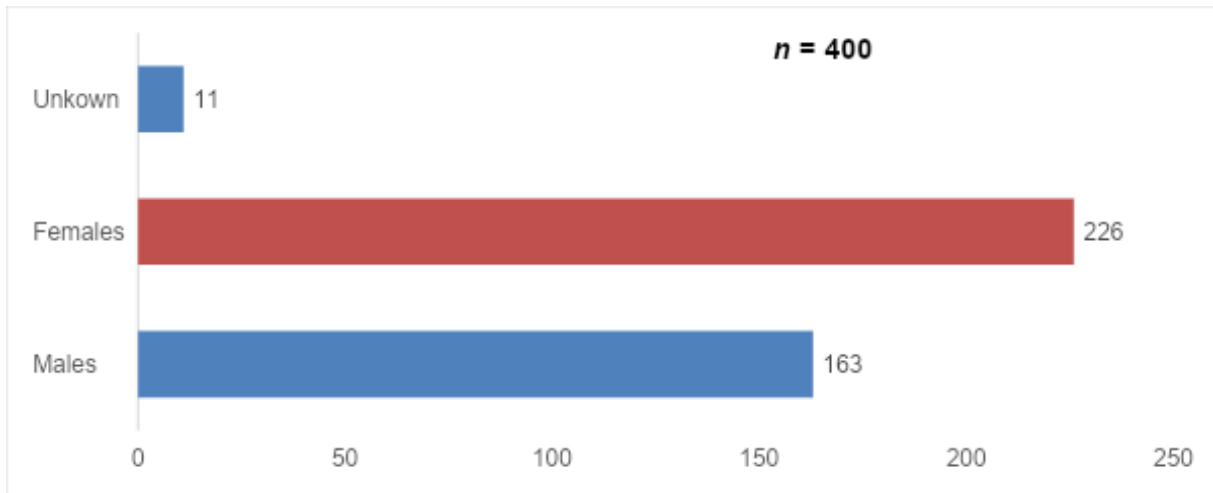


Figure 11 below shows the ages of the victims in ongoing TIP-related prosecutions:

Figure 11 Victim age from ongoing TIP prosecution cases (2021)

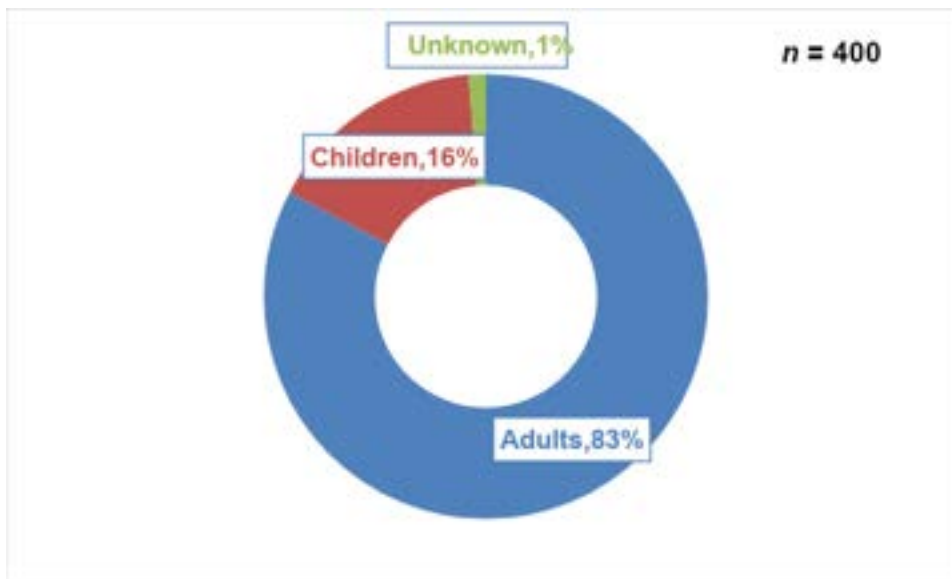
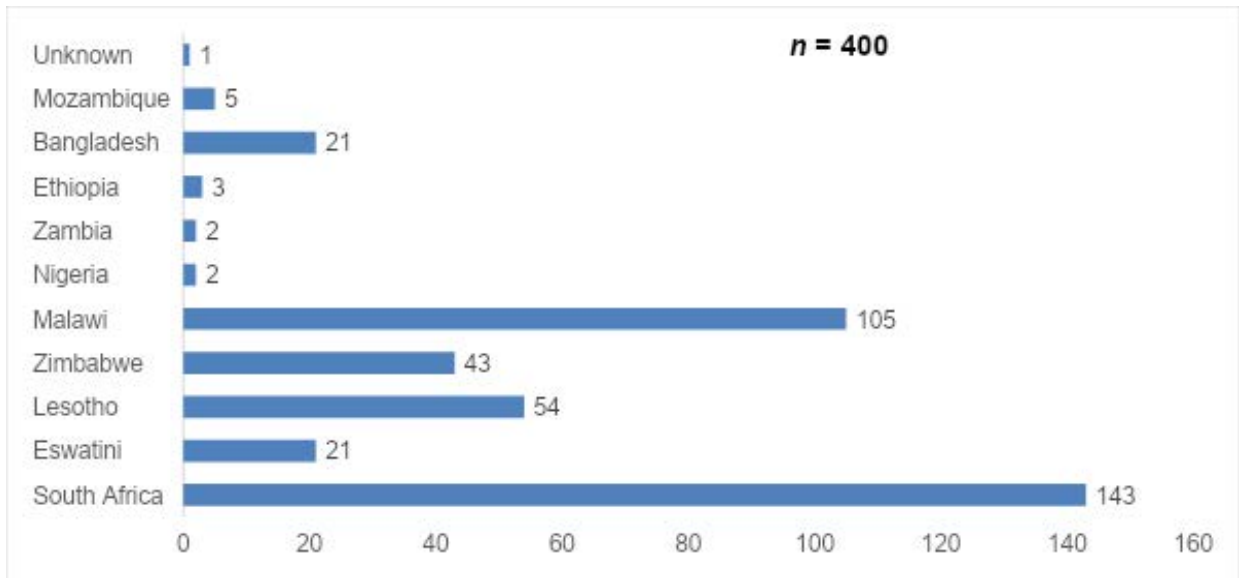


Figure 12 below shows the nationalities of the victims in ongoing TIP-related prosecutions:

*Figure 12 Nationalities of victims from ongoing prosecution cases (2021)*



A total number of 176 accused were identified in the 79 TIP-related prosecutions that were ongoing in South Africa’s Criminal Justice System during 2021.

Figure 13 below shows the gender breakdown of accused persons in ongoing TIP-related prosecutions:

*Figure 13 Gender of accused in ongoing TIP prosecutions (2021)*

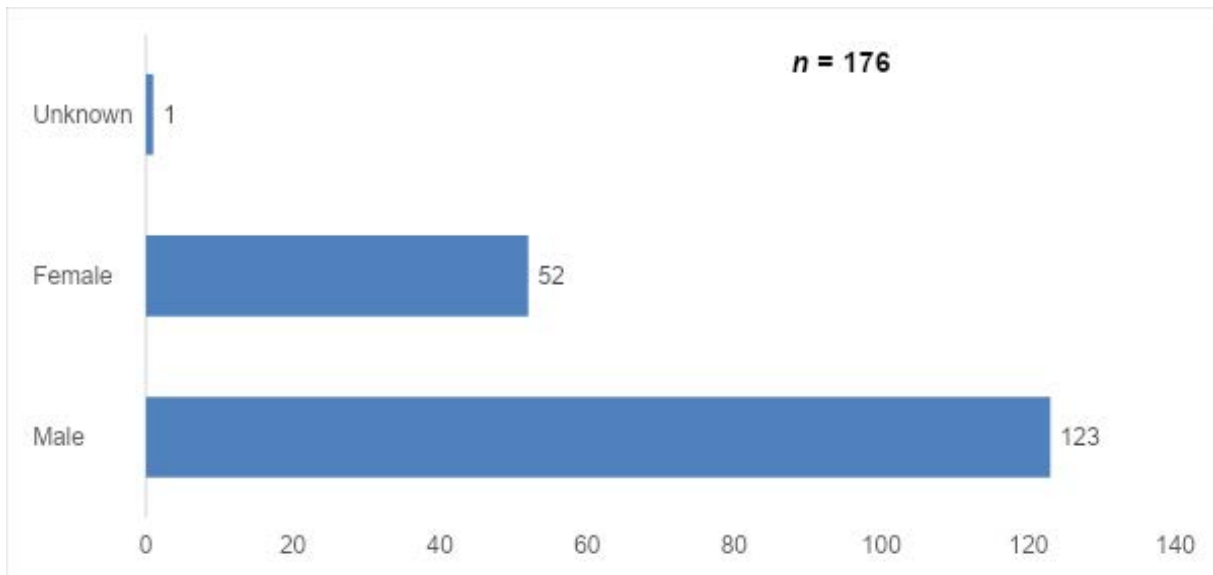
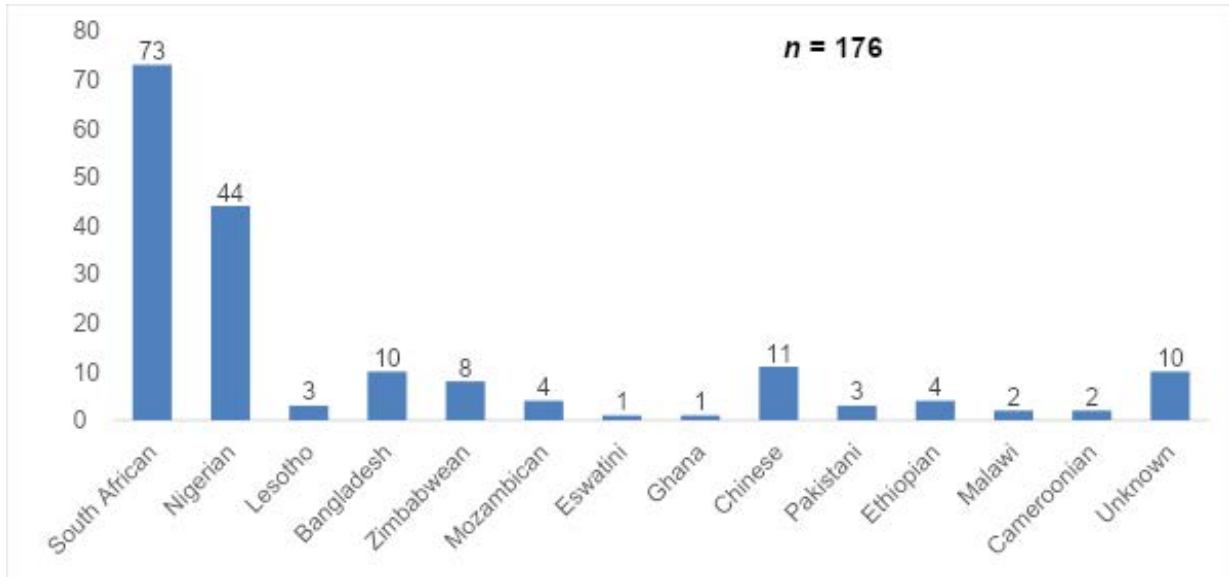


Figure 14 below shows the nationalities of the 176 accused identified in the 79 TIP-related prosecutions that were ongoing in South Africa’s Criminal Justice System during 2021:

Figure 14 Nationalities of accused in ongoing TIP prosecution cases (2021)



The volume and depth of information available in ongoing court prosecutions are significant and presents ample opportunity for both quantitative and qualitative mapping of TIP prevalence insights. What is evident in several cases are the number of possible victims that enter the relevant TIP criminal justice proceedings, and, conversely, the number of possible victims who eventually ‘fall out’ of this process. Some examples shared by prosecutors include the ‘Beautiful City’ labor trafficking case involving Chinese nationals. In this case, a total number of 92 TIP victims were rescued. At the time of the research in 2021, only 10 victims remained active and available as witnesses in the case as the rest either “disappeared or lost interest” (Prosecutor interview).

Similarly, in another ongoing matter (*S v Rakgwale*), about eight women were rescued from a residential brothel and five women submitted statements. Only three witnesses remain active in this case. The complex nature and challenges associated with TIP investigations are well documented and evident in several cases that remain active in courts. One set of challenges and circumstances, not dissimilar to those in active prosecutions documented in 2021, were described in Van der Watt (2018, p.15). These challenges are prominent factors that sometimes lead to cases being struck from the court roll. This was the outcome in *S v Ndukauba and 5 others* in which multiple victims and witnesses were prepared for criminal justice proceedings, however, all charges were withdrawn against the accused for reasons that include a victim disappearing and concerns that the remaining victims were single witnesses in several aspects of the case:

*“The case of S v Ndukauba and 5 others emerged from the lengthy investigation into the disappearance of 15-year-old Janice Kakora. This matter highlighted the multilayered complexities that are faced by investigators and stakeholders who are mandated to make a discipline-specific contribution to the investigation and prosecution of human*

*trafficking...Some of the investigative challenges included the large geographical area of investigation, intimidation of victims and witnesses, complex relationships between victims and perpetrators, drug dependency of victims and witnesses, corruption, judicial proceedings and institutional bureaucracies. The case of S v Ndukauba and 5 others was also characterized by the subversive nature of organized crime and the coordination of parallel investigative activities amongst a range of stakeholders.”*

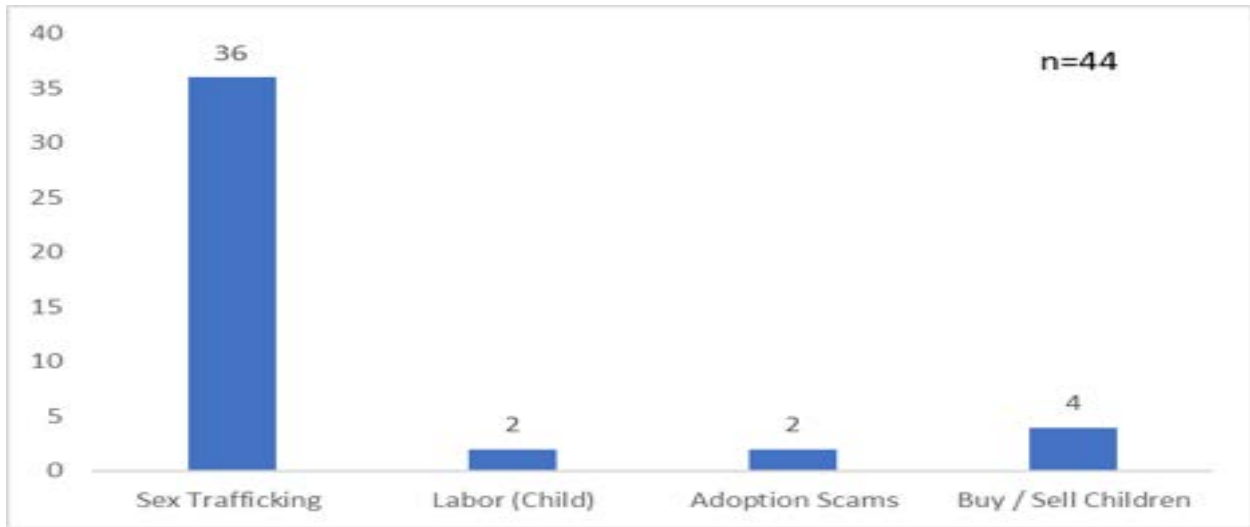
Finally, several of the online adult websites implicated in successful TIP prosecutions, are also implicated in ongoing court prosecutions. In addition to tangible investigative leads that ought to be pursued by SAPS and/or the DPCI for the prosecution of these platforms, this recurring theme also presents several opportunities for illicit financial flows- and money laundering investigations by entities like the Asset Forfeiture Unit and the Financial Intelligence Center. Collaboration between these different role-players is also important for securing justice and relevant financial compensation for trafficking victims in line with Section 29 of the PACOTIP Act.

