

Looking behind the mask of confusion: towards a better understanding of human trafficking

Beatri Kruger

Department of Criminal and Medical Law, Faculty of Law, University of the Free State
E-mail: KrugerH@ufs.ac.za

Hennie Oosthuizen

Department of Criminal and Medical Law, Faculty of Law, University of the Free State
E-mail: OosthuH@ufs.ac.za

The crime of human trafficking has recently received extensive global and local attention. However, owing to the complex and multifaceted nature of this crime, a clear, uniform understanding of this phenomenon remains a challenge. Although some references are made to the South African context, this article explores definitional and related issues pertaining to this phenomenon primarily from an international perspective in order to enhance the understanding of human trafficking.

INTRODUCTION

Only by understanding the depth, breadth and scope of the [human trafficking] problem can we address the second issue, namely, how to counter it.¹

The main focus of this article falls on an examination of the internationally agreed-upon, definitional components of human trafficking in order to arrive at a thorough understanding of this crime. Obokata emphasises that human trafficking is a multifaceted, highly complex crime.² For this reason, the input of professionals from various disciplines is essential to ensure an effective and holistic approach to combating human trafficking, and, in particular, child trafficking.³ The required multidisciplinary response is vital to address the trail of destructive consequences of this crime that impact gravely on trafficked persons.⁴ Physical and psychological health problems commonly experienced by trafficked persons are often all-encompassing owing to prolonged physical and emotional abuse, appalling working conditions, malnourishment, as well as poor sanitation and personal hygiene.⁵

Trafficked children often experience additional harm. Significant needs of children are often neglected as a result of the trafficking encounter:

Children need to acquire normal emotional development according to their age. They need to learn healthy emotional management and expression. They need to be able to determine right from wrong according to their age, and be aware of their social culture and customs. In addition to training, the children need to be mentally stimulated and educated in religious and

cultural traditions in order to help them lead happy lives.⁶

Deprived of proper parenting and education, trafficked children thus forego fundamental moral, spiritual, cultural and social developmental opportunities.⁷ Consequently, the recovery process of trafficked persons requires partnering by a wide spectrum of professionals, including medical practitioners, psychologists, social workers, educators, police officials and lawyers. A thorough understanding of human trafficking empowers these professionals not only to intervene in human trafficking by identifying and treating trafficked persons, but also to prosecute trafficking agents successfully.⁸

Despite a substantial increase in the literature on human trafficking and an array of international and national anti-trafficking interventions,⁹ Truong and Angeles maintain that many aspects of the phenomenon still remain poorly understood.¹⁰ An effective counter-trafficking response requires that professionals working towards eradicating this phenomenon have a thorough knowledge of what constitutes human trafficking. Consequently, this article explores the key components of human trafficking from an international perspective in order to clarify complexities and arrive at a thorough understanding of this multifaceted phenomenon.

WHAT IS HUMAN TRAFFICKING?

Clarifying the dimensions of the concept "human trafficking"¹¹ is the first step for professionals in the multidisciplinary team to

address this crime holistically according to the internationally accepted “three P’s approach”, focusing on the prevention of human trafficking, the protection of victims, and the prosecution and punishment of perpetrators.¹²

A profusion of definitions

The historical development of the definition of human trafficking commenced more than a century ago¹³ and was followed by a multitude of definitions.¹⁴ Gould rightly concludes that human trafficking is “a slippery concept, something that is hard to pin down and come to grips with”.¹⁵ The literature supports this view and indicates that many obstacles hamper the development of a comprehensive, clear definition of human trafficking.¹⁶ One of the main obstacles is the fact that human trafficking encompasses a wide range of activities, actors, violations and methods.¹⁷ A further complicating factor is that trafficking is undertaken for the purposes of various forms of exploitation, including exploitation of a sexual or labour nature, trafficking for body parts, illegal adoptions, forced marriages, begging, criminal activities or conscripting child soldiers.¹⁸

Against this background, Laczko and Gramegna conclude that the human trafficking concept accommodates a multitude of facets:

Trafficking in persons is used as an umbrella term to cover a range of actions and outcomes. Viewed as a process, trafficking can be used to entail several phases – recruitment, transportation (which could be across several borders), and control in the place of destination. Different groups, agents or individuals may be involved in different phases of the process, and can organize recruitment, transportation and control in different ways. There is thus immense diversity between and within trafficking systems.¹⁹

Recognising this reality, Pharoah²⁰ and Gould²¹ maintain that knitting together so many trafficking components in one definition is indeed a challenging undertaking.²² Thus, despite continuous efforts, a single, universally accepted definition for the term “human trafficking” remains a challenge.²³

A comprehensive international definition

The differing definitions of human trafficking undermine certainty and complicate the study of

human trafficking. For this reason, international consensus on the definition of trafficking has become increasingly urgent to avoid confusion and also to develop effective responses to the human trafficking problem.²⁴

In November 2000, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol).²⁵ The Palermo Protocol is the current standard-bearer and contains the first internationally agreed-upon definition of human trafficking.²⁶ The Palermo Protocol defines “trafficking in persons” as follows:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.²⁷

In contrast to previous narrower definitions, the Palermo Protocol’s definition of “trafficking in persons” is a comprehensive definition. The definition encompasses not only sexual exploitation, but also all forms of exploitation.²⁸ Furthermore, while some previous definitions focused only on women and children,²⁹ this definition recognises that all persons may qualify as victims of trafficking.³⁰ For these reasons, the Palermo Protocol is a significant milestone on the road towards an internationally recognised, homogeneous definition of human trafficking.³¹

THREE KEY COMPONENTS OF THE HUMAN TRAFFICKING DEFINITION

The Palermo Protocol’s rather complex definition of human trafficking can be broken down into three constituent parts, namely the act or conduct of the trafficker, the method or means used by the trafficker to commit the act, and the purpose of the trafficker.³² Stated differently, the definition describes the crime by stipulating what is done (the act), how it is done (the method) and why it is done (the purpose).³³

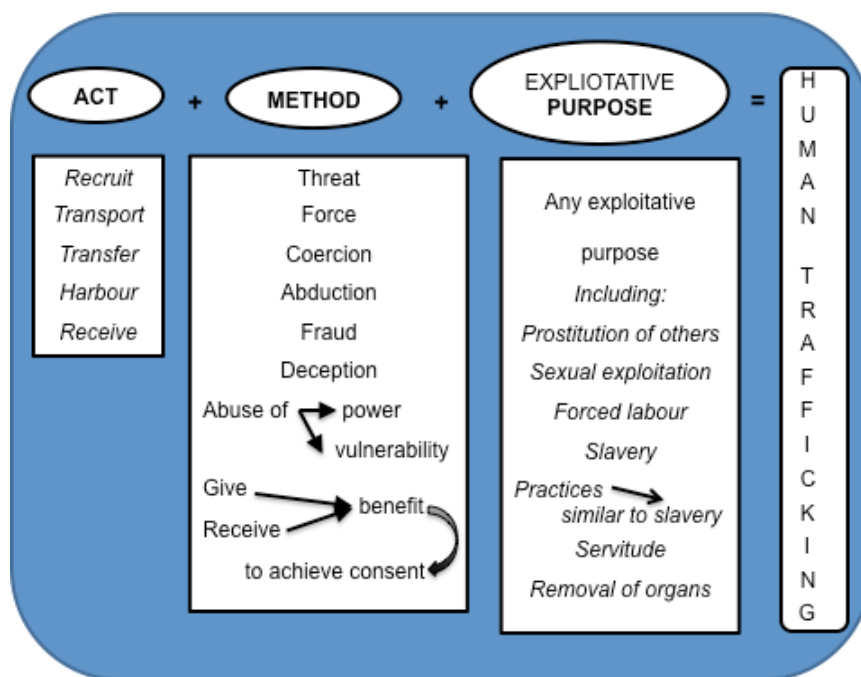


Figure 1: Constituent parts of the definition of human trafficking – Palermo Protocol³⁴

First component of the definition: prohibited actions

In a nutshell, the typical human trafficking process starts off with the recruitment of victims, followed by moving them to a place where they are received and exploited.³⁵ Capturing the dynamics of the usual human trafficking process,³⁶ the Palermo Protocol prohibits the following actions: the recruitment, transportation or transfer, harbouring or receipt of a trafficked person.³⁷

As regards the recruitment of victims, traffickers use a variety of recruitment techniques ranging from force to deceit, depending on what would be the most successful in the circumstances of a particular case.³⁸ After the victims are recruited, traffickers usually “transport or transfer”³⁹ them within a country or across national borders to an unfamiliar environment where there is a demand for their services.⁴⁰ Such movement may take place by land, air or sea.⁴¹ After being transported, victims are received and harboured at the destination location, where the main exploitation takes place.⁴²

The definition does not require that all the prohibited actions be committed by the same person.⁴³ Although the trafficking crime is sometimes committed by a single person, it is common for more persons to be involved, ranging from a small group⁴⁴ to a highly sophisticated, transnational, organised crime

network.⁴⁵ Shelley confirms that trafficking groups come in “every size of organisation in between the family business and the multinational criminal organisation”.⁴⁶ Therefore, the trafficked person may be recruited by one person, transported by another and eventually harboured by others.⁴⁷ Thus trafficking agents may play different roles in the recruitment, transportation and exploitation phases of the trafficking process.⁴⁸ Acknowledging this practice, the Palermo Protocol’s definition of the crime is formulated broadly. Gallagher⁴⁹ points out that “not just recruiters, brokers, and transporters, but also owners and managers, supervisors, and controllers of any place of exploitation, such as a brothel, farm, boat, factory, medical facility, or household” may potentially satisfy the conduct part of the definition of human trafficking.

Second component of the definition: prohibited methods

The second component of the human trafficking definition requires that the prohibited actions discussed above must be performed by using one or more of the methods listed in the international definition.⁵⁰ This means component is only required in the trafficking of adults, and not of children.⁵¹ Recognising that traffickers use various methods or means to ensnare victims in the trafficking net, the Palermo Protocol prohibits the use of a rather

long list of methods.⁵² The forbidden methods are listed, but not defined, in the Palermo Protocol. These methods can be divided into three main categories, namely methods focusing on force, on deception or, lastly, on the abuse of power or of a position of vulnerability.

First, the Palermo Protocol prohibits forceful methods, ranging from threats of violence to direct force. Force in the form of physical assaults includes abducting or capturing people in a harsh way and assaulting them to make, and keep, them compliant.⁵³ The Protocol further forbids “other forms of coercion”, which indicates that the forms of coercion listed in article 3(a) are not exhaustive.⁵⁴ The authors of the present article agree with Rijken⁵⁵ that a wide interpretation of coercion is appropriate, that is, an interpretation covering the whole spectrum of different forms and degrees of force used by traffickers during the trafficking cycle. In line with the recommended broad definition of the term “coercion” in the Model Law Against Trafficking in Persons of the United Nations Office on Drugs and Crime (UNODC Model Law),⁵⁶ it is submitted that intimidation and indirect force, such as threats against, and assaults on, the victim’s family or loved ones, are also included under “coercion” in this category of forceful methods.

