

A POLICING PERSPECTIVE ON THE INVESTIGATION CHALLENGES OF CHILD TRAFFICKING IN SOUTH AFRICA

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The first of July 2007 can be regarded as an important milestone for the children of South Africa. It was on this date that a proclamation was signed by the President of South Africa on the commencement of certain sections of the new Children's Act, 2005 (Act No. 38 of 2005). For the first time in South African history, trafficking in children under 18 years of age is criminalized, and offenders contravening this new law can be investigated and prosecuted.

The South African Police Service will play a vital role in the investigation and combating of child trafficking. This article will therefore focus on the challenges that the police will face with regard to the implementation of this new law on child trafficking and the investigation and combating of the crime. Human trafficking in general has become a popular topic amongst researchers worldwide. However, almost no research has been done on the complexities and problems involved in the investigation of child trafficking cases. Content analysis provided specific findings that contributed to practical actions and implications. This study will make practical recommendations on how the police should deal with child trafficking investigations to ensure effective implementation of the law. An inquiry based on primary source interviews and a literature study will provide in-depth insight and knowledge on how the police consider implementing this new law.

INTRODUCTION

When South Africa took the step of signing the Palermo Protocol, one of 117 countries, it committed itself to criminalising trafficking in persons and developing legislation to combat it. With the Children's Act 38 of 2005, which includes provisions on the trafficking in children, South Africa paved the way for comprehensive trafficking legislation.

The effect of this newly defined crime of child trafficking is that in future perpetrators will be charged with the crime of *child trafficking*. If they are found guilty they can be fined and or be imprisoned for 20 years.

A perpetrator who is prosecuted for child trafficking can also be brought up on additional charges, for example rape, if there is evidence that the victim was also raped. Anyone can be charged with child trafficking: parents, guardians, care takers or even groups of people such as syndicates. The bill is very comprehensive in that it provides for cooperation between South Africa and

other countries. It even allows the prosecution of South African citizens and permanent residents who commit child trafficking in other countries. It also addresses aspects such as assistance to victims and includes the role of various government departments in dealing with child trafficking.

Another effect of this new law is that all cases that are reported to the South African Police Service will have to be captured and statistics will be available on reported cases. Inadequate statistics in the past made it very difficult to combat child trafficking; even researchers were playing a guessing game as to the real extent of the problem.

It may be very satisfying to have this new law; but how will the police deal with it? Are they ready for the challenge? In an article entitled “2010 child trafficking concerns highlighted”, Silva (2007:5) explains that there are fears that the new law will take three or four years to be properly implemented. It will be a challenge for investigators to prove the elements of child trafficking, and the fact that it is mostly syndicates that are involved in this crime will make the investigation thereof even more complicated.

The focus of this research is therefore the challenges facing the police with regard to the implementation of this new law on child trafficking and the investigation and combating of this crime. The researcher attended the first child trafficking case in South Africa at the Pretoria Regional Court on 12 May 2008. Aldina dos Santos, a 28-year-old Mozambican woman, was arrested at a brothel in Moreleta Park, Pretoria, on 13 February 2008. She is currently on trial facing 68 charges. This was the first step taken in the implementation of the new legislation with regard to child trafficking.

DEFINING KEY CONCEPTS

A description of important concepts will ensure a general understanding by readers of the meaning of the various concepts referred to in this paper.

The South African Law Commission (2004) Issue Paper 25 on trafficking in persons defines *trafficking in persons* according to the United Nations Palermo Protocol as follows:

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. **Exploitation** shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Section 1 of the Children’s Act 38 of 2005 defines exploitation as follows:

Exploitation in relation to a child includes all forms of slavery or practices similar to slavery, including debt bondage or forced marriage; sexual exploitation; servitude; forced labour or services; child labour prohibited in terms of section 141; and the removal of body parts.

A child

A child shall mean any person under 18 years of age (Currie & de Waal 2005:600).

Criminal investigation

Criminal investigation is a logical, objective, legal inquiry involving a possible criminal activity (Gilbert 2004:37).

Police Investigator

A police investigator is a law enforcement officer working toward the resolution of a criminal matter through investigative action (Gilbert 2004:45).

RESEARCH ON HUMAN TRAFFICKING

A substantial increase in research literature worldwide over the past decade reflects the concern about the complex issue of human trafficking, which also includes child trafficking. For researchers the topic of human trafficking has become very popular, despite the problems associated with the collection of data, the clandestine nature of this kind of offence, the lack of official statistics and the difficulties in defining what is to be investigated (Pharoah 2006:23).

The definition of human trafficking is so broad and encompasses so many different kinds of abuse, such as forced child labour, drawing of children into prostitution, trading in body parts and child pornography, that it is not an easy topic for research purposes. Other factors which complicate research on trafficking are the lack of clarity on the meaning of certain terms used in the definition, such as coercion, deception and exploitation (Pharoah 2006:23).

Pharoah (2006:66) emphasises that almost no research has been conducted in South Africa on how law enforcement is supposed to deal with trafficking issues in everyday policing. There is a real need for research on the challenges that will face law enforcement and judicial personnel when trafficking cases are to be policed and prosecuted (Pharoah 2006:57).

RESEARCH METHOD

The problem that initiated this research project concerns various challenges and difficulties that investigators face with regard to the investigation of child trafficking cases: the lack of proper guidelines on structuring of investigation units, approaches to trafficking investigations and dealing with and assistance to trafficking victims. Within this context the researcher approached the study from a phenomenological perspective.

The aim of the research was to look at the challenges that the police face with regard to the implementation of this new law on child trafficking and the investigation and combating of the crime and to make practical recommendations that could ensure effective investigations and implementation of this new law.

