

Child trafficking and children in South Africa's sex trade: Evidence, undercounting and obfuscations

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Few social phenomena in contemporary South Africa have been subject to so much speculation and raised so many unanswered questions as the country's child trafficking 'problem'. The exact scope of child trafficking in South Africa will remain elusive, whilst fearmongering is unlikely to leave our dining room tables and social media spaces. The concept of child trafficking itself is a greasy and contested one, open to misuse, sensation and even discounting. With due consideration to the absence of an unambiguous statistical knowledge base, this article considers sceptics' assertion of only anecdotal or "little evidence" to substantiate the problem and assesses what insights can be gleaned from available sources. The article focuses on child trafficking and children in the sex trade. A complex and nuanced perspective replaces number counting and simplicity, with the author's proximity to the study phenomena over the past 18 years serving to string the disconnected 'pieces' together. South Africa's Prevention and Combating of Trafficking in Persons Act 7 of 2013 is discussed as the yardstick for determining what is trafficking and what is not, followed by an overview of available literature and media reports. Available police data is presented and selected successfully prosecuted cases briefly discussed. Findings indicate that some researchers' use of truncated definitions of Trafficking in Persons (TIP) undercounts the prevalence of TIP among research participants and that claims by TIP sceptics of "little evidence to substantiate" the prevalence of child trafficking and children in South Africa's sex trade are misleading. The complex nature and malleability of child trafficking and children in the sex trade are underscored and factors contributing to constraining the measurement of the problem discussed. Woven together, literature, research, media reports, academic studies, police investigations (closed and ongoing) and prosecutions (successful and unsuccessful) over the past three decades – contextualised within South Africa's complex socio-cultural vulnerability landscape – indicate that child trafficking and children in South Africa's sex trade cannot be ignored as a systemic South African problem.

Keywords: trafficking in persons; child trafficking; sexual exploitation; child prostitution; human trafficking

INTRODUCTION

As with other forms of human trafficking, reliable statistical data on the exact scope of child trafficking and children in South Africa's sex trade simply does not exist. It will continue to be "*an elusive statistical nightmare*" (Van der Watt, 2015), while representing a minefield of political and ideological contestations (De Sas Kropiwnicki, 2012; Raphael, 2017). Over the past 30 years, however, the constellation of successfully prosecuted child trafficking cases, investigative reporting and documentaries, media reports, academic publications, masters and doctoral research, and a number of research reports has suggested, quite convincingly, that child trafficking and children in the sex trade is an indisputable and systemic reality in South Africa. The annual United States Trafficking in Persons Report¹ (US TIP Report), considered the most comprehensive global report on governments' efforts to combat severe forms of human trafficking (see Kruger, 2010: 126), has consistently referred to South Africa as a source, transit and destination country for the trafficking of men, women and children exploited for commercial sex and forced labour. As early as 2003, it was reported that South African women and children were trafficked "*internally for labour and commercial sexual exploitation*" (U.S. Department of State, 2003: 10) and, in 2004, that "*women and girls are trafficked to South Africa for forced prostitution, forced marriages, and forced labour*" (U.S. Department of State, 2004: 77). A year later, in 2005, the report indicated that an "*unknown but substantial number of South African women and girls are trafficked internally, and occasionally to other countries, for sexual exploitation*" (U.S. Department of State, 2005: 198). Most recently, South Africa was ranked on the tier two watch list for the second consecutive year on the US Department of State ranking list, with the continued reference to both domestic and foreign victims exploited in South Africa's sex trade (U.S. Department of State, 2019).

Despite the phenomenon being widely recognised as a problem in South Africa, some are not convinced that Trafficking in Persons (TIP) in the sex trade is a significant issue and suggest that there is little evidence to substantiate this notion (Gould, 2014; Gould & Fick, 2008; Richter & Delva, 2010; Palmary, 2016; Yingwana, 2018). Gould (2014: 200) concludes that international pressure to comply with the Palermo Protocol (United Nations, 2000) – a legally binding instrument ratified by the South African

government – appears to have contributed to “*the creation of sex trafficking as a social problem in South Africa*”. Palmary (2016: 53), in a similar vein, tracks the “*invention of trafficking as a preoccupation*” in the country and goes on to state that South Africa’s Prevention and Combating of Trafficking in Persons Act is based on “*mythology*” (Palmary, 2016: 77), qualified earlier in her text as “*common sense cultural belief*” (Palmary 2016: 64). Most poignant perhaps is a human trafficking ‘factsheet’ researched by Africa Check (2014/2017) and updated as recently as 9 May 2017. It states that there is “*limited evidence of human trafficking in South Africa*” and suggests that South Africa’s Prevention and Combating of Trafficking in Persons Act 7 of 2013 (Prevention and Combating of Trafficking in Persons Act (PACOTIP Act), 2013) is “*not yet operational*”, despite its commencement almost two years earlier on 9 August 2015.

Arguably more disputed than the human trafficking phenomenon is its subset of child trafficking and the phenomenon of children in the sex trade discussed in this article. It raises critical questions though: What do we know about these phenomena and what are we missing? What counts as ‘evidence’ and who decides? How much is ‘enough’ to qualify as a ‘problem’? This article, based on an extensive study of human trafficking for sexual exploitation and its complex intersection with other crime and social phenomena, will attempt to answer these questions. Available literature, police data from between 16 December 2007 and 12 December 2017 and 10 cases selected from 21 successfully prosecuted child trafficking cases are discussed and considered as thematically consistent with what has been documented about these phenomena. The author’s diverse roles and proximity to the study phenomena over the past 18 years serve to string the disconnected ‘pieces’ together, and the article concludes with a discussion of the assemblage of existing knowledge and data.

The author has taken note of criticism levelled against an exclusive research focus on TIP and the sex trade. Other areas of TIP, particularly the largely undocumented phenomenon of labour trafficking, are indeed in dire need of in-depth study. However, as will be shown in this article, something is considerably amiss with how TIP in the sex trade is conceptualised and overlooked by some researchers. It is the author’s view that poor conceptualisations of TIP have significantly constrained efforts to substantiate the prevalence of both adult and child trafficking in the sex trade and, arguably, have rationalised harm. Therefore, much remains to be documented, deconstructed and demystified about these phenomena. An in-depth legal analysis of cases is beyond the ambit of this article. The legislative framework that follows positions South Africa’s PACOTIP Act 7 of 2013 as a “*sharp prosecution sword*” (Kruger, 2016: 84) that delineates what is trafficking and what is not.

LEGISLATIVE FRAMEWORK

Definitions and legal frameworks matter. If a crime phenomenon is not accurately defined, the interpretation of a specific constellation of circumstances will be skewed and the concomitant response, if any, flawed. The consequences of using inaccurate definitions may be inadvertent, yet dire. Harm may be induced, lives may be lost, and perpetrators may be allowed to continue with unyielding stamina and impunity. Dempsey (2017) points out that some South African researchers have used truncated legal definitions of trafficking for the purpose of sexual exploitation. This adversely affects research reliability and undercounts the prevalence of human trafficking in South Africa. In a way that has been remarkably similar to experiences documented in the United States (Farrell, Owens & McDevitt, 2014), getting to grips with the TIP legislation has also been a problem for those at the frontline of combating the crime in South Africa. Significant shortfalls in victim identification and the propensity to undercount the problem have consistently been raised in the annual US TIP Reports. Most recently, the “*poor understanding of trafficking and the lack of consistent training*” were said to hinder South Africa’s anti-trafficking efforts and “*sometimes resulted in arrests and detentions of trafficking victims*” (U.S. Department of State, 2019: 424). Fragmented interim pieces of legislation leading up to the operationalised PACOTIP Act in 2015 have also contributed to the undercounting melange. For the purpose of this article, a “child” means a person under the age of 18 years (PACOTIP Act, 2013), and a child victim of trafficking is any person trafficked under 18 years of age (UNICEF, 2006: 9). Both the Children’s Act 38 of 2005 (Children’s Act, 2005) and the Sexual Offences Amendment Act 32 of 2007 (The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007) contained interim provisions dealing with particular aspects of trafficking in persons pending the promulgation of the PACOTIP Act (Kruger, 2010: 482). These transitional provisions were a means for South Africa to domesticcate laws and policies in line with the

obligations in terms of trafficking-related international and regional treaties. However, the scope of the mandate of these legislative pieces was inherently constrained. As pointed out by Kreston (2007: 45), its limitations include the fact that the Children’s Act 38 of 2005 applied only to child victims of trafficking (Children’s Act 38 of 2005) while the Sexual Offences Amendment Act 32 of 2007 only covered trafficking for sexual exploitation of both children and adults. In contrast, the PACOTIP Act 7 of 2013, enacted in July 2013, comprehensively addresses all forms of trafficking in persons. The law eventually came into effect on 9 August 2015 (Kruger, 2016: 55; President Zuma signs new Trafficking Act into law, 2015) and gave domestic legal effect to South Africa’s international obligations under the Palermo Protocol (Mollema, 2014: 247). The protection of- and provision of assistance to all victims of human trafficking, the prevention of human trafficking, and the prosecution and appropriate punishment of perpetrators are now enabled by the PACOTIP Act. In Kruger’s (2016: 84) comparison of the PACOTIP Act with international prosecution standards, the author describes the legislation as an *“innovative and invaluable tool”* that equips practitioners to terminate impunity for multiple trafficking agents who profit from the lucrative exploitation of human beings.