## Successfully prosecuted TIP Cases

Successfully prosecuted TIP cases representing those cases that progressed through the different stages of the criminal justice system – from initial reporting and arrest of the suspects to the charging- and conviction of the accused persons for TIP related crimes, were the final data set sampled for this study. Since no centralized repository for this dataset exists, the researcher and research assistants relied on a combination of sources. These included cases reported in official law reports and other published cases (SAFLII reports, Juta’s Daily Reports), official SAPS and NPA media releases on finalized cases, active and historical email threads with fellow TIP task team members and colleagues, iterative phone calls and interviews with the prosecutors who were responsible for the successful TIP prosecutions, and media reports obtained from MMA and OCL, and Reynecke (2021). All available case information and records were made available by the relevant prosecutors.

A total number of 44 successfully prosecuted TIP cases were identified in this research. Figure 15 shows the different types of TIP cases that were successfully prosecuted in South African courts.

Figure 15 Types of trafficking in successfully prosecuted cases



A total number of 78 ‘first cohort’ victims were identified in these cases. Figure 16 below shows the gender breakdown of victims in these cases:

Figure 16 Gender of first cohort of victims in successfully prosecuted cases

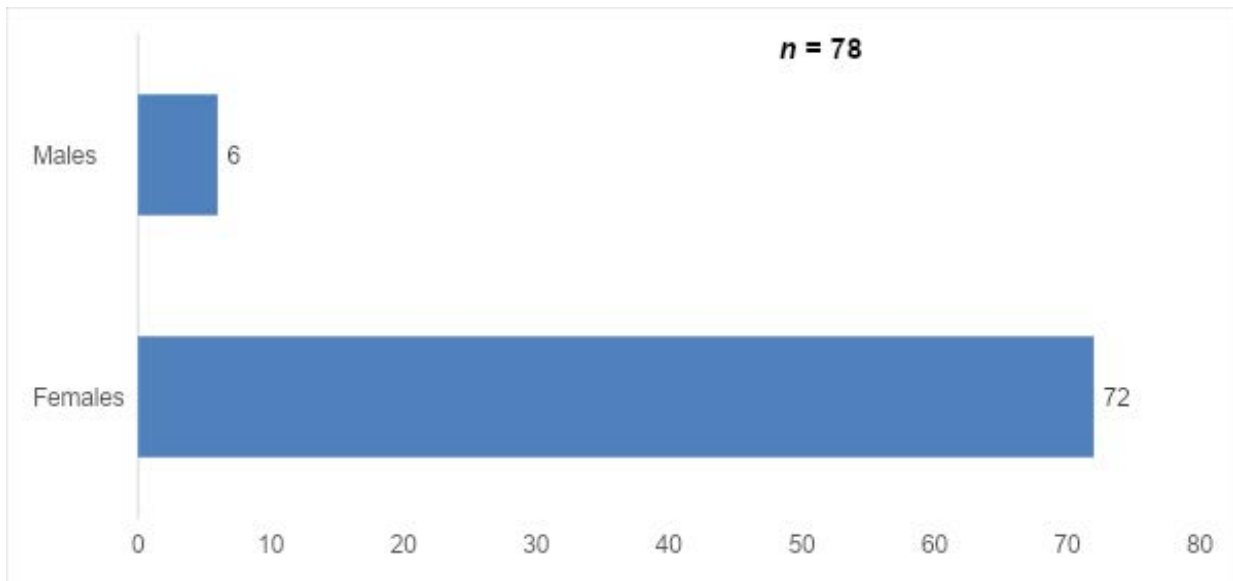


Figure 17 below shows the ages of the ‘first cohort’ victims in successfully prosecuted TIP cases:



Figure 17 Age of first cohort victims from successful prosecution cases

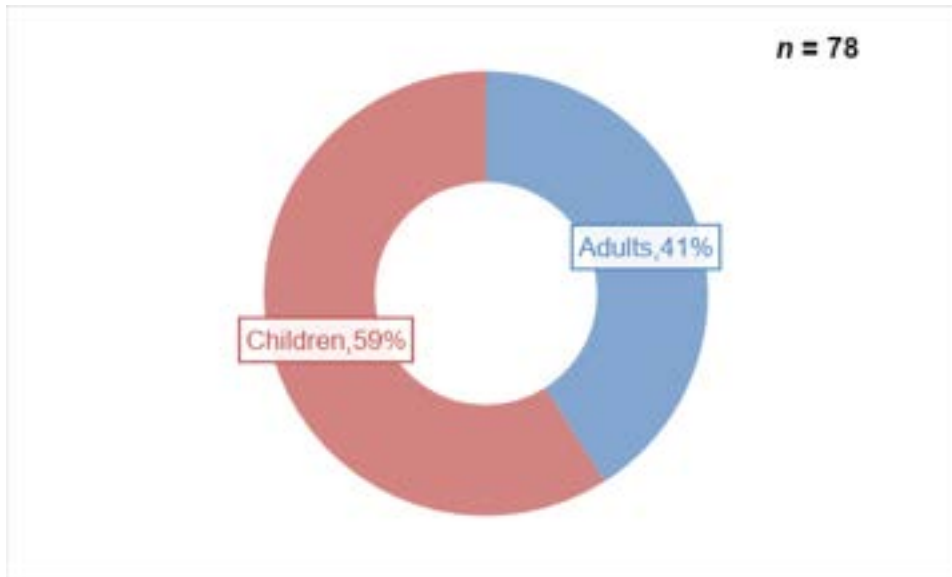
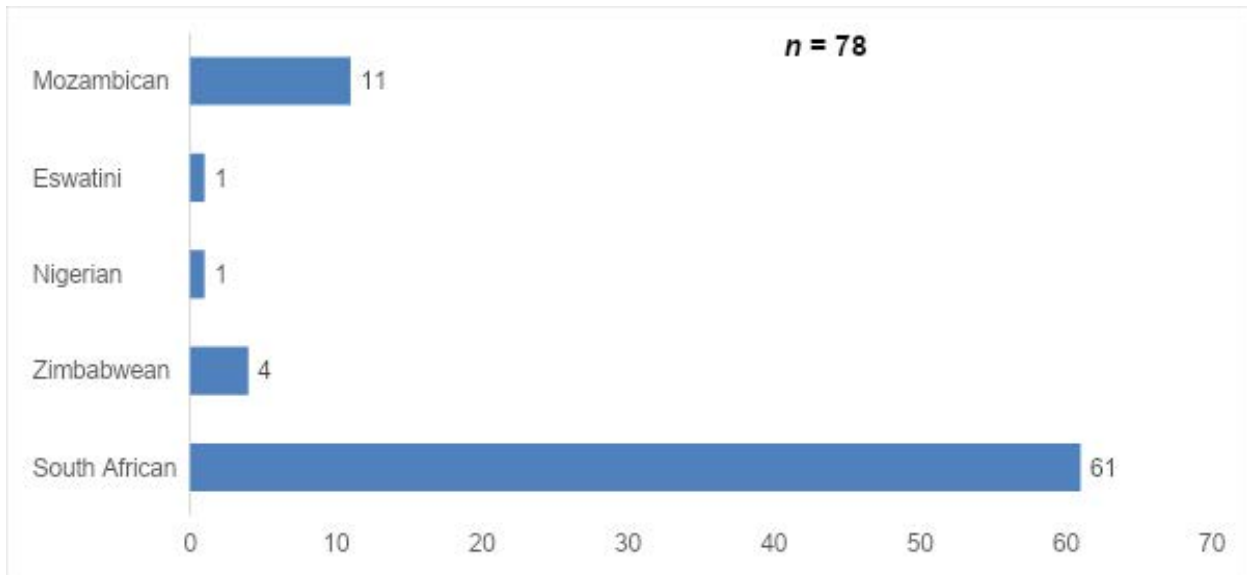


Figure 18 below shows the nationalities of the ‘first cohort’ victims in successfully prosecuted TIP cases:

Figure 18 Nationalities of first cohort of victims successfully prosecuted TIP cases



A total number of 77 traffickers were convicted in the 44 successfully prosecuted TIP cases. Figure 19 shows the gender breakdown of convicted traffickers:

Figure 19 Gender of convicted traffickers

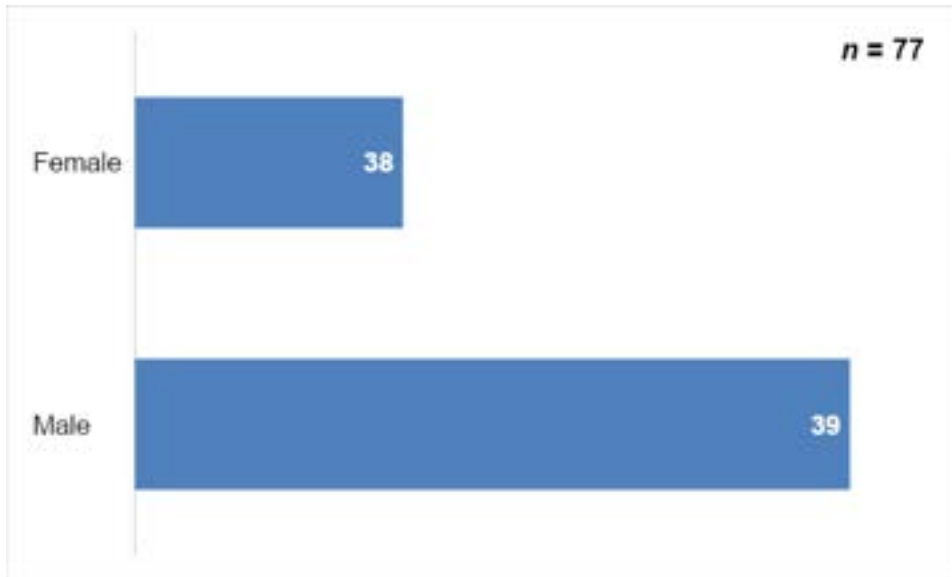
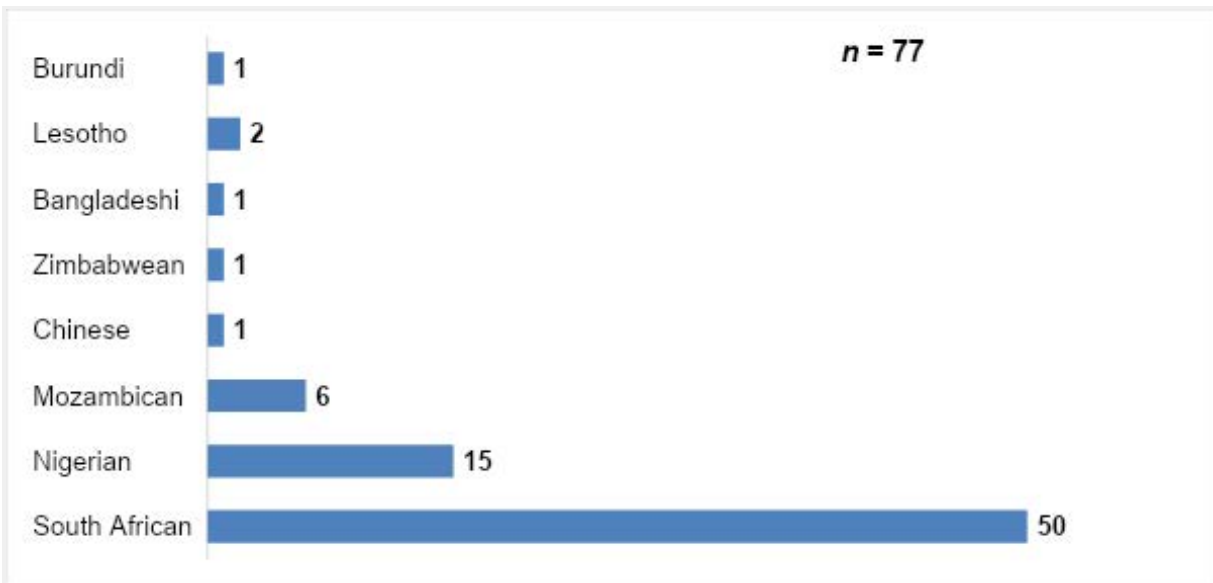


Figure 20 below shows the nationalities of the 77 convicted traffickers in the 44 successfully prosecuted TIP cases:

Figure 20 Nationalities of convicted traffickers

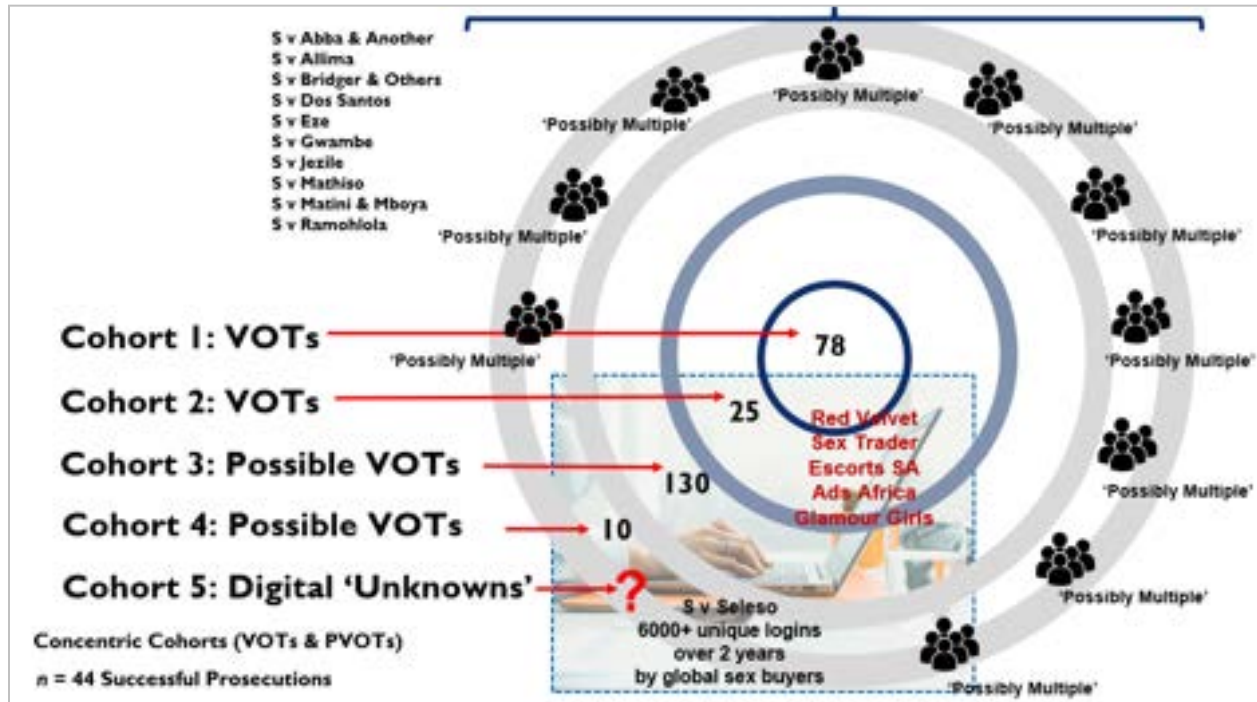


The concentric mapping of TIP victims from available data stemming from successful prosecutions provided useful insights. This exercise was based on the premise that many TIP cases, from civil society data and police investigations to ongoing and successful prosecutions, are ‘more than the sum of its parts’. Trafficking victims who provided testimony and those who were positively screened and participated in the spectrum of criminal justice processes (Cohort

1 and Cohort 2), were significantly eclipsed in numbers by those who remain unscreened and undetected as possible victims of trafficking (Cohorts 3, 4, and 5). The possible victim cohorts must be considered from a prevalence perspective. Victims and/or witnesses during the investigation and/or the trial referred to these persons either by name or otherwise, as individuals they observed and/or interacted with [in similar circumstances] during the trafficking process. The concentric circles and mapping of these victims and possible victims are shown in Figure 21 below. The external layer to these victims and possible victims of TIP is made up of at least 10 cases<sup>33</sup> of ‘possibly multiple’ (Cohort 4) and denote those cases where mention was made of several other possible victims of trafficking, in each case, that could not be enumerated during the case analysis.