The research questions that originated from the problem are the following;

- What are the challenges and problems that investigators are facing in dealing with child trafficking investigations?
- How can these challenges and problems be addressed?

In order to obtain information on the research questions, it was decided to make use of an empirical research design, following a qualitative research approach, as explained by Mouton (2001:144,161). Primary data was obtained during in-depth, individual semi-structured interviews with six police investigators, who investigate child trafficking cases, to get their perspectives and views on the problem.

The ranks of the six police participants who were interviewed include constable, inspector, captain, superintendent, and two senior superintendents. The participants' experience in investigation of crime covers 4, 8, 11, 12, 25 and 30 years respectively, which gives them a total of 90 years of investigation experience. The participants requested that their names not be mentioned in the study to prevent any possible victimisation; they will therefore just be referred to as participants. The participants shared their experiences with regard to the investigation of child trafficking cases with the researcher.

Because of the exploratory nature of the research, the non-probability snowball sampling method was used to obtain the opinions and perceptions of the participants; this sampling method is also recognised by Huysamen (1993:46).

Secondary data was collected through a thorough study of relevant literature on the topic; this provided new ideas, different perspectives and approaches to the problem, as indicated by Leedy and Ormrod (2005:81).

The information and data collected for this research was organised, collated, and analysed by breaking up the data into manageable themes, patterns, trends and relationships, as explained by Mouton (2001:108). The purpose of this content analysis was to gain an understanding of the relationship between concepts, constructs or variables in order to determine whether there are any patterns or trends that can be identified to establish themes in the data (Mouton 2001:108).

EXTENT OF THE PROBLEM

Limited research has been done in South Africa on the issue of child trafficking. The fact that there are no official statistics on trafficking of children into, through and from South Africa makes it difficult to give an accurate overview of the problem. Therefore it was decided to make use of various research findings on child trafficking as well as newspaper articles to give an indication of the extent of the problem.

Pharoah (2006:33) argues that South Africa has been identified as a key destination and a country of origin and transit for persons trafficked to and from Africa and also globally. Only a few research studies have examined trafficking in Southern Africa, and the information on trafficking in South Africa is based on studies done by support organisations, media reports and a few research studies. Pharoah (2006:34) refers to two studies that were published in 2000 by Molo Songololo, and one in 2003 by the IOM which focused on women and children trafficked for the purpose of sexual exploitation; and points out that these studies indicate that trafficking is a significant problem in South Africa. Silva (2007:5) explains that 1700 children go missing in South Africa every year and about ten percent are never found.

Harris (2008:15) states in an article in the *Pretoria News* titled “They stole my childhood and education” that every year millions of children are sold into serfdom. He points out that hundreds of children are trafficked to Britain from African countries to be exploited as modern-day slaves. He adds, “The illicit trade in children – sold by their parents, some while still babies, to criminal gangs and human traffickers – has been uncovered by a *Sunday Telegraph* investigation”.

According to *Breaking the cycle of vulnerability* (IOM 2006:22), South Africa is regarded as a source, transit route and country of destination for men, women and children for the purpose of forced labour and sexual exploitation. South African women and girls are trafficked by organised crime syndicates to European and Asian countries, mainly for sexual exploitation, while women and children are being trafficked to South Africa from neighbouring countries such as Lesotho, Mozambique and Malawi for the same purpose. Wilson (2008) agrees that South Africa is the main destination for trafficked children. The author interviewed a 17-year-old Mozambican boy who was trafficked from an orphanage in Mozambique. A man who lived near the orphanage promised him a better life in South Africa. He ended up on a sugarcane farm doing forced labour under severe conditions. He then managed to escape and was admitted to the Amazing Grace Children’s home in Malelane, with 30 other children, some of whom had also been victims of trafficking.

According to the editorial “Unpacking South Africa’s new Children’s Act” (2007:3), child trafficking has emerged as one of South Africa’s greatest challenges. The writer argues that children are trafficked for reasons such as the sex tourism industry, sexual exploitation, forced labour and domestic servitude. South Africa also experiences a huge problem with missing children; according to the South African Police Bureau for Missing Persons, on average 1500 children under the age of 18 go missing every year in South

Africa. No research is available on the extent to which trafficking plays a role in the missing child phenomenon.

Beyrer (2004) indicates in his article "Global child trafficking" that an estimated 1 to 1.2 million children are trafficked globally each year, most of them for cheap controlled labour, sexual exploitation, adoption, arranged marriages, for their organs and also for the use of children by military organisations in conflict zones in countries such as Uganda, Burma and Liberia. The US State Department estimates that between 600 000 and 800 000 persons were trafficked across national borders worldwide between April 2003 and March 2004 (Newman 2006:5). Furthermore the editorial "Slavery today" (2003:2093) estimates that 800 000 to 900 000 men, women and children are trafficked across international borders worldwide, involved in the sex trade or in dangerous low-paying jobs.

INTERNATIONAL INVOLVEMENT OF SOUTH AFRICA

South Africa as a young democracy is an important participant in the international arena to find solutions to the complex problem of human trafficking. The commitment of the country to address the problem of trafficking is reflected by the many conventions ratified by South Africa over the past years.

According to the South African Law Reform Commission's report (2004) on trafficking in persons, South Africa has signed the United Nations Convention against Trans-national Organised Crime and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, during 2000. South Africa also ratified the Protocol to the Convention on the Rights of the Child during 2003. The South African Law Reform Commission's report (2004) points out that this places an obligation on all state parties, including South Africa, to legislate to address issues such as the sale of children. Furthermore, according to the South African Law Reform Commission's report (2004), South Africa ratified the Convention on Forced Labour 29 of 1930 during 1997.