Secondly, the Palermo Protocol prohibits the use of deceptive methods, such as defrauding or deceiving persons into trafficking.⁵⁷ The recruitment of a victim for human trafficking therefore need not include the use of any form of coercion or violence. In fact, it is reported that the vast majority of victims are being trafficked through false promises of “a better life” or other forms of deception, and not by forceful methods such as kidnapping and abduction.⁵⁸

Trafficking agents use a range of deceptive techniques to recruit trafficking victims.⁵⁹ To lure potential victims, traffickers most frequently use false promises or misrepresentations of well-paid employment, educational opportunities and better living conditions.⁶⁰ Singh⁶¹ points out that, apart from being deceived about the nature of employment or services to be delivered, trafficked persons may also be misinformed about the conditions under which they will work or render services.⁶² For example, victims may be misled about their remuneration and the level of violence,⁶³ their working hours, the place where they will work and the health risks.⁶⁴ Even when trafficked

persons voluntarily consent to do sex work, they are often significantly deceived regarding their working conditions. The literature indicates that traffickers frequently require that victims render unprotected sexual services which place them at risk of being infected by sexually transmitted diseases such as syphilis, human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS).⁶⁵ Importantly, victims are also deceived about the loss or restriction of their freedom and about the fact that they will eventually be controlled by the traffickers.⁶⁶ For this reason, the UNODC Model Law includes, in one of its proposed definitions of deception, deception about the extent to which trafficked persons will be free to leave their place of residence or employment.⁶⁷ To summarise, traffickers use different types of deception, and the degree thereof varies from full to partial deception.⁶⁸ These deceptions are tailored to the needs and circumstances of the potential victims and are especially shaped according to their vulnerabilities.⁶⁹

Another method of deception employed by traffickers is to misuse cultural traditions to trick people into becoming victims of human trafficking. In aspiring to improve the upbringing of children, some societies in various regions of the world,⁷⁰ including Africa, have the tradition of “placing” children.⁷¹ This tradition involves sending the children to live with family or wealthier people in urban areas for work and educational purposes.⁷² Dottridge⁷³ has documented that traffickers exploit this tradition by pretending to be agents, thus misleading parents into handing over their children to them. Once the children are under the control of the traffickers, previous promises of education or employment are not kept, but, instead, the children are trafficked for the benefit of the trafficker.⁷⁴

To recapitulate, traffickers use various forms of deception to trap potential victims. For this reason, it is submitted that, in the absence of a definition in the Palermo Protocol, the concept “deception” must also be interpreted broadly to cover the range of deceitful methods used in trafficking scenarios.⁷⁵

The third category of forbidden methods involves the “abuse of power or of a position of vulnerability” by traffickers to accomplish human trafficking. Although undefined in the Palermo Protocol, it is suggested that the “abuse of power” covers incidents where persons in

authoritative positions, such as teachers, parents or employers, use their powers inappropriately to facilitate trafficking.⁷⁶ Rijken⁷⁷ further regards it as abuse of power or of a dominant position when traffickers confiscate victims' identification or travel documents, because, without proof of their legal status in the destination country, they are in a dependent and vulnerable position.

Gallagher⁷⁸ notes that the other undefined concept of "abuse of a position of vulnerability" is unique to the Palermo Protocol. Traffickers most often abuse the vulnerabilities of their victims.⁷⁹ The literature confirms that perpetrators:

...seek vulnerabilities in their intended victims, and they also seek environments in which they can exploit victims with minimal threat of the victims' escape or law enforcement action.⁸⁰

Vulnerable as a result of gender discrimination⁸¹ and a lack of education and employment opportunities,⁸² women are often eager for a better future and are thus susceptible to false promises of jobs abroad as baby-sitters, housekeepers, waitresses, dancers or models – jobs that traffickers turn into an exploitation nightmare.⁸³ In addition, traffickers also take advantage of the vulnerabilities caused by natural disasters, armed conflict and political instability to deceive desperate people with false promises and subsequently entrap them into being trafficked.⁸⁴ According to the *Travaux Préparatoires*, the Official Interpretative Notes to the Palermo Protocol, the abuse of a position of vulnerability refers "to any situation in which the person involved has no real and acceptable alternative, but to submit to the abuse involved".⁸⁵ Arguably, the broad meaning of this concept incorporates vulnerabilities of any kind, including a victim's "precarious financial, psychological, and social situation as well as linguistic, physical, and social isolation".⁸⁶

The Palermo Protocol also prohibits the abuse of benefits in order to obtain the "consent of a person having control over another person", but the meaning of this method is not clarified.⁸⁷ This type of abuse may refer to situations where parental authority is exploited by means of benefits given to parents or guardians to obtain their consent to traffic children in their care.⁸⁸ However, it must be remembered that the method component is not required to constitute child trafficking. Accordingly, it is not clear why this form of abuse, which seems to be

incorporated in the "abuse of power or position of vulnerability", has been added in the Protocol.⁸⁹

Finally, an underlying key aspect of the method component of the human trafficking definition is the power dominance of the trafficker over the trafficked person. This power dominance enables the trafficking agents to exercise control over the victim by means of force, coercion, deception, isolation, confiscation of passports, and forced use of drugs and alcohol.⁹⁰ Professionals dealing with human trafficking cases must be well informed about the various methods traffickers use to control their victims.⁹¹ Recently, on 7 July 2011, Anthony Harrison was convicted in the United Kingdom of conspiracy to traffic two girls in and out of Britain for sexual exploitation and was sentenced to 20 years imprisonment.⁹² One of the victims alleged that she was controlled by witchcraft, in that she had to undergo a "juju" ritual.⁹³ This ritual involved cutting her flesh, shaving off her body hair and locking her in a coffin, combined with the threat that, if she dared to escape, she would be killed by the "juju" gods.⁹⁴

Third component of the definition: the exploitative purpose

The exploitation component is the final link in the chain that constitutes human trafficking. The trafficking definition in the Palermo Protocol requires that the offender must commit the prohibited action with a specific intent, namely to exploit the trafficked person.⁹⁵

Interpreting the concept "exploitation"

Exploitation is a core part of human trafficking, since traffickers primarily exploit victims to profit from it.⁹⁶ Although exploitation may occur from the initial stages of the trafficking process, the main exploitation occurs predominantly at the place of destination.⁹⁷

A closer examination of the definition of human trafficking in the Palermo Protocol reveals that the trafficker must have the purpose to exploit, but the actual exploitation of the victim need not have taken place.⁹⁸ Thus, a trafficker who, after having deceitfully recruited a victim in Zimbabwe with the intent to sexually exploit her in South Africa, is arrested at the border before the victim can be exploited, can still be convicted of human trafficking.⁹⁹ Stated differently, the third component of the trafficking crime is satisfied when it is proven

that the trafficker committed the forbidden act with the intention¹⁰⁰ to exploit the trafficked person, even if the intended exploitation did not eventually take place.¹⁰¹

The Palermo Protocol does not define the term “exploitation”,¹⁰² but lists some forms of exploitation, including:

...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.¹⁰³

The formulation in the Palermo Protocol that exploitation “shall include at a minimum” certain forms of exploitation means that other forms of exploitation are not excluded.¹⁰⁴

TYPES OF EXPLOITATION

None of the types of exploitation listed in the Palermo Protocol are defined in the treaty.¹⁰⁵ To obtain a better understanding of the complexities of human trafficking, an overview follows of the types of exploitation listed in the Palermo Protocol, as well as other types that are common in human trafficking cases.

Sexual exploitation

The Palermo Protocol prohibits human trafficking for the purpose of the “exploitation of the prostitution of others” or other forms of “sexual exploitation”, but does not provide a definition for these concepts.¹⁰⁶ The UNODC Model Law¹⁰⁷ suggests that “exploitation of prostitution of others” may be defined as the “unlawful obtaining of financial or other material benefit from the prostitution of another person”¹⁰⁸, and “sexual exploitation” as the obtaining of financial or other benefits by involving another person in prostitution or other sexual services, such as pornographic activities.¹⁰⁹

The literature indicates that the majority of cross-border trafficking is for purposes of sexual exploitation.¹¹⁰ Many people, mainly women and girls, are typically trafficked for sexual services through force or deception, thus finding themselves in the sex industry against their will.¹¹¹ There is consensus that conduct which amounts to coercing or deceiving an adult person into prostitution constitutes human trafficking.¹¹² Others who initially agreed to provide sexual services, realise afterwards that they have been significantly deceived about the deplorable working conditions, confinement, excessive working hours, nominal wages, debt bondage and continuous abuse.¹¹³ In such cases,

despite the initial consent to participate in sexual services, it is important to note that forcing a person to continue to provide sexual services also amounts to human trafficking.¹¹⁴

Numerous types of sexual exploitation have been documented, such as prostitution, sexual slavery, mail-order brides, forced marriages, the production of pornography, and sex tourism.¹¹⁵ Sex tourism involves clients who travel to engage in commercial sexual activities.¹¹⁶ The main demand for this form of exploitation is from tourists travelling to developing countries, where they enjoy anonymity.¹¹⁷ The demand for the many forms of commercial sexual services fuels sex trafficking and leads to the growth of sex markets.¹¹⁸

As far as children are concerned, it is estimated that about two million children are exploited in the transnational sex trade worldwide.¹¹⁹ Despite commendable steps taken by numerous countries such as Brazil, France, the United States of America and Madagascar to counter child sex tourism, traffickers still pursue this type of trafficking.¹²⁰ Research indicates that these prostituted children may be exploited by more than 100 perpetrators per year.¹²¹ Traffickers thrive on child sexual exploitation, since weak law enforcement and the ease with which corrupt officials can be bribed in poverty-stricken tourist destinations make it a low-risk enterprise.¹²²

Misused technology is playing an increasing role in expanding the sex trade, opening up a multitude of markets for traffickers.¹²³ Without much effort, predators advertise sexual services worldwide on the internet, enabling buyers and sellers to arrange business deals with the push of a button.¹²⁴ In a similar way, the availability of brothels, mail-order bride industries and child sex tourism sites is communicated online by means of chatrooms, e-mail and specific websites.¹²⁵ Filming of child sexual abuse by means of digital and cellphone cameras is used to “groom”¹²⁶ and blackmail child victims, while huge profits are made by selling these images.¹²⁷ “Cyber-sex” dens, showing images via a webcam on the internet of how persons are sexually abused, constitute a new market for traffickers.¹²⁸ By using trafficked persons to provide this service, clients pay not only for a once-off service, but can also watch “live” pornographic shows over and over again in the privacy of their own homes.¹²⁹

Labour exploitation

The trafficking of persons for labour exploitation is a widespread phenomenon.¹³⁰ Traffickers supply trafficked people to a wide range of markets, including the domestic,¹³¹ agricultural, mining, fishery, industrial, construction, textile, garment, manufacturing, tourism, catering, and entertainment sectors of the economy.¹³²

According to Devenish,¹³³ forced labour predominantly involves “work done without consent and invariably without fair and just compensation”. In a human trafficking scenario, labour trafficking includes practices where trafficked persons do not perform services voluntarily, but are forced by physical assault, serious threats or other forms of coercion to perform services.¹³⁴ In reality, the freedom of people trafficked for forced labour is often restricted and varying degrees of “ownership” are exerted over them.¹³⁵

Labour trafficking typically consists of the transportation of trafficked persons to another place by force or false promises of well-paid employment. At the destination location, such trafficked persons are often exploited by debt bondage,¹³⁶ long working hours, dangerous and unhealthy working conditions, minimal wages or the withholding of wages, confiscation of travel and identification documents, confinement as well as physical, sexual and psychological abuse.¹³⁷ Victims are often trafficked into the informal, unregulated sectors of the labour market,¹³⁸ such as domestic and entertainment sectors, where they can be easily exploited with a low risk of being detected.¹³⁹ Particularly in these sectors, trafficked workers are often not protected under labour law and are difficult to identify, assist and estimate.¹⁴⁰

Apart from adults involved in labour trafficking, children are also trafficked for forced labour, even though most countries have domestic legislation prohibiting child labour.¹⁴¹ Global concern about child trafficking and forced child labour¹⁴² led to the adoption of the International Labour Organization (ILO) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour in 1999.¹⁴³ This Convention specifically proscribes child trafficking and forced child labour as the “worst forms of child labour”.¹⁴⁴

Slavery, practices similar to slavery and servitude

Another manifestation of human trafficking is

trafficking for the purposes of slavery or slavery-like practices. Although exploitation for these purposes is explicitly prohibited by the Palermo Protocol, the concepts “slavery, practices similar to slavery and servitude” are not defined in the Protocol.¹⁴⁵ Apart from “servitude”, definitions for these concepts are found in other international instruments.¹⁴⁶ In 1926, the Slavery Convention¹⁴⁷ abolished slavery and became the first international instrument to define slavery as:

...the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.¹⁴⁸

Haysom¹⁴⁹ points out that, apart from traditional slavery, which requires the powers attached to the right of ownership to be present,¹⁵⁰ numerous practices exist that “fall short of the condition of slavery, yet place the victim in a state of servitude”. The term “servitude” is generally used to cover such slavery-like practices. In other words, servitude differs from slavery in that it is a broader concept that does not require ownership.¹⁵¹ Human trafficking is today often referred to as modern-day slavery, because of the links it has with slavery and slavery-like practices, such as the restriction of movement and coercive control of victims and the fact that victims are treated as disposable commodities.¹⁵²

