

**THE POLITICS OF HUMAN TRAFFICKING IN SOUTH
AFRICA:
A CASE STUDY OF THE KWAZULU-NATAL INTERSECTORAL
TASK TEAM AND SOUTH AFRICAN COUNTER-
TRAFFICKING GOVERNANCE**

by

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ABSTRACT

Human trafficking is a complex phenomenon which obviates simple solutions. Although this is acknowledged in the literature and amongst anti-trafficking practitioners and policymakers, the existence of a dominant discourse at both the international and domestic level focuses on human trafficking for the purposes of sexual exploitation and prostitution to the detriment of other forms of trafficking in practice. Human trafficking and counter-trafficking in South Africa remain under-studied from all perspectives. In-depth knowledge and understanding of the phenomenon, as well as the efficacy and impact of responses, are required to formulate effective policies and strategies. Understanding the actors and complex governance structures involved in counter-trafficking, their interactions and their political agendas, and how this translates in practice in the South African context represents a gap in research on preventing and combating human trafficking in South Africa. This study makes a meaningful contribution to this body of research by analysing the actors involved in preventing and combating human trafficking and counter-trafficking governance in South Africa and the impact that politics (in the form of discourses and agendas) has on human trafficking approaches and responses.

In this dissertation, I provide a better understanding of the politics of human trafficking in South Africa by deconstructing the international and South African human trafficking discourses and underlying agendas of state and non-state actors involved in counter-trafficking and assess the impact this has on counter-trafficking responses in practice. I examine the international and South African human trafficking legal and policy frameworks. I analyse and assess human trafficking governance and the way in which human trafficking is being combatted in South Africa from a complexity perspective, using the KwaZulu-Natal intersectoral task team as a case study, and provide insight into the role played by counter-trafficking networks in South Africa.

I contend that dominant discourses and competing political agendas influence the trajectory of legislative and policy formulation and implementation, at both the international and domestic level, and ultimately counter-trafficking responses. In the South African context, the domestic discourse closely reflects the dominant international discourse. I claim that while the recently adopted comprehensive human trafficking legislation is expansive and victim-centred, like much other progressive legislation and policy in South Africa, implementation may prove problematic. I highlight a number of contentious issues surrounding the adopted legislation and examine the South African response to preventing and combating human trafficking in the form of its *Tsireledzani* programme and the national task team. I analyse and assess the efficacy of counter-trafficking governance in South Africa through the lens of the KwaZulu-Natal intersectoral task team. I argue that the strategic objectives of the task team, in the form of its 4P model based on prevention, protection, prosecution and partnerships, have been implemented relatively successfully. However, a number of constraints and challenges are observed, and recommendations are made for augmenting the impact and efficacy of counter-trafficking responses in KwaZulu-Natal. Cooperation and coordination are required for an integrated approach to counter-trafficking and effectively managing counter-trafficking governance in South Africa. I claim that counter-trafficking networks, formed primarily by civil society organisations, play an important role in counter-trafficking in the South African context. Linking networks through formalised cooperation and coordination, and leveraging their resources through knowledge management, information sharing and positive competition, are vital components for an effective, holistic response to human trafficking in South Africa. I argue that the disparate approaches to human trafficking have a marked effect on outcomes of counter-trafficking responses and have resulted in unintended consequences. This has the implication that although South Africa advocates a holistic approach to addressing human trafficking, the reality is a more fragmented approach which leads to a disproportionate amount of resources and effort being allocated to combating, preventing and

assisting particular sub-populations of trafficking victims – namely women and children trafficked for the purposes of sexual exploitation. In addition, resources are spent keeping undocumented migrants and their traffickers out and male victims of trafficking, while officially acknowledged, tend to be overlooked in terms of victimology and assistance in practice.

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DECLARATION

I declare that this dissertation submitted for the degree *Doctor of Philosophy* in Political Science at the University of KwaZulu-Natal is my own independent work and has not been previously submitted by me at another university.

I hereby declare that this dissertation has not been plagiarised. I declare that all the material presented for examination is my own work. It has not been written for me, in whole or in part, by any other person. I also declare that any quotation, paraphrase, picture or graph from the published or unpublished work of another person has been duly acknowledged in the work which I present for examination.

Signed:

Date: 22 February 2013

LIST OF ACRONYMS AND ABBREVIATIONS

1949 Trafficking Convention	Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others
ACSA	Airports Company South Africa
Adv.	Advocate
AFU	Asset Forfeiture Unit
ANC	African National Congress
ANEX / Anex CDW	Activists Networking against the Exploitation of Children
BCOCC	Border Control Operational Coordinating Committee
CAS	Complex adaptive system
CASE	Community Agency for Social Enquiry
CATW	Coalition Against Trafficking in Women
CGE	Commission on Gender Equality
CIA	Central Intelligence Agency
CBCG	Cross Border Coordination Group
CSO	Civil Society Organisation
CTC	Counter Trafficking Coalition
DA	Democratic Alliance
DPCI	Directorate of Priority Crime Investigation
DSD	Department of Social Development
DSTV	Digital Satellite Television
EC	European Commission
EEA	European Economic Area
EU	European Union
FIFA	Fédération Internationale de Football Association
FCS	Family Violence, Child Protection and Sexual Offences Unit
FPB	Films and Publication Board
GAATW	Global Alliance Against Trafficking in Women
GAO	General Accountability Office
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HSRC	Human Sciences Research Council
IDMT	Interdepartmental Management Team
IFP	Inkatha Freedom Party
ILO	International Labour Organization
IO	International Organisation
IOM	International Organization for Migration
IP	Internet Provider
ISC	Intersectoral Committee
ISS	Institute for Security Studies
KHK	Kriminalhauptkommissar
KZN HPPB Task Team / Provincial task team	KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team
Metro	Metropolitan Police
Model Law	US State Department Model Law to Combat Trafficking
MTV	Music Television
NAP	National Action Plan
NCPS	National Crime Prevention Strategy

NFN	National Freedom Network
NFS	Not for Sale Campaign
NGO	Non-Governmental Organisation
NIA	National Intelligence Agency
NPA	National Prosecuting Authority
NPO	Non-Profit Organisation
OCC	Organised Crime Component
Organised Crime Convention	United Nations Convention Against Transnational Organised Crime
Open Door	The Open Door Crisis Care Centre
Palermo Protocols	United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, and United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
PCU	Programme Coordinating Unit
POCA	Prevention of Organised Crime Act 121 of 1998
PSC	Programme Steering Committee
PVEF	Provincial Victim Empowerment Forum
SA	South Africa
SACTAP	Southern Africa Counter- Trafficking Programme
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SALRC	South African Law Reform Commission
SANCA	South African National Council on Alcoholism and Drug Dependence
SANDF	South African National Defence Force
SANTAC	Southern African Network Regional Network Against Trafficking and Abuse of Children
SAPS	South African Police Service
SETA	Sector Education and Training Authority
Sexual Offences Amendment Act	Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
Smuggling Protocol	United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air
SOCA Unit	Sexual Offences and Community Affairs Unit
STOP	STOP Trafficking of People
SWEAT	Sex Workers Education and Advocacy Taskforce
TECL	Towards the elimination of child labour
TIP	Trafficking in persons
TIP Bill	Prevention and Combating of Trafficking in Persons Bill [B7-2010]
TIP Report	Trafficking in Persons Report
TME	Thare Machi Education
TOC	Transnational Organised Crime
Trafficking Protocol	United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
TCC	Thuthuzela Care Centre
THB	Trafficking in Human Beings
TVPA	Trafficking Victims Protection Act
UN	United Nations
UN Convention on TOC	United Nations Convention Against Transnational Organised Crime

UNGA	United Nations General Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNICEF	United Nations Children's Fund
UNISA	University of South Africa
UNODC	United Nations Office on Drugs and Crime
U.S.	United States
US	United States
USAID	United States Agency for International Development
VEP	Victim Empowerment Programme
Victims Service Charter	Service Charter for Victims of Crime in South Africa
YWAM	Youth with a Mission

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INTRODUCTION

As we enter the 21st century, we continue to grapple with a plethora of ills plaguing the world, such as poverty, hunger, a fragile environment, widespread discrimination, and war. Fundamental human rights are too often denied by those in control, whether in governments, communities, or in the home. The list of human rights violations is long, but one of the most heinous crimes has in recent years recaptured our attention: the selling and buying of people for profit, otherwise known as human trafficking.¹

Human trafficking is a politicised phenomenon wherein ‘knowledge production on “human trafficking” is not always based on an analysis of lived experiences’². Human trafficking is an umbrella term used to denote a continuum of exploitative experiences. It is an amorphous and indeed poorly understood problem due to its sheer complexity, and the divergent perspectives on how human trafficking should be understood and studied, not to mention the volume of diverse actors involved in counter-trafficking. Despite sustained attention internationally, it is an area of study fraught with inconsistent definitions often conflated with other issues, such as prostitution, (illicit) migration and national security. The human trafficking discourse that has emerged over the past decade is diverse and often contradictory and competitive, due in part to competing viewpoints from a variety of actors, organisations and scholars and their particular political and moral agendas. The issue of human trafficking has been problematised as a threat to the sovereignty of states by transnational organised crime to its territorial and moral authority. This has led to its securitisation – resulting in attempts to control migration – ostensibly to limit the negative effects of globalisation. Both state and non-state actors interact and play significant roles in the development of normative frameworks, legislation, policies, and processes to counter the phenomenon, as well as legitimating and perpetuating certain political agendas over others. This has had an impact on the way human trafficking is addressed. The politics of human trafficking and the human trafficking discourse, interactions and roles played by state and non-state actors, as well as the forms of human trafficking governance which have emerged (transnationally and locally), in relation to South Africa are the focus of this study.

¹ Jessica Neuwirth and Taina Bien-Aimé, ‘Foreword’, in Kathryn Cullen-DuPont, *Human Trafficking*, New York: Facts on File, Inc., (2009): ix.

² Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 4, cited in Maybritt Jill Alpes, ‘Escaping statism: From the paradigm of trafficking to the migration trajectories of West African sex workers in Paris’, in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 121.

Political science is the broad study of political institutions, actions, events and ideas. It is concerned with how political actors interact with one another, how rules are made and norms enforced within the international arena and within the territorial confines of the state itself. Essentially, political science is concerned with the distribution of political power, the actors who wield it and the institutions, organisations and forums where decision-making takes place, and how this shapes people's perceptions of their social reality and how they in turn interact with it. Increasingly, this involves the study of non-state actors who are wielding ever more power on the international stage and within states themselves shaping policy and law. The interplay of state and non-state actors, their competing interests, and the influence they exert in relation to governance has become an important area of study. Multi-level governance refers to the act of governing at multiple levels, at the transnational level and sub-state level. It also refers to the transformation of the state system by globalisation and the multiple sites and levels of power which exist.

Multi-level governance can be defined as an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more-or-less continuous negotiation/deliberation/implementation, and that does not assign exclusive policy competence or assert a stable hierarchy of political authority to any of these levels.³

Governments are but one of numerous actors who are active in addressing social problems either at the international, regional, national, provincial or local level. In other words, political scientists study emergent phenomena or events at three different levels, politics, policy and polity, and across different governmental levels to understand the effect that the agency of actors has on institutions, decision-making and power within and across borders, and the creation and legitimation of rules and norms in world affairs. Rather investigations tend to focus on spheres of authority and the influence of individual actors and groups. Actors are studied within the context of a globalised world where traditional distinctions and roles are increasingly blurred, and simultaneous contradictory processes of fragmentation and integration occur. The intersection of complex social global and local issues is often explored and the manner in which state and non-state actors shape the way that such issues are understood and dealt with.

Human trafficking is conceptualised by state and non-state actors as a global issue that requires global solutions to a problem that neither knows nor respects traditional state boundaries. It is a complex social problem that requires the cooperation and coordination of

³ Philippe C. Schmitter, 'Neo-Functionalism', in Antje Wiener and Thomas Diez, *European Integration Theory*, Oxford: Oxford University Press, (2004): 49.

state and non-state actors at multiple levels. Human trafficking as a global problem is situated within the multi-level governance structure of the United Nations in terms of international law and transnational cooperation. States are simultaneously addressing the phenomenon within the confines of their borders, and through the harmonisation of domestic legislation and policy. Moreover, human trafficking is an issue of foreign policy, or unilateralism on the part of the United States, in the form of its compliance and enforcement mechanism – the Trafficking in Persons Report. Thus, in order to study and understand how human trafficking is conceptualised and addressed, the actors, institutions and processes involved, how they interact with one another, their agendas, the diverse and competing perspectives which exist, the impact and consequences of such actions, it is vital to study the complex network of human trafficking governance. For the purposes of this study, human trafficking governance refers to the institutions, processes and interactions between different actors at various levels that address human trafficking and their influence on how human trafficking is understood and addressed within the dominant discourse.

There are numerous actors and institutions involved in counter-trafficking (human trafficking governance) globally and locally. However, for the purposes of this study this is limited to an analysis of the global human trafficking governance structure situated within the United Nations framework and the role played by influential actors, state and non-state actors, in shaping conventions and policies (and discourses on human trafficking), and human trafficking governance in South Africa. The politics surrounding the South African response to human trafficking is analysed. Human trafficking governance, and counter-trafficking, in KwaZulu-Natal over a four year period (2008 – 2012) is examined as a site or level of human trafficking governance within the South African context. The role and influence counter-trafficking networks and actors in South Africa are also explored. The reason for a dual lens of analysis is that human trafficking is addressed simultaneously at a global and local level, and the international discourse and governance structure(s), and networks of actors therein, overlaps with and influences the South African discourse and thus governance. Thus, this dissertation is a study of human trafficking governance and discourse, and an analysis of actors involved in shaping and forming counter-trafficking structures, approaches and policies, and human trafficking discourses in relation to South Africa.

Human trafficking is a widely studied phenomenon, attracting academic interest across disciplines. However, until relatively recently there has not been much in the way of systematic, empirically and theoretically grounded research on this socially complex problem. There are also numerous approaches to the study of human trafficking due to the plethora of definitions and conceptualisations of the phenomenon, its causes, its victims, the traffickers,

and responses. Many approaches to the study of human trafficking are compartmentalised, operating in competition with one another, and based on conflicting political agendas. Most of the research conducted has been non-empirical⁴ and has focused almost exclusively on women and trafficking for sexual exploitation, to the detriment of other forms of trafficking and tends to exclude men as victims. Such research tends to be ideologically, morally or politically driven. This has in part been due to the early prevalence or dominance of non-governmental organisations, and international organisations, involved in advocacy, and research, on human trafficking as a form of sexual exploitation of women and girls and linked to (transnational) migration. The constraints on focus and emphasis on human trafficking research has resulted in a body of knowledge built on methodologically and conceptually flawed foundations, and has had a tangible effect on counter-trafficking responses by states and other actors. Much research on human trafficking is disconnected from theory.⁵ There has been a noticeable turnaround in the way human trafficking is conceptualised and studied (and addressed) recently as more academics have applied their minds, through empirical research, to the problem of trafficking. Trafficking for the purposes of sexual exploitation, combined within a narrative of organised crime and law enforcement / criminal justice, remain the most commonly researched areas of human trafficking.

Human trafficking research is thus concerned with a range of intersecting and competing, or even contradictory, issues. These are typically interwoven with the supremacy of the state, its sovereignty, and threats to its existence by the shadowy forces of globalisation, porous borders and undocumented migration from the developing world. This is in turn stitched together with issues of human insecurity, the moral threat of prostitution⁶ and transnational organised crime. In this area of political science research, the state is once more elevated to the position of defender of its citizens and the integrity of its borders – the provider of political goods and certainty in an uncertain world. Studies on human trafficking from this perspective typically engage with concepts of security, transnational threats and the role played by states and international institutions and normative regimes to prevent and combat the phenomenon (which is seen as a threat to global security). Such an approach, however, only paints a partial picture of the phenomenon of human trafficking, the way it is or should be conceptualised, and responses to the phenomenon. Such an approach often fails to interrogate the causal relationship between legislation, policy interventions and (unintended) consequences. It does not meaningfully take into consideration migrants or human rights. It is

⁴ Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008.

⁵ Ibid.

⁶ Which is thought to manifest in its darkest form as sex trafficking.

more concerned with protecting the state and by extension the international system, from external threats posed by non-state actors and networks. Such an approach does not take into account the multifaceted nature of the phenomenon or the diversity of its victims, or the ways in which it can be problematised and examined, or the influence of actors on the discourse and thus responses. Instead, it tends to focus on seeking simple solutions from either a state-centric or criminal justice perspective to a complex problem. An uncritical, theoretically disconnected approach to the study of human trafficking, data and information provided, or which is limited by the dominant discourse or singular approaches, is thus rejected.

The study of human trafficking is increasingly being approached from a more holistic perspective which takes into consideration the political, social, cultural, historical and economic dimensions of the problem. Human trafficking is thus studied ‘in the context of the illicit global economy, rising illegal migration, and as a regional and international policy issue’⁷. An approach which combines a human rights and law enforcement perspective is increasingly being followed, and allows for a more nuanced and fuller picture of the phenomenon and redirects focus to the victims of trafficking (rather than the state). Research from this perspective tends to be more methodologically rigorous and empirically based. However, it remains focused on discourse and institutional analyses⁸ typically from feminist or gendered perspectives. The discursive narratives which define the international human trafficking discourse, and the polarisation of perspectives, are unpacked, and the role played and influence exerted by counter-trafficking actors on institutions and the discourse is examined. However, such studies tend to be based on prescriptive theories and limited in scope and focus either on the international discourse and counter-trafficking institutions, or the influence of the United States and counter-trafficking actors. Moreover, there is a preponderance of research focused on the process of (female) migration, migrants’ experiences and ‘the institutional ramifications and consequences for migrants’⁹. Such an approach is still limited in its ability to deal with the complexity and multidimensionality of human trafficking.

A relatively new approach to the study of human trafficking is a complexity approach. According to this approach, theorists critique the tendency of dominant discourses to be either state-centric and/or exclusionary of divergent perspectives, and thus only partially telling the

⁷ Louise Shelley, *Human Trafficking: A Global Perspective*, Cambridge: Cambridge University Press, (2010): 25.

⁸ Maybritt Jill Alpes, ‘Escaping statism: From the paradigm of trafficking to the migration trajectories of West African sex workers in Paris’, in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 121.

⁹ Ibid.

story which does not take into account the myriad of ways actors interact within a complex system. A complexity approach provides useful conceptual tools to describe the changing nature of discourses, institutions, governance structures, laws and responses by counter-trafficking actors, and the 'rich pattern of interactions' between them¹⁰. A complexity approach is not predictive nor does it specify particular solutions. Moreover, theorists examine the way in which a plurality of shifting perspectives present in a group is facilitated and maintained through dialogue¹¹ and critically reflect on the role and importance of diverse actors, and their multifarious interactions and relationships within the complex adaptive systems (whether these be governance structures or legal frameworks) within which they are situated in order to generate fuller pictures of reality.

In this dissertation, I adopt a complexity approach, based on empirical fieldwork research, to the study of human trafficking governance, discourses and the rich pattern of interactions between counter-trafficking actors in the South African context. This approach meaningfully adds to the study of human trafficking governance and counter-trafficking actors in a number of ways. Firstly, I deconstruct the nature of the discourse itself and the multiplicity of actors therein, and offer insight as to how actors interact and shape, and ultimately impact on, discourses, law, policies, responses and governance structures in relation to human trafficking. Secondly, by examining the complex interplay of interactions and dialogue between counter-trafficking actors and structures, I identify and interrogate a core set of claims and political agendas regarding human trafficking in South Africa, and analyse why certain disputations about human trafficking are legitimated and others not, and their impact on counter-trafficking responses. Thirdly, I examine counter-trafficking governance, strategies and responses through the use of a case study, the KwaZulu-Natal Intersectoral Task Team, interrogate similar state-initiated counter-trafficking initiatives, as well as civil society based organisations and networks involved in counter-trafficking in South Africa. I contend that interactions between actors within complex systems (i.e. counter-trafficking organisations, institutions, networks, legal and policy frameworks, and governance structures) and the influence of discourse and political agendas have a direct impact on how human trafficking is viewed and addressed in practice. I hypothesise that counter-trafficking governance in South Africa is influenced by the complex interaction of actors, systems and discourses which in turn determines the way the problem of human trafficking in the South African context is approached.

¹⁰ Gilberto Gallopin et al, 'Science for the 21st Century: From Social Contract to the Scientific Core', *International Social Science Journal* (2001): 225.

¹¹ Anna Carline and Zoe Pearson, 'Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking', *CJWL/RFD*, (2007): 79.

Human trafficking is an egregious violation of human rights and a phenomenon which transcends borders. Human trafficking is a problem which affects all states, including South Africa. South Africa has signed and ratified¹² the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000¹³. As a result of the international obligations incurred, South Africa has been in the process of harmonising domestic legislation and criminalising human trafficking. The *Prevention and Combating of Trafficking in Persons Bill* [B7-2010] was finally adopted by national parliament in 2012. Currently, only human trafficking for the purpose of sexual exploitation is criminalised under South African legislation, as well as all forms of child trafficking. The bill once enacted will extend the definition of what constitutes human trafficking to include other forms of human trafficking, such as trafficking for forced labour and organ / body part trafficking, as well as provide protective services to both domestic and transnational victims of human trafficking.

The South African programme to prevent and combat human trafficking is known as *Tsireledzani*. Preventing and combating human trafficking is largely devolved by the national task team to provincial task teams throughout the country. The South African counter-trafficking strategy is based on the pillars of prevention, victim support and response. The KwaZulu-Natal task team was the first provincial task team to be established in 2008, and employs an integrated model based on prevention, protection, prosecution and partnerships to prevent and combat human trafficking in the province, and serves as a model for other provincial task teams. Non-governmental organisations, and international organisations, are active in counter-trafficking initiatives and structures in South Africa. This is reflected in the composition of the national and provincial task teams. Non-governmental organisations have also formed parallel counter-trafficking (governance) structures in the form of coalitions and networks to prevent and combat human trafficking provincially and nationally.

My examination of the key themes of this study is divided into seven chapters. In Chapter 1, I review the literature on human trafficking and consider the fractured and methodologically flawed nature of the human trafficking discourse. I consider the ways in which human trafficking has been problematised in the international and domestic literature. I elucidate the various misconceptions and misperceptions, influenced by politics and moral agendas, which pepper the literature and raise the issue that many counter-trafficking strategies, policies and even legislation have been based on such studies. I note the gaps in the literature and explicate

¹² South Africa ratified the protocol on 20 February 2004.

¹³ Supplementing the United Nations Convention Against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

how few studies adequately deal with the politics of human trafficking. Indeed, most studies neglect to address how counter-trafficking actors have shaped international and local discursive narratives. Moreover, such discursive narratives upon closer inspection are intimately linked and intertwined. I situate my study within this context.

In Chapter 2, I locate my study within the theoretical framework of complexity theory. I introduce the six main themes in the study, which are: (i) the politics of human trafficking, (ii) the origins and development of human trafficking as a discourse, (iii) international and domestic legal and policy responses to human trafficking, (iv) the inception and development of the KwaZulu-Natal intersectoral task team, (v) networked counter-trafficking in South Africa, and (vi) dominant perspectives and approaches to counter-trafficking in South Africa. I reflect upon the methodology and methods used in my study, explain the selection of sites and informants, the data collection and analysis methods used. I discuss the limitations of the study and research problems encountered. I claim that such an approach needs to be followed in order to understand a complex and multidimensional phenomenon, such as human trafficking, and the numerous interactions between a multiplicity of actors and perspectives, within and across systems, and the human trafficking discourse itself.

In Chapter 3, I describe the current international legal framework and its genesis, and assess the role played by state and non-state actors and their particular ideologies and political agendas in its formation. The legacies of past conventions and debates about human trafficking, and the contemporary discourse, are explored and discussed. I analyse the international legislation (in the form of the Trafficking Protocol) and other influential legal and policy frameworks – particularly those stemming from the United States – and the role played, in what has become the dominant discourse, in influencing and shaping its trajectory. The intersection of complex and controversial issues have all served to influence and shape both the international legal framework and the trajectory of the dominant discourse. The trafficking discourse and the international legal and policy framework are heavily influenced by the past, as well as dominant voices and their political and moral agendas. The unilateral role played by the United States in monitoring and enforcing compliance of anti-trafficking measures in accordance with its own established minimum standards (and not those of the Trafficking Protocol) is also considered. I find that the officious role of certain actors (state and non-state) could have damaging effects on the long-term saliency and legitimacy of the current international legal framework and that the victims remain largely disempowered. Measures aimed at the preservation and protection of rights lack substance. I claim that the United States' compliance mechanism is little more than a political construct designed to

manipulate states to conform to U.S. foreign policy orientations and how it has deemed human trafficking should be understood and combated.

In Chapter 4, I turn to an examination of the South African legal and policy framework and the South African response to preventing and combating human trafficking. I explore the existing and transitional legislation used to combat human trafficking in South Africa, and the piecemeal approach followed. I analyse the adopted *Prevention and Combating of Trafficking in Persons Bill* [B7-2010] and explore the ramifications of certain provisions and broader debates surrounding it. I examine the contemporary and transitional policy framework. I conclude that by adopting an expansive definition and criminalisation of human trafficking in the TIP Bill, South Africa has fulfilled the political and legal obligations derived from the Trafficking Protocol and other international agreements. However, many challenges still lie ahead for the government to formulate and successfully implement a coordinated and cohesive anti-trafficking strategy.

In Chapter 5, I turn to an examination, through empirical data in the form of a case study, of the KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team and explore a provincial response to preventing and combating human trafficking. I examine its initial structure and identification of key role players and co-option of members to the provincial intersectoral task team, as well as its evolution in relation to the structure of the task team and the system within which it is oriented, and the actors who form part of it. I analyse the successes and challenges faced by the task team in implementing the national, and its own provincial, strategy in relation to the task team's objectives of prevention, protection, prosecution and partnerships. I conclude that collaborative partnerships form an integral part of operations and other counter-trafficking initiatives and programmes. The task team consistently performs well in the areas of primary prevention, prosecution and to a lesser extent in the areas of protection, partnerships and law enforcement due to various challenges discussed in the chapter. Moreover, the task team performs remarkably well for an 'unresourced agency of provincial government' and in the absence of comprehensive legislation and policy. I claim that the lack of funding and departmental buy-in and long-term commitment are the greatest challenges faced by the task team. I make a series of recommendations on how aspects of task team strategies or initiatives under the objectives of prevention, protection, prosecution and partnerships can be improved and strengthened.

In Chapter 6, I reflect on the concept of network organisational forms or complex adaptive systems that have emerged in response to adaptive, fluid and diverse human trafficking networks. I examine the concept of human trafficking networks and claim that anti-trafficking

networks, as new forms of governance against human trafficking, are impeded in their efforts due to issues of formalised cooperation and coordination and need to be restructured. I explore, through empirical data, how emergent counter-trafficking networks are structured and function in practice in the South African context. I examine counter-trafficking networks and networked partnerships in the Western Cape and Gauteng as parallel counter-trafficking structures formed by civil society organisations. I further examine the formation, influence and strategies of a national counter-trafficking network, the National Freedom Network. Formalised cooperation and coordination between counter-trafficking actors, within and between states, should be a key priority of any holistic counter-trafficking strategy. I conclude that networks allow for more political power and information sharing in the South African context, however, they are not immune from the issues of coordination and cooperation witnessed at the transnational level.

In Chapter 7, I consider how human trafficking is problematised in the South African context in order to deconstruct the domestic discourse. I interrogate the impact of the dominant human trafficking discourse(s) in South Africa upon responses to human trafficking. I examine this from five dominant perspectives and approaches to human trafficking. Finally, I explore whether a holistic approach to human trafficking is being followed in practice in South Africa. I conclude that the South African human trafficking discourse closely mirrors that of the international discourse, and that in the South African context this has resulted in few victims being identified or assisted outside the sex industry and trafficking for the purposes of sexual exploitation. Human trafficking needs to be conceptualised as a complex and multidimensional problem which cannot be reduced to a singular perspective or a partial view that fits a particular political or moral agenda or that, in practice, is based on exclusion.

In the conclusion, I tie together the component parts of the study by focusing on the nature of the human trafficking discourse and counter-trafficking actors, responses and structures. I claim that the influence of human trafficking discourses on counter-trafficking actors, strategies and governance should not be underestimated or disregarded. Human trafficking governance needs to be inclusive and participatory in order for the multiplicity of diverse perspectives to be fully engaged with to ensure that the multidimensional problem of human trafficking is adequately addressed from all perspectives and that the most vulnerable are protected. This also requires empowering victims of trafficking by giving them a voice in such structures and decision-making forums.

Chapter 1: Literature Review

The ‘Mysterious Phenomenon’ of Human Trafficking: Deconstructing a Fractured and Methodologically Uncertain Discourse

It is true that such a complicated phenomenon is hard to understand and to tackle, but oversimplifications that boil the issue down to being simply one of prostitution, of illegal migration, or an organised crime problem, do a disservice to both victims as well as governments in the long run. Trafficking is in fact all of those problems, but it is not any of these problems alone.¹⁴

1.0 Introduction

The human trafficking discourse, whose genesis may be traced back to the latter part of the nineteenth century and the purported ‘white slave trade’ and ensuing Victorian hysteria, has been revived and reinvented in the modern era. Publications on the subject have boomed since 2000. This may be attributed to the raising of the issue to the international agenda in the 1990s, and the formulation of two significant pieces of legislation, the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000¹⁵ (Trafficking Protocol) and the U.S. *Trafficking Victims Protection Act* of 2000¹⁶ (TVPA). Laczko notes that while not all publications present new research, they illustrate the notion that research on human trafficking has become increasingly salient, urgent and extensive, ‘spanning historical, political, humanitarian, legal, and socio-economic dimensions’¹⁷. Most research on human trafficking, however, focuses on international trafficking, to the detriment of gaining greater insight into the issue of internal (domestic) trafficking, and has resulted in creating seemingly exclusive narratives within the discourse itself. There also is relatively little research on human trafficking conducted in Africa (see figure 1), and only a handful of publications on the phenomenon in South Africa.

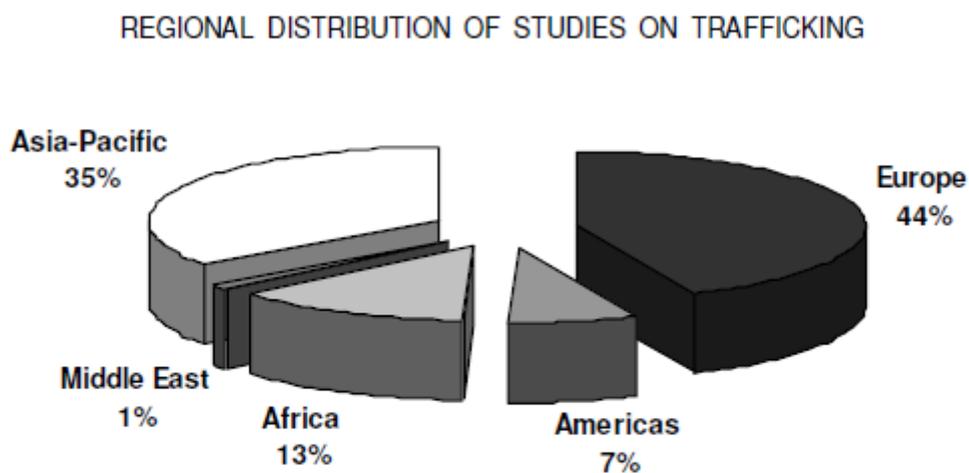
¹⁴ Galma Jahic and James O. Finckenaer, ‘Representations and Misrepresentations of Human Trafficking.’ *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 37.

¹⁵ Supplementing the United Nations Convention Against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

¹⁶ (Public Law 106-386)

¹⁷ Frank Laczko, ‘Data and Research on Human Trafficking’, *International Migration*, 43(1/2) 2005:7.

Figure 1: Regional Distribution of Studies on Human Trafficking



Note: N=260 titles

Source: "Human trafficking bibliography", IOM, Geneva.

Source: Frank Lackzo, 2005.

It is evident from the pie chart above, that the African region is only featured in or accounts for 13% of all studies on human trafficking, whereas most studies are primarily limited to regions where the issue of human trafficking and sex industries are the most visible (such as Europe and the Asia-Pacific region). Interestingly, the United States of America, one of the drivers/leaders of counter-trafficking campaigns internationally, accounts for even fewer studies on trafficking in its region of the world. The dearth of studies on trafficking in the African region, and more specifically South Africa, in itself creates alarming gaps in understanding the immensity and intricacy of human trafficking as a phenomenon, and the various points where a multitude of narratives (and perspectives or agendas) intersect along what can only be termed a continuum of exploitative practices¹⁸ that defines the phenomenon. This starting point is a cause for concern in terms of implications of any counter-trafficking policies initiated at state-level.

In this chapter I address the fractured and predominantly methodologically flawed nature of the human trafficking discourse as evidenced particularly by the international literature. This in turn is mirrored to a certain extent in the extremely limited South African literature on the phenomenon. This may be ascribed to the fact that the majority of research conducted into human trafficking in South Africa has been compiled by the International Organisation for

¹⁸ To extend Anderson and O'Connell Davidson's notion of human trafficking falling within a continuum of experience. See, Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003.

Migration (IOM). The controversy surrounding definitions, and indeed definitional issues, of human trafficking is discussed in this chapter. The competing perspectives¹⁹ which have added to this debacle amongst researchers and practitioners alike are unpacked. It is within this fractured and competitive discursive environment, which delineates the landscape of human trafficking research in South Africa, that this dissertation is situated.

2.0 A Fractured Discourse

Human trafficking is a fractured discourse. It is a discourse defined by inconsistent definitions of the phenomenon²⁰, and a lack of verifiable data/statistics. Moreover, I claim that it is a minefield of conflicting ideas on what should be studied, uncritical analysis, and for the most part, methodologically weak or unsound research. Research is conducted mainly by international governmental organisations (IGOS), and advocacy agencies in the form of non-governmental organisations (NGOs) ranging from the conservative, Christian right to neo-abolitionist feminist groups. As such, although there is a plethora of research available on human trafficking – with an inordinate focus on sex trafficking (of women and girls) – there is limited academic, systematic, theoretically and empirically grounded research on the phenomenon in general²¹.

Attempting to define an amorphous and shadowy phenomenon like human trafficking has proven as difficult as trying to measure and understand the phenomenon itself. Due to the mysterious nature of the phenomenon, there has been much dissent amongst states,

¹⁹ The origins of the Trafficking Protocol and the agendas and ideologies which informed and shaped it are discussed in more detail in Chapter 3. How the Trafficking Protocol, came to be and which actors were involved in its formulation and acceptance are of primary importance as a starting point in understanding how the human trafficking discourse has been constructed, and how it has shaped our knowledge and understanding of human trafficking as a phenomenon. The process surrounding the formulation of the UN Convention on TOC and the Trafficking Protocol is analysed in conjunction with the various competing political agendas and ideologies that shaped the final outcome of the legislation.

²⁰ This is due to a range of competing interests and perspectives represented on the international political arena which are discussed later in Chapter 3.

²¹ Most of the information available on human trafficking in the form of reports, articles and presentations has been produced by governments, international organisations and NGOs. Statistics and case studies are bandied about internationally without any concrete evidence in the form of empirical research or methodologically sound longitudinal studies to back up such assertions. In turn, these statistics and an array of baseline studies conducted by international organisations (like the IOM) and advocacy organisations (whether they are of the radical abolitionist feminist variety or the conservative Christian right), are unquestioningly accepted and used to base further research and counter-trafficking initiatives and policy upon. (This is highlighted by Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008; Frank Laczko and Marco Gramigna, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194; and Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, 2006).

international organisations, and advocacy groups and other non-state actors, as well as academics/researchers, as to how the phenomenon should be defined. Indeed, it has boiled down to a question of what forms human trafficking may take (as there is a general consensus that it encompasses more than mere sexual exploitation), and which (criminal) acts actually constitute human trafficking. The roles of competing political agendas and ideologies (discussed below) have also greatly impacted on our understanding, and thus definition, of human trafficking. Although a broad legal definition now exists, in the form of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000²² (Trafficking Protocol), which supplements the overarching *UN Convention Against Transnational Organized Crime* of 2000²³ (UN Convention on TOC), and is meant to complement its sister-protocol, the *UN Protocol against the Smuggling of Migrants by Land, Sea and Air*²⁴ (Smuggling Protocol), much controversy surrounds the formulation of this piece of legislation that has become central to defining and countering human trafficking across the globe.

The UN Convention on TOC and the two Palermo Protocols (Trafficking and Smuggling Protocols) lie at the heart of this controversy. Moreover, it is also of fundamental importance to understand why the Trafficking Protocol supplements the UN Convention on TOC, and why it has been wed to the overarching paradigm of (transnational) organised crime, and placed in contradistinction to migrant smuggling. Thus, this section delves into the genesis and subsequent evolution of the modern human trafficking discourse, carefully deconstructing the realities, narratives and mythologies that have been constructed around human trafficking. Moreover, the role of the media (often used as the mouthpiece of advocacy organisations) is gauged and analysed in how it has facilitated the creation of the human trafficking discourse, and has effectively legitimated and perpetuated only certain ‘voices’ or viewpoints – creating a particular mythology of human trafficking. The media more often than not educates the public as to what the critical issues of the day are, how we should define and judge them. Thus, their role in the human trafficking discourse is as important as the ones played by advocacy and awareness-raising organisations, law enforcement and state actors. Also, the conflation of human trafficking with other issues or specific agendas is also examined. It is argued that the conflation of human trafficking with other issues, based on an actor’s ideological or political agendas has played a very formative role in shaping (and sometimes limiting) the discourse as a whole, and by extension policy addressing human trafficking²⁵.

²² General Assembly resolution 55/25, annex II.

²³ General Assembly resolution 55/25.

²⁴ General Assembly resolution 55/25, annex III.

²⁵ Discussed in more detail in Chapter 3.