During 2000, South Africa also ratified the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, including all forms of slavery practices such as the sale, trafficking, prostitution and production of child pornography (South African Law Reform Commission 2004).

Van der Merwe (2004) explains that a task team with a multi-pronged strategy was formed in South Africa 2004 in to combat human trafficking, including using children as sex slaves. The task team comprises of two SAPS units, representatives from the departments of Labour, Justice, Home Affairs and Social Development, the International Organisation for Migration (IOM), the UN Office of Drugs and Crime and a Cape Town children's rights advocacy group. This illustrates the willingness of South Africa to cooperate with other countries and institutions in the struggle against human, and specifically child, trafficking.

International organisations that forge a common front to combat trafficking in the Southern African region are the United Nations Office on Drugs and Crime (UNODC), the International Labour Organisation (ILO), the International Organisation for Migration (IOM) and the United Nations Children's Fund (Unicef).

Interpol plays a vital role in fighting crimes against children; this involves coordinating international investigations, analysing information and intelligence and managing a database known as Child Abuse Image (ICAID). Interpol, with its unique position in the international law enforcement community, assists investigative efforts and also prevents unnecessary duplication of investigations (Fight crimes against children 2008).

SOUTH AFRICAN LEGISLATION

South Africa, like other countries, is in the process of developing legislation to deal with the complex problem of trafficking of human beings, learning from the international exposure. The new legislation on child trafficking is an encouraging step for all those concerned about this crime.

The new law came into operation on 1 July 2007, when a proclamation by the President of the Republic was signed for the commencement of certain sections of the new Children's Act, No. 38 of 2005. This research investigated the challenges that the police will face with the implementation of the new law on child trafficking. It is therefore important to have a brief look at what the legislation entails. Section 1 of the Children's Act 38 of 2005 defines trafficking in children as follows:

Trafficking, in relation to a child:

- (a) means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic
 - (i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or
 - (ii) due to a position of vulnerability, for the purpose of exploitation; and
- (b) includes the adoption of a child facilitated or secured through illegal means.

This definition includes illegal child adoptions, although other existing legislation already deals with illegal adoption. If an offender is charged under this section it will be classified as a trafficking offence. The definition includes various actions that can be committed with regard to a child.

It will not be an easy task for investigators to investigate trafficking; they will have to obtain proof that an illegal action did take place. For example, in the case of the sale of a child, evidence that a transaction did take place will have

to be obtained as proof. The clandestine nature of this type of offence will further complicate the evidence-gathering process, but it is for the investigator to overcome this challenge.

The intention of trafficking is to expose the child to some form of exploitation. Section 1 of the Children's Act 38 of 2005 defines *exploitation* in relation to a child as follows:

- (a) all forms of slavery or practices similar to slavery, including debt bondage or forced marriage;
- (b) sexual exploitation;
- (c) servitude;
- (d) forced labour or services;
- (e) child labour prohibited in terms of section 141; and
- (f) the removal of body parts.

The definition covers all forms of exploitation in relation to a child. To ensure a conviction, the police investigation will have to prove that exploitation did take place and also what the purpose of the exploitation was.

Further to this, Chapter 18 of the Children's Act also deals with the UN Protocol to prevent trafficking in persons and to combat child trafficking in general. This chapter deals with important aspects, such as;

- The UN Protocol to prevent trafficking in persons (These provisions are also law in the Republic of South Africa.)
- International cooperation
- Trafficking in children prohibited
- Behaviour facilitating trafficking in children prohibited
- Trafficking of a child by a parent, guardian or other person who has parental responsibilities and rights in respect of the child
- Reporting of a child who is a victim of trafficking
- Assistance to a child who is a victim of trafficking
- A child who is a victim of trafficking found in Republic
- Repatriation of child who is victim of trafficking
- Extra-territorial jurisdiction

The legislation mentioned above will not be discussed any further. However, for the purpose of this article, where the focus is on the challenges that the police will face with the implementation of the new law, it is important to have a look at Section 288 of the Children's Act. This section deals with the reporting of a child who is a victim of trafficking. The article states that an immigration official, police official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking in the Republic must refer that child to a designated social worker for investigation in terms of section 289(1). This places a mandatory reporting obligation on certain categories of persons.

There is no obligation to report the trafficking incident (crime) to the South African Police, but only to refer the child to a designated social worker. The

designated social worker is also not obliged to report the child trafficking incident (crime) to the police. For the police who are responsible for investigating the crime, this is really problematic. It may happen that the crime is never reported to the police, or that the police are the last to receive the information that a trafficking crime was committed. Taking into consideration the fact that trafficking crimes are mostly committed by organised criminals, it is vital for the police to deal with a trafficking crime as soon as it is discovered. If the police are the last to receive information that a crime was committed, valuable leads may be lost due to the delay in reporting the crime. This will have a devastating effect on the police investigation.

SOUTH AFRICAN POLICE INITIATIVE

According to Van der Merwe (2004), since 2004 the South African Police Service has formed part of a multi-pronged task team with the mandate to investigate and combat human and child trafficking. The police took the initiative of setting up a hotline in conjunction with their Centre for Missing and Exploited Children (Bureau for Missing Persons) in order to exchange photographs and details of children suspected to be part of sex rings.

The effect of this was that detectives would be able to forward information and photographs via e-mail to the centre. It was also decided that South African detectives would link up with Interpol and share information on possible suspects, which would enable them to conduct searches on relevant databases. Interpol would then be able to provide information on aspects such as previous convictions and passport validity. This arrangement between SAPS and Interpol can only strengthen investigations in this regard. In addition South African police officials were also requested to inform the relevant embassy or high commission, as well as Interpol, in cases where foreigners were arrested or implicated in investigations locally.