The offence of ‘Trafficking in Persons’ is defined by section 4(1) in Chapter 2 of the PACOTIP Act as follows:

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

- (a) a threat of harm;*
- (b) the threat or use of force or other forms of coercion;*
- (c) the abuse of vulnerability;*
- (d) fraud;*
- (e) deception;*
- (f) abduction;*
- (g) kidnapping;*
- (h) the abuse of power;*
- (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or*
- (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons”*

Also important here is the definition of ‘abuse of vulnerability’ as deconstructed in section 1 of the Act as a means through which a person can be mobilised for subsequent exploitation. According to this definition, ‘abuse of vulnerability’ for purposes of section 4(1) means:

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

- a) the person having entered or remained in the Republic illegally or without proper documentation;*
- b) pregnancy;*
- c) any disability of the person;*
- d) addiction to the use of any dependence-producing substance;*
- e) being a child;*
- f) social circumstances; or*
- g) economic circumstances.”*

Even though the PACOTIP Act does not refer specifically to the crime of ‘child trafficking’ or ‘trafficking in children’, it does include this crime, which, importantly, has a lower burden of proof than cases that concern adults. The PACOTIP Act does not specifically provide in section 4(1) that the ‘means’ requirement is waived when children are trafficked. However, the means seems redundant in relation to trafficking of children, because one of the means listed in section 4(1), namely the ‘abuse of vulnerability’, includes ‘being a child’ as part of its definition. It is further argued that the PACOTIP Act is compliant with international law in that section 11(1)(a) implies that the ‘means’ component does not form part of the definition of child trafficking. This section provides that a child’s consent to the intended exploitation is no defence to a charge of trafficking (see also Kreston, 2014; Kruger, 2016). For adults, section 11(1)(b) becomes relevant and states that an adult’s consent to the intended exploitation is no defence to a charge

of trafficking, regardless of whether one or more of the means referred to in section 4(1)(a) to (j) have been used. Simply put, neither children nor adults can consent to being exploited.

Article 3(c) of the Palermo Protocol defines the elements of a case of child trafficking 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.” Compliant with Article 3(c) of the Palermo Protocol, UNICEF (2006: 9) defines child trafficking as “the act of recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation regardless of the use of illicit means, either within or outside a country”. Consistent with the implication of section 11(1)(a) of the PACOTIP Act, South Africa’s National Policy Framework on the Management of Trafficking in Persons Offences (the NPF), released in 2019, provides a definition of a ‘trafficked child’. Even though the NPF does not have the authority and binding effect of legislation, it captures the spirit of international law’s definition of child trafficking as described in Article 3(c) of the Palermo Protocol. According to the NPF (2019: 18), a ‘trafficked child’ is “any person under eighteen who is recruited, transported, transferred, sold, exchanged, leased, harboured or received for the purpose of exploitation, either within or outside a country, even if no element of coercion, deception, abuse of authority or any other form of abuse is used”.

Noteworthy, also, is the intersection between commercial sexual exploitation of children (CSEC) and trafficking of children for sexual exploitation. The difference “*is difficult to untangle and can vary between nations based on their national laws, although both include sexual exploitation of a child as their purpose*” (Mapp, 2020: 355). Section 17 of the Sexual Offences and Related Matters Amendment Act 32 of 2007 becomes critical when considering the various research studies discussed in this article. According to this section of the Act, a child can consent to sex in certain cases, but, as soon as the sex is for payment (i.e. prostitution), the child is deemed to be the victim of the offence of sexual exploitation up until the age of 18. TIP and prostitution cannot be conflated as they have different legal definitions – both in South Africa and elsewhere in the world (Dempsey, 2017). However, from a complex systems perspective (Van der Watt, 2020), myopic dichotomies and binary framings negate the seamless interpenetration of these phenomena. Moreover, trafficking, prostitution, pornography and sexual violence rarely exist in their own private universes. The one frequently oxygenates another, with offender- and harm residue dispersed between these systems. This is of particular importance to consider in a country plagued by a gender-based violence crisis (National Strategic Plan on Gender-Based Violence & Femicide, 2020). Whether researching these phenomena or collecting evidence during a criminal investigation for prosecutorial purposes, the intractability of these issues must be considered.

LITERATURE REVIEW

Human trafficking

The necessity of reliable data on the scale of human trafficking and the accompanying challenges in producing prevalence measurements have been discussed extensively (Farrell & de Vries, 2020; Fedina & DeForge, 2017; Raphael, 2017). With reference to the absence of rigorous data, Gallagher (2014) points to the fact that “*human exploitation takes many forms, occurs largely among hidden populations, and is notoriously difficult to find, let alone quantify in any meaningful way*”. In South Africa, the lack of official data remains an ongoing problem (Hesselink, 2018; Pharoah, 2006), with the crime described as a “*confluence of complexities*” that “*denies us the convenience of an unambiguous and quantified understanding*” (Van der Watt, 2015). South African scholarly work on the issue of human trafficking, and to a lesser extent child trafficking as a subset of the broader phenomenon, has incrementally gained traction over the past two decades. Prominent texts on the broader human trafficking issue in South Africa range from biographical accounts by survivors sharing their lived experiences (Grootboom, 2016; Hough-Coetzee & Kruger, 2015) to an exposé of the transnational drug trade’s nexus with human trafficking in South Africa (Friedman, 2014). Probably the most significant theme addressed by scholars to date relates to South Africa’s legal and legislative arena (Kreston, 2007, 2014; Kruger, 2016; Kruger & Oosthuizen, 2011; Kruger & Oosthuizen, 2012; Mollema, 2013, 2014; Prinsloo & Ovens, 2015). A number of local reports on human trafficking and its internal and Southern African dimensions (Bermudez, 2008; Delpont, Koen & MacKay, 2007; Human Sciences Research Council (HSRC), 2010; Martens, Pieczkowski & Van Vuuren-Smyth, 2003) have been published, whilst publications with a specific focus on trafficking in South Africa’s sex trade include those by Molo Songololo (2000) and Gould and Fick (2008).

Theme-specific publications include human trafficking and the 2010 Soccer World Cup in South Africa (Gould, 2010a, 2010b); scepticism about the notion of human trafficking in the sex trade (Gould, 2011, 2014); the criminal justice response to human trafficking (Bello, 2018; Bello & Olutola, 2018; Van der Watt & Van der Westhuizen, 2017); control methods and modus operandi (Van der Watt & Kruger, 2017, 2020); the trafficking of men and boys (Allais, 2013); human trafficking and social work (Warria, 2019); governance and politics (Emser & Francis, 2017); and the unexplored nexus between missing children and human trafficking (Emser & Van der Watt, 2019). The most comprehensive text written on the issue of human trafficking in South Africa thus far is Frankel's (2016) *Long Walk to Nowhere: Human Trafficking in Post-Mandela South Africa*. Apart from its detailed and multifaceted discussion of human trafficking, the text provides the first seminal insights into issues concerning the bane of labour trafficking, illicit mining, farm labour and domestic servitude in South Africa. On the basis of insights garnered from "153 core and confidential interviews" (Frankel, 2016: 20) with multidisciplinary participants, Frankel deconstructs the country's enabling environment as the "perfect climate" for labour exploitation, trafficking and slavery (Frankel, 2016: 4) and concludes that "it would be a surprise if South Africa did not have a trafficking problem" (Frankel, 2016: 4).

However, not everybody agrees that trafficking is a 'problem' in South Africa. Scepticism is critical, and it is important to understand its basis towards the human trafficking phenomenon. The findings of a two-year study (2006–2008) by the Institute for Security Studies (ISS) and the Sex Worker Education and Advocacy Taskforce (SWEAT) (Gould & Fick, 2008) lay claim to dispelling "several myths and popular notions" (Gould & Fick, 2008: 153) about 'sex work' and human trafficking in Cape Town (see also Gould, 2014). The study is arguably the most widely cited by sceptics and commentators for insights into the prevalence of human trafficking in South Africa (Africa Check, 2014/2017; Hübschle, 2009; Wilkinson & Chiumia, 2013; Yingwana, 2018). Moreover, it is referred to by the Africa Check human trafficking factsheet (Africa Check, 2014/2017) as "the most methodologically sound research", and pours cold water on many anti-trafficking campaigners' speculations about the scope of South Africa's trafficking 'problem' (Vigneswaran, 2012: 3).