2.1 Problems of Definition

One of the quintessential questions that one is faced with when attempting to research, understand and ultimately address the problem of human trafficking is the question of definition. *What is human trafficking?* As one author succinctly put it (when referring to the complexities of world affairs), it's 'many damn things'²⁶. There is no simple one line answer to this question. Indeed, much conjecture exists as to what constitutes human trafficking and how it may be defined. Until a legal definition was formulated and enshrined in the Trafficking Protocol, there were divergent and indeed diverse definitions of what constituted human trafficking – some were broad in scope, whilst others were issue driven and thus narrow (in the sense that they adhered to a particular political or ideological perspective of the organisation defining the problem). Even today, with a legal definition that has for the most part been accepted internationally, there is still disagreement as to how to define the term and where the focus should lie in determining whether an individual fits the profile and has indeed been trafficked or not. Not only are there concerns regarding the Trafficking Protocol in terms of definition (discussed below) and approach, but also in the contestations regarding the various conceptions of trafficking, traffickers and trafficked persons ('victims').

Human trafficking is a multidimensional phenomenon – fraught with distinct and, at times, overlapping problems – that are not always easily packaged or categorised. Moreover, human trafficking is 'an imprecise and highly contested term'²⁷. A working definition of human trafficking should reflect this. It should not oversimplify the phenomenon into a single issue area (depending on the political actors involved at any given time) or be so broad in scope that focus is '[taken] away from the "real" victims and their needs, resulting in unfocused programs and watered-down policies'²⁸. However, these concerns and requirements are often not reflected in the reality.

2.2 Defining 'the Problem' and Creating a Discourse

Human trafficking is not a new phenomenon – just the term used to describe it. We are informed of this time and time again – in each new publication, report, newspaper article that one might read – of an ancient evil with a new face. Ironically, although history 'is often

²⁶ James N. Rosenau, 'Many Damn Things Simultaneously: Complexity Theory and World Affairs', in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, Washington DC: National Defense University, 1997, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

²⁷ Maggy Lee, 'Introduction: Understanding human trafficking', in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 3.

²⁸ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 37.

invoked when identifying the significance of fighting the trade in human beings²⁹, and is used to give the problem of human trafficking a sense of gravitas, Picarelli contends that ‘experts have rarely engaged history to inform our present-day understanding of trafficking’³⁰. Instead, they have followed an ahistorical trajectory which lays the blame on globalisation and the new threats which have sinisterly emerged with the end of the Cold War. Few interrogate the history of human trafficking³¹, as something more complex and far-reaching than the dominant human trafficking discourse which is distinguished by a legacy of chattel slavery³², and delve into the perpetuation of other forms of (labour) servitude – such as indentured labour³³. Indentured servitude is still very much with us, and it is this form of labour servitude, rooted in the cultural aspects of slavery, that renders the labourer highly vulnerable as ‘the holder of the bond or indenture can often arbitrarily change the terms of the agreement and leave the labourer with no outlet for redress’³⁴.

Moreover, the language / terminology utilised in the human trafficking discourse, and even a common understanding of slavery and its end, is criticised as being imprecise and skewed. Indeed, as Quirk asserts, ‘an informal separation of past and present... can obscure the historical roots of contemporary problems’³⁵. From Picarelli’s seminal study³⁶ on the history of human trafficking (or what he labels ‘the trade in human beings’), three important conclusions can be drawn, that have significant implications for policymakers and researchers in the understanding and addressing contemporary human trafficking:

²⁹ John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 26.

³⁰ Ibid.

³¹ For a comprehensive discussion of the historical dimension of human trafficking and slavery, see Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, 2008.

³² Chattel slavery refers to the legal ownership of labourers as property, whereby owners can purchase, sell or transfer labourers (i.e. their property) like any other good. This particular form of slavery was legally abolished in the 19th century. However, other forms of exploitation such as debt bondage and servitude and serfdom continue to exist. See, Joel Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking*, Philadelphia, Pennsylvania: University of Pennsylvania Press, 2011.

³³ Indentured servitude, which is akin to debt bondage or peonage, refers to the agreement by a person to work for a specified period of time in return for passage and boarding, or in lieu of cancellation of a debt.

³⁴ John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (ed), *Human Trafficking*, Devon: Willan Publishing, (2007): 28; 34.

³⁵ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, (2008): 18.

³⁶ John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (ed), *Human Trafficking*, Devon: Willan Publishing, (2007): 27 – 45.

- (i) Slavery³⁷ did not end in the 19th century, as commonly believed, but ‘unfree labour’ continued to evolve into novel forms³⁸ that an international trade in human beings provided, and a growing international economy required.
- (ii) State policy in relation to human trafficking (or whatever derivative of the term one prefers) has always been based on national interests³⁹ (and is not exclusively altruistic or idealistic).
- (iii) Traffickers (‘traders in human beings’) historically have been small entrepreneurial organisations with major ties to legitimate business and political interests, operating both legally and illegally, with the illegal sector of the market becoming more notorious over time.

This is supported to a large extent by Quirk who contends that it is misleading to assume that slavery in other parts of the world ended with the abolition of transatlantic slavery⁴⁰. Indeed, ‘abolition does not automatically translate into an effective end to slavery’⁴¹. Quirk notes that defining slavery itself has been historically problematic because of the diversity of slave systems and the inability to distinguish between different forms of human bondage and slavery consistently⁴². Moreover, the socio-cultural and political landscape has an important role to play in this regard. As Quirk maintains, ‘[i]f slavery is defined as a distinctive social

³⁷ A form of ‘unfree labour’.

³⁸ From the latter half of the 19th century, it has been noted that indentured servitude and debt bondage became the predominant forms of so-called ‘unfree labour’. Moreover, Picarelli highlights that in the search for ever cheaper labour, during this era, a number of ‘unsavoury aspects’ which had evolved out of chattel slavery (as opposed to earlier forms of ‘unfree labour’) came to be part and parcel of indentured servitude and debt bondage. For instance, labourers were often not fully informed of what awaited them nor did many of them volunteer servitude willingly (i.e. deception and coercion became commonplace); and their contracts often contained provisions that allowed their ‘masters’ to cut their pay and time accrued for even the most minor infractions. See John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (ed), *Human Trafficking*, Devon: Willan Publishing, (2007): 31 – 33.

³⁹ ‘[S]tates approached the trade in human beings and servitude through the lens of self interest. Where the state benefited from chattel slavery or the trade in human beings, it was taxed and regulated much like other forms of commerce. After abolitionists crafted a devastating argument detailing the immorality of the trade and built an impressive movement behind them, states criminalised the trade and on the surface sought to take measures to end the trade. But even in the face of this effort, states either retained or allowed some elements of the trade and of servitude to continue in order to maintain control of their colonial interests.’ (John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (ed), *Human Trafficking*, Devon: Willan Publishing, (2007): 38 – 39) In other words, the role of the state in the continuation / perpetuation of ‘the trade in human beings’ in whatever incarnation it might take should not be ignored or underestimated.

⁴⁰ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, 2008: 18.

⁴¹ *Ibid.*, 27.

⁴² *Ibid.*, 23.

system, rather than an individual affliction, few cases of modern bondage (no matter how heinous) formally amount to slavery⁴³.

Human trafficking, categorised as a crime against humanity⁴⁴, and thus a gross violation of human rights, is internationally defined by the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)*.

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

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.

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’⁴⁵

The definition of ‘trafficking in persons’ has been criticised as being overly broad, and the application of Article 3 open to interpretation. This is attributable to the conceptual issues that surround the definition of human trafficking, and how it has been conceptualised in the Trafficking Protocol⁴⁶. As Dottridge notes, ‘[f]or most readers, the definition is not easy to navigate or understand... as the wording was a result of long debates between representatives of governments with quite different interests’⁴⁷.

According to this definition of trafficking, trafficking has three constitutive elements that need to be present in order for a person to be a victim of trafficking: (i) the person must be recruited, moved, transferred, harboured or received; (ii) there must have been some form of

⁴³ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, 2008: 27.

⁴⁴ Prohibited under Article 7 of the Statute of the International Criminal Court.

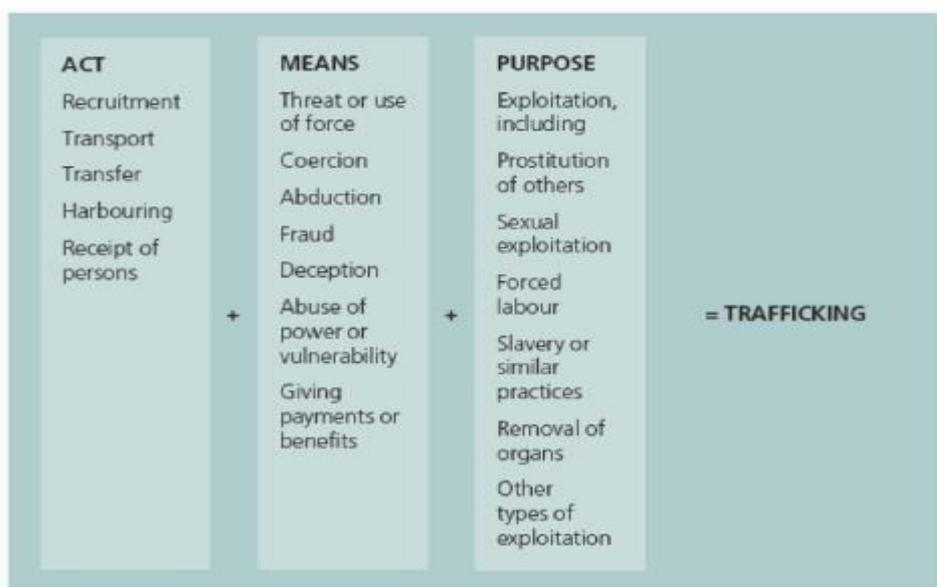
⁴⁵ Article 3(a) – refer to table one for a deconstructed tabular explanation of the constitutional parts of trafficking.

⁴⁶ For example, see Anne Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling’, *Human Rights Quarterly*, Vol. 23, (2001): 975 – 1004; Marta Iñiguez de Heredia, ‘People Trafficking: Conceptual Issues with the United Nations Trafficking Protocol 2000’, *Human Rights Review*, Vol. 9, (2008): 299 – 316.

⁴⁷ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 4.

coercion, deception or abuse of power or vulnerability involved; (iii) the actions are for the purposes of exploitation (see table 1).

Table 1: Elements of Trafficking



Source: UNODC⁴⁸

However, herein lies the rub – human trafficking is a *post-facto* crime (it can only be deemed a crime *after* it has happened)⁴⁹. This leads to operational and conceptual complications and complexities⁵⁰, and is inherently linked to the determination of whether the crime of human trafficking has occurred, who may be deemed the ‘victim’ and who may be branded the ‘criminal’. Gould and Richter note, that if all three elements are not present, then the case is not one of trafficking⁵¹. If one breaks down the three elements of trafficking, it becomes clear that it is exceptionally difficult to determine the crime of human trafficking in its initial phases due to the post-facto nature of the crime. The first element, referring to movement and recruitment, already becomes problematic as initially the decision to migrate might render the

⁴⁸ Available at <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> – last accessed January 2010.

⁴⁹ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 14.

⁵⁰ See Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 14.

⁵¹ Chandré Gould and Marlise Richter, ‘The Need for Evidence to Assess Concerns About Human Trafficking During the 2010 World Cup’, *ISS Today: 23 March 2010*, http://www.issafrika.org/iss_today.php?ID=917 – last accessed May 2010.

later victim complicit in the migration-smuggling nexus⁵² (i.e. what the International Organisation for Migration refers to as illicit migration), or even more simply the victim might willingly and voluntarily wish to migrate (whether legally or illegally) in search of a better life. At this stage, unlike what the media would have us believe, the general rule of thumb is that victims are not abducted in the dead of night by ominous shadowy figures. More often than not, recruiters / agents / traffickers are actively aided by their later victims, and thus the element of coercion is often absent at this stage of the trafficking process. The use of deception and false promises tend to be deployed at this stage – with promises of a better life, gainful employment, even marriage. At this initial stage of the process of trafficking, human trafficking is ‘indistinguishable from agent-facilitated voluntary migration or smuggling’⁵³. Only once the victim becomes aware of their situation, once they have become confined and coerced to perform exploitative services, only then can the crime of human trafficking be said to have occurred. However, there is also a hidden dimension that is part and parcel of this process:

*Just as trafficking becomes a crime in its final stage, the jobseeker and willing migrant becomes a victim at the destination point. And as the crime of trafficking goes underground into invisibility, the victim of trafficking becomes increasingly inaccessible... if her situation is suffused with illegalities... then she is transformed paradoxically into both a victim and a criminal.*⁵⁴

Moreover, complicating the issue, human trafficking or ‘trafficking in persons’ often goes by various labels, such as ‘modern-day slavery’, ‘the trade in human beings’, ‘the commodification of human beings’, ‘trafficking in women and children’ and so forth. Each of these labels has its own particular connotations, is linked to a particular narrative or

⁵² See Mike Kaye, *The migration-smuggling nexus: Combating trafficking through the protection of migrants’ human rights*, Anti-Slavery International, 2003.

⁵³ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 14. See also, Salt, John and Jennifer Hogarth, ‘Migrant Trafficking and Human Smuggling: A European Perspective’, in Frank Laczko and David Thompson (Eds.), *Migrant Trafficking and Human Smuggling in Europe: a Review of Evidence with Case Studies from Hungary, Poland and Ukraine*, Geneva: IOM, 2000: 11-164; Claudia Aradau, ‘The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking’, *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 251 – 277; Wendy Chapkis, ‘Trafficking, Migration, and the Law. Protecting Innocents, Punishing Migrants’, *Gender & Society*, Vol. 17, No. 6 (2003): 923 – 937; Christina Fisanick (Ed.), *Human Trafficking*, Farmington Hills, Greenhaven Press, 2010; Mike Dottridge, ‘Introduction’, in Global Alliance Against Traffic in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW, 2007: 1 – 27.

⁵⁴ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 15. This notion and the blurring of ‘victim’ and ‘criminal’, the complicity of the trafficked person with their trafficker in the initial stages of the trafficking process to illicitly / illegally migrate, particularly in relation to the intersection of migrant smuggling and human trafficking, is discussed later in this chapter.

perspective (political / ideological / economic), naturally excludes certain forms of trafficking from its particular definition, and each creates its own ‘stereotypical victim’ profile. This has led to the formulation of normative frameworks within which ‘little consistency in the core definition of trafficking in persons’ is exhibited, and as a result national legislation ‘often falls short of the comprehensive provisions of the Protocol’ – posing a major challenge for international cooperation⁵⁵. Moreover, the intentional omission of a legal definition of what constitutes *the exploitation of the prostitution of others or other forms of sexual exploitation* allows for great leeway in interpretation by states who have ratified the Palermo Protocol⁵⁶. There is also an overwhelming tendency by advocacy organisations, law enforcement and states to equate human trafficking with prostitution and sexual exploitation⁵⁷. As Lindquist and Piper note, ‘research has tended to take two different starting points: (1) a ‘migration’ of irregular migration flows (Skeldon 2000), or (2) a ‘sexual violence perspective’ which links trafficking to sexual exploitation, and thus is strictly focused on women and children (Barry 1995; Hughes 2003; Raymond 1998).’⁵⁸

*It is striking, however, that in policy, in the donor infrastructure that has developed around trafficking, and in the media, almost all attention has focused on the sexual violence perspective, and, in particular, the trafficking of women and children into prostitution.*⁵⁹

Human trafficking is an amorphous phenomenon which should not and cannot be so simply be referred to as ‘modern-day slavery’ (i.e. a modern variant of the age-old slave trade) nor can it be singularly associated with prostitution and limited to sexual exploitation (i.e. sex trafficking and sexual slavery). As Picarelli correctly notes, ‘[t]rafficking is a phenomenon that one cannot reduce to “root causes” that culminated in the past few decades to give rise to a return to slavery... [nor] is it reducible to either economic or ideological forces’.⁶⁰ Quirk avows that ‘[t]he key historical progenitor of modern conceptions of trafficking is not chattel slavery, but late nineteenth century campaigns against prostitution and sexual servitude... [and] chiefly defined by a political platform that gave limited consideration to either chattel

⁵⁵ UNDOC, UN.GIFT, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, (2008): 11.

⁵⁶ Kinsey Alden Dinan, ‘Globalization and national sovereignty: From migration to trafficking’, in Sally Cameron and Edward Newman (Eds.), *Trafficking in Humans, Social, cultural and political dimensions*, New York: United Nations University Press, (2008): 59.

⁵⁷ The conflation of human trafficking with other issues, and the specific coupling of human trafficking with prostitution is discussed later in the chapter.

⁵⁸ Johan Lindquist and Nicola Piper, ‘From HIV prevention to counter-trafficking: Discursive shifts and institutional continuities in South-East Asia’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 139.

⁵⁹ Ibid.

⁶⁰ John T. Picarelli, ‘Historical approaches to the trade in human beings’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 45.

slavery or other practices of a nonsexual nature.’⁶¹ Human trafficking occurs along a broad continuum of exploitation and exploitative experiences that overlaps and intersects with issues of gender, sexuality, economic survival, legacies of servitude, and notions of vulnerability, and ultimately cycles of abuse. It is a beast with many heads, and any narrow portrayal of human trafficking is disingenuous to those whose experiences ‘diverge from more traditionally recognised forms of trafficking’⁶². Indeed, Salt and Hogarth⁶³ have identified as many as twenty-two definitions of the concept of human trafficking. It is thus not surprising that the sheer complexity of the internationally accepted definition of human trafficking in itself, as evidenced in the Trafficking Protocol, makes it problematic to adapt to national legislation. All too often the definition provided by the Trafficking Protocol is adopted verbatim in national legislation, and passed on to ‘law enforcement officials as an operational definition of a crime they are supposed to detect or prevent. In most contexts it does not function as well as an operational definition for law enforcement agencies or others, such as immigration officials. They consequently resort to various shortcuts to enforce the law and, in doing so, often misapply or misinterpret the definition.’⁶⁴

Iñiguez de Heredia asserts that the Trafficking Protocol should be understood as a joint response by governments to the deleterious effects of globalisation, and which challenges the traditional notion of security⁶⁵. More importantly, the simultaneous raising of globalisation as a phenomenon that challenged not only the security of the state, but its very existence, in a post-Cold War world where uncertainty reigns and borders are porous, with that of the ‘new threats’ facing the world (such as organised crime, terrorism, and illegal migration) – it is hardly surprising that the big buzz words of the 1990s should be institutionalised as global prohibition regimes. The UN Convention on TOC and its two supplementary protocols (Trafficking and Smuggling Protocols) are the almost natural outcome of states trying to reassert themselves, and ultimately their *raison d’être*, in a world that suddenly became unfamiliar with the collapse of the Soviet Union and the end of the Cold War. It quickly became apparent that in a world dominated by forces ‘other than the state’ new enemies had

⁶¹ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, (2008): 30.

⁶² Janie Chuang, ‘Redirecting the debate over trafficking in women: Definitions, Paradigms, and Contexts’, *Harvard Human Rights Journal*, Vol. 11, (Spring 1998): 66.

⁶³ John Salt and Jennifer Hogarth, ‘Migrant Trafficking and Human Smuggling: A European Perspective’, in Frank Laczko and David Thompson (Eds.), *Migrant Trafficking and Human Smuggling in Europe: a Review of Evidence with Case Studies from Hungary, Poland and Ukraine*, IOM: Geneva (2000): 11-164.

⁶⁴ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 4.

⁶⁵ Marta Iñiguez de Heredia, ‘People Trafficking: Conceptual Issues with the United Nations Trafficking Protocol 2000’, *Human Rights Review*, 9, (2008): 299 – 316.

to be found to recreate the state, and its rationale for being. This was done by reinventing the notion of security and addressing the new perceived threats that faced the state – namely, issues of human security and all its unwanted consequences (such as poverty, globalised disease, illegal migration and [organised] crime). As Berman suggests when one interrogates the discourse surrounding sex trafficking and the overarching theme or linkage to organised crime:

Sex-trafficking discourses position organized crime – and not women on the move [in contrast to the white slave trade discourse] as the challenge to the state and provide the state with an opportunity to act on behalf of the protection of their citizenries. As state institutions seek to perform and to reiterate their own dissolute necessity, they cast women back across the material and socio-symbolic transgressed boundaries of nation and state. They remake these ‘popular strangers’, into ‘unpopular’ foreigners, into illegal immigrants whose deportation becomes part of the price paid for the reiteration of state sovereignty... They invest the state with an ‘actual’ as well as symbolic raison d’être – battling criminals and other illegals, protecting citizens and innocent women...⁶⁶

This mirrors earlier constructs of the human trafficking discourse – with notions of perceived threats to the sanctity of the state posed by mass migration and prostitution and the prohibitive regimes introduced to counter them⁶⁷. Indeed, much of the earlier discourse has been recycled and used as the basis for the current one. This is the unfortunate consequence of human trafficking being intimately, and unwarrantedly, associated with prostitution / sex work – often relegating other forms of trafficking to the sidelines in international and local discourses – and imbuing the entire discourse with a moralistic fervour⁶⁸.

Discourses function to associate a number of concepts or ‘continuities’ that ‘do not come about of themselves, but are always the result of a construction’ with one another (Foucault, 1972: 25–6). From these associations emerge a set of definitions, understandings and outcomes that appear logical.⁶⁹

⁶⁶ Jacqueline Berman, ‘(Un)Popular Strangers and Crises (Un)bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State’, *European Journal of International Relations*, 9(1), March (2003): 52 – 53.

⁶⁷ This is discussed in more detail in later in the chapter.

⁶⁸ Many anti-trafficking campaigns resemble moral crusades against ‘the evils of prostitution’ rather than dealing with the real issue(s) at hand. See Galma Jahic and James O. Finckenauer, ‘Representations and Misrepresentations of Human Trafficking.’ *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 24 – 40, Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949, and Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

⁶⁹ Jacqueline Berman, ‘(Un)Popular Strangers and Crises (Un)bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State’, *European Journal of International Relations*, 9(1), March (2003): 47. See also, Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd, 2007; Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, 2010; Joyce Outshoorn, ‘The Political Debates on Prostitution and Trafficking of Women’, *Social Politics*:

The human trafficking discourse is constructed in a similar fashion, creating a distinctive set of definitions, understandings of the phenomenon, leading to anti-trafficking programmes and initiatives – all of which appear logical – but maintain certain prohibitions on our definition and understanding of the phenomenon, and thus potentially skewing outcomes or resulting in outcomes that do not have the desired effect. The predominant position of sex trafficking within the human trafficking discourse, which it is often taken as being synonymous with, constitutes ‘an intersecting and fortifying set of prohibitions... excruciatingly enmeshed around sexuality and politics’⁷⁰. It is this notion which drives the human trafficking discourse and our limited understanding of the phenomenon. This has resulted in most narratives of trafficking being somehow laced with sexual exploitation and organised crime. It has also led to a variety of draconian attempts by the state to bolster the security of its borders by trying to keep the ‘undesirables’ (illegal migrants) out and an overly narrow focus on the supposed perpetrators of the crime – the ‘kingpins’ (organised criminal masterminds). Victims of trafficking are depicted as young, helpless, uneducated and somewhat naïve (read innocent). They are all in search of a better life (usually abroad). The narrative accounts of these victims include how they were completely unsuspecting and deceived into thinking that they would enter into gainful employment upon arrival at their destination, only to be sold by organised criminals into prostitution, and beaten and raped repeatedly until they comply with the demands of their new keepers. This is the story told time and time again. This particular narrative, and variants on it, have succeeded in creating a discourse based on the trafficking of women (and children) into forced prostitution (sex trafficking). ‘[A] discourse of sex trafficking names, delimits and collapses complex forms of women’s migration involving everything from deception and abuse to informed decisions to move into a representation of women as victims of a crime.’⁷¹ One need only glance upon educational posters (below) and campaigns by organisations such as the IOM to understand the strength and pervasiveness of this particular discourse.

International Studies in Gender, State and Society, Vol.12, No. 1, (Spring 2005):141 – 155; Georgios Papanicolaou, ‘The sex industry, human trafficking and the global prohibition regime: a cautionary tale from Greece’, *Trends in Organized Crime*, Vol. 11, (2008): 379 – 409; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

⁷⁰ Jacqueline Berman, ‘(Un)Popular Strangers and Crises (Un)bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State’, *European Journal of International Relations*, 9(1), March (2003): 47.

⁷¹ *Ibid.*, 49.



Source: IOM

This poster is indicative of the types of campaigns aimed at young women and girls. The distressed female figure, perhaps an undocumented migrant from somewhere in Southern Africa, is shown dressed provocatively but cheaply and sitting on a small bed. As the graffiti on the wall implies she is a victim of human trafficking, a modern form of slavery, and has been seduced, imported and sold invariably into prostitution. Her dejected figure portrays a young woman without hope. The subtext on the poster states that 2 million women and children are trafficked every year. This figure however is a guesstimate. Moreover, while the poster claims that many are abducted or recruited with false job offers for the purpose of sexual exploitation and forced labour, the reality is more complex. An even more stereotypical portrayal of a victim of human trafficking and her story is observed in the poster below.

He promised everything she wanted.

And stole everything she had.

Maria went to South Africa because Sam promised her a good job. But Sam lied to her. He sold her to another man who kept her locked up in a room. He forced Maria to have sex with other men for money, which he kept. Maria is a victim of human trafficking. Don't fall into the same trap as Maria. For help or information please call us. It could save your life. In SOUTH AFRICA phone: 0800 555 999. In ZAMBIA: 01 256 701. In ZIMBABWE: 04 335 044.

THE 5 STAGES OF HUMAN TRAFFICKING

1. TRAFFICKER RECRUITS VICTIM
2. VICTIM IS TRANSPORTED
3. VICTIM IS IDENTIFIED
4. VICTIM IS FORCED TO WORK BY TRAFFICKER
5. VICTIM

IOM's Southern African Counter-Trafficking Assistance Program (SACTAP) offers help and support to victims of human trafficking. SACTAP is sponsored by the US Department of State's Bureau for Population, Refugees and Migration, the Norwegian Ministry of Foreign Affairs, and South Africa's Department of Foreign Affairs. Visit www.iom.org.za

INTERNATIONAL ORGANIZATION FOR MIGRATION (IOM) REGIONAL OFFICE FOR SOUTHERN AFRICA

Source: IOM

This poster depicts yet another young woman being recruited, deceived, trapped and exploited. In this instance, it is clear that Maria (the young woman depicted in the pictorial narrative) was trafficked into South Africa for the purpose of sexual exploitation. Maria was deceived and recruited by Sam who promised her a good job in South Africa but instead kept her locked up and prostituted her upon her arrival. It is in the form of morality tale warning young women not to be duped by charming men and promises of a better life or job that are too good to be true. This account graphically depicts the various stages of the trafficking process and offers a glimmer of hope by providing for young women like Maria by providing the IOM's contact details in three Southern African states.

In both posters, however, young migrant men are not warned of the same dangers. The implication is that men are either the perpetrators of this crime or are not vulnerable to it – which belies reality. Such educational posters inadvertently entrench particular stereotypes and prejudices in turn as to who are vulnerable to being trafficked and the forms it takes.

The entrenchment of sex trafficking as the dominant narrative within the human trafficking discourse has led to a sense of hysteria amongst state and non-state actors alike. This becomes apparent when one delves into the history and evolution of the modern human trafficking discourse – which has been built upon the foundations of prohibition, sexuality and politics (particularly statecraft). This discourse in turn has been manipulated by various actors (particularly advocacy organisations) to suit particular ideological or political agendas⁷². Far from being objective or neutral, there are distinct camps with the human trafficking discourse itself. Each of these perspectives and conceptualisations of the discourse, often in the absence of scientific fact and verifiable statistics, have affected the way that policies and programmes have been formulated and instituted. Indeed, it has even had a marked effect on the formulation of international legislation and initiatives in this regard.

The reality of human trafficking is much more complicated and blurred than the dominant discourse would have us believe. Moreover, victims of trafficking are not a homogenous group (of women). Nor are most of the victims trafficked into the sex industry. As Feingold succinctly notes, '[e]vidence can be found in field studies of trafficking victims across the world and in the simple fact that the worldwide market for labor is far greater than that for sex. Statistics on the "end use" of trafficked people are often unreliable because they tend to overrepresent the sex trade.'⁷³ As most victims do not readily fit into this idealised victim profile, it serves only to oversimplify the problem⁷⁴. Many victims are not as 'unsuspecting' or 'naïve' as we are led to believe – they are not without agency. As Quirk notes, they 'should not be regarded as passive victims, but as active agents who have consistently sought to challenge their predicament using many different strategies... [and should] be seen as active – albeit severely disadvantaged – participants in a constant negotiation and contestation over their terms of service.'⁷⁵ While deception and coercion do indeed play an important role in the trafficking process, many victims are somewhat aware of what type of activities or work they

⁷² This is discussed later in the chapter.

⁷³ David A. Feingold, 'Human Trafficking', *Foreign Policy*, No. 150, (Sept. – Oct. 2005): 26.

⁷⁴ Galma Jahic and James O. Finckenaue, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 27.

⁷⁵ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, 2008: 66.

will be expected to engage in⁷⁶, however, not the extent of deprivation, isolation and exploitation they are expected to endure. For instance, it is not unknown for some women to have previously been prostitutes or adult entertainers in their home countries and migrated to take up a similar profession elsewhere. However, the conditions and situation rapidly become more exploitative and coercive. Many transnationally trafficked victims are also migrants who are initially in collusion with their traffickers and aware that they are entering a state illegally (as often legal migration is barred to them). Such women are also victims of trafficking and just as deserving of protection as those who entered legally or are domestic victims. Migrant women, however, are thought to make up the majority of those who have been trafficked. Unfortunately, the media and advocacy organisations have rendered them passive and overly naïve agents who have become objects of pity in which their individual stories are retold to suit a particular political or moral agenda. Jahic and Finckenauer assert that victims in the discourse had to be constructed in this particular manner because '[p]roviding assistance for illegal immigrants and prostitutes is not a particularly popular political position. It is even more difficult to get assistance for women who are both illegal immigrants and prostitutes. Governments and the public as well have very little sympathy for such persons, particularly if they bear responsibility for their own situations.'⁷⁷

2.3 Guesstimates and Questionable Methodology

The human trafficking discourse is one that is severely limited by large gaps in theoretical knowledge and practical understanding of the phenomenon. It is a highly politicised and sensitive discourse which intersects (and is often conflated) with several other policy areas, such as prostitution, migration/immigration laws, labour market protection⁷⁸, and organised crime/state security. This only serves to complicate an already complex and poorly understood phenomenon.

Goździak and Bump in their bibliography and analysis of research-based literature illustrate this by highlighting the glaring gaps in both the data and analysis on human trafficking:

⁷⁶ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 27; See also Interpol website; Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005; Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, 2010.

⁷⁷ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 27.

⁷⁸ Guri Tyldum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking', *International Migration, (IOM)*, Vol.43 (1/2), 2005:18.

While the majority of experts on human trafficking assert that the greatest number of victims of trafficking are women and children, there is little systematic and reliable data on the scale of the phenomenon; limited understanding of the characteristics of victims (including the ability to differentiate between the special needs of adult and child victims, girls and boys, women and men), their life experiences, and their trafficking trajectories; poor understanding of the modus operandi of traffickers and their networks; and lack of evaluation research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue and restore programs, among other gaps in the current state of knowledge about human trafficking.⁷⁹

One may categorically state that no reliable data exists on the scope and scale of human trafficking. This ranges from the lack of data on the characteristics of victims (explaining why only some people are vulnerable while others are not in similar circumstance and contexts), to the profiles of traffickers (who for the most part have been painted with a broad brush, and generally portrayed as members of organised crime networks). Moreover, few governments systematically collect and collate data on human trafficking⁸⁰, and more commonly conflate data pertaining to trafficking, smuggling and irregular migration⁸¹. In South Africa, a national trafficking database does not yet exist (as human trafficking has yet to be officially defined by law), and as such no reliable or unambiguous data exists on the number of persons trafficked into and within South Africa itself.

Populations described and analysed in most of the literature are not representative of the entire population of trafficked individuals. Instead the sub-populations captured and studied are marked by a significant selection bias, derived from the only sources of data which

⁷⁹ Elżbieta M. Goździak and Micah N. Bump, 'Data and Research on Human Trafficking: Bibliography of Research-Based Literature', *Institute for the Study of International Migration*, October 2008.

⁸⁰ The German Federal Office of Criminal Investigation (*Bundeskriminalamt, BKA*), which has published an annual report on crimes involving human trafficking since 1999, and the Dutch National Rapporteur on Trafficking in Human Beings are among the few providers of national data. However, this data is limited to cases of sex trafficking of women, and thus does not include the trafficking of men or other forms of trafficking (See Kriistina Kangaspunta, 'Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings', *Forum on Crime and Society*, Vol. 3, Nos. 1 and 2, December 2003; Frank Laczko, 'Introduction: Data and Research on Human Trafficking', *International Migration*, Vol. 43, (1/2), (2005): 5 – 16). In Sweden, there is also a national rapporteur on human trafficking – but this is limited to trafficking in women. (See Kriistina Kangaspunta, 'Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings', *Forum on Crime and Society*, Vol. 3, Nos. 1 and 2, December 2003) A general lack of collection and collation of human trafficking data may be attributed to the fact that legal definitions of what constitutes trafficking are varied or lacking, and recent acquiescence to the Trafficking Protocol. As such, many states do not yet have legislation pertaining specifically to the criminalisation of human trafficking, resulting in the absence of crime statistics. Where legislation is available, Kangaspunta (2003: 85) notes that legislation might only address a particular form of human trafficking (most commonly the sexual exploitation of women and trafficking of children) which is reflected in the limited scope of trafficking crime statistics. Moreover, some countries view human trafficking data as classified and refuse to share this information (Frank Laczko and Marco Gramegna, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194).

⁸¹ This confusion for the most part arises from a lack of legislation and thus legal definitions.

unambiguously identify victims of trafficking, namely law enforcement and rehabilitation centres⁸². Thus, at any given time, much of the research and data available on the total number of trafficked persons, only covers a small proportion of the total number persons trafficked. This in turn has been extrapolated on and generalised by governments and international organisations and NGOs to infer the actual number of people trafficked. Guesstimates abound in the human trafficking literature. Alarming high statistics as to the prevalence of human trafficking, the vast majority of which are unverifiable, are uncritically accepted by many and are, in turn, recycled and perpetuated in many new studies and reports. One need only visit the official websites of government departments tasked with counter-trafficking, international organisations and advocacy groups to observe this. Much of the hype and fear surrounding human trafficking originates from the United States. In an article in the *Washington Post*⁸³, Jerry Markon illustrates how the unsubstantiated fear of a ‘tidal wave’ of victims into the United States, estimated to be 50 000 per annum in 1999 led to the passing of the TPVA in 2000. Markon suggests that advocacy organisations needed quantifiable statistics in order for legislation to be enacted. According to Markon, the US administration has only been able to identify 1 362 trafficked persons since 2000. ‘Although there have been several estimates over the years, the number that helped fuel the congressional response – 50 000 victims a year – was an unscientific estimate by a CIA analyst who relied mainly on clippings from foreign newspapers’⁸⁴. Steinfatt notes that the most common methodological errors in measuring trafficking numbers are: (i) no study is conducted (numbers are cited from someone else’s report); (ii) arrogance on the part of the author (“Don’t bother me with research, evidence, or the facts I’m right, you’re wrong, and that’s all there is to it.”), research is used as form of propaganda and there is a dismissal of empirical research; (iii) it is ‘impossible’ to measure and thus ‘estimated’ figures are used⁸⁵.

Steinfatt demonstrates that in most cases the numbers stay the same from report to report but what they refer to differs. For instance, if a report estimates that there are 80 000 prostitutes in Cambodia, in the next report this becomes ‘80 000 sex slave in Phnom Penh, many of them children’⁸⁶. The implications of the subsequent report are dramatically different. In the run-up to the 2010 FIFA World Cup, national media citing NGOs and also official government

⁸² Guri Tyldum and Anette Brunovskis, ‘Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking’, *International Migration, (IOM), Vol.43 (1/2), 2005:30*.

⁸³ Jerry Markon, ‘Human Trafficking Evokes Outrage, Little Evidence: U.S. Estimates Thousands of Victims, But Efforts to Find Them Fall Short’, *Washington Post*, Sunday, September 23, 2007; A01.

⁸⁴ *Ibid.*

⁸⁵ Thomas Steinfatt, ‘Methodological Issues in Trafficking Research’, no date, available at http://www.unescobkk.org/fileadmin/user_upload/hiv_aids/Documents/Workshop_doc/Seminar_promoting/Methodological_Issues_in_Trafficking_Research_-_Thomas_Steinfatt.pdf.

⁸⁶ *Ibid.*

sources initially estimated that 40 000 sex slaves⁸⁷ would be trafficked into South Africa before and during the event. This estimate peaked at 100 000 on an advocacy group's website⁸⁸, without any indication where this number was derived from. Moreover, 'double counting' also occurs resulting in inflated estimates of regionally or transnationally trafficked individuals. This has led to a questioning of whether the impending crisis of human trafficking has been blown out of proportion. As Laczko and Gramegna note, '[t]he lack of reliable figures, in addition to the fact that many commentators on trafficking repeat estimates derived from interviews with officials, means that many of the referenced statistics are rounded numbers that give little explanation of how estimates were made'⁸⁹.

According to such unverifiable statistics, provided by, and circulated by states, international organisations and advocacy groups, it is generally accepted that approximately 800 000 people are trafficked annually across the globe⁹⁰. Of that number, it is estimated that 80 percent are women and girls, and 50 percent are minors. However, according to a study conducted by the UN Educational, Scientific and Cultural Organisation (UNESCO) global statistics deviate by factors of two and five⁹¹ – the highest recorded by USAID and the UN at four million a year, and the lowest from the US State Department at under a million a year⁹². The International Labour Organisation (ILO) in turn purports that as many as '2.4 million people are trafficked for the purpose of forced labour globally, and 43 percent are trafficked specifically for sexual exploitation, 32 percent for labour exploitation and 25 percent for a

⁸⁷ Exactly the same figure that had been cited in the run-up to the 2006 FIFA World Cup hosted in Germany.