Van der Merwe (2004) rightly points out that a thoroughly prepared case docket with information on the suspect's previous convictions and endorsements that he or she is a wanted person can strengthen the case both locally and internationally.

THE POLICE INVESTIGATION

The importance of identification

Identification is of vital importance for an investigator, who will have to apply the principles of identification during the investigation process. The first step in the process is situation identification, which refers to identifying the crime that was committed, then victim identification, which refers to the identity of the victim, and lastly the positive identification of the perpetrator and his or her unlawful participation in the crime (Marais 1992:2).

If one studies the definition of trafficking from an investigation point of view, the challenge is that investigators will have to prove that it is indeed a case of trafficking. At first glance it may look as if the crime that was committed falls

under common law, for example abduction, kidnapping or indecent assault. This in itself makes child trafficking a difficult crime to identify, while the clandestine nature of this crime and the fact that it is mostly committed by organised criminals contributes to the complexity.

Glick (1995:325) explains that one of the characteristics of organised crime groups is that legitimate businesses are often used to launder the illegal income or funds. Other features of organised crime are the use of power, intimidation and violence to achieve its goals.

If one compares a trafficking investigation to a rape investigation, it will probably be easier to determine that the crime of rape was committed than to prove child trafficking. In a case of trafficking the elements of the crime must be proved: for example that the child was indeed recruited or sold and that threats of violence were used. The investigator will have to obtain evidence to prove this. Investigators responsible for child trafficking investigations will therefore have to be experienced in the method. Apart from obtaining information from complainants (victims) or witnesses, other types of physical evidence can also play a role in child trafficking investigations; such as computer evidence, documents, blood, semen, drugs and firearms. To obtain evidence from a victim can be problematic due to the fear of retribution from the traffickers and their associates should evidence be given against them (Piotrowicz 2002:263).

If trafficking cannot be proved by the investigation and there is sufficient evidence to prove that a crime such as indecent assault was committed, the offender will be prosecuted for the latter offence according to the South African Law Reform Commission's report on trafficking in persons (2004:67). This may have the negative effect that victims will have to attend more than one court hearing to finalise the case. This may lead to further victimisation by the criminal justice system, as pointed out by the South African Law Reform Commission's report (2004: 67).

RESULTS FROM THE INTERVIEWS WITH SOUTH AFRICAN POLICE OFFICIALS

Information on cases investigated

The participants investigated a total of forty child trafficking cases altogether. According to the participants, these cases were not registered on the police CAS system as *child trafficking* but rather as abduction, kidnapping or charges of rape. The participants shared their experiences with regard to the investigation of cases as follows:

Child trafficking statistics

"Approximately 10 to 15 former cases that I investigated were registered as kidnapping, abduction or rape. One of my current cases consists of more than 60 charges of rape, fraud and assault. It is clear that child trafficking is a

reality in South Africa, although the South African Police statistics do not reflect it due to shortcomings in their data capturing system.”

Experience of police officers

“In all of these investigations a major stumbling block is the inexperience/uncertainty of police officers at ground level on how to react when the crime is detected. Children are often smuggled by women pretending to be caretakers responsible for accompanying children from one country to family members in another country. Stolen or forged travel documents are often used, especially where trafficking is done through airports.”

Training of the community

“People known to the parents also sometimes take children. These individuals promise the parents (especially where parents are poor) that they will take the child to a foreign country for schooling and so on. Once the child is taken from the parents this is not done and the trafficking process starts. It is not only the police that are in need of training; it is also community members who need to be educated on how to protect themselves and their children from becoming victims.”

“I initiated various projects on child trafficking. We targeted the owners of hotels who allowed child prostitution on their premises and managed to close down very prominent places. As a result of this operation, a recommendation was made that children who are involved in prostitution must be managed separately from other children in care matters and receive specific targeted treatment.”

Training in the investigation of child trafficking

All the participants agreed that police officials do not receive any training in dealing with child trafficking and that it is also not addressed on the detective training course. However, one of the participants stated that Human Trafficking is one of the modules in the Organised Crime Course of the SAPS and that various workshops are held to support the investigation officer.

One participant attended two one-week workshops on human trafficking that were offered by the National Directorate of Public Prosecution (NDPP). Another attended a conference that was hosted by the Department of Homeland Security: ICE African Regional Child Exploitation & Forced Child Labour. Another one of the participants was fortunate enough to attend a seminar in Bangkok, Thailand, while yet another received training at Interpol Lyon. One participant explained that he keeps himself informed on human/child trafficking by conducting his own research on the internet, and by reading books and articles. One of the participants stated that the police are planning to present a human trafficking course at Hammanskraal for personnel at the human trafficking desk and investigators dealing with these cases.

As one participant explains: “I am not aware of any official SAPS training intervention that focuses specifically on child trafficking. Individual crimes that fall under the umbrella concept of trafficking, such as abduction, rape, domestic violence and so on, are covered in courses such as the detective learning programme and the FCS [Family Violence, Child Protection and Sexual Offences] course. The only training programme that I am aware of is a five-day workshop presented by the International Organization for Migration (IOM). Interpol do offer training hosted by the relevant Interpol Secretary General Sub Directorate. The International Organization for Migration (IOM), however, gives regular training on Human Trafficking, Smuggling, Border Line, PSS Protection Security Issues, and Border Police.”

The fact that the SAPS itself does not provide enough structured formal training is a serious concern; without training, efforts to investigate and combat this crime will be limited and more children will become victims.

Policy and guidelines on how to deal with (investigate) child trafficking cases

The participants were in agreement that there is no formal policy or guidelines in SAPS focusing on child trafficking. On this question the various participants gave the following answers.