Reflecting on the collaborative research approach between SWEAT and the ISS, Gould (2014: 185) states, "SWEAT had been working with sex workers and brothel owners in Cape Town for 11 years prior to the study, providing health and other services." This enabled the ISS to gain access to the industry – "245 street prostitutes, 964 brothel prostitutes, and 103 brothels in the city" were identified (Gould, 2014: 185). Data for the study was gathered through telephonic and in-person interviews, surveys and focus group discussions – 164 interviews in total – with research subjects that included 'sex workers', brothel owners and one pimp. Force and deception in the process of recruitment were not found to be common features of the 'sex work' industry in Cape Town. However, the research did find "widespread evidence that sex workers based in brothels are subject to various forms of coercion by brothel owners, mainly to force them to remain in the industry and thus to maintain the brothels' income" (Gould & Fick, 2008: xiii). Eight women, of 164 canvassed, "who could be said to have experienced trafficking-like practices", were identified, and "almost all of these experiences happened in the past" (Gould & Fick, 2008: xiii). The findings include that few sex buyers "employ the services" of "very young sex workers" (Gould & Fick, 2008: xiii) and, despite prevailing perceptions that there are large numbers of children forced to sell sex, "the researchers found no evidence of children in brothels" (Gould & Fick, 2008: xiii). In a finding that further challenged the lived experiences, casework and perceptions of practitioners in the field, Gould and Fick (2008: xiii) state that over the two-year research period in Cape Town, a mere "five children were encountered selling sex on the street" and "none of these children were being forced by a third party to sell sex". Two "unexpected trends in demands from clients" included "unprotected sex, and someone who would take drugs with the client" (Gould & Fick, 2008: xiii).

In a subsequent publication by Gould (2014), conclusions are drawn from the aforementioned ISS/SWEAT study in Cape Town and another by Richter and Delva (2010), which together "reflect a continuum of working experiences for those involved in prostitution" (Gould, 2014: 199). The report compiled by Richter and Delva (2010) was based on research findings from three studies related to the Soccer World Cup 2010 and managed by SWEAT (Richter & Delva, 2010: 1). The research project comprised two components – a website component and a mixed-methods component. The website component included a three-wave telephonic survey of female persons in prostitution in the last weeks of May (pre-World Cup), June (during the World Cup) and July (post-World Cup) 2010. The mixed-methods component of the research project employed several research techniques, including the surveying of more

than 2000 persons in prostitution in Hillbrow, Sandton, Rustenburg and Cape Town (Richter & Delva, 2010: 5). One of the nine main findings from Richter and Delva (2010: 5) was no indication of a “*major influx of young sex workers*” and that the data “*does not support fears about an increase of children ... into the sex industry during the World Cup period*”.

Data from both studies (i.e., Gould & Fick, 2008; Richter & Delva, 2010), collectively considered by Gould (2014) in a paper entitled ‘Sex Trafficking and Prostitution in South Africa’, provides “*the basis for a critique of Western rescue missions and the larger anti-trafficking movement*” (Gould, 2014: 183). Generalising to the entire “*South African context*”, Gould (2014: 199) continues by stating that there is “*little evidence to substantiate the popular notions*” that:

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

In a conclusion, Gould (2014: 200) asserts:

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

The findings of negligible evidence regarding both adults and children being trafficked in South Africa’s sex trade have, however, not escaped scrutiny. Subsequent to a 2009 presentation of the research by the ISS in Port Elizabeth², which claimed that the problem in the country “*is not so bad*”, *The Herald* quoted Director Ronald Koll of the South African Police Service (SAPS), who stated that TIP is “*a definite problem in Port Elizabeth*”. Director Marinda Mills of the SAPS also responded to the research by stating that TIP is “*often overlooked*” and sometimes “*just seen as prostitution*”. She pointed out that it can be “*more serious than that and the victims become so entangled in it that they don’t report they’re being exploited*” (De Kock, 2009). Frankel considered the conclusion “*that less than a dozen of hundreds of sex workers in the city [of Cape Town] are trafficked*” as “*extraordinary*” (2016: 167-168) and probably based on the fact that “*respondents were asked whether they had been trafficked notwithstanding the inherent dangers in admitting involvement in trafficking circles*” (2016: 168). Michelle Dempsey, Professor of Law at Villanova University in the United States, identified a number of shortfalls in the trafficking definition used in both Gould and Fick (2008) and Gould (2014). Dempsey points out that Gould (2014) has “*radically truncated the scope of the definition*” of human trafficking and even “*excludes cases involving the use of force*” (Dempsey, 2017: 73-74). Furthermore, in the study by Gould and Fick (2008), three case studies (‘Sarah’, ‘Chantal’ and ‘Xing Xing’) were documented as cases not fitting the description of trafficking. In response, Dempsey, applying the same set of facts to the definition of human trafficking in the Palermo Protocol, meticulously argues that Gould and Fick (2008) incorrectly coded the cases as not being trafficking and, thus, “*undercounted the prevalence of trafficking for the purpose of sexual exploitation*” (Dempsey, 2017: 75-77). In August 2018, veteran TIP prosecutor Advocate Zeldi Swanepoel raised concerns about claims of “*little evidence to substantiate*” TIP in South Africa, during her presentation on the PACOTIP Act at a University of South Africa seminar on TIP (Swanepoel, 2018). From research and studies conducted by several academics, she stated that it is clear that some academics are not using the same definition of TIP and she concurred with the conclusions and recommendations made by Dempsey (2017).

The undercounting of TIP in the sex trade has continued post-Gould (2014). In Palmary’s interpretation of South Africa’s PACOTIP Act, the author asserts “*women are not deceived and coerced, but know perfectly well that their work will be exploitative*” (Palmary, 2016: 73). That women are exploited “*is beyond dispute*” the author states, but she concludes that this exploitation “*falls short of trafficking*” (Palmary, 2016: 73). Coercive tactics by third party role-players and the ‘exploitation’ footprint are evidently widespread in the sex trade and ‘beyond dispute’, but are not conceptualised as trafficking by TIP sceptics. This is contrary to section 11(1)(b) of the PACOTIP Act, which states explicitly that it is “*no defence*” to a trafficking-related offence if “*an adult person who is a victim of trafficking has*

consented to the intended exploitation” (PACOTIP Act, 2013). The irrelevance of initial consent is also highlighted by the U.S. Department of State (2017: 17).

A country study by Yingwana (2018) documents how SWEAT and Sisonke, the national ‘sex worker’ movement, deal with TIP in the sex trade through their advocacy and organising. Included in the study’s methodology were focus group interviews with 21 adult women in prostitution and 11 individual interviews, which included the SWEAT national helpline coordinator. According to Yingwana (2018: 220), the “*definition of human trafficking that SWEAT works with is derived from the PACOTIP Act*”. The author continues to quote the helpline coordinator’s description of a trafficking victim/survivor as “... *someone who has been taken away from where they were staying without really knowing where they were going, and without consenting to be taken to that place, for exploitation purposes*” (Yingwana, 2018: 220). Save for the reference to ‘exploitation purposes’, the PACOTIP Act derivative used by SWEAT is glaringly reduced. The mention that “*the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement*” (Yingwana, 2018: 215) is also problematic and indicates definitional truncation and emphasis on ‘movement’, which is by no means a prerequisite for a trafficking offence.³ Furthermore, women in prostitution also made mention of children experiencing harm. The first mention comes from a local woman in prostitution who addresses a migrant woman in prostitution (Yingwana, 2018: 213-214) where mention is made of “... *the Nigerians*” who “*sell drugs ... And they use our children*”. Concerning challenges faced by women in prostitution, the second mention of children is in reference to their identification of “*stigma and abuse that filter down onto their children because of their sex work*” (Yingwana, 2018: 215). Troublingly, the meaning and implications of the aforementioned references to the ‘use’ and ‘abuse’ of children are not explained and the first mention seemingly dismissed as “*sex workers drawing from government and media rhetoric about foreigners (specifically Nigerians) bringing corruption and crime to the country*” (Yingwana, 2018: 214). Importantly, the taking away, guarding over and use of children as leverage to ensure continued compliance with exploitative ‘work’ commitments are common control methods employed by traffickers (see Aghatise, 2004; UNODC, 2014; Van der Watt & Kruger, 2020). Three case studies of TIP interventions by SWEAT and Sisonke are discussed (Yingwana, 2018: 221-226) which include child trafficking and children exploited in the sex trade. However, a number of other references to abuse by pimps and brothel managers, and women enticed, misled or coerced into prostitution (Yingwana, 2018: 214, 217) do not appear to be considered within the definitional ambit of TIP.

To further explore the claim that ‘little evidence’ exists to substantiate the ‘popular notions’ about TIP and, more specifically, child trafficking and children in the sex trade, it is important to consider a number of research reports and data-gathering initiatives dating back to the mid-1990s. Albeit varying in their aims, scope and methodologies applied, similar themes and patterns are undoubtedly evident.

Child trafficking

One of the first research reports to provide granular insights into what could clearly fit the current definition of trafficking under South Africa’s PACOTIP Act is a study entitled *Child Prostitution and Sex Tourism: South Africa*, authored by O’Connell Davidson and Sanchez Taylor (1996). The study was published by ECPAT International as one of the background documents for the World Congress Against the Commercial Sexual Exploitation of Children, held in August 1996. The research, based on nine days and nights of fieldwork and observations in Cape Town and Durban, included in-depth interviews with 12 sex buyers and shorter interviews (half an hour or less) with a further 20 such men. A further 25 people working in the sex trade (hostess club and escort agency managers, doormen, pimps and persons in prostitution), seven street children and a number of local people were also interviewed (O’Connell Davidson & Sanchez Taylor, 1996: 4). The study documented the reality of girls as young as eight years old being exploited by brothel owners, whilst others, aged 11 and 12, were held and exploited in dilapidated apartment blocks. The researchers spoke to prostituted children under the age of 17, who operated in nightclubs in both Cape Town and Durban where girls aged between 14 and 16 go to “*solicit seamen’s trade*” (O’Connell Davidson & Sanchez Taylor, 1996: 6). Worth noting, according to the researchers, was that the owners of these establishments do not necessarily operate them as brothels, but that their “*managers, doormen and bar staff do appear to become involved in various opportunistic forms of pimping and procuring*”. Managers and owners of more sophisticated agencies and clubs were also implicated in the prostitution of girls “*much younger*” than 18, in the sense that they would arrange ‘anything a regular asks for’, even though the exploitation did not necessarily occur on their premises

(O'Connell Davidson & Sanchez Taylor, 1996: 7). O'Connell Davidson and Sanchez Taylor (1996: 6-8) documented a number of important themes. These included the owners of clubs and agencies locking women and girls into "*a relationship of obligation and dependency upon them*", the exercise of control by debt bondage and drug dependency and "*several layers of third party involvement*" in the abuse of children, who were "*often prostituted from rooms in cheap hotels and tenement blocks*".