Concentric map of five cohorts of TIP victims in the 44 successfully prosecuted TIP cases (Figure 21), followed by two specific case examples (Figure 22 and Figure 23) discussed under Finding 3 ‘The Great Undercount’:

Figure 21 Cohorts of victims of trafficking from successful prosecutions



Noteworthy also is that at least 108 persons of interest were identified in the 44 successfully prosecuted TIP cases who played a direct or indirect role in the facilitation of TIP crimes yet were not arraigned before court. In the next section, five thematic findings that emerged from

<sup>33</sup> Albeit including only one TIP victim and one perpetrator, the case of S v Jezile is included in this list of cases for the sake of prevalence insights. From interviews with both the prosecutor and witnesses in the Jezile matter (Van der Watt, 2018), it was apparent that the practice of ukuthwala was prevalent in the area where the victim and the trafficker originate from with “kids as young as eleven/twelve” that are “being married off” (p. 290).

the different data points in this research will be presented. This is followed by a conclusory discussion.

## THEMES

A golden thread that weaves together the findings in this study is the vulnerability landscape of everyday South Africans, as well as international diasporas that visit- or make South Africa their home. The findings that are discussed here affirm the consistency and coherency of historical and contemporary claims of TIP as deeply embedded in South African society. Vulnerability and South Africa's many-hued violence manifestations are seamlessly woven into the country's TIP profile. This contributes to TIP undercounting and TIP incidents being subsumed under a range of other crimes and civil disputes. Whilst reliable statistics are critical for policy, practice, budgeting and resource allocations, a fixation on numbers should not detract from a broader systemic response to vulnerability and violence in South Africa. The vulnerability considerations in the definition of 'abuse of vulnerability' in the PACOTIP Act, reflect the South African social context, and feature prominently in numerous past and ongoing reports, investigations and prosecutions of all forms of TIP in the country. These vulnerability considerations also feature strongly as predisposing factors and considerations for 'participation' in the sex trade and exploitation in forced labor, most prominently being social circumstances, economic circumstances, addiction to the use of any dependence-producing substance and being a child. The court in *S v Matini* noted that "*people's lives are worth what the next person pays for*". The acute implications of this has become a reality for far too many adults and children in South Africa. The evidence discussed in the findings clearly show how persistent structural inequalities, widespread societal indifference, and the multiple and overlapping systems of violence that have become embedded in South African society, continue to enable TIP in its numerous manifestations. South Africa indeed has the perfect climate for TIP and it would be surprising if the country "*did not have a trafficking problem*" (Frankel, 2016, p. 4). The following five thematic findings are distilled from the available mosaic of evidence collected in this study. Verbatim extracts and vignettes from court judgments, testimony, and available court records will be fused into this section and, where relevant, will corroborate for these findings be drawn from previous research, literature, reports, and media articles.

### Finding 1: The PACOTIP Act as a "Sharp Prosecution Sword"

It is widely accepted that a strong national legal framework around TIP is the foundation and scaffolding of an adequate and appropriate criminal justice response (Gallagher & Holmes, 2008). The many manifestations of TIP require a formidable prosecution tool to confront and defeat it. South Africa's counter-trafficking "prosecution sword" (Kruger, 2016), the PACOTIP Act 7 of 2013, came into effect on 9 August 2015. The Act gives effect to South Africa's international obligations under the Palermo Protocol by criminalizing all forms of trafficking and protecting all victims. Stringent penalties for TIP offenses, as provided for in the PACOTIP Act, are applied by the courts, and courts complied with Section 14 by considering the listed aggravating factors in sentencing. Severe penalties of up to life imprisonment, and even multiple life sentences, have often been imposed. The courts are the watchdogs to ensure that TIP is not confused or conflated with prostitution, immigration offences, related sexual offences, kidnapping, abduction, or any other offences, but that a conviction on TIP will only result if all elements of TIP, required by the PACOTIP Act, are proved. The courts made some crucial decisions to interpret and clarify the provisions of the PACOTIP Act. Notably, '*transportation*' (movement of the victim) is not a mandatory requirement. Legislation, such as the PACOTIP Act, is therefore legally binding and must be used as the yardstick for determining what satisfies the elements of TIP, and what

does not. This is equally important for TIP research, with some studies failing to correctly operationalize the TIP definition leading to the undercount of TIP victims in South Africa. Furthermore, a person is deemed unsuitable to work with children if convicted of less serious trafficking crimes in Sections 8, 9, and 10, but not if a person is convicted of the primary trafficking offense or other serious offenses created in Section 4(2) or 7 (using the services of a child victim) (Kruger 2017: 252). Implementing regulations for the immigration provisions in Sections 15, 16, and 31(2) (b)(ii) have still not been promulgated, and, as such, these important protection measures are still not available to foreign TIP victims for the eighth consecutive year.

This study confirms significant successes in prosecuting trafficking perpetrators. The implementation of the PACOTIP Act and previous interim legislation resulted in at least 44 successfully prosecuted trafficking cases up to date. In these cases, 77 perpetrators were convicted, and justice was realized for 78 first cohort victims. Apart from the successfully prosecuted cases, 79 ongoing prosecutions where the accused have been arrested on *prima facie* evidence in terms of the PACOTIP Act, were active in South Africa's criminal justice system during 2021. In these cases, 176 accused persons are being prosecuted for trafficking offenses, and a possible 400 victims of trafficking are identified. The majority of the possible victims are also females (226). Unlike the 44 successfully prosecuted cases, the vast majority of possible victims are adults (331) and not children. At 143, the majority of the possible victims are also South Africans, and in second place, there are 105 possible victims of Malawian nationality. In several cases, such as *S v Mabuzza*, *S v Seleso*, *S v Matini and Another*, *S v Zweni*, *S v Obi*, *S v Balele*, *S v Eze Okechukwu* and *S v Amaku and Another*, the convicted perpetrators were sentenced to multiple life sentences on TIP and related charges. In the aforementioned successfully prosecuted cases, the evidence presented by the state was tested in court to ensure that all the elements of TIP in terms of the PACOTIP Act were proven beyond a reasonable doubt. One case was traced where the High Court set aside the conviction on TIP.<sup>34</sup> In contrast, in all other cases that went on appeal, including *Ntonga v S*, *S v Jezile*, *S v Dos Santos* and *S v Mabuzza*, the High Court confirmed the convictions on TIP.

The no consent-based defense, as captured in Section 11(1) of the PACOTIP Act, has effectively been applied by courts. In doing so, courts confirmed that a victim's (purported) consent (or the consent of the person that has authority over the child as in *S v Jezile*) does not nullify the offender's criminal liability. Moreover, courts confirmed that the intention to exploit (Section 11) suffices and that actual exploitation is not required. The courts in *S v Fabio*, *S v Coetzer*, *S v (Wayne &) Justine Loubser* and *S v Madlala*, applied Section 11(1) by confirming

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<sup>34</sup> In *S v Fakudze* 2019 JDR 1027 (KZP):2-9. The High Court set aside the conviction of trafficking of the appellant's 12 year-old stepdaughter for sexual exploitation, because the court found that it was not the only reasonable inference that the purpose for which the accused harbored the complainant, was for the purpose of sexual exploitation. This was based on the testimony of the complainant that when her mother abandoned her in 2014, she begged the appellant, her stepfather who previously sexually abused her, to go with him and his other children to South Africa and that he did not further abuse her in 2014. The sexual abuse and rapes only started again in 2015: "He also had sexual intercourse with her many times and on diverse occasions without her consent. He also never allowed her to go out of the house and play with other children. He told her to keep quiet and would threaten to kill her if she told anyone. He would remind her that he supported her every day and doing everything for her...She felt like he was treating her as his wife as he also made her cook for the other children and wash their clothes" (par 5-6). The conviction on rape (complainant's stepfather also impregnated her) and the sentence of life imprisonment were confirmed on appeal (par 6).



that the crime of TIP can be committed *before* exploitation. It is the intention to exploit the victim, together with the other required elements, that constitute the trafficking offense.<sup>35</sup>



**Photo: “If you monitor me you die”: Wording on the shirt of an accused convicted in a sex trafficking case (Photo credit: M van der Watt)**

Several prosecutors developed expertise in applying the *PACOTIP Act* to prosecute trafficking cases. This was illustrated in *S v Seleso and Another* where a minor victim absconded from the place of safety at the beginning of the trial. Notwithstanding the dilemma that the victim could not testify against the perpetrators, the prosecutor’s expertise secured a conviction, and both traffickers were sentenced to 19 life sentences for the online sex trafficking of an orphaned minor girl. Also, in *S v Matini and Another* the prosecutor faced many challenges. Several victims could not testify because two of them died, while another victim with a mental age of nine, was not competent to testify due to her intellectual disability. A victim of 17 years testified, but she had a mental age of only ten years due to her intellectual disability (Source: charge sheet counts 14,16, 17 and 19). Still, the prosecutor’s dedication and expertise resulted in a conviction on TIP and several other charges, and the

main perpetrator was sentenced to life imprisonment.

The courts made some important decisions to interpret and clarify the provisions of the *PACOTIP Act*. For example, the court in *S v Pillay* clarified the concept “harbor”, which is listed as a prohibited action in Section 4(1), but not defined in the Act, by applying the rules of contextual interpretation:

*“I find an anomaly in the use of the word ‘harbors’, the normal meaning of which is ‘to shelter or hide or give refuge’. The words ‘shelter’ and ‘give refuge’ suggest a sense of safety and protection from harm or danger, and convey a positive connotation. Hence, ships seek safety in a harbor. However, in the context of this statute and applying the rules of contextual interpretation to s 4(1), it would appear that the word ‘harbor’ means to hide or provide a person with shelter with the intention of exploiting that person, thereby conveying a negative connotation.”<sup>36</sup>*

Such clarification of concepts of the trafficking definition enhances legal certainty on what constitutes TIP and thus elucidates which scenarios form part of the scope of trafficking in South Africa. As emphasized above, the *PACOTIP Act*, as legally binding legislation, must therefore be used as *“the yardstick for determining what is TIP, and what isn’t”* (Van der Watt 2020b: p. 58, p. 74). A conviction on TIP requires that the state proves beyond a reasonable doubt the elements of the crime in terms of Section 4(1) of the *PACOTIP Act*, namely that the perpetrator:

<sup>35</sup> Section 11(1).

<sup>36</sup> *S v Pillay* Case no CCD39/2019 Judgment 11-12-2020 Durban High court KZN SAFLII : par 189.

- committed any *one* of the nine listed *acts*;
- by using any *one* of the ten listed *means*;
- with the purpose to exploit the (adult) complainant in any manner.<sup>37</sup>

With regards to the elements of child trafficking, the Palermo Trafficking Protocol (Article 3(c)) waives the means element of the human trafficking definition when a child is trafficked. Thus, only the prohibited act and the exploitative purpose are required to constitute child trafficking in international law.<sup>38</sup> In contrast, the PACOTIP Act does not specifically prescribe the elements of child trafficking.<sup>39</sup> It is recommended that the PACOTIP Act be interpreted in line with the Protocol's definition for child trafficking.<sup>40</sup> Still, although the Act does not explicitly waive the 'means' requirement when children are trafficked, the means become redundant concerning trafficking of children, because one of the means listed in Section 4(1), namely the 'abuse of vulnerability', includes 'being a child as part of its definition. Arguably, two aspects must still be proven for "abuse of vulnerability" to qualify as a "means", namely it must be proven that 1) the victim is a child (the vulnerability is present) and 2) The perpetrator abused this vulnerability. The state thus has the onus to prove both these aspects. If the means element is waived as the Protocol prescribes, the state has no burden of proof regarding the means element. In *S v Matini* the court underpinned the international definitional elements of TIP, which domestic laws, such as the PACOTIP Act, must use to criminalize TIP as follows:

*"All three elements must be present to constitute "trafficking in persons" in international law. The only exception is when the victim is a child; in such cases, it is not necessary to prove that one of the acts was accomplished through the use of any of the listed "means". State parties to the Palermo Protocol must use the above definition to criminalize trafficking in persons in their domestic law."*

Importantly, '*transportation*' (movement of the victim) is not a mandatory requirement. The '*transportation*' (or transfer) of a victim, as one of the 9 possible acts prohibited in Section 4(1), is not mandatory to constitute a TIP offense.<sup>41</sup> The prohibited acts are substitutes or alternatives to one another, and proof of any one of them constitutes the required conduct element. Similar to Article 3(a) of the Palermo Trafficking Protocol, these acts are therefore disjunctive. Therefore, "*it is not an essential requirement of trafficking in persons that the victim be physically moved*" (UNODC, 2020, p. 29).<sup>42</sup>

<sup>37</sup> See the discussion in Kruger (2016, pp. 73-78).

<sup>38</sup> UNODC (2020, p. 29) "...obligations in relation to trafficking in children also arise from several other international instruments: Article 35 of the Convention on the Rights of the Child mandates that States Parties 'take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.' Under Article 1 of the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography 'States Parties shall prohibit the sale of children, child prostitution and child pornography' as defined in Article 2 of the Optional Protocol." (UNODC, 2020, pp. 40-41).

<sup>39</sup> See the discussion in Kruger (2020, pp. 761-763)

<sup>40</sup> See Kruger (2016, p. 78); Kruger (2020, pp. 761-763)

<sup>41</sup> Although some hold a different view, the sound interpretation of Article 3(a) of the TIP Protocol as well as of Section 4(1) of PACOTIP Act holds that '*transportation*' is not a mandatory requirement for TIP - see the discussion in Kruger (2010, pp. 302-308).

<sup>42</sup> This point has been further emphasized: "... *it is not an essential requirement of trafficking in persons that the victim has been physically moved by the traffickers. Placing too much emphasis on movement will result in cases being undetected as in many cases, at the time of movement or transportation, it can be difficult to determine whether the crime of human trafficking has been made out. Neither the victims themselves, nor border officials, may know the ultimate purpose for which they are being moved. It is*

Another observation from the data in this study is that the lack of implementation of all provisions of the PACOTIP Act significantly constrains knowledge about the nature and prevalence of TIP in South Africa. Almost no convictions could be traced on the contraventions of the TIP-related crimes included in Sections 4(2) to 11. Convictions for contravening Section 7 were only secured in *S v Obi* 2020 (JDR 0618 (GP) at 9 par2). Implementing Section 7, which criminalizes the intentional use of or benefitting from victims' services, is an effective instrument towards consumer level demand reduction for both commercial sex and/or forced labor. Notably, in *S v Obi* 2020 JDR 0618 (GP) at 9 par 2 the court not only convicted the accused of TIP:

*"You have also been convicted on three counts of using the services of victims of trafficking (s 7)... A sentence of 15 years imprisonment in respect of each of the three counts is accordingly imposed."*

Notwithstanding the availability of this formidable section in the PACOTIP Act, and a clear example of how it was effected in court, no other convictions on Section 7 could be traced. Convictions recorded for TIP related offences under the *Sexual Offences and Related Matters Act (SORMA) 32 of 2007* include a conviction on 'involvement in TIP' in *S v Wiedermeyer & Others* (contravening Section 71(1) 2(b)), and a conviction on 'attempted TIP' in *S v Eloff*.

Section 29 of the PACOTIP Act authorizes courts to order on their own accord or on request of a victim of trafficking or the prosecutor, a convicted perpetrator to pay compensation to a victim not only for damages to property, but also for physical, psychological or other injury; being infected with a life-threatening disease; or loss of income or support. The issuing of such an order has not been made yet by the courts (US Department of State 2021:510). However, in *S vs Nancy Eze Light* the court ordered in terms of Section 300 of the *Criminal Procedure Act 51 of 1977* the accused to compensate the complainant for damages in the amount of R45,000.00 on date of sentence (outstanding payment for labor services). No compensation order in terms of Section 29 of the PACOTIP Act, which is much broader than Section 300, was made.