“Presently there are no guidelines. This makes it very difficult to deal with these cases. I am using my own initiative to deal with these cases because there are no direction, guidelines, or instructions in place at the moment. There are different Protocols to follow between different foreign countries, which I had to find out myself. In court I experienced the same problems, where prosecutors could not prosecute because of a lack of training and experience. The court had to make special arrangements and provided a prosecutor from the National Prosecuting Authority (NPA). [There is] no training; it is done on an individual basis by some investigating officers. Currently cases are handled on an ad-hoc basis and are investigated in terms of current common and statutory law offences; the actual trafficking issue is not addressed.”

“Interpol does have policy and guidelines in place. Interpol Pretoria channelled all child trafficking cases to the South African Police Service Organized Crime Units. Cases reported by South African authorities are channelled to Interpol member countries as prescribed by the Interpol Constitution.”

“I am not aware of guidelines or policies in the South African Police Service on human or child trafficking. I know that the International Organization for Migration (IOM) does have guidelines and policy in place.”

“I am not aware of any official internal (SAPS) policies or guidelines focusing on the investigation of child trafficking cases. During the Family Violence,

Child Protection and Sexual Offences Investigators course in 2006, this crime was briefly discussed by lecturers. What I am currently using is the guidelines provided by the South African Counter Trafficking Assistance Programme (SACTAP), international policing journals focusing on child trafficking and general case studies documented in IOM publications.”

“Guidelines are verbally communicated to detectives at station level. Within the context of organized crime the investigation methodology that is followed is similar to that used in investigating organized crime. Obviously the facts of the case are considered and will affect the investigation strategy. In a scenario where children are in danger the rescue of the child before/during the investigation will be enforced.”

Without proper policy, guidelines and instructions to assist police officials who have to deal with this crime, investigators are forced to make their own plans. It complicates their investigations and has a negative impact on uniformity within SAPS.

Readiness for the implementation of the new law

All the participants agreed that investigators are not yet ready to implement the new law. One participant explains that the multi-faceted complexity of a human trafficking investigation will definitely require specialised individuals with knowledge of both common law and statutory crimes involved, as well as understanding the parallel financial investigation that needs to be conducted. Another adds that the most prominent challenge is to sensitise police officials; child sex trade is still seen as a delinquency problem and not as a matter of a child in need of care. One participant stated that “As with any new legislation, growing pains will be evident. Interpretation of the legislation in the practical situation could bring challenges. The investigation officers will be ready and will become more effective through gaining practical experience when investigating cases directed towards proving the contraventions of the Act”.

The fact that all police investigators are not yet competent to investigate child trafficking is a serious concern, taking into consideration the fact that the Soccer World Cup will be held in South Africa in 2010. With so many foreigners visiting South Africa, there is a strong possibility that child trafficking may increase. If the police are not geared to deal with child trafficking cases, perpetrators will escape detection and prosecution. On the other hand, one of the participants explained that Interpol National Crime Bureau (NCB) Pretoria is ready to deal with all new cases in terms of existing procedures.

Units currently dealing with child trafficking cases

The participants all stated that Organised Crime Units are currently dealing with child trafficking cases. As one participant explains, this is a syndicate issue; as an enterprise, human trafficking goes hand in hand with drugs and firearms. He gave an example of a case in Sunnyside where children were trafficked from Nigeria to South Africa, not for sexual exploitation but for

drugs. The trafficker paid for their accommodation. There is, however, an arrangement that adult trafficking is dealt with by the Organised Crime Units and child trafficking cases by FCS units. Another participant stated that if the crime is committed by an organised crime network, it is dealt with by the organised crime component, otherwise by the detectives at station level. Such an arrangement could be problematic because in practice it will have the effect that the Organised Crime Unit will first have to investigate the matter to determine whether it is a case of organised crime or not, and if this is not the case, the investigation will be handed over to the general detectives. This is not ideal; it may confuse and further traumatise the victim(s) if they have to work with different detectives. The following is typical of current problems experienced with the allocation of these types of cases.

One of the participants shares his experience in the reporting and assigning of cases to the relevant units as follows: “My experience is that cases are reported randomly at police stations and by chance end up at a specialised unit (either Family Violence, Child Protection and Sexual Offences Unit (FCS) or Organized Crime Unit). Due to a lack of expertise of police members, cases may be misclassified as prostitution, child delinquency and may simply complete a basic missing children’s report. This is unacceptable, and as a result an initiative was implemented involving myself, Organised Crime, the missing person’s bureau, police stations and various other role-players to ensure that cases are channelled to the correct unit. Successes in the rescue of adult victims have already been achieved as result of this initiative.”

From the above it is evident that the allocation of cases to organised crime units is also problematic, but again it can be attributed to the lack of guidelines and policy in this regard.

The ideal unit to deal with child trafficking cases

The participants have different views on which unit should deal with child trafficking cases. Four participants stated that Organised Crime units should investigate these cases. Their justification is that Organised Crime units can make use of detectives from the now disbanded FCS units. Child trafficking is never an individual, opportunistic crime being committed. There are always well-organised structures behind it. Owing to the complexity and organised nature of the crime, the investigation should fall under the mandate of the Organised Crime Unit of the SAPS.

Only members of the FCS units were trained in the Criminal Law (Sexual Offences) Amendment Act 32 of 2007 which covers sections 70 and 71 of “Trafficking in Persons”. However, the disbanding of these units and the lack of training these individuals received on the nature of organised crime makes it incontestable that child trafficking should be investigated by the Organised Crime Unit. Resources and a diverse range of expertise are also more readily available to the Organised Crime Unit. The cross-border and transnational nature of the crime further argues for a swift response, which is more likely to be executed by the Organised Crime Unit than any other currently operational in the SAPS.