Forced marriages

Trafficking for the purpose of forced marriage exists widely.¹⁵³ Traffickers use innovative measures to traffic persons into the commercial marriage market. For example, on a billboard on a South Korean roadside, a so-called “international marriage specialist” advertised that women could be bought like any other article of trade.¹⁵⁴ Other traffickers advertise women for marriage,¹⁵⁵ display prospective brides at trade shows or even offer organised tours to the source country for clients to choose whom they want to purchase from the paraded women.¹⁵⁶ Internet-based marriage brokers go a step further, providing access to this bride-selection service in the comfort and anonymity of the client’s residence or office.¹⁵⁷

In the South African context, professionals involved in counter-trafficking interventions must take note of the alleged link between forced marriage and the *ukuthwala* custom practised within Nguni and other indigenous communities.¹⁵⁸ According to Koyana and Bekker, *ukuthwala* is a method of initiating

negotiations for a marriage proposal by means of a type of “mock abduction” of the bride-to-be.¹⁵⁹ This culturally legitimated abduction entails the girl to be married being taken and kept, unharmed, at the kraal of the suitor’s father pending the outcome of the marriage negotiations with her family.¹⁶⁰ Although the *ukuthwala* procedure is usually planned and agreed to, the girl, who is “forcibly” taken, pretends to resist as part of seemingly upholding her maidenly dignity.¹⁶¹ At the suitor’s home, the girl should be placed in the care of the women and be treated with respect and consideration.¹⁶² Koyana and Bekker state that the suitor is not allowed at this stage, according to customary law, to have intercourse with the *thwala’d* girl.¹⁶³ Mwambene and Sloth-Nielsen point out that *ukuthwala* is not a marriage in itself, but a preliminary procedure “to force the girl’s family to enter into negotiations for the conclusion of a customary marriage”.¹⁶⁴

On the one hand, South African customary law recognises *ukuthwala* as a legitimate means of marriage negotiation in the communities in which it is practised.¹⁶⁵ The *ukuthwala* tradition is indeed an expression of the right to participate in the cultural life of one’s choice. This right is enshrined in the Constitution of the Republic of South Africa of 1996, but only to the extent that it is not exercised “in a manner inconsistent with any provision of the Bill of Rights”.¹⁶⁶ Therefore, the argument of Mwambene and Sloth-Nielsen that South African law should recognise those forms of *ukuthwala* where the future bride consents to the *ukuthwala* process, is underpinned.¹⁶⁷ This traditional form of *ukuthwala* cannot be conflated with forced marriage. On the other hand, other variants of *ukuthwala* and the abuse of the tradition must be carefully scrutinised.¹⁶⁸ It has been widely reported that the *ukuthwala* tradition has been abused, especially in the Eastern Cape, to force girls as young as 12 to marry adult men.¹⁶⁹ Such abuse of this tradition is not compatible with the Constitution and may indeed constitute child trafficking for the purpose of forced marriage.¹⁷⁰

Removal of body parts

Another form of exploitation, namely the trafficking of persons for the purpose of organ removal, is also prohibited by the Palermo Protocol.¹⁷¹ Notably, this form of human trafficking must not be confused with the crime

of trafficking in organs. Stated differently, the Protocol prohibits the trafficking of people for the removal of their organs, but does not cover the selling or trafficking in organs alone.¹⁷² Therefore, it is important for professionals dealing with trafficking cases to note that, although the two crimes may intersect, they are not identical.¹⁷³

It is reported that perpetrators traffic people in order to sell their organs at an exorbitant price to patients who desperately require an organ transplant.¹⁷⁴ This form of human trafficking is fuelled by the shortage of healthy organs for use in transplants,¹⁷⁵ since the demand is not met by the limited number of donated organs and by the medical advances to provide compatible artificial organs.¹⁷⁶ The global shortage of body parts has resulted in a black market for body parts.¹⁷⁷ Consequently, it is documented that traffickers recruit and exploit victims to provide for the demand for human organs.¹⁷⁸ Traffickers profit illegally from organ-related trafficking,¹⁷⁹ because “recipients of the organs must pay a much higher price than the donors receive, part of which benefits brokers, surgeons and hospital directors, who have been reported to be involved in the organised criminal network”.¹⁸⁰

Besides organs, traffickers have also found a market for other body tissue and parts, such as skin, bone, cartilage,¹⁸¹ blood, corneas, hair and nails.¹⁸² However, the Palermo Protocol only lists the removal of organs as a form of exploitation and does not mention other body parts. This apparent oversight by the drafters of the Protocol is overcome by the fact that the types of exploitation listed by the Protocol are not an exhaustive list.¹⁸³ Accordingly, trafficking for the exploitative purpose of removing body parts other than organs still falls within the scope of the Protocol’s definition of human trafficking. The demand for some of these body parts is created by a number of practitioners of witchcraft, by ritual sacrifices and by dubious traditional healers preparing traditional potions.¹⁸⁴ It has been reported that, in South and southern Africa, people have been trafficked for their body parts, including skulls, hearts, eyes, tongues, hands, feet and genitals, to be used in muti, a traditional African potion.¹⁸⁵ These potions are sold by deviant practitioners alleging that such potions increase wealth, influence, health or fertility.¹⁸⁶

Trafficking in body parts has been documented, but is not as well known as other types of trafficking.¹⁸⁷ In their research,

Weissbrodt and Anti-Slavery International¹⁸⁸ advocate further in-depth research on this issue, since no comprehensive global survey on this type of human trafficking is available.¹⁸⁹

Illegal adoptions

Although not specifically mentioned as a form of exploitation in the Palermo Protocol,¹⁹⁰ the Official Interpretative Notes (*Travaux Préparatoires*) to the Protocol state that an illegal adoption, which amounts to a practice similar to slavery, falls within the scope of the Protocol.¹⁹¹ This form of human trafficking is not common, but exploitation of children by trafficking them for the purpose of illegal adoptions has been documented.¹⁹²

Forced military service

Apart from other forms of exploitation, it is documented that traffickers also traffic persons for military service in armed-conflict areas.¹⁹³ Happold,¹⁹⁴ as well as Cohn and Goodwin-Gill,¹⁹⁵ argues that shortages of soldiers experienced in government and other armed forces lead to forced recruitment. The demand for soldiers in conflict areas lures traffickers to provide trafficked persons.¹⁹⁶ In numerous conflict- and war-stricken areas, especially in Africa, Asia, the Americas and the Middle East,¹⁹⁷ national armies and rebel forces recruit by means of force, coercion¹⁹⁸ or deception.¹⁹⁹ Despite the prohibition on using children in armed conflict by numerous international documents,²⁰⁰ the militias²⁰¹ traffic children to be used as combatants, for laying mines, and as spies, porters, guards, messengers, cooks, servants as well as sex slaves.²⁰²

Some evidence exists of trafficking for forced military service, but comprehensive data and reliable statistics on the number of adults and children trafficked for military service are lacking. Cohn and Goodwin-Gill²⁰³ emphasise that more in-depth research is needed on this topic to clarify the dimensions of this type of trafficking.

Begging

In some parts of the world, including China, India, Africa and the United States of America, traffickers trick people into forced begging on the street.²⁰⁴ To gain sympathy from the public, young children, the elderly and disabled people are mainly targeted for this type of trafficking.²⁰⁵ In practice, traffickers set daily money targets for their victims and, if these targets are not met, victims are punished.²⁰⁶ In

addition, victims are often deliberately deformed or underfed, as well as kept without shoes and proper clothing, in an attempt to obtain more money from empathetic community members.²⁰⁷

Crime or other exploitative purposes

Trafficking of people to be used as criminal agents has not been widely documented.²⁰⁸ Still, it is reported that traffickers use children as instruments to further various crimes, such as theft, housebreaking and, in particular, drug trafficking, where victims are exploited as drug couriers.²⁰⁹

Apart from trafficking children to commit crimes, other types of trafficking have also emerged. Lee reports that children are trafficked to be exploited as camel jockeys in the Gulf States.²¹⁰ Trafficking of children for the purpose of street vending is also documented.²¹¹ Further reports disclose that unlicensed football agents recruit, for an exorbitant fee, African youths with the false promise of introducing them to a top European football club.²¹² Subsequently, the youths are transported to Europe, but, soon, the victims are abandoned, while the trafficker disappears with the fee previously paid to him or her.²¹³

To summarise, trafficking is not limited to a few forms of exploitation. Counter-trafficking stakeholders must therefore bear in mind that exploitative trafficking practices are varied, while new forms of exploitation emerge continuously.

CHILD TRAFFICKING

The concept “trafficking in children” or “child trafficking” is not identical to the definition of “trafficking in persons”.²¹⁴ While trafficking of adults requires the abovementioned three components of action, method and exploitative purpose to be present, the method component is waived in cases where children are trafficked.²¹⁵ Regarding the trafficking of children, who are defined as a person under the age of 18 years,²¹⁶ the Palermo Protocol provides as follows:

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article.²¹⁷

Gallagher²¹⁸ and others emphasise that the Palermo Protocol requires only two components for the trafficking of children, namely the proscribed actions and the purpose to exploit.

Consequently, the evidential burden to prove that children were trafficked is lighter compared with adult victims, because it is not required to prove that force, deception or any of the other prohibited means were used to traffic children.²¹⁹

CONSENT ISSUES

The question often arises whether the alleged offender may successfully raise the defence that the victim consented to the intended exploitation. As has been pointed out above, the Palermo Protocol requires the method component, namely the offender's use of one of the proscribed coercive or deceptive means, to be present in order to constitute human trafficking.²²⁰ In line with international legal norms,²²¹ the Protocol stipulates that consent to the intended exploitation obtained from a trafficked victim by using any of the prohibited means listed in the Protocol²²² renders such consent legally invalid.²²³ Lansink argues that the crime of trafficking adult persons "always contains a non-consensual element, as traffickers use coercive, deceptive and abusive means".²²⁴ Accordingly, the presence of the method component excludes consent of an adult victim.²²⁵ Jordan concludes:

Real consent is only possible and legally recognisable, when all the relevant facts are known and the person is free to consent or not.²²⁶

Trafficked persons sometimes consent in the initial phase of the human trafficking process to be transported for employment elsewhere. However, as was pointed out earlier, they are often deceived about the nature or conditions of the work.²²⁷ Therefore, it is important to note that:

...consent of the victim at one stage of the process cannot be taken as consent at all stages of the process and without consent at every stage of the process, trafficking has taken place.²²⁸

There has been a long-standing debate on the consent issue in the case of sex trafficking.²²⁹

The discourse has focused on whether it still constitutes human trafficking if adults voluntarily migrate into the sex industry with none of the prohibited methods listed in the Palermo Protocol being used to obtain their consent. In other words, as Gallagher puts it, does "non-coerced, adult migrant prostitution" fall within the scope of the definition of human trafficking?²³⁰ Two views based on different perceptions of voluntary prostitution exist as regards this issue. On the one hand, abolitionists argue that forced as well as

voluntary prostitution must be included in the definition of human trafficking, because all prostitution, even consensual prostitution, is coercive, reduces women to sex objects and always violates human rights.²³¹ This view concludes that, since all prostitution is inherently sexual exploitation, a person cannot validly consent to such exploitation.²³²

On the other hand, others maintain, based on the right to privacy and self-determination, that sex work may be chosen like any other ordinary work and that only forced prostitution should be penalised.²³³ According to this view, an empowered, voluntary decision to do sex work, without the use of improper means, is not exploitative²³⁴ and therefore the Palermo Protocol applies only to non-consensual prostitution.²³⁵

The two opposing views have led to different interpretations of the consent provision in article 3(b) of the Palermo Protocol. While there is consensus that trafficking for forced prostitution constitutes human trafficking, because of the use of prohibited means listed in the Protocol, the focal point of the debate is whether consensual prostitution also amounts to human trafficking.²³⁶ Jordan²³⁷ states that the consent provision merely confirms the international legal norm that "consent" obtained by means such as force, coercion, deception or abuse of power is not valid consent. In other words, the Palermo Protocol excludes "a consent-based defence in cases where the use of improper means of obtaining consent is established".²³⁸

To summarise, while acknowledging the differing views on the consent issue in the case of adult prostitution, the crux is that human trafficking requires the means element to be present. The means part consists of consent-nullifying conduct, such as using force or deception.²³⁹

Consent of the victim can be a defence in domestic law, but as soon as any of the improper means of trafficking are established, consent becomes irrelevant and consent-based defences cannot be raised.²⁴⁰

The consent issue in cases where children are trafficked also needs clarification.²⁴¹ Given that, where children are trafficked, the Palermo Protocol requires only two definitional components, namely the action and exploitative purpose, to constitute human trafficking,²⁴² the UNODC Model Law emphasises that the child victim's consent is irrelevant.²⁴³

Article 3(c) of the Trafficking in Persons Protocol makes the consent of a child irrelevant and the capacity to consent may be further restricted under the domestic law of a particular State.