The PACOTIP Act encompasses crucial protection provisions for foreign victims of trafficking that are still not in force. Section 15 provides that foreign victims, who can assist in police investigations relating to offenses under Chapter 2, may be issued with a visitor's visa for a recovery and reflection period of up to three months to allow such victims to make an informed decision on whether to cooperate with law enforcement or not.<sup>43</sup> In addition, Section 16 provides that if a foreign victim of trafficking, whose continued presence in South Africa is essential for the successful prosecution of a trafficking offense, agrees to cooperate with law enforcement, he or she may be issued with a visitor's visa for temporary residence regardless of his or her status (Kruger, 2017, p. 260). However, the implementing regulations for the immigration provisions in Sections 15, 16, and 31(2) (b)(ii) have not been promulgated. The latter section provides that a foreign adult victim must be informed of arrangements made for his or her reception in the country to which the victim is repatriated. This duty has also not been complied with by the Department of Home Affairs (DHA), and thus Section 31(2)(b)(ii) is not operational either. Thus, these critical protection measures are still unavailable to foreign victims for the eighth consecutive year.

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*often only at the place of destination, where persons are subjected to exploitation in its various forms, that trafficking can be easily made out"* (UNODC 2020, p. 45).

<sup>43</sup> Kruger (2017, p. 260).

It is noteworthy that children are not protected against perpetrators who commit serious TIP offenses as such perpetrators are not included in the National *Child Protection Register*. The *Children's Act 38 of 2005* established the *National Child Protection Register*. The purpose of Part B of the Register is to have a record of persons who are unsuitable to work with children and to use the information in the Register to protect children, including child victims of trafficking, against abuse from these persons.

Section 120(4) of the *Children's Act* provides:

*In criminal proceedings, subject to the provisions of Subsection (4A), a person must be deemed unsuitable to work with children-*  
*(a) on conviction of murder, rape, ...or offences in terms of Sections 8, 9, 10 or 24A (5) of the Prevention and Combating of Trafficking in Persons Act, 2013...*"

What is problematic is that there is no Section 24A(5) in the PACOTIP Act. Furthermore, a person is deemed unsuitable to work with children if convicted of less serious trafficking crimes in Sections 8, 9, and 10, but not if a person is convicted of the main trafficking offense or other serious offenses created in Section 4(2) or 7 (using the services of a child victim) (Kruger 2017, p. 252).

## Finding 2: A spectrum of TIP perpetrators: From single traffickers to loosely connected networks of criminal actors

The study confirms that TIP is a multi-layered and complex criminal phenomenon committed by a spectrum of perpetrators. This includes single traffickers who repeatedly sexually exploit their victims, traffickers who subjugate minors in situations of forced labor and/or domestic servitude, and an example of a South African mother using an online marketing platform to advertise her baby for sale. Perpetrators also include loosely connected networks like that of more than 20 Nigerian traffickers responsible for selling and moving sex trafficking victims between multiple residential brothels (*S v Eze*). In another case of child sex trafficking between Mozambique and South Africa (*S v Dos Santos*), the court concluded<sup>44</sup>:

*"A feature of this case is that the abuse of these young complainants (and the appellant's other victims) was the result of an elaborate and organized criminal enterprise. The record shows, and the regional magistrate found, correctly in my view, that several persons participated in the facilitation of the crimes."*

In *S v Matini* the court observed that *"traffickers could be family members, parents, partners, friends, acquaintances, pimps, business contacts, strangers or any other person"*. Court cases confirm that victims are increasingly recruited for their sexual services and advertised on internet platforms and websites – some of which advertise on billboards next to major roadways. Both ongoing prosecutions and successfully prosecuted TIP cases reveal accused and convicted nationalities from more than 15 countries. In *S v Madlala* the single trafficker was the young mother who advertised her baby for sale on Gumtree for R5,000 and "sold" the baby to a buyer who was part of an undercover police operation. Similarly, in *S v Coetzer* the sole trafficker sold a minor girl to a "Nigerian syndicate" in a police operation. On the other end of the

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<sup>44</sup> Judgment in Appeal *S v Dos Santos*, 2018 (1) SACR 20 (GP)



continuum, well-organized criminal syndicates consisting of multiple trafficking agents perpetrate the crime.

In some cases, the victims were trafficked by family members. A mother and daughter team has been convicted of sex trafficking in *S v Eloff & Another* as well as in *S v Seleso & Another*. Other cases where family members were involved and convicted on TIP charges include *S v Gudwana* (3 family members convicted). Cases where family members were involved but not convicted on TIP charges include *S v Fabiao* and *S v Jezile*. In *S v Wayne & Justine Loubser*, only Justine Loubser was convicted of trafficking for selling her baby for R500, but her husband was also involved and tried to sell the baby on a previous occasion. In *S v Mbambo* the accused sold her eight-year-old niece.

Both successfully prosecuted and ongoing TIP cases provide insights into the trafficker and alleged trafficker profiles in South Africa. In the 44 successfully prosecuted cases, a total of 77 traffickers were convicted on trafficking-related charges. Contrary to the widely held assumption that almost all traffickers are males, the study reveals that 39 of the traffickers were males and a significant number of 38 traffickers, were women. The largest group of convicted traffickers were South Africans at 50 persons. The second largest group consists of 15 persons of Nigerian nationality, who were all convicted of commercial sex trafficking. The alleged traffickers in the 79 ongoing cases in court total 176. Unlike the successfully prosecuted cases, the number of alleged male traffickers at 123 eclipses that of 52 alleged female traffickers. As far as nationalities are concerned, the Nigerian alleged traffickers total 44 persons, which is more than half of the 73 alleged South African traffickers that stand accused of TIP crimes. Alleged traffickers of Nigerian descent are prominent in ongoing sex trafficking prosecutions. Consistent with several US TIP reports that refer to the impunity with which international syndicates involving Thai, Chinese, Russian, and Bulgarian traffickers continue to operate in South Africa, none of these nationals features prominently in court prosecutions, and none have been convicted on TIP related charges in South African courts. Also consistent with the US TIP reports is the prominence of Nigerian sex trafficking syndicates that are said to:

*“...dominate the commercial sex trade within the country”* (2011, p. 327; 2012, p. 315).

*“...dominate the commercial sex trade in Hillbrow and other areas”* (2013, p. 333; 2014, p. 348).

*“...dominate the commercial sex trade in several provinces”* (2015, p. 308; 2016, p. 340; 2017, p. 364).

The 2021 US TIP Report (p. 511) noted that:

*“Traffickers operating in South Africa increasingly are from Nigeria, the Democratic Republic of the Congo, Cameroon, and Ghana. Syndicates, often dominated by Nigerians, force women from Nigeria and countries bordering South Africa into commercial sex.”*

It is well documented that trafficking presents itself in various forms globally. One aspect of the nature of TIP is revealed in the finalized 44 TIP cases by identifying the four types of trafficking that perpetrators have been convicted of. The vast majority of TIP convictions represent trafficking for sexual exploitation<sup>45</sup>, namely a total of 36 cases. Noteworthy, the types of sexual

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<sup>45</sup> It is important to reiterate that labor trafficking cases are vastly underrepresented in both ongoing and successful TIP prosecutions, and that sex trafficking investigations and prosecutions, as ‘low hanging

exploitation are also varied. Apart from some perpetrators that exploit victims only for their own personal benefit, most sexual exploitation is vested in the South Africa's commercial sex trade. Some commercial sexual exploitation is operated from brothels, for example, in *S v Bridger and S v Eloff & Another*. Other traffickers, for example, in *S v Dos Santos*, *S v Eze*, and *S v Amaku* preferred to sell the sexual services of their victims to sex buyers at residential brothels. In *S v Matini and Another* accused one kept a residential brothel at her shack in an informal settlement. Even though the accused in *S v Pillay* mostly used the minor victim as his own sex slave, he also tried to sell her services to an unknown man in a hotel for money.

Not surprisingly, the court cases confirm that victims are increasingly recruited, or their sexual services are advertised on internet platforms and websites. In *S v Seleso* the minor girl was sexually exploited online by registering her on an internet website for sex buyers to "order" on webcam sexual activities as they please. Also, in *S v Dos Santos* the victims were forced to smoke cannabis and have sexual intercourse with several sex-buying men daily. A photographer visited the brothel and took photographs of the victims scantily dressed and in the nude. The victims were informed that these photographs would be used to advertise them on the internet.

Apart from advertising sexual services of victims of trafficking (VOT), the mother (and accused) in *S v Madlala* used Gumtree to advertise her baby for sale. Perpetrators were also convicted of three other forms of trafficking. Convictions on labor trafficking of children were secured in *S vs Nancy Eze Light* and *S v Judite Augusta Nyamtunbo*. Furthermore, children were bought and sold in five other cases. In two of the cases, namely *S v Madlala* and *S v Wayne & Justine Loubser*, the mothers were convicted for selling their own babies. In *S v Coetzer* the accused sold another mother's child, while babies were bought in two cases (*S v Gwambe & S v Ndhlovu*). In the fourth form of trafficking adoption scams were applied in another two cases to obtain money and goods from the prospective "adoptive parents". In *S v Msweli & Another*, a baby was given for so-called adoption in exchange for R2,500 and an air-conditioner, while in *S v Ramohlola* R15,000 per child was required from a couple.

### Finding 3: The Great Undercount

Evidence from all data sources in this study suggests a significant undercounting of TIP victims in South Africa. Both ongoing prosecutions and successfully prosecuted TIP cases suggest that there are frequently more victims of trafficking than the complainants that were screened, submitted statements and/or testified in these cases. In one example of child trafficking (*S v Dos Santos*), multiple books belonging to the accused and covering a period of between five to eight years, had the names of numerous other possible victims documented in them. The books were found in the residential brothel where the child victims were exploited. The accused, a Mozambican national who trafficked and exploited Mozambican children in the Pretoria-based residential brothel, is believed to have been active in South Africa since the mid-1990's before her eventual arrest in 2008. In this matter, the court referred to: "...the complainants (and the other females kept by the appellant, because there were several others who did not testify a quo)". When considering the case of *S v Dos Santos*, an important factor is the operational life spans of numerous brothels and other places of exploitation that are significantly protracted, with some being in operation for many years before any meaningful intervention takes place. In the case of *S v Ramohlola*, the accused – known to the community as 'Mama Jackie' – was

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fruit', continue to be receive the bulk of South Africa's TIP combating focus. Far more labor trafficking cases should be detected, investigated, and prosecuted by the South African government.



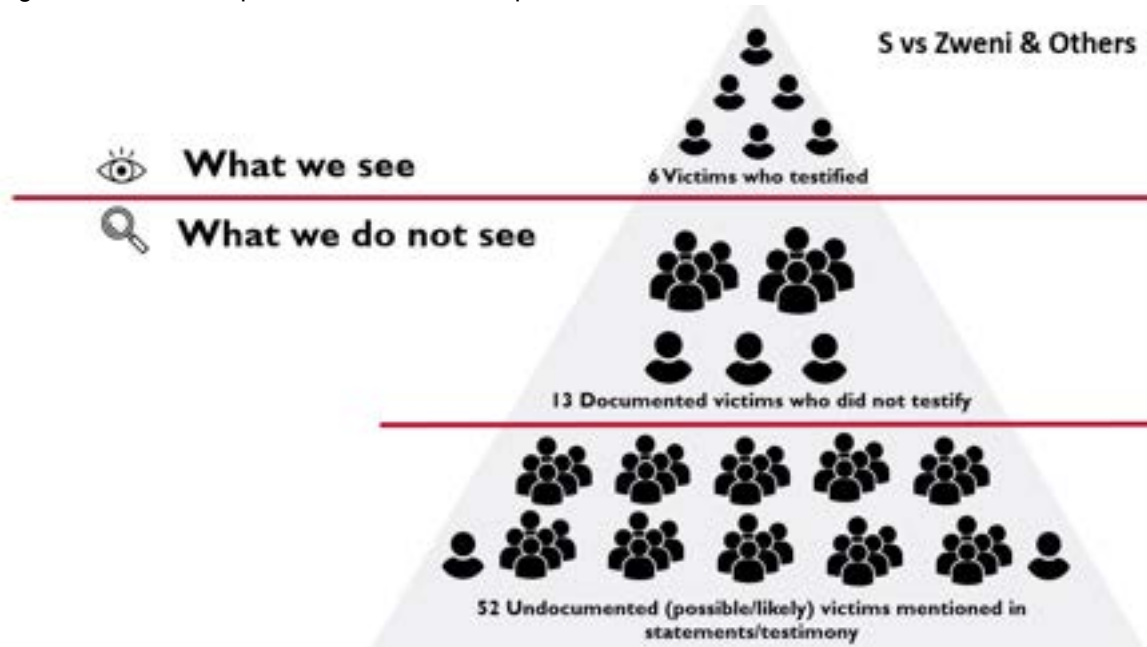
convicted of selling two children for R15,000 each in an illegal adoption scheme. The accused submitted that she started her orphanage in 1996 in response to the many children in the streets of Diepsloot. Most of the children did not have parents and Mama Jackie started to take them into her unregistered orphanage. The court was told that if she registered her orphanage, Mama Jackie could receive state grants, but she refused. The prosecution questioned *"how many children might have been sold"* (Venter, 2016, p. 4) – a pertinent question considering the life span of the accused’s operations and the copious number of vulnerable children she had access to.

Apart from the 15-year-old girl child that was sexually exploited in *S v Eke*, Judge Mabesele was quoted as asking, *"how many children’s lives has he ruined? Initially there were four girls who were found in that house, where have the three disappeared to?"* (ANA Reporters, 2017). In *S v Matini* the accused operated a residential brothel for more than six years (from April 2006 to 19 July 2012). The court in this matter noted: *"A golden thread of evidence shows how groups of unsuspecting women and girls were lured to Fairview, with promises of employment; only to find there is, as everywhere in the area, a shortage of work."* In the case of *S v Allima*, mention was also made to numerous other "boys and girls" in similar circumstances as the victim in the case, but who were not documented as possible victims of trafficking. The victim undercounting theme is illustrated below in two cases that formed part of this study’s concentric mapping of TIP victims in successfully prosecuted cases. In figures 22 and 23 below, 'What we see' (Cohort 1) denotes those victims that were present and/or participated in the entire criminal justice process. These are the victims who are formally recorded as victims of trafficking. 'What we do not see' are those victims of trafficking (Cohort 2) and possible victims of trafficking (Cohorts 3, 4, and 5) that are either not formally recorded in official numbers or who were never identified and screened for trafficking indicators.

Figure 22 *S v Obi* prosecution case example of cohorts



Figure 23 S v Zweni prosecution case example of cohorts



Several past factors that constrained the scope of TIP in South Africa were also identified. It is important to consider that not only is South Africa's history leading up to 1994's laced with indicators of subjugation and the undercounting of victims of trafficking, but that fragmented interim pieces of legislation leading up to the operationalized PACOTIP Act in 2015 have also "contributed to the undercounting *mélange*" (Van der Watt 2020b, p. 59). A past factor that constrained the scope of trafficking in South Africa was that no TIP legislation was available before 16 December 2007, and no convictions on TIP-related crimes could therefore be secured in this period. In, for example, *S v Amien Andrews* the accused was convicted of several crimes, including rape, kidnapping and brothel-keeping involving girls as young as 12 years old, committed in the late 1990's. The accused was convicted on a charge of brothel keeping involving two girls, aged 12 and 14, when the offenses were committed in 1996. Andrews operated a brothel in Salt River called 'Amiens Girls', where he exploited young girls for sexual purposes. He is said to have profited from the sale of the "bodily integrity" of the girls on offer to the public. Andrews had known that the girls were destitute and homeless and had taken advantage of them. He also "cruelly" kept one of the victims as a prisoner in the brothel, ignoring the fact that she needed medical treatment for the serious assaults she had received (Brothel-keeper sentenced again, 2004). The evidence of the girls, according to Magistrate Chris Naude, suggests that "they were plied with dagga and alcohol, before being, in some cases, gang-raped by up to 10 men" (Sex with children is a crime, 2004).