Research conducted by Molo Songololo (2000) set out to investigate actual reported instances of child trafficking for sexual exploitation within the provinces of the Western Cape, Gauteng, KwaZulu-Natal (KZN) and the Eastern Cape, and focused on Cape Town, Pretoria, Johannesburg, Durban and Port Elizabeth as the core areas where trafficking had been reported (Molo Songololo, 2000: 16). Interviews were conducted with, amongst others, family members of trafficked children, detectives attached to police stations and the child protection unit, and representatives from a number of organisations that provide services to sexually exploited children. "*Extensive interviews with nineteen girls and one young woman who had been trafficked when she was a child*" were also conducted (Molo Songololo, 2000: 17). Child trafficking was found to be a predominantly in-country phenomenon. Both girl and, to a lesser extent, boy children were identified as victims of trafficking, with girl child victims' ages ranging from 4- to 17 years old. Six 'forms' of trafficking are identified in the Molo Songololo (2000: 2-3) study. The first of these is the complicity of strangers, individuals and third parties linked to gangs or syndicates that forcibly recruit children to work in the sex trade. The second form involves parents or relatives that coerce children to work from their homes or the homes of sex exploiters. As the third form, family acquaintances or persons in positions of authority force children to submit to sexual exploitation. Fourth, children are trafficked into the sex trade by children already in the trade. As the fifth form, business ventures advertise in national and local newspapers for 'teenage girls of working age' for work in the hospitality or film industries. This 'work' then turns out to be work in the sex trade. Finally, the sixth form of trafficking identified by Molo Songololo (2000) is the cross-border trafficking of children into South Africa by criminal syndicates and individuals in both the countries of origin and in South Africa. A noteworthy theme from research interviews that was conducted is the description of the abduction of 15 girl children during 1996 and 1998 (Molo Songololo, 2000: 55-58). Even though only two of the girls, both aged 14 at the time of abduction, disclosed that they became 'sex workers', five reported that they were raped whilst the remaining girls mentioned that they were threatened and/or physically assaulted. Their 'length of stay' with abductors ranged from one day to seven months, with one girl, 'Alicia' (14-year-old 'sex worker'), providing insights into a number of other possible child trafficking victims that were not identified:

"Everyone was locked up, in that house. There were eleven other girls there besides the three of us."

No comprehensive piece of legislation that addressed trafficking in persons was in operation at the time of the research, and therefore a number of these abductions and other incidents of sexual exploitation in the reports could be re-evaluated as trafficking in terms of current legislation. The volume of granular detail from interviews and lived experiences in Molo Songololo (2000) provides a formidable depth of insights into child sex trafficking and a range of other forms of exploitation effectively covered under the present-day PACOTIP Act and the Sexual Offences and Related Matters Amendment Act 32 of 2007.

The International Organization for Migration's (IOM) (Martens et al, 2003) research assessment, from August 2002 to February 2003, into the trafficking of women and children for sexual exploitation in Southern Africa provides comprehensive insights into the bane of South Africa's sex trade. The methodology consists of 232 interviews, primarily with trafficking victims, persons in prostitution, traffickers, police and government officials, grassroots NGOs and the media. Twenty-five of the interviewees were trafficked women and children from 11 countries. Major findings of this study include:

- Street children in Lesotho who are coerced or forcibly abducted by white men, taken across the border with the consent of border officials to border towns and asparagus farms in the Eastern Free State, where they are held captive in private houses and sexually and sadistically assaulted over several days by small groups of men;
- Mozambican victims, including girls and young women between the ages of 14 and 24, that are offered jobs as waitresses or 'sex workers' in Johannesburg. They "*pay their traffickers to smuggle them*" (Martens et al, 2003: 7) into South Africa, where they stay over in transit houses along South Africa's border with Mozambique and Swaziland. Here they are sexually assaulted "*as an initiation for the sex work that awaits them*" (Martens et al, 2003: 7). Once in Johannesburg, victims are sold

to brothels, “*sold as slaves on private order*” (Martens et al, 2003: 8) or sold to mineworkers on the West Rand as ‘wives’; and

- Malawian women and girl children that are trafficked to Johannesburg, where they are held in flats as sex slaves, and Malawian businesswomen who traffic women and girl children to brothels in Johannesburg.

In another study by the IOM (Bermudez, 2008), triangulated research methods were used to ensure a varied collection of both primary and secondary data, which included a desk review, the distribution of questionnaires, field visits and a review of internal trafficking cases assisted by the IOM (Bermudez, 2008: 24). Open-ended and semi-structured in-person interviews were conducted in seven of the nine South African provinces. A total of 224 participants were consulted for the study, of which 16 were victims of internal trafficking. One informant who had taken part in the well-known Operation Priscilla, an undercover operation by the South African Police Service (SAPS) into a Nigerian child sex trafficking syndicate, was also interviewed. The informant estimated that about 160 youth, primarily girls between the ages of 13 and 17, were discovered working in brothels. Lured mostly from rural areas by female recruiters, the girls were found in brothels in Gauteng, Western Cape, Free State and KZN urban areas. Forced sex acts with men, drug dependency and the use of debt bondage by traffickers were common features of their exploitation. A Hillbrow-based informant estimated that more than half of the persons engaging in prostitution in her area were children, with many of the girls coming from outside of Gauteng province. She believed “*some of these girls may have been trafficked*” (Bermudez, 2008: 36). Rampant substance abuse in the sex trade and psychosocial complications such as anxiety, paranoia, depression and Post-Traumatic Stress Disorder (PTSD) were some of the health risks documented (Bermudez, 2008: 43).

Research by the Human Sciences Research Council represented the “*first comprehensive assessment of human trafficking in South Africa*” (HSRC, 2010: i). Compiled by a multidisciplinary research team of experts and project leaders from the Human Sciences Research Council and the National Prosecuting Authority (NPA), the report was released in March 2010. The study pursued ten objectives. Three of these objectives were i) the identification of victim profiles and characteristics and motives of the agents in human trafficking; ii) identifying the purposes for human trafficking and the key driving factors; and iii) identifying socio-economic aspects of the demand and cultural values and practices influencing human trafficking. No attempt was made to “*estimate the actual size of trafficking streams into South Africa and only the major characteristics of the practice are highlighted*” (HSRC, 2010: iv). Quantitative and qualitative data was gathered from surveys, interviews, focus group discussions, and documentary and open-source materials. The majority of the fieldwork for the study was conducted between September 2009 and December 2010. One of the key findings indicated that young girls featured “*prominently in all trafficking streams*” whilst the demand for under-age girls for purposes of sexual exploitation was “*a disturbing feature of the South African trafficking landscape*”. Forms of trafficking included exploitation in prostitution and pornography, whilst Cape Town, Durban, Johannesburg and Port Elizabeth were believed to be “*primary destinations for underage sex tourism, involving children between 10 and 14 years of age*” (HSRC, 2010: vi-vii). Barely three months after publication, a critique of the report by trafficking sceptics (Gould, Richter & Palmary, 2010), entitled ‘Of Nigerians, albinos, satanists and anecdotes’, followed, in which disdain was expressed for “*unsubstantiated and generalised claims*” and “*major methodological weaknesses and missed opportunities*” along with numerous other criticisms levelled at the study.

Other noteworthy research studies include two reports by ECPAT International that provide insights into the intersection of different forms of sexual violence inflicted on children, including child sex trafficking. In the first study (ECPAT International, 2013), desktop research, the analysis of secondary sources and reports, and consultations with ECPAT groups and invited specialists “*served as a measure for triangulating and validating information*” (ECPAT International, 2013: 9). The most recent study (ECPAT International, 2019) included a desk review of the available existing literature related to sexual exploitation of children, expert analysis of the legal framework, individual interviews with 24 professionals and two focus group discussions (ECPAT International, 2019: 5). Lack of access to- and limited information were lamented in both studies whilst a chief concern was South Africa’s lack of a “*centralised mechanism for quantitative data collection on victims of sexual exploitation, disaggregated by age and gender of victims and forms of sexual exploitation suffered*” (ECPAT International, 2019: 8). However, “*sufficient information was gathered to provide a broad overview of the situation*” (ECPAT International, 2013: 9) in the country. Both reports shed light on the child sex trafficking reality and

“*various forms of prostitution of children*” (ECPAT International, 2013: 12). ECPAT International (2013: 12) refers to estimates of at least 32 brothels and hotels in Johannesburg, where about 5000 young girls are exploited in the sex trade. Another reference is to the Durban Children’s Society, which reported that commercial sex in some localities of the city is common, with ‘madams’ “*using young girls involved in prostitution to lure other peers*”. The widespread commercial sexual exploitation of girls below the age of 16 in the Diepsloot community, north of Johannesburg, and “*prostitution rings*” operating in KZN schools – where “*some children give all their earnings to pimps in exchange for drugs*” – are also discussed (ECPAT International, 2013: 12). Despite data on child sex trafficking being “*scarce in South Africa*” (ECPAT International, 2019: 20), research participants considered the country as a hub for child sex trafficking, “*the land of milk and honey*” for sex traffickers and “*a prime destination for international sex trafficking syndicates to operate from*” (ECPAT International, 2019: 21).