In line with the literature, it is agreed that a trafficked child's consent is not a valid defence in child trafficking cases.²⁴⁴

THE SOUTH AFRICAN CONTEXT

The discussion above focused on clarifying a number of definitional issues pertaining to the multifaceted phenomenon of human trafficking from an international perspective. The internationally recognised definition of human trafficking in the Palermo Protocol was taken as the point of departure. Having ratified the Palermo Protocol in 2004,²⁴⁵ South Africa is obligated to build the requirements of the Palermo Protocol, including the definition of human trafficking, into its domestic legislation.²⁴⁶

It may be helpful for most professionals working in the field of human trafficking to be knowledgeable about the definitions of human trafficking in the current South African legal framework. Thorough knowledge of the South African anti-trafficking laws contributed to recent successful prosecutions of human trafficking cases. For example, on 19 July 2011, Adina Dos Santos was sentenced to life imprisonment for trafficking three girls from Mozambique to South Africa for sexual exploitation.²⁴⁷ The definitions of human trafficking in the interim trafficking provisions in the *Children's Act* 38 of 2005²⁴⁸ and the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007,²⁴⁹ as well as in the proposed Prevention and Combating of

Trafficking in Persons Bill B7 of 2010,²⁵⁰ are to some extent similar, but not identical. In an effort to comply with international standards, all three of these definitions have the standard-bearing definition in the Palermo Protocol as a foundation. While some links were drawn from the international perspective to the South African context, a full discussion of these definitions in the current South African legal framework lies beyond the scope of this article.

CONCLUSION

Despite increased research and an increasing number of publications on the human trafficking problem, Lee emphasises that there remain "considerable limitations in our knowledge and understanding of human trafficking".²⁵¹ To address these limitations, this article explored, from an international perspective, the definitional components of human trafficking and how it is distinguished from child trafficking. After a myriad of definitions had been used over the past century to describe human trafficking, the formulation of the first internationally accepted definition by the United Nations Palermo Protocol remains a celebrated milestone.²⁵² The internationally agreed-upon definition forms the foundation for understanding this phenomenon. However, it is conceded that professionals dealing with human trafficking in practice will find numerous aspects that are still vague and ambiguous. Thus, building on the foundation laid by the Palermo Protocol, further research on problematic issues in the South African context is needed in order to proceed towards a thorough understanding of human trafficking.

Endnotes:

¹ UNODC 2009a:6; HSRC 2010:167.

² Obokata 2006:38; Shelley 2007:123-124.

³ Obokata 2006:38, 173-174.

⁴ Kruger 2010:110-116.

⁵ UNODC 2006:154; IOM 2006:13; US Department of State 2008:5; Melvin 2006:28; US Department of State 2010:12. Drawing from their research with trafficked persons, Zimmerman *et al.* 2006:22 emphasise that victims "suffer an extremely wide range of health problems, of which many are severe and enduring".

⁶ GAATW 1999a:123.

⁷ ILO 2008:7; IOM 2007:31; Snyman 2005:287.

⁸ Di Nicola 2007:49-50; see also Rijken 2003:79; Shelley 2007:117; Gallinetti and Kassan 2008:253. Di Nicola 2007:49 emphasises that the purpose of research is "to understand phenomena and their causes, and to solve problems, thereby satisfying concrete societal needs". Aligned with Di Nicola's view, the purpose of this article is primarily to enhance the understanding of human trafficking in order to assist professionals in counter-trafficking interventions.

⁹ Defeis 2003/2004:486; Gallinetti 2010:11-14.

¹⁰ Truong and Angeles 2005:1; Gallinetti 2010:11-14.

¹¹ Various related terms, such as "human trafficking", "human trade", "people trafficking" and "trafficking in persons", are used to refer to trafficking in human beings – Kruger 2010:27; Gould 2006:19, 21; Ezeilo 2009:5. Although these terms are usually interchangeable, the term "human trafficking" is mainly used in this article.

- ¹² Di Nicola 2007:49-50; Rijken 2003:79; Shelley 2007:117; Gallinetti and Kassan 2008:253; Melvin 2006:22, 43. The recent trend is that the 3 P's approach should be expanded to include a fourth P, namely "partnerships" – UN.GIFT 2008c:59; US Department of State 2010:15; Kruger 2010:23-24.
- ¹³ Rijken 2003:54 views the International Agreement for the Suppression of White Slave Traffic of 1904 as the first international effort to combat trafficking in women, noting that this agreement applied to trafficking for the purpose of prostitution only; see also Kruger 2010:211-213.
- ¹⁴ For the development of, and the various meanings attached to, human trafficking and related concepts in international instruments, see Gallagher 2010:12-25; Kruger 2010:192-246; Wijers and Lap-Chew 1999:42; Haynes 2004:223 in footnote 7; Bales and Robbins 2001:18; Gallagher and Holmes 2008:319. Rijken 2003:53, 59 points out that countries, as well as international and national organisations doing anti-trafficking work, have been using different interpretations for the same concept. For example, the Global Alliance Against Traffic in Women, a coalition of non-governmental organisations dedicated to eliminating trafficking in women, has developed its own definition of human trafficking – see GAATW 1999a:11; see also Foundation Against Trafficking in Women *et al.* 2001:5-7.
- ¹⁵ Gould 2006:19.
- ¹⁶ Pharoah 2006:14; Gould 2006:19; Laczko and Gramegna 2003:180; US Department of State 2009:15.
- ¹⁷ Laczko and Gramegna 2003:180; Pharoah 2006:14; Leggett 2004a:2; Foundation Against Trafficking in Women *et al.* 2001:5.
- ¹⁸ US Department of State 2007:21, 24, 26-28; Pharoah 2006:14.
- ¹⁹ Laczko and Gramegna 2003:180.
- ²⁰ Pharoah 2006:14 describes human trafficking as "an umbrella term that covers an assortment of outcomes...".
- ²¹ In agreement with Pharoah, Gould also refers to human trafficking as a "blanket term", because it covers such a multifaceted phenomenon – Gould 2006:19.
- ²² Laczko and Gramegna 2003:180; Snyman 2005:281.
- ²³ Rijken 2003:53.
- ²⁴ Di Nicola 2007:51; European Commission 2004:47; Gallagher and Holmes 2008:319.
- ²⁵ http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (accessed 2008-3-11); Ezeilo 2009:7.
- ²⁶ UNODC 2006:ix; Laczko and Gramegna 2003:180; Rijken 2003:66; SALRC 2006:12.
- ²⁷ Article 3(a).
- ²⁸ UNODC 2006:xii. Rijken 2003:64-65 discusses the previous narrower definitions, where the purpose of human trafficking was limited to prostitution; see also Lee 2007:10; Weissbrodt and Anti-Slavery International 2002:18.
- ²⁹ Kruger 2010:211-218.
- ³⁰ UNODC 2006:xii; Weissbrodt and Anti-Slavery International 2002:26.
- ³¹ Melvin 2006:22; Gallagher 2001:986-987.
- ³² Gallagher 2010:29; The Future Group 2007a:6-7; UNODC 2006:xi; Snyman 2005:281-282; UNODC 2009b:31-32; Raymond 2002:498; UNODC 2004:268.
- ³³ UNODC 2008:2, 96.
- ³⁴ Kruger 2010:300.
- ³⁵ UNODC 2006:xiii-xiv; Truong and Angeles 2005:2; Lee 2007:1; Di Nicola 2007:49-50. The 2007 US TIP Report states that the common denominator of trafficking scenarios is the use of force, fraud or coercion to exploit a person for profit – US Department of State 2007:8.
- ³⁶ David 2007:2.
- ³⁷ Article 3(a); see also Snyman 2005:281.
- ³⁸ Shelley 2007:127.
- ³⁹ Although movement usually occurs by transporting trafficked persons by means of car, truck, train, boat or aeroplane, victims may also be "transferred" by requiring them to walk to the destination location – Shelley 2007:130.
- ⁴⁰ UN.GIFT 2008a:11, 12. For a critical discussion of the "transport" act and whether "transport" is a prerequisite in order to constitute human trafficking, see Kruger 2010:302-308. Pearson 2000:9 argues that "some form of physical movement or transportation is needed", for the purpose of such transportation is to move victims to unfamiliar places away from home and thus place them under the control of traffickers; see also IOM 2009:6, 9; ILO 2008:11; Rijken 2003:57, 65, 79; GAATW 1999a:9; Singh 2004:341; Dottridge and Weissbrodt 1999:243-244, 263; Shah 2007:442; Lee 2007:1; Laczko and Gramegna 2003:180; Jordan 2002:7; UNODC 2004:340; HSRC 2010:21. However, Immelback 2008:3 points out that there are various possible interpretations of "transportation" and, with reference to practical examples, identifies the lack of legal certainty on this issue.
- ⁴¹ UN.GIFT 2008a:13; Singh 2004:344; Shelley 2007:130.
- ⁴² UN.GIFT 2008a:11; Snyman 2005:5, 281.
- ⁴³ Kruger 2010:95; UN.GIFT 2008a:10.
- ⁴⁴ Singh 2004:343; UN.GIFT 2008a:8, 14; Shelley 2007:118; Obokata 2006:46; Raymond 2002:493; Foundation Against Trafficking in Women *et al.* 2001:5; UN.GIFT 2008a:25.
- ⁴⁵ GAATW 1999a:11; IOM 2006:20; Singh 2004:343; Raymond 2002:493; Gallagher 2001:977. In South Africa, the crime is also committed by individuals as well as by criminal groups – Brown 2010:17. Obokata 2006:46-47 reports that, apart from the Japanese organised criminal group called Yakuza that traffics Thai women into Japan for sexual exploitation, other organised criminal groups from Albania, China, Russia, Germany and Hong Kong are also involved in human trafficking.
- ⁴⁶ Shelley 2007:120; Obokata 2006:46; UN.GIFT 2008a:25.
- ⁴⁷ David 2007:2.
- ⁴⁸ Kruger 2010:95; UN.GIFT 2008a:10.
- ⁴⁹ Gallagher 2010:30.
- ⁵⁰ Article 3(a).
- ⁵¹ See the discussion of child trafficking below.
- ⁵² Article 3(a).
- ⁵³ Article 3(a); Snyman 2005:5, 281; US Department of State 2011:27.
- ⁵⁴ Rijken 2003:67; Singh 2004:341. Therefore, the Palermo Protocol includes any form of coercion whereby an unwilling person is persuaded, by using force or threats, to do something – IOM 2007:22.
- ⁵⁵ Rijken 2003:63.
- ⁵⁶ Article 1(e). The United Nations Office on Drugs and Crime developed this Model Law in 2009 as a guide for drafting domestic counter-trafficking legislation – http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf (accessed 2010-7-14); see also US Department of State 2011:27; Gallagher 2010:30-31; UNODC 2009b:11.
- ⁵⁷ UNODC 2009b:32.
- ⁵⁸ Raymond 2002:497.
- ⁵⁹ UNODC 2009b:12. For a further discussion of the concept "deception", see Kruger 2010:308-309.
- ⁶⁰ UN.GIFT 2008a:12; IOM 2006:20; IOM 2007:22; Gajic-Veljanoski and Stewart 2007:342; Shelley 2007:128.
- ⁶¹ Singh 2004:341; see also Weissbrodt and Anti-Slavery International 2002:22.
- ⁶² UNODC 2009b:12.