One participant motivates his choice of the Organised Crime Unit as follows; “The following scenario would require the expertise and resources available within Organised Crime to complete the investigation successfully. If it is an organized crime network facilitating the trafficking, then organized crime trafficking takes place across International borders; it is achieved by a network of people, each with a specialist function. In most instances the trafficking will be facilitated by different networks assisting the trafficker in their field of expertise. To achieve success the total network must be exposed and dismantled. If only part of the network is addressed, it will be replaced and trafficking by that group will continue. I refer to networks involved in other crimes (narcotic traffickers/vehicle crimes etcetera); a drug trafficking network could have access at a border post that is to the benefit of the human trafficker; entry is then arranged by the drug traffickers. If required, the trafficked person could also be used as a mule.”

Two other participants, however, felt it should be the duty of Family Violence, Child Protection and Sexual Offences (FCS) Units, despite the fact that these units have been disbanded. They explained that FCS detectives have specialized knowledge with regard to cases involving children.

It is evident that child trafficking is mostly committed in an organised fashion and therefore the Organised Crime Unit will be the ideal unit to investigate such cases. It seems that the ideal solution would be to offer proper training to Organised Crime investigators, including how to deal with and interview child victims.

Reporting of a child as a victim of trafficking

Section 288 of the Children’s Act 38 of 2005 was explained to the participants and their opinions asked on the practical implications of this section, which states that an immigration official, social worker, social service professional, medical practitioner or registered nurse who comes into contact with a child who is a victim of trafficking in the Republic must refer that child to a designated social worker for investigation in terms of Section 289(1). This section places a mandatory reporting obligation on certain categories of persons who may come into contact with a child victim of trafficking to refer that child to a designated social worker for an investigation, whether or not the child is in need of care and protection. There is *no mandatory duty* to report the matter to the South African Police Service. The participants all agreed that it is problematic that there is no mandatory duty to report such an incident to the police. The participants responded as follows:

“The matter must be reported to both parties at the same time. The police need the social worker to support the child and the social worker must report the matter to the police for the criminal prosecution of the matter.”

“If the social workers and the police do not work together immediately, valuable evidence will be lost – and if they do not report it immediately to the police to get them involved and investigate the matter, the cases are later just

reported for the sake of statistics. The cases should be reported to the police – but it is very important that the two departments work together.”

“This is a problem, but it could be easily overcome by creating interdepartmental protocols to facilitate the reporting of such cases. Section 54 of the Sexual Offences Amendment Act (32/2007) places an obligation on any person to report child abuse to the SAPS. I believe this places an obligation on the social worker to report child trafficking.”

“There must be an obligation to report these crimes to the police. Designated social workers have no mandate or capacity to investigate these kinds of cases. If they don’t report it to the police the crime will go undetected and the criminals will be able to continue with their activities. All role-players should get involved, such as the police, medical doctors, and the departments of Health, Home Affairs, Social Welfare and Foreign Affairs.”

Article 3 of the United Nations’ Convention on the Rights of the Child states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”. This article is also respected by Section 28 of our Constitution, which states that the best interest of the child is of paramount importance.

In the light of these fundamental instruments, social workers should never be given *carte blanche* to make such an important decision as that of whether to report the matter to the police or not. The decision on what is in the best interest of the child should be made by a multi-disciplinary team who can scrutinize the merits of each case, where after an informed decision can be made; this is similar to the principle of case conferencing. It is of the utmost importance for all relevant role-players to come together to discuss their respective responsibilities and establish a working relationship that will be in the best interests of all.

Networking between social workers and the police

The participants were asked: if a crime is reported to a designated social worker, what arrangements are in place to ensure that the police receive the information? All the participants responded that they were not aware of any formal arrangements between the social workers and the police. They responded as follows:

“If the matter is reported to a social worker they have to contact the police immediately. The victim must be questioned by the police and the social worker together to avoid the repeated interviewing of the victim and to obtain the necessary evidence. The following example illustrates the problem: in one of my cases the social workers took the child to Mere Street Safety House and dealt with the situation on their own. They did not call the police to determine if there was any criminality. This then takes a lot of effort from the police to get involved at a later stage.”

One participant was of the view that this aspect would be dealt with by general detectives who generally would receive the case (information) first and have to react to it.

Another participant explained his view on this as follows: “Yes, I am aware of this [dilemma]: the right of a specific victim versus the capture of future victims. It is hoped that the social worker and NGO in this field understand all aspects of the crime, and whilst ensuring the protection of a victim also consider the actual intention of investigating in terms of the legislation, which is ultimately to stop/prevent trafficking. I sometimes get the impression that the organization (NGO) is so focused on survival and following their rules that the bigger picture is ignored – does it become a job and no longer a humanitarian passion?”

Another participant explains that he was transferred from the FCS to Organized Crime to focus on human trafficking. “At that stage procedure with regard to reporting the crime was non-existent, and it would probably be reported to the nearest police station. At the conclusion of three meetings with identified role-players, we have agreed on the procedures to be followed. First of all, it was of the utmost importance for social workers to understand what constitutes human trafficking (recruitment, transportation, exploitation) in order to identify potential cases. This was done through presentations and awareness talks during which a relationship with social workers was fostered. On identification of a trafficking-related crime, I will be contacted personally by social workers to avoid such a case potentially being lost in the system.”

This is a good example of the benefit of establishing positive working relationships between relevant role-players. It is important for the SAPS members to understand that they cannot function in isolation. They will have to consult with all relevant stakeholders to develop guidelines and policy in order to be successful in their investigations.