Academic publications with a specific focus on child trafficking document the investigative challenges of the crime and provide some insight into how many cases actually fail to be identified and, effectively, fall through the proverbial cracks. As pointed out by a police investigator of child trafficking cases in Van Zyl and Horne (2009: 16):

“Approximately 10 to 15 former cases that I investigated were registered as kidnapping, abduction or rape. One of my current cases consists of more than 60 charges of rape, fraud and assault. It is clear that child trafficking is a reality in South Africa, although the South African Police statistics do not reflect it due to shortcomings in their data capturing system.”

Other studies bemoaned the lack of official prosecution- and conviction data that could facilitate “*insight into the national situation*” (Maluleke & Mabaso, 2017: 81) and cited SAPS participants as pointing to an existing “*lack of capacity*” for addressing child trafficking in South Africa (Maluleke & Mabaso, 2017: 79). The identification of transnational children trafficked into South Africa was the focus of the study by Warria, Nel and Triegaardt (2015). Individual face-to-face in-depth interviews were conducted with 22 participants made up of social workers, child protection advocacy officers, victim empowerment practitioners, anti-trafficking researchers, a lawyer and a detective. The identification of child trafficking victims was found to be a difficult task for social workers, with the inherent nature of child trafficking and its link to socio-legal, economic and cultural factors amongst those that compounded the difficulty. Warria et al (2015: 322) also established what they refer to as the “*child-trafficker relationship*”, which they characterise as “*harmful, risky and complex in nature*”. Socio-legal assistance to transnational child victims of trafficking and its concomitant challenges in the South African context (Warria, 2018; Warria & Chikadzi, 2018) are amongst the themes explored by existing literature in the field. Emser and Van der Watt (2019: 92) examined the issue of missing children in South Africa and concluded that “*missing children cases are intricately intertwined with the layers of violence that have become embedded in South African society*”. The unexplored nexus between missing children and child trafficking is also investigated in the study and available statistics of 3957 children unaccounted for, or still missing, for the period 1 January 2000 to 31 December 2015, considered. “*This does not include the number of cases that are not reported to authorities*” (Emser & Van der Watt, 2019: 92). The missing children and TIP nexus was confirmed in successfully prosecuted cases of child trafficking for sexual exploitation. These cases include *State vs Nahimana Allima* and *State vs Matini and another*, both discussed below. Noteworthy, and allied to media reports and at least four successful prosecutions⁴, is the intersection of baby selling and adoption irregularities with TIP and missing children (Emser & Van der Watt, 2019: 103) mentioned by a Hawks investigator:

“What we found in a lot of the cases we actually went to the families and the mothers weren’t even aware that the children were up for adoption. As far as they were concerned the children were missing.”

Finally, a number of doctoral research studies into human trafficking in South Africa contain empirical data collected from practitioners in the field and provide insights into different aspects of their experience with the phenomenon, including child sex trafficking (Emser, 2013; Horne, 2014; Van der Westhuizen, 2015; Van der Watt, 2018).

Child prostitution

Child prostitution, its proximity to trafficking and its estimated prevalence, is another prickly subject that infuses tension into the broader child sex trafficking debate (De Sas Kropiwnicki, 2012). In 2017 Africa Check found the claim that there are “*over 10,000 children working as prostitutes in Johannesburg at the moment*” to be incorrect (Skosana & Wilkinson, 2017) and delved into Molo Songololo’s (2000: 27)

contentious reference to “28,000 child prostitutes in South Africa” – a claim ascribed to “social workers and officers of the Child Protection Unit (CPU)”. Again, reliance is placed on the Gould and Fick (2008) study by the ISS and SWEAT, which “found little evidence of children in the sex trade” (Skosana & Wilkinson, 2017). A number of other original sources, including available police statistics on child prostitution, are cited in Molo Songololo (2000), including a claim by SWEAT itself that “25 percent of sex workers (in Cape Town) are children” (True Love Magazine, May 2000, in Molo Songololo, 2000: 27). It is unclear as to why these sources are not mentioned by Africa Check, as they bring a more nuanced and different perspective to the conversation. Yet, the disputed numbers and indeterminate debates surrounding the existence and figures of child prostitution in South Africa are clearly linked to children in prostitution.

While confirming that no official statistics existed for child prostitution at the time, noteworthy literature covered by Hesselink-Louw (2001: 217-218) suggests the ‘view’ that child prostitution in Johannesburg increases annually (Du Plessis, 1996: 75, 97 as cited in Hesselink-Louw, 2001: 217-218) and the “well known” estimate that 10% of South Africa’s prostitution population is under the age of 18 (Nedbank ISS Crime Index, 2000: 2 as cited in Hesselink-Louw, 2001: 218). Brümmer (1999: 7) (as cited Hesselink-Louw, 2001: 218) states that in 1998 there were approximately 38 000 children in South Africa’s sex trade and, according to Leslie (2001a: 3) (in Hesselink-Louw, 2001: 218), the SAPS FCS Unit processed about 28 000 children in prostitution during 2000. Documented experiences and sound empirical research exist on the reality of child prostitution and its link to human trafficking in South Africa (Hesselink-Louw, 2001; Hesselink-Louw, Bezuidenhout & Pretorius, 2002; Harrisberg, 2017; Hesselink, 2018). Hesselink (2018) points to the undeniable statistical deficits related to child prostitution, human trafficking and child sexual abuse materials, which are shrouded in secrecy, and underscores these phenomena as enmeshed manifestations of child abuse (Hesselink, 2018: 316).

MEDIA

Albeit simplistic, messy and, at times, sensationalist, the South African media – from print and television, to investigative journalism – has made a significant investment in portraying the child trafficking phenomenon in South Africa. Between January 2015 and February 2020, the National Freedom Network (NFN) recorded a non-exhaustive list of 2696 media articles related to human trafficking in South Africa. It must be stated that media reports are by no means the gold standard for evidence and rigour; however, the extent of reporting in the media is such that it cannot be ignored. Much of the impetus for contemporary discussions, speculation and panic around the issue of child trafficking in South Africa has arguably been prompted by one of South Africa’s most enduring unsolved crime mysteries with its genesis in the decade leading up to South Africa’s first Constitutional democracy. The Apartheid-era disappearance of six young girls in the late 1980s, allegedly kidnapped by Gert van Rooyen and Joey Haarhoff, continues to captivate both the public and the media to this day. The pair were linked to the disappearance of the six girls, who were never found (Steyn-Barlow, 2006; Ferreira, 1990: 1; *Ontvoering-drama – buurvrou se onthulling...*, 1990: 1). Media reports in the early 1990s included allegations by a South African source who worked in the international sex trade of child abductions with links to China and Taiwan (Taiwan sal SAP help..., 1991: 4). Other reports highlighted police actions where traffickers involved in ‘slave trading’ and drugs were stopped at the Jan Smuts International Airport (currently OR Tambo) as they were in the process of trafficking girls to Taiwan (Van der Westhuizen, 1991: 4).

The period leading up to South Africa’s FIFA World Cup Soccer hosting in 2010 was characterised by significant awareness-raising efforts around the issue of human trafficking. Contestable claims and discussions around human trafficking statistics gained increasing prominence, with snowballing concern about the ‘nexus’ between an increase in human trafficking and major sporting events (like the forthcoming Soccer World Cup). Sanpath (2006:120) pointed to “thousands of women and girl-children that are trafficked into South Africa every year” and underscored concerns raised by NGOs that this “already high number” would increase “drastically” during the 2010 Soccer World Cup. The notion of 40 000 prostituted persons being trafficked into South Africa became routine in discourse surrounding the Soccer World Cup (Tacopino, 2010; World Cup 2010, 2010), with estimations of the volume of people that would fall victim to human trafficking before the World Cup escalating to as many as 100 000 (Gould, 2010b). South Africa’s children were said to be “under threat” whilst child rights’ experts, NGOs and trafficking authorities warned parents to be on high alert for syndicates targeting children, “particularly

those aged five to 15, as 'products' and 'cargo' with lucrative price tags" (Laganparsad, 2010). These claims, as well as a number of subsequent references to 30 000 children trafficked in South Africa every year (Masombuka, 2013; Mkize, 2013), have indeed been problematic and have been pointed out to be exaggerated and unsubstantiated (Wilkinson & Chiuma, 2013).