- ⁶³ Rijken 2003:63; Gajic-Veljanoski and Stewart 2007:343; Shelley 2007:128; Foundation Against Trafficking in Women *et al.* 2001:6.
- ⁶⁴ UNODC 2006:154; US Department of State 2007:28, 35; US Department of State 2008:32, 34; US Department of State 2010:12; Silverman *et al.* 2008:932-933; Melvin 2006:28-29; Gajic-Veljanoski and Stewart 2007:346; Harrold 2006:101; Zimmerman *et al.* 2006:15; GAATW 1999a:63, 66; IOM 2006:36.
- ⁶⁵ UNODC 2006:154; US Department of State 2007:28, 35; US Department of State 2008:32, 34; US Department of State 2010:12.
- ⁶⁶ Stuurman 2004:5; Defeis 2003/2004:488; Foundation Against Trafficking in Women *et al.* 2001:6; Shelley 2007:125; UNODC 2004:288; US Department of State 2011:27.
- ⁶⁷ Section 270(1)(b) and (c) of the Australian Criminal Code of 1995 goes even further by defining deception in the context of sex trafficking to include deceit about the extent to which a person will be free to leave the place where services are provided or even to cease to provide the sexual services – UNODC 2009b:13.
- ⁶⁸ Gajic-Veljanoski and Stewart 2007:343; Shelley 2007:127.
- ⁶⁹ Snyman 2005:5, 281-282.
- ⁷⁰ Skinner reports that, in Haiti and also in Haitian communities across the United States of America, the “restavèc” custom, involving the “placing of a child”, usually from poor, rural areas, with more affluent people, is an acceptable practice. Human traffickers, pretending to be trustworthy agents, facilitate the placing of children, but actually sell these children to their new “owners”. Parents usually do not receive payment for giving up their children, because the agents promise schooling for them, a luxury many parents cannot afford. In reality, the restavècs, or the so-called “stay-withs”, are child slaves who are forced to work long hours without payment, are often sexually abused and rarely have the privilege of attending school – Skinner 2008:6-9.
- ⁷¹ Truong and Angeles 2005:12, 16; Dottridge 2002:39.
- ⁷² Dottridge 2002:39.
- ⁷³ Dottridge 2002:39.
- ⁷⁴ US Department of State 2007:35.
- ⁷⁵ Kruger 2010:308-309.
- ⁷⁶ Gallagher 2010:32; IOM 2007:22; Rijken 2003:63; SALRC 2006:12; Jordan 2002:8.
- ⁷⁷ Rijken 2003:63.
- ⁷⁸ Gallagher 2010:32.
- ⁷⁹ US Department of State 2009:8.
- ⁸⁰ US Department of State 2008:28; US Department of State 2007:9.
- ⁸¹ For a discussion of gender discrimination, see Kruger 2010:105-106.
- ⁸² Defeis 2003/2004:485.
- ⁸³ US Department of State 2009:8; US Department of State 2007:10; IOM 2007:25; UN.GIFT 2008a:12; The Future Group 2007b:2.
- ⁸⁴ Kreston 2007:38; US Department of State 2007:35.
- ⁸⁵ UN General Assembly 2000: paragraph 63; Jordan 2002:7 in footnote 12; UNODC 2004:269. The UNODC Model Law provides more than one definition of the “abuse of a position of vulnerability” – UNODC 2009b:9-11.
- ⁸⁶ Gallagher 2010:32-33.
- ⁸⁷ Article 3(a).
- ⁸⁸ Article 3(a). Shelley reports that this method of offering money to parents for their child has been used in Russia in some cases where the parents are alcoholics and drug addicts – Shelley 2007:128.
- ⁸⁹ Gallagher 2010:33.
- ⁹⁰ In the South African context, these methods of controlling victims are well known – Brown 2010:17.
- ⁹¹ For a discussion of the various methods that traffickers use to exercise control over their victims, see Kruger 2010:148-155; Snyman 2005:282.
- ⁹² Davis 2011:1.
- ⁹³ Davis 2011:1.
- ⁹⁴ Davis 2011:1.
- ⁹⁵ Article 3(a); Gallagher 2010:34; Snyman 2005:282; UNODC 2004:268.
- ⁹⁶ IOM 2007:23. The exploitation part distinguishes human trafficking from kidnapping, in that kidnapping entails the deprivation of a person's freedom of movement, usually by means of forceful or deceptive movement. However, exploitation of the victim is not a requirement of the crime of kidnapping – Rijken 2003:65; Snyman 2008:479-481.
- ⁹⁷ IOM 2006:34; Snyman 2005:282.
- ⁹⁸ Article 3(a); Gallagher 2010:34.
- ⁹⁹ Gallagher 2010:34; UNODC 2004:269.
- ¹⁰⁰ Snyman 2008:182.
- ¹⁰¹ Gallagher 2010:34; Rijken 2003:59, 64; SALRC 2006:15; Snyman 2005:282.
- ¹⁰² Gallagher 2010:34; UN General Assembly 2000: paragraph 64.
- ¹⁰³ Article 3(a); see also Gallagher 2010:34; UNODC 2006:xii.
- ¹⁰⁴ UNODC 2006:xii; Kamidi 2007:8; Gallagher 2001:987 in footnote 72.
- ¹⁰⁵ UNODC 2006:xii; Weissbrodt and Anti-Slavery International 2002:22 in footnote 111.
- ¹⁰⁶ UNODC 2006:xii; Jordan 2002:8. Gallagher explains that these two concepts have been intentionally left undefined to allow countries to sign and ratify the Palermo Protocol, even though their approach to voluntary adult sex work in their respective legal systems varies – Gallagher 2010:28-29, 38; see also Jordan 2002:8-9; UN General Assembly 2000: paragraph 64; SALRC 2006:15; Stuurman 2004:5; HSRC 2010:20-21; UNODC 2009b:14.
- ¹⁰⁷ UNODC 2009b:1.
- ¹⁰⁸ UNODC 2009b:14; see also Gallagher 2010:38; Jordan 2002:9.
- ¹⁰⁹ UNODC 2009b:20; Gallagher 2010:38-39.
- ¹¹⁰ Rijken 2003:66; US Department of State 2008:23; US Department of State 2007:27; Raymond 2002:492. However, research indicates that cases of trafficking for labour purposes outnumber sex trafficking where trafficking is committed within a country's borders – US Department of State 2008:18.
- ¹¹¹ GAATW 1999a:13.
- ¹¹² GAATW 1999a:13.
- ¹¹³ GAATW 1999a:13.
- ¹¹⁴ US Department of State 2010:9.
- ¹¹⁵ Snyman 2005:284; Dottridge and Weissbrodt 1999:272; Morawska 2007:100; Foundation Against Trafficking in Women *et al.* 2001:5. Commercial sexual services are commonly provided in massage parlours, saunas, escort agencies, bars and brothels – Raymond 2002:492, 500; US Department of State 2009:21-22; US Department of State 2011:7.
- ¹¹⁶ Dottridge and Weissbrodt 1999:266; US Department of State 2008:14; Raymond 2002:492; US Department of State 2009:22, 25.
- ¹¹⁷ US Department of State 2008:25; US Department of State 2007:23.
- ¹¹⁸ US Department of State 2008:24; Farrior 1997:230; Lee 2007:8.

- 119 US Department of State 2010:12; US Department of State 2008:14, 24; US Department of State 2007:23, 28; US Department of State 2011:9-10.
- 120 US Department of State 2008:14.
- 121 US Department of State 2008:14.
- 122 US Department of State 2008:25; US Department of State 2007:23.
- 123 Melvin 2006:27; US Department of State 2008:13; US Department of State 2007:23.
- 124 US Department of State 2008:13; Dottridge and Weissbrodt 1999:253.
- 125 US Department of State 2008:13; US Department of State 2007:23; Weissbrodt and Anti-Slavery International 2002:34-35; Dottridge and Weissbrodt 1999:266; Hodgkin and Newell 2002:527; Raymond 2002:492.
- 126 The term "grooming" is usually used to indicate those acts of a perpetrator that are aimed at facilitating the commission of an illegal sexual act with another person – Burchell 2005:750. These acts are therefore performed with the intention to encourage or persuade the victim to engage in sexual activities or to reduce any resistance on the part of the victim. Examples of such acts are befriending victims, spoiling them with presents and other treats to gain their trust, and then increasingly introducing them to sexual activities. These grooming acts are criminalised in South African law in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007*: section 18(2).
- 127 US Department of State 2007:23.
- 128 US Department of State 2007:23.
- 129 US Department of State 2007:23.
- 130 US Department of State 2007:14, 16; US Department of State 2010:8. The US Model Law distinguishes between the terms "labour" and "services" by describing labour as "work activities which would, but for the coercion, be otherwise legitimate and legal", while "services" comprise "activities akin to an employment relationship, but are in market sectors that are not legitimate forms of 'labor'" – US Department of State 2003:8-9.
- 131 US Department of State 2008:22; US Department of State 2007:13; GAATW 1999a:14.
- 132 ILO 2008:1, 5, 23; GAATW 1999a:11, 16; IOM 2007:24; US Department of State 2008:37; Melvin 2006:17, 24; Foundation Against Trafficking in Women *et al.* 2001:5; US Department of State 2011:7.
- 133 Devenish 1998:54; Nowak 2005:201. Currie and De Waal 2005:313 endorse this view by emphasising that the key definitional feature of forced labour is involuntariness.
- 134 IOM 2007:24.
- 135 Melvin 2006:24; Dottridge and Weissbrodt 1999:253.
- 136 Debt bondage refers to the status of debtors who pledge their personal services as security for a debt, but the debt is seldom paid off, because the debt is continuously increased or the services are undervalued – Kruger 2010:64; Haysom 2002:178.
- 137 GAATW 1999a:14, 16.
- 138 Wijers and Lap-Chew 1999:40. Typical examples of such more informal, unregulated sectors include the entertainment business, forced domestic labour in private households, and marital obligations – Wijers and Lap-Chew 1999:223. Employers of these trafficked persons tend to take advantage of gaps in law enforcement – US Department of State 2008:19.
- 139 US Department of State 2010:9; US Department of State 2009:18.
- 140 US Department of State 2010:9; US Department of State 2009:18; US Department of State 2008:19.
- 141 Banda 2008:15; US Department of State 2007:31; US Department of State 2009:19; US Department of State 2011:8-9.
- 142 US Department of State 2009:19. A typical example of such disturbing child trafficking practices for the purpose of forced labour is found on the estimated two million cocoa farms in West Africa – US Department of State 2007:31.
- 143 <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> (accessed 2008-4-10); US Department of State 2008:21; Weissbrodt and Anti-Slavery International 2002:29; US Department of State 2009:19; Gallagher 2001:987.
- 144 For a further discussion of this Convention and "the worst forms of child labour", see Kruger 2010:208-211.
- 145 Slavery, servitude and forced labour are prohibited in almost all major international human rights instruments, but, since none of them define these terms, definitions are only found in subsidiary instruments – Haysom 1997:88; Devenish 1998:54; Haysom 2002:176; Bales and Robbins 2001:26. For a discussion of "practices similar to slavery", including debt bondage, serfdom, servile forms of marriage and the provision of children for exploitation, see Gallagher 2010:36-37; Kruger 2010:198-201.
- 146 Haysom 2002:178; Naidu 1987:108; Gallagher 2001:987-988.
- 147 <http://www.unhcr.ch/html/menu3/b/f2sc.htm> (accessed 2008-3-12). Haysom 2002:176 points out that, although slavery was abolished more than a century ago in many countries, such as Britain in 1807 and the United States of America in 1862, the Slavery Convention was the first international instrument to confirm the banning of the slave trade.
- 148 Article 1(1); Dottridge and Weissbrodt 1999:243; Weissbrodt and Anti-Slavery International 2002:4; Allain 2008:67-68. For a more detailed discussion of slavery and its relationship to human trafficking, see Kruger 2010:165-179.
- 149 Haysom 2002:178; Gallagher 2010:36; Weissbrodt and Anti-Slavery International 2002:5-6.
- 150 Allain 2008:67-68; Bales 2004:58. Dottridge and Weissbrodt 1999:248 explain that traditional slavery was referred to as "chattel slavery", because owners were entitled to treat their slaves like any moveable possession (chattel) by buying or selling them.
- 151 Weissbrodt and Anti-Slavery International 2002:7 in footnote 26; Haysom 2002:178; Gallagher 2010:37.
- 152 Kruger 2010:177-178; Nowak 2005:195; Rijken 2003:76.
- 153 US Department of State 2010:15; IOM 2006:12; Pearson 2000:23; GAATW 1999a:15; GAATW 1999b:70-71; SALRC 2006:33; Wijers and Lap-Chew 1999:40-41; Singh 2004:341; Weissbrodt and Anti-Slavery International 2002:35-37; Dottridge and Weissbrodt 1999:274-276; Lee 2007:3. Several countries, such as Taiwan, recognise trafficking for the purpose of forced marriage as a significant problem and have adopted more stringent prevention measures to combat this type of exploitation by traffickers – US Department of State 2007:17.
- 154 The cryptic advertisement read: "Vietnamese – They Don't Run Away! – International Marriage Specialist" – US Department of State 2007:17; see also GAATW 1999a:15; Weissbrodt and Anti-Slavery International 2002:36.
- 155 For a discussion on women advertised for marriage, usually under the description "mail-order brides", and their vulnerability in becoming victims of trafficking, see Dottridge and Weissbrodt 1999:275-276; Weissbrodt and Anti-Slavery International 2002:36-37.
- 156 GAATW 1999a:15; US Department of State 2007:17.
- 157 US Department of State 2007:17.
- 158 Koyana and Bekker 2007:139; Kruger 2010:419-421; Mwambene and Sloth-Nielsen 2011:3.
- 159 Koyana and Bekker 2007:139; Olivier *et al.* 1995:9; Burchell 2005:763; McQuoid-Mason 2009:716; Mwambene and Sloth-Nielsen 2011:1.
- 160 Olivier *et al.* 1995:9; Mwambene and Sloth-Nielsen 2011:3. For a further discussion of the three forms of *ukuthwala*, see Olivier *et al.* 1995:9-10; Mwambene and Sloth-Nielsen 2011:6-7.
- 161 Koyana and Bekker 2007:139; Mwambene and Sloth-Nielsen 2011:4, 6.
- 162 Koyana and Bekker 2007:141.
- 163 Koyana and Bekker 2007:141; Mwambene and Sloth-Nielsen 2011:5.
- 164 Mwambene and Sloth-Nielsen 2011:3, 6.
- 165 Koyana and Bekker 2007:141.
- 166 Section 30; see also McQuoid-Mason 2009:717; Mwambene and Sloth-Nielsen 2011:11.
- 167 Mwambene and Sloth-Nielsen 2011:22.