Moreover, one Cape Town-based NGO "came across 46 girls who had gone through Amien Andrew's operations", which was investigated "but nothing happened for a couple of years" (Roux, 2018). In 2002, the accused was convicted on charges related to rape, kidnapping and brothel keeping, and sentenced in July 2004 (Sex with children is a crime, 2004) and November 2004 (Brothel-keeper sentenced again, 2004), respectively, in different cases.

Also, in the *State v Netcare Limited*, the accused could not be convicted of trafficking for the removal of body parts since the PACOTIP Act 7 of 2013 was not yet in force<sup>46</sup>. In this case, the hospital allowed its “employees and facilities to be used to conduct illegal kidney transplant operations...The admission of guilt relates to 109 illegal kidney transplant operations which took place between June 2001 and November 2003 within a scheme whereby Israeli citizens in need of kidney transplants would be brought to South Africa for transplants performed at St Augustine’s Hospital” (Allain, 2011, p. 117).

The fragmented interim pieces of legislation in operation from 16 December 2007 up to 8 August 2015 also did not cover all forms of trafficking and thus restricted the scope of trafficking. The transitional trafficking provisions in the *Children’s Act* of 2005<sup>47</sup> only covered the trafficking of children and not adults, while the *Sexual Offences and Related Matters Act of 2007* criminalized just one form of trafficking of adult and child victims, namely sex trafficking. Although the identification of victims of trafficking and convictions on child and sex trafficking were recorded in terms of these interim trafficking provisions, the undercounting of trafficking victims also stemmed from no convictions on adult trafficking for labor, the removal of body parts, and other forms of exploitation that could not be prosecuted. Apart from no TIP legislation and fragmented interim legislation constraining the scope of TIP, some cases were not prosecuted even though relevant TIP legislation was available. In the case of *Malachi v Cape Dance Academy International (Pty) Ltd and Others* debt detention law was ruled unconstitutional, but the evidence revealed significant indications of trafficking.

#### Summary of Facts:

The applicant, a citizen of the Republic of Moldova, was recruited in Moldova and employed by the first respondent (Cape Dance Academy International (Pty) Ltd) and the second respondent (House of Rasputin Properties (Pty) Ltd) as an exotic dancer at a Cape Town nightclub. On her arrival in South Africa during March 2009, the applicant was instructed to hand over her passport to her employer for 30 days to finalize registration at the police station. However, her employers kept her passport for the entire period of her employment and refused to return it unless she paid \$2,000 for her air ticket and R20,000 as a levy. The applicant was unable to pay either of these amounts, as she was not earning sufficient income during her employment. The applicant sought and received the assistance of the Consul General of Russia to facilitate her return to her home country Moldova. However, prior to her departure from South Africa on 9 July 2009, she was arrested and taken into custody at Pollsmoor Prison, Cape Town.

Detention for suspected debt was pronounced invalid and unconstitutional by the Western Cape High Court. Tatiana Malachi, recruited from Moldova to work as an exotic dancer at the House of Rasputin in Cape Town, was insufficiently remunerated to pay a range of fees charged by the nightclub and was also without her passport because her employer confiscated it. After arranging with the Russian consul-general to facilitate her return home, she was arrested and imprisoned. Her release was secured by an urgent application in the Cape High Court, and she returned to Moldova.

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<sup>46</sup> This case, however, was recognized as a TIP matter and drew a fair amount of international attention. The legacy of this period’s fragmented TIP legislation reverberates to this day as various TIP forms, other than that of sex trafficking, are still not readily addressed.

<sup>47</sup> The trafficking provisions came into force on 1 April 2010 – see Proc R12 in GG 33076 of 1 April 2010.

Both subtle and unsubtle forms of manipulation and control, similar to that in the case of Tatiana Malachi, are present in several high-end brothels in South Africa and may be considered within the legal definition of debt bondage as defined in section 1 of the PACOTIP Act. As described by a bouncer who worked in a high end brothel that he also implicated in sex trafficking:

“[name of brothel owner] has invoked a lot of fines. So you come late, it’s a fine. When you not on the floor you get fined...you allowed six minutes for a normal lap dance downstairs and fifteen minutes at the top. So if you go over the time you gotta pay. So there’s a fine for that...if you don’t have the correct lingerie on and...if you don’t change during the night you get fined.”  
(Van der Watt, 2018, p. 183)

Another example stems from documented conversations that the author of this report had with two employees of a prominent Cape Town brothel in August 2017. The employees, both females and both working as cleaning and cooking staff at the brothel, shared their experiences of intimidation, fear, and effective debt bondage. Both women were in their mid-50’s, they worked between 65 and 80 hours per week, and received salaries of R 2,700.00 and R 3,500.00, respectively, every month and were not provided with payslips. One of the women, ‘Sarah’, was a single mother with 4 children, and had incurred a debt of R 17,500.00 that stemmed from, among others, breaking dishes, spilling food, and “allowing customers to leave the premises without paying for their food and drinks”. Both women shared experiences of emotional and psychological abuse and being subject to a well established fine system that serves to induce compliance from both support staff and from those who dance and “service customers”. This serves as a typical example of how labour exploitation intersperse with the sex trade.

When considering the assemblage of legal, societal, and law enforcement response crevices that allow victims of trafficking to remain undetected and undercounted, the number of actual victims of trafficking is likely to be vastly underestimated. The problem of corruption (Finding 5), and the nexus between missing persons and cases of TIP, as well as South Africa as a ‘transit’ country for TIP, are other factors that must be taken into account when considering the undercounting problem. This is discussed in the additional findings section later in this report.

#### Finding 4: The Commercial Sex Trade as a Vortex of Violence, Child Trafficking, and (Un)Constrained Demand

Sex trafficking and excessive sexual, physical, and psychological violence perpetrated against women and children in South Africa’s sex trade is commonplace in civil society organizations’ experiences, and pervasive in ongoing- and successful TIP prosecutions. Kotze and Niemandt (2020), in their work related to the sex trade in Rustenburg, remark that “*victims of sex trafficking have never been more invisible in one of the most visible industries in the world*” (p. 414). An unsettling picture of this ‘visible industry’ and trafficking for commercial sexual exploitation<sup>48</sup> is apparent in both historical research and in the current study. In his 2017 judgment in *S v Eze*, Magistrate Pravesh Singh noted:

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<sup>48</sup> While “sexual exploitation” is not defined in other international instruments, the Act’s definition is broad and based on the South African context, namely the commission of any sexual offence referred to in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* or any offence of a sexual nature in any other law (e.g., *Sexual Offences Act 23/1957*).



*“The entire evidence in this case unmasked the sordid and sleazy world of drug abuse, prostitution and exploitation.”*

By no means dissimilar to many other sex trafficking cases where extreme violence is meted out to TIP victims, the case of *S v Eze*, shows how victims were bought and sold over a protracted period amongst a network of more than 20 Nigerian traffickers. One of the victims had been a child when she was initially abducted from school by a Nigerian male – not arraigned in the trial – and kept at an unknown location where she was forced to smoke drugs. Victim testimony pointed to numerous other victims who were kept in a drug induced and subjugated state whilst being bought and sold. The multi-layered abuse included incidents of rape and one of the victims being forced to witness the physical dismemberment and murder of other victims who were not as fortunate to escape. The following vignette from the victim’s transcribed testimony illustrates the overlap of the sex trade with corruption, child trafficking, and other victims who were never accounted for in official TIP numbers:

VOT: *“I was in Vereeniging when I opened a docket because he beat me. My friend went with me, and she also testified about it. Then Alaji found out about it because in the police station there was a policeman who worked for them. The docket disappeared. They told us to come back the following day to open another docket. We were on our way to my aunt’s house, then that policeman picked us up. He took us back to Alaji. Alaji then paid him and he told us we have to go bath and eat. We then had to smoke and then go out to go and work. We were six girls there, but we were the only two who had to be left in the car. Then from there, they took us to a bush. Then they asked us whose idea was it to make a court case. Then my friend and I argued. I said that it was me. She said that it was her. My friend then said just give us five minutes so that she can talk to me. She then said Vicki\*, I am just trying to keep you safe. Before I could tell them that it was me, she said that it was her. They then took her into the bush. They were three Nigerians. When I tried to run away, they tied me on the chair with duct tape. Then they wanted me to watch how they kill her. Then they cut off her breasts, her arms, her legs, and her head. My other two friends were killed differently.”*

Prosecutor: *“How old were you when you saw this Vicki\*?”*

VOT: *“15 years old”*

Prosecutor: *“What impact did this have on you?”*

VOT: *“With my first friend, I cried for two months. My second friend, I cried for three months, and my other, the third friend, I cried for six months in my room.”*

Numerous cases in the research reflect the complex life stories of trafficking victims that comes from different backgrounds and age groups, whose trafficking experiences overlap in the sex trade. The role and complicity of prominent online adult websites, child trafficking, drug abuse, police corruption, and egregious violence are commonplace in these cases. From the evidence adduced in several cases related to the commercial sex trade, perpetrators prey on the vulnerabilities of victims, deceiving and exploiting them at any cost to make money. The experiences of sex trafficking victims are also not secluded to multiple rapes and variations of sexual exploitation but include criminal exploitation in a spectrum of activities that include drug trafficking (*S v Matini*), robbery, and the recruitment and control of other victims in the trafficking process. The notion of a clinical wedge between the benign and liberating sex trade on the one

end, and the violent universe of sex trafficking on the other end, are challenged by the evidence in TIP cases. In his dismissal of the appeal by the accused against life imprisonment, Judge Jacobs in *S v Dos Santos* found that the commercial sexual exploitation of the child complainants was “*under constant threat, lived in fear, and were subjected to treatment that can only be described as inhumane*”. Another example of the commercial sexual exploitation of a child is the case of *S v Ugochukwu Eke*. The 15-year-old girl child was drugged and sexually exploited by a Nigerian trafficker. The victim was forced to take drugs and was exploited by as many as six sex-buying men per night during her ordeal in 2015. Judge Mabesele was quoted as stating that what “*happened to her [the victim] was cruel, inhumane and degrading*” (ANA Reporters, 2017). In *S v Matini* “*women were called mounts, an analogy to new horses without owners. Then, they were sold off to these men for sexual favors, mostly against their wills. They were left destitute, far from home and afraid. Nobody was spared, whether you are a child, or married women; even number one’s own child was not spared; you were not safe*” (Source: Judgment notes p. 70).

In his sentencing in the case of *S v Obi*, Judge Ranchod stated that the accused has been convicted of 23 counts ranging from trafficking in persons, using the services of victims of trafficking, rape, sexual exploitation of a child for financial reward, sexual grooming of children, kidnapping, keeping a brothel and dealing in drugs. Judge Ranchod cited the late Professor Cornelius Roelofse (Roelofse, 2011, p. 2) as follows:

*“[Human trafficking] ... is a product of an increasing sex obsessed world with billions of dollars being earned from pornographic magazines, television channels and prostitution...it is obviously a very lucrative business whereas drugs and other narcotic substances can be used only once; a girl used as a sex slave can be sold over and over. This is the tragedy of this cruel exploitation of the vulnerable in our societies”.*

Judge Ranchod concluded by stating that “*this is tragically illustrated in this matter before me*” (Judgment in CC40/2018, *S v Obi*). The crime scene photographs in Figure 24 represent those from the residential brothel in the case of *S v Obi* where children were exploited. The nexus between Professor Roelofse’s reference to pornography, and the crime scene photograph depicting “*pornographic magazines*”, is ominously striking.



Figure 24 Brothel in S v Obi and the opening in the floor leading to basement where victims were hidden



Traffickers are by no means solely responsible for the multilayered harms inflicted on trafficking victims. Sex buyers<sup>49</sup>, too, are responsible for the sexual, physical and psychological violence perpetrated against women and children in South Africa’s sex trade. From the evidence in this

<sup>49</sup> See also the study by Jewkes et al (2012) that included 1645 randomly-selected adult South African men who participated in a household study, and who disclosed whether they had sex with a woman in prostitution or had had a provider relationship (or sex). The study has shown that “most men who have had sex with women in prostitution are not ‘normal’ men. They are all more likely to have engaged in a range of illegal practices. Further the largest group of these men, those who had also had sex or relationships predicated on their occupying a provider role, displayed a self-focused, instrumental masculinity. They had the most pronounced gender inequitable attitudes and psychological attributes indicating ruthlessness in interpersonal relations. They were also much more likely to have engaged in a range of acts of gender-based violence. As such they pose a considerable threat to women in prostitution.” (Jewkes et al, 2012, pp. 8-9).

study, it is clear that commercial sexual exploitation is fueled by sex buyers who represent the demand component. Insights into unconstrained demand and violence inflicted by sex buyers are well documented in existing research with sex buyer profiles that include ‘judges’, ‘politicians’, ‘Government ministers’, ‘clergy’, and ‘billionaires’ (Frankel, 2016; Van der Watt, 2018). As stated earlier, when it comes to illicit financial incentives, traffickers pocket the money, but sex buyers pay the money. Online adult websites, an important part of South Africa’s commercial sexual exploitation infrastructure, facilitate the harm. The South African Government’s inaction in this area is glaring as it continues to ignore the imploring<sup>50</sup> in the annual US TIP Reports to “*reduce demand for commercial sex, including by prosecuting individuals, including police, who purchase commercial sex*” (US TIP Report, 2021, p. 508). Notwithstanding sufficient laws that can be used to address consumer level-demand for commercial sex, no other cases could be traced, save for one TIP conviction (*S v Obi*), where the ‘demand’ or sex purchasing dimension of cases were prosecuted. When considering the protracted lifespans of numerous brothels implicated in successfully prosecuted TIP cases, and the evidence of multiple sex buyers who violated and exploited both the known and unknown victims in these cases, it may well be inferred that several thousands of male sex buyers were not held accountable. This is the case in a mere ten successful prosecutions where multiple brothels, in separate cases, were active over a protracted period<sup>51</sup>.

As part of his preparation for testimony in the case of *S v Amaku & Another*, the researcher was furnished with comprehensive records of multiple sex buyers who entered Eagle Trace Estate, a secure upmarket complex in Johannesburg where a TIP victim was sexually exploited, repeatedly. Records included ID photos and car registration details (including luxury vehicles) of sex buyers who visited the residential brothel. The role of sex buyers in this case closely relates to numerous other TIP cases and similar to abuses suffered by victims at the hands of sex buyers in ongoing prosecutions and successful TIP prosecutions in this study. The victim expressed disgust when recollecting her traumatic experiences of interacting with ‘clients’, many of whom, she stated, “*could have been her father or her grandfather*”. With humiliation, the victim explained “*the type of things that they (the accused) made us do to clients*”. These included blowjobs, golden showers, rimming, and more abusive practices which included sex buyers assaulting her or forcing their fists into her vagina. Also evident in successful prosecutions is the way sex buyers “*care precious little about issues of agency, coercion and third-party influence*” (Van der Watt, 2020b, p. 73). The victim in *S v Amaku & Another* further stated that drugs were mixed with the food that she ate and pointed out that the other girls on the premises were drugged all the time. She reflected on the effect that the drugs had on her:

*“There were days that I could not even remember who I am...I wake up confused. For example then I sleep from the morning and only wake up the next afternoon...I don’t know anything that is happening around me, but my [deep sigh by victim] pants and the top that I was wearing was undone all the time. Just now and then will I wake up slightly then I will take drugs again...”*

The victim also elaborated how she was sometimes given drugs before, during and after seeing a ‘client’ and stated that there were days that she didn’t sleep and compared herself to be like a “zombie” during these periods. Trafficking for commercial sexual exploitation is therefore intertwined with coercive use and abuse of drugs and also compelling trafficking victims to assist

<sup>50</sup> See also US TIP Reports (2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017)

<sup>51</sup> *S vs Dos Santos, S vs Allima, S vs Zweni & Others, S vs Eke, S vs Matini & Another, S vs Eze, S vs Obi & Others, S vs Seleso, S vs Bridger, S vs Amaku & Another*

in perpetrators' drug dealing trade. In *S v Matini* some trafficking victims were induced to assist in the dagga dealing trade.