Media reports and coverage of incidents that appear to fall within the legislative ambit of child trafficking cases continue, whilst official numbers struggle to keep up with the sprinting 'stories'. Media reports of commercially sexually exploited children, children rescued from brothels and children trafficked into South Africa's sex trade have been numerous, with many historical media reports referenced in publications such as Molo Songololo (2000) and De Sas Kropiwnicki (2012). From a prevalence perspective, a burning question is how many of these stories – widely read by politicians, decision-makers and police managers – have actually prompted police investigations, police enquiries or some form of administrative intervention by relevant officials from the Department of Social Development? Variations of these accounts include sexually abused minors "rescued by police from an alleged brothel", who were also the children of women in prostitution operating from the same location (Umraw, 2015). Other accounts include police officials failing to respond to "an alleged sex-trafficking ring" where the rescued child, according to Dr Shaheda Omar of the Teddy Bear Clinic, "could not have been older than 12 years". Dr Omar, interviewed by Radio 702, claimed the police officers refused to assist 11 children left behind at the place of exploitation and one of the reasons provided was that these children "enjoy the sex" (Joburg police accused of failing to act swiftly on alleged sex-trafficking ring, 2019). Investigative inquiries and online video productions are equally plentiful. From "a lot of big guys who likes to have small children you know", shared by drug-induced minors on the streets of Pretoria (Innocence for sale, 2001), to police operations into a Nigerian sex trafficking syndicate and the rescue of girls as young as ten in Durban (Operation Priscilla, 2005), the many-hued shades of the problem are viscerally depicted (How can a 9-year-old child be a prostitute? Rosettenville resident asks, 2017).

Finally, reports on the alleged complicity of social workers and child welfare organisations in the trade in children have, to a lesser extent, appeared in mainstream media. According to Errol Goetsch of the Justice and Reconciliation Centre, as quoted in the *Pretoria News*, "the demand for children to be abducted and sold in South Africa was extremely high". Goetsch alleges that "social workers targeted vulnerable families that were usually uneducated, poor or had more children than they could afford". In one case in the report, he refers to a Bloemfontein brothel owner who "bought teenagers from a social worker and used them as sex slaves". Goetsch had allegedly presented the case at the Children's Court in July 2019 and had still not received a reply by the time of publication in October 2019 (Ntuli, 2019). In April 2011, the *City Press* reported that Sharon Mushokabanji, a social worker at Child Welfare in Kempton Park, charged people who wanted to adopt children an 'adoption fee' of between R400 and R6000. One of the clients was a 72-year-old businessman and his girlfriend, who, under normal circumstances, would not have qualified to adopt a child. Two other social workers were dismissed because they were unregistered, whilst another worker was dismissed for distributing pornography. The *City Press* report further detailed that a shelter, supported by Child Welfare, was closed and 11 children removed after allegations of abuse, neglect and rape. Children were also allegedly exposed to pornography, with a 14-year-old girl falling pregnant after she was raped and subsequently "forced to give birth in secret" (Pauw, 2011). More recently, an 18-year-old suspect was arrested for posing as a social worker and abducting a two-month-old twin from Khayelitsha. It was reported that she subsequently "confessed to selling the baby to foreign nationals" (Ntseku, 2020). Child protection practitioners discussed systemic irregularities and the complicity of social workers and child welfare organisations in the trade in children extensively during a UNISA seminar hosted in February 2019 (Gwangwa, 2019; Boje, 2019).

POLICE REPORTS AND SUCCESSFUL PROSECUTIONS

Table 1 reflects data obtained from the SAPS as it pertains to TIP cases reported on the Crime Administration System (CAS) between 1 January 2006 and 12 December 2017 (Directorate for Priority Crime Investigation (DPCI), 2017). At the time that the statistics were received from the SAPS, the author was informed that they had not been filtered and had been taken as is from the system. Aggregated data and further differentiation between adult and child victims were not available. Cases registered under the Children's Act include only minor victims, whilst cases registered under section 71 of the Sexual Offences

Amendment Act include both adults and children for the period 16 December 2007 to 8 August 2015 and relate only to cases of sex trafficking. The 2132 cases registered under the current PACOTIP Act were reported over a 28-month period between 9 August 2015 and 12 December 2017. The forms of trafficking, age and gender of the victims, and the specific sections (offences) that were registered were not made available.

Table 1: Reported TIP cases: 1 January 2006 to 12 December 2017

Province	Children's Act 38 of 2005	Sexual Offences Act 32 of 2007	Prevention and Combating of Trafficking in Persons Act 7 of 2013
Eastern Cape	0	24	212
Free State	1	15	72
Gauteng	3	63	810
KZN	3	17	378
Limpopo	1	7	160
Mpumalanga	2	19	176
North West	2	13	101
Northern Cape	0	7	33
Western Cape	2	23	190
TOTAL	14	188	2132

The 2132 cases reported over a 28-month period is not a meagre number. Prevalence considerations include that each registered case or police enquiry may involve more than one victim of trafficking and can include multiple known victims of trafficking, multiple unknown victims of trafficking, or a combination of the two. The same applies to known and unknown traffickers in a single case reported. In the period 2014 to 2017, 115 TIP prosecutions were instituted, which resulted in the finalisation of 34 cases, with convictions in 22 cases (Swanepoel, 2018). At the time of writing, data gathered relating to ongoing cases on the court roll indicated 47 active cases, of which 21 matters related to sex trafficking and 15 matters involved minor victims. For the hardened TIP sceptic, it remains important to reiterate that reporting numbers, investigations and prosecutions are influenced by multi-layered and perplexing factors (Van der Watt & Burger, 2018) that not only pixelate the problem but also seriously constrain efforts to 'count' it. Challenges include cases subsumed⁵ under a range of other crimes, such as domestic violence, kidnapping, abduction, rape and assault, to name a few. Child trafficking victims are sometimes incorrectly treated as 'children in need of care', whilst victims in general do not self-identify or are overlooked by frontline law enforcement officials. Arguably the strongest predictor of human trafficking, which also adversely impacts on data accuracy, is "*widespread corruption among the police force*" (U.S. Department of State, 2014, 2015, 2016) and the "*intersection of the sex trade with organised crime, human trafficking and corruption*" (Van der Watt, 2019). Well-known brothels in South Africa identified as locations of sex trafficking also "*continue to operate with officials' tacit approval*" (U.S. Department of State, 2019). Systemic indifference and a trust deficit between communities and the police also mean that numerous cases remain undocumented. Major-General Liziwe Ntshinga from the Hawks confirmed that the SAPS dealt with "*a lot more human trafficking cases*" than the statistics reflected (Sello, 2015), whilst Deputy Minister of Justice and Constitutional Development John Jeffery was quoted as saying that some child trafficking cases in South Africa are "*ignored for being 'too complex'*" (Wicks, 2017). Despite the multi-layered complexities and challenges that TIP continues to present, South Africa "*is seeing improved convictions of TIP cases*" (Jeffery, 2019).

Gaining access to official trafficking data, indictments, transcripts, judgments and sentencing proceedings is difficult for a number of reasons. At least 21 successfully prosecuted child trafficking cases, not an exhaustive list, were identified during the research for this article. For the purpose of this article, a brief overview of ten child sex trafficking cases is presented and discussed as thematically consistent with what has been documented about this phenomenon. Fellow TIP task team members and prosecutors, archived email correspondence regarding TIP cases and media articles served as sources of relevant information and for summarising each of the cases. Since the author consulted and/or provided testimony in three of the cases discussed, he relied on consultation notes, recordings and relevant court documents to complement available case data where needed.

The case of *State vs Amien Andrews*⁶ was prosecuted in the five years preceding South Africa's ratification of the Palermo Protocol by using legislative instruments available at the time. It was therefore not considered as a child trafficking case at the time of the trial but is discussed here to show a pattern of child sex trafficking consistent with contemporary cases documented. The accused was convicted on a charge of brothel keeping involving two girls, aged 12 and 14, at the time of the offences in 1996. Andrews ran a brothel in Salt River called 'Amiens Girls', where he offered young girls for sexual purposes. He is said to have profited from the sale of the "bodily integrity" of the girls on offer to the public. Andrews had known that the girls were destitute and homeless and had taken advantage of them. He also "cruelly" kept one of the victims as a prisoner in the brothel, ignoring the fact that she needed medical treatment for the serious assaults she had received (Brothel-keeper sentenced again, 2004). The evidence of the girls, according to Magistrate Chris Naude, suggests that "they were plied with dagga and alcohol, before being, in some cases, gang-raped by up to 10 men" (Sex with children is a crime, 2004). Moreover, one Cape Town-based NGO "came across 46 girls who had gone through Amien Andrew's operations", which was investigated "but nothing happened for a couple of years" (Roux, 2018). In 2002, the accused was convicted on charges related to rape, kidnapping and brothel keeping, and sentenced in July 2004 (Sex with children is a crime, 2004) and November 2004 (Brothel-keeper sentenced again, 2004), respectively, in different cases.