Data capturing: statistics on child trafficking cases

The participants all explained that the crime is not captured as *child trafficking* for the simple reason that the SAPS does not have a crime code for this new crime. The participants responded as follows:

“If a case of child trafficking is reported to the police, the personnel capture it as abduction or kidnapping on the system. This is the alternative that the personnel use because they cannot find “child trafficking” on the system when they capture the crime; they just use their own initiative on what to read in.” One participant made the remark that this can be dealt with as with all other crimes.

“No relevant information on child trafficking can therefore be retrieved from the system – as nothing can be and is captured under this crime.” Some participants stated that this is a new crime and it must get a crime code; only in this way can statistics be kept. This is a serious concern because statistics play a very important role in the criminal justice system. This is one of the

biggest challenges for researchers worldwide; without statistics researchers can only guess at the extent of the problem.

Specific guidelines on how to deal with child trafficking victims

The participants were asked whether specific guidelines exist to determine how the police should deal with the victims of child trafficking. All of them stated that they do not have specific guidelines. They responded respectively as follows:

“Presently it is a very difficult situation. Individual detectives dealing with these matters have created their own processes, with shelters, and so on. It takes the police investigator a lot of time to get a place for the child victims.”

As one participant explained, he learnt from his own experience that you can contact the IOM for assistance if the victim/child is from another country. According to him there must be proper guidelines, especially if the victim is from another country, on how to deal with the relevant embassy and what to do when victims are illegally in the country and do not have passports. Victims cannot be taken to Lindela, because they are victims, not perpetrators, and need special arrangements. It took him as an investigator two months to get a place of safety for the children in one of his cases, in Capital Park and Garankuwa. Currently social workers have to assist; that is why the police have to report to the social worker to obtain a place of safety.

Another participant pointed out that if you don't act in cooperation with the social worker immediately it has a negative effect on the victims. If the social worker is not involved there is no emotional support for the victims and they feel like prisoners.

“If you work with Welfare for a safe house for the victims, the victims can obtain a temporary passport and they can go to school and get emotional support. This means that you don't just keep them for the sake of prosecution of the case. You also assist to bring them to a normal life.”

Another participant felt that this it is not very different from the treatment of a rape victim and therefore the same guidelines can be followed, while another stated that within the context of organised crime all the principles of an organised crime investigation must be applied.

One of the participants felt strongly that “ignorance is not an excuse” and every police official should at least be in possession of or make an effort to obtain the following fundamental and related guidelines: the Constitution, the United Nations Convention on the Rights of the Child, and Police National Instruction 22/1998 on Sexual Offences: Support to Victims and Crucial Aspects of the Investigation. The problems that are experienced with the victims are a direct result of a lack of clear guidelines, especially taking into consideration that victims are mostly not South African citizens.

CHALLENGES FACING INVESTIGATORS OF CHILD TRAFFICKING CASES

The participants were requested to consider all the possible challenges that an investigator will have to face when investigating child trafficking cases. They responded as follows;

Legislation

- There is currently no legislation on human trafficking – only in the Children’s Act and the Sexual Related Offences Act, where *child trafficking* is criminalised.
- The fact that there is no obligation to report the trafficking incident (crime) to the South African Police, but to the designated social worker, will have many implications. One of the major problems will be that if it is not reported to them the police will not be able to capture the information for the purpose of crime statistics. The major role-player, according to sections 288 and 289, will be the designated social worker, who will conduct his or her own investigation into the circumstances.

Investigation of the crime

- Ensuring the protection of the child and future victims will influence the method of investigation and prevent efforts in dismantling the network.
- Investigation is time consuming, as different departments need to be involved such as Home Affairs, Social Welfare, Interpol and IOM.
- Detectives will have to be very patient. Victims are very often made drug dependent and return to the sex trade to get their drugs. Police will have to create wide networks with internal and external role-players to facilitate the after-care of the child. The buy-in of police managers will be a challenge; managers may feel it is a waste of time as they have the perception that these are children who do not want to be helped.
- Interviewing techniques are essential – investigators must know how to interview children – they must build confidence and trust between themselves and the victim in order for the victim to comfortably tell about what happened.
- Forensic experts are very often called to this type of scene. Police officials do not understand the importance of physical evidence to prove this type of case.
- Immense problems are experienced with the collection of exhibits; inexperienced police officials often overlook possible evidence on scenes, such as drugs and firearms, which are often involved in these types of case. Cell phones are used to send photos of girls or children to clients –

these phones need to be collected as exhibits, as well as computers, if computers were used to advertise the services of the girls.

- The capturing of statistics on child trafficking will assist investigators to link crimes and perpetrators.
- The motive, reason behind the crime and how the crime was committed (modus operandi) are not captured completely with all the information on the CAS system.
- Investigating officers will have to work hand in hand with prosecutors; it is difficult if the prosecutor is not knowledgeable on these types of cases.

Resources

- Some of the more common challenges are a lack of resources. One participant gave an example: “I have been carrying my own cell phone and internet costs since starting my work in December 2008.”
- Limited venues to interview children – a specific place, for example a trauma centre room is required; no such facilities are available at the Organised Crime Units when dealing with children.

Involvement of other countries

- Participation of other countries is a challenge – including the countries of origin of both victims and suspects. To obtain valid information from other countries is difficult; investigators struggle to get cooperation from other countries when identity documents/fingerprints from suspects and victims are needed.
- The investigating officer might have to travel to other countries to obtain statements for the investigation.
- On the other hand, problems arise due to poor arrangements made for travel to other African countries and not knowing exactly who to meet in an African country, to get assistance with the investigation and to obtain the necessary statements and evidence. Investigators have to depend on authorities in foreign countries to gather the required information and evidence.
- Statements from African countries are letters and not proper statements – they are not constitutionally obtained and cannot be used in court.