Prominent online adult platforms identified in this research and that were implicated in both ongoing and successfully prosecuted sex trafficking cases include:

- **Red Velvet** (*S v Abba, S v Amaku, S v Eze, S v Wiedermeyer, S v Baisley & Others, S v Chibuzo Richard & Others*)
- **Ads Africa** (*S v Abba, S v Eze, S v Tshepo Motswasele & Others*)
- **Sex Trader** (*S v Abba, S v Bridger, S v Onangaya*)
- **Streamatemodels.com** (*S v Seleso*)
- **Glamour Girls** (*S v Bridger*)
- **Escourts SA** (*S v Eze, S v Obi, S v Chibuzo Richard & Others*)
- **Springs** (*S v Obi*)
- **Bonga** (*S v Osabiya*)
- **MyFreeCams** (*S v Osabiya*)
- **Premier** (*S v Chibuzo Richard & Others*)

Figure 25 depicts a large Red Velvet billboard in a Pretoria neighborhood that is located in close proximity to both a primary school and a high school in an upmarket neighborhood. The Red Velvet receipt in Figure 26 was found in a brothel that was raided during a sex trafficking investigation, and shows the range of sexual services that sex buyers can purchase.

*Figure 25 A Red Velvet Billboard*



*Photo credit: M van der Watt*

Figure 26 A Red Velvet Receipt in a sex trafficking investigation



In one example of online sexual exploitation, the child victim in *S v Seleso* was exploited through the use of a live streaming platform employed by her traffickers. The victim’s profile had more than 6000 log-ins from sex buyers who spanned the globe. Section 8 of the PACOTIP Act criminalizes conduct that facilitates human trafficking, such as advertising information by any means, including on the internet. No prosecutions in this regard could be traced. Furthermore, at least 108 persons of interest (suspects) were identified in the 44 successfully prosecuted TIP cases who played a direct or indirect role in facilitating TIP crimes yet were not arraigned before court. Another important insight from the data in this study is evidence of police complicity in TIP crimes. It is by no means an incongruity in TIP crimes and will be discussed next.

### Finding 5: Indifference, corruption, and official complicity

The corruption ‘footprint’ is by no means an anomaly in South Africa’s TIP landscape. As early as 2004, the US TIP Report implored the Government of South Africa to “*move vigorously to combat organized trafficking syndicates and lower-level government corruption*” (US TIP Report, 2004, p. 77). Since then the issue has become an established concern in South Africa’s annual US Department of State TIP Profile (currently on the Tier 2 Watchlist), with “*official complicity in trafficking crimes, especially by police*” (US TIP Report, 2021, p. 511) persisting. Furthermore, well-known brothels historically identified as sex trafficking locations continue “*to operate with officials’ tacit approval*” (US TIP Report, 2021, p. 511). Evidence in several successful prosecuted TIP cases confirmed indifference, corruption and complicity by law enforcement officials. In *S v Seleso*, a SAPS officer who was tasked with investigative responsibilities allegedly sexually assaulted the victim and stole money from her. In 2018, after the commencement of the trial, the minor victim absconded from the place of safety and could not be traced. In *S v Bridger* one of the accused persons was not arrested for a protracted period of time as she provided police officers with free sexual services by the victims. In *S v Eze*, both victims were handed back to their traffickers by members of SAPS after they disclosed their abuse. This resulted in severe punishment and even death for the victims who attempted to



escape. A victim in the case stated that she lost “all faith and hope in their [police’s] ability to help her”. In *S v Obi*<sup>52</sup> the court found:

*“... 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. This is some of the evidence that came out in this trial.”*

The prominence of corruption was explicitly commented on in the case of *S v Dos Santos* where children were trafficked between Mozambique and South Africa:

*“... there clearly exists an illicit infrastructure to transport these young females across the border into South Africa under escort. The mere existence of such infrastructure justifies the inference that the crimes of which the appellant had been convicted comprise but a fraction of the criminal activity the Convention and its protocol aim to address... transport of the complainants to and from South Africa demonstrates, as the regional magistrate correctly found, involvement of corrupt government officials. The above mentioned circumstances create a climate that lends itself to the commission of the crimes under consideration...”*

Other successful TIP prosecutions with evidence of corruption included *State vs Odii*, *State vs Palan & Another*, and *State vs Zweni & Others*. In one ongoing prosecution (*S v Islam*) four SAPS members are on trial for TIP-related charges related to the kidnapping of ten Bangladeshi nationals. At the time of their arrest, the accused persons had a pending IPID investigation for kidnapping and related charges which suggests that their actions were by no means novel. All four SAPS members were still on duty at the time of writing. Civil society complaints and concerns submitted to TIP Task Teams are manifold. Verbatim vignettes include<sup>53</sup>:

- “A case of trafficking was reported to the Hawks late in 2017. Same case was reported and followed up again and again in 2018 and different Hawks personnel knew about the case. It was brought up several times within a Provincial Task Team meeting. By May of 2018 promises were made by the DSD to assist the child but nothing was ever done to assist the victim or to investigate the suspects.”
- “A case was reported to the Hawks about a victim that involved several witnesses from a business. The witnesses were willing to cooperate, but the Hawks never interviewed them – NO statements obtained.”
- “A victim was rescued and reported to the Hawks but later returned to the suspect. A Hawks member said they weren’t going to investigate the matter because they didn’t believe she was a victim of TIP since she went back to the suspect.”
- “A case was reported by a family member and statements were taken. However, when it was followed up... the Hawks ended up interviewing the victim in front of the suspect because of this the victim denied allegations and the family members statements were ignored.”
- “We have a list of several case numbers that have never been investigated and possibly also deleted. One in particular has been deleted and it involves a trafficking syndicate and an informant being threatened by SAPS members.”

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<sup>52</sup> Conversely, the court also commented: “... there are those police officers who take their work seriously and it was their efforts that led to the prosecution of, in particular, accused 1 in this matter.”

<sup>53</sup> Source email sent to National TIP Task Team (17 July, 2019) on file.

- “When trying to report cases, police states that no one is being murdered or raped so therefore ‘it is not their problem’ and no cases or enquiries are registered”.
- “House where Congolese men were kept in hazardous conditions; couldn't understand the Social Worker; were kept locked in room; etc. Suspected of being forced to beg on the street for a syndicate. Police did not respond as they were not South Africans. Men have since disappeared from the premises.”
- “Victims not willing to report trafficking because the police believe they “asked” for it.”
- In some of our investigations and follow-ups, we were informed that dockets disappeared, or cases was thrown out because of mistakes.”

From existing research and evidence from the various sources in this study, it is clear that experiences related to indifference, corruption and/or complicity in TIP crimes are manifold and debilitating (Frankel, 2016; Motseki & Mofokeng, 2020; Ngalwa, 2006; Nicholson, 2011; Van der Watt, 2018, 2019a). Not only do these problems inhibit the investigation process, compromise the potential for success, and perpetuate and enable the crime of TIP, but they constrain efforts to better understand the nature and prevalence of TIP in South Africa. Additional insights into the issue of corruption and official complicity are discussed in the sections below related to ‘South Africa as Transit Country for TIP’ and ‘Missing Persons and TIP’.

## ADDITIONAL FINDINGS

‘South Africa as a transit country for TIP’ and ‘the link between missing persons and TIP’ are discussed as two supplementary findings in the report. The discussion below draws from a range of available sources.

### SOUTH AFRICA AS A ‘TRANSIT’ COUNTRY FOR TIP

Evidence of ‘transit’ for the purpose of TIP is a fleeting dynamic that may not always be as readily available when compared to evidence for a country as a ‘source’ or ‘destination’ for people to be exploited. Organized crime and corruption are not the only factors that diminish insights into South Africa’s position as a transit country for TIP. Poor record keeping, inaccessibility of official TIP data, and the long-outstanding integrated information system required to collate and analyze the specific information as detailed by Section 41(1)(b) of the PACOTIP Act, further compounds and masks evidence of transit. The lack of proactive investigations and intelligence sharing, and a largely inactive National TIP Task Team, means that evidence of South Africa as a transit country is not proactively pursued with international counterparts. It is therefore important to consider the sum total of available transit evidence, as well as the plenteous transit ‘possibilities’ and transit ‘plausibilities’ that stem from the multi-system TIP shortfalls and response deficits.

In a multi-country study on the smuggling of migrants and the trafficking in persons from Nepal (UNODC, 2019), South Africa was highlighted as the main destination for smuggled migrants and trafficked persons in the South African region and within Africa, and as *“an origin and transit country for trafficking towards Europe and North America, and for trafficking and smuggling to and from Latin America and Asia”* (UNODC, 2019, p. 50). The report explains that *“most Africans see South Africa as the easiest country of transit to reach Europe or the Americas”* (UNODC, 2019, p. 51). Nationals of other African countries try obtaining a South African passport legally or illegally and travel to Ireland and onwards to Europe. For both Ireland and the United Kingdom (UK), regular channels are also used but with a fake passport or those that



are obtained illegally. Numerous references are included in this study from which South Africa as a transit for TIP, smuggling, and smuggling-cum-trafficking, can be inferred.

The UNODC (2019) report refers to information received from stakeholders that Bangladeshis are entering South Africa, *“especially those who were in debt bondage back at home and wanting to earn quick money to pay off the debts”* (UNODC, 2019, p. 50). The migrants are said to enter the Johannesburg airport and then immediately depart to Lesotho via a connecting flight. After reaching Lesotho, *“they just walk across the porous borders back into South Africa to avoid all documentation checks and start working for low wages or illegally”* (UNODC, 2019, p. 50). South Africa’s borders, more porous than a *“tea strainer”* (Van der Watt, 2018, p. 279), and numerous references to *“compromised embassies and embassy staff”* (Van der Watt, 2018, p. 279) communicated by frontline law enforcement officials responsible for TIP investigations, are additional considerations when considering the country’s ‘transit profile’.

According to Love Justice International (South Africa), monitoring teams recounted multiple incidents when dealing with possible TIP victims and surmised that traffickers try multiple times to move a person to an intended destination. Traffickers can earn enough money for each “delivered victim” that they are able to cover multiple failed trips (including air fares) and pay facilitators, handlers and officials along multiple, complex routes to the end destination. LJI’s work in the region has highlighted cases where South Africa is used as a transit to other countries. Some cases have involved potential victims being intercepted en route to South Africa, and staff have also uncovered plans of traffickers to move their victims to other countries out of South Africa. Other cases have involved the interception of potential victims at various transit points in the region, where after the potential victim communicates that a plan is in place for a facilitator to re-route them elsewhere. LJI monitoring teams have also intercepted the same potential victim at another transit point using a different route to the same end destination. In such cases, South Africa is most often used as a Plan B when the first direct route out of the source country has failed. Travel through both land borders and airports into and out of the country has been used. These were all based on intercepts of potential victims in high risk and evidence cases (see LJI cases). Two case studies involving the same known trafficker, were supplied by LJI:

### **Case Study 1:**

A LJI monitor intercepted a male Potential Victim of Trafficking at the airport. After the interview, there was enough information to arrest the TIP suspect that was with the potential victim of trafficking. The male potential victim of trafficking did not understand the possible dangers he was facing until Love Justice Namibia spoke to him about trafficking. During conversations with the victim and TIP suspect, it was discovered that there were more women in Johannesburg (citizens of a neighboring country) at a lodge. They had been told that if they come to South Africa then someone will take them to the UK or Turkey for work. According to WhatsApp messages from the other potential victims, the suspect(s) are pairing them up for travel. They do not get to choose or manage their travel itinerary. The female potential victims of trafficking are hungry, crowded, and trapped until their recruiter/handler is able to take them out of the country. Additionally, they don’t have their passports as the recruiter/handler has taken possession of it. It is very possible that these women do not yet understand that they are in the process of being trafficked.

**Case Study 2:**

A 23-year-old student, whose studies were on hold due to financial constraints, was profiled by the monitor. Her story was that she was going to South Africa for a youth conference. The potential victim of trafficking didn't know where in South Africa the youth conference was hosted and who the person in charge was. She had no proof that the conference was a legitimate event. The potential victim of trafficking did not have a return ticket or money. The monitor contacted the potential victim of trafficking's parents and spoke to the mother. Both the parents relayed the same narrative as that of the potential victim of trafficking. The mother asked who would be meeting the potential victim of trafficking in South Africa. The mother then mentioned the name of a known suspect of human trafficking (same persons as in case study 1). The family claimed that he was a relative but didn't know anything about him. The monitor asked the potential victim of trafficking to be frank about her journey arrangements, and permission to check her conversations with the suspected trafficker was granted. The potential victim of trafficking was escorted to an office for a subsequent interview. The monitor then discovered that the potential victim of trafficking was not honest and was, in fact, destined for the UK.

Additional 'transit' threats, risk factors, and inferences made by practitioners include:

- Asian men land at the Cape Town International Airport and move in groups of eight to ten people at a time. One person is in possession of an envelope or parcel that contains all the men's passports. The men are not checked or interviewed by immigration officials and, in some cases, appear to be whisked away in haste by immigration officials. The arrivals of the men have been linked to the fishing industry, with as many as 60-80 of these men identified at the Cape Town airport each month. One practitioner who is fluent in Indonesian has confirmed that multiple Indonesian<sup>54</sup> men have requested help to inform their families of their arrival in Cape Town to work on fishing vessels, and not in some Asian country as was originally communicated or agreed upon. The exact destination where these men end up 'working' is unknown.
- Children from Eswatini who enter South Africa to attend a bicycle riding course in the country, but who then participate in competitions in other African countries.
- Eastern-European women who arrive in South Africa with a one-way plane ticket to accompany men on Safaris in neighboring African countries.
- Multiple incidents were observed where passports are issued after the date on which the visa was issued, and visas that are issued in neighboring countries where the passport carrier never set foot before. Immigration stamps are frequently absent in these examples.
- Evidence of highly compromised situations, in which TIP were believed to be a plausible outcome, were observed and included inadmissible passengers awaiting further processing and interviewing from immigration officials. Found in their possession are instructions regarding which counter they must go to and the details of the immigration

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<sup>54</sup> **Indonesia country narrative:** "More than 7,000 Indonesian fishermen per year sign in and out of foreign vessels at the port in Cape Town, South Africa, reportedly facing dire working conditions, particularly on vessels owned by Taiwan, Korea, and Japan" (US TIP Report, 2018, p. 228); **South Africa country narrative:** "Foreign male forced labor victims have been identified aboard fishing vessels in South Africa's territorial waters; NGOs estimated 10 to 15 victims of labor trafficking disembark each month in Cape Town." (US TIP Report, 2018, p. 390).

official that will assist them. In one example, an Indian national waited to be interviewed and suddenly disappeared. His passport and luggage were left behind in front of the immigration official's office on their side. Moments later, the immigration official returns with a bottle of whiskey from the Duty-Free shop.