Aldina Dos Santos, a 28-year-old Mozambican national, was sentenced to life imprisonment in April 2011 for the sex trafficking of three Mozambican children in *State vs Aldina Dos Santos*.⁷ The minor victims were exploited in a three-bedroom residential brothel in Moreleta Park, Pretoria. The victims were forced to smoke cannabis and have sexual intercourse with several sex-buying men daily. A photographer visited the brothel and took photographs of the victims scantily dressed and in the nude. The victims were informed that these photographs would be used to advertise them on the internet. The accused showed the victims pornographic videos and demonstrated to them by performing sexual intercourse on her boyfriend. In his dismissal of the appeal by the accused against life imprisonment, Judge Jacobs found that the complainants were "under constant threat, lived in fear, and were subjected to treatment that can only be described as inhumane". The conviction on child trafficking in the magistrate court was confirmed on appeal in the High Court.

In the case of *State vs Nahimana Allima*⁸, the 15-year-old victim was abducted in May 2012 on her way to a library in Ulundi by the accused, a 33-year-old female Burundi national, and two male accomplices. The victim was subsequently reported as missing by her family. The accused sexually exploited the child and gained financially from the victim's rape and exploitation by multiple male sex buyers. The victim was located in Durban during September 2012, after which the accused was arrested. The accused was convicted and sentenced to life imprisonment on 26 June 2014.

In *State vs Sandile Zweni and others*⁹, 16 girls, eight of them children, were rescued from a brothel in Durban's Point area. Some of the girls were as young as 12 years old, and some were allegedly under the influence of drugs when they were rescued in 2012. Drug runners, guards and supervisors over the exploited victims were some of the role-players 'employed' at the brothel. Girls who tried to escape were assaulted and taken back to the brothel. The case was described by the presiding officer as "a very complex case, dealing with 156 counts". The length of the record of the proceedings was "over 6000 pages". The accused persons were convicted on charges related to dealing in cocaine, TIP, keeping a brothel and living off the earnings of prostitution. The accused were convicted in 2015, with the total sentence of all three men amounting to 869 years (SAPA, 2012; Barbeau, 2015).

In *State vs Ugochukwu Eke*¹⁰, a 15-year-old girl child was drugged and sexually exploited by a Nigerian trafficker. The victim was forced to take drugs and was exploited by as many as six sex-buying men per night during her ordeal in 2015. Judge Mabesele was quoted as asking "how many children's lives has he ruined? Initially there were four girls who were found in that house, where have the three disappeared to?" (ANA Reporters, 2017a). Furthermore, Judge Mabesele was also quoted as stating that what "happened to her [victim] was cruel, inhumane and degrading" (ANA Reporters, 2017b). In 2017 Ugochukwu Eke was sentenced to 20 years' imprisonment by the Johannesburg High Court.

In October 2017 Nombuyiselo Matini and Nolubabalo Mboya were convicted in *State vs Matini and another*¹¹ for a wide range of offences, including racketeering, keeping a brothel, the trafficking of four adult and two mentally disabled victims for sexual exploitation, the commercial sexual exploitation of a child, living off the earnings of prostitution and the sexual exploitation of mentally disabled victims. "The case dates back to July 2012 when two mentally challenged girls were abducted from Kwanobhule area

and taken to Fairview Race Course, where they were held captive” (Life sentence for human trafficker, 2018). The victims, who came from impoverished communities, had been reported missing at KwaNobhule police station by their parents. The victims were trafficked and forced into prostitution at a brothel, which had been in operation since 2006 in Fairview, Port Elizabeth. In February 2018, Matini received six life sentences and 36 years and Mboya received a suspended sentence and correctional supervision (Koen, 2019; African News Agency, 2017).

In July 2019, the Pretoria Regional Court sentenced 39-year-old Nigerian national Onyekachi Eze Okechukwu to two life terms and an additional 39 years of imprisonment for the sex trafficking of two women in *State vs Onyekachi Eze Okechukwu*.¹² Both women were rescued from a residential brothel in Pretoria in May 2013 (ANA Reporter, 2019). One of the victims had been a child when she was initially abducted from school by a Nigerian male – not arraigned in this trial – and kept at an unknown location where she was forced to smoke drugs. The sexual exploitation and abuse suffered by the victims were multi-layered. In studying the court records and transcripts in preparation for his testimony in the case, the author found that a much larger and loosely connected network of more than 20 Nigerian traffickers was involved and that the victims were moved between multiple addresses, were acquainted with multiple other potential trafficking victims and were ‘sold’ between multiple traffickers. One victim testified that the accused was “a small fish in a big pond” and highlighted that “there is more bigger Nigerians than him”. Both victims in the case had had experiences where members of the SAPS handed them back over to their exploiters after they had disclosed their abuse. This resulted in one victim, who at the time was 15 years of age, being forced to witness the physical dismemberment of her friend and the murder of two others, whilst the other victim stated that she lost “all faith and hope in their [police’s] ability to help her”. In his judgment, Magistrate Pravesh Singh stated that: “the entire evidence in this case unmasked the sordid and sleazy world of drug abuse, prostitution and exploitation.”

In *State vs Edozile Obi & Others*¹³, one adult female and two girl children between the ages of 13 and 14 were lured into a residential brothel in Springs, held hostage, forced to use drugs, raped and used as sex slaves. The girls were paid for their prostitution with drugs and hardly received food. The author conducted a pre-trial interview with the adult victim, who explained how she had been recruited at Club 26 in Springs, before being lured to the residence of the accused. She explained how she had tried to escape on multiple occasions and how SAPS officials frequented the brothel to receive payment from accused 1 and exploited the victims at the premises. Two of the victims had pictures of them in a half-naked state taken by one of the accused persons, after which the photographs were used to advertise the victims on a prominent adult entertainment website. Multiple sex-buying males responded to the online advertisements and sexually exploited the victims at the residential brothel. One of the victims was also caused to watch pornography by one of the accused persons, after which she was raped in the presence of another victim. Residents in the area reported that “the brothel was one of three on the busy street, which was also populated by law firms, mechanics, upholsterers, a day-care centre and an estate agency” (Springs brothel owner gets multiple life terms for human trafficking, 2019). Accused 1, a Nigerian national, was convicted and sentenced on 18 September 2019. He received 6 life sentences and an additional 129 years. His co-accused both received suspended sentences.

In December 2019, the Queenstown Regional Court in the Eastern Cape sentenced five accused for human trafficking and sexual exploitation after they abducted a 12-year-old girl in Whittlesea and used her as a sex slave for approximately a month in *State vs Garhishe and others*.¹⁴ Harun Mohammed, 38 years old, paid R100 to the four co-accused women, who, in turn, offered the 12-year-old girl to him for sexual exploitation. The sentences of Garhishe, Klaas, Kaziwa and Tom do not run concurrently and each will serve 24 years’ direct imprisonment. Harun Mohammed was sentenced to life imprisonment for rape (Maphanga, 2019).

In *State vs Seleso*¹⁵, accused 1, 29-year-old Lomile Rosina Seleso, and accused 2, 52-year-old Malomile Mamoketsi Seleso, deceived and lured the 16-year-old victim to South Africa from Lesotho with promises of furthering her education during October 2015. The accused sexually exploited the victim for monetary reward and kept the proceeds. The victim was registered on Streamatemodels.com, a website found on the internet that facilitates the viewing of persons that perform various sex acts upon payment by clients. Both accused persons forced the victim to perform sex acts for the paying customers. More than 6000 unique logins by sex buyers across the globe were recorded. The accused persons received payment from this exploitation. Allegations emerged that the investigating officer in the case stole money from the victim after she was put in a place of safety pending the trial. The victim, who lost trust in the police, went missing

and has not been seen since (Germaner, 2020). The prosecutor in the matter, Advocate Geo Wassermann, subsequently secured a conviction despite not having the victim to testify against the accused persons. On 12 December 2019, both accused were sentenced to 19 life terms on a range of charges related to sex trafficking.

The commodification, trafficking and sexual exploitation of children in South Africa's sex trade are far more chronic than available numbers suggest. The successfully prosecuted cases discussed provide but a small glimpse into the abject realities faced by children exploited in the sex trade, and resemble a labyrinth of difficulties implicit in such cases, yet effectively navigated by police investigators, prosecutors, social workers, experts and service providers. As highlighted by Swanepoel (2018): *"The wheels of justice turn very slowly, but they are still turning"*.

DISCUSSION

The past three decades have witnessed a major expansion of attention paid to human trafficking, which, according to Legget (2004: 1), *"calls to mind images of children being snatched from the streets into dark panel vans, stowed in the holds of cargo ships, and dumped in a foreign brothel or work camp far from their mothers' arms"*. It is, perhaps unfortunately, more mundane than this. The enmeshed realities of child trafficking and children in the sex trade are dispersed within the multiple systems of violence that have long been commonplace in South African societies – perhaps for time immemorial. Oxygenated by South Africa's deep and dense structural inequalities, the crime flourishes on indifference and the demands stemming from an ever-expanding globalised sex trade – both tactile and virtual. The spectrum of acute vulnerabilities that clothe many adults and children not only renders them largely invisible to justice and recourse but is also an essential cog in South Africa's violence and exploitation landscape. Much less spoken about is the reality of adult persons in prostitution who were usurped into the sex trade as trafficked or sexually exploited children, and child victims who frequently present themselves to sex buyers as older, yet young women (see Mehta, 2013). From available evidence and successfully prosecuted TIP cases it is quite clear that sex buyers care precious little about issues of agency, coercion and third-party influence. Brothels and places of exploitation where violence is inflicted upon child victims are embedded in communities, affluent neighbourhoods and security complexes. Frequently ring-fenced by compromised and corrupt security guards, police officials, community members, neighbours and sex-buyers, the operational life spans of brothels and places of exploitation are ominously protracted, with some operating for many years before any meaningful intervention occurs. A number of prominent 'adult entertainment' websites, all of which have been familiar to law enforcement agencies for a number of years, have been implicated in successfully prosecuted adult and child sex trafficking cases but continue to operate with impunity. Egregious violence inflicted on child victims is multi-layered, complex and devoid of any human decorum.