Language barriers

- Language barriers are a problem – if the victim or the suspect is from another country.

- There are not enough official interpreters at the courts – this results in the delay in cases if suspects/victims are from a foreign country.
- Investigators have to liaise through Interpol for interpretation on cases.
- Other countries have to send their own social workers to South Africa, because it is difficult for our police to communicate with the victims/suspects – so these social workers need to be brought into the country to assist the children.

Victim support

- The multilayered complexity of the crime itself can pose potential challenges. Not having a support structure or safety net in place when coming across a victim of child trafficking can also be detrimental to the successful investigation of the case.
- It is degrading to put a child through the court procedures, and it is another traumatic experience for the child.

RECOMMENDATIONS FOR OVERCOMING THE CHALLENGES

Legislation

- Legislation on Human Trafficking needs to be promulgated urgently.
- South Africa should become serious about fulfilling its obligations in terms of the Palermo Protocol. Government should be held accountable and understand that our response to these crimes is a yardstick to determine how serious we really are about crimes against woman and children.
- It is recommended that the reporting of the child trafficking incident to the police by the designated social worker be included in the Children's Act.
- It is further recommended that the police work closely with other role-players in developing clear guidelines and policy to ensure effective investigation of child trafficking cases.

Investigation of the crime

- National police instructions must be issued on the investigation of, and method of dealing with, child trafficking cases – these must include practical guidelines. These instructions should also indicate the specific responsible units who should deal with child trafficking cases.
- Police officials at police stations need basic training on child trafficking matters; this should take place during basic training and on the detective courses.

- Training and sensitisation of investigators and all police officials as well as police management is urgently needed to address all the challenges that investigators are currently experiencing. They should also be trained to understand the trauma experienced by the child victims.
- Detectives who are going to deal with these cases must be carefully screened, as they need certain unique personal qualities.
- Investigators need training to understand these cases and should be able to collect exhibits that can be used as evidence. They ought to be trained to conduct proper searches to detect if a case is not link to child trafficking. Training is therefore recommended for all police officials with regard to the collection of exhibits in these cases, such as drugs, firearms, cell phone and computer evidence.
- Forensic experts need to be called immediately to assist with the collection of exhibits, as well as photographers for the taking of photos.
- The Cyber Crime Unit needs to be involved in the investigations. These crimes are often linked to the Internet. In some of the cases investigated by the participants, the girls were advertised on Sex Traders on the Internet.
- The South African Police Service can learn from people and organisations dealing with victims of trafficking on a daily basis such as the IOM, NGOs and Social Welfare.
- CAS – A proper crime code for child trafficking needs to be implemented for the correct capturing of the crime data on the system.
- Modus operandi – Currently only a very brief summary is captured under the Modus Operandi on the system. All that the personnel are interested in capturing on the system is a case number. The information on the case is therefore not captured properly. It is suggested that after the investigation is completed the investigator must complete a specific form to capture the complete modus operandi, before the case is filed. This must also be updated on the system electronically.
- Prosecutors and magistrates at the courts need urgent training to be able to deal with child and human trafficking cases.

Resources

- More funds and resources will have to be made available and channelled correctly to where they are most needed. Individuals with specialised training should form part of a multi-disciplinary team to effectively respond to all aspects relating to the crime such as money laundering, fraud and victim support.

Involvement of other countries

- Countries should not work in isolation. This is a type of crime that can only be successfully addressed by shared ownership of initiatives and actions; for example Interpol resources and expertise through its collective global reach is one key to addressing the challenges posed by this type of crime.
- It is suggested that agreements be reached with other countries to assist each other. An example would be the agreement between Italy and Nigeria under the auspices of Interpol. This agreement reflects a new concept of law enforcement, as it complements and enhances bilateral and multilateral international cooperation or security, adapting innovative concepts such as joint law enforcement, capable of enhancing the operational capabilities of the two countries.
- The investigator must know exactly whom to liaise with in other countries during the investigation. Each country can identify police officials who could assist investigators from South Africa with the language and collection of evidence and statements. The South African investigator must be able to communicate his or her needs to the investigator in the foreign country and that investigator needs to be trained accordingly.

Language barriers

- More interpreters must be appointed to assist with foreign languages at South African courts and police stations.
- Cases should be given priority at courts; unnecessary delays should be prevented. If a case takes too long it frustrates the victims and has a negative impact on the case as the victim forgets what happened.

Victim support and networking

- More facilities for welfare should be established, such as places of safety for foreign victims/children. There is a need for social workers from their own countries who understand their language and can help out with communication and to assist with the taking of statements.
- Victim support training must be given to all police officials to deal with victims/children in child trafficking cases.

CONCLUSION

It is evident that the South African Police Service is playing a vital role in the investigation and combating of child trafficking. However, this research has revealed that there are many shortcomings and problems with regard to the investigation of this crime. The clandestine nature of child trafficking, the fact that it is committed in an organised fashion either internationally or domestically, does not make this crime easy to investigate. It is of the utmost importance that the police work closely with other role-players in developing

clear guidelines and policy to ensure effective investigation of child trafficking cases.

It is clear that a child trafficking investigation can be complicated and demanding and that only experienced and well-trained investigators may achieve success. The practical recommendations that were made in this study by police investigators themselves can be used to address most of the problems experienced during investigations. When further research is done on aspects of the investigation of child trafficking, the police may have proper statistics available.

Only time will tell whether investigators will strive to gather proof in child trafficking cases and not settle for the easier option of proving another crime such as indecent assault or rape. A child trafficking investigation will demand more effort from the investigator, who in turn will also have to liaise with Interpol and other relevant agencies in a multiagency approach.

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