⁸⁸ Stop 2010 Human Trafficking – <http://2010humantrafficking.org> – last accessed May 2010. The Stop 2010 Human Trafficking campaign is closely affiliated to Christian organisations, and is as such much of its information is sourced from the websites and articles available from faith-based organisations. The predominant focus of this advocacy / awareness raising organisation is sex trafficking and the vulnerability of children. It is also 'anti-prostitution' (or the legalisation thereof) as it views prostitution as a feeder into sex trafficking. See also <http://2010humantrafficking.org/documentation/STOP-Human-Trafficking.pdf>

⁸⁹ Frank Laczko and Marco Gramegna, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, Summer/Fall, Volume X, Issue 1, 2003: 182.

⁹⁰ This estimated figure is believed to have been derived from the US Department of State's annual *Trafficking in Persons* Report, which since 2005 has consecutively estimated the number of persons to be trafficked annually across international borders to be between 600 000 and 800 000. This estimate is often cited by the United Nations, numerous international organisations, NGOs and has been accepted as fact by the South African government – see South African Government Information Website: <http://www.info.gov.za/issues/humantrafficking/what/background.htm> – last accessed March 2010. However, criticism about worldwide estimates promulgated by the US Department of State has been expressed by UNESCO, the US Justice Department, and by the Government Accountability Office (GAO) which noted that such statistics were problematic because of 'methodological weaknesses, gaps in data, and numerical discrepancies' (GAO Report on Human Trafficking, July (2006): 2). See <http://www.gao.gov/new.items/d06825.pdf> – last accessed April 2010.

⁹¹ UNESCO 2003 – <http://www.unescobkk.org/culture/trafficking> – last accessed February 2010.

⁹² The US Department of State estimates steadily declined over the period 2002 – 2004, from 700 000 – 4 million to reach the adjusted and stabilised figure of 600 000 – 800 000.

mixture of both. Half the victims of trafficking are thought to be under 18.⁹³ Kelly notes that the now commonly accepted adjusted global estimate of 600 000 – 800 000 is a result of mounting criticism of the unsubstantiated nature of these estimated figures (i.e. the lack of methodological clarification as to how such figures were produced or projected), and the recent advancement of more appropriate evidence-based estimates.⁹⁴

Steinfatt offers some clarification as to the origin of these widely varying statistics, by noting that the oft-cited and now commonly accepted number of individuals trafficked annually was derived from a 1999 oral briefing by the U.S. Central Intelligence Agency (CIA) entitled *Global Trafficking in Women and Children: Assessing the Magnitude*. As such, '[n]o report currently exists of how these numerical estimates were obtained'⁹⁵, nor is it known how the CIA actually derived this estimate. Steinfatt suggests that these estimates 'are based on figures reported by immigration officials around the world since the numbers are represented as cross-border numbers and not internal country numbers'⁹⁶.

Laczko and Gramegna⁹⁷ have demonstrated that such data further obscure the establishment of a realistic picture of human trafficking as the estimates cited rarely concern other forms of exploitation. An overwhelming majority of estimates, such as those cited above, narrowly focus on the trafficking of women and children for sexual exploitation.⁹⁸ Moreover, these unsubstantiated estimates have been, and continue to be, circulated globally. As evidenced in South Africa, for instance, these figures have become commonly accepted within the South African discourse, albeit with a few additional statistics as to numbers trafficked into and within South Africa. For instance, the children's rights NGO Molo Songololo claimed in 2000 that between 28 000 and 30 000 children were being prostituted, and by inference trafficked, in South Africa.⁹⁹ According

⁹³ <http://www.ilo.org/global> – last accessed February 2010.

⁹⁴ Liz Kelly, "'You can find anything you want': a critical reflection on research on trafficking in persons within and into Europe", in Frank Laczko and Elżbieta Gozdzik (Eds.), *Data and Research on Human Trafficking: A Global Survey, International Migration*, Vol. 43 (1/2) 2005: 239.

⁹⁵ Thomas Steinfatt, 'Methodological Issues in Trafficking Research', no date, available at http://www.unescobkk.org/fileadmin/user_upload/hiv_aids/Documents/Workshop_doc/Seminar_promoting/Methodological_Issues_in_Trafficking_Research_-_Thomas_Steinfatt.pdf.

⁹⁶ Ibid. Moreover, Steinfatt questions how it is possible for immigration officials, or any other sources for that matter, to know the number of persons trafficked into or out of their countries, 'given that these estimates do not represent numbers of arrests for trafficking in persons.'

⁹⁷ Frank Laczko and Marco Gramegna, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, Summer/Fall, Volume X, Issue 1, (2003): 181.

⁹⁸ This reflects the preponderance in the literature to focus almost exclusively on the trafficking of women and children, and the manner in which the discourse itself has been shaped.

⁹⁹ This figure has been reiterated in numerous national newspaper and web-based articles, as well as in official government briefings: <http://www.pmg.org.za/minutes/20050623-human-trafficking-molo-songololo-home-affairs-department-and-saps-briefings>, and was even quoted in a US Department of State report in 2004: <http://www.state.gov/g/drl/rls/hrrpt/2004/41627.htm> At times, this number has

to Molo Songololo these scores of children had been trafficked from Lesotho to Free State farms, from the impoverished Eastern Cape to cities, and from Mozambique to Gauteng and KwaZulu-Natal. An oft-cited 2003 study by the IOM, entitled *Seduction, Sale & Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa*, claims that South Africa is the main destination for child trafficking in Southern Africa. According to this study, 25 percent of all prostitutes in South Africa are children, and 25 percent of street children are involved in prostitution. However, not only does there seem to be little concrete evidence of this, it is unclear how these organisations arrived at these particular statistics.¹⁰⁰ This would appear to be continuing with an almost entrenched tradition within the human trafficking discourse of disseminating estimates without any verifiable data to support such numbers. Moreover, these commonly accepted and replicated statistics cannot be corroborated with any evidence-based data, as they often have been derived from interviews with officials or anti-trafficking practitioners who cite figures which do not correlate with official statistics, or from studies that either do not explain the methodology used to derive such estimates or from miniscule data sets.¹⁰¹

*Unfortunately, almost no information is available on where the data to determine such estimates comes from, or how precisely it is calculated. It appears that many global statistics are based on a combination of official data released by governments and law enforcement agencies, data collected by organisations working in support of trafficking victims, inferences from other types of crime and, often, 'guesstimates' from key informants. The reliability of such data and the lack of transparency regarding how numbers are calculated raises questions about their accuracy.*¹⁰²

Gould and Fick extend this point by suggesting that '[s]uch overestimations, while successful in capturing public attention and generating moral outrage, do not provide a sound basis for

even been inflated to 38 000. The origins of this figure, however, point to the number of estimated child prostitutes in South Africa. See Molo Songololo, *Trafficking in Children for Purposes of Sexual Exploitation – South Africa*, 2000.

¹⁰⁰ This figure is surprisingly greater than the 2004/5 official statistics of the number of children reportedly raped or sexually abused in South Africa over that period which stood at 22 486. It possibly reflects Molo Songololo's documented tendency to confuse child trafficking with prostitution as a survival strategy, and other forms of child abuse. Moreover, the IOM Southern African Counter-Trafficking Assistance Programme (SACTAP) has only assisted 238 of 'victims of trafficking' over a 4 year period from 2004 to 2008. This number is representative of all victims of trafficking assisted in *Southern Africa* over this period. Of this figure, only one fifth of those assisted were children (which I have worked out equates to roughly 47 children assisted over this period). In an interview with Nde Ndifonka from the IOM in the City Press Newspaper (09.02.2008, page 30), it was reiterated that over a three year period, the IOM had assisted 223 'victims of human trafficking' in Southern African, of which 33 were children. 180 of the victims that the IOM assisted over this time period, were in South Africa. See also IOM, *Eye on Human Trafficking*, Issue 17, 2008.

¹⁰¹ The Human Sciences Research Council (HSRC) report on understanding the dimensions of human trafficking in South Africa reaches a similar conclusion and warns that '[a]s this is a new area of empirical research, estimates at this point would not be methodologically advisable.' (2010: iv).

¹⁰² Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, (2006): 20.

policy-making and resource allocation'¹⁰³. Guesstimates are used primarily by advocacy organisations to achieve their objective of placing trafficking on the policy-making agenda.

Similarly, as much of the human trafficking discourse has been conflated with and wed to that of organised crime¹⁰⁴, it has been presented as a phenomenon that is akin to a criminal industry that is one of the 'fastest growing and most lucrative enterprises in the world' and is considered to be 'the third largest source of profits for organised crime behind drugs and guns'¹⁰⁵. Moreover, reports by international organisations, such as UNDOC, the IOM and the ILO, assert that human trafficking is now favoured by organised crime networks / syndicates as it is a low risk venture which promises high returns (apparently thanks to the unending demand and supply of persons across the globe), and where the penalties are generally light (in the lack of comprehensive counter-trafficking legislation).¹⁰⁶ In the South African context, whereby official sources blindly espouse such widely accepted notions and facts, we are informed that most researchers and experts (without actually qualifying this statement, and listing who these individuals are and where these estimates have been derived from), 'concur that trafficking in persons (TIPs) is nothing but organised crime with a total market value estimated at \$32 billion (\$10 billion of which is realised at the point of an illicit sale of persons and, \$22 billion of which is estimated as risk free profits derived from the sale of related illicit organised criminal activities or services).'¹⁰⁷

The genesis of this assertion pertaining to the purported criminal profits accrued from trafficking, however, may be traced to Jonas Widgren's 1994 report entitled 'Multilateral Co-operation to Combat Trafficking in Migrants and the role of International Organizations'¹⁰⁸. The figures cited in this report (\$5-7 billion), although much lower than the ones now

¹⁰³ Chandré Gould in collaboration with Nicole Fick, *Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City*, Institute for Security Studies, (2008): 84.

¹⁰⁴ This is attributable to the nature and focus of the UN *Convention against Transnational Organised Crime* (2000), which the Trafficking Protocol supplements (is an ad hoc development) and is intrinsically linked to.

¹⁰⁵ <http://www.info.gov.za/issues/humantrafficking/what/background.htm> – last accessed February 2010.

¹⁰⁶ See also Andrew Nichols Pratt, 'Human Trafficking: The Nadir of an Unholy Trinity', *European Security*, Vol. 13 (1-2), (February 2004): 55 – 71; Kristof Van Impe, 'People for Sale: The Need for a Multidisciplinary Approach towards Human Trafficking', *International Migration*, Vol. 38, Issue 3, Special Issue 1, (2000): 113 – 191; Raimo Väyrynen, *Illegal Immigration, Human Trafficking, and Organized Crime*, Discussion Paper No. 2003/72, Helsinki: United Nations University World Institute for Development Economics Research, (2003): 1 – 25.

¹⁰⁷ <http://www.info.gov.za/issues/humantrafficking/what/background.htm> - last accessed February 2010

¹⁰⁸ Jonas Widgren, *Multilateral Co-operation to Combat Trafficking in Migrants and the Role of International Organizations*, Vienna: International Centre for Migration Policy Development, 1994.

accepted, were derived from *estimates of the number illegal migrants and fake asylum seekers in Europe* and not actually those who were trafficked¹⁰⁹.

Bruckert and Parent¹¹⁰ point to the dearth of research (in the form of concrete findings and statistical evidence) linking human trafficking to organised crime, which makes it incredibly difficult to definitively assess the extensity of organised crime's involvement in human trafficking. Nonetheless, it is a commonly held belief that organised crime and human trafficking go part in parcel with one another – despite the lack of evidence.¹¹¹ As Hübschle indicates, ongoing Institute for Security Studies (ISS) research into organised crime in Southern Africa has shown that the concepts of 'human trafficking' and 'people smuggling' continue to be confused and used interchangeably by various stakeholders, resulting in the distortion of the way the threat of human trafficking in the region is presented.¹¹²

*Most people encountered during the course of our research could not distinguish between the two crimes. When asked about the prevalence of human trafficking in the region, the initial reaction of many was to allude to very high volumes of human trafficking. As the difference between human trafficking and human smuggling was explained, however, it became clear that human trafficking occurred on a rather limited level. Yet, with the exception of terrorism, no other type of criminality receives as much interest as the fight against human trafficking.*¹¹³

Jahic and Finckenauer, and similarly Aradau¹¹⁴, assert that this conflation of human trafficking with organised crime and/or illegal migration is calculated.

While service providers, NGOs and women's groups have been concerned primarily with the victimization aspect of trafficking in women, for the problem to get

¹⁰⁹ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 29.

¹¹⁰ Christine Bruckert and Collette Parent, *Trafficking in Human beings and Organized Crime: A Literature Review*, Research and Evaluation Branch, Royal Canadian Mounted Police, 2002: 13

¹¹¹ See also John Salt, 'Trafficking and human smuggling: A European perspective', *International Migration*, Vol.38, No.3, (2000): 31-56; Christine Bruckert and Collette Parent, *Trafficking in Human beings and Organized Crime: A Literature Review*, Research and Evaluation Branch, Royal Canadian Mounted Police, 2002, available at <http://www.rcmp-grc.gc.ca/pubs/ccaps-spcca/pdf/traffick-eng.pdf>; Adam Edwards and Pete Gill, 'The politics of 'transnational organized crime': discourse, reflexivity and the narration of 'threat'', *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 245 – 270; James O. Finckenauer, 'Problems of Definition: What is Organized Crime', *Trends in Organized Crime*, Vol. 8, No. 3, Spring (2005): 63 – 83.

¹¹² Annette Hübschle, 'Trafficking in Persons: Assumptions and Reality', *ISS Today*, 3 September 2009, Institute for Security Studies, <http://www.issafrica.org/pgcontent.php?UID=29626>, last accessed March 2010.

¹¹³ Ibid.

¹¹⁴ Claudia Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 251 – 277.

*government attention, they had to present it in a sufficiently alarming way... Thus, the transmogrification into an organized crime and/or illegal migration issue.*¹¹⁵

As Steinfatt, Baker and Beesey have shown, '[a] commonly held and oft repeated belief is that it is difficult or impossible to know the extent of trafficking throughout the world. Such statements are often followed by pronouncements of the "estimated" numbers of persons trafficked. If the numbers are difficult or impossible to obtain, then where did these "estimates" come from? In attempting to trace the "estimates" back to the methods that produced them, it appears that many and perhaps most may be little more than wild guesses, or even pure fabrications. Once published, this initial publication of the "estimate" is cited by other publications as the source, and the numbers, whether fabrications or valid measurements, take on a credibility of their own.'

¹¹⁶

The research conducted by Tydlum and Brunovskis seems to concur with this, as they found that '[e]ven if several independent actors present similar numbers to estimate the number of trafficking victims, this should not be taken to indicate that the number is correct' and warn that the danger exists that 'key respondents in the same field may be influenced by each other, or the same sources of information, media coverage or general perception in the society.'

¹¹⁷

Moreover, it is difficult to assess actual available data, as governments, the media and researchers continue to conflate a variety of issues with one another¹¹⁸ – in particular migration (both regular and irregular) coupled with attendant security implications of asylum and refugee seekers, smuggling and trafficking¹¹⁹.

This study is cognisant of the lack of credible statistical data on the phenomenon itself, whether it be international or domestic, due in part to the highly politicised nature of the

¹¹⁵ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 28.

¹¹⁶ Thomas M. Steinfatt, Simon Baker and Allan Beesey, *Measuring the Number of Trafficked Women in Cambodia: Part –I of a Series*, Paper presented at The Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children, Globalization Research Center – University of Hawaii-Manoa, Honolulu, Hawaii USA, November 13 – 15, 2002, available at <http://preventhumantrafficking.org/storage/article-downloads/MeasuringTheNumber.pdf> – last accessed January 2010.

¹¹⁷ Guri Tydlum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking', *International Migration, (IOM)*, Vol.43 (1/2), 2005: 28.

¹¹⁸ This is may be done to serve a particular political or even ideological agenda.

¹¹⁹ See Liz Kelly, *Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe*, Migration Series, No. 11: International Organization for Migration, 2002; Frank Laczko, 'Introduction: Data and Research on Human Trafficking', *International Migration*, Vol. 43, (1/2), (2005): 5 – 16.

discourse¹²⁰. As such, this study has taken a very critical approach when assessing available data and research, and has taken heed of Steinfatt's warning that, '[t]he numbers produced by ideologically driven research are usually (a) not verifiable, (b) have no original data from which they were composed, and (c) usually have no computations or interim data summaries available from smaller scale data sets from which they were composed. These elements are hallmarks of fabricated numbers.'¹²¹

The bulk of research conducted into human trafficking, particularly in the plethora of reports¹²², studies and articles on the subject, suffers particularly from methodological weakness and superficiality. Few studies go 'beyond mere description of the phenomenon and its trends to become analytical by seeking to explain relations among variables, among causes and effects'¹²³. In terms of methodology, the literature is predominantly defined by exploratory and 'quick and dirty' studies, using snowball sampling techniques, which in the form of small action-oriented baseline studies, are conducted over a period ranging from six to nine months, limited in scope by available funding and resources, and largely presented in the form of reports. Figure 2 is an example of the prevalence of the types of publications that exist on human trafficking.

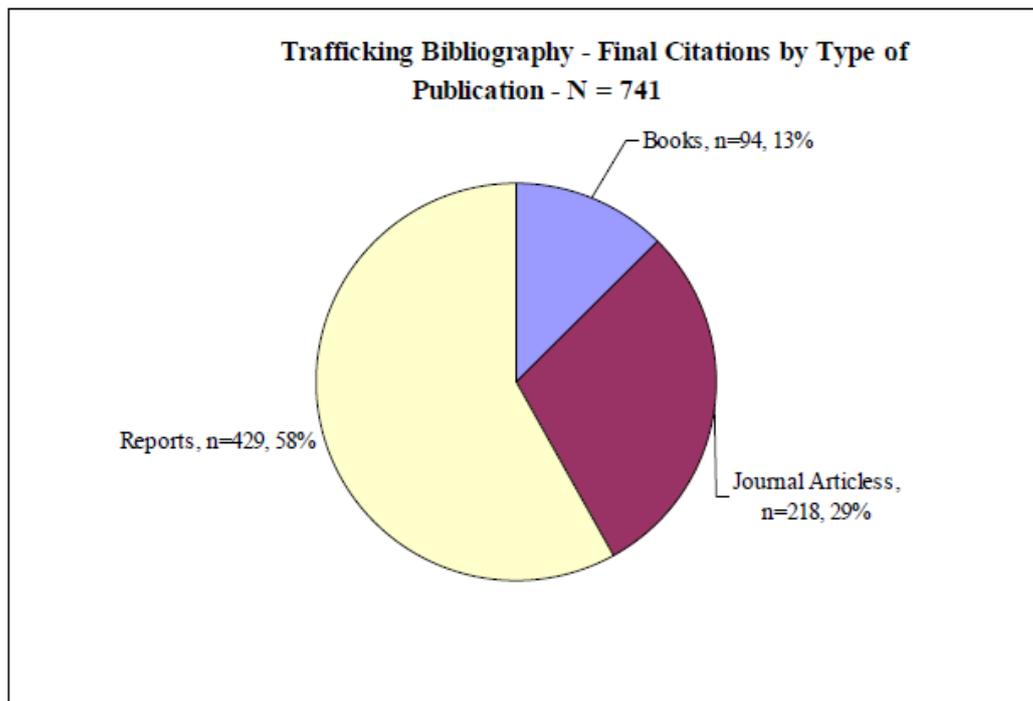
¹²⁰ The highly politicised nature of the discourse which has been shaped to a large extent by ideologically driven research is discussed in Chapter 3.

¹²¹ Thomas Steinfatt, 'Methodological Issues in Trafficking Research', date? 4 http://www.unescobkk.org/fileadmin/user_upload/hiv_aids/Documents/Workshop_doc/Seminar_promoting/Methodological_Issues_in_Trafficking_Research_-_Thomas_Steinfatt.pdf

¹²² Most reports primarily emanate from governments, and advocacy organisations / NGOs, and most notably from the three most prominent international organisations which fall under the umbrella of the United Nations concerned with trafficking: the United Nations Office on Drugs and Crime (UNODC), the International Organisation on Migration (IOM) and the International Labour Organisation (ILO).

¹²³ Andrea Di Nicola, 'Researching into human trafficking: Issues and problems', in Maggy Lee (Ed), *Human Trafficking*, Willan Publishing, Devon, UK, (2007): 57.

Figure 2: Trafficking Bibliography – Final Citations by Type of Publication

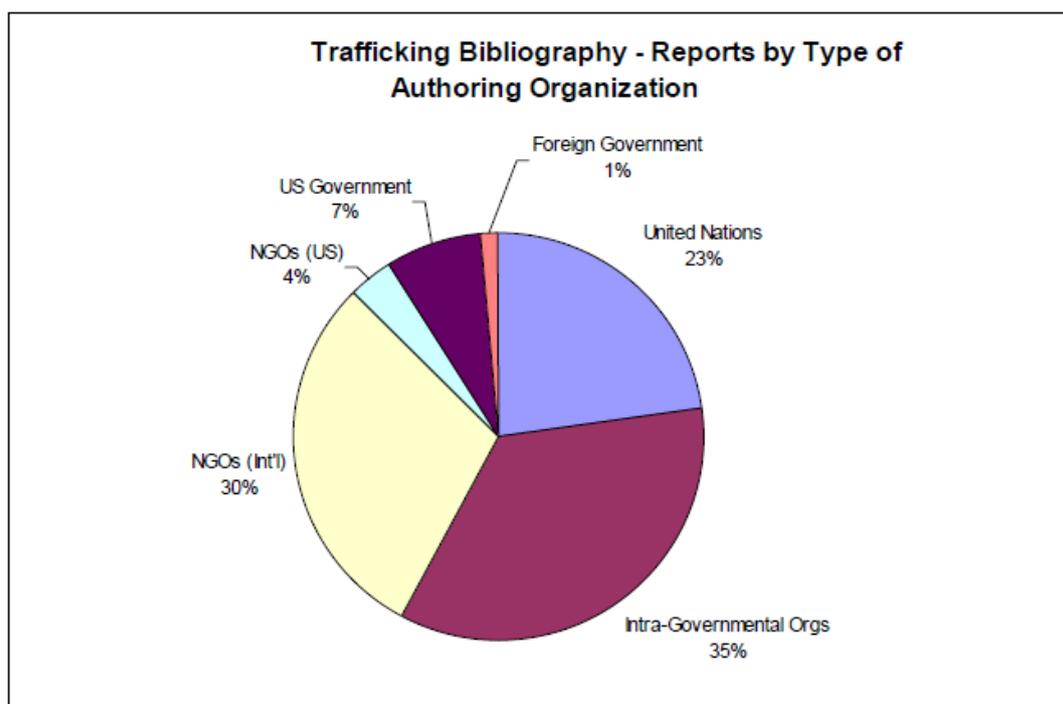


Source: Goździak and Bump (2008)

As the pie chart indicates, approximately 58% of all publications on human trafficking, upon which most of our knowledge and understanding of human trafficking is built from, are in the form of reports. These reports are almost exclusively the realm of international organisations and advocacy groups who seem to be the most prolific writers in this regard. Many of these reports are methodologically flawed and for the most part are not peer-reviewed. Journal articles, many of which are peer-reviewed, only account for 29% of all publications on human trafficking and books only account for 13%.

If one looks more closely at the reports by type of authoring organisation, (see figure 3 below), it becomes apparent how influential non-governmental organisations and intra-governmental organisations are in shaping and steering the human trafficking discourse.

Figure 3: Trafficking Bibliography – Reports by Type of Authoring Organization



Source: Goździak and Bump (2008)

As the figure illustrates, most reports are commissioned by intra-governmental organisations – which account for 35% of all reports. This is followed in turned by NGOs which account for 30% of all reports. These reports are mainly compiled for advocacy and awareness purposes (but are also often used to further specific political and ideological agendas). The United Nations, as the institution that crafted the Trafficking Protocol, by comparison accounts for only 23% of all reports. The United States Government, the leader in ‘the war against human trafficking’ and author of the ubiquitous TIP Report, surprisingly only accounts for authoring 7% of all reports compiled. Although the figures speak little to the researchers contracted to compile these reports, this does have significant implications for the state and credence of human trafficking research in general. Di Nicola¹²⁴ notes that it is common for researchers to make use of exploratory research where almost nothing is known about the issues being investigated, where insufficient data is available or there is limited understanding on the subject being researched, and when past research cannot be reliably counted on to provide a guide to research currently being undertaken. This is certainly applicable to the research being conducted into the phenomenon of human trafficking. As such, most research on human trafficking seeks ‘to explore the topic and to provide some

¹²⁴ Andrea Di Nicola, ‘Researching into human trafficking: Issues and problems’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 58.

familiarity with, or understanding of, the topic [. . .] to provide input to project/policy interventions.’¹²⁵

Baseline studies tend to focus primarily on the supply-side of the human trafficking phenomenon, creating a distinct narrative which exists within the discourse itself. Few studies, apart from Anderson and O’Connell Davidson’s *Trafficking – a demand led problem?*¹²⁶, delve into the demand-side of the issue. Laczko notes that while most studies have simply shown that a problem exists, baseline studies attempt to investigate and define ‘the factors that contribute to trafficking in countries of origin and the profile of those most at risk at being trafficked’¹²⁷.

One of the main problems encountered in the form of primary research on human trafficking are sampling and representativity¹²⁸. This arises from attempting to research and establish a sample frame from *hidden populations* – such as prostitutes, traffickers, victims/survivors, and/or illegal immigrants. Such hidden populations are inherently secretive as those belonging to them are invariably engaged in either stigmatised or illegal behaviour, further compounding the issue of reliability of data garnered from such populations, and in numerous cases reluctance or even refusal to cooperate in such studies¹²⁹. Tydlum and Brunovskis define a hidden population as ‘a group of individuals for whom size and boundaries are unknown, and for whom no sampling frame exists’¹³⁰.

¹²⁵ Annuska Derks, Roger Henke and Ly Vanna, *Review of a Decade of Research on Trafficking in Persons, Cambodia*. San Francisco, Washington DC, Phnom Penh: The Asia Foundation (2006): 10 quoted in Andrea Di Nicola, ‘Researching into human trafficking: Issues and problems’, in Maggy Lee (Ed), *Human Trafficking*, Devon: Willan Publishing, (2007): 58.

¹²⁶ Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003.

¹²⁷ Frank Laczko, ‘Data and Research on Human Trafficking’, *International Migration* 43(1/2), 2005:9

¹²⁸ See Andrea Di Nicola, ‘Researching into human trafficking: Issues and problems’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 49 – 72; Elżbieta M. Goździak, and Elizabeth A. Collett, ‘Research on human trafficking in North America: A review of literature’, *International Migration*, Vol.43 (1/2), (2005): 99 – 128; Frank Laczko and Marco Gramegna, ‘Developing Better Indicators of Human Trafficking’, *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194; Frank Laczko, ‘Introduction: Data and Research on Human Trafficking’, *International Migration*, Vol. 43, (1/2), (2005): 5 – 16; Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, 2006; Guri Tydlum and Anette Brunovskis, ‘Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking’, *International Migration*, Vol.43 (1/2), (2005): 17 – 34.

¹²⁹ See Douglas D. Heckathorn, ‘Respondent-driven sampling: a new approach to the study of hidden populations’, *Social Problems*, 44(2), (1997): 174 – 198. See also, Deborah L. Harrison, *Victims of Human Trafficking or Victims of Research? Ethical Considerations in Research with Females Trafficked for the Purposes of Sexual Exploitation*, University of East Anglia, September 2006.

¹³⁰ Guri Tydlum and Anette Brunovskis, ‘Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking’, *International Migration*, (IOM), Vol.43 (1/2), 2005: 18.

Moreover, most studies use a snowball sampling technique which is substantively methodologically flawed when attempting to develop a representative sample¹³¹. Although a useful technique to identify research subjects through the consultation of informants, it is severely limited in terms of appropriateness when applied as the ‘methodological basis for the development of representative samples, or as the basis from which generalised conclusions can be drawn’¹³².

Henschel¹³³ has compiled a useful list of common mistakes in research methodology and analysis that researchers are often guilty of:

1. Control groups are seldom part of research design;
 - Small samples are used as the basis for generalisations;
 - Research fails to take local and cultural contexts into consideration when making an analysis;
 - Data is not triangulated;
 - It is insufficient to use a survey questionnaire alone when dealing with children or particularly sensitive subjects;
 - The integrity of data may be undermined if research subjects are identified by institutions or organisations which have a stake in the subject.

Most of the international research on human trafficking, as is true for South Africa, is ‘funded, commissioned and/or conducted by either international organisations in support of counter-trafficking programmes or by NGOs for advocacy purposes’ which feed readily into ‘policy debates, rather than detailed investigations’¹³⁴. In South Africa, as with most of the international research conducted on the phenomenon, knowledge and understanding of human trafficking is almost entirely derived from small-scale, action-oriented studies, which only provides us with snapshots of the issue, whilst utilising potentially flawed methodology to extrapolate and generalise research findings to account for the entire country, if not also for the Southern African region, from small and limited data-sets which provide, at best, anecdotal evidence of the situation.

¹³¹ See Karen Jacobsen and Loren Landau, *Researching Refugees: Some Methodological and Ethical Considerations in Social Science and Forced Migration*, Forced Migration Working Paper Series 2, Forced Migration Studies Programme: University of the Witwatersrand, 2003; and Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25.

¹³² Landau and Jacobsen in Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, (June 2006): 24

¹³³ Barbara Henschel, *The Assessment of Commercial Sexual Exploitation of Children: A Review of Methodologies*, UNICEF, 2003: 12.

¹³⁴ Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, (2006):18.

Adepoju¹³⁵ provides a good example of the state of research being conducted into human trafficking in Southern Africa by referring to the IOM's 2003 study in southern Africa¹³⁶ which primarily focussed on the trafficking of women and children for sexual exploitation (although some mention was made as to the existence of others forms of trafficking – forced labour – and the trafficking of men was acknowledged). The study or survey had been conducted from August 2002 to February 2003 and the author interviewed a range of individuals, including trafficked persons, traffickers and sex workers, law enforcement and government officials, NGOs and the media. This resulted in 232 interviews being conducted, enabling the identification of 25 trafficked women and children from 11 countries (not forgetting that the study surveyed five countries to obtain such results). However, as with much available data extricated from studies elsewhere, this modest figure was then exponentially extrapolated. The IOM estimated that '1000 Mozambican women per year were entering South Africa by way of the two trafficking operations' documented in its study on trafficking routes from Maputo, reputedly earning the traffickers R1000 per woman or girl'¹³⁷. Adepoju correctly notes that as the samples were small and non-random their results should not and cannot be generalised, particularly when one takes country specific variations into account¹³⁸.

Even more problematic, is that most research conducted in South Africa is drawn from three studies conducted by the IOM and Molo Songololo (which shared a common researcher), the results of which add little to deepening the knowledge of human trafficking in the South African context¹³⁹. Up until 2010 with the release of the HSRC research report, the reports by the IOM and Molo Songololo made up the cornerstone of research on the nature of human trafficking in South Africa. As such, they have greatly informed current perceptions about the nature and scale of the problem. Both organisations' research has been conducted for advocacy purposes to raise awareness about the need for law enforcement and policy

¹³⁵ Aderanti Adepoju, 'Review of Research and Data on Human Trafficking in sub-Saharan Africa', *International Migration*, Vol.43 (1/2), 2005: 88 – 89.

¹³⁶ The geographical scope of the study predominately covered the urban centres of Lesotho, Malawi, Mozambique, Swaziland, and South Africa's four major cities (Johannesburg, Cape Town, Pretoria and Durban). Major city centres and ports of entry tend to be the focus of such studies as they are *seen* as destination points for human trafficking and where most of the 'victims' who have been assisted are to be / were found.

¹³⁷ J. Martens, M. Pieczkowski, B. van Vuuren-Smyth, *Seduction, Sale & Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa*, 3rd Edition, IOM Regional Office for Southern Africa, Pretoria, May 2003: 52-63.

¹³⁸ See Aderanti Adepoju, 'Review of Research and Data on Human Trafficking in sub-Saharan Africa', *International Migration*, Vol.43 (1/2), 2005: 75 – 92.

¹³⁹ See Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, 2006. Moreover, researchers from Molo Songololo also seem to have co-authored reports / policy recommendations for organisations like UNESCO. See UNESCO, *Human Trafficking in South Africa: Root causes and Recommendations*, Policy Paper No. 14.5(E), 2007.

intervention. The consequence of this is that their research does not provide a clear understanding of the scale of the problem. For instance, the Molo Songololo (a children's rights NGO) studies¹⁴⁰ viewed as pioneering research on human trafficking, focus almost exclusively on child trafficking in South Africa, are limited in scope and application to the Western Cape region. They are also based largely on anecdotal evidence and make broad sweeping assertions about the nature of trafficking and the causal factors driving it¹⁴¹.

As such, the limited number of studies that have been conducted into human trafficking in South Africa have primarily been written by advocacy agencies, citing information obtained from previous methodologically unsound studies, support organisations and the media. Where studies have been compiled by international organisations such as the ILO (TECL programme¹⁴²) or UNICEF, data has been sourced primarily from preceding reports. The majority of these studies focus almost exclusively on trafficking for sexual exploitation of women and children, while a few do mention other forms of trafficking. As Pharoah¹⁴³ correctly notes, these studies infer or possibly indicate various trends and issues (dimensions) pertaining to human trafficking in the South African context, but are insufficient / inadequate to provide reliable and extensive data that is required for policy design.

In March 2010, however, the Human Sciences Research Council (HSRC) released the findings of their exploratory study on human trafficking in South Africa, entitled 'Tsireledzani: understanding the dimensions of human trafficking in Southern Africa'. This

¹⁴⁰ Molo Songololo, *Trafficking in Children for Purposes of Sexual Exploitation – South Africa*, 2000.

¹⁴¹ As Gould and Fick note, one of their studies on the trafficking of women for sexual exploitation (i.e. into prostitution), involved interviewing 44 women, 10 of whom they believed had been trafficked, albeit in terms of a much broader definition of trafficking than that provided by international law. Chandré Gould in collaboration with Nicole Fick, *Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City*, Institute for Security Studies, (2008): 84.

¹⁴² In 2003, ILO TECL (Towards the Elimination of Child Labour) commissioned the Community Agency for Social Enquiry (CASE) to prepare situational analyses in the Western Cape, KwaZulu-Natal, Mpumalanga and Limpopo to investigate the extent of child trafficking and the commercial sexual exploitation of children. The findings of the report were inconclusive, as although service organisations / NGOs and government departments expressed grave concern about child trafficking for sexual exploitation/prostitution, few had encountered actual cases of this. Where service providers had claimed 'direct experience', such assertions could not be substantiated by other support organisations (like Childline) or government departments (like the Department of Social Welfare). Although unable to estimate the prevalence of child trafficking and commercial sexual exploitation, the TECL report nonetheless concluded that the absence of cases and concrete indicators pointed to a lack of awareness of the problem/phenomenon and to the fact that human trafficking was a hidden crime. See A. Delany, *Situation Analysis on the Commercial Exploitation of Children and Child Trafficking: KwaZulu-Natal: Report for the Programme Toward the Elimination of the Worst Forms of Child Labour*, Johannesburg: Community Agency for Social Enquiry (CASE), 2005; D. Lopes, *Situation Analysis on the Commercial Sexual Exploitation of Children and Child Trafficking: Mpumalanga*, Johannesburg: CASE, 2005b; D. Lopes, *Situation Analysis on the Commercial Exploitation of Children and Child Trafficking: Limpopo*, Johannesburg: CASE, 2005a.

¹⁴³ Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, (2006): 23.

report is purportedly the ‘first comprehensive assessment of human trafficking in South Africa’¹⁴⁴, and to a large extent this is true. This study is unique in the South African context, as it has delved into ancillary issue areas that no single study conducted in South Africa has, to date, sought to investigate. These range from the psycho-social profile of victims to the driving factors of human trafficking. These include structural factors influencing human trafficking in the region, the interrelation between human trafficking and migration in the context of globalisation, its linkage to organised crime, and supply and demand factors in relation to international sporting events. The report concludes with recommendations for a framework for a trafficking management system. This research report conducted on behalf of the ‘Programme of Assistance to the South African Government to Prevent, React to Human Trafficking and Provide Support to Victims of Crime’ was driven by the National Prosecuting Authority (NPA) and represents the initial outcome (Result 1: Deepened Knowledge and Understanding of Trafficking) of the programme¹⁴⁵. The report acknowledges that constructive action / counter-trafficking initiatives are impeded by the paucity of empirical research on human trafficking in South Africa¹⁴⁶. The report notes that the limited studies conducted on the situation in South Africa suggest certain trends that the report at times has corroborated from the information gathered from intelligence-led research and key informants¹⁴⁷. It does observe that ‘while varying (and often alarmist) statistics pertaining to human trafficking are sometimes reported in the media and by civil society institutions, reliable information on the scale, direction and nature of trafficking remains sparse’¹⁴⁸.

Although the HSRC study has significantly contributed to and enriched the limited academic discourse on human trafficking in South Africa, it still only represents the initial steps of developing and expanding our understanding of, and research into, the dimensions of human

¹⁴⁴ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: i.

¹⁴⁵ Tsireledzani comprises of four pillars, the other three are: (1) Cooperation and Coordination; (2) Capacity Building and Development; (3) Prevention and Public Awareness Strategy.

¹⁴⁶ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: iii.

¹⁴⁷ The research design and methodology for this research study was unique, especially in the South African context, as it called for a multidisciplinary research team gathered from the fields of Anthropology, Criminology, Law, Migration/Demography, Organised Crime, Psychology and Sociology. Political Science was not represented on this multidisciplinary research team, and as such an investigation into the shaping of the discourse, the political debates surrounding the phenomenon and South African counter-trafficking initiatives / policy has not adequately been addressed. The methodology used by the research team is purportedly innovative as, in conjunction with traditional qualitative and quantitative research, part of it was intelligence-led.

¹⁴⁸ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: iii.

trafficking in the South African context¹⁴⁹. Although the study attempts to be a comprehensive exploratory study of human trafficking in South Africa and the region as a whole, and indeed represents a new benchmark in South African human trafficking research, it bases many of its assumptions on previous studies¹⁵⁰ that are thought to be methodologically flawed¹⁵¹.