- ¹⁶⁸ Mwambene and Sloth-Nielsen 2011:22.
- ¹⁶⁹ McQuoid-Mason 2009:716; US Department of State 2009:260; US Department of State 2010:297; Brown 2010:17.
- ¹⁷⁰ For a discussion of the violation of the various constitutional rights as a result of *ukuthwala* being abused to force a woman into marriage, see McQuoid-Mason 2009:718-719; Mwambene and Sloth-Nielsen 2011:7-8.
- ¹⁷¹ Article 3(a) of the Palermo Protocol; SALRC 2006:15. This provision of the Palermo Protocol links up with the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which prohibits, in article 3(1)(a)(i)b, the “offering, delivering or accepting, by whatever means, a child for the purposes of transfer of organs of the child for profit” – <http://www.unhcr.ch/html/menu2/6/crc/treaties/opsc.htm> (accessed 2008-3-12); Weissbrodt and Anti-Slavery International 2002:45. However, it must be noted that the removal of an organ from a child, with the valid consent of a parent, for legitimate medical or therapeutic reasons is not considered exploitation – UN General Assembly 2000: paragraph 65; Jordan 2002:9 in footnote 14; UNODC 2004:269.
- ¹⁷² IOM 2007:24; IOM 2008:60; SALRC 2006:15; Jordan 2002:10; US Department of State 2010:8. Watson does not distinguish clearly between the two phenomena and conflates the crime of organ trafficking with human trafficking for the purpose of organ removal – Watson 2006:39-44; see also Weissbrodt and Anti-Slavery International 2002:44-45; Gallagher 2010:39-40.
- ¹⁷³ UN.GIFT 2008a:3. When an organ is illegally removed from a deceased person and sold for profit, this is an example of organ trafficking, but it does not constitute human trafficking unless the person was killed for the purpose of removing the organ – UN.GIFT 2008a:6; Weissbrodt and Anti-Slavery International 2002:44-45.
- ¹⁷⁴ US Department of State 2009:17; UN.GIFT 2008a:2; Hodgkin and Newell 2002:523; Slabbert 2009:515-516; UN.GIFT 2008c:12. It is reported that a distinguishing feature of this type of trafficking is that “traffickers and organ ‘brokers’ come from atypical sectors and include doctors and other health-care practitioners, ambulance drivers and mortuary workers” – UN.GIFT 2008c:12; HSRC 2010:31.
- ¹⁷⁵ US Department of State 2010:8; UN.GIFT 2008a:2; SALRC 2006:30; Dottridge and Weissbrodt 1999:282; Snyman 2005:284; UN.GIFT 2008c:12.
- ¹⁷⁶ SALRC 2006:30; Snyman 2005:284. Watson 2006:34-35 also confirms the worldwide shortage of body organs available for life-saving transplants. For a discussion of the shortage of organs in South Africa and a number of other countries, see Slabbert 2002:20-24.
- ¹⁷⁷ Slabbert 2009:516.
- ¹⁷⁸ SALRC 2006:30; UN.GIFT 2008a:13; Shelley 2007:128-129; US Department of State 2009:17.
- ¹⁷⁹ According to UN.GIFT 2008a:9, financial gain from human organs is prohibited in the domestic law of most countries.
- ¹⁸⁰ UN.GIFT 2008a:2; US Department of State 2010:8.
- ¹⁸¹ Cartilage is a firm, flexible connective tissue forming the infant skeleton, which is mainly replaced by bone in adulthood – Reader’s Digest Oxford 1996:213.
- ¹⁸² UN.GIFT 2008a:14; UN.GIFT 2008c:12.
- ¹⁸³ Article 3(a); see also UNODC 2006:xii; Kamidi 2007:8; SALRC 2006:15.
- ¹⁸⁴ US Department of State 2009:17; UN.GIFT 2008a:2; IOM 2008:60; UN.GIFT 2008c:12.
- ¹⁸⁵ IOM 2008:60, 63; SALRC 2006:30; Snyman 2005:284-285. Muti is described as a traditional African medicine consisting of herbs as well as parts of animals and human beings used in traditional therapy or in witchcraft – Branford and Branford 1991:209.
- ¹⁸⁶ UN.GIFT 2008a:2; IOM 2008:60.
- ¹⁸⁷ IOM 2008:60-63; Dottridge and Weissbrodt 1999:282; UN.GIFT 2008a:4; Hodgkin and Newell 2002:527; Snyman 2005:284; US Department of State 2009:17; UN.GIFT 2008c:12-14.
- ¹⁸⁸ Weissbrodt and Anti-Slavery International 2002:44-45.
- ¹⁸⁹ Dottridge and Weissbrodt 1999:282; Di Nicola 2007:66; Hodgkin and Newell 2002:57. UN.GIFT 2008a:4, 11 endorses the need for further research and reports that the lack of information on organ-related trafficking is a major obstacle in responding effectively to this form of trafficking. For a discussion of some responses to organ-related trafficking, such as Organs Watch, Initiative on Global Organ Trafficking and the Coalition for Organ-Failure Solutions, see UN.GIFT 2008a:11-12.
- ¹⁹⁰ Article 3(a).
- ¹⁹¹ Gallagher 2010:40-41; UN General Assembly 2000: paragraph 66.
- ¹⁹² US Department of State 2010:8; UN General Assembly 2000: paragraph 66; Dottridge and Weissbrodt 1999:282; SALRC 2006:34; Hodgkin and Newell 2002:524; UNODC 2009b:38.
- ¹⁹³ US Department of State 2009:20-21; Happold 2005:1-4, 119-125; see also Cohn and Goodwin-Gill 1994:23; Lee 2007:3; UNODC 2009b:35-37; US Department of State 2010:9.
- ¹⁹⁴ Happold 2005:9.
- ¹⁹⁵ Cohn and Goodwin-Gill 1994:24-25, 167.
- ¹⁹⁶ Poverty and other risk factors contributing to human trafficking make people susceptible to being trafficked for military service – Cohn and Goodwin-Gill 1994:23.
- ¹⁹⁷ Happold 2005:6-7; US Department of State 2007:23, 27.
- ¹⁹⁸ According to Cohn and Goodwin-Gill 1994:28, forced recruitment differs from coercive and abusive recruitment, since the latter covers those situations “where there is no proof of direct physical threat or intimidation, but the evidence supports the inference of involuntary enlistment”. Examples of such manipulation are indoctrination and pressuring children to revenge the atrocities committed by the enemy by fighting for their country and loved ones – Cohn and Goodwin-Gill 1994: 30, 32; US Department of State 2009:20-21.
- ¹⁹⁹ Cohn and Goodwin-Gill 1994:23-29; US Department of State 2008:21; US Department of State 2007:24.
- ²⁰⁰ Dottridge and Weissbrodt 1999:281; Weissbrodt and Anti-Slavery International 2002:40; Happold 2005:34-85; Cohn and Goodwin-Gill 1994:67-70.
- ²⁰¹ A “militia” is a military force, “especially one raised from the civil population and supplementing a regular army in an emergency” – Reader’s Digest Oxford 1996:947.
- ²⁰² US Department of State 2010:9; US Department of State 2009:20-21; US Department of State 2008:21; US Department of State 2007:21, 24; Happold 2005:6, 11; Cohn and Goodwin-Gill 1994:95-96; US Department of State 2009:20-21; Allais 2006:9; US Department of State 2011:9.
- ²⁰³ Cohn and Goodwin-Gill 1994:176-177.
- ²⁰⁴ US Department of State 2008:33; Melvin 2006:24; Dottridge and Weissbrodt 1999:261; Shah 2007:451; Hodgkin and Newell 2002:523-524; ILO 1998:2; Snyman 2005:284; UNODC 2009b:35-36.
- ²⁰⁵ GAATW 1999a:17; US Department of State 2008:33; ILO 1998:2.
- ²⁰⁶ US Department of State 2008:33.
- ²⁰⁷ Hodgkin and Newell 2002:524; ILO 1998:1-2.
- ²⁰⁸ Kreston 2007:36 in footnote 12.
- ²⁰⁹ IOM 2008:56; Snyman 2005:284; UN.GIFT 2008c:26; UNODC 2009b:35.
- ²¹⁰ Lee 2007:3, 5; Hodgkin and Newell 2002:524; Snyman 2005:284.
- ²¹¹ IOM 2008:56.
- ²¹² Correspondent – African Research Bulletin 2008:17-445C.
- ²¹³ The European Union has expressed concern about the trafficking of African children with false promises of a lucrative football career and is in the process of preparing an action plan – Correspondent – African Research Bulletin 2008:17-445C.