At the time of this writing, an alleged kingpin utilized South Africans' identity numbers and fingerprints to manipulate the DHA system and use foreign nationals' photos to create fraudulent passports. Officials from the DHA were among those arrested for complicity and corruption in these crimes. DHA Minister Aaron Motsoaledi is quoted as confirming that the kingpin worked with corrupt DHA officials in a network that spanned Gauteng, Limpopo, KwaZulu-Natal, Eastern Cape, Western Cape, and Mpumalanga. As part of an elaborate criminal operation, it is alleged that South Africans were recruited for as little as R500,00 and promised jobs abroad, which never materialized. Criminal elements are alleged to have pocketed between R5,000 and R10,000 per passport, while the kingpin allegedly charged approximately R40,000 per passport to any foreign national who sought to acquire one (O'Regan, 2022). Sex traffickers who supply "*Home Affairs services*" (Van der Watt, 2019a) have also been documented in South Africa. If they do not personally 'supply' these services, they benefit from it, which enables, among others, transnational sex trafficking. As pointed out elsewhere (Van der Watt, 2018, pp. 197-198), one sex trafficking victim provided a detailed account of how she and other girls were flown out of South Africa to Russia on four occasions from Oliver Tambo International Airport by a prominent Russian trafficker without requisite travel documentation:

*"I know I was in Russia on four occasions. I did not have an ID book...nobody signed me out of the country. My question to you is, how could this happen? How could I leave the country on four occasions...I did not have a passport at that time?"*

The possibility of such an incident occurring was tested with two senior officials – one from SAPS and another from the DHA. The SAPS official was skeptical during the interview on 2015-05-26 that this could in fact occur, but subsequently communicated with the researcher via SMS on 2015-06-01 at 14:24, stating: "*The story of the Russian girl at OR Tambo can happen, I found out*". Similarly, the DHA official stated that such an incident was "*highly, highly possible*" (Van der Watt, 2018, p. 197). Another example which sheds light on the intricacies of corruption at OR Tambo International Airport was provided by a senior DHA official. The official stated that it is not only DHA officials that may be involved, but a spectrum of actors that include the flight attendants, immigration officials, airport security and the police. This includes undercover officials "*that are working there and instead of them picking these things up, because they are also on the payroll of the syndicates, they just let everything pass*" (Van der Watt, 2018, p. 278). To qualify the statement that the possibility exists for an entire chain to be compromised, the DHA official responded:

*"Yes, I am. I am because I've dealt with them. Especially with the guys from crime intelligence. I'm glad that we're gonna to remain anonymous because this is actually dangerous. There's a team of guys that I worked with..."*

In the next section the nexus between TIP and incidents of missing persons will be discussed.

## MISSING PERSONS AND TIP

Not all missing persons' incidents relate to cases of TIP, but many TIP cases are typically incidents where people are reported or at least deemed to be missing (see Chatterjee 2015). This nexus 'begs to be interrogated' (Van der Watt, 2015). Emser and Van der Watt (2019) found that negligible attention has been afforded to the link between at least some incidents of TIP in South Africa and incidents of adults and children that have been reported as missing. They conclude that cases of missing children are *"intricately intertwined with the layers of violence that have become embedded in South African society in the democratic era"* (Emser & Van der Watt, 2019, p. 90). In a four-part essay on missing children in South Africa (Wolfson-Vorster, 2021a, 2021b, 2021c, 2021d), child protection activist Robyn Wolfson Vorster pieces together a well-researched mosaic of South Africa's sociological abyss that consumes the missing, and the bountiful voices and lived experiences that undergirds her unsettling findings. Albeit not an academic research project on the missing children phenomenon in South Africa, Vorster's research, methodical argumentation, and evidence show how indifferent society has become, both philosophically and pragmatically, to the plight of the missing and those that await their return. With reference to South Africa's 'ghost children' – the unknown multitudes that are not reported missing – Vorster poses an unsettling question:

*"While the government claims that there is no missing children problem in South Africa, statistics, such as they are, can only be valid if all missing children cases are recorded. But in a country where poverty, fear, mistrust of the police, cultural practices and even parent complicity result in cases going undisclosed, ... children are significantly under-reported. It raises the question; how do you find children if no one knows they are missing?"*

An example of South Africa's 'ghost children' can be found in a case where the author of this report – in his capacity as case manager for the NFN - assisted a senior citizen from Atteridgeville, Pretoria, in opening a TIP matter (Atteridgeville CAS 459/01/2020). The case involved her 20-year-old stepdaughter, who had gone missing after leaving Pretoria for an employment opportunity in Johannesburg. Her attempts to get a response from the SAPS failed. Her statement was obtained and assistance provided to register the case. The senior citizen stated that her stepdaughter, Thembi\*, had left home on 6 December 2019 to take up an offer of employment. When she had not heard from Thembi\* by 8 December 2019, she tried calling Thembi\* on multiple occasions but could not reach her on her cell phone, which was switched off. The stepmother stated that Thembi\* only made contact with her on 20 January 2020 (6 weeks later), during which Thembi\* whispered, cried hysterically, and *"told me that the women who offered her a job, sold her to Nigerians"*. The phone call was brief, but Thembi\* managed to inform her that she was being kept at a residential brothel in Johannesburg, that *"they are selling us to different men"*, that her captors were armed, and that there were other girls being exploited at the same premises – *"some as young as twelve years"*. The whereabouts of Thembi\* and an unknown number of possible child trafficking victims remain unknown.

Official and updated missing person statistics are not readily available but have been gleaned in data sets made available by SAPS for two research studies (Van der Watt, 2018; Van der Watt, 2022). Table 13 below presents data on missing persons in South Africa for the period 1 January 2000 up to 31 December 2015:



Table 13 Reported missing persons: 1 January 2000 to 31 December 2015

<b>Adults</b>	
Reported missing from 2000/01/01 to 2015/12/31	49 346
Cancelled (found) from 2000/01/01 to 2015/12/31	25 543
<b>Unaccounted for or still missing</b>	<b>23 803</b>
<b>Children (Under 18)</b>	
Reported missing from 2000/01/01 to 2015/12/31	14 252
Cancelled (found) from 2000/01/01 to 2015/12/31	10 295
<b>Unaccounted for or still missing</b>	<b>3 957</b>

Source: SAPS Bureau for Missing Persons (2016)

In an ongoing study into the missing persons phenomenon in South Africa (Van der Watt, 2022), statistics made available by SAPS for the period 1 January 2000 to 1 January 2020, indicate that a total of 94,252 persons have been circulated as missing over a period of 20 years. Of this, 16,151 were children reported as missing, and 78,101 were adults. The total number of cases closed or canceled amounts to 62,707, while active cases where people are either unaccounted for or still missing, amount to 31,545. Thus, the total number of people (adults and children) still missing or unaccounted for increased by 3,785 from 27,760 in 2015 to 31,545 in 2020. Emser and Van der Watt (2019) point out that proper collection, collation, analysis, and reporting of data is critical to a holistic understanding of how crimes such as TIP relates to missing persons. They warn that “we are missing most of what is really out there when we take the immediate statistical appearance of these phenomena as the whole truth” (p. 109).

For insights related to frontline responses to incidents of missing persons in South Africa, and how TIP indicators and evidence can be inferred from such cases, the 15 years’ experience garnered by Missing Children South Africa (MCSA) - an established national organization in the area of missing persons - must be considered. MCSA is a registered non-profit organization (NPO) that assists with all missing person’s cases throughout South Africa. The organization was established in 2007 when two young girls went missing. After both were found murdered, the need for rapid interventions in similar cases was recognized, and MCSA was founded. The organization started by helping to distribute flyers, emergency contact numbers, and information needed to mobilize a vast network of people and volunteers to assist in the search for the missing. MCSA works closely with the SAPS and does not intervene in cases if a missing person incident has not first been reported to SAPS. MCSA have observed many different reasons why children and adults go missing, including:

- Children and adults that run away from home, many due to traumatic circumstances in the home (i.e., domestic violence, sexual violence)



- Mentally challenged children/adults getting lost
- Children and adults falling victim to crime
- Gender Based Violence
- Kidnappings (opportunistic kidnappings, parental abductions, traditional medicine kidnappings)
- Trafficking in Persons
- Suicides
- Missing persons end up in mortuaries as unidentified.

MCSA considers the number of missing persons in South Africa as “alarming” and, in recent years, has noticed an increase in TIP cases being reported to them. This includes reports from the public that suspect TIP activities in their residential areas. Case examples where the overlap between missing persons reports and TIP were evident, include:

- Young girls are lured by a “Blesser” and exploited in the sex trade.
- A mother that sold her two daughters for R 50,00 for exploitation in the sex trade.
- A mother that tried to sell her stepdaughter for R30 million – the Hawks received a tip-off and set up a sting. She was caught before the girl could be sold.
- Many children’s homes get reported where there appears to be children who are either sold or used on the premises for prostitution.

MCSA experiences a “*significant delay in response to TIP incidents*” and a number of instances “*where SAPS refuse to open cases of TIP or the reporter of the matter is threatened*”. MCSA has seen a “*massive decline in missing persons being found during the COVID-19 pandemic*” and surmise that this can be attributed to a number of possible factors. This includes the vast number of police stations being closed and not being fully staffed. Many cases during this time were not reported due to police stations being closed for decontamination and people unable to report missing persons or any other types of cases. A major challenge faced by MCSA is a “*lack of support from our South African Government*” and rely solely on small donations from the public. SAPS continues to show families away when having to open a missing persons case and, on many occasions, continues to misinform the public that they must wait for 24 hours before reporting a person as missing. The issue of corruption and complicity has also been raised as a major concern by MCSA. In one of several experiences, MCSA was informed of girls used in a “sex ring”. The girls were reported as missing to MCSA. Upon initiating their response protocols, MCSA was informed to “*either back off or go dig [my] own grave.*” Van Aswegen explains:

*“We have come to realize that high profile persons are involved in these “rings” and that the dominance, bribery and corruption is failing the victims. There are prominent well-known people that are involved in the corruption, that have informants within our police services, government and other necessary institutes where they get all their inside information from to make sure they can keep operating without any issues.”*

Another challenge reported by MCSA is the lack of international collaboration between SAPS and agencies in other countries. This makes it “*very difficult for organizations like ours to get the “flier” of the potential victim out internationally*”.

In this study, it was not possible to enumerate how many of the actual and potential TIP victims in ongoing prosecutions, successful prosecutions, and civil society data were reported as missing to SAPS and organizations such as MCSA. Evidence that TIP victims were actually reported as missing to SAPS may receive cursory attention during pre-trial investigations and consultations with victims and witnesses or could be inferred from testimony during the trial. However, it is not explicitly documented as part of any segment of the TIP knowledge base. In addition to cases where TIP victims were formally reported as missing to SAPS (i.e., *State v Eze & State v Msweli*), examples from successfully prosecuted TIP cases show that trafficked persons are not forgotten by loved ones when they don't return home, but that someone – anyone – may be searching and anxiously await their return, irrespective of whether the disappearance is formally reported to SAPS, or not. Examples include:

**S v Allima:** The minor victim was considered missing by her family for at least four months before she was found by her aunt: *"I went to the owner of the shop; I gave him the phone in order to check the battery of the same phone. Whilst I was inside the shop, I looked inside the shop then I saw the face of Sihle\*. I became shocked because I could see my sister's child, the one who had been missing since May, and we have been looking for her since May"*

**S v Eke:** Evidence was led that the mother of the victim was searching for her since her disappearance from home. A state witness testified that *"she came across the complainant's mother. The mother asked her about the whereabouts of the complainant. She informed the mother that the complainant was in Rosettenville with the accused. The mother gave her a cellphone and asked her to call the accused. She put the cellphone on speaker and phoned the accused. She enquired from the accused whether the complainant was still residing with him, and the accused confirmed that the complainant was with him. She said she and Rumi\* including the complainant's mother took the police to the accused's place of residence."*

**S v Jezile:** The mother of the victim discovered that she was missing from her maternal grandmother's home, and she searched for her but could not find her. The victim's mother testified that during February 2010 she discovered that the victim had been given away in a customary marriage. She testified that she would never have consented to the victim's 'marriage' because she was too young. She could obtain very little information as to whom the victim had 'married' or where she was. The victim's mother subsequently ascertained that the victim had run away from her 'marital home' when the accused came to inform her brother. Despite her search, the victim could not be found.

**S v Matini & Mboya:** Evidence was led that the disappearances of the victims were reported to the police and that a story about the missing children appeared in *The Herald* newspaper. A clipping of the story that appeared in the newspaper was handed in as an exhibit during the trial. One witness testified that *"There were two newspaper articles doing rounds at Fairview, which were read to all present and both were confiscated by number one (the accused)"*

Finally, to map and increase our understanding of the nature of the missing persons/TIP relationship in South Africa, data and statistics related to missing adults and children must be released annually in an aggregated form. The following data, proposed by Emser and Van der Watt (2019, p. 109), must be collected, released annually, and considered in the national response to missing persons and TIP:

- The number of persons reported missing
- The number of persons found
- Reason for, or circumstances of the disappearance
- Circumstances under which the adult or child was found
- Age, gender and race of the missing adult or child
- How many missing persons cases are translated into police inquiries or criminal cases?
- What was the outcome of such police inquiries or criminal cases?
- Geographical location or province where the persons went missing
- Geographical location or province where the person was found

Emser and Van der Watt (2019, p. 109) concluded that when one recognizes only what we can consciously rationalize and count, *“our understanding of these problems in South Africa will be reduced to the most abject limitations”*.

## SECTION 5: CONCLUSIONS

This study explored a spectrum of available evidence related to the nature and prevalence of TIP in South Africa stemming from various sources. These included available SAPS statistics related to TIP reporting; available data from ongoing TIP prosecutions that was active in South African courts during 2021; a thematic analysis of successfully prosecuted TIP cases; the concentric mapping of successfully prosecuted cases to enumerate victims of trafficking (Cohort 1 and Cohort 2), possible victims of trafficking (Cohort 3 and Cohort 4), and acknowledged the potentially vast number of unknown victims exploited online (Cohort 5); available qualitative and quantitative insights from three national counter-TIP NGO's who are represented on Provincial and National TIP Task Teams; and experiences from a national organization that work in the field of missing children. The value and importance of the media as a source of TIP prevalence insights, were also underscored.

The assemblage of evidence from these sources indicates that TIP is indeed a serious, pervasive, and systemic problem in South Africa that seamlessly intersperse with other crimes and social phenomena, including gender-based violence, prostitution, organized crime, missing persons, irregular migration, child abuse, and labor disputes, to name but a few. The true nature and extent of overlap between TIP and other phenomena will only become clear when focussed and dispassionate research that employs the legally binding definition of TIP is prioritized. From frontline experiences and anecdotal evidence, areas that require further investigation into an overlap with TIP include adoption and foster care irregularities, muti killings, terrorism and terror funding, and illegal mining. The link between TIP, money laundering, and illicit financial flows have yet to be investigated and mapped by researchers. Labor trafficking detection, investigations, and prosecutions must be prioritized, and the online adult entertainment arena - implicated in ongoing and successful prosecutions - held accountable for their role in TIP-related crimes.

The number of ongoing- and successful TIP prosecutions by the Government of South Africa is disproportionately low compared to calls for responsive service and data from civil society, available police statistics, media coverage, and practitioner perceptions related to the nature and prevalence of the phenomenon in South Africa. Much of the prosecutorial successes related to TIP are person-dependent, while transdisciplinary expertise and institutional knowledge are confined to a small number of practitioners diffused within government, civil society, NGOs, and academia. Skills transfer and mentoring in all areas of the multidisciplinary responses to TIP, must be planned for and executed by managers.

Law enforcement responses to TIP are overwhelmingly reactive, and the persistent calls for increased specialized and intelligence-led investigations by veteran practitioners remain unheeded. Corruption and official complicity enable and perpetuate TIP crimes in South Africa and severely constrains prevalence insights while detracting from South Africa's international obligations to prevent TIP, protect the victims of TIP, and prosecute those who perpetrate the crime. Moreover, when considering the relationship of corruption with irregular migration, pervasive travel and transit irregularities at South African ports of entry, and missing persons and kidnapping – all within the ambit of TIP – there is little doubt that these crimes, and the people who perpetrate them, pose a national security threat and diminishes the integrity of the country's borders.

Historical and ongoing research claims that TIP is rarely encountered and that there is little evidence of sex trafficking are misleading, obfuscate the day-to-day realities of adult and child

trafficking victims, and fail to employ the legally binding TIP definition of the PACOTIP Act in research. Important and perhaps unsettling questions<sup>55</sup> for practitioners and the research community include: Could there be more to the undercounting of adult and child trafficking in South Africa? How many victims have been missed because of definitional truncation and the rationalization of harm? How many traffickers, facilitators, and sex buyers continue to ply their trade? Where do 'young' and 'very young sex workers' and the employment of their 'services' fit into South Africa's child protection lexicon? And, when considering available evidence explored in this study (i.e., the imposing sex trafficking theme among both children and adults), what is the relationship (if any) between the omission of this evidence in research and ongoing discursive debates and ideologies (i.e. non-securitization of migration and decriminalization of the sex trade)? Quality assurance peer review mechanisms, and Institutional Review Boards will have to consider the methodological issues pointed out in this study and will become increasingly important in TIP studies, especially when policy implications, high stakes litigation, and international funding are involved.