The HSRC study does suffer, as with the vast majority of studies on human trafficking, from only a superficial exploration of themes due to the limited time frame in which the research was conducted. It would also appear that the shape of the study was decided before the research was even conducted, and this could have some impact on the findings of the study itself. 'In order to address the objectives of the study, the issue of human trafficking was addressed from a multidisciplinary perspective, including its legal, psychosocial, migration, vulnerability and organised crime, and policing aspects.'¹⁵² Cwikel and Hoban warn us that the approach or research paradigm adopted by a study will influence its findings¹⁵³. They also offer a word of caution to researchers by highlighting the need for researchers to 'consider the intended use of the data that is being collected and to be wary of a hidden agenda (e.g., of law enforcement, labor courts, women's rights organizations, pro-prostitution, anti-prostitution, or abolitionist groups) for gathering this information'¹⁵⁴. The field of inquiry is / may be muddled by the range of competing perspectives driving the research. As a result, human trafficking is envisaged as an issue predominantly involving sex and sexual exploitation; an issue only involving labour; an issue of demand for cheap goods and services, and the commodification of human beings; an issue primarily related to migration (possibly driven by globalisation); and, as an issue of systemic poverty which 'pushes' people to take desperate risks.

¹⁴⁹ The research found that the data gathered (whether anecdotal or quantitative) inferred 'a portrait of trafficking that warrants intervention on all fronts'. HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: iv

¹⁵⁰ Whose flaws in methodology and potential weaknesses have been noted above.

¹⁵¹ See Aderanti Adepoju, 'Review of Research and Data on Human Trafficking in sub-Saharan Africa', *International Migration*, Vol.43 (1/2), 2005: 75 – 92; Chandré Gould, 'Cheap Lives: Countering human trafficking: considerations and constraints', *SA Crime Quarterly* No. 16, June (2006): 19 – 25; Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, 2006.

¹⁵² HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 13.

¹⁵³ Julie Cwikel and Elizabeth Hoban, 'Contentious Issues in Research on Trafficked Women Working in the Sex Industry: Study Design, Ethics, and Methodology', *The Journal of Sex Research*, Volume 42, Number 4, November 2005: 306 – 316.

¹⁵⁴ Julie Cwikel and Elizabeth Hoban, 'Contentious Issues in Research on Trafficked Women Working in the Sex Industry: Study Design, Ethics, and Methodology', *The Journal of Sex Research*, Volume 42, Number 4, November 2005: 310.

Analogous with international studies, most studies conducted within the South African context are severely limited in their sample sizes. As a result, their findings tend to be based for the most part on interviews conducted with ‘key informants’ the choice of which tends to be advocacy groups and a few choice individuals possessing personal experience of or exposure to human trafficking¹⁵⁵. What constitutes ‘personal experience’ or ‘exposure to human trafficking’ can fall within a broad spectrum, and can even be highly subjective and open to interpretation. As such, there is often no benchmark against which to test the reliability and authenticity of information sourced from key informants. The use of key informants can thus prove to be epistemologically problematic. Although key informants are widely viewed and accepted as being knowledgeable or being experienced in certain issues, key informant interviews are commonly used to frame the issue before other parts of the research is undertaken. Moreover, key informants might be selected by their particular organisations and/or researchers as they represent a particular point of view or agenda. Basing the framework of one’s research on the ‘wrong’ informants can be damaging to the research itself – as it can skew findings/results and negatively impact on the validity of the research itself. On the extreme side of the spectrum, some studies solely base their findings on interviews conducted with ‘people in the know’ – sourced from law enforcement and various anti-trafficking organisations (particularly those involved in advocacy) or organisations involved in victim assistance¹⁵⁶.

From a geographical standpoint, some studies (such as the Molo Songololo reports) obtain their data sets from geographically limited sites (i.e. for the most part data was collected from the major South African cities – notably Cape Town, Johannesburg, Durban, Pretoria, and more recently extended to include Nelspruit and Polokwane). Interviews and consultative forums were conducted with ‘key stakeholders’¹⁵⁷. In the past, most interviews were conducted in Cape Town and thus were severely limited in their scope to allow for generalisations and extrapolations of the situation far removed from urban centres, or even cross-border trafficking. This has the implication that an over-reliance on unrepresentative samples exists in studies conducted in the South African context – which unsurprisingly mirrors the many malaises of international research on human trafficking.

¹⁵⁵ As noted by Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008; Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, 2006.

¹⁵⁶ The UNICEF study stands out, as no victims were actually interviewed.

¹⁵⁷ See Molo Songololo, *Rapid assessment of the impact of 2010 FIFA World Cup on the abuse, exploitation and trafficking of children*, 2008; *Trafficking in Children in the Western Cape*, 2005; *Trafficking in Children for Purposes of Sexual Exploitation – South Africa*, 2000.

Pharoah is particularly critical of previous South African studies, which share a similar deficit with international studies, in that none included control groups¹⁵⁸ and making it difficult to delineate the dimensions or factors that facilitate human trafficking. Moreover, few studies (most notably the one conducted by Laczko and Gramegna¹⁵⁹) attempt to interrogate what makes some individuals more *vulnerable*¹⁶⁰ to being trafficked than others, and how trafficking may be differentiated from highly exploitative working conditions or sexual opportunism and abuse that seems rampant in South African society. Poverty, fragmented familial structures, exceptionally high levels of violence / crime, and pervasive exclusion are the hallmarks of contemporary South and Southern African societies. While these factors are claimed to be the drivers of human trafficking, not one study attempts to elucidate the distinction between those who are trafficked and those living in comparable circumstances who are not¹⁶¹.

Rigorous ethnographic and sociological studies based on in-depth interviews with trafficking survivors are required in order to provide baseline data on trafficking victims and their characteristics. This cannot be achieved through the type of studies currently being conducted into human trafficking in South Africa and abroad. Even the latest study conducted by the HSRC, which employs a rapid assessment methodology, fails to meet this benchmark due to time constraints within which the study had to be completed. As a result, alongside international research, it may be noted that '[t]oo often victims of trafficking remain one-

¹⁵⁸ This may be attributed to the nature and scope of the studies conducted – which tend to be baseline studies and are of the ‘rough and ready’ or exploratory variety – limited by their short time frames and resources.

¹⁵⁹ Gould highlights the significance of Laczko and Gramegna’s findings as their study on human trafficking in the Balkans challenged conventional wisdom about the victims of trafficking and the recruitment process. Gould urges researchers to take heed of these findings, as current assumptions of the causal factors of human trafficking, particularly in Southern Africa, appear to be based on a ‘commonsense understanding’ of the causes of vulnerability. Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25.

¹⁶⁰ Vulnerability seems to be the buzzword, made popular by UNDOC and reiterated throughout human trafficking literature. One of the key drivers of human trafficking is said to be poverty – however, while more recent studies (such as that of Lackzo and Gramegna, 2003) have found that those living in absolute poverty are less likely to be trafficked than those with more mobility; and while poverty may be a good indicator why those desperately seeking a better life may open themselves up to exploitation – most studies do not address what makes certain individuals (from the same background) more vulnerable to being trafficked than others. See Frank Laczko and Marco Gramegna, ‘Developing Better Indicators of Human Trafficking’, *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194.

¹⁶¹ See Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25; Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, 2006.

dimensional figures whose stories are condensed and simplified¹⁶², and as Goździak and Bump have argued this trend does not bode well for the development of culturally appropriate services¹⁶³.

There is a growing literature that is critical of existing, unquestioningly accepted research and counter-trafficking programmes due to these very issues and often narrow competitive interests which are seen to oversimplify the discourse, resulting in the generalisation of this complex and shadowy phenomenon¹⁶⁴. Lee notes that the human trafficking debate has been criticised ‘for its “shoddy research, anecdotal information, or strong moralistic positions” (Sanghera 2005) and emotive manipulation of “wobbly” statistics (Murray 1998)’¹⁶⁵.

Jacobsen and Landau¹⁶⁶ note that research that is not methodologically sound brings into question the area of research itself. Gould¹⁶⁷ proposes that when applied to the human trafficking discourse, it results in research crafted for the furtherance of political agendas rather than responding to a real or growing problem.¹⁶⁸ The concern thus exists that flawed research risks not only reaching wrong conclusions, but that it might also lead to inappropriate, and perhaps harmful or counterproductive, policies. This apparent lack of sound evidence-based knowledge may in reality inadvertently further deepen and entrench, rather than unravel, the factors that make trafficking purportedly so profitable and difficult to address.¹⁶⁹ Moreover, Goździak and Bump have shown that most articles and books tend not to be based on empirical research, but rather are in the form of ‘policy analyses; compilations of information from secondary sources on a particular facet of human trafficking; critiques of trafficking frameworks; or authors’ views on the human trafficking debate’.¹⁷⁰ There also

¹⁶² Elżbieta M. Goździak and Micah N. Bump, ‘Data and Research on Human Trafficking: Bibliography of Research-Based Literature’, *Institute for the Study of International Migration*, October 2008: 48.

¹⁶³ Ibid.

¹⁶⁴ In part, the HSRC report attempts to address this in the South African context.

¹⁶⁵ Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 2.

¹⁶⁶ Karen Jacobsen and Loren Landau, *Researching Refugees: Some Methodological and Ethical Considerations in Social Science and Forced Migration*, Forced Migration Working Paper Series 2, Forced Migration Studies Programme: University of the Witwatersrand, (2003): 3-4 cited in Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly No. 16, June 2006*: 23.

¹⁶⁷ Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly No. 16, June (2006)*: 19 – 25.

¹⁶⁸ See also Kempadoo, Kamala with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005; Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007.

¹⁶⁹ Liz Kelly, ‘Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe,’ *Migration Series, International Organization for Migration, No. 11*, (2002): 60.

¹⁷⁰ Elżbieta M. Goździak and Micah N. Bump, ‘Data and Research on Human Trafficking: Bibliography of Research-Based Literature’, *Institute for the Study of International Migration*, October 2008: 9.

appears to be an apparent lack of ability by states and individual government departments to differentiate between sensationalist publications mainly by advocacy organisations and even the media to raise awareness of the issue (in order to set the political agenda) and ‘serious’ research based on rigorous, methodologically sound, and peer-reviewed analysis.

Beyond frequently conflicting and fuzzy definitions, much of the available research is also constrained by issues of both focus and methodology. It is only in the past few years that researchers have begun to discuss the weaknesses in the data. For the most part, concerns over data quality have been eclipsed in the clamour to produce the information needed to motivate and support policy intervention; and the resulting findings have been accepted uncritically by those working in the field. Even though the so-called facts and figures on trafficking vary widely, the numbers have gone unchallenged and little attention has been paid to how projects are conceptualised, how data is gathered or how reliable the findings are.¹⁷¹

This has significant implications for research into human trafficking, as ‘research that is biased by erroneous preconceived notions is unlikely to be informative and enlightening’¹⁷², and the policies and initiatives that emanate from it are unlikely to be successful in the real world.

2.4 Transnational Organised Crime and the Spectre of Human Trafficking

As Article 4 of the Trafficking Protocol demonstrates, it is only applicable to ‘offences that are transnational in nature’. Moreover, the nature of the act (crime) must not only be transnational in nature, but must also involve ‘an organised criminal group’. This creates a conundrum, as an overarching international legal framework which neglects or leaves it up to the individual states to interpret and apply the notion of ‘transnational’ and ‘an organised criminal group’ to their own domestic situations in the formulation of domestic legislation, creates gaps in the application and enforcement (and indeed protection) of trafficked individuals. It also creates a contradiction, as the UN Office on Drugs and Crime (UNODC) – the coordinating agency for the implementation of the Trafficking Protocol – has recognised that human trafficking is not merely transnational in nature, but also has a significant national aspect. Even more worryingly, it is assumed by the Trafficking Protocol that not only is the act of human trafficking international in flavour, but as a prerequisite to be deemed human trafficking, as opposed to some other form of exploitation or abuse, it must be one of those offences listed in Article 3(a) which is committed by an organised criminal group.

¹⁷¹ Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, (2006):7.

¹⁷² James O. Finckenauer, ‘Problems of Definition: What is Organized Crime’, *Trends in Organised Crime*, Vol. 8, No. 3, Spring (2005): 73.

By wedding the Trafficking Protocol to that of the overarching UN Convention on TOC, an underlying assumption exists, and shapes not only perceptions but initiatives / policies, that human trafficking is but one of the many crimes ascribed to organised crime, and limited to organised criminal groups. It begs the question as to who may then be defined as a trafficker – need it always necessarily be ‘an organised criminal group’? Is this not an overgeneralization, and indeed faulty assumption, to label one particular group as ‘traffickers’ when little empirical research supports this assertion? Even the notion of what may be defined as ‘organised crime’ is contested. As Finckenaur notes, almost everyone has a particular opinion as to what constitutes organised crime – much of which stems from popular culture. ‘Rarely is there someone with firsthand information. And almost as rare is someone who has read a book about organized crime, usually a novel’¹⁷³.

As with human trafficking, organised crime has proven notoriously difficult to define. Definition is the key in determining how ‘laws are framed, how investigations and prosecutions are conducted, how research studies are done, and, increasingly, how mutual legal assistance across national borders is or is not rendered’.¹⁷⁴

*[T]he vagaries of definition... allow stereotypes to gain a strong foothold. Then, absent solid rational-empirical evidence to refute them, these stereotypes and the myths that surround them proceed to drive public perceptions, public policy, and law enforcement... They also shape and constrain research and analysis.*¹⁷⁵

This is also the case with human trafficking whose discourse overlaps and to some extent parallels that of organised crime. Human trafficking has been artificially coupled with the notion of transnational organised crime, and is defined as a criminal act which violates the rule of law, is seen to threaten national jurisdictions and ultimately international law. Transnational organised crime is portrayed as ‘one of the most important mechanisms for unlawful redistribution of national wealth, unduly influencing markets, political power and societal relations... The underlying threat posed by trafficking in persons is why the issue is increasingly recognized as one of global security’¹⁷⁶. Hence, it becomes apparent that the issue of human trafficking and organised crime have been galvanised together to bolster the role of state in a complex and uncertain world. Adding to this, Edwards and Gill have identified two contradictory narratives pertaining to the problem of TOC, which in turn can be extended to the problematisation of human trafficking and initiatives to address or counter it –

¹⁷³ James O. Finckenauer, ‘Problems of Definition: What is Organized Crime’, *Trends in Organised Crime*, Vol. 8, No. 3, Spring (2005): 63.

¹⁷⁴ *Ibid.*, 68.

¹⁷⁵ *Ibid.*, 73.

¹⁷⁶ UNDOC, UN.GIFT, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, (2008): 8.

namely the traditional role of the state as sovereign in contrast to the current view of the role of the state in terms of governance¹⁷⁷. They contend that TOC is being used by states as a ‘vehicle for extending the resources of particular agencies and re-inventing the role of others (especially the security and intelligence services for whom countering the Soviet threat was the essential *raison d’être*)’.¹⁷⁸

Feeding into this problematisation of both TOC and human trafficking is the notion that law enforcement is the appropriate response. ‘The justification for investment in law enforcement goals and the appraisal of law enforcement is an inevitable product of the focus on the purported attributes of TOC [and human trafficking]. A self-perpetuating legitimisation of both problem and appropriate response is launched through the ways in which official agencies render organised crime and criminals knowable.’¹⁷⁹ As with much of the human trafficking discourse, and the role of the state in addressing this phenomenon both domestically and internationally, ‘the common thread in all this policy activity is a remarkable reassertion of the power, efficacy and importance of law enforcement as the appropriate means of intervening against organised crime’¹⁸⁰ and its purportedly most sinister form – human trafficking.

Such notions and preconceptions could have a knock-on effect with regards to how human trafficking, legislation and policies countering it, have come to be understood and implemented. Over time, however, most states and organisations have come to realise the importance of addressing not only the domestic side of human trafficking, but the fact that it is extremely difficult to ‘typecast’ traffickers as organised criminal groups – when a whole range of perpetrators exist from opportunistic (individual) traffickers (including family members and acquaintances), to ‘mom and pop’ outfits¹⁸¹, familial networks, to more

¹⁷⁷ Adam Edwards and Pete Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’’, *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 252 – (i) Although the sovereignty of the state remains intact in the post-Cold War era, governments respond to popularly expressed insecurities or actually manipulate them for some broader political purpose, as evidenced in the language of ‘wars’ against particular crimes; (ii) Crime is a constant but new techniques (such as individual vigilance, private-public partnerships) are needed to contain it – creating a discourse that aims to limit the supply-side of criminal activity.

¹⁷⁸ Adam Edwards and Pete Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’’, *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 258.

¹⁷⁹ *Ibid.*, 255.

¹⁸⁰ *Ibid.*, 257.

¹⁸¹ ‘Mom and pop’ outfits operate on a small-scale and involve a single victim at any given time.

organised groupings¹⁸². In other words, human trafficking may not necessarily be organised crime, but rather a crime that is organised¹⁸³.

There appears, however, to be a hangover in the security sector¹⁸⁴ of most implementing states when addressing the issue of human trafficking – and an enthusiasm in going after the kingpins behind human trafficking syndicates¹⁸⁵. South Africa is not an exception in this case.

[T]here is a danger of intellectuals being drawn into the legitimisation of policies the terms of which are defined for them rather than by them. This jeopardises the critical contribution which academic research can make to policy change and learning, in particular it precludes a more reflexive approach to ‘evidence-based’ government.¹⁸⁶

This has the unfortunate effect of narrowing the focus too much, in the absence of reliable and longitudinal research into the phenomenon of human trafficking, and going after only a particular type of perpetrator – perhaps missing the mark in many instances, which might result in ineffective policies and initiatives.

2.5 Constructing a singular narrative

Although numerous discursive narratives exist within the human trafficking discourse, research has also almost exclusively focussed on the sexual exploitation (of women and children), often neglecting to address the multidimensionality of the subject¹⁸⁷. In terms of

¹⁸² As noted by a host of researchers, such as Christine Bruckert and Collette Parent, *Trafficking in Human beings and Organized Crime: A Literature Review*, Research and Evaluation Branch, Royal Canadian Mounted Police, 2002; John Salt and Jennifer Hogarth, ‘Migrant Trafficking and Human Smuggling: A European Perspective’, in Frank Laczko and David Thompson (Eds.), *Migrant Trafficking and Human Smuggling in Europe: a Review of Evidence with Case Studies from Hungary, Poland and Ukraine*, Geneva: IOM, 2000: 11-164; Andrea M. Bertone, ‘Transnational Activism to Combat Trafficking in Persons’, *Brown Journal of World Affairs*, Vol. X, Issue II, (Winter/Spring 2004) 9 – 22; Marta Iñiguez de Heredia, ‘People Trafficking: Conceptual Issues with the United Nations Trafficking Protocol 2000’, *Human Rights Review*, 9, (2008): 299 – 316..

¹⁸³ See Ko-lin Chin, *Smuggled Chinese: Clandestine Immigration to the United States*, Philadelphia: Temple University Press, 1999; James O. Finckenauer, ‘Problems of Definition: What is Organized Crime’, *Trends in Organised Crime*, Vol. 8, No. 3, (Spring 2005): 63 – 83.

¹⁸⁴ The security sector refers to the police / law enforcement, intelligence, criminal justice / prosecutors.

¹⁸⁵ The misuse of such labels, and the perceptions or myths that are derived from them, may ironically lead ‘[v]ictims or potential victims who believe they are confronted by some omnipotent force called organized crime . . . are more fearful, more likely to succumb, and less likely to report to the police.’ See James O. Finckenauer, ‘Problems of Definition: What is Organized Crime’, *Trends in Organised Crime*, Vol. 8, No. 3, (Spring 2005): 78.

¹⁸⁶ Adam Edwards and Pete Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’’, *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 245.

¹⁸⁷ See Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003; Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25; Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008; Frank Laczko and Marco Gramegna, ‘Developing

sexual exploitation as human trafficking, this discourse has been dominated by feminist scholars who focus primarily on sex trafficking. Kapur notes that this is driven by a continued, and perhaps calculated, persistence by certain prominent (abolitionist) feminist anti-trafficking researchers/advocates to conflate human trafficking with prostitution¹⁸⁸. Gould and Fick note that what is apparent from the vast body of literature on human trafficking is that while ‘trafficking’ may be ‘a term describing a specific set of activities, it is also a term used to garner support for various agendas such as preventing migration, stopping organised crime, or eradicating sex work’¹⁸⁹. Similarly, Limanowska suggests that this is reflected in counter-trafficking / prevention strategies adopted by states – which tend to be repressive in that they ‘focus on suppressing the negative (or perceived as negative) phenomena related to trafficking, such as [undocumented migration]... illegal and forced labor, prostitution, child labor or organized crime’¹⁹⁰. Sex-trafficking accounts for the single largest source of literature on human trafficking. This can be attributed to the historical paradigm and discursive tradition within which the human trafficking discourse is situated. In essence, the human trafficking discourse is one that has been rediscovered and reinvented, stemming from an earlier skewed gendered and racialised discourse that sought to securitize women’s sexuality, the sanctity of the family as symbolised by the state, and women’s freedom of movement (migration).¹⁹¹

Better Indicators of Human Trafficking’, *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194; Robyn Pharoah, *Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa*, ISS Monograph Series, No. 123, 2006; Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005: 1 – 24; Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

¹⁸⁸ Ratna Kapur, ‘Cross-border Movements and the Law: Renegotiating the Boundaries of Difference’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (eds), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005: 30.

¹⁸⁹ Chandré Gould in collaboration with Nicole Fick, *Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City*, Institute for Security Studies, 2008: 83. See also, Andrea Marie Bertone, *Human Trafficking on the International and Domestic Agendas: Examining the Role of Transnational Advocacy Networks between Thailand and United States*, PhD Thesis, University of Maryland, May 2008; Nandita Sharma, ‘Anti-Trafficking Rhetoric and the Making of a Global Apartheid’, *NWSA Journal*, Vol. 17, No. 3, (Fall 2005): 88 – 111.

¹⁹⁰ Barbara Limanowska, ‘Trafficking in Human Beings in South Eastern Europe’, 2005: xiii – 2, cited in Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1, (Winter 2006): 138.

¹⁹¹ See Jacqueline Berman, ‘(Un)popular strangers and crises (un)bounded: Discourses of sex trafficking, the European political community and the panicked state of the modern state’, *European Journal of International Relations* 9(1), (2003): 37 – 86; Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Vol. 18, No. 1, (Winter 2000): 23 – 50; Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.),

Doezema¹⁹², Berman¹⁹³, and Kempadoo¹⁹⁴, amongst others, have documented this historical context and the origins of the human trafficking discourse – from which sex trafficking and prostitution emerged as the dominant paradigm. The late nineteenth century was a time of great social upheaval and perturbation, and witnessed mass migration from the old to the new world. Episodic mass migration, as witnessed again with the fall of the Soviet Union and opening up of borders in the latter part of the twentieth century, is also an indicator of the deepening effect of globalisation. This first episodic mass migration of primarily poor and working class people, which resulted from the internationalisation of wage labour¹⁹⁵ and the dislocations caused by the abolition of slavery, was marked by unaccompanied women seeking to carve out a path of their own – usually by servicing and reproducing the migrant workforce.¹⁹⁶

In a rigidly patriarchal era, defined by Victorian moral and social hysteria and neurosis, the mobility of (independent) women was perceived to be a threat to the very fabric of the state and society. And any threat to the moral fabric of society, not to mention the sanctity of the state, needed to be suppressed and controlled. This gave rise to the term ‘white slavery’, which was used to invoke and reaffirm the imagery and narrative of (European) women as being naïve and apparently with little or no volition of their own. Where women were found to be engaged in prostitution, this could only be explained or rationalised by ‘the fact’ that they had been ‘coerced, deceived, lured, trapped, kidnapped, and forced into prostitution’¹⁹⁷ – echoing modern definitions of trafficking for sexual exploitation. Hence, ‘white slavery’ and the ‘white slave trade’ were terms invented to connote the selling of (white, European) women and girls into sexual slavery. It was, and is, a narrative created and reinforced by

Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights, Boulder: Paradigm Publishers, 2005: 1 – 24; Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

¹⁹² Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Vol. 18, No. 1, (Winter 2000): 23 – 50.

¹⁹³ Jacqueline Berman, ‘(Un)popular strangers and crises (un)bounded: Discourses of sex trafficking, the European political community and the panicked state of the modern state’, *European Journal of International Relations* 9(1), (2003): 37 – 86.

¹⁹⁴ Kamala Kempadoo, ‘From Moral Panic to Global Justice’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005.

¹⁹⁵ Including then acceptable systems of indentured labour and debt bondage.

¹⁹⁶ Kamala Kempadoo, ‘From Moral Panic to Global Justice’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005: x.

¹⁹⁷ Ibid.

transatlantic media flows¹⁹⁸ which describe tales of young, innocent girls (migrating in the hope of a better life) tricked, kidnapped and forced into prostitution¹⁹⁹. This has effectively cemented the narratives of entrapment, enslavement and gendered / racialised innocence into the human trafficking discourse.²⁰⁰

The ensuing moral panic of the Victorian middle classes which crystallised widespread fears and anxieties (concerning immigration, urbanisation, changing gender relations, and questions of race and national identity) sought not to confront the actual causes of these problems but instead did so ‘by displacing them onto... an identified social group (often the immoral or degenerate)’²⁰¹. This underscores Altheide’s notion that ‘[c]omplex and often ambiguous events and concerns are symbolically mined for moral truths and understandings presumed to be held by the audience, while repeated presentations of similar scenarios “teaches” the audience about the nature and causes of “disorder”’²⁰². In this instance, the state and society had found its bogeyman in prostitution and launched a moral crusade against it under the guise of eradicating ‘white slavery’.

The contemporary dominant anti-trafficking discourse, is grounded in the abolitionist feminist tradition (which displays an overwhelming focus on sex-trafficking), and unfortunately is not evidence-based. It is actually founded on the construction of a particular mythology of human trafficking which conflates human trafficking with prostitution as sex-trafficking²⁰³. In her

¹⁹⁸ In the producing such emotionally-laden and sensationalised accounts of the horrors of human trafficking and suffering of its victims, the media drives home the message that such events are ‘real’. Moreover, through the media’s stressing of ‘known truths’ it creates a narrative imbued with fear, that draws from images of risk and invoked pity that in turn feeds into the official stance – simultaneously reinforcing and determining it.

¹⁹⁹ See Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as a Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3,4, (2003): 6 – 26.

²⁰⁰ See Jacqueline Berman, ‘(Un)popular strangers and crises (un)bounded: Discourses of sex trafficking, the European political community and the panicked state of the modern state’, *European Journal of International Relations* 9(1), (2003): 37 – 86; Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Vol. 18, No. 1, (Winter 2000): 23 – 50; Kamala Kempadoo, ‘From Moral Panic to Global Justice’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): vii – xxxiv.

²⁰¹ Jeffery Weeks cited in Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as a Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3,4, (2003):18.

²⁰² David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear’, *The Sociological Quarterly*, Volume 38, Number 4 (1997): 654.

²⁰³ See Jacqueline Berman, ‘(Un)Popular Strangers and Crises (Un)bounded: Discourses of Sex-Trafficking, the European Political Community and the Panicked State of the Modern State’, *European Journal of International Relations*, Vol. 9, No.1, (March 2003): 37 – 86; Jo ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Vol. 18, No. 1, (Winter 2000): 23 – 50; Neil Howard and Mumtaz Lalani,

seminal work *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, Doezema shows that ‘contemporary accounts of ‘trafficking in women’ make use of the many discursive foundations of the “white slavery” myth’, which in turn ‘both creates and limits the discursive space around which these issues can be aired’²⁰⁴. Weitzer maintains that research conducted on sex-trafficking demonstrates a worrying pathology, in that ‘[i]n no area of the social sciences has ideology contaminated knowledge more pervasively than in writings on the sex industry, where cannons of scientific inquiry are suspended and research deliberately skewed to serve a particular political and moral agenda’.²⁰⁵

The continued emphasis on trafficking for sexual exploitation can be attributed not only to the phenomenon’s historical discursive tradition, but also to a variety of actors who have promoted particular narratives which lay inordinate emphasis on prostitution and sexual exploitation (sex trafficking). The most influential of these stem from the United States. This was demonstrated in increased influence of the American neo-conservative religious right on policy decisions which became entrenched under the Bush Administration. The American feminist movement, and advocacy groups such as the Coalition Against Trafficking in Women (CATW)²⁰⁶, and their opponents the Global Alliance Against Trafficking in Women (GAATW)²⁰⁷, have effectively been at the forefront of raising awareness about human

‘Editorial Introduction: The Politics of Human Trafficking’, *STAIR*, Vol. 4, No. 1, (2008): 5 – 15; Kamala Kempadoo, ‘From Moral Panic to Global Justice’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005; Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 6 – 26; Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 1 – 24; and locally, Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25; and Robyn Pharoah, ‘Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa’, *ISS Monograph Series*, No 123, 2006.

²⁰⁴ Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Winter (2000): 83.

²⁰⁵ Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women* 11(7) 2005: 934.

²⁰⁶ CATW is a neo-abolitionist NGO with regional networks against prostitution and trafficking, and actively seeks to influence anti-sex industry and anti-trafficking legislation. It was instrumental in forming the International Human Rights Network consisting of 140 NGOs who participated in the negotiations of the Trafficking Protocol and the political debate surrounding prostitution as trafficking. See <http://www.catwinternational.org/WhoWeAre/History>.

²⁰⁷ GAATW is an international alliance of more than 100 NGOs. ‘GAATW promotes rights of women migrant workers and trafficked persons and believes that ensuring safe migration and fair work places should be at the core of all anti-trafficking efforts. We advocate for living and working conditions that provide women with more alternatives in their countries of origin, and to develop and disseminate information to women about migration, working conditions and their rights.’ See http://www.gaatw.org/index.php?option=com_content&view=article&id=3&Itemid=46.

trafficking and lobbying legislators (both within the United States and internationally)²⁰⁸ They have actively promoted research on sex trafficking and prostitution. Both groupings have effectively narrowed mainstream focus and understanding on the phenomenon, and have sought to sway opinion and action as to how states should respond to such a growing problem.

The human trafficking discourse is not only fractious, but also polarised. The most notable example of this is the diametric opposition of feminist organisations – CATW and GAATW – within the human trafficking discourse. During the formulation of the Trafficking Protocol, they were at odds as to how human trafficking should be defined and addressed. CATW, and high profile researchers, such as Donna Hughes and Linda Lederer, have greatly influenced U.S. Policy (domestic and foreign), and counter-trafficking initiatives, such as the “Global War against [Human] Trafficking”. By forming an antithetical alliance with the conservative Christian Right, and defining human trafficking solely in terms of sexual exploitation of women and children, they have attempted to collapse human trafficking into sexual slavery (i.e. prostitution), and effectively show that prostitution is human trafficking, from which all women are forced into and hence must be rescued or saved²⁰⁹. This has resulted in the conflation of human trafficking with migration and prostitution, and has created what Laura Maria Agustín²¹⁰ labels the ‘rescue industry’, which ascribes victim status to, and thereby objectifies, women who have made conscious and rational decisions to migrate, and whose effects are witnessed in contemporary policy. Outshoorn suggests that the term *trafficking* in this context should be replaced with the more aptly phrased term *prostitution-related migration*.²¹¹

The political debates surrounding prostitution, migration and human trafficking have been played out on the international arena. Agustín notes that from the inception of the contemporary discourse on human trafficking, neo-abolitionists have had a virtual

²⁰⁸ These movements and their stances on prostitution / sex work have had a significant effect on the human trafficking discourse and formulation of the Trafficking Protocol which is discussed in Chapter 3.

²⁰⁹ Goździak and Bump conclude that a significant proportion of the research on human trafficking for sexual exploitation has been conducted by activists involved in anti-prostitution campaigns, who have adopted an extreme version of radical feminist theory, which does not distinguish between trafficking for forced prostitution and voluntary migration (legal or irregular) for sex work. Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, (October 2008): 9.

²¹⁰ Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd, 2007.

²¹¹ Joyce Outshoorn, ‘The Political Debates on Prostitution and Trafficking of Women’, *Social Politics: International Studies in Gender, State and Society*, Vol.12, No. 1, (Spring 2005):141 – 155.

stranglehold on debate of the issue and the construction of how it should be conceptualised and addressed. This has been effected by imposing solidarity; creating a culture of indignation; and carefully crafted research. Agustín refers to the (international and local) conferences held by abolitionist anti-trafficking organisations, who try to limit their guest list to those share their strict abolitionist outlook, and try to extend their message to an array of government officials and NGOs. She notes that by controlling invitations to such conferences and events, and effectively silencing and censoring differing opinions, such events gain the semblance of cohesion on an international scale.²¹² Recalling one of these events that she attended, she likened it to a cult meeting, as time and time again²¹³ participants were indoctrinated with the notion that prostitution should be equated with slavery and violence against women, that men force themselves onto women, and that trafficking and prostitution are the same thing. The only solution to this type of oppression and repression is the abolition and punishment of the ‘exploiters’²¹⁴. Participants are urged to ‘develop the capacity for indignation, [and] establish a culture of indignation’²¹⁵ to curb the scourge of human trafficking – prostitution. Thus, constructing a singular narrative, that negates or delegitimises dissent or difference, resplendent in its (political and moral) symbolism and ability to create such a disarming picture of human trafficking through oft repeated syllogisms and ‘simplistic political line[s] made to sound like good struggling against evil’²¹⁶.

Edwards and Gill refer to this particular form of political manipulation as a ‘process by which coalitions win political arguments and define policy by successfully articulating the identities, interests and appropriate actions of others’.²¹⁷ Central to this process is the use of spokespersons and ‘the according of credibility and authenticity to their claims for support’²¹⁸. Callon²¹⁹ has identified four key moments in this process:

- (i) Coalitions problematise an issue or problem, in this instance human trafficking, in a way that establishes their role as indispensable for its resolution.

²¹² Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, Zed Books Ltd, New York, 2007: 161.

²¹³ Over the course of three days.

²¹⁴ Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, Zed Books Ltd, New York, 2007: 159.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Adam Edwards and Pete Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’’, *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 250.

²¹⁸ Ibid.

²¹⁹ Michel Callon, ‘Some elements of a sociology of translation: domestication of the scallops and the fishermen of St Brieuc Bay’, in John Law, *Power, action and belief: a new sociology of knowledge?*, London: Routledge, 1986: 196 – 223, and cited in Edwards and Gill (2002): 250.

- (ii) Such coalitions employ various devices of *interessement* which are used to enthrall potential supporters in their problematisation – such as providing so-called objective evidence on the nature of the problem and ‘normative appeals to the righteousness of their cause’²²⁰.
- (iii) Potential allies are recruited and enrolled into a coalition through negotiation and bargaining – by offering financial, organisational-informational and political resources.
- (iv) In order to ensure the successful mobilisation of an advocacy coalition, a process of disorganising competing coalitions is put into play – leading to the displacement of actors from these coalitions who are then are incorporated into new alliances.

Indeed, abolitionists have been so successful that this is reflected in the U.S. *Trafficking Victims Protection Act* of 2000²²¹ (TVPA), wherein the annual TIPS Report ranks nation-states according to their compliance to institutionalising the requirements of the Palermo Protocol. Soderland maintains that ‘[t]he United States is also using its status as a superpower and major donor nation to force other countries to allow its citizens to raid brothels and send prostitutes into rehabilitation programs as well as to create domestic legislation that further criminalizes sex trafficking (and by extension other forms of prostitution)’²²². The role of U.S. foreign policy and the ominous aid conditions/restrictions²²³ instituted during the Bush Administration should not be underestimated when reviewing the literature available on the subject, especially that pertaining to sex trafficking and prostitution. International agencies and NGOs funded by the U.S., most notably by the U.S. Agency for International Development (USAID)²²⁴, will not qualify for receiving funding unless they sign an oath

²²⁰ As Edwards and Gill note, such devices are employed ‘as a means of both corroborating and legitimising the problematisation offered by a particular coalition whilst discrediting those offered by other coalitions.’ Adam Edwards and Pete Gill, ‘The politics of ‘transnational organized crime’: discourse, reflexivity and the narration of ‘threat’’, *British Journal of Politics and International Relations*, Vol. 4, No. 2, June (2002): 250.

²²¹ (Public Law 106-386)

²²² Gretchen Soderlund, ‘Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition’, *NWSA Journal*, Vol.17, No.3, Fall (2005): 76.

²²³ Donor-recipient states receive aid, particularly from the main source of U.S. donor funding – USAID. Conditionality and restrictions are placed on the aid, and recipient states have to abide by guidelines decreed by the neo-conservative U.S. administration that are in line with U.S. foreign policy (in other words, U.S. interests). Foreign assistance has become a vehicle for advancing ‘an extreme social conservative agenda’. (See William A. Smith, ‘The Politicization of HIV Prevention: The Cynicism of U.S. Assistance to Africa’, *Human Rights*, Volume 35, Number 1, (Winter 2008): 18). Petroni and Skuster note that ‘[t]hrough restrictions and funding conditionalities, the United States has ensured that foreign aid programs and policies reflect the ideology of the Religious Right, instead of effectively providing services and enabling organizations to promote women's health and human rights.’ (See Suzanne Petroni and Patty Skuster, ‘The Exportation of Ideology: Reproductive Health and Rights in U.S. Foreign Policy’, *Human Rights*, Volume 35, Number 1, Winter, (2008): 9)

²²⁴ USAID is an ‘independent federal government agency that receives overall foreign policy guidance from the Secretary of State... [and] supports long-term and equitable economic growth and advances

which explicitly states that they neither support nor condone prostitution or any incarnation that prostitution may take. Where funding has been granted such agencies may not use said funding in the prevention of harm among sex workers²²⁵. Moreover, ‘advocating prostitution as an employment choice or [groups] which advocate or support the legalization of prostitution are not appropriate partners for USAID anti-trafficking grants or contracts’²²⁶.

From this stems the uncritical advocacy for securitisation of human trafficking in much of the literature, mirroring attempts of the past, which ‘serves not only to criminalise and demonize individuals who are otherwise survivors of gross human rights violations, but offers the state an opportunity to unduly extend its authority over its citizens, in many cases severely encroaching on civil liberties’²²⁷. This has resulted in what Aradau refers to as the redefinition and restructuring of human trafficking in terms of human rights and human security – whereby the trafficked person simultaneously is perceived as a threat to the state and as a threat to vulnerable segments of society – most notably women²²⁸. Claudia Aradau²²⁹ in her examination of the securitisation of human trafficking highlights how governmental interventions to combat and manage this phenomenon, have proven to be uneasy unions between distinct, and arguably incompatible, humanitarian (‘politics of pity’) and security (‘politics of risk’) discourses.