- ²¹⁴ Weissbrodt and Anti-Slavery International 2002:28; Gallagher 2001:988-990. Although “the sale or traffic in children for any purpose or in any form” was already prohibited in 1989 by article 35 of the Convention on the Rights of the Child http://www.unhchr.ch/html/menu3/b/k2_crc.htm (accessed 2008-3-11), and although the Optional Protocol to the Convention on the Rights of the Child deals specifically with the sale of children <http://www.unhchr.ch/html/menu2/6/crc/treaties/psc.htm> (accessed 2008-3-12), neither of these instruments defines “traffic in children”.
- ²¹⁵ Gallagher 2010:29; Gallagher 2001:987; Ezeilo 2009:7; UNODC 2004:270.
- ²¹⁶ Article 3(d) of the Palermo Protocol provides that a “child” means any person under 18 years of age.
- ²¹⁷ Article 3(c).
- ²¹⁸ Gallagher 2010:29; also see Lansink 2006:50; The Future Group 2007a:7; Weissbrodt and Anti-Slavery International 2002:22, 27-30; Kassin 2007:18–6.
- ²¹⁹ Gallagher 2010:29; Gallagher 2001:989.
- ²²⁰ Article 3(a).
- ²²¹ UNODC 2009b:34.
- ²²² Article 3(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used. See also UN.GIFT 2008a:2; Gajic-Veljanoski and Stewart 2007:340; SALRC 2006:16.
- ²²³ UNODC 2008:5-6; UNODC 2009b:34, 38; UNODC 2004:270; US Department of State 2011:27.
- ²²⁴ Lansink 2006:47.
- ²²⁵ UNODC 2009b:33; Defeis 2003/2004:488; UNODC 2008:5-6.
- ²²⁶ Jordan 2002:11. For this reason, a victim cannot legally consent to, for example, slavery, servitude or forced labour, since the definitions of these crimes entail that there is no real consent – Jordan 2002:11; see also UNODC 2009b:32, 34.
- ²²⁷ Shelley 2007:128; US Department of State 2009:13; US Department of State 2011:27.
- ²²⁸ UN.GIFT 2008a:5; see also Defeis 2003/2004:488; US Department of State 2009:13; UNODC 2008:5-6. In this regard, Gajic-Veljanoski and Stewart 2007:341 underpin the fact that consent is of a continuous nature.
- ²²⁹ Gallagher 2010:26-29.
- ²³⁰ Gallagher 2010:26; Gallagher 2001:984.
- ²³¹ See the discussions in Gallagher 2010:26-28; Lansink 2006:50-52, 55; Defeis 2003/2004:488; Rijken 2003:56-57; Raymond 2002:499; Gallagher 2001:984.
- ²³² Gajic-Veljanoski and Stewart 2007:341.
- ²³³ Rijken 2003:56-57. The different views on voluntary prostitution are also discussed in IOM 2006:12; GAATW 1999b:125.
- ²³⁴ GAATW 1999b:125; IOM 2006:12; Rijken 2003:67.
- ²³⁵ Weissbrodt and Anti-Slavery International 2002:23; Gallagher 2001:1002.
- ²³⁶ For a discussion of the conflicting views on whether the definition of human trafficking should protect all trafficked victims, irrespective of whether they consented or not, or only those who can prove that they have been forced or deceived, see Raymond 2002:494.
- ²³⁷ Jordan 2002:11; see also Gallagher 2010:27-28; Gallagher 2001:985-986.
- ²³⁸ UNODC 2006:xv; Gallagher 2010:26-27. If no improper means were used, Weissbrodt and Anti-Slavery International 2002:23 state that “adults who have migrated to work voluntarily in the sex industry may not be regarded as having been trafficked”.
- ²³⁹ See article 3(a); Lansink 2006:47; see also the discussion by Gallagher 2001:984-985.
- ²⁴⁰ UNODC 2008:6.
- ²⁴¹ UNODC 2008:6; UNODC 2006:xv; Jordan 2002:12; UNODC 2009b:38.
- ²⁴² See article 3(c); UNODC 2009b:38.
- ²⁴³ UNODC 2009b:38.
- ²⁴⁴ UNODC 2008:6; UNODC 2006:xv; Jordan 2002:12; UNODC 2009b:38; Foundation Against Trafficking in Women *et al.* 2001:8.
- ²⁴⁵ IOM 2009:82, 103; DFA 2005:3; Kassin 2007:18–6; IOM 2008:19; Stuurman 2004:5; Leggett 2004b:4.
- ²⁴⁶ Brown 2010:22; Kassin 2007:18–10; IOM 2009:82; Stuurman 2004:5.
- ²⁴⁷ The accused was convicted in the Pretoria Regional Court in terms of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* – SAPA 2011:1.
- ²⁴⁸ Section 1.
- ²⁴⁹ Section 70(1)(b).
- ²⁵⁰ Clause 1.
- ²⁵¹ Lee 2007:2.
- ²⁵² Melvin 2006:22; Gallagher 2001:986-987.

REFERENCES

- Allain, J. 2008. *The Slavery Conventions*. Leiden: Martinus Nijhoff Publishers.
- Allais, C. 2006. An Overview of Human Trafficking in Sub-Saharan Africa. Joint Area Centres Annual Symposium: Criminal Trafficking and Slavery: the Dark Side of Global and Regional Migration, 23-25 February 2006, University of Illinois, Urbana-Champaign, Illinois.
- Bales, K. 2004. *Disposable People: New Slavery in the Global Economy*. London: University of California Press.
- Bales, K & Robbins, PT. 2001. No One Shall Be Held in Slavery or Servitude: a Critical Analysis of International Slavery Agreements and Concepts of Slavery. *Human Rights Review*, 2(2):18-45.
- Banda, F. 2008. Building on a Global Movement: Violence against Women in the African Context. *African Human Rights Law Journal*, 8:1-22.
- Branford, J & Branford, W. 1991. *A Dictionary of South African English*. 4th ed. Cape Town: Oxford University Press.

- Brown, K. 2010. *Human Slavery's New Era in Sub-Saharan Africa – Combating the Trafficking of Women and Girls for Sexual Exploitation*. [Online] Available from: <http://ssrn.com/abstract=1870944> (Accessed on 20 July 2011).
- Burchell, JM. 2005. *Principles of Criminal Law by J Burchell and J Milton*. 3rd ed. Lansdowne: Juta & Co., Ltd.
- Cohn, I & Goodwin-Gill, GS. 1994. *Child Soldiers: the Role of Children in Armed Conflict*. Oxford: Clarendon Press.
- Correspondent – African Research Bulletin. 2008. Sport: Africa's Football Traffickers. *Africa Research Bulletin: Political, Social and Cultural Series* 45(2):17444C-17445C.
- Currie, I & De Waal, J. 2005. *The Bill of Rights Handbook*. 5th ed. Lansdowne: Juta & Co., Ltd.
- David, F. 2007. Law Enforcement Responses to Trafficking in Persons: Challenges and Emerging Good Practice. *Trends & Issues in Crime and Criminal Justice*, 347:1-6.
- Davis, M. 2011. Man Guilty of Trafficking Girls in Witchcraft Trial. *The Independent UK* dated 8 July 2011:1. [Online] Available from: <http://www.independent.co.uk/news/uk/crime/man-guilty-of-trafficking-girls-in-witch> (Accessed on 11 July 2011).
- Defeis, F. 2003/2004. Protocol to Prevent, Suppress and Punish Trafficking in Persons – a New Approach. *ILSA Journal of International & Comparative Law* 10:485-491.
- Devenish, GE. 1998. *A Commentary on the South African Constitution*. Durban: Butterworth Publishers (Pty) Ltd.
- DFA (Department of Foreign Affairs). 2005. *International Agreements and/or Conferences Signed by South Africa in relation to the Youth, Children and People with Disabilities, Particularly with regard to the United Nations and the African Union*. [Online] Available from: http://www.dfa.gov.za/docs/2005pq/pq2_455.htm (Accessed on 20 October 2008).
- Di Nicola, A. 2007. Researching into Human Trafficking: Issues and Problems. In *Human Trafficking* edited by M Lee. Devon: Willan Publishing.
- Dottridge, M. 2002. Trafficking in Children in West and Central Africa. *Gender and Development*, 10(1):38-42.
- Dottridge, M & Weissbrodt, D. 1999. Review of the Implementation of and Follow-up to the Conventions on Slavery. *German Yearbook of International Law*, 42:242-292.
- European Commission. 2004. *Report of the Experts Group on Trafficking in Human Beings*. [Online] Available from: http://europa.eu.int/comm/justice_home/fsj/crime/forum/fsj_crime_forum_en.htm (Accessed on 20 March 2008).
- Ezeilo, JN. 2009. Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development – Report Submitted by the Special Rapporteur on Trafficking in Persons, Especially Women and Children. GA A/HRC/10/16. [Online] Available from: <http://www2.ohchr.org/english/issues/trafficking/docs/HRC-10-16-pdf> (Accessed 1 November 2010).
- Farrior, S. 1997. The International Law on Trafficking in Women and Children for Prostitution: Making It Live Up to Its Potential. *Harvard Human Rights Journal*, 10 (Spring issue):213-255.
- Foundation Against Trafficking in Women, International Human Rights Law Group and Global Alliance Against Traffic in Women. 2001. *Human Rights Standards for the Treatment of Trafficked Persons*. 3rd ed. Bangkok: Global Alliance Against Traffic In Women.
- GAATW (Global Alliance Against Traffic in Women). 1999a. *Human Rights in Practice – a Guide to Assist Trafficked Women and Children*. Bangkok: GAATW.
- GAATW (Global Alliance Against Traffic in Women). 1999b. *Human Rights in Practice – a Guide to Assist Trafficked Women and Children. The Migrating Woman's Handbook*. Bangkok: GAATW.
- Gajic-Veljanoski, O & Stewart, DE. 2007. Women Trafficked into Prostitution: Determinants, Human Rights and Health Needs. *Trans-cultural Psychiatry*, 44(3):338-358.
- Gallagher, AT. 2001. Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: a Preliminary Analysis. *Human Rights Quarterly*, 23:975-10004.

- Gallagher, AT. 2010. *The International Law of Human Trafficking*. Cambridge: Cambridge University Press.
- Gallagher, AT & Holmes, P. 2008. Developing an Effective Criminal Justice Response to Human Trafficking – Lessons from the Front Line. *International Criminal Justice Review*, 18(3):318-343.
- Gallinetti, J. 2010. Don't Shout Too Loud – Reflections on the Outrage against Human and Child Trafficking. *SA Crime Quarterly*, 33:11-17.
- Gallinetti, J & Kassan, D. 2008. Trafficking in Children in Africa: an Overview of Research, International Obligations and Existing Legal Provisions. In *Children's Rights in Africa – a Legal Perspective* edited by J Sloth-Nielsen. Hampshire, England: Ashgate Publishing Limited.
- Gould, C. 2006. Cheap Lives – Countering Human Trafficking: Considerations and Constraints. *SA Crime Quarterly*, 16:19-25.
- Happold, M. 2005. *Child Soldiers in International Law*. Manchester: Manchester University Press.
- Harrold, MM. 2006. A New Kind of Traffic(ing) Cop on the International “Beat” of Human Trafficking. *Charleston Law Review*, 1:98-122.
- Haynes, DF. 2004. Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers. *Human Rights Quarterly* 26:221-272.
- Haysom, N. 1997. Section 12/13: Servitude, Forced Labour and Slavery. In *Fundamental Rights in the Constitution – Commentary and Cases* edited by MH Cheadle, DM Davis and N Haysom. Kenwyn: Juta & Co., Ltd.
- Haysom, N. 2002. Servitude, Forced Labour and Slavery. In *South African Constitutional Law: The Bill of Rights* edited by MH Cheadle, DM Davis and N Haysom. Durban: Butterworth Publishers (Pty) Ltd.
- Hodgkin, R & Newell, P. 2002. *Implementation Handbook for the Convention on the Rights of the Child*. New York: UNICEF.
- HSRC (Human Sciences Research Council). 2010. *Tsireledzani: Understanding the Dimensions of Human Trafficking in South Africa*. [Online] Available from: <http://www.hsrc.ac.za/Document-3562.phtml> (Accessed on 25 March 2010).
- ILO (International Labour Organization). 1998. A New Kind of Trafficking: Child Beggars in Asia. *World of Work* 26:1-6. [Online] Available from: <http://www.ilo.org/public/english/bureau/inf/magazine/26/child.htm> (Accessed 11 March 2008-).
- ILO (International Labour Organization). 1999. Convention (No. 182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. United Nations, Treaty Series, vol. 2133, no. 37245. [Online] Available from: <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> (Accessed 10 April 2008).
- ILO (International Labour Organization). 2008. ILO Action against Trafficking in Human Beings. Geneva. [Online] Available from: <http://www.ilo.org/forcedlabour> (Accessed on 20 July 2008).
- Immelback, M. 2008. What Does It Mean To “Transport” a Victim of Trafficking? *Eye on Human Trafficking*, 19:3.
- IOM (International Organization For Migration). 2006. *Breaking the Cycle of Vulnerability: Responding to the Health Needs of Trafficked Women in East and Southern Africa*. Pretoria: International Organization for Migration.
- IOM (International Organization For Migration). 2007. *Training of Trainers on Combating Human Trafficking for South African Civil Society Organisations*. Pretoria: International Organisation for Migration, MRF.
- IOM (International Organization For Migration). 2008. No Experience Necessary: the Internal Trafficking of Persons in South Africa. Report for the International Organization for Migration. Pretoria. [Online] Available from: http://iom.org.za/site/index.php?option=com_docman&task=doc_details&gid=123Itemid=50 (Accessed 11 April 2008).
- IOM (International Organization For Migration). 2009. *Handbook on Counter-Trafficking for South African Government & Civil Society Stakeholders*. Pretoria: IOM.