South African courts are steadily getting to grips with the idea that control over victims – both adults and children – is rarely characterised by whips, chains and physical confinement, but rather by a range of *"psychological abuse, coercion and mental manipulation"* (Dando, Walsh & Brierley, 2016: 1) and other *"non-physical coercive control methods"* (Van der Watt & Kruger, 2020). The oft-cited criticism regarding 'conflation of sex work with human trafficking' (Gould, 2011; Gould & Fick, 2008; Yingwana, Walker & Etchart, 2019), which is levelled at the counter-TIP community, and the call for *"a more constructive model of understanding... that makes a clear distinction between human trafficking and sex work"* (Yingwana, 2018: 227), discount the very essence of the PACOTIP Act and the ability of prosecutors and presiding officers to discern. In the event of an incident being incorrectly classified as a TIP matter or an adult or child as a TIP victim (over counting) by a frontline police officer or a social worker (i.e. smuggling or parental abduction), multiple systems – guided by the PACOTIP Act – are effectively in place to mitigate this error. These include case discussions on provincial and national TIP task teams, 24-hour assistance and screening provided by the National Human Trafficking Hotline, and decision-making and guidance offered by nodal points within the NPA, Department of Social Development and the SAPS on new reported cases.

Research and conceptual dilemmas pointed out in this article can be alleviated by the inclusion of sex trade survivors and multi-disciplinary TIP researchers and practitioners from legal, criminal justice and social work perspectives in both TIP and prostitution studies. The omission of these perspectives and lived experiences in research must be treated with a healthy dose of scepticism. Equally problematic, is the

witting or unwitting omission of ‘abuse of vulnerability’ as a consideration in TIP and prostitution research. No longer is it dismissible as a ‘vague’ concept; it is clearly defined in the PACOTIP Act and effectively applied in TIP prosecutions. Research initiatives focussed on children and their exposure to sexual violence, victimisation and neglect must consider the PACOTIP Act as a means to optimise both the interpretive value of collected data and the opportunity to identify and quantify possible child trafficking indicators in South Africa. The government’s ongoing efforts to determine, with greater certainty, the total number of trafficking victims (suspected and/or confirmed) identified by government, establishing the profiles of victims and perpetrators of the crime and identifying the number of convictions and the number of pending cases in the criminal justice system pertaining to TIP, is commendable. However, a significant shortfall pointed out in the most recent US TIP Report is that the South African government “*did not make efforts to reduce demand for commercial sex or forced labor*” (U.S. Department of State, 2019: 427). The role of ‘demand’ is explicitly recognised in the preamble of the PACOTIP Act (2013), and the government would do well to be more proactive in employing tangible strategies aimed at constraining “*the demand for the services of victims of trafficking*”, which contributes to “*making persons vulnerable to becoming victims of trafficking*”. These strategies must relate to restraining the demand for both commercial sex and forced labour (see Bermudez, 2008; Delpont et al, 2007; Frankel, 2016; Horne, 2014; Maluleke & Mabaso, 2017). Political will and determined leadership should be amplified as “*imperative conditions for severing any hint of corruption and official complicity*” (Van der Watt, 2019) in TIP cases, and sophisticated intelligence collection, data analysis and data visualisation capabilities in the hands of prominent counter-TIP NGOs, such as the Human Trafficking Hotline and Love Justice International, leveraged. Together with Missing Children South Africa, these NGOs are but some of the critical partners in the frontline response to both adult and child trafficking in South Africa. Collectively considered, the issues raised here, and the concomitant responses suggested, may position the South African government and its partners on a trajectory more inclined to mine prevalence insights and co-create solutions with limited resources.

CONCLUSION

Whether considered as anecdotal data crumbs by TIP sceptics at the one end of the spectrum, or as run-of-the-mill realities by the counter-trafficking community at the other end, convincing evidence does in fact exist that child trafficking and children in the sex trade is a systemic South African problem. As elsewhere in the world, the demand for rigorous statistical data ‘proving’ the scope of trafficking and children in the sex trade is considerable. When the constellation of published research, media reports, academic studies, police investigations (closed and ongoing) and prosecutions (successful and unsuccessful) over the past three decades – all contextualised within South Africa’s complex socio-cultural vulnerability landscape – is woven together, there is no denying that structural and thematic patterns and consistency are found in the data. This thick and many-hued blanket cannot simply be cut up for sense-making purposes without acknowledging the impending damage to hidden transcripts, relationships and intricacies between data points. Sceptics’ assertions that there is “little evidence” to substantiate the prevalence of TIP and children in South Africa’s sex trade are misleading and raise more questions than answers. Could there be more to the undercounting of adult and child trafficking in the sex trade? How many victims have been missed over the past two decades because of this grave error? Where do ‘young’ and ‘very young sex workers’ or the employment of their ‘services’ fit into South Africa’s child protection lexicon and agenda, and could some researchers be denigrating harm? Why are South Africa’s legislative and international obligations trivialised? When considering the sum total of distorted definitions, the undercounting of TIP among some research participants, and sceptics’ reliance on ‘evidence’ based on claims made by active brothel owners, pimps and women whose ongoing coercion and exploitation by these players are ‘beyond dispute’, one cannot but conclude that ‘little evidence’ is in fact considerably ‘more evidence’ that substantiates TIP in the sex trade. This is, of course, if agreement exists that the PACOTIP Act is the yardstick for determining whether a crime is being committed or not. These weighty matters and obfuscations cannot be ignored by practitioners, policy-makers, researchers, research funding bodies and ethics committees. Unambiguous and rigorous statistical data simply does not exist – not in South Africa, nor anywhere else in the world. When all is considered, it would indeed be bizarre if claims persisted that South Africa did not have a problem with child sexual exploitation, and adult and child trafficking in the sex trade. However, emphases on questionable numbers “*create a*

credibility dilemma, detract from a constructive conversation and frustrate efforts to understand the multi-layered realities of the problem” (Van der Watt, 2015).

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Endnotes

- 1 Despite being widely recognised and used by countries as a performance indicator, the annual US TIP Report has not been exempt from criticism (see Hübschle, 2009; Wooditch, 2011). However, rarely has the methodology been considered by sceptics in South Africa. It includes in-depth conversations and interviews with the entire spectrum of practitioners involved in counter-trafficking work (government and civil society), the monitoring and validation of media reports, and the transmission of a standardised questionnaire for completion. Data collected from questionnaires is synthesised, written-up, checked and validated through multiple iterations, by stakeholders that include multiple officials at the US Embassy in Pretoria and multiple officials in Washington DC.
- 2 The author attended the 2009 ISS research presentation in Port Elizabeth and was equally surprised by the research findings. At the time, he was attached to the Hawks and was responsible for a project-driven investigation into a Nigerian syndicate that was implicated in the trafficking of women and girls into the sex trade between Port Elizabeth, Cape Town, Bloemfontein, Pretoria and Johannesburg.
- 3 See also Africa Check's (2014/2017) assertion that human trafficking "usually relates to the movement of people, against their will, for purposes of exploitation..."
- 4 State vs Elizabeth Gwambe (Case details unavailable); State vs Tazley Msweli & another (Pinetown Regional Court case no: RC 465/15); State v Rasibe Jaqueline Ramohlola (Gauteng North (Pretoria) High Court case no: CC70/2015); State vs Zama Madlala (Pietermaritzburg Regional Court case no: RC 681/15).
- 5 Evidence and indicators of the study phenomena were, in all likelihood, present during the early years of South Africa's democracy. Historical statistics cited by Senior Superintendent Anneke Pienaar (Pienaar, 2000), Unit Commander of the SAPS Child Protection Unit (CPU), reflect the sheer number of crimes against children reported to the SAPS CPU. These include 102 147 registered cases between 1994 and 1998 that relate to rape, indecent assault (sexual assault), kidnapping, abduction, offences registered under Act 23 of 1957 (Sexual Offences) and a variety of other crimes, including public indecency.
- 6 Cape Town Regional Court (WC) case no: 27/50/98
- 7 Confirmed on appeal in the High Court – S v Dos Santos 2018 1 SACR 20 (GP) / Appeal Case: A26/2014 in Pretoria High Court
- 8 Regional Court in Nongoma (KZN) case no: RC92/13
- 9 Durban Regional Court case no: 41/362/12/LG/CD38
- 10 Gauteng South (Johannesburg) High Court case no: SS14/2016 (GJ)
- 11 Uitenhage Regional Court (Eastern Cape) case no: RC 123/2013
- 12 Pretoria Regional Court case no: 14/546/13
- 13 Gauteng North (Pretoria) High Court case no: C532/17
- 14 Queenstown Regional Court (Eastern Cape)
- 15 Gauteng South (Johannesburg) High Court case no: SS45/2018 (GJ)

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