The hallmarks of the ‘politics of pity’ are that it relies on a so-called ‘emotional’ governmental model that configures suffering, in relation to victims, ‘as recognisable, something the spectators can identify and sympathise with’²³⁰. In this sense, the politics of pity is strategically used to reveal ‘a defect, flaw, a disorder, a chaos, either in the

U.S. foreign policy objectives.’ (Italics added for emphasis). The primary purpose of U.S. foreign assistance in the form of USAID is to further the U.S.’s foreign policy interests in exporting its brand of democracy and free markets. However, foreign assistance comes with strings attached. http://www.usaid.gov/about_usaid – last accessed August 2010.

²²⁵ See Penelope Saunders, ‘Prohibiting Sex Work Projects, Restricting Women’s Rights: The International Impact of the 2003 U.S. Global AIDS Act’, *Health and Human Rights*, Vol.7, No. 2, (2004): 179 – 192; Gretchen Soderlund, ‘Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition’, *NWSA Journal*, Vol.17, No.3, Fall (2005): 64 – 87.

²²⁶ Kent R. Hill, ‘Statement before the United States House of Representatives Committee on Government Reform Subcommittee on Human Rights’, 29 October 2003, quoted in Gretchen Soderlund, ‘Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition’, *NWSA Journal*, Vol.17, No.3, Fall (2005): 80.

²²⁷ Neil Howard and Mumtaz Lalani, ‘Editorial Introduction: The Politics of Human Trafficking’, *STAIR 4:1* (2008): 5. See also Kapur, 2005.

²²⁸ Claudia Aradau, ‘The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking’, *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 251-277.

²²⁹ Ibid.

²³⁰ Ibid., 258.

organisation of society or in the constitution of the individual'²³¹. Thus, the politics of pity is a device commonly used by international organisations, such as the IOM. Although, this device has been more vigorously used by advocacy groups (NGOs), neo-abolitionist groups, and the media. All these organisations employ the politics of pity to construct trafficked individuals as naïve and/or innocent victims. Jahic and Finckenaue²³², and Frederick²³³ have shown that these victims fit a particular mould. All of whom through their naivety or innocence have been tricked and deceived or even kidnapped, brutalised and held captive – pitiful creatures waiting to be rescued. This imagery of the helpless victim has readily been taken on by researchers and governments across the globe, and thus it is not surprising that South Africa has done the same.

Nevertheless, the politics of pity is a useful tool which is used to 'suspend the official distinction between innocent and guilty women in official discourses... by appealing to an imaginary of common suffering'²³⁴. Such emotionally laden and sensationalised accounts of human trafficking focus on the sexual brutality inflicted by traffickers who ruthlessly exploit and demean women and children, who through such inhumane treatment have effectively become slaves.

This in turn helps direct and disseminate the problem framework by focusing on the physical pain and suffering of the victim, and thus generating not only pity for the victim but fear of what might happen to oneself or one's loved ones. This sense of vulnerability intermingled with fear, but also contrived pity for the victims is used to create a sense of commonality and moral outrage amongst the general public. Increasingly, as awareness is raised, through more reports on the problem in the media, government is put under pressure 'to do something about this problem'. From a governmental perspective, concerned with security, and as such law enforcement responses to human trafficking, it would seem almost 'natural' that the politics of risk has been wedded to this constructed problem framework. It should not be forgotten that the *UN Protocol to Prevent, Suppress and Punish Human Trafficking: Especially in Women and Children (2000)* is after all a supplementary protocol to the *UN Convention*

²³¹ Lorelea Michaelis, 'Politics and the Art of Suffering in Hölderlin and Nietzsche', *Philosophy and Social Criticism*. Vol. 27, No.5 (2001): 89-115 quoted in Claudia Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 258.

²³² Galma Jahic and James O. Finckenaue, 'Representations and Misrepresentations of Human Trafficking.' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 25.

²³³ John Frederick, 'The Myth of Nepal-to-India Sex Trafficking: Its Creation, Its Maintenance, and Its Influence on Anti-trafficking Interventions', in Kempadoo, Sanghera and Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005.

²³⁴ Claudia Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 267.

against *Transnational Organized Crime*²³⁵. And thus, a state's obligations to combating not only human trafficking, but also illegal migration and more ominously organised crime, unsurprisingly problematises these issues/problems as security threats or calculable risks.

The politics of risk is utilised within the human trafficking discourse to market governmental prevention and protection. Victim profiles are thus crafted, in order to facilitate risk identification and categorise 'high risk' groups. Moreover, as Aradau notes, 'trafficked women also mutate into a risk to the state/society'²³⁶. In other words, the (transnationally) trafficked individual represents an uneasy duality – a victim worthy of pity and a risk to the state and/or society, created by the risk posed by that individual's migration or potential to be re-trafficked.

Weitzer goes so far as to claim that the politicisation of sex-trafficking by 'moral crusaders' has led to the institutionalisation of such a 'crusade ideology' in U.S. policy and practice. Weitzer explains that,

*social conditions become "problems" only as a result of claims-making by interested parties, claims that may or may not reflect actual social arrangements... Moral crusades are one of the forces responsible for transforming such conditions into "problems"... define a particular condition as an unqualified evil, and see their mission as a righteous enterprise whose goals are both symbolic (attempting to redraw or bolster normative boundaries and moral standards) and instrumental (providing relief for victims, punishing evildoers).*²³⁷

Research tends to be highly emotive and intuitive rather than objective, and is often conveyed in such a manner as to resemble a media exposé as opposed to solid, scientific investigation²³⁸. This is due, in part, to our acceptance of human trafficking (as presented to

²³⁵ The genesis and evolution of the Convention and supplementary protocol is discussed in the Chapter 3.

²³⁶ Claudia Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 269.

²³⁷ Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade', *Politics & Society*, Vol. 35, No. 3, (2007): 448.

²³⁸ See Chandré Gould, 'Cheap Lives: Countering human trafficking: considerations and constraints', *SA Crime Quarterly* No. 16, June (2006): 19 – 25; Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008; Frank Laczko and Marco Gramegna, 'Developing Better Indicators of Human Trafficking', *Brown Journal of World Affairs*, Vol. X, Issue 1, (Summer / Fall 2003): 179 – 194; Robyn Pharoah, *Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa*, ISS Monograph Series, No. 123, 2006; Jyoti Sanghera, 'Unpacking the Trafficking Discourse', in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005: 1 – 24; Ronald Weitzer, 'Flawed theory and method in studies of prostitution', *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949; Ronald Weitzer, 'The Social

us) as scientific fact²³⁹. This is also true in the case of South Africa, which as suffers from limited academic discourse on the issue, as noted above. Moral crusaders rely on horror stories and what Weitzer terms ‘atrocities tales’ of victims’ experiences to create an atmosphere of panic and moral outrage, thereby facilitating their calls for policymakers to institute draconian solutions to combat the problem. Weitzer claims that inflated claims far exceeding the available statistical data are made about the magnitude of the problem. Moreover, the problem is framed unambiguously – with no room for dissent or grey areas – as a fight of good against evil, in the name of the hapless and helpless victim²⁴⁰. For this reason, most research and policy overlooks the complex and layered issue of agency on the part of the victim throughout the trafficking experience.

Doezema attributes this to the continued conflation of human trafficking with prostitution, and the construction of a victim profile that is primarily limited to vulnerable women and children²⁴¹ – who are in need of rescuing²⁴². Ditmore and Weijers²⁴³ suggest that this is reflected in the wording of the two supplementary Protocols to the *UN Convention against Transnational Organized Crime* – whereby trafficked individuals mirror this concept of the innocent, helpless victim, and smuggled individuals are portrayed as criminals²⁴⁴. In turn,

Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

²³⁹ See Steinfatt, Thomas M. Simon Baker and Allan Beesey, *Measuring the Number of Trafficked Women in Cambodia: Part –I of a Series*, Paper presented at The Human Rights Challenge of Globalization in Asia-Pacific-US: The Trafficking in Persons, Especially Women and Children, Globalization Research Center – University of Hawaii-Manoa, Honolulu, Hawaii USA, November 13 – 15, 2002, available at <http://preventhumantrafficking.org/storage/article-downloads/MeasuringTheNumber.pdf>; Chandré Gould, ‘Cheap Lives: Countering human trafficking: considerations and constraints’, *SA Crime Quarterly* No. 16, June (2006): 19 – 25; Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008; Robyn Pharoah, *Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa*, ISS Monograph Series, No. 123, 2006; Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

²⁴⁰ See Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd, 2007; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

²⁴¹ Or as Enloe suggests should be read as ‘womenandchildren’. See Cynthia H. Enloe, *The morning after: Sexual politics at the end of the Cold War*, Berkeley: University of California Press, 1993.

²⁴² Jo Doezema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’, *Gender Issues*, Winter, 2000.

²⁴³ Melissa Ditmore and Marjan Wijers, ‘The Negotiations on the UN Protocol on Trafficking in Persons’, *Nemesis*, No. 4, (2003): 79 – 88. For an example of this see Victoria E. Kalu, ‘Issues in Human Trafficking and Migrant Smuggling in the Context of Migration’, *International Legal Studies Program Law Journal*, Vol. 1, Issue 1, (2008): 26 – 33.

²⁴⁴ Moreover, there appears to be an implicit gendered division amongst the two Protocols – victims of trafficking are generally female, and smuggled migrants are perceived to be mainly men.

numerous studies also fail to examine or even consider why and how people stay in, or extricate themselves from, exploitative situations²⁴⁵.

Weitzer in his seminal work, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*²⁴⁶, has identified seven core claims used by moral crusaders – many of which have been adopted wholeheartedly in much of the official information disseminated by South African governmental organisations and law enforcement, advocacy groups and legitimate counter-trafficking and awareness initiatives and campaigns:

1. Prostitution is evil by definition.
2. Violence is omnipresent in prostitution and sex trafficking.
3. Customers and traffickers are the personification of evil.
4. Sex workers lack agency.
5. Prostitution and sex trafficking are inextricably linked.
6. The magnitude of both prostitution and sex trafficking is high and greatly increased in recent years.
7. Legalisation would make the situation far worse than it is at present.

For instance, in the run-up to the 2010 FIFA World Cup, the ‘Stop 2010 Human Trafficking’ campaign²⁴⁷, which was supported by the South African government and the National Prosecuting Authority (NPA), launched a web-based video clip (which was aired on the national pay-per-view television provider DSTV during the World Cup), starring local South African soap stars. The video intended to raise awareness of the dangers and evils of human trafficking reiterates some of these erroneous claims pertaining to human trafficking and prostitution/sex work, and the conflation of the two, and feed into the moral crusade’s goals discussed above:

1. Legalisation of sex work makes trafficking worse.
2. Germany and Australia regret legalising sex work.
3. 100 000 people²⁴⁸ will fall victim to trafficking in South Africa before the World Cup.
4. Sex work and trafficking are the same thing²⁴⁹.

²⁴⁵ For a discussion of this see, Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003; Wendy Chapkis, ‘Trafficking, Migration, and the Law: Protecting Innocents, Punishing Migrants’, *Gender & Society*, 17, No. 6 (2003): 923 – 937; Robyn Pharoah, *Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa*, ISS Monograph Series, No. 123, 2006.

²⁴⁶ Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

²⁴⁷ Referred to earlier in this chapter.

²⁴⁸ At the March 2010 meeting of the KZN HPPB Task Team, the NPA did acknowledge that this was an over-inflated estimate – but that was their only criticism of the video clip.

As Weitzer has correctly pointed out, moral crusades extend their ambit and incorporate ‘evils’ that were not originally targeted but have come to be associated with the foundational problem²⁵⁰. Within the American context, moral crusaders have not just targeted sex trafficking, but the sex industry as a whole. Similarly, this too may be said for the case of South Africa, and the vehement crusade by advocacy organisations²⁵¹ and to an extent by law enforcement (in the form of the NPA) to prevent the legalisation or decriminalisation of prostitution in South Africa – conflating prostitution with sex trafficking. Thus, mirroring Weitzer’s assertion that although ‘the crusade’s core claims regarding both trafficking and prostitution are generally quite dubious... activists have met with remarkable success in getting their views and demands incorporated in government policy, legislation, and law enforcement practices’.²⁵²

²⁴⁹ Chandré Gould and Marlise Richter, ‘The Need for Evidence to Assess Concerns about Human Trafficking During the 2010 World Cup’, *ISS Today*: 23 March 2010, *Institute for Security Studies*, http://www.issafrica.org/iss_today.php?ID=917

²⁵⁰ Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (2007): 464.

²⁵¹ Ranging from children rights organisations (like Molo Songololo), religious groups, and religious-conservative groups like ‘Doctors for Life’. ‘Doctors for Life’ (DFL) are a non-profit faith-based organisation/association for medical professionals. There are three principles which this group stands for: (i) sound science in the medical profession, (ii) the sanctity of life from conception to death, (iii) a basic ‘Christian ethic’. As a highly conservative-religious organisation DFL is anti-abortion, anti-prostitution, and anti-homosexuality.

²⁵² Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (2007): 447.

2.6 *The Face of Human Trafficking: Myths, Images and the Role of the Media*

Sanghera²⁵³, as well as Frederick²⁵⁴, have dissected the construction of the human trafficking discourse²⁵⁵ and voiced serious concerns as to the human trafficking problem narrative, as well as myths that have arisen out of this discourse or have been woven into it. Sanghera asserts that,

*The dominant anti-trafficking discourse, and consequently understanding, is not evidence-based but grounded in the construction of a particular mythology of trafficking. As a result, the interventions and programs flowing from this understanding have rarely led to the desired or expected results, i.e., the reduction of trafficking.*²⁵⁶

This is especially true when one looks at the prominent position anti-trafficking campaigns (almost exclusively aimed at curbing the trafficking in women and children) have taken in the past decade – ranging from state-sponsored campaigns to advocacy organisations to educational broadcasts on MTV and a part has even been played by the private sector²⁵⁷. Despite any evidence that anti-trafficking measures are even modestly effective, a plethora of actors (particularly donors funding these campaigns and initiatives) continue to invest huge amounts of money, as if under the influence of mass hysteria or delusion whereby ‘the common refrain... is that trafficking is “rapidly increasing”, and acquiring “monstrous dimensions”²⁵⁸. From this perspective human trafficking may be defined as what Kappeler and Potter²⁵⁹ refer to as a crime myth – which is produced from a frequently reported exaggeration of the magnitude of the problem which ‘sustains public attention long enough

²⁵³ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, 2005.

²⁵⁴ John Frederick, ‘The Myth of Nepal-to-India Sex Trafficking: Its creation, its maintenance, and its influence on anti-trafficking interventions’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, 2005.

²⁵⁵ Their studies on the narratives creating the discourse are situated in the Asia-Pacific region, but their outcomes share characteristics with the discourse as whole.

²⁵⁶ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 4

²⁵⁷ For instance, motor vehicle insurance companies such as *First For Women* in South Africa is a proud sponsor of anti-trafficking initiatives and anti-trafficking campaigns aimed at women (and children).

²⁵⁸ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (eds), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Paradigm Publishers: United States, (2005): 4 – 5.

²⁵⁹ Victor E. Kappeler and Gary W. Potter, *The Mythology of Crime and Criminal Justice*, 4th Edition, USA: Waveland Press, Inc., 1993 (2005).

for fear to take hold, leading to calls for institutional control and formal sanctions²⁶⁰. As Kappeler and Potter note,

*Crime myths are usually created in non-scientific forums through the telling of sensational stories. These crime fictions often take on new meanings as they are told and retold – and at some point evolve into the truth for many people. The fiction in crime myths comes not from the fabrication of events but from the transformation and distortion of those events into social and political problems.*²⁶¹

With the aid of powerful mythmakers, such as the mass media, government and advocacy or interest groups, social problems / ills are politicised into crime myths directly affecting in turn the manner in which society perceives crime issues²⁶². Similarly, Frederick notes, the discourse on sex trafficking (the predominant focus of the human trafficking discourse) has evolved from ‘a small set of questions and speculations to a complex and increasingly sophisticated discussion. At the core of that discourse is the trafficking “myth” – a typifying narrative of the trafficking episode²⁶³. This myth, although limited in Frederick’s study to the case of the trafficking of women and girls from Nepal to India, is also applicable to other narratives based on a similar myth that pepper the human trafficking discourse²⁶⁴. This myth or typified narrative ‘woven from strands of solid data, conjecture, cultural assumptions, and organizational and political agendas²⁶⁵ can readily be superimposed onto the South African discourse²⁶⁶.

A good example of this myth or typified narrative, which replicates the pervasiveness of sex trafficking within the discourse (discussed earlier), in the South African context, is based on a case profile reported on by the IOM – regional office for Southern Africa – report, “*No Experience Necessary*”: *The Internal Trafficking of Persons in South Africa*²⁶⁷:

²⁶⁰ Ibid., 18 – 19.

²⁶¹ Ibid., 2.

²⁶² Ibid., 13.

²⁶³ John Frederick, ‘The Myth of Nepal-to-India Sex Trafficking: Its creation, its maintenance, and its influence on anti-trafficking interventions’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 127.

²⁶⁴ See John Frederick, ‘The Myth of Nepal-to-India Sex Trafficking: Its creation, its maintenance, and its influence on anti-trafficking interventions’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 127 – 147 for the myth of Gita.

²⁶⁵ Ibid., 127 – 128.

²⁶⁶ Discussed later in this section.

²⁶⁷ Laura Gauer Bermudez, “*No Experience Necessary*”: *The Internal Trafficking of Persons in South Africa*, Pretoria, South Africa: IOM Regional Office For Southern Africa, October 2008: 43 – 44.

In May 2008, IOM assisted victims of internal trafficking in Free State. The victims were four black females from Gauteng and Free State provinces between 19 and 25 years of age.

The four young women came upon an advertisement in the Daily Sun seeking women between the ages of 18 and 35 to work in a club earning up to R4000 per week. The women responded to the advertisement and were told to send their contact details and photographs. After being offered and accepting the position, the young women were either provided with a bus ticket to the destination or told to purchase and they would be reimbursed. The bar owner was to pick them up at the bus station and each of the girls was under the impression that they would be doing bar work or waitressing.

Upon arrival at the club, the young women were introduced to other women who were employed at the bar but were not told the details of their working arrangement. Shortly thereafter, the girls were told they would go by a new name and made to sign a contract, which was written in Afrikaans, a language which the girls did not speak or read fluently. After signing the contract, the girls were informed they would be working as prostitutes and if they tried to escape they would be found and would suffer.

The girls were expected to take between 5-10 clients per day, most of whom were White, Chinese, and Indian men over 40 years of age.

After a certain amount of time the girls were either paid very small amounts of money or told they would receive the money at the end of their three-month contract. They were also told that money was being subtracted from their salaries for expenses but were not informed of the nature these expenses.

The victims were eventually assisted through a patron of the club who had heard the stories of the young women and deemed it illegal that they were being held in such conditions. The patron provided a tip to the police who then raided the club.

There are a number of assumptions and myths that are shared with Frederick's 'Myth of Gita', and the dominant assumptions which inform the human trafficking discourse in general, which need to be unpacked. The dominant assumptions informing the human trafficking discourse, representing those identified and put forward by Sanghera²⁶⁸, and shared by Doezema²⁶⁹, Jahic and Finckenauer²⁷⁰, and Weitzer²⁷¹ in varying degrees, are:

1. Trafficking of women and children is an escalating problem.
2. Younger girls constitute an ever increasing proportion of victims of trafficking.
3. Prostitution is the driving force behind most incidences of trafficking.

²⁶⁸ Jyoti Sanghera, 'Unpacking the Trafficking Discourse', in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 5 – 6.

²⁶⁹ Jo Doezema, 'Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women', *Gender Issues*, Vol. 18, No. 1, (Winter 2000): 23 – 50.

²⁷⁰ Galma Jahic and James O. Finckenauer, 'Representations and Misrepresentations of Human Trafficking,' *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 24 – 40.

²⁷¹ Ronald Weitzer, 'The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade', *Politics & Society*, Vol. 35, No. 3, (2007): 447.

4. Poverty is the sole or principle cause of trafficking.
5. Trafficking is controlled and perpetrated by organised criminal groups.
6. All women are coerced into the sex industry and the notion of ‘consent’ in prostitution is irrelevant as it is based upon false consciousness / falsehood.
7. Trafficked women want to be rescued and reintegrated with their families or rehabilitated.
8. Rehabilitation into families and communities is assumed to provide adequate protection and safety for victims of trafficking.
9. Brothel-based (i.e. off-street) prostitution is the sole or major form through which the sex trade is conducted.
10. Police facilitated raids and rescue operations of brothels will significantly reduce the number of trafficking victims.
11. The absence of tight border control and surveillance is the primary reason for the facilitation of transnational trafficking.
12. Migration needs to be curbed in order to curtail trafficking – anti-migration strategies based upon awareness-raising campaigns alerting communities to the dangers of trafficking by instilling a fear of strangers and big cities is seen to be the key.
13. Strategies that equate women with children (i.e. categorising women and children together) are thought to equally beneficial to both groups in extending protection and redress after being trafficked.
14. All persons under 18 years of age (i.e. minor children) constitute a homogenous group – ‘devoid equally of sexual identity and sexual activity, bereft equally of the ability to exercise agency, and hence in need of identical protective services’²⁷².
15. Law enforcement is a neutral and unproblematic category – all that is required is to bring it up to speed on trafficking through sensitisation and training so that they can curtail the problem.

In the above mentioned case of the four young women trafficked internally into prostitution, the following assumptions are made:

1. A number of young women are being trafficked at once (in this case four) – representing a growing trend.
2. Prostitution is the driving force behind the majority of cases of trafficking – as was the case in point.

²⁷² Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (eds), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): 6.

3. The phrases ‘young women’ and ‘girls’ are used interchangeably – to denote a lack of agency and a sense of naivety on the part of the young women – and equating women with children in need of protection.
4. The young women were forced to engage in brothel-based prostitution.
5. The young women were coerced into a life of prostitution.
6. Police raids are the only way to rescue such victims and curb the problem.
7. Migration to urban centres needs to be tempered through awareness campaign pointing to the dangers of false job offers.

There are also a number of other assumptions, not shown in this case but in other narratives relayed by the IOM, that also conform to Sanghera’s list of assumptions dominating the human trafficking discourse, in South Africa. For instance, the story of ‘Jamila Dube’ follows a similar trajectory to that of Frederick’s myth of Gita. In a newspaper article, written by Karen Blackman of the IOM, which has been extracted from an IOM Publication, *Eye on Human Trafficking*²⁷³, is the tragic recounting of how a young, intelligent but poverty-stricken 16 year old virgin from Zimbabwe migrates, with her uncle ‘a respected member of the family’, to South Africa (‘the Promised Land’) for a chance of a good education. Upon arrival in Johannesburg, ‘Uncle Thomas’ took his innocent niece to a ‘notorious brothel in Hillbrow’. She was summarily sold to the brothel owner. Her new owner then proceeded to rape her ‘before explaining to her that she would have to live and work for him there as a prostitute. Overwhelmed and disorientated, she was forced to submit to her new ‘owner’. For two years ‘Jamila’ was forced to work as a prostitute, confined to the brothel and closely guarded by ‘heavily built men’, she was too scared to even try to escape into the unfamiliar and dangerous streets of Hillbrow. She was forced to comply with the desires of her clients – even engaging in unprotected sex. She was seriously beaten whenever she tried to resist. She was given drugs by the brothel owner to make her more compliant and ‘keep up with the demands of the clients’²⁷⁴. Her life had become a veritable nightmare, until one day a client took her outside the confines of the brothel and she made her escape. Upon contacting her family she discovered that her uncle had fed them lies about her – that she was unreliable and that she had run away (bringing great shame to the family). Hurt and unable to tell them the truth of her ordeal, because of the great stigma attached to prostitution, with nowhere to turn to – she returned to the brothel and her tragic fate.²⁷⁵

²⁷³ Vivian Mooki, ‘Children Smuggled into SA to Work as Slaves’, *City Press*, 9 February 2008, in IOM, *Eye on Human Trafficking*, Issue 17, 2008: 1 – 2.

²⁷⁴ Ibid.

²⁷⁵ What the narrative does not mention, but Frederick’s story does, is that the young girl contracted HIV/AIDS – making her fate even more pitiful.

While the reality of what all this young woman had to endure is tragic, the use of her story as a narrative device conveys all the elements of the quintessential victim of trafficking. It even incorporates the sad reality that many victims of trafficking for sexual exploitation are unable to return to their families and communities because of the stigma attached and return to a life of prostitution. This particular narrative has been used as a morality tale – and warns of the horrors that might face young, unsuspecting girls who migrate in the search of a better life.

Accounts of young women and girls (minors) who do not fit this pattern are seldom mentioned. Sanghera's point of the assumed homogeneity of trafficked minors comes to mind. Sanghera offers novel insight into the notion of consent of minors in contrast to that of adults in the trafficking discourse. In terms of the Trafficking Protocol and popular understanding, unlike adults minors cannot consent to being trafficked. Thus, the legal definition of trafficking of children does not require any form of coercion, deception or undue influence to meet the prerequisite conditions of being trafficked. However, as Sanghera points out, no matter how unpalatable it might be for individuals from the developed western-influenced world, 'what is deemed illegal under law may be socially and culturally acceptable in many instances'²⁷⁶. Examples abound of child prostitution from India and Thailand – where minors are engaged in sex entertainment and prostitution in order to survive and to provide for their families – a practice which albeit is socially acceptable in this part of the world is criminalized by law. 'It must be borne in mind that millions of street children and youth may have no unit such as a family, nor any responsible person or institution to depend on... Laws leave them no alternative but to resort to occupations that are illegalized and criminalized and to work sites that are unprotected and underpaid.'²⁷⁷

Like with much of the human trafficking discourse and the over-simplistic victim profiles that it has generated,

*vulnerable young people have been criminalized for exercising autonomy in the economic and sexual spheres, stripped of all powers to exercise agency and independent choices, reduced to deeper vulnerability due to lack of viable alternatives, rescued and confined in dead-end remand homes, rehabilitated into abusive situations, which they fled from in the first place, and above all, stigmatized.*²⁷⁸

²⁷⁶ Jyoti Sanghera, 'Unpacking the Trafficking Discourse', in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 20.

²⁷⁷ Ibid.

²⁷⁸ Ibid. See also, Wendy Chapkis, 'Trafficking, Migration, and the Law. Protecting Innocents, Punishing Migrants', *Gender & Society*, Vol. 17, No. 6 (2003): 923 – 937; Michèle A. Clark, 'Vulnerability, prevention and human trafficking: the need for a new paradigm' in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper,

Jahic and Finckenauer²⁷⁹ have also shown that a number of themes exist within the trafficking discourse, which have become the focus for policy responses, namely: the dramatic scale of the problem, prostitution, naïveté of victims duped into sex work (or some similar variation involving sexual exploitation), illegal migration, and more sinisterly the involvement of organised crime and the huge profits it generates. These assumptions will be revisited later in the dissertation when analysing the South African human trafficking discourse, and the actors, initiatives and programmes forming part of it, and in turn shaping it.

According to Altheide, frames essentially shape media content.²⁸⁰ Framing refers to the selection of specific aspects of an issue by the media to make them more salient and thus drawn attention to a particular cause of some phenomenon.²⁸¹ ‘Frame, theme and discourse are related... to communication formats, which in the case of mass media, refer to the selection, organization and presentation of information’.²⁸² Such formats or frames orientate public perception to a variety of issues which are cast as ‘problems’ by the media. The role of the public is not passive, according to Neuman, Just and Crigler ‘people “co-construct” what they see, read, and hear from the media with information drawn from their own lives to create a meaning from some issue’.²⁸³ Underlying all of these constructed problems is the overarching theme of fear²⁸⁴.

The power and influence of the media in shaping not only public awareness and opinion, but also the political agenda, should not be underestimated in the case of human trafficking in South Africa. As Zucker notes, ‘the less direct experience the people have with an issue... the

United Nations: New York, (2008): 59 – 78; Judith Dixon, ‘The impact of trafficking in persons’, in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 81 – 100; Global Alliance Against Traffic in Women (GAATW), *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW, 2007; Anne Gallagher and Elaine Pearson, ‘The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking’, *Human Rights Quarterly*, 32 (2010): 73 – 114.

²⁷⁹ Galma Jahic and James O. Finckenauer, ‘Representations and Misrepresentations of Human Trafficking.’ *Trends in Organized Crime*, Vol.8, No.3, Spring (2005): 25.

²⁸⁰ David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear.’ *The Sociological Quarterly*, Volume 38, Number 4 (1997): 647 – 668.

²⁸¹ James W. Dearing and Everett M. Rogers, *Communication Concepts 6: Agenda Setting*. Thousand Oaks, CA: Sage. (1996): 63-64. See also Shanto Iyengar, *Is Anyone Responsible?*, Chicago: University of Chicago Press, 1991:11.

²⁸² David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear.’ *The Sociological Quarterly*, Volume 38, Number 4 (1997): 651.

²⁸³ Russell W. Neuman, Marion R. Just and Ann N. Crigler, *Common Knowledge: News and the Construction of Political Meaning*, Chicago: University of Chicago Press, 1992 quoted in J.W. Dearing and E.M. Rogers, *Communication Concepts 6: Agenda Setting*. Thousand Oaks, CA: Sage. 1996: 5.

²⁸⁴ David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear.’ *The Sociological Quarterly*, Volume 38, Number 4 (1997): 647 – 668.

greater is the news media's influence on public opinion on that issue'²⁸⁵. And, as a host of seminal studies suggest the media's influence, and indeed its particular agenda on an issue/problem, can transcend merely setting the public agenda, but also focus individual or personal evaluation thereof²⁸⁶. To summarise in the oft-cited words of Bernard Cohen²⁸⁷:

The press may not be successful much of the time in telling people what to think, but it is stunningly successful in telling its readers what to think about... The world will look different to different people, depending... on the map that is drawn for them by writers, editors, and publishers of the papers they read.

Human trafficking as a valence issue is strongly being shaped by the media – particularly as a tool of government to legitimise its responses, and as a voice for various local advocacy groups and international organisations involved; but also as part of its own agenda which in turn feeds back into public opinion and the setting of the political agenda.

Interestingly, this particular role of the media can actually distort political reality when journalists attempt to 'redefine reality by their presentation of some news events as more salient, based on nothing more than arbitrary rules'²⁸⁸. Indeed, human trafficking makes for perversely 'newsworthy' stories, in that our voyeuristic tendencies are sated by subtly crafted glances into human depravity and suffering, which almost banally transform a multidimensional phenomenon into 'a simple problem'.

Worryingly, this sensationalist need by the media that feeds on audience fears and vulnerability, especially relevant in a country like South Africa which has one of the highest crime rates in the world, can not only distort political reality but also general understanding of the issue. This cognitive distortion might lead politicians, international organisations, donors, advocacy groups and more disturbingly academic disciplines to make counter-productive

²⁸⁵ H.G. Zucker, 'The Variable Nature of New Media Influence', in B.D. Ruben (Ed), *Communication Yearbook 2*, New Brunswick, NJ: Transaction Books, 1978: 245.

²⁸⁶ See also Robert M. Entman, 'How the Media Affect What People Think: An Information Processing Approach', *The Journal of Politics*, Volume 51, Issue 2, (1989): 347 – 370; Shanto Iyengar, *Is Anyone Responsible?*, Chicago: University of Chicago Press, 1991; Vincent F. Sacco, 'Media Constructions of Crime', *Annals of the American Academy of Political and Social Science*, Vol. 539, Reactions to Crime and Violence (May 1995): 1141 – 154; Michael B. Salwen and Frances R. Matera, 'Setting the News Agenda with an Ethnic-Relevant Topic: Public Salience of Illegal Immigration', *The Howard Journal of Communications*, 8:4, (December 1997): 329 – 341; Nayda Terkildsen and Frauke Schnell, 'How Media Frames Move Public Opinion: An Analysis of the Women's Movement', *Political Research Quarterly*, Vol.50, No.4, (Dec., 1997): 879 – 900.

²⁸⁷ B.C. Cohen, *The Press and Foreign Policy*, Princeton, NJ: Princeton, (1963): 13.

²⁸⁸ Dan Edogbo Okolo, 'Agenda Setting Role of the Mass Media in Political Reporting', in Charles Okigbo (Ed.), *Reporting Politics and Public Affairs*, Nairobi: The African Council for Communication Education, (1994): 36.

adjustments and thus compound the problem even further²⁸⁹. This would appear to be a very real concern with regard to the human trafficking discourse in general, and more specifically in South Africa. The human trafficking discourse is unfortunately one lacking in academic rigour, due to the fact that the majority of research, and thus reports and articles written on the phenomenon, have been compiled by advocacy groups and international organisations with specific interests and agendas. Moreover, in the case of South Africa international ‘facts’ on human trafficking have been unquestionably accepted, and research conducted into the scope of human trafficking has been limited (generally in the form of baseline studies by the IOM and an influential anti-child trafficking/children’s rights NGO, Molo Songololo²⁹⁰); building upon unverifiable estimates²⁹¹ as to the extent and nature of human trafficking in South Africa.

Media involvement and framing and/or agenda setting in this instance appears to be more focused on showing how to solve this particular ‘problem’ – and not whether such a problem exists. (As with the human trafficking discourse in general, it is taken for granted / as a given that such a problem exists.)

*Although framing may be capable of increasing issue salience by pairing a specific frame with issue coverage, framing’s real effects are due to the considerations that come to bear when forming an opinion and how these changes can result in a net shift in policy support.*²⁹²

Framing has an important function to play particularly when a valence issue of such complexity, such as human trafficking, can be presented and packaged in a multitude of ways, which may potentially influence opinion and thus responses to it²⁹³. Thereby, informing us of not only what to think about, but how to think about it. Thus, as Gamson and Modigliani assert, frames ‘imply a policy direction or implicit answer to what should be done about an issue’²⁹⁴.

²⁸⁹ David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear.’ *The Sociological Quarterly*, Volume 38, Number 4 (1997): 647 – 668.

²⁹⁰ Three of the primary pieces of research upon which the South African human trafficking discourse is built are derived from studies conducted by the IOM and Molo Songololo – both of whom shared a common researcher.

²⁹¹ Methodological issues and the lack of credible data as to the scope and nature of human trafficking are discussed in the following chapter.

²⁹² Nayda Terkildsen and Frauke Schnell, ‘How Media Frames Move Public Opinion: An Analysis of the Women’s Movement’, *Political Research Quarterly*, Vol.50, No.4 (Dec., 1997): 880.

²⁹³ See also William Gamson and Andre Modigliani, ‘The Changing Culture of Affirmative Action’ in R. Braungart (Ed.), *Research in Political Sociology*. Greenwich, CT: JAI Press 1987; Nayda Terkildsen and Frauke Schnell, ‘How Media Frames Move Public Opinion: An Analysis of the Women’s Movement’, *Political Research Quarterly*, Vol.50, No.4, (Dec., 1997): 879 – 900.

²⁹⁴ William Gamson and Andre Modigliani, ‘The Changing Culture of Affirmative Action’ in R. Braungart (Ed), *Research in Political Sociology*. Greenwich, CT: JAI Press (1987): 144 cited in Nayda

The *human trafficking* problem frame, or as it is often referred to in the print media – the *modern-day slavery* problem frame, has been subtly crafted to produce a sense of fear amongst the public. This has been achieved through the incorporation of a particular temporal/social relationship – Altheide’s ‘here and now’²⁹⁵ – to make this problem salient to the public (in the sense that ‘it could happen to you’). Moreover, fear is produced and packaged through the transmutation of social complexities into seemingly simplistic problems (such as conflating human trafficking with prostitution or illegal migration or organised crime) – necessitating the government to find a speedy solution.²⁹⁶ It should be noted that the way in which the human trafficking problem frame is presented lends itself readily to the officially constructed paradigm that melds the politics of risk with the politics of pity, through the medium of fear.²⁹⁷

Within the South African context, the story-line of the victim is virtually the same as elsewhere in the world, just with a few local details thrown in. Here the victim²⁹⁸ is generally a young women or child, looking for a better life or proper education in one of the big cities in South Africa (she may come from an economically depressed rural area or from one of the states bordering South Africa – most commonly, Mozambique, Zimbabwe, Lesotho or Swaziland). Such a victim is generally depicted as desperately poor, from a broken home or some sort of abusive/dysfunctional background, having a low level of education, and is looking for employment or better education opportunities. The victim migrating to urban, economically vibrant areas of South Africa, is recruited and deceived (by a friend or relative as to the purpose of the journey), transported (usually by mini-bus taxi operators who are ‘in on the deal’) and then viciously sexually exploited and dehumanised (drugged, raped and held captive in a brothel, or sold as a ‘wife’ to a miner), whose only chance of rescue is by that of law enforcement (in the form of raids), and organisations such as the IOM or Molo Songololo. Such accounts regularly ignore questions of agency, and the vulnerability of

Terkildsen and Frauke Schnell, ‘How Media Frames Move Public Opinion: An Analysis of the Women’s Movement’, *Political Research Quarterly*, Vol.50, No.4 (Dec., 1997): 879-900.

²⁹⁵ David L. Altheide, ‘The News Media, The Problem Frame, and the Production of Fear.’ *The Sociological Quarterly*, Volume 38, Number 4 (1997): 647 – 668.

²⁹⁶ *Ibid.*, 655.

²⁹⁷ Claudia Aradau’s notion of the *politics of risk* and the *politics of pity* are discussed in detail in the following chapter. Essentially, Claudia Aradau in her examination of the securitisation of human trafficking highlights how governmental interventions to combat and manage this phenomenon, have proven to be uneasy unions between distinct, and arguably incompatible, humanitarian (‘politics of pity’) and security (‘politics of risk’) discourses. See Claudia Aradau, ‘The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking’, *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 251-277.

²⁹⁸ Such victim profiles, originally compiled by international organisations such as the IOM and other advocacy groups, have become ubiquitous and have become readily accepted as fact throughout the world. The creation of victim profiles has supplemented the problem frame by melding the politics of risk with that of pity. For an example of a standardised victim profile see, http://www.europol.europa.eu/publications/Serious_Crime_Overviews/THB_FactSheet2007.pdf.

individuals who are well-educated, urbane, and employed with stable relationships – not to mention the question of adult male victims.

This demonstrated in the following excerpts from South African newspaper articles.

“At its worst, the trafficking system takes innocent girls, imprisons them in brothels to be raped repeatedly and leaves them dead by their early 20s – and yet there is far less effort to save these children than to save the Brazilian rainforest”
– Source: Pretoria News (23.08.2004)

“...victims of the crime had their passports taken away and were then terrorised, raped and beaten by several men to a point where they became totally submissive and dependent on their traffickers.” – Source: Weekend Post (06.08.2005)

The International Organisation for Migration (IOM) says the youngest victims of trafficking they have assisted was only 12 years old. The girl was one of thousands lured to SA under false pretences over the past two years. – Source: Saturday Star (20.05.2006)

For 15-year-old- Faith, the impact was devastating. Struggling to make ends meet in Bulawayo, Zimbabwe, she was approached by a man offering waitressing at a Johannesburg restaurant. But the promises were false. There was no restaurant job. Once in Johannesburg, Faith was beaten, abused, locked in a Hillbrow flat and forced into prostitution to earn profits for her traffickers. – Source: Mail and Guardian (07.06.2007)

South African women are being lured with false job offers to Macau where they are forced into prostitution... Some had been held there for the past two years and had been resold several times... Nicola told IOM the trafficking operation between South Africa and Macau was run by two South African nationals involved in the Johannesburg sex industry and two associates in organised-crime networks in Macau... Nicola says that traffickers often physically assaulted the women staying in the apartment, threatened them with arrest and even death... “I got beaten up and told that if I don’t work, they will send me home in a box.” She refused to continue, and was severely assaulted and left for dead in a street. – Source: Sunday Independent (09.05.2004)

In all but one of the excerpts victims of trafficking were all minors – the youngest only twelve years old. In all of the excerpts the girls or young women were trafficked into sexual exploitation and prostitution after being lured by their traffickers with false promises and job offers. A reoccurring theme is the brutality of the traffickers and the sexual violence meted out on the victims in order to ensure compliance. Two of the articles make reference to the idea that a trafficking experience is always (near) fatal.

In producing such emotionally-laden and sensationalised accounts of the horrors of human trafficking and suffering of its victims, the media drives home the message that such events are real. Moreover, through the media’s stressing of ‘known truths’ it creates a narrative

imbued with fear, that draws from images of risk and invoked pity that in turn feeds into the official stance – simultaneously reinforcing and determining it. By framing human trafficking as a problem, and a frightening problem at that, the media serves direct official and public understanding and opinion of the problem.

As Murray correctly suggests,

*Blanket statements about prostitution and the exploitation of women are propaganda from a political agenda which seeks to control the way people think and behave. The situations which the anti-traffickers rail against, insofar as they do exist, are a result of economic, political and gender inequalities which should be our central cause for concern. The vast range of sex industries and contexts requires an understanding of diversity and difference and a realisation that prohibition and unitary ‘moral values’ are part of the problem, not the solution.*²⁹⁹

2.7 Conflations, Conflations, Conflations

Human trafficking is a phenomenological concept which is more often than not conflated with other problematised and politicised issues to further particular political or ideological agendas. This is partly as a result of the human trafficking discourse being built upon the recycled framework or discourse of the ‘white slave trade’ and the prohibitive, abolitionist regimes that emanated from it. Counter-trafficking initiatives themselves are framed in the language of human rights. However, policies and approaches instituted by governments in this regard fail to place the human rights of the trafficked individual at the core. Moreover, this has led to an uneasy balance between the concerns of victim protection and state interest concerning border control. ‘Anti-trafficking efforts have consequently had a negative impact in three distinct areas of government policy, concerning the status of migrants, women and sex workers’³⁰⁰. Lee³⁰¹ extends this notion by positing that human trafficking is further conflated with slavery and organised crime.³⁰²

The migration-trafficking nexus is a particularly complex one, as issues of human smuggling and human trafficking overlap – and are often confused, and played upon by states to suit their own particular agendas. Moreover, as Kapur notes, the distinctions between trafficking and migration, and trafficking and sex work, are blurred ‘resulting in the formulation of legal

²⁹⁹ Alison J. Murray, ‘Debt-Bondage and Trafficking: Don’t Believe the Hype’, in Kamala Kempadoo and Jo Doezema (Eds.), *Global Sex Workers: Rights, Resistance and Redefinition*, New York: Taylor and Francis 1998: 64.

³⁰⁰ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 16.

³⁰¹ Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007.

³⁰² Discussed earlier in this chapter.

strategies that are both anti-migrant and anti-sex worker, and anti the families of both'.³⁰³ This is traceable to the language, vague definitions and lack of coherency of the UN Convention on Transnational Organized Crime and the two protocols supplementing it. The two supplementary protocols (Smuggling and Trafficking Protocols) ignore to a great extent this overlap, and have created the concept of 'smuggled criminals' and 'trafficked victims'. '[T]he Protocols are, ultimately, incapable of describing trafficking and smuggling more precisely than as mere points on a poorly defined continuum'.³⁰⁴ Those who choose the route of illicit or irregular migration are classified as criminals in so far as they consent to be being smuggled – and any exploitation that may occur during or after their journey is seen to be part and parcel of this criminal enterprise to enter another state illegally. According to this definition, one is coerced into being trafficked, and the victim is automatically rendered innocent and powerless – without agency or guile.³⁰⁵ This serves states well, in that they are able to construct levels of blame on migrants and artificially categorise as to what constitutes 'deserving' and 'undeserving' victims of human trafficking and/or human smuggling³⁰⁶.

*When announcing that 'victims of trafficking have been rescued', governments have taken advantage of the term trafficking to imply that the individuals concerned have been brought to the country concerned against their wishes and consequently have no wish to remain there... [Moreover] by labelling certain cases as 'trafficking', government officials imply that these cases do not involve a violation of ordinary labour rights and that organisation which conventionally play an important role in defending labour rights, such as trade unions, have no role to play in supporting this.*³⁰⁷

As Buckland contends, 'the opacity of bureaucratic migration procedures – procedures that are often so long and complex that would-be migrants have no choice but to use facilitators or intermediaries... in many cases expose migrants to exploitation or abuse'.³⁰⁸ However, Buckland makes an important distinction by noting that 'both trafficked and smuggled people

³⁰³ Ratna Kapur, 'Migrant women and the legal politics of anti-trafficking interventions', in Sally Cameron and Edward Newman (Eds.), *Trafficking in Humans, Social, cultural and political dimensions*, New York: United Nations University Press, (2008): 113.

³⁰⁴ Benjamin S. Buckland, 'Human Trafficking & Smuggling: Crossover and Overlap', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 149.

³⁰⁵ For an example of this, see Victoria E. Kalu, 'Issues in Human Trafficking and Migrant Smuggling in the Context of Migration', *International Legal Studies Program Law Journal*, Volume 1, Issue 1, (2008): 26 – 33.

³⁰⁶ See Maggy Lee (Ed), *Human Trafficking*, Devon: Willan Publishing, 2007.

³⁰⁷ Mike Dottridge, 'Introduction', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 16.

³⁰⁸ Benjamin S. Buckland, 'Human Trafficking & Smuggling: Crossover and Overlap', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 144.

most often choose to leave their homes, whether as economic migrants, asylum seekers, or to be reunited with their families (among many other reasons). While the image of the trafficked person, kidnapped in the dead of night, is a powerful one, it only describes a small minority of cases.³⁰⁹ Rather, migrants and/or labourers expose themselves to a ‘continuum of victimisation’ and exploitation they use illicit channels, Skeldon’s ‘continuum of facilitation’, to gain entry into third states³¹⁰.

Because much of the counter-trafficking focus has been on its worst forms, what has often been ignored has been lower level exploitation on the margins of legality. Much of this low-level exploitation involves people often regarded as smuggled, or those at the trafficking/smuggling boundary.³¹¹

Lee asserts that there exist an array of economic, cultural, social and legal factors that contribute to ‘the exploitation and abuse of migrant workers, especially irregular migrants in unprotected, informal and/or illegal labour markets’.³¹² This in turn renders it exceptionally difficult, at times, to distinguish between an individual who has been trafficked and an irregular migrant working under varying degrees of exploitative conditions and/or debt bondage.

By choosing a security frame for counter-trafficking and smuggling efforts, both state and non-state actors have since been locked into a kind of path dependency, one that has subsequently played an enormous role in dictating key decisions and priorities. This path dependency has in many ways restricted human rights and other protections to the narrowest possible group of people.³¹³

This path dependency or preoccupation with security and the sanctity of state borders, has led to an overemphasis on curbing illicit or irregular immigration, in the form of smuggling and

³⁰⁹ Benjamin S. Buckland, ‘Human Trafficking & Smuggling: Crossover and Overlap’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 143.

³¹⁰ See, Ronald Skeldon, ‘Trafficking: A Perspective from Asia’, *International Migration*, Volume 38, Issue 3, Special Issue 1, (2000): 7 – 30; Benjamin S. Buckland, ‘Human Trafficking & Smuggling: Crossover and Overlap’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 143 – 144; Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007.

³¹¹ Benjamin S. Buckland, ‘Human Trafficking & Smuggling: Crossover and Overlap’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 145

³¹² Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 7.

³¹³ Benjamin S. Buckland, ‘Human Trafficking & Smuggling: Crossover and Overlap’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, National Defence Academy and Austrian Ministry of Defence and Sports, September (2009): 154.

ultimately human trafficking, by actively supporting initiatives to prevent trafficking in originating states (i.e. to prevent irregular migration or human trafficking into the borders of their own states). The effect of such initiatives is that ‘patterns of exploitation, including forced labour, in these countries receive relatively little attention, while the risk of being trafficked is used primarily to deter people in poorer countries from migrating’³¹⁴ – albeit often with little success. This has effectively led to the ‘criminalisation of migrants’³¹⁵. As Grewcock contends, ‘the measures to police trafficking allow for a cynical manipulation of human rights rhetoric that does little to break the migrant from the cycle of illegality constructed by border controls and the utilisation of illicit means of entry... [by] conceptualising and constructing traffickers as a predominant source of illegal migration deflects attention from the fundamental roles of the state in excluding migrants and forcing them to utilise illicit networks (Kelly 2002; Lee 2005; Marfleet 2006).’³¹⁶ As Sanghera concludes, equating human trafficking with migration ‘has led to simplistic and unrealistic solutions within the mainstream anti-trafficking paradigm. As a result, in order to prevent trafficking there is a move to stop the migration of those who are considered vulnerable to trafficking’³¹⁷ – namely women and girls.

This attempt to curb migration, particularly of women and children, feeds into another complex issue stemming from state counter-trafficking initiatives which is the categorisation or the stereotyping of women as victims, and the overarching role that gender plays in terms of migration and/or trafficking. Counter-trafficking initiatives tend to ‘reproduce assumptions about women as passive, incapable of decision-making and in need of protection... While claiming to protect the rights of women, they undermine the status and equality of women’.³¹⁸

³¹⁴ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 17.

³¹⁵ For example see, Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd, 2007; Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005; Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007; Pardis Mahdavi, *Gridlock: Labor, migration, and human trafficking in Dubai*, Stanford, California: Stanford University Press, 2011; Jude McCulloch and Sharon Pickering (Eds.), *Borders and Crime: Pre-Crime, Mobility and Serious Harm in an Age of Globalization*, Chippenham and Eastbourne: Palgrave Macmillan, 2012; Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, 2010.

³¹⁶ Michael Grewcock, ‘Shooting the passenger: Australia’s war on illicit migrants’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 184.

³¹⁷ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 10 – 11.

³¹⁸ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 17.

This creates a persuasive discourse which reflects the previous ‘white slave trade’ discourse which amalgamated and simultaneously sought to deny women’s sexuality, agency and ability to migrate and decide their own fates, with the traditional role of the family and in turn the symbolic role played by the state in this regard. Similarly in the current epoch and human trafficking discourse, once more women are portrayed as being without agency, and only perceived in terms of their apparent victim status – in need of protection by the state. ‘[T]he legitimacy of migrant women is reshaped and reconfigured in the process of crossing borders – they are rendered vulnerable, stigmatized and even outlawed by efforts to stop them from crossing borders through the operation of anti-trafficking and anti-migration initiatives’.³¹⁹ There appears to be a warped resurgence of Victorian family values in the 21st century which attempts to convey a sense of uniformity amongst the victims of trafficking – women and children (all rendered equal and equally vulnerable) who need to be rescued and for the most part repatriated with their families.

*The dominant narrative is also inscribed within a dominant understanding of family as geographically located in one place, and the assumption that the primary caregivers, women, would not voluntarily seek to venture far from the family unit. This narrative is steeped in a glowing view of history by those who seek to restore the family to the status it enjoyed in some long-lost golden age, and who therefore would support initiatives to keep women at home.*³²⁰

Conflating human trafficking with migration, and especially the migration of women and girls / children, has had the unfortunate consequence of placing gender and patriarchal notions at the forefront of the human trafficking discourse. This has resulted in the delegitimation of women’s rights and agency in many parts of the developing world (i.e. in states known for high flows of migrants), and revived the notion that women and children (especially girl children) need to be protected / rescued by men and arguably the state in a patriarchal sense. By attempting to limit the migration of women, in particular, state responses to human trafficking have had a counter-intuitive effect. Rather than decreasing the potential for women and children to fall victim to ominous human traffickers it has actually increased their vulnerability by forcing them to clandestinely seek aid in migrating by using smuggling networks – leaving them open to ‘economic and physical abuse, exploitation and harm’³²¹. Such anti-trafficking policies and practices are exceptionally short-sighted and invariably fail to show positive results.

³¹⁹ Ratna Kapur, ‘Migrant women and the legal politics of anti-trafficking interventions’, in Sally Cameron and Edward Newman (Eds.), *Trafficking in Humans, Social, cultural and political dimensions*, New York: United Nations University Press, (2008): 111.

³²⁰ *Ibid.*, 115.

³²¹ *Ibid.*, 116.

*Women's movement is also conflated with sex work or prostitution by anti-trafficking players, which produces at least two contradictory responses. By collapsing the process with the purpose, the abuse and violence that a woman may experience in the course of transport is equated with the purpose of her journey. And so many anti-trafficking measures are invariably anti-prostitution/sex work measures. Prostitution per se as the exclusive purpose of trafficking is an untenable definition, as not all victims are prostitutes nor have all prostitutes been trafficked. At the same time if women are deemed to have participated in the process of trafficking, they are immediately recast as immoral or criminal, and undeserving of legal protection. The tension between the fact that women from the developing world who cross borders are predominantly victims of traffickers in need of protection and that they are also sexually transgressive is never resolved through trafficking legislation or international initiatives.*³²²

This leads on to the third predominant conflation – that of sex work / prostitution and trafficking. Once more the role of women and their gender plays a predominant role in the discourse. This stems from the manner in which states and various anti-trafficking advocates choose to define and understand ‘trafficking in persons’ or ‘human trafficking’. As Dottridge notes, numerous states have chosen to place greater emphasis on the ‘exploitation of the prostitution of others’ over and above all other forms of exploitation, resulting in a general lack of attention or initiatives (and resources) to counter these forms of exploitation³²³. This has resulted in states and advocacy organisations manipulating the provisions of the Trafficking Protocol to forward their own particular agendas, and use them to justify a concerted effort in suppressing sex work in general, ‘rather than at the specific situations in which people are forced into prostitution’³²⁴. Nowhere is this more apparent than the United States led anti-trafficking (abolitionist) crusade which was launched in 2001.³²⁵ As Ditmore correctly notes, such confluations are the result of a continuing tendency which simplistically envisages human trafficking as ‘white slavery’ – ignoring the multidimensionality and sheer complexity of the phenomenon in favour of simplified, and thus easy, solutions. ‘The anti-prostitution stance is an example of oversimplified and inefficient analysis that claims a moral high ground while obscuring the plight of trafficked men and women in other industries... When this attitude manifests itself in policy decisions affecting international aid, it comes at a

³²² Ratna Kapur, ‘Migrant women and the legal politics of anti-trafficking interventions’, in Sally Cameron and Edward Newman (Eds.), *Trafficking in Humans, Social, cultural and political dimensions*, New York: United Nations University Press, (2008): 116.

³²³ Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 17.

³²⁴ Ibid.

³²⁵ See Mike Dottridge, ‘Introduction’, *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights Around the World*, GAATW (2007): 1 – 27; Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475 – discussed earlier in this chapter.

very human cost.³²⁶ It is the human cost of such initiatives and policies which are blatantly based on particular political, moralistic, or ideological agendas and misconceptions that should be more feared than the perceived danger that the phenomenon of human trafficking itself poses.

2.8 New Perceptions

As mentioned earlier in this chapter, there is a growing body of literature which is critical of much of the research conducted on human trafficking, this stems particularly from the field of migration studies. Researchers are slowly starting to shift the oversimplified perception of the dimensions and causes of human trafficking that have abounded since 2000. They have been successful in showing the complexity and multidimensionality of the phenomenon itself which is embedded in an array of social relations and imaginings. More recent research has begun to delve into the historical, social, cultural and political dimensions of human trafficking, and have attempted to use different models and analyses to explain aspects of this phenomenon – ranging from migration theory³²⁷ to gendered analyses. It is within this sector of the human trafficking paradigm, that new perceptions and voices are gaining sway and credence in the discourse as a whole, contributing to a more nuanced understanding of the phenomenon. As noted, studies conducted from a migration perspective tend to be the most dominant, deepening our understanding of how issues like globalisation, the feminisation of poverty, migration and the political restrictions hindering migration, labour exploitation, conflict, violence and discrimination – the factors effecting vulnerability of individuals – intersect with human trafficking and affect the discourse.

The literature arising out of the migration theory perspective has attracted criticism. Goździak and Bump³²⁸ note that most research on labour trafficking, in particular, which falls within the migration-trafficking nexus, is disconnected from theory. They assert that no evidence exists in the literature of any concrete attempt to develop a theoretical framework that will enable researchers to comprehensively analyse the phenomenon. Moreover, it is suggested that

³²⁶ Melissa Ditmore, 'Trafficking in Lives', in Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 123.

³²⁷ Migration theory utilises an economic perspective to analyse trends in human migration in terms of supply and demand (push – pull factors).

³²⁸ Elżbieta M. Goździak and Micah N. Bump, 'Data and Research on Human Trafficking: Bibliography of Research-Based Literature', *Institute for the Study of International Migration*, October 2008.

researchers writing from this perspective fail to analyse the issue of transnational trafficking for labour exploitation from within existing international migration theories³²⁹.

Since the inception of the contemporary human trafficking framework, much of the literature, and more perturbably most legal frameworks and policies, have tended to overlook the broader socio-economic issues, and even societal attitudes, that feed the problem³³⁰. There has been an apparent reluctance to view human trafficking from a more comprehensive perspective which incorporates the primary socio-economic problems facing societies at large – such as, migration, (intergenerational) poverty, discrimination and gender-based violence. This may be ascribed to the fact that human trafficking has tended to be viewed primarily as a law enforcement issue by states. ‘Treating trafficking as a criminal justice issue is far less resource-intensive than developing long-term strategies to address the labor migration aspects of the problem’.³³¹ As Anderson and O’Connell Davidson note, the sheer immensity of the political problems surrounding the very question of human trafficking acts as a compounding factor, as ‘there is no international consensus as to how, if at all, the various areas of social and economic life within which trafficking and related abuses occur should be regulated by the state, or whether market relations should apply in these areas’.³³² This is a valid point, as it should be remembered that human trafficking does not occur in a vacuum – there is a host of variables where human lives, frailties, abuse, exploitation and opportunism intersect that all are specific components of the complex phenomenon that we term human trafficking. Moreover, trafficked individuals are ‘often exploited in contexts that are socially imagined and involve non-market relations, or that are viewed as occupying some twilight zone between market and non-market relations’³³³. Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women, maintains the gender disparity in relation to female survival migrants is reinforced / maintained through the collusion of market, state, community and family factors³³⁴.

³²⁹ Elżbieta M. Goździak and Micah N. Bump, ‘Data and Research on Human Trafficking: Bibliography of Research-Based Literature’, *Institute for the Study of International Migration*, October 2008: 44.

³³⁰ The demand and supply side of human trafficking as noted by Anderson and O’Connell Davidson (2003) and Truong (2006).

³³¹ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, (2006): 155.

³³² Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003: 54.

³³³ *Ibid.* See also, Helma Lutz, ‘Life in the twilight zone: migration, transnationality and gender in the private household’, *Journal of Contemporary European Studies*, Vol. 12, No. 1, (April 2004): 47 – 55.

³³⁴ Cited in Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1, (Winter 2006): 142.

Researchers from this perspective call for more focus to be given to the conditions which caused trafficked individuals to migrate – and to establish what the circumstances were that rendered them vulnerable to such exploitation³³⁵. Gallagher asserts that human ‘trafficking lies at one end of the emigration continuum’³³⁶, particularly where migration is undertaken for survival. Human trafficking from this perspective is seen as a violation of human rights, and general human rights abuses and the contexts within which they occur need to be addressed. Moreover, it is thought that contributory causes of human trafficking, which exacerbate vulnerability, may be traced back to the marginalisation of entire groups of people, a general lack of human security and the inability of some states to provide political goods, civil conflict, political instability, famine / food insecurity, economic stagnation and the HIV/AIDS pandemic³³⁷. As such, it is referred to as ‘the underside of globalisation’³³⁸.

In the South African context, the HSRC study concluded that a major contributor to vulnerability in the region is poverty, and serves as *one* of the push factors that cause individuals to migrate or to seek better opportunities and become entangled in the web that is human trafficking. Indeed, poverty and aspirations for a better life tend to be the predominant ‘push factors’ discussed in the literature which exacerbate vulnerability and increase individual risk for being trafficked³³⁹. The HSRC report³⁴⁰ neatly summarises the push-pull factors (laws of supply and demand borrowed from migration theory) that are commonly believed to facilitate human trafficking in Southern Africa:

- *Push factors* – poverty and deprivation, persistent unemployment, gender discrimination, lack of information and education, harmful socio-cultural practices³⁴¹, and lack of legislative and policy protection.
- *Pull factors* – economic inequality³⁴², conflicts³⁴³, the adoption trade, and the use of organs or body parts for rituals.

³³⁵ See Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, Vol. 13, Issue 1, (Winter 2006): 137 – 163.

³³⁶ Anne Gallagher, *Consideration of the Issue of Trafficking: Background Paper*, 2002: <http://www.nhri.net/pdf/ACJ%20Trafficking%20Background%20Paper.pdf>.

³³⁷ See UNDOC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, 2008.

³³⁸ International Labour Organization cited in Kathleen Fitzgibbon, ‘Modern Day Slavery? The Scope of Trafficking in Persons in Africa’, *Africa Security Review*, Vol. 12, No. 1, (2003): 82.

³³⁹ This reflects what is claimed in the international literature.

³⁴⁰ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 5.

³⁴¹ The HSRC report suggests that family patronage in extended families tends to increase the vulnerability of children to abuse and exploitation – citing that often children from these contexts are recruited and exploited by relatives (usually as domestic servants, or as sex workers). Also, the practice of forced marriages in the region, and even virginity testing are cited as socio-cultural practices that may exacerbate the vulnerability of young girls. See HSRC report (2010): viii.

³⁴² Economic inequality is thought to create the impression of major cities, regions or countries as attractive destinations for those living in impoverished regions.

³⁴³ Conflicts apparently generate a demand for domestic and sexual services.

A host of researchers, such as Anderson and O'Connell Davidson³⁴⁴, Gallagher³⁴⁵, Outshoorn³⁴⁶, Pyle³⁴⁷, Stange³⁴⁸ and Truong³⁴⁹, have thus come to define human trafficking as a subset of [illicit] immigration, which is in itself a subset of the migration of millions of impoverished people, particularly women, seeking to survive in variously coercive and exploitative conditions. Chuang maintains that economic globalisation has had a multiplier effect on these drivers which has in turn created and driven a spate of 'survival migrants' – irregular migrants – seeking international opportunities (or even opportunities in the more affluent city centres) as a means of survival, as employment opportunities in their hometowns or countries become increasingly untenable³⁵⁰. Fitzgibbon notes that populations vulnerable to trafficking are growing in Africa, and that victims may be categorised as coming from particularly vulnerable sub-populations, such as economic migrants, political asylum seekers, and internally displaced persons³⁵¹. Chuang postulates that human trafficking should be seen as an opportunistic response to the tension between the economic necessity to migrate and the politically motivated restrictions on migration that render those more vulnerable and open to exploitation.³⁵²

Most notably, Anderson and O'Connell Davidson and Truong have explored the important role that gender plays in fomenting the vulnerability of women and girls within the human trafficking discourse, by referring to the so-called feminisation of poverty and varied entrenched traditional and cultural practices that continue to relegate women to a subservient status – particularly in Sub-Saharan Africa. Such discrimination results in women being generally less educated and/or skilled and thus limited to being active only in the informal economy. This in turn limits the opportunities for legal migration, thereby exacerbating

³⁴⁴ Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003..

³⁴⁵ Anne Gallagher, *Consideration of the Issue of Trafficking: Background Paper*, 2002: <http://www.nhri.net/pdf/ACJ%20Trafficking%20Background%20Paper.pdf>

³⁴⁶ Joyce Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women', *Social Politics: International Studies in Gender, State and Society*, Spring 2005:141-155.

³⁴⁷ Jean Pyle, 'Sex, Maids, and Export Processing: Gendered Global Production Networks', *International Journal of Politics, Culture, and Society*, Vol. 15, No. 1, (2001): 55 – 76.

³⁴⁸ Margit Stange, *Human Trafficking: The newly defined global phenomenon*, Paper presented at the annual meeting of the American Studies Association, 12 October 2006.

³⁴⁹ Thanh-Dam Truong, *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, 2006.

³⁵⁰ Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy', *Indiana Journal of Global Legal Studies*, 2006: 138.

³⁵¹ Kathleen Fitzgibbon, 'Modern Day Slavery? The Scope of Trafficking in Persons in Africa', *Africa Security Review* 12(1), 2003: 86.

³⁵² Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy', *Indiana Journal of Global Legal Studies* 2006: 140.

vulnerability³⁵³. Such authors are increasingly cognisant of the historic and entrenched role that migration has played in the region, and have noted the way this has changed in the recent past to reflect specific characteristics of crises particularly in Southern Africa. As Truong correctly notes, '[o]vergeneralization can hide important nuances in continuity and change' and it is important to examine the linkages between poverty and migration, and the point at which this intersection results in human smuggling and/or human trafficking³⁵⁴. Moreover, it is from this perspective that calls are made for researchers and governments to be more sensitive and aware of the peculiarities of human trafficking within the African continent, as they do not necessarily fit the international definition, and as such trafficking may be facilitated by family members and related networks³⁵⁵.

Anderson and O'Connell Davidson caution that although more interest is being taken by researchers and policy makers into the demand side of human trafficking, the findings are unlikely to provide a clear-cut or politically neutral basis for policy recommendations on trafficking.³⁵⁶ Laczko³⁵⁷, in turn, is critical of hastily adopted counter-trafficking policies and legislation, particularly those relating to the demand side of trafficking, which have by and large been blindly 'taken on faith' that they are and will be effective, with little or no basis in objective evaluations of their outcomes. Anderson and O'Connell Davidson conclude,

*In the current global economic and political climate, prioritising the control of illegal immigration or the suppression of prostitution is not necessarily consistent with the goal of protecting migrants from abuse and exploitation... and may indeed cause or encourage human rights violations.*³⁵⁸

Such authors call for more input from the very people these counter-trafficking policies and laws are supposed to protect – namely, the trafficked individuals (and also migrants circulating in exploitative networks). The literature notes the lack of debate within the discourse at addressing the 'root causes' of human trafficking, or the discussions of regulating

³⁵³ Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003; Thanh-Dam Truong, *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, 2006.

³⁵⁴ Thanh-Dam Truong, *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, (2006): 21, 33.

³⁵⁵ *Ibid.*, 74; Truong warns that a criminalisation approach may have the unintended effect of penalising entire communities as a result.

³⁵⁶ Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, (2003): 55.

³⁵⁷ Frank Laczko, 'Data and Research on Human Trafficking', *International Migration* 43(1/2) 2005:9

³⁵⁸ Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, (2003): 55.

labour sectors where migrants and trafficked persons are exploited³⁵⁹. Anderson and O’Connell Davidson³⁶⁰, Chuang³⁶¹, and Limanowska³⁶² are critical of the apparent myopia exhibited by researchers and policy-makers in this regard, and advocate that concerted efforts should be made to focus on educational and preventative measures which target ‘the social construction of demand’³⁶³ (i.e. the social norms permitting exploitation of vulnerable sub-populations).

3.0 Situating this Research

Research gaps abound in the human trafficking literature. Misconceptions and misrepresentations, often influenced by politics or moral ideology, continue to eschew research into, and understanding of, this shadowy phenomenon. This has resulted in a fractured discourse, which is often at odds with itself depending on which side of the ‘ideological’ divide one situates oneself, and is driven and informed primarily by methodologically flawed and often unscientific reports by advocacy organisations. Salacious accounts of human misery have found their way into the popular imagination, creating particular narratives to which many subscribe, due to the lack of rigorous, methodologically sound, empirical research. Counter-trafficking strategies, policies and legislation have been for the most part based on such ‘studies’. Even the more analytical / academic research conducted on human trafficking has fallen into the trap of basing assumptions on such previously flawed or ideologically biased studies. As Kelly has ironically observed, ‘[I]ack of research-based knowledge may inadvertently deepen, rather than loosen the factors that make trafficking both so profitable and difficult to address’³⁶⁴.

³⁵⁹ This may be a result of the traditional fallacious view held by many that economic, social and cultural rights are merely programmatic and aspirational. (See Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, 2006:162)

³⁶⁰ Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study*, Save the Children Sweden, 2003.

³⁶¹ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, (2006): 137 – 163.

³⁶² Barbara Limanowska, *Trafficking in Human Beings in South Eastern Europe: 2004 - Focus on Prevention in: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova, Romania, Serbia and Montenegro, and the UN Administered Province of Kosovo*, UNDP, March 2005.

³⁶³ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’, *Indiana Journal of Global Legal Studies*, (2006): 159.

³⁶⁴ Liz Kelly, ‘Journeys of Jeopardy: A Review of Research on Trafficking in Women and Children in Europe’, *International Organization for Migration*, Migration Series, No. 11, (2002): 60.

Research on human trafficking should fulfil a number of roles³⁶⁵, one of which this research attempts to accomplish. The study investigates and explicates the way the discourse has been constructed and its impact on counter-trafficking responses and policy. This is realised through a meticulous exploration of the origins of the modern human trafficking discourse, and its predecessors surrounding slavery and the ‘white slave trade’. Careful attention is given to various discursive narratives which define the human trafficking discourse, and the debates and mythologies surrounding human trafficking. It also addresses the role played by a variety of actors, and how such actors have affected and informed our understanding of human trafficking as a phenomenon. By examining the various actors shaping the international discourse, and local actors within the South African discourse, this research interrogates the ideologies and political agendas of these actors. This study delves into how our understanding of human trafficking as a phenomenon, informed by various actors, has affected the way key ‘stakeholders’ have legitimised certain disputations about human trafficking and not others, both internationally and in South Africa, as well as the ramifications of this.

This research offers an independent and critical assessment of current counter-trafficking strategies / initiatives, policy and practice, particularly in the South African context. This is achieved by analysing the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000³⁶⁶ (Trafficking Protocol), a review of the role played by the United States (as self-proclaimed world-leader in the ‘war against human trafficking’), the impact of anti-trafficking discourses and disparate approaches, and an overview of the domestic legal and policy framework tackling human trafficking in South Africa. Key focus is placed on the proposed *The Prevention and Combating of Trafficking in Persons Act*, and contemporary counter-trafficking governance (processes, structures and initiatives) in South Africa, such as the Tsireledzani programme and the accompanying national intersectoral task team, the KZN Human Trafficking, Prostitution, Pornography and Brothels Task Team which is used as a case study, and other South African counter-trafficking networks.

Research conducted on human trafficking has surprisingly neglected to connect the political underpinnings of the discourse, how powerful states, international organisations, substate actors and advocacy groups, all with specific interests and agendas, have shaped international and more specifically local narratives, counter-trafficking governance and strategies, and how

³⁶⁵ Elżbieta M. Goździak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service: Georgetown University, October 2008.

³⁶⁶ Supplementing the United Nations Convention Against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

these are all intimately linked and intertwined. A few studies have alluded to the politics of human trafficking³⁶⁷, however, mainly in relation to the international debate and the feminist divide that informed and crafted the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and has dominated the discourse in general. More recent and diverse research along this vein includes Gulati's examination of U.S. media coverage of international human trafficking³⁶⁸. Gulati has highlighted the manner in which only certain 'voices', those that support the official stance of the state, are legitimised in the U.S. media – whilst dissenting views are scorned and under-represented. The pioneering work of Weitzer in his account, *The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade*³⁶⁹, has offered insight into the role played by various actors in construction of sex trafficking as a moral crusade in the U.S, and offered support for the famous adage that 'politics makes for strange bedfellows'. However, no single study has analysed how the actors and narratives that have shaped and dominated the international discourse, and even how those of politically influential states and organisations, have come to shape and direct local actors and narratives (which feeds back into the international dominant discourse), and thus, research and counter-trafficking strategies. This study is unique in this regard as it examines the influence of this on counter-trafficking strategies and the human trafficking discourse in the South African context. Understanding the politics of human trafficking is as important as attempting to understand the phenomenon of human trafficking itself. In order for researchers to move away from the inadequate research of the past, and develop new benchmarks for research into human trafficking in the future, we must be aware of where our knowledge and understanding of human trafficking comes from and how it is (and has been) used.

In the next chapter, I turn to a discussion of the themes of my study explicated through complexity theory which forms the theoretical framework. In it I discuss the various themes of the research, and offer an explanation of complexity theory and its application to this study. I thereafter reflect upon the methodology and methods used in this research.

³⁶⁷ See Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd 2007; Joyce Outshoorn, 'The Political Debates on Prostitution and Trafficking of Women', *Social Politics: International Studies in Gender, State and Society*, Vol.12, No. 1, (Spring 2005):141 – 155; Kamala Kempadoo, Jyoti Sanghera and Bandana Pattanaik (Eds), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Publishers, 2005; Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007; Robyn Pharoah, 'Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa', *ISS Monograph Series*, No 123, 2006.

³⁶⁸ Girish Gulati, *U.S. Media Coverage of International Human Trafficking*, 2008 Annual Meeting of Midwest Political Science Association, Chicago, IL, 3 April 2008.

³⁶⁹ Discussed earlier in this chapter.

Chapter 2: Theoretical Framework and Reflection on Methodology

*Knowledge... is not a series of self-consistent theories that converges toward an ideal view; it is rather an ever increasing ocean of mutually incompatible (and perhaps even incommensurable) alternatives, each single theory, each fairy tale, each myth that is part of the collection forcing the others into greater articulation and all of them contributing, via this process of competition, to the development of our consciousness.*³⁷⁰

1.0 Introduction

The post-Cold War world is one shrouded in uncertainty and apprehension. The twisted-kind of stability based on the threat of mutual nuclear annihilation that permeated international politics suddenly evaporated. What was left in its place was a cornucopia of menaces (real and imagined) from almost every conceivable part of political and social life as borders and markets were opened following the collapse of the Soviet Union. Moreover, the advent of the 21st century, 9/11 and the subsequent ‘war on terror’ served to cement these fears. Indeed, the media constantly harangues us with ‘global dangers’ of terrorism, human-induced climate change, and the spreading tentacles of organised crime, the war on drugs, illegal migration, and more recently the spectre of human trafficking – threatening not only the individual in society, but the state and indeed the entire international system as we know it. Rosenau classifies the advent of the 21st century as an ‘emergent epoch of multiple contradictions’ which he calls ‘fragmegration’³⁷¹. Fragmegration is the compression of the two seemingly contradictory phenomena – the simultaneous processes of fragmentation and integration observable in a globalised world. As Rosenau notes, unexpected events have become commonplace, anomalies normal occurrences, minor incidents have the capacity to turn into major outcomes and events, ‘that what was once transitional may now become enduring, and that the complexities of modern life are so deeply rooted as to infuse ordinariness into the surprising development anxieties that attach to it’.³⁷²

Traditional linear (ordered) attempts at understanding and predicting the world and events that occur, more often than not, fail to comprehend that ‘diversity – not order – is normal’³⁷³

³⁷⁰ Paul Feyerabend, *Against Method: Outline of an anarchistic theory of knowledge*, London: NLB, (1975): 30.

³⁷¹ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, 1997.

³⁷² *Ibid.*, 32.

³⁷³ Robert Geyer, ‘Globalisation, Europeanisation, Complexity’, *Governance*, 16:4, (2003): 572 quoted in Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 436.

and that ‘surviving uncertainty is a normal part of being alive and being human’³⁷⁴. Indeed, as Cioffi-Revilla notes it is a substantive feature of all political life³⁷⁵. ‘At the center of the emergent world view lies an understanding that the order which sustains families, communities, countries, and the world through time rests on contradictions, ambiguities, and uncertainties... [In contrast to earlier epochs], the present epoch appears to derive its order from contrary trends and episodic patterns’.³⁷⁶ Indeed, with uncertainty and unpredictability having become the norm of 21st century life, there is a need to view phenomenological events and a variety of manifold social interactions and interrelationships from a new perspective or world view which is cognisant of the ambiguous and amorphous nature of the modern world. Complexity theory offers us this. Complexity theory asserts ‘the ubiquity of the dynamics of change, self-organization and emergence and contends that traditional reductionist methodologies are ill-suited to account for the panoply of diverse behaviours underwriting any phenomenon’.³⁷⁷

Human trafficking is a shadowy, and still poorly understood, phenomenon. It is a phenomenon that is both ambiguous and amorphous, and which represents the uncertainty and unpredictability of the modern world. Attempts at theorising human trafficking, or even finding appropriate conceptual tools and frameworks with which to study it, have proved difficult. Due to its elusive nature, there is much conjecture and dissent as to what, or even how the phenomenon, should be studied. What is apparent from previous studies into this phenomenon is that traditional, reductionist methodologies and hylomorphic theories have limited the ability of researchers and policy-makers to ‘address randomness and has convinced a number of its representatives of the utility of ignoring the complexity of interactions’³⁷⁸. This study is primarily concerned with the actors involved in the construction

³⁷⁴ Barbara Heinzen, ‘Surviving uncertainty’, *Development*, 47:4, (2004): 4 quoted in Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 435.

³⁷⁵ Claudio Cioffi-Revilla, *Politics and uncertainty*, Cambridge UK: Cambridge University Press, (1998): 22. See also, Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 435.

³⁷⁶ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 33, available at www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

³⁷⁷ Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 437. See also Steven M. Manson, ‘Simplifying complexity: a review of complexity theory’, *Geoforum*, 32, (2001): 405 – 414.

³⁷⁸ Diana Richards (Ed.), *Political Complexity*, Ann Arbor: University of Michigan Press, (2000): 3 cited in Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations

of the human trafficking discourse and counter-trafficking initiatives, the diverse ideologies that drive them and their competing political agendas.

These themes were used to map events, actions and perceptions. The use of complexity theory, complex systems analysis³⁷⁹ and discourse analysis allowed me to deconstruct the nature of the discourse itself, and offer insight as to how actors interact and shape, and ultimately impact on, the various complex adaptive systems that form part of the global phenomenon that is human trafficking. This in turn facilitated the identification of the core set of claims regarding human trafficking in South Africa, and revealed the tensions between formal responses and the approaches followed by counter-trafficking actors in practice. This allowed me to interrogate how these themes play out in the South African context by examining the KZN HPPB Task Team and similar state-initiated counter-trafficking initiatives, as well as civil society based organisations and networks involved in counter-trafficking in South Africa.

This chapter is divided into two parts. The first section defines the particular theoretical framework that has been chosen for this dissertation, namely that of complexity theory. It demonstrates how complexity theory will be used and explicates the appropriateness of complexity theory to underpin an interrogation into the various themes that are interwoven throughout this study. Moreover, it discusses the inherent limitations of the use of complexity theory in this study. The second section offers a reflection on the methodology and methods used to conduct this study.

2.0 Theoretical Framework

Complexity theory is an integrative form of scientific analysis, which has emerged over the past two decades from an array of developments in the sciences, mathematics and economics, and the revival of neo-vitalism in social thought, that is 'based on the dynamics of non-equilibria, with its emphasis on multiple futures, bifurcation and choice, historical dependence, and... intrinsic and inherent uncertainty'³⁸⁰. Complexity theory marks a shift away from reductionist analyses that are the foundation of scientific inquiry towards analysis that involves the study of what Urry terms *complex adaptive matter* that demonstrates

theory: notes on the application of complexity theory to the study of international life', *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 446.

³⁷⁹ Discussed below.

³⁸⁰ Immanuel Wallerstein (Ed.), *Open the Social Sciences. Report of the Gulbenkian Commission on the Restructuring of the Social Sciences*, Stanford, California: Stanford University Press, (1996): 61 – 63 quoted in John Urry, 'The Complexities of the Global', *Theory, Culture & Society*, Vol. 22(5), (2005): 236 – 237.

‘ordering but which remains on “the edge of chaos”.’³⁸¹ Although the theory of complexity itself is still emerging, complexity science has already made its mark on the scientific and academic communities by challenging ingrained Newtonian worldviews, and illustrating its potential application to a vast range of problems facing us in the 21st century. As Geyer and Rihani note, complexity science offers a complete break with the ‘Newtonian view of an orderly, clockwork universe driven by observable and immutable laws’³⁸² that permeates both the sciences and the social realm. This so-called *paradigm of order* is founded on four cardinal rules: *order, reductionism, predictability, determinism*³⁸³. Following a traditional positivist / reductionist approach implies that actors and events (social phenomena) are for the most part orderly and therefore controllable and predictable. Reductionist methods are utilised to offer explanations and models of social phenomena, based on a continued belief / faith in the notion of causal relationships (i.e. cause-and-effect). From a complexity perspective, such methods prove to be wholly inadequate when faced with situations or phenomena which are not amenable or reducible to such linear, deterministic methods or outcomes. Indeed, complexity theory is premised on the ‘aphorism that “the whole is greater than the sum of its parts”’³⁸⁴.

The first three themes which this study addresses follow the above mentioned assertion that ‘the whole is greater than the sum of its parts’, namely the human trafficking discourse itself. The first theme of this dissertation delves into the politics of human trafficking with particular reference to South Africa. The second theme focuses on the origin and development of human trafficking as a discourse. It deconstructs the discourse by delving into its origins, legal framework, and identifying the key role-players within the discourse – internationally and within South Africa. By deconstructing the discourse the third theme emerges, that of both international and domestic legal and policy responses to human trafficking and the particular agendas and influence that state and non-state actors have on international and domestic responses. Understanding and explicating the role played by individual actors and organisations, whether they are states, intergovernmental or non-governmental organisations, is crucial to this study. Complexity theory facilitates this, by allowing for the ‘study of the phenomena which emerge from a collection of interacting objects’³⁸⁵. In this instance, it is our

³⁸¹ John Urry, ‘The Complexity Turn’, *Theory, Culture & Society*, Vol. 22(5), (2005): 1

³⁸² Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 5 – 6.

³⁸³ *Ibid.*, 13.

³⁸⁴ Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 437.

³⁸⁵ Neil Johnson, *Simply Complexity: a clear guide to complexity theory*, Oxford: Oneworld Publications, (2007): 3 – 4.

understanding of human trafficking as a phenomenon, and the various counter-trafficking initiatives and bodies that have emerged from this that are of interest.

Complex systems analysis investigates social phenomena and the systems within which they occur, as well as the systems themselves which have ‘the ability to adapt and co-evolve as they organize through time’³⁸⁶. Moreover, complexity investigates emergent, dynamic and self-organising systems whose interactions profoundly influence the probabilities of future events.³⁸⁷ Complex systems are ‘irreducible to elementary laws or simple processes’³⁸⁸. Complexity theory in turn seeks to understand and describe the behaviour of complex adaptive systems, and provides a useful conceptual tool to describe the evolving nature of legislation, policy and interventions and the reimagining of space for the participation of a diverse range of actors. Indeed, as indicated above, the evolving nature of legislation, policy and interventions constitute the third theme of this dissertation. The use of complexity theory also facilitates the assessment of current counter-trafficking strategies and initiatives, policy and practice, particularly in the South African context, which are the fourth and fifth themes of this study in order to determine how human trafficking is being addressed in South Africa. In terms of the fourth theme, it allowed me to determine the efficacy of counter-trafficking governance structures in South Africa by examining the KwaZulu-Natal intersectoral task team since its inception in 2008. The KZN Human Trafficking, Pornography, Prostitution and Brothels (HPPB) Task Team is the primary focus of this study when examining the structure of the organisation and the system within it is oriented, as well as the individuals who comprise it. Anti-trafficking practitioners and their organisations, networks and the structures they in turn belong to are also examined. By identifying the individuals and organisations who constitute the task team, their various affiliations (their linkage to other complex organisations and systems), and their political agendas, this study is able to assess the impact of the individual within this counter-trafficking structures on decisions made, and (the efficacy of) their implementation. Moreover, it enables the analysis of how this systemically affects the discourse as a whole in South Africa.

Complexity theory and complex systems analysis allow for the identification and comprehension of the variegated ideological and political agendas behind actors’ responses to human trafficking (both internationally and more specifically in South Africa). It also enables the analysis of why certain disputations about human trafficking are legitimated and not

³⁸⁶ John Urry, ‘The Complexity Turn’, *Theory, Culture & Society*, Vol. 22(5), (2005): 3.

³⁸⁷ John Urry, ‘The Complexities of the Global’, *Theory, Culture & Society*, Vol. 22(5), (2005): 237. See also Ilya Prigogine in collaboration with Isabelle Stengers, *The End of Certainty: Time, Chaos, and the New Laws of Nature*, New York: The Free Press, 1997.

³⁸⁸ John Urry, ‘The Complexity Turn’, *Theory, Culture & Society*, Vol. 22(5), (2005): 3.

others, and the impact this has on our understanding of the phenomenon and counter-trafficking initiatives, which forms the sixth broad theme of this study. The sixth broad theme of this study thus examines the dominant perspectives and approaches to counter-trafficking in South Africa and determines the effect that actors, divergent perspectives and approaches have on counter-trafficking in South Africa. By examining the complex adaptive systems, which the actors and forums in which they interact constitute, complex systems analysis allows for the potential reimagining of space within which participation may occur.

For some, complexity theory is *the* theory for the new millennium, offering new insights into almost everything imaginable, from the mysteries of quantum physics to traffic jams to market crashes to cancerous tumours and global pandemics to terrorism and guerrilla wars. However, it should be noted that while complexity theory has promising application, it has severe limitations as well (as it cannot and should not be used to predict future events). Rather, it serves to provide ‘a cast of mind that can clarify, that can alert observers to otherwise unrecognised problems, and that can serve as a brake on undue enthusiasm for particular courses of action’.³⁸⁹ This reflects the growing need for ‘dynamic cross-systemic explanations where static and reductionist models once prevailed’³⁹⁰.

Complexity theory also represents a reaction to the contradiction which has emerged, of imposing order and classical compartmentalised approaches in an increasingly complex and networked world, whose very success, ironically, ‘has led to the aggravation of the environmental and developmental problems addressed’³⁹¹. Indeed, the world of the 21st century is one marked by ‘extraordinary turbulence reflecting the genesis and intensification of deep economic, social, political, and cultural changes, associated with the current techno-economic revolution... result[ing] in a high level of uncertainty and unpredictability, presenting new threats (and also new opportunities) for humankind’³⁹². Analyses of multifaceted, amorphous social phenomena (such as modernity and globalisation) increasingly draw upon notions of complexity³⁹³ (albeit not explicitly expressed), and are

³⁸⁹ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 32, available at www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

³⁹⁰ Gilberto Gallopín, Silvio Funtowicz, Martin O’Connor, and Jerry Ravetz, ‘Science for the twenty-first century: from social contract to the scientific core’, *International Social Science Journal*, 168, (2001): 219.

³⁹¹ *Ibid.*, 222.

³⁹² *Ibid.*

³⁹³ See John Urry, ‘The Complexities of the Global’, *Theory, Culture & Society*, Vol. 22(5), (2005): 235-236.

witnessed most notably in the works of Giddens³⁹⁴, Castells³⁹⁵, Hardt and Negri³⁹⁶ and Urry³⁹⁷. Complexity grounds itself within a framework which acknowledges that ‘the natural and social worlds are symbiotically intertwined and that they exhibit orderly, disorderly and complex phenomena’³⁹⁸. As Urry so aptly notes,

*This complex systems world is a world of avalanches, of founder effects, self-restoring patterns, apparent stable regimes that suddenly collapse, punctuated equilibria, ‘butterfly effects’ and thresholds as systems tip from one state to another.*³⁹⁹

Complexity theory diverges from most theories as it does not claim to provide a ‘final solution’ to any particular political, policy, social, scientific or economic issue – it is not a panacea. A complexity perspective or approach does not predict outcomes or specify particular solutions. It focuses on the role that history plays, and it is cognisant of the notion that situations are multiply caused. ‘Rather, focusing as it does on initial conditions and the paths that they chart for systems, complexity treats the historical context of situations as crucial to comprehension’⁴⁰⁰. Moreover, it accepts that the modern world is filled with anomalies and contradictions that cannot be readily explained, and that unintended consequences often accompany intended ones, and so forth. However, complexity theory and the incorporation of a complexity framework within this research is useful, as it enables myself as a researcher, and potentially policy-makers and other actors, ‘to interpret what goes on in the social, economic and political arenas in a new way that recognises the limits of knowledge and prediction and the consequent need to adjust policy-making and actions accordingly’⁴⁰¹. This is of particular importance when looking at the phenomenon of human trafficking and counter-trafficking policies and initiatives.

³⁹⁴ Anthony Giddens, *The Consequences of Modernity*, Cambridge: Polity, 1990.

³⁹⁵ Manuel Castells, *The Rise of the Networked Society*, Oxford: Blackwell, 1996.

³⁹⁶ Michael Hardt and Antonio Negri, *Empire*, Cambridge, Massachusetts: Harvard University Press, 2000.

³⁹⁷ John Urry, *Global Complexity*, Polity: Cambridge, 2003.

³⁹⁸ Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 7.

³⁹⁹ John Urry, ‘The Complexities of the Global’, *Theory, Culture & Society*, Vol. 22(5), (2005): 237.

⁴⁰⁰ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 40, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

⁴⁰¹ Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 7.

2.1 Defining Complexity

Complexity theory is a synthesis or amalgamation of the paradigm of order and its antithesis disorder that attempts to reconcile the flaws of these two disparate frameworks.⁴⁰² As Prigogine notes, complexity represents the ‘end of certainty’ as complexity science overcomes the ‘two alienating images of a deterministic world and an arbitrary world of pure chance’⁴⁰³.

Complexity represents a systemic and non-linear paradigm whose constitutive parts embody the middle ground needed to comprehend uncertain events and phenomena, offering a theoretical framework which is well-suited to the ambiguities and uncertainty of the 21st century. Complexity theory is unique in that it highlights the plurality and uncertainty inherent in any social phenomena and collective interactions, thus presenting ‘a stark contrast to the traditional positivist framework... [grounded in] its rational, objective, and ordered paradigm’⁴⁰⁴. Moreover, plurality in complex systems means that there is a multiplicity of heterogeneous actors who interact with each other in a rich variety of ways. Rather than attempting to reconcile all positions into a single framework (a linear, ordered method based on the Newtonian tradition) a complexity approach aims to examine the way in which dialogue facilitates and maintains the interactions of a plurality of shifting perspectives present in a group⁴⁰⁵. ‘A complexity perspective acknowledges the nonlinearity of both natural and human systems. It posits human systems as constantly learning, reacting, adapting, and changing even as they persist, as sustaining continuity and change simultaneously. It is a perspective that embraces non-equilibrium existence’⁴⁰⁶. Complexity theory thus creates opportunities for the engagement and interaction of a plurality of different actors through the establishment of inclusive structures of communication, negotiation and decision-making. This is appositely summarised by Geyer and Rihani who contend,

Complexity theory argues that physical and social reality is composed of a wide range of interacting orderly, complex and disorderly phenomena... Consequently, complexity theory demands a broad and open-minded approach to epistemological

⁴⁰² For a succinct explanation of the emergence and development of complexity theory, see Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 12 – 35.

⁴⁰³ Ilya Prigogine in collaboration with Isabelle Stengers, *The End of Certainty: Time, Chaos, and the New Laws of Nature*, New York: The Free Press, (1997): 189.

⁴⁰⁴ Anna Carline and Zoe Pearson, ‘Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking’, *CJWL/RFD* (2007): 80.

⁴⁰⁵ *Ibid.*, 79.

⁴⁰⁶ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997), available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

*positions and methodological strategies without universalising particular positions or strategies.*⁴⁰⁷

Kavalski offers a twofold definition of complexity:

*Objectively, complex systems are identified by the multitude of their components, the many feedback loops between those components, and the numerous interconnections among the subsystems of a complex system. Subjectively, complex systems involve 'unfamiliar... or unplanned and unexpected sequences, either not visible or not immediately comprehensible'. In this respect, complexity tends to be identified by its relationships rather than by its constituent parts.*⁴⁰⁸

As Kavalski notes, this has two important implications, namely that (i) complex systems are not uniform, and that the relationships between the component parts of the system are of varying strengths; and (ii) component parts of the system are capable of participating in manifold subsystems, resulting in a multitude of diverse subsystems even where the component parts are identical.⁴⁰⁹ Thus, for the purposes of this dissertation, complexity theory is a non-linear, non-deterministic theory which focuses on the relationship between the different parts of the structure and how these interactions contribute to the properties of the larger whole organisation.

At the core of complexity theory lies the complex adaptive system (CAS), which is distinguishable from other systems by a set of interrelated parts⁴¹⁰. '[E]ach of which is potentially capable of being an autonomous agents that, through acting autonomously, can impact on the others, and all of which either engage in patterned behaviour as they sustain day-to-day routines or break the routines when new challenges require new responses and new patterns.'⁴¹¹ Jervis notes that a system is defined by its constitutive parts, namely 'when (a) set of units or elements are interconnected so that changes in some elements or their

⁴⁰⁷ Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 30

⁴⁰⁸ Emilian Kavalski, 'The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life', *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 438.

⁴⁰⁹ Ibid.

⁴¹⁰ Gell-Mann notes that a complex adaptive system (CAS) may also be an integral part of another CAS, 'or it may be a loose aggregation of complex adaptive systems, forming a composite CAS. Thus a CAS has a tendency to give rise to others.' As such, aggregations of human beings (in the form of societies, corporations, task teams) can also be complex adaptive systems. (See, Murray Gell-Mann, 'The Simple and the Complex', in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 5, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.)

⁴¹¹ James N. Rosenau, 'Many Damn Things Simultaneously: Complexity Theory and World Affairs', in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 36, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

relations produce changes in other parts of the system and (b) the entire system exhibits properties and behaviours that are different from those of the parts⁴¹². In other words, a system is defined and veritably constructed by the interrelationships of the agents, whose capacity to cope (adapt) collectively with new challenges defines them as adaptive systems. ‘[T]he agents that comprise world affairs are brought together into systemic wholes that consist of patterned structures ever subject to transformation as a result of feedback processes from their external environments or from internal stimuli that provoke the agents to break with their established routines’⁴¹³. This results in systems often displaying nonlinear relationships and outcomes that cannot be understood as a sum of its parts, and often there are unintended results. As complex systems are autopoietic, they cannot be fully understood by simply analysing their parts in isolation from each other, as too much of the relational information would get lost⁴¹⁴. Hence, it relates to the number of ways in which parts interact or connect with each other and the nature of the rich patterns of interactions (emergent system effects) between actors in a system⁴¹⁵.

Such a system is uncertain as a result of the non-linear, multidimensional, self-organising interactions of the system’s multiple parts. Interactions are to a large extent unpredictable, as parts of a system might interact in a myriad of ways, depending on the circumstances. The continuous shifting character of these relationships constitutes a defining aspect of complex systems. Complex adaptive systems exhibit decentralised tendencies, and control of such systems tend to be highly dispersed. Any form of coherent behaviour in the system arises from competition and cooperation among the agents themselves⁴¹⁶. ‘Initial behaviours and outcomes often influence later ones, producing powerful dynamics that explain change over

⁴¹² Robert Jervis, ‘Complex Systems: The Role of Interactions’, in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 20, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

⁴¹³ James N. Rosenau, ‘Many Damn Things Simultaneously: Complexity Theory and World Affairs’, in David S. Alberts and Thomas J. Czerwinski (Eds.), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 36, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

⁴¹⁴ See Gilberto Gallopín, Silvio Funtowicz, Martin O’Connor, and Jerry Ravetz, ‘Science for the twenty-first century: from social contract to the scientific core’, *International Social Science Journal*, 168, (2001); Paul Cilliers, ‘Complexity, Deconstruction and Relativism’, *Theory, Culture & Society*, Vol. 22, No. 5, (October 2005): 255 – 267; John Urry, ‘The Complexities of the Global’, *Theory, Culture & Society*, Vol. 22(5), (2005): 235 – 254, Anna Carline and Zoe Pearson, ‘Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking’, *CJWL/RFD*, Volume 19, Number 1, (2007): 73 – 118 .

⁴¹⁵ See Gilberto Gallopín, Silvio Funtowicz, Martin O’Connor, and Jerry Ravetz, ‘Science for the twenty-first century: from social contract to the scientific core’, *International Social Science Journal*, 168, (2001); John Urry, ‘The Complexities of the Global’, *Theory, Culture & Society*, Vol. 22(5), (2005): 235 – 254.

⁴¹⁶ See Neil Johnson, *Simply Complexity: a clear guide to complexity theory*, Oxford: Oneworld Publications:, (2007): 13

time and that cannot be captured by labelling one set of elements “causes” and other “effects”⁴¹⁷. As Jervis so aptly notes, ‘many statesmen see that their actions can produce a desired outcome, all other things being equal, and project into the future the maintenance of the conditions that their behaviour will in fact undermine’⁴¹⁸. Thus, complexity underscores the notion that actors’ influence on the course of events and outcomes should not be underestimated or overlooked. Moreover, ‘failure to cope can be viewed in terms of the evolutionary process not being able to keep pace with change. Individual human beings in a large organization or society must be treated... as playing a dual role. To some extent they can be regarded statistically, as units in a system. But in many cases a particular person must be treated as an individual, with a personal influence on history.’⁴¹⁹ This is something we often overlook when examining a variety of organisations or the very structure of an organisation, the impact of the individual within this organisation on decisions made, and (the efficacy of) their implementation. This study examines both the structure of the organisation and the system within it is oriented, as well as the individuals who comprise it. This is achieved by identifying the key role-players or actors (the individual) within the discourse (the system), at the international and local level, and then by analysing the interactions and relationships which exist between the various subsystems (societal, institutional and individual).

Complexity theory also is cognisant of diversity. Diversity encompasses differences in terms of interests, agendas or histories, expertise and experience. It is asserted that the very nature of complexity facilitates change and variation within the various systems or organisations, and as such, ‘diversity begets diversity’ leading to a ‘structural deepening’ whereby a system through its greater variety of possible connections becomes increasingly complex; allowing it to operate and function in more environments whilst increasing its resilience and ability to adjust to exceptional circumstances⁴²⁰. Moreover, it acknowledges differences in terms of knowledge, resources and influence that may affect the ability of the actors to engage, and thus acknowledges an array of legitimate perspectives (all of which are relevant to and

⁴¹⁷ Robert Jervis, ‘Complex Systems: The Role of Interactions’, in David S. Alberts and Thomas J. Czerwinski (Eds), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 24, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

⁴¹⁸ *Ibid.*, 26.

⁴¹⁹ Murray Gell-Mann, ‘The Simple and the Complex’, in David S. Alberts and Thomas J. Czerwinski (Eds), *Complexity, Global Politics and National Security*, National Defense University, Washington DC, (1997): 6, available at http://www.dodccrp.org/files/Alberts_Complexity_Global.pdf.

⁴²⁰ See also, Nader Elhefnawy, ‘Societal Complexity and Diminishing Returns in Security’, *International Security*, 29:1, (2004) 152 – 174; and Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 439.

participate in the decision-making process).⁴²¹ This approach insists on a dialogue between different perspectives (i.e. actors) and is aimed at the collective generation of fuller pictures of reality with the goal of developing strategic connections and linkages between particularities, through which the perspectives of actors may be informed and transformed. Theorising counter-trafficking processes and responses from a complexity theory perspective enables the acknowledgement and critical reflection of the role and importance of diverse actors, and their manifold interrelationships within the complex adaptive systems within which they are situated.

2.2 Complex Systems Analysis

As calls and arguments are increasingly being made for world views to be altered and challenges and threats to be addressed from a complexity perspective, as witnessed in the current US administration (particularly in relation to security threats and warfare), the salience and contemporary suitability of such an approach becomes apparent. Indeed, the language of the US Department of Homeland Security, and Department of Defense, readily reflects this shift to a more complex, and nuanced approach to understanding the networked societies and multitudes of systems within which we live, work, exploit and interact. It is increasingly acknowledged that many contemporary threats and the means to address them are ‘embedded in webs of complex systems that surround everyday life’⁴²². As indicated in the six broad themes of this study⁴²³, it thus becomes relevant to also address a complex problem and phenomenon such as human trafficking from a complexity perspective as well as counter-trafficking governance and the network of actors involved.

What is so frustrating for analysts subscribing to a Newtonian linear world view or theoretical approach is that a complex system often exhibits properties, patterns, and outcomes not present in *any* of its individual elements. (It is in this regard that the complex system may be referred to as being nonlinear.) Counter-trafficking policymakers and actors, whether at an international or state level, or the non-governmental (non-state actor) level, regardless of the perspective (worldview) from which they approach human trafficking, all attempt to understand, predict or affect (combat) the behaviour of complex systems that intersect and overlap with complex systems within the phenomenon of human trafficking itself and the complex systems that these initiatives find themselves within. These issues may range from the variegated forms of human trafficking itself, to illicit migration, human smuggling, the

⁴²¹ G. Gallopín et al, ‘Science for the 21st Century: From Social Contract to the Scientific Core’, *International Social Science Journal* (2001): 223 – 225.

⁴²² James Jay Carafano and Richard Weitz, ‘Complex Systems Analysis – A Necessary Tool for Homeland Security’, *Backgrounder*, No. 2261, The Heritage Foundation, (April 16, 2009): 1.

⁴²³ Discussed above.

illicit drug trade, organised crime to civil wars, global markets, and state collapse. The world is truly networked, and highly complex – a veritable web of relationships and interconnections – however tenuous some may be. In other words, a host of interlinked and overlapping concerns are faced by contemporary policymakers in addressing seemingly simple, single-issue concerns. This tunnel vision or reductionist approach to issues and the policy concerns, without any inclination as to how their decisions might affect a system and other complex systems in turn. As Carafano and Weitz correctly note,

*Rather than dealing with systems as a whole, contemporary decision makers tend to concentrate their choices on discrete activities that are easier to identify and understand. There is a problem with that approach: The more complex and disorganized the system, the more unpredictable effects the discrete, uninformed, intuitive decisions of policymakers may have on specific outcomes... Failing to understand how discrete decisions have an impact on the system as a whole can produce unintended and counterproductive consequences.*⁴²⁴

Describing complex systems – how they work, what they produce – and then applying various planning methods and choice models to determine how the systems’ performance can be changed is the task of complex systems analysis⁴²⁵. Complex systems analysis thus forms a crucial and necessary part in analysing the ‘bigger picture’ of the human trafficking phenomenon and counter-trafficking initiatives. It is a method of analysis that attempts to avoid the traps inherent in traditional forms of analysis – which when attempting to analyse a complex system breaks it down into its component parts, and analyses these individual, smaller parts in detail. This has resulted in the oversimplification of descriptions of system behaviour, and ignores the cardinal rule of complexity theory – that ‘the whole is not the sum of its parts’. The significance of complex systems analysis is that it attempts to ‘bridge the gap between knowledge and understanding – of analysis and synthesis – by exposing and studying interrelationships rather than simply relying on linear chains of cause and effect’⁴²⁶. Moreover, it is suggested that if understood and implemented properly, complex systems analysis can alert policymakers ‘to unexpected outcomes of interactions between discrete parts of a system... In addition, complex systems analysis should help counter the natural tendency of policymakers to dwell on their daily inbox rather than consider deeper, more comprehensive issues.’⁴²⁷ It is for these reasons, that a complexity approach, utilising complex systems analysis was adopted in this study.

⁴²⁴ James Jay Carafano and Richard Weitz, ‘Complex Systems Analysis – A Necessary Tool for Homeland Security’, *Backgrounder*, No. 2261, The Heritage Foundation, (April 16, 2009): 2.

⁴²⁵ *Ibid.*, 3.

⁴²⁶ *Ibid.*

⁴²⁷ *Ibid.*, 4.

2.3 Application of Complexity Theory to Human Trafficking

Complexity theory, like many theories, is not a unified theoretical construct. There exist numerous variants and interpretations of the overarching theory itself. This reflects the multifaceted approach to the study of human trafficking, both as a phenomenon and as a discourse. However, the theoretical paradigms within which the numerous studies on human trafficking are situated are indeed limited / constrained. Complexity theory could very well be a theory which allows us to reconcile the myriad of competing political and moral or ideological agendas which pervade the human trafficking discourse. This would enable a harmonisation of interests, or at the very least, a respect of divergent views. In addition, it would allow for an acknowledgement of an array of legitimate perspectives. All of which surpasses the underlying amorphous nature of the phenomenon that is human trafficking. Complexity theory thus creates opportunities for the engagement and interaction of a plurality of heterogeneous actors (particularly, in terms of power, legitimacy, and knowledge).

Complexity theory offers a holistic framework, in the sense that it threads together the divergent views encompassed in the literature, as well as those of the various actors within the discourse, and the real-world effects thereof – as witnessed by legislation, policy and the bodies created to deal with the scourge of human trafficking. This study utilises a number of the shared concepts on which most theories of complexity are based. It uses the notion of the complex adaptive system (CAS), which is distinguishable from other systems by a set of interrelated parts, as a departure point for the identification of the various systems, and the anthology of the numerous interacting agents therein and between such systems. It also draws upon and examines in detail, several of the highlighted CAS⁴²⁸ found within the human trafficking discourse, the concept that complex systems are not uniform, that the relationships between the component parts of the system will be of varying strengths; and component parts of the system are capable of participating in manifold subsystems, resulting in a multitude of diverse subsystems even where the component parts are identical⁴²⁹. This notion is especially applicable to, and testable of, the counter-trafficking organisations and task teams that have been established, and the various actors (ranging from governmental to non-governmental organisations) that constitute them.

These concepts when applied to the case study, the KZN HPPB Task Team, and counter-trafficking networks and activities in South Africa, helped understand and identify the

⁴²⁸ Focus will be placed on the international and local discourse and the key actors therein. As well as the international legal framework within which it is situated.

⁴²⁹ Emilian Kavalski, 'The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life', *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 438.

emergent properties that have been produced as a result of interactions between the agents that constitute it, and the other systems they form part of and interrelate with. It also allowed for the identification and analysis of its current incarnation and evolutionary path, and how this complex system now functions and interacts with other complex systems in the local human trafficking discourse. Moreover, it facilitated the identification of the initial conditions at the inception of this CAS (KZN HPPB Task Team), and the systemic impacts thereof. The variegated and numerous activities, events, routines, strategies, behaviours and interactions that are found in any form of human organisation or complex adaptive system (such as the KZN HPPB Task Team) at a specific juncture are what form the initial conditions for the emergence of future phenomena or properties (i.e. outcomes of such interactions). Some of these will be amplified through the effects of small events and more specifically positive and negative feedback processes, whereas others will be diffused throughout the system, and thus dispelled. For the purposes of this study, non-linearity (a key attribute of complex systems and complexity theory) results from ‘an initial condition having a disproportionate effect on an emergent outcome of the system as a whole’⁴³⁰, as demonstrated by the political and ideological agendas behind the formulation and acceptance of the 2000 *UN Convention Against Transnational Crime*⁴³¹, and its ad hoc protocol the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000⁴³² (Trafficking Protocol), and the resultant approach(es) adopted by states, international- and advocacy organisations.

2.4 Limitations of Complexity Theory

The application of complexity theory to the human trafficking discourse, and the organisations and actors involved therein, is somewhat problematic. This stems primarily from complexity theory’s attempt to bridge the gap between the social and natural sciences, and the paradigms of order and disorder. While the application of complexity theory concepts to ant colonies, computer simulations of traffic flows and stock markets, and other physical or physiological systems such as the cancer cells and even our immune systems, is relatively straightforward, when applied to social and human systems this is where things get complicated. The primary reason for this is that complexity theory was developed by studying those very physical systems it primarily engages. One cannot simply superimpose complexity theory concepts directly on human and social systems – this would be tantamount to the metaphorical attempt of trying to fit a round peg in a square hole. One of the greatest

⁴³⁰ K. Houchin and D. MacLean, ‘Complexity Theory and Strategic Change: an Empirically Informed Critique’, *British Journal of Management*, Vol. 16, (2005): 151.

⁴³¹ General Assembly resolution 55/25 of 15 November 2000.

⁴³² Supplementing the United Nations Convention Against Transnational Organized Crime (General Assembly resolution 55/25, annex II).

criticisms of complexity theory lies with the fact that many of the studies based on complexity theory use results calculated from computer simulations, and not those firmly grounded in empirical observation⁴³³. However, this is a flawed understanding of the variety of applications of complexity theory. Complexity theory is not just limited to computational simulations – although this does take the dominant form taken by studies which are grounded in complexity theory / science. Concepts akin to complexity theory have been circulating throughout the social sciences for some time now⁴³⁴.

The ability of the human species to learn and adapt, and ultimately exploit their environment, are the defining features of its uniqueness and unpredictability. The analysis of human interactions and events will always hold an element of subjectivity, but the use of complexity theory and complex systems analysis is certainly no less adept or appropriate than traditional, linear and ordered methods of analysis. As opposed to merely looking for regularities and patterns of order at the global level, complexity theory does interrogate the constitutive parts of the system, and when dealing with conscious complex systems – this means looking at the individuals (complete with their unique methods of decision-making, their individual characteristics and emotive unpredictability that defines one person from another) and even groups (at the sub-system level) that comprise the system as a whole. Complexity theory does not ignore the role played by human beings or human emotion. It is not merely a cold, computational model of what reality might look like. It offers a flexibility that many other theories do not. As well as incorporating elements of the ordered and disorderly, certain and uncertain, predictable and unpredictable. Perhaps the greatest limitation for critics of complexity theory is that it is not a predictive theory. It cannot and does not predict outcomes or specify particular solutions – rather small scale incremental adjustments (reflecting the limitations to knowledge and prediction). Many scholars and critics of complexity theory pose the question whether complexity theory is just ‘a recipe for doing nothing’. Geyer and Raihani refute this by championing the need for a change in mindset, and a ‘commonsensical’ approach that encourages that,

*Once one abandons the arrogance of order and despair of disorder and accepts the humbling limits of knowledge and uncertain potential which complexity implies then a new politics emerges: a politics of uncertainty, but also of openness, of mistakes and learning, of failure and adaptation.*⁴³⁵

⁴³³ K. Houchin and D. MacLean, ‘Complexity Theory and Strategic Change: an Empirically Informed Critique’, *British Journal of Management*, Vol. 16, (2005): 152.

⁴³⁴ As discussed earlier in this chapter, analyses of multifaceted, amorphous social phenomena increasingly draw upon notions of complexity.

⁴³⁵ Robert Geyer and Samir Raihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, (2010): 184.

3.0 Reflections upon Methodology and Methods

This study used a qualitative methodology consisting of primary and secondary sources which facilitated ascertaining: (i) the existence of a core set of claims regarding human trafficking in South Africa, (ii) the tensions between formal responses and actors' political, moral or institutional agendas, (iii) and how this plays out in a formal setting such as the KZN HPPB Task Team and similar state-initiated counter-trafficking initiatives, as well as in the counter-trafficking community.

*Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that makes the world visible. These practices transform the world... At this level, qualitative research involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of, or interpret, phenomena in terms of the meanings people bring to them.*⁴³⁶

A qualitative methodology was deemed appropriate for this study, as in order to understand the social world of participants (and those being studied), an in-depth understanding of the context within which interaction occur, their experiences, perspectives, and histories was required.⁴³⁷ In addition, it allows for the purposeful selection of participants on the basis of salient criteria determined by expertise and/or the stakeholder role of participants on the task team, and within South Africa when examining the larger counter-trafficking community. A qualitative methodology ensured that the complexity of the phenomenon and diversity of participants studied were appreciated when examining the interactions and formal responses of an array of heterogeneous actors and perspectives represented. The use of a qualitative methodology was appropriate for this particular study, as the rationale driving / beliefs underlying responses to human trafficking needed to be identified and examined. Moreover, as researchers themselves are agents of change in the world, and the very act of investigation will have an impact upon the environment investigated⁴³⁸, an *actor-oriented approach*, whose concepts are grounded in the everyday life experiences and understandings of individuals (agents) who form part of organisations and complex systems, was adopted. As Long and Long note, 'an actor-oriented perspective entails recognizing the "multiple realities" and diverse social practices of various actors, and requires working out methodologically how to

⁴³⁶ Norman K. Denzin and Yvonna S. Lincoln, 'Introduction: The Discipline and Practice of Qualitative Research,' in K. Denzin and Yvonna S. Lincoln (Eds.), *The SAGE Handbook of Qualitative Research*, 3rd Edition, Thousand Oaks, California: SAGE Publications (2005): 3; See also Dawn Snape and Liz Spencer, 'The Foundations of Qualitative Research', in Jane Ritchie and Jane Lewis (Eds.), *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, London: SAGE Publications, (2003): 2 – 3.

⁴³⁷ Dawn Snape and Liz Spencer, 'The Foundations of Qualitative Research', in Jane Ritchie and Jane Lewis (Eds.), *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, London: SAGE Publications, (2003): 5.

⁴³⁸ Malcolm Williams, *Making sense of social research*, London: Sage Publications, (2003): 3.

get to grips with these different and often incompatible social worlds⁴³⁹. Such a perspective readily lent itself to the greater theoretical framework and worldview offered by complexity theory and complex systems analysis when trying to comprehend and investigate a phenomenon as mystifying as that of human trafficking. As such, it was felt that neither a positivist nor a quantitative approach would be able to reflect the complexity of the participants' understanding / perceptions and interactions and the complex organisations and greater systems within which they occur.

3.1 Conceptualisation of the Study and Selection of Respondents

This study is based on empirical evidence collected through fieldwork on counter-trafficking actors, structures and responses within the South African context, with a particular focus on the KwaZulu-Natal intersectoral task team, known as the KwaZulu-Natal Human Trafficking, Prostitution, Pornography, Brothels Task Team, an un-resourced agency, mandated to coordinate counter-trafficking initiatives in the province (ranging from prevention strategies and protection of victims, to the investigation and prosecution of trafficking offences). The primary method of collecting information was through my role as a participant-observer on the KwaZulu-Natal intersectoral task team (see section 3.2.1 where this is discussed in detail). The principal objectives of the study were twofold: (i) to understand and evaluate the efficacy of counter-trafficking in South Africa, using the KwaZulu-Natal intersectoral task team and its integrated counter-trafficking model as a case study, and (ii) to understand the South African human trafficking discourse comprised of competing political agendas and institutional perspectives, in relation to the international dominant discourse, and its impact on counter-trafficking in South Africa.

Respondents were chosen through their affiliation to or membership of counter-trafficking structures, in particular the KZN HPPB Task Team. Interviewees were chosen for their level of expertise and involvement in counter-trafficking. The KZN HPPB Task Team was an important site for sourcing interviewees, as the key focus of this study, in relation to how human trafficking is being prevented and combated in South Africa and the role played by counter-trafficking actors. The KZN HPPB Task Team was the first provincial task team to be established in South Africa in 2008 to prevent and combat human trafficking. Its integrated '4P model' based on prevention, protection, prosecution and partnerships is widely emulated. This makes the KZN HPPB Task Team an ideal site to examine and observe how human trafficking is understood, approached and addressed in South Africa on a provincial level. It also facilitates the examination of the various actors involved in counter-trafficking, their

⁴³⁹ Norman Long and Ann Long (Eds.), *Battlefields of Knowledge: The Interlocking of Theory and Practice in Social Research and Development*, London: Routledge, (1992): 5.

interactions with one another, differing perspectives and agendas, the environment within which the task team was formed and has developed, the challenges faced and the ways in which these are addressed, and the cohesion of the task team in terms of cooperation and coordination. Respondents in other provinces, in particular the Western Cape and Gauteng, or involved in counter-trafficking at a national level were chosen because of their prominence in the South African counter-trafficking community. These respondents played an important role in understanding how human trafficking is understood and approached in South Africa, and the effect that these actors and their particular agendas have on shaping the human trafficking discourse and counter-trafficking initiatives in the South African context. Access to these respondents also allowed me to observe provincial differences in cooperation and coordination of official counter-trafficking structures, and the formation of parallel counter-trafficking organisations and networks led by non-governmental organisations.

3.1.1 Approach to Information Received

An actor-oriented approach forms a vital component of the methodology of this study, as it integrates and binds together the assorted methods of analyses used within this research (discussed later in this chapter) and allows for a more complex and nuanced investigation of the issues at hand, and robust analysis of findings. The rationale behind using such an approach is that from the onset, ‘an actor-oriented approach requires a full analysis of the ways in which different social actors manage and interpret new elements in their life-worlds, an understanding of the organizing, strategic and interpretive elements involved, and a deconstruction of conventional notions of planned intervention... [which] should be visualized as an ongoing transformational process in which different actor interest and struggles are located.’⁴⁴⁰ Such an approach coupled with a complexity perspective allowed for the reflexive realisation that ‘in any particular context, at any particular time, there is [no] single reality out there waiting to be discovered’⁴⁴¹. Indeed, such an approach reflects ‘the interdependence of conceptual factors, variables and components, that relate in systemic ways’⁴⁴². The interlocking strategies of the actors and collective ones / initiatives which generate ‘social forms and commitments that shape future possibilities for action’ can be examined in this way, as well as the way in which they arise or result from a ‘dynamic

⁴⁴⁰ Norman Long and Ann Long (Eds), *Battlefields of Knowledge: The Interlocking of Theory and Practice in Social Research and Development*, London: Routledge, (1992): 9.

⁴⁴¹ John Law and John Urry, ‘Enacting the social’, *Economy and Society*, 33:3, (2004): 397.

⁴⁴² Harlan Wilson cited in Emilian Kavalski, ‘The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life’, *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 447.

interplay of “emergent” patterns, differential meanings and strategies⁴⁴³. Such notions or concepts become increasingly important when viewed from the lens of complexity theory and understood in terms of complex systems analysis.

3.2 Methods Used in the Study

Primary information was garnered from a combination of questionnaires and semi-structured interviews from a variety of non-governmental organisations, government agencies / departments, and international organisations involved in official counter-trafficking structures in South Africa, in particular the KZN HPPB Task Team. Additionally, two non-governmental organisations (based in Germany and the Netherlands respectively) and one law enforcement agency (based in Germany) involved in counter-trafficking or advocacy and victim assistance were also interviewed in order to gain deeper insight into how human trafficking is perceived and addressed elsewhere in the world. Informal discussions and electronic communication also supplemented face-to-face interviews.

In-depth, semi-structured face-to-face interviews were used to elicit a rich, nuanced picture of each participant’s perspective, experience and opinion on their role in counter-trafficking in South Africa, how they understand human trafficking, their political or moral agendas, personal or institutional biases, interactions with other actors involved in counter-trafficking, and the approaches they advocate in preventing and combating the phenomenon.

The actors identified for this study are primarily representatives and organisations involved with the KZN HPPB Task Team, as well as other organisations involved in counter-trafficking advocacy or initiatives in South Africa; they are either actively engaged in state-initiated counter-trafficking programmes (such as affiliation to the KZN HPPB Task Team or other provincial intersectoral teams) or are part of counter-trafficking coalitions and/or networks, and engage in victim assistance and protection, human trafficking advocacy and awareness-raising. These actors are essentially ‘key informants’, as most possess direct personal experience, and experiential knowledge, through their activities in counter-trafficking, whether it be in the form of law enforcement, criminal justice, or assisting trafficked individuals (and offering psycho-social services), or are involved and affiliated with task teams in supportive roles through training and awareness campaigns. The expertise and proximity to site of knowledge on the part of those interviewed ensured authenticity and reliability of information acquired.

⁴⁴³ Norman Long and Ann Long (Eds.), *Battlefields of Knowledge: The Interlocking of Theory and Practice in Social Research and Development*, London: Routledge, (1992): 9.

Access was gained through the researcher's standing association and participation on the KZN HPPB Task Team and through purposive expert/stakeholder sampling⁴⁴⁴ and snowball sampling⁴⁴⁵. Interviews and informal discussions were held in Durban and Johannesburg, South Africa, and in Heilbronn, Germany. Questionnaires were formally distributed to members of the KZN HPPB Task Team electronically via the task team's Secretary. Questionnaires directed at organisations and individuals involved in counter-trafficking throughout the country were distributed electronically via the National Freedom Network, a South African counter-trafficking network, to its affiliates. Moreover, further primary data was gathered from attendance of and participation in bimonthly task team meetings (2009 – 2012), public meetings and awareness campaigns, and a meeting with a consultant from the European Commission (EC) assessing the EC funded South Africa's counter-trafficking programme in 2011, minutes of meetings and task team reports.

However, as anonymity was offered, participants could choose whether or not to disclose their identities or their organisation's identities. In some instances, participants requested that parts of their interview be kept confidential or that their identity not be revealed. These wishes were respected, and the identity of those participants is not revealed, rather their organisation or affiliation to an organisation, agency or formal structure is alluded to. Information provided that was deemed by the participant as being highly sensitive and confidential, and where a request was made by them for the information not be disseminated, is not disclosed in this study.⁴⁴⁶ The 'public interest test' was applied to this information and it was deemed not be in the public interest. What interests the public is not necessarily the same as the public interest. Moreover, '[t]he fact that a topic is discussed in the media does not automatically mean that there is a public interest in disclosing the information'.⁴⁴⁷ Information may be disclosed to the public to ensure transparency and accountability. However, to disclose this information that could jeopardise the outcome of an investigation, criminal proceedings, or the safety or identity of vulnerable persons is not pertinent.

⁴⁴⁴ As Palys notes, 'this strategy involves identifying who the major stakeholders are who are involved in designing, giving, receiving, or administering the programme or service being evaluated, and who might otherwise be affected by it.' Ted Palys, 'Purposive Sampling', in Lisa M. Given (Ed.), *The Sage Encyclopaedia of Qualitative Research Methods*, Sage: Thousand Oaks, CA, Vol.2, (2008): 697, available at <http://www.sfu.ca/~palys/Purposive%20sampling.pdf> – last accessed July 2011.

⁴⁴⁵ Snowball sampling is a method typically used to access small, rare or unknown populations. Social networks between actors within a targeted population are used in order to build a sample.

⁴⁴⁶ See Addendum A for a note on participants.

⁴⁴⁷ Information Commissioner's Office, *The public interest test: Freedom of Information Act*, (4 May 2012): 6, available at http://www.ico.gov.uk/~-/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.pdf.

Secondary information was extracted from a range of sources, including official documents, legislation and policy documents, government websites, agency and organisation websites, textbooks, scholarly articles, newspapers and media releases which enriched the information gathered from the primary sources, and served as comparative points of reference when examining inherent tensions between actors and official responses and initiatives, and the consequences of such measures.

3.2.1 Participant-Observation

Participant-observation was a qualitative method employed in this study to collect primary data. Participant-observation ‘connects the researcher to the most basic of human experiences, discovering through immersion and participation the hows and whys of human behavior in a particular context’.⁴⁴⁸ Participant-observation is an appropriate qualitative and interactive method which: (i) allows for the opening up of areas of inquiry to collect a wider range of data, (ii) reduces the problem of reactivity, (iii) enables the researcher to know what questions to ask, (iv) allows for an intuitive understanding of the meaning of the data by the researcher, and (v) addresses problems which are unavailable to other data collection techniques (i.e. experiential learning).⁴⁴⁹

In order to fully examine, observe and understand the workings and interactions of the actors on the KZN HPPB Task Team and how this played out, it was important to be both part of the process and observe it. The data and outcomes derived from the case study of the KZN HPPB Task Team are the result of my association and participation on the task team over a three-year period (from 30 April 2009 – 2 October 2012) which allowed for a greater opportunity to explore the emergent properties of an organisation specifically formed to counter-trafficking in KwaZulu-Natal, South Africa. This has the practical application that as a participant-observer, I shared the same privileges as other participants of the KZN HPPB Task Team and meant that I could observe interactions and events that an ‘outsider’ would not be privy to. Moreover, by establishing rapport over time, this meant that I was accepted as part of the group and the participants interviewed were more likely to act ‘naturally’ around me, and be more responsive to my questions. ‘Being embedded in the social context helps researchers

⁴⁴⁸ Greg Guest, Emily E. Namey and Marilyn L. Mitchell, ‘Participant Observation’, in Greg Guest, Emily E. Namey and Marilyn L. Mitchell, *Collecting Qualitative Data: A Field Manual for Applied Research*, Sage Publications, (2012): 75, available at http://www.sagepub.com/upm-data/48454_ch_3.pdf.

⁴⁴⁹ Harvey Russell Bernhard, *Research methods in anthropology*. Lanham, MD: Altamira Press, 2006 cited in Greg Guest, Emily E. Namey and Marilyn L. Mitchell, ‘Participant Observation’, in Greg Guest, Emily E. Namey and Marilyn L. Mitchell, *Collecting Qualitative Data: A Field Manual for Applied Research*, Sage Publications, (2012): 80 – 81, available at http://www.sagepub.com/upm-data/48454_ch_3.pdf.

learn what questions are relevant'.⁴⁵⁰ Participant-observation as a method afforded me an intimate knowledge of my area of study, the KZN HPPB Task Team and counter-trafficking actors, initiatives, structures and discourse in South Africa, which serves to greatly reduce the issues of validity associate with other qualitative methods. In terms of research ethics and informed consent, I presented myself to all participants from the outset as a researcher and clarified the purpose of my research study, and participation in the task team. I consciously kept my own work with the task team to a minimum during the period of study in an attempt to maintain objectivity as a researcher. During my first year of membership with the task team, I was largely an unobtrusive observer. However, as time progressed I became more involved in counter-trafficking activities and bimonthly task team meetings. As a condition of membership to the task team, I was required to contribute to the realisation of the prevention component of the task team's annual action plan (as are all members of the task team). This meant that I attended training days (on the various awareness manuals used by the task team), participated in public awareness events and disseminated primary prevention information, as well as attended consultative workshops. I eventually became actively involved in the prevention subcommittee in 2012 – as my study drew to an end. This meant that I actively participated in discussions around the role and function of this component of the task team. This included a review of the resource material used in the task team's primary prevention activities, deliberations on what roles and functions of members should be in terms of the prevention subcommittee, analyses and report-backs on prevention subcommittee issues pertaining to engagement and training, evaluation of a proposed database to map and manage prevention activities, and contribution to the task team's resource library with material on the subject of human trafficking. I also took minutes for both the main task team meetings and the prevention subcommittee meetings when the need arose. Despite being an active member of the task team during the period of study, I always tried to retain a sense of neutrality and objectivity in participation and support of task team activities through compartmentalisation of my dual role. I regularly reflected on the ways in which my engagement with the task team, and individual counter-trafficking actors, could influence my analysis of the task team's activities. To mitigate an uncritical approach to my analysis of the task team's activities, I recorded events and dialogue dispassionately and would review my notes at a later date with a critical eye. This allowed me to retain objectivity as a researcher.

⁴⁵⁰ Greg Guest, Emily E. Namey and Marilyn L. Mitchell, 'Participant Observation', in Greg Guest, Emily E. Namey and Marilyn L. Mitchell, *Collecting Qualitative Data: A Field Manual for Applied Research*, Sage Publications, (2012): 80, available at http://www.sagepub.com/upm-data/48454_ch_3.pdf.

3.3 Fieldwork and the Process of Interviewing

Access to the KZN HPPB Task Team was negotiated through the task team's Chairperson, Advocate Dawn Coleman, who allowed me to participate as a member of the task team and as an observer. Members of the task team were formally approached through a letter of introduction detailing the purpose of the study, and follow-up telephone calls. Interviews were then set up at the interviewees' convenience. Interviews were tailored according to each participant and area of expertise or activity. Due to the nature of the study, which was conducted over a period of three years, follow-up interviews were also conducted with participants. In addition, questionnaires consisting of 25 questions were also circulated amongst the task team members.

Difficulty was experienced in negotiating access to representatives of government departments involved on the task team, as formal procedures involving written requests to line managers had to be followed. However, in many instances a lack of acknowledgement or response by the 'gatekeepers' involved meant that formal semi-structured interviews could not be conducted. This created a potential limitation for the study in that not all perspectives and motivations or agendas of all the actors concerned would be uncovered, thus hindering a fuller picture of reality. However, due to a high turnover of members from government departments on the task team, the impact of this was limited. Moreover, much of the information that would have been provided by these representatives, many with little understanding of human trafficking⁴⁵¹, was available from alternative sources and documents.

A snowball sampling technique was used to source more research participants nationally. Introductions by interviewed members of the KZN HPPB Task Team greatly facilitated access to other participants. Those participants in turn introduced me to other organisations and individuals involved in counter-trafficking in South Africa and/or abroad. The same approach for gaining access, as with the participants of the task team, was followed. Questionnaires consisting of 45 questions were circulated to members and affiliates of the National Freedom Network, including the KZN HPPB Task Team.⁴⁵² Access to interviewees in Germany was gained through my long-standing acquaintance with a member of the German equivalent of the Criminal Investigation Department, who put me in contact with the Kriminalhauptkommissar (Detective Chief Superintendent) in charge of human trafficking, at the Heilbronn Police Headquarters in Baden-Württemberg. The KHK arranged access to

⁴⁵¹ A survey was conducted by the task team in September 2012 which indicated that a significant percentage of members in attendance had received little or no training on human trafficking, thus necessitating a full day workshop which took place in November 2012.

⁴⁵² The format of the two questionnaires is provided in Addendum B.

interview social workers at a shelter that provides assistance to female victims of trafficking (and their children).

Interviews lasted on average 1.5 hours and were conducted in the medium of the English language, apart from one interview which was conducted in German. Interviews were recorded on a digital recorder after permission had been sought from the interviewees. The recorded interviews were transferred into a password protected computer file. In two instances, interviews were not recorded, however extensive notes were taken. In one instance this was due to the digital recorder malfunctioning. In the other instance, the interviewee requested not to be recorded. Interviews were transcribed in a question and answer format and stored electronically in a password protected file. Access to these interviews was provided to my supervisor.

3.4 Special Research Problems

The KZN HPPB Task Team is comprised of representatives from the following organisations and provincial government departments or agencies⁴⁵³: National Prosecuting Authority (NPA), South African Police Services (SAPS), Metropolitan Police (Metro), Border Control Operational Coordinating Committee (BCOCC), South African Defence Force (SANDF), National Intelligence Agency, Films and Publication Board (FPB), Department of Justice and Constitutional Development, Department of Home Affairs, Department of Social Development, Department of Labour, Department of Community Safety and Liaison, Department of Arts, Culture and Tourism, eThekweni Municipality, Commission on Gender Equality (CGE), South African Human Rights Commission (SAHRC), Airports Company South Africa (ACSA), Bobbi Bear, Childline, Children's Rights Centre, Doctors for Life, Durban Lesbian and Gay Community and Health Centre, Ethembeni Crisis Care Centre, Kloof Harvest Church, LifeLine, The Open Door Crisis Care Centre, Red Light, The Salvation Army, Umgeni Community Empowerment Centre, Women and Men against Child Abuse, International Labour Organisation (ILO), International Organisation for Migration (IOM), United Nations Office on Drugs and Crime (UNODC). Nineteen organisations and departments, which form part of the KZN HPPB Task Team, were interviewed in this study.

There was a high turnover of members on the KZN HPPB Task Team which had a direct impact on the number of interviews that were carried out. This also was reflected in completed questionnaires. In addition, some participants who had agreed to participate in the study later withdrew. In some instances, the turnover of government representatives was so

⁴⁵³ Not all of the organisations and departments listed have active representation on the task team, and participation and attendance by these organisations and departments have fluctuated over the years.

regular that as soon as rapport had been established with one, they were replaced by another representative at the next bimonthly meeting. As a result many new members had little or no experience, training or understanding of human trafficking or the function of the task team. Moreover, poor attendance at meetings, and a lack of decision-making power, by government representatives meant that many were not active participants. As a result, I identified a core team of organisations and individuals who played an integral role in the task team and its functions and activities, as well as those representatives who attended meetings on a regular basis. This in itself was a lengthy process due to the issues noted above. I was able to gain access to most of these core role-players who I interviewed. The implication of not being able to interview other members of the task team means that there is the potential for valuable information and divergent perspectives not to be included. However, this was mitigated through the sourcing of information from alternative sources, documentation, attendance of task team meetings and participating in informal discussions with members of the task team.

Information acquired on individual perceptions, beliefs and opinions in relation to lived experience and the research topic, coupled with a small sample size and potential selection bias derived from the sampling methods employed, means that findings are not generalizable, to the extent other methods of data collection are. However, certain patterns of association, approaches and trends are observable in terms of the dominant human trafficking discourse and actors' motivations, activities and agendas. These are discussed in the following chapters. The use of in-depth, semi-structured interviews, follow-up interviews, informal discussions and questionnaires allowed for data to be collected and extracted which was detailed, information rich and extensive, and an analysis which was open to emergent concepts and ideas allowing for explanations and detailed descriptions to be documented.⁴⁵⁴

3.5 Data Analysis

Data was analysed using an amalgamation of methods. These include, complex systems analysis⁴⁵⁵ (which is intimately aligned to the theoretical framework upon which this study is based); and a combination of discourse analysis and narrative analysis. Such a combination was vital in order to answer the research questions posed and deconstruct the human trafficking discourse in South Africa, by drawing from interviews conducted with selected actors, and responses from questionnaires and secondary sources in the South African context. The purpose of utilising this combination of methods of analyses is that they are

⁴⁵⁴ This fits into the core set of characteristics of qualitative methods identified by Snape and Spencer. See Dawn Snape and Liz Spencer, 'The Foundations of Qualitative Research', in Jane Ritchie and Jane Lewis (Eds.), *Qualitative Research Practice: A Guide for Social Science Students and Researchers*, London: SAGE Publications, 2003.

⁴⁵⁵ Discussed in the chapter above.

complimentary in that they adhere to the variegated worldview of diversity, plurality, nonlinearity and uncertainty inherently built into the theoretical framework. More importantly, they are not methods of analysis which seek to necessarily provide definitive answers, but to acknowledge and critically reflect on divergent perspectives and (unacknowledged) agendas.

3.5.1 Discourse Analysis

Discourse analysis does not actually provide a tangible answer to problems based on scientific research, but does enable ‘access to the ontological and epistemological assumptions behind a project, a statement, a method of research, or a system of classification.’⁴⁵⁶ In other words, the primary purpose of using discourse analysis is to reveal and unravel hidden motivations – particularly those documented in textual form. Discourse analysis seeks to locate this within the larger social and historical contexts within which they occur, ‘so that they may acquire a different significance and provide the basis for a possible critique and transformation of existing practices and social meanings’⁴⁵⁷. As with complexity theory, history matters, and a discourse analysis assumes that all events, objects and actions are products of ‘historically specific system[s] of [socially constructed] rules’⁴⁵⁸. Moreover, discourse theory and analysis alerts us to the notion that ‘discourses are contingent and historical constructions, which are always vulnerable to those political forces excluded in their production, as well as dislocatory effects of events beyond their control’⁴⁵⁹.

The use of discourse analysis is compatible with the theoretical framework of this study, as it does not provide absolute answers, but attempts to facilitate an understanding of and insight into the conditions/assumptions informing the phenomenon of human trafficking, both internationally and in South Africa, and counter-trafficking initiatives (responses). The motivation behind such an approach is to enable a more comprehensive view of the issue. ‘Discourse analysis is meant to provide a higher awareness of the hidden motivations in others and ourselves and, therefore, enable us to solve concrete problems – not by providing unequivocal answers, but by making us ask ontological and epistemological questions.’⁴⁶⁰

⁴⁵⁶ Discourse Analysis, available at <http://www.ischool.utexas.edu/~palmquis/courses/discourse.htm> - last accessed June 2010.

⁴⁵⁷ David Howarth, *Discourse*, Buckingham: Open University Press, (2000): 129.

⁴⁵⁸ *Ibid.*, 8.

⁴⁵⁹ Laclau (1990: 31-6) cited in David Howarth, *Discourse*, Buckingham: Open University Press, (2000): 9.

⁴⁶⁰ Discourse Analysis, available at <http://www.ischool.utexas.edu/~palmquis/courses/discourse.htm> - last accessed June 2010.

The term discourse, and the concept of discourse, plays an increasingly significant role in a variety of disciplines. Discourse analysis is generally used to analyse literary and non-literary texts.⁴⁶¹ ‘A discourse is a set of sanctioned statements which have some institutionalised force, which means that they have a profound influence on the way individuals act and think.’⁴⁶² Discourse is seen by some (like Jacques Derrida) as synonymous with the entire social system, in which discourses literally constitute the social and political world.⁴⁶³ According Haworth, the meaning, scope and application of discourse is relative to the different theoretical systems in which it is embedded. These theoretical systems are ‘laden with particular assumptions about the nature of the social world and the way we attain knowledge of it’⁴⁶⁴. Michel Foucault, the most pre-eminent scholar of discursive theory, asserts that a discourse should be conceived as ‘something which produces something else (an utterance, a concept, an effect), rather than something that exists in and of itself and which can be analysed in isolation’⁴⁶⁵. In this sense, the structure of a discourse itself may be viewed as a complex system, and whose structure can be detected or identified because of ‘the systematicity of the ideas, opinions, concepts, ways of thinking and behaving which are formed within a particular context, and because of the effects of those ways of thinking and behaving’⁴⁶⁶. Discourses are primarily viewed as ‘frames’, and as such are ‘instrumental devices that can foster common perceptions and understandings for specific purposes, and the task of discourse analysis is to measure how effective they are in bringing about certain ends’⁴⁶⁷. Thus, we can assume (and in turn attempt to identify and deconstruct) that there is a set of discourses surrounding the phenomenon of human trafficking, consisting of individual and overlapping / amalgamated discourses of (sexual) slavery, (forced) prostitution, debt bondage, child trafficking, organ trafficking, organised transnational crime, migration and so forth.

Discourse analysis is useful in that it allows one to develop and explore the discursive framework (emanating from legislation, policy, scholarly research, advocacy reports, and the media) demarcating the boundaries within which we can understand and negotiate what it means to be trafficked or a victim of trafficking or a slave, and how such constructed frameworks potentially constrain how trafficking is addressed. Discourse analysis is

⁴⁶¹ See David Howarth, *Discourse*, Buckingham: Open University Press, (2000); Sara Mills, *Discourse*, London: Routledge, (1997).

⁴⁶² Sara Mills, *Discourse*, Routledge: London, (1997): 62.

⁴⁶³ David Howarth, *Discourse*, Buckingham: Open University Press, (2000): 2.

⁴⁶⁴ *Ibid.*, 3

⁴⁶⁵ Sara Mills, *Discourse*, London: Routledge, (1997): 17.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ David Howarth, *Discourse*, Buckingham: Open University Press, (2000): 3; See also Robert D. Benford and David A. Snow, ‘Framing Processes and Social Movements: An Overview and Assessment’, *Annual Review of Sociology*, 26, (2000): 611 – 639.

particularly useful in tracing and delineating the notion of Foucault's 'mechanics [of discourse] whereby one becomes produced as the dominant discourse, which is supported by institutional funding and the respect of the population as a whole'⁴⁶⁸. Thus, in the investigation of the phenomenon of human trafficking and counter-trafficking initiatives, and their incarnation in South Africa, discourse analysis allowed me to delve into the episteme⁴⁶⁹ surrounding it.

Hajer's Foucauldian inspired structured approach to discourse analysis was used to identify dimensions, agents and motives, and sites of conflict within the human trafficking discourse drawn from desk research (pertinent literature), interviews and participant observation. Hajer's framework consists of three elements: (i) metaphor⁴⁷⁰, (ii) story line⁴⁷¹, and (iii) discourse coalitions⁴⁷². This framework formed the basis for an eight step analysis⁴⁷³ which I employed to analyse both written texts and the spoken word 'to reveal the discursive sources of power, dominance, inequality, and bias and how these sources are initiated, maintained, reproduced and transformed within specific social, economic, political and historic contexts (Van Dijk, 1998)⁴⁷⁴. This involved the following steps:

1. Desk research involving a first reading of events. Texts were initially approached in an uncritical manner. They were then revisited and critically read and sorted into particular genres (i.e. the type of text – such as peer-reviewed journal articles and books, research reports, advocacy briefs and position papers, legislation and policy documents⁴⁷⁵, speeches, interviews and so forth) and provided an overview for the collation of different perspectives.

⁴⁶⁸ Sara Mills, *Discourse*, London: Routledge, (1997): 19.

⁴⁶⁹ An episteme is the set of discursive structures as a whole within which a culture thinks. In this instance, it refers to the groups of discourses which make up the structure of what we constitute as the human trafficking phenomenon. See Mills (1997: 56 – 57) for a discussion of episteme.

⁴⁷⁰ Metaphors consist of phrases which symbolise the key ideas of the discourse, such as 'human trafficking', 'modern-day slavery', 'sex trafficking' or 'vulnerability of women and children'.

⁴⁷¹ 'Story lines encapsulate the discourse in a short-hand form using metaphors.' Sally Hewitt, *Discourse Analysis and Public Policy Research*, Centre for Rural Economy Discussion Paper Series No. 24, (October 2009): 10.

⁴⁷² Discourse coalitions refers to 'a group of actors that, *in the context of an identifiable set of practices*, shares the usage of a particular set of story lines over a particular period of time.' Hajer (2005):302 quoted in Sally Hewitt, *Discourse Analysis and Public Policy Research*, Centre for Rural Economy Discussion Paper Series No. 24, (October 2009): 11.

⁴⁷³ Adapted from Hajer's ten steps of conducting discourse analysis. See Sally Hewitt, *Discourse Analysis and Public Policy Research*, Centre for Rural Economy Discussion Paper Series No. 24, (October 2009): 12.

⁴⁷⁴ Sue L.T. McGregor, 'Critical Discourse Analysis – A Primer', *Kappa Omicron Nu Forum*, Vol. 15, No. 1, May 2004, available at <http://www.kon.org/archives/forum/15-1/mcgreggorda.html> – last accessed January 2013.

⁴⁷⁵ This included, *inter alia*, the Trafficking Protocol, the annual US TIP Report, the South African Trafficking in Persons Bill (as well as discussion documents and deliberations), and South African Government information on human trafficking.

2. Document analysis was conducted to identify metaphors and story lines, as well as agents and motives, and sites of discursive struggle. This helped identify how each text was ‘framed’ or problematised.⁴⁷⁶
3. Interviews with key role-players were conducted in order to construct the interviewee discourses and catalogue alternative perspectives.
4. Data was searched to account for sites of argumentation.
5. Data / text was then analysed for positioning effects in order to demonstrate how individuals, institutions, networks or states are interconnected and to discover the relationships which exist between them.
6. Key events / incidents were identified in order to understand discursive dynamics and outcomes.
7. Text was revisited to see if ‘the meaning of what is said can be related to the practice in which it was said’⁴⁷⁷.
8. Interpretation of the data in order to provide ‘an account of the discursive structures, practices and sites of production’⁴⁷⁸ (i.e. how the dominant human trafficking discourse is produced and reproduced globally and locally).

Such an analysis proved useful in deconstructing the human trafficking discourse in the South African context and the importation or indigenisation of the globally dominant human trafficking discourse⁴⁷⁹; and pertinent in discovering and analysing agendas and the reality of the politics of human trafficking in South Africa. In particular, a discursive study of international and national legislation, policy, the media and public perceptions of the human trafficking phenomenon⁴⁸⁰ was undertaken to facilitate this.

⁴⁷⁶ This was achieved by examining to varying degrees: (i) word/phrase level (classification, connotation, code words, metaphor, presupposition, modality); (ii) sentence/utterance level (transitivity, deletion, foregrounding, register, presupposition, insinuation, intertextuality); (iii) text level (genre, heteroglossia, coherence, framing, foregrounding, agency, omission); and (iv) higher level concepts (heuristics, naturalisation, cultural models and myths, resistance, ideology). See, Thomas Huckin, ‘Critical Discourse Analysis and the Discourse of Condescension’, in E. Barton and G. Stygall (Eds.), *Discourse Studies in Composition*, Hampton, (2002): 7 – 12, available at https://secure.lsit.ucsb.edu/writ/wrconf08/Pdf_Articles/Huckin_Article.pdf – last accessed December 2012. Register refers to a technique used to manipulate the reader through the use of ‘selective voices to convey the message that certain points of view are more correct, legitimate, reliable, and significant while leaving out other voices.’ Sue L.T. McGregor, ‘Critical Discourse Analysis – A Primer’, *Kappa Omicron Nu Forum*, Vol. 15, No. 1, May 2004, available at <http://www.kon.org/archives/forum/15-1/mcgreggorda.html> – last accessed January 2013.

⁴⁷⁷ Sally Hewitt, *Discourse Analysis and Public Policy Research*, Centre for Rural Economy Discussion Paper Series No. 24, (October 2009): 12.

⁴⁷⁸ *Ibid.*, 12.

⁴⁷⁹ A term coined by Roy Huijsmans. For a discussion of the indigenisation of the global trafficking discourse in Laos, see Roy Huijsmans, ‘The Theatre of Human Trafficking: A Global Discourse on Lao Stages’, *International Journal of Social Quality*, 1(2), Winter (2011): 66 – 84.

⁴⁸⁰ See Chapter 1 where human trafficking as discourse are discussed.

3.5.2 Narrative Analysis

Narrative analysis was used in a limited but complementary way to discourse analysis. It offered some valuable insights into perceptions of what human trafficking is and the overarching ‘story’ of what human trafficking means and how it should be addressed.

*As nations and governments construct preferred narratives about history, so do social movements, organisations, scientists, other professionals, ethnic/racial groups, and individuals in stories of experience. What makes such diverse texts “narrative” is sequence and consequence: events are selected, organised, connected and evaluated as meaningful for a particular audience.*⁴⁸¹

Narrative analysis allowed me to identify and investigate the preferred narratives (stories) around human trafficking and counter-trafficking measures, particularly in the South African context. It enabled me to piece together which events had been selected and how they had been organised and connected to create the seemingly linear story of human trafficking, and how this has been utilised and/or adopted in the South African context. ‘[N]arratives are skilfully woven to bring into being versions of the self that serve specific purpose’⁴⁸². It is through this analysis of specific purposes that the researcher might unpick the various roles played by individuals within specific contexts, organisations or systems. ‘For many narratives what is crucial is the tenuous complexity of actual analysis rather than the powerful simplicity of reduction’⁴⁸³. Thus, narrative analysis enables the extraction of the politics or ‘sociology hidden behind a handful of lines’⁴⁸⁴ in policy, task team reports and documentation, and research by advocacy groups. Especially when dealing with issues or phenomena as complex, uncertain and polarised as that of human trafficking at both the local and international level, it became vital for me to examine ‘the different stories policymakers and their critics use to articulate and make sense of that uncertainty, complexity, and polarization’⁴⁸⁵. As such, an analysis of both the ‘micro’ and ‘macro’ levels of narrative(s), derived from interviews and the case study, was essential.

⁴⁸¹ Catherine Kohler Riessman, ‘Narrative Analysis’, in Catherine Kohler Riessman, *Narrative, Memory and Everyday Life*, Huddersfield: University of Huddersfield (2003): 1.

⁴⁸² Rachel Redwood, ‘Narrative and Narrative Analysis’, *Journal of Clinical Nursing*, 8:6, (1999): 674.

⁴⁸³ S. Chatman, *Story and Discourse: Narrative Structure in Fiction and Film*, Cornell University Press: Ithaca, NY, (1978): 94 cited in Roberto Franzosi, ‘Narrative Analysis – Or why (and how) sociologists should be interested in narrative’, *Annual Review of Sociology*, Vol. 24, (1998): 519.

⁴⁸⁴ Ibid.

⁴⁸⁵ Emery Roe, *Narrative Policy Analysis: Theory and Practice*, Durham and London: Duke University Press, (1994): 3. This research incorporates Roe’s four steps of narrative policy analysis: (i) definition of stories and identification of accompanying (policy) narratives; (ii) identification of other narratives in the issue that deviate from the preferred definition of the story or dominant policy narratives; (iii) comparison of the two sets of narratives in order to generate a meta-narrative; (iv) determine whether the meta-narrative is more amenable to decision-making and policymaking.

In the next chapter, I turn to the international legal and policy framework. I examine its formation and discursive development. I critically assess the role played by state and non-state actors and their particular ideologies and political and/or moral agendas. Thereafter I examine the influence of the international compliance and evaluation mechanism, in the form of the TIP Report, spearheaded by US foreign policy.

Chapter 3: Addressing the Unknown – Legal Frameworks and Legacies

This exploitative partnership trades in trafficked women and has created a vast industry where not only are the bodies of “weak” “foreign” women repeatedly raped in every media, but – equally humiliating – their voices are stolen to serve political agendas that have little or no resonance with their own migration agendas.⁴⁸⁶

1.0 Introduction

Human trafficking has been addressed by individual states and the international community in different forms of legislation and convention. The international legislative framework that has emerged over time reflects many of the rigorous and often unresolved debates surrounding prostitution, gender and migration. The resurgence of human trafficking as a threat posed to states and humanity gained new and fervent impetus in the era preceding the end of the Cold War with the feminist movement and the spread of human rights, and thereafter in the vacuum of immediate threats to the security of the state. With borders suddenly opened in Eastern Europe, large influxes of migrants gained entry into Western Europe and the United States. With them came undocumented workers, prostitutes and organised crime syndicates (who facilitated their movement across borders and who also exploited them for material gain). It is within this setting of the post-Cold War world and a fresh surge of mass migration (particularly that of impoverished women and children) that a new threat that deserved international attention was born – or in this instance, revived in another incarnation.

In this chapter, I provide a critical overview of the current international legal framework and its genesis, and assess the role played by state and non-state actors and their particular ideologies and political agendas in its formation. I also provides an in-depth analysis of international legislation (in the form of the Trafficking Protocol) and other influential legal and policy frameworks – particularly those emanating from the United States – and the role played, in what has become the dominant discourse, in influencing and shaping its trajectory. The legacies of past conventions and debates about human trafficking, and indeed the ones created by influential actors in the contemporary discourse, are explored and discussed. Such an examination is integral to the attempt to deconstruct the human trafficking discourse, particularly the dominant one, and assesses to what extent it has been exported and accepted elsewhere. In other words, how this affects the emerging discourse and legal and policy frameworks in South Africa.⁴⁸⁷ The chapter is thus divided into three parts. The first part of this chapter focuses on the international legal framework, its genesis and development. The

⁴⁸⁶ John Davies and Benjamin Davies, ‘So if you are not “Natasha,” who are you? Revealing the other trafficked women and their uses?’ in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London: Routledge, (2010): 218. (Citing the work of Agustin 2005 and Doezema 2001).

⁴⁸⁷ As discussed in the following chapter.

second part looks at the modern discourse and the role played by state and non-state actors in its formation and exportation. It interrogates the dominant voices and perspectives, the intense and unresolved debates of issues that form the crux of the trafficking definition, and the implications this has on policy and law and potential effect on human trafficking. The third part of the chapter delves into international compliance and monitoring mechanisms which is driven by United States foreign policy and its controversial annual Trafficking in Persons Report. It reviews the influence this has on states and questions the validity, and indeed purpose, of such a unilateral approach.

2.0 The International Legal Framework

In the decade since human trafficking emerged on the international agenda, and subsequently the international policy arena, as a threat to the security of states⁴⁸⁸ in a highly interconnected and interdependent international system, a number of significant international legal instruments (treaties) have been introduced in an attempt to counter this tenebrous phenomenon. The international human rights framework, which provides the spirit for anti-trafficking measures and treaties but which has proven incapable of addressing severe forms exploitation internationally, and regional specialist treaties are not discussed.⁴⁸⁹ These include, *inter alia*,

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (UNGA Res. 54/263 of 2000);
- United Nations Convention against Transnational Organized Crime (225 UNTS 209 of 2000);
- Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime (UNGA Res. 55/25 of 2000);
- Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Organized Crime (UNGA Res. 55/25 of 2000);
- Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Trafficking Principles and Guidelines) (UN Doc. E/2002/68/Add.1).

These international legal instruments, which form the foundation of the international legal framework and serve to guide regional and domestic legal and policy frameworks alike,

⁴⁸⁸ This refers to the territorial, political, and economic security of the state, and indeed the state system.

⁴⁸⁹ For a detailed and comprehensive discussion of these legal instruments, see Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010).

represent the culmination of different perspectives, responses and conceptions of how to combat what has been perceived by states and other actors as an emerging threat of epic proportions. The genesis and indeed negotiations of the current international legal framework needs to be traced and unpacked in order to understand the contested nature of the human trafficking discourse and the compromises made by state parties in the negotiations leading up to the Trafficking Protocol itself. For many commentators, especially those who favour a more human rights based approach,⁴⁹⁰ the Trafficking Protocol, as discussed below, represents a missed opportunity. Vagaries in terminology and weak obligations placed on ratifying states form the basis of such criticisms. While it is important to provide clear and even concise definitions