- Jordan, AD. 2002. *The Annotated Guide to the Complete UN Trafficking Protocol*. (Compiled for the International Human Rights Law Group) [Online] Available from: <http://www.walnet.org/csis/papers/UN-TRAFFICK.PDF> (Accessed on 13 November 2008).
- Kamidi, R. 2007. A Legal Response to Child Trafficking in Africa: a Case Study of South Africa and Benin. Unpublished LLM Dissertation, University of the Western Cape, Cape Town.
- Kassan, D. 2007. Trafficking in Children. In *Commentary on the Children's Act* edited by CJ Davel and AM Skelton. Cape Town: Juta & Co., Ltd.
- Koyana, DS & Bekker, JC. 2007. The Indomitable *Ukuthwala* Custom. *De Jure*, 40(1):139-144.
- Kreston, SS. 2007. Trafficking in Children in South Africa: an Analysis of Pending Legislation. *Child Abuse Research in South Africa*, 8(1):35-50.
- Kruger, HB. 2010. Combating Human Trafficking: a South African Legal Perspective. Unpublished LLD thesis, University of the Free State, Bloemfontein.
- Laczko, F & Gramegna, MA. 2003. Developing Better Indicators of Human Trafficking. *Brown Journal of World Affairs*, X(1):179-194.
- Lansink, A. 2006. Human Rights Focus on Trafficked Women: an International Law and Feminist Perspective. *Agenda*, 70:45-56.
- Lee, L. (Ed.). 2007. *Human Trafficking*. Devon: William Publishing.
- Leggett, T. 2004a. Hidden Agendas? The Risks of Human Trafficking Legislation. *SA Crime Quarterly*, 9:1-5.
- Leggett, T. 2004b. The Risks of Specialised Human Trafficking Legislation. *Eye on Human Trafficking*, 3:4.
- McQuoid-Mason, D. 2009. The Practice of "Ukuthwala", the Constitution and the Criminal Law (Sexual Offences and Related Matters) Amendment Act. *Obiter*, 30(3):716-723.
- Melvin, JL. 2006. Human Trafficking: a Theoretical Application of Anomie on the Tier Placement System Utilized by the U.S. Department of State's "Trafficking in Persons" Report. Unpublished Master's Dissertation, School of Criminal Justice, Grand Valley State University, Allendale, Michigan.
- Morawska, E. 2007. Trafficking into and from Eastern Europe. In *Human Trafficking* edited by M Lee. Devon: Willan Publishing.
- Mwambene, L & Sloth-Nielsen, J. 2011. Benign Accommodation? *Ukuthwala*, "Forced Marriage" and the South African Children's Act. *African Human Rights Law Journal*, 11(1):1-22.
- Naidu, A. 1987. The Right To Be Free from Slavery, Servitude and Forced Labour. *The Comparative and International Law Journal of Southern Africa*, 20(1):108-113.
- Nowak, M. 2005. *U.N. Covenant on Civil and Political Rights – CCPR Commentary*. 2nd ed. Kehl: N.P. Engel.
- Obokata, T. 2006. *Trafficking of Human Beings from a Human Rights Perspective: towards a Holistic Approach* Leiden: Martinus Nijhoff Publishers.
- Olivier, NJJ, Bekker, JC, Olivier NJJ(Jnr) & Olivier, WH. 1995. *Indigenous Law*. Durban: Butterworths.
- Pearson, E. 2000. *Human Rights and Trafficking in Persons: a Handbook*. Bangkok: GAATW.
- Pharoah, R. 2006. *Getting to Grips with Trafficking – Reflections on Human Trafficking Research in South Africa*. Institute for Security Studies Monograph Series No. 123 June 2006. Pretoria: Institute for Security Studies.
- Raymond, JG. 2002. The New UN Trafficking Protocol. *Women's International Forum*, 25(5):491-502.
- Reader's Digest Oxford. 1996. *Complete Wordfinder*. New York: The Reader's Digest Association, Inc.
- Rijken, C. 2003. *Trafficking in Persons: Prosecution from a European Perspective*. The Hague: TMC Asser Press.

- SALRC (South African Law Reform Commission). 2006. Trafficking in Persons. Project 131 (Discussion Paper 111). [Online] Available from: <http://www.doj.gov.za/salrc/dpapers.htm> (Accessed 11 March 2008).
- SAPA. 2011. Human Trafficker Gets Life Sentence. NEWS24:20 JULY 2011:1. [Online] Available from: <http://www.news24.com/printArticle.aspx?iframe&aid=bdbc90ea-5794-403c-95df-e7> (Accessed on 21 July 2011).
- Shah, SP. 2007. Distinguishing Poverty and Trafficking: Lessons from Field Research in Mumbai. *Georgetown Journal on Poverty Law & Policy*, 14:441-454.
- Shelley, L. 2007. Human Trafficking As a Form of Transnational Crime. In *Human Trafficking* edited by M Lee. Devon: Willan Publishing.
- Silverman, JG, Decker, MR, Gupta, J, Dharmadhikari, A, Seage, GR & Raj, A. 2008. Syphilis and Hepatitis B Co-infection among HIV-infected, Sex-trafficked Women and Girls, Nepal. *Emerging Infectious Diseases* 14(6):932-934.
- Singh, D. 2004. Piercing the Veil on Trafficking in Women. *Comparative and International Law Journal of Southern Africa*, 37(3):340-373.
- Skinner, BE. 2008. *A Crime So Monstrous: Face-to-Face with Modern-day Slavery*. New York: Free Press.
- Slabbert, M. 2002. Handelsdryf met Menslike Organe en Weefsel vir Oorplantingsdoeleindes. Unpublished LLD Thesis, University of the Free State, Bloemfontein.
- Slabbert, M. 2009. This Is My Kidney, I Can Do What I Want with It – Property Rights and Ownership of Human Organs. *Obiter*, 30(3):499-517.
- Snyman, CR. 2008. *Criminal Law*. 5th ed. Durban: LexisNexis Butterworths.
- Snyman, R. 2005. Victims of Human Trafficking. In *Victimology in South Africa* edited by L Davis and R Snyman. Pretoria: Van Schaik Publishers.
- Stuurman, L. 2004. Anti-trafficking Legislation Can No Longer Be Delayed. *Eye on Human Trafficking*, 3:5.
- The Future Group. 2007a. Faster, Higher, Stronger: Preventing Human Trafficking at the 2010 Olympics. [Online] Available from: <http://www.thefuturegroup.org> (Accessed 20 August 2008).
- The Future Group. 2007b. Human Trafficking – a Human Security Crisis of Global Proportions. [Online] Available from: <http://tfgwebmaster.web.aplu.net/wwwthefuturegrouporg/id20.html> (Accessed on 20 August 2008).
- Truong, T & Angeles, MB. 2005. *Searching for Best Practices to Counter Human Trafficking in Africa: a Focus on Women and Children*. Report for UNESCO. [Online] Available from: <http://unesdoc.unesco.org/images/0013/001384/138447E.pdf> (Accessed 25 March 2008).
- UN (United Nations). 2000. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. (Trafficking Protocol) GA Res. 55/25, annex II 55 UN GAOR Supp. (no. 49) U.N. Doc. A/45/49 (Vol. I) 2001. [Online] Available from: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (Accessed on 11 March 2008).
- UN General Assembly. 2000. Addendum: Interpretative Notes for the Official Records (*Travaux Préparatoires*) of the Negotiation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. A/55/383/Add.1. [Online] Available from: http://www.unodc.org/pdf/ctoccp_2006/04-60074_ebook-e.pdf (Accessed 18 November 2008).
- UN.GIFT (United Nations Global Initiative To Fight Human Trafficking). 2008a. Human Trafficking for the Removal of Organs and Body Parts. Background Paper 011 Workshop (UN.GIFT B.P.:011) at The Vienna Forum to Fight Human Trafficking, 13-15 February 2008, Austria Centre, Vienna.
- UN.GIFT (United Nations Global Initiative To Fight Human Trafficking). 2008b. Profiling the Traffickers. Background Paper 016 Workshop (UN.GIFT B.P.:016) at The Vienna Forum to Fight Human Trafficking, 13- 15 February 2008, Austria Centre, Vienna.

- UN.GIFT (United Nations Global Initiative To Fight Human Trafficking). 2008c. *The Vienna Forum Report: a Way Forward to Combat Human Trafficking*. New York: United Nations.
- UNODC (United Nations Office on Drugs and Crime). 2004. Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols thereto. [Online] Available from: <http://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html> (Accessed on 17 August 2010).
- UNODC (United Nations Office on Drugs and Crime). 2006. Toolkit to Combat Trafficking in Persons – Global Programme Against Trafficking in Human Beings. New York: United Nations.
- UNODC (United Nations Office on Drugs and Crime). 2008. Toolkit to Combat Trafficking in Persons – Global Programme Against Trafficking in Human Beings. New York: United Nations. [Online] Available from: http://www.unodc.org/documents/human-trafficking/HT_Toolkit08_English.pdf (Accessed on 16 October 2008).
- UNODC (United Nations Office on Drugs and Crime). 2009a. Global Report on Trafficking in Persons. Vienna: UNODC.
- UNODC (United Nations Office on Drugs and Crime). 2009b. Model Law for Trafficking in Persons. [Online] Available from: http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf (Accessed on 14 July 2010).
- US DEPARTMENT OF STATE (United States of America Department of State). 2003. Model State Anti- Trafficking Criminal Statute. [Online] Available from: http://www.justice.gov/crt/crim/model_state_law.pdf (Accessed on 17 September 2010).
- US DEPARTMENT OF STATE (United States of America Department of State). 2007. Trafficking in Persons Report. [Online] Available from: <http://www.state.gov/g/tip/rls/tiprpt/2007> (Accessed on 22 July 2007).
- US DEPARTMENT OF STATE (United States of America Department of State). 2008. Trafficking in Persons Report. [Online] Available from: <http://www.state.gov/g/tip/rls/tiprpt/2008> (Accessed on 1 August 2008).
- US DEPARTMENT OF STATE (United States of America Department of State). 2009. Trafficking in Persons Report. [Online] Available from: <http://www.state.gov/documents/organization/123357.pdf> (Accessed on 30 June 2009).
- US DEPARTMENT OF STATE (United States of America Department of State). 2010. Trafficking in Persons Report. [Online] Available from: <http://www.state.gov/documents/organization/142979.pdf> (Accessed on 18 June 2010).
- US DEPARTMENT OF STATE (United States of America Department of State). 2011. Trafficking in Persons Report. [Online] Available from: <http://www.state.gov/g/tip/rls/tiprpt/2011> (Accessed on 15 July 2011).
- Watson, C. 2006. The Organised Crime of Organ Trafficking. Unpublished LLM Dissertation. University of the Free State, Bloemfontein.
- Weissbrodt, D & Anti-Slavery International. 2002. *Abolishing Slavery and Its Contemporary Forms*. Report for the Office of the United Nations High Commissioner for Human Rights HR/PUB/02/4. New York and Geneva: United Nations.
- Wijers, M & Lap-Chew, L. 1999. *Trafficking in Women: Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*. Utrecht: Foundation Against Trafficking in Women.
- Zimmerman, C, Hossain, M, Yun, K, Roche, B, Morison, L & Watts, C. 2006. *Stolen Smiles: a Summary Report on the Physical and Psychological Health Consequences of Women and Adolescents Trafficked in Europe*. Report for the London School of Hygiene & Tropical Medicine, London. [Online] Available from: www.lshtm.ac.uk/genderviolence (Accessed on 14 July 2008).