Available TIP evidence clearly indicates that South Africa is a source, transit, and destination country for TIP. Moreover, South Africa is potentially awash with TIP data, much of which remains unexplored or undocumented due to overlapping operational, methodological, ideological, and socio-political factors. The time is ripe for interdisciplinary and transdisciplinary dialogues among all counter-TIP constituents, including practitioners, researchers, policy-makers, and those involved in various forms of advocacy. The next chapter of South Africa's journey to combat TIP necessitates the realization that the phenomenon does not exist in its own private universe, but that its 'fingerprint' - both latent and patent - stretch far wider than what is currently understood. In a country plagued by a gender-based violence crisis (National Strategic Plan on Gender-Based Violence & Femicide, 2020), the intractability of these issues must be considered.

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<sup>55</sup> Some of these questions and/or variations thereof are also posed in Van der Watt (2020b)



## SECTION 6: RECOMMENDATIONS

### Policy Recommendations

1. The South African Government to comply with requisite policy guidelines related to the functioning of Provincial TIP Task Teams, Provincial Rapid Response TIP Task Teams, and the NICTIP – take action against non-compliance.
2. The South African Government to coordinate responsibilities, functions, and duties relating to the implementation of the PACOTIP Act as it relates to establishing public awareness programs designed to discourage the demand for and the supply of victims of trafficking that foster exploitation of those victims, especially women and children (as per section 41(1)(d)(iii)).
3. Employ Section 7 of the PACOTIP Act to discourage the demand that fosters trafficking for forced labor.
4. Promulgate the immigration provisions in Sections 15, 16, and 31(2)(b)(ii) of PACOTIP.
5. Review the PACOTIP Act to remove sentencing provisions that allow fines in lieu of imprisonment, especially for sex trafficking crimes.
6. Prioritize the legally binding TIP definition and ‘abuse of vulnerability’ as defined in the PACOTIP Act in policy discussions related to prostitution and pornography, gender-based violence, child abuse, labor violations, and irregular migration to correctly identify and prevent the undercounting of TIP cases among these phenomena.
7. Include available TIP evidence in relevant policy discussions and law reforms related to Gender-Based Violence, Prostitution Law, Migration, Labor and Employment Law.
8. Invite, elevate, and incorporate the voices of both sex trafficking and labor trafficking victims and survivors in all issues related to the prevention of TIP, the protection of victims, and the prosecution of perpetrators.

### Criminal Investigations, Law Enforcement, and Response to Calls for Service

9. Fully implement and comply with SAPS National Instruction 4 of 2015 related to detectives at police stations, data integrity, and the capturing of TIP and related matters on the SAPS CAS system.
10. Create dedicated capacity for proactive, intelligence-led, and court driven investigations that are paralleled with financial investigations, asset forfeiture, and a counter-corruption strategy.
11. Recognize the NHTH as an official TIP reporting mechanism that augments other official reporting structures in South Africa.
12. Strengthen relational density and secure service-level agreements with key civil society organizations for improved information sharing and timeous responses to calls for response services.
13. Use reported and prosecution data to inform proactive investigations to investigate and respond to the identified third and fourth cohort of possible victims highlighted in this research.

### Information Management, Data, and Statistics

14. Establish the long-outstanding integrated information system to provide evidence on TIP prevalence, facilitate the effective monitoring and implementation of the Act, and commence TIP interventions by collating and analyzing the specific information as detailed by Section 41(1)(b) of the PACOTIP Act.
15. Release up to date TIP statistics as part of the quarterly and annual SAPS Crime Statistics.

16. Release up to date Missing Persons statistics as part of the quarterly and annual SAPS Crime Statistics.
17. Release up to date statistics and prosecutions data (ongoing and successful prosecutions) as part of relevant NPA and DOJCD reporting mechanisms.
18. Available media and data technologies (i.e., Dexter by MMA and Open Cities Lab and the LexisNexis Human Trafficking Awareness Index) to be invigorated, funded, and mobilized to coax TIP prevalence insights from the plethora of historical and ongoing TIP media reporting.
19. Increase specialization and capacity among journalists to better document TIP incidents and gather relevant evidence-based data for TIP prevalence insights in South Africa.

### **Research and strengthening of the TIP knowledge base**

20. Prioritize the legally binding TIP definition and ‘abuse of vulnerability’ as defined in the PACOTIP Act in research related to prostitution and violence in the sex trade to correctly identify and prevent the undercounting of TIP cases in research studies.
21. Prioritize research into the issue of labor trafficking and the continuum of exploitation and abuse. Ensure a focus on all forms of TIP, including its links to forced marriage, child labor, and organ trafficking.
22. Institutional Review Boards, Ethics Committees, Postgraduate Research Supervisors, and Local and International Research Funders to be cognizant of the research pitfalls and the omission of important sources of information that is vital for evidence-based findings and policy recommendations.
23. Quality assurance and peer review mechanisms in national TIP studies to include practitioners, representatives from government departments and TIP Task Teams, and civil society representatives that work in the area of TIP.
24. Continue to build the evidence base on the nature and scope of trafficking in South Africa for translation to policy, practice, and learning.
25. Increase multi-sectoral capacity building to judicial and law enforcement officials and frontline responders.

### **Recommendations to strengthen the prevention of TIP**

26. Deputy Minister of Justice and Constitutional Development, John Jeffery to continue championing the “Under the Tree” dialogues (Jeffery, 2020c) geared towards vigorously engaging with men and boys to change toxic attitudes and beliefs around masculinity and patriarchy that lead to violence against women and children. These dialogues are to inculcate conversations around issues of sex buying as part of South Africa’s responsibility to discourage the demand for and the supply of victims of trafficking that foster exploitation of those victims.
27. Enhance collaboration and cooperation between TIP civil society organizations and support capacity for the sustainability of services.
28. Strengthen the prevention response to counter-trafficking and reduce vulnerability and victimization, particularly by escalating awareness of exploitation and trafficking to reduce victimization

### **Recommendations to strengthen protection of TIP victims**

29. Strengthen the multi-level and systemic response for adult and child victims of trafficking, alongside the continuum of care.
30. Strengthen the focus on the prevention of secondary trauma and revictimization. Consider lessons learnt from cases such as *S v Seleso* in which a successful prosecution was

secured without the testimony of the primary victim of trafficking. Recommit to victim-led responses and ensure that victims of trafficking are being given a voice and are being heard.

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- *S v Balele* Case no. CC 83/2017 (North Gauteng High Court, Pretoria)
- *S v Bridger/ Reyneke + S v Camilla de Waal Rossouw* Case numbers ~ Case no. CC10/2018 (Western Cape High Court, Cape Town) Judgment 2019-3-5 (main POCA Act and TIP case); ~Case no SH4/2017 (Regional Court Belleville, Western Cape) case against accused 2, 3 and 7 Sentence 2020-11-7 (adult and child victims)
- *S v Cummings & Another* Case no. SS66/2016 GJ (South Gauteng High Court, Johannesburg) Judgment 2019-5-20
- *S v Alina Dos Santos* 2018 1 SACR 20 (GP)
- *S v Ugochukwu Eke* Case no. SS14/2016 (South Gauteng High Court, Johannesburg)
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- *S v Foster Simelane* Case no not available (Regional Court Potchefstroom, North West) Sentence 2014-8-21
- *S v Zweni & Others* Case no. 41/362/2012 (Regional Court Durban, KZN)

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- *S v Abba* Case no CC 41/2017 Gauteng High Court
- *S v Peter Akadoronge* Case no not available ( Magistrate's Court Johannesburg, Gauteng) Sentence 2021 (Nov)
- *S v Frank Amaku and Ilo Promise Somadina* Case no not available (South Gauteng High Court, Johannesburg) Judgment July 2018 Sentence 2018-8-17
- *S v Alaba Makonjuola Asabi*, Case no. unavailable (North Gauteng High Court, Pretoria) Sentence October 2021
- *S v Bridger/ Reyneke + S v Camilla de Waal Rossouw*  
~ Case no. CC10/2018 (Western Cape High Court, Cape Town) Judgment 2019-3-5 (main POCA Act and TIP case);
- ~Case no SH4/2017 (Regional Court Belleville, Western Cape) (case against accused 2, 3 and 7), Sentenced 2020-11-7. (adult and child victims)
- *S v Ronel Eloff & Antoinette Godfrey* Case no SH 599/08 (Regional Court Welkom, FS) Sentence 2009-9-10
- *S v Mathiso* Case no. RC110/2016 (Jeffrey's Bay)
- *S v Matini & Another* Case no. RC 123/2013 (Regional Court Uitenhage, EC) Judgement 2017-10-27 Sentence 2018-2-8
- *S v Xolani Mkhize* Case no. SS 056/2020 (South Gauteng High Court, Johannesburg) Judgment 2021-3-4 Sentence 2021-3-10
- *S v Emmanuel Uche Odii & others* Case number 41/2382/2010 (Regional Court, Durban, KZN) Sentence 2015 October
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- *S v Zweni & Others* Case no. 41/362/2012 (Regional Court Durban, KZN)

#### **Trafficking for child labor**

- *S vs Nancy Eze Light* Case no. GSH(2) 05/16 (Regional Court Goodwood, Western Cape)
- *S v Judite Augusta Nantumbi* Case no SH 45/18 (Regional Court Carolina, Mpumalanga) Judgment & Sentence 18-7-2019. Boy victim.

#### **Trafficking for exploitation of children (buy or sell)**

- *S v Coetzer* Case no. CC 76/2021 (North Gauteng High Court, Benoni) Judgment & sentence 26-1-2022
- *S v Gwambe* Case number not available yet (Magistrate's Court Nelspruit, Mpumalanga) bought baby boy for R2000
- *S v Madlala* Case no. RC 681/15 (Regional Court Pietermaritzburg, KZN). Sell own baby boy - advertise for sale on Gumtree for R5 000
- *S v Ndlovu* Case no. RC298/16 (Regional Court Nelspruit, Mpumalanga) Judgment 2016-12-8 Sentence January 2017
- *S v Wayne & Justine Loubser* Case number not available Gauteng North High Court, Pretoria). Justine Loubser convicted 21-11-6 TIP (sell own boy for R500). To be sentenced 2022-2-22

#### **Trafficking for exploitation by adoption scam**

- *S v Msweli & Another* Case no. RC 465/15 (Regional Court Pinetown, KZN). Judgment 2017-3-13 Baby boy trafficking: "adoption" for R2500 & aircon
- *S v Ramohlola* Case no. CC70/2015 (North Gauteng High Court, Pretoria) Judgment 2015-12-1 Sentence 2016-5-6. Trafficking baby girl & boy 6yrs for scam "adoption": R15 000 per child

## ANNEX 1: BIOGRAPHY

### DR. MARCEL VAN DER WATT

Marcel van der Watt (Ph.D.) is an internationally acclaimed investigative and research professional with 20 years' experience in combating the interspersing criminal economies of organized crime, human trafficking, and sexual exploitation. His cumulative experience as a former Hawks investigator, hostage and suicide negotiator, and human trafficking case consultant continues to inform his work. Marcel has consulted in and provided expert court testimony in several sex trafficking cases. His contribution to the investigation of crime and human trafficking combating efforts have been widely recognized. This includes a commendation by E. Benjamin Skinner, fellow at the Harvard Kennedy School CARR CENTER for Human Rights Policy (2010), a position in the Top 35 under 35 Africans awarded by the Young People in International Affairs (2014), and the Influential Scholar Award by the 17th Annual International Human Trafficking and Social Justice Conference (2020). Marcel is an Executive Committee member of the Global Association of Human Trafficking Scholars (GAHTS), an observer on INTERPOL's Human Trafficking Expert Group (HTEG), and a Research Fellow at the Free State Centre for Human Rights (University of the Free State, South Africa).

### AUTOBIOGRAPHICAL PROBLEM STATEMENT

Dr van der Watt's experience with the interspersing criminal economies of organized crime, human trafficking, and sexual exploitation in a variety of roles, contributed to this study's conceptualization and undertaking. The autobiographical problem statement, therefore, becomes an important methodological component to explicate. It elaborates on the researcher's experience with the phenomenon under investigation, highlights incidents that led to puzzlement about the topic and addresses the concept of reflexivity (Creswell, 2013, p. 226, 228). Rodgers and Cowles (1993) point out that the researcher's background, prior knowledge, and biases with regard to the study phenomena are interconnected with the research and influence data generation and analysis. Explicating the aforementioned issues is, therefore, crucially important at the outset of the study. The "*investment of the self*" (Birks, 2014: 24) in qualitative research uses the autobiographical problem statement, drafted reflexively by the researcher, to highlight his position, shows the reader what underpinned the engagement with participants, the approach taken to collecting and analyzing data, and informs the way in which the findings are presented (Birks, 2014: 25). It should also provide insights into how he formulates an interpretation of the situation and what he expects to obtain from conducting the research (Creswell, 2013, pp. 54-55). The researcher's history, gender, culture, and lived experiences with the TIP phenomenon was detailed in Van der Watt (2018). After leaving the employ of SAPS as TIP investigator at the DPCI (Hawks) in 2011, he assisted in and/or consulted in numerous TIP criminal investigations and testified in- and/or consulted in several prosecutions that were part of this study, including:

*State v Seleso and Another*, Westonaria CAS 150/10/2017

*State v Frank Amaku and Another*, Douglasdale CAS 474/04/2016

*State v Onyekachi Okechukwu Eze*, Brooklyn CAS 236/05/2013

*State v Benjamin Obioma Abba and Another*, Case number: CC 41/2017 on 11-06-2017

*State vs Wiedermeyer & Others*

*State vs Obi & Others*

*State v Alam and Others*. Pretoria West CAS 312/04/2019.

*State v Islam and Others*, Villieria CAS 327/03/2019

*State v Chinonso Richmond Obasi, Krugersdorp CAS 70/01/2017*

The researcher also conducted in-depth and unstructured interviews with at least 13 of the convicted traffickers whose cases formed part of this research. He was an active member of the NICTIP between 2016 and 2020, as well as a member of Provincial TIP Task Teams and/or Working Groups in three provinces since 2008. He remains involved with the KwaZulu-Natal (KZN) Human Trafficking, Prostitution, Pornography and Brothels (HPPPB) Task Team. The write-up of the NFN in this study was co-drafted with Chief Executive Officer (CEO), Diane Wilkinson, in the researcher's NFN capacity as Case Manager for the period October 2011 and November 2021. He is involved in several international TIP platforms, including serving on the Executive Committee of the Global Association of Human Trafficking Scholars, an observer on INTERPOL's Human Trafficking Expert Group (HTEG), and Research Director for the Global Resources Epicenter Against Human Trafficking in Canada. He conducted this study as an international consultant and a Research Fellow at the Free State Centre for Human Rights.

The nature of TIP research and its ideological minefields necessitates that worldviews, biases, and research agendas be clearly explicated<sup>56</sup>. This is particularly important in South Africa's active research landscape around issues of prostitution and migration, where TIP is frequently ignored, undercounted, and/or the legally binding definition of the PACOTIP, omitted. The aforementioned explication must enable a reader to understand the lens applied by a researcher while empowering the reader to weigh up and consider the cumulative value of the methodology employed, the underlying motivations for the research, and its methodological limitations.

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<sup>56</sup> The author's position on the ongoing debate concerning decriminalization (legal sex buying and legal brothels), the truncation of the TIP definition, the undercounting of TIP victims, and problematic research methodologies (among others), has been documented (Van der Watt, 2019b, 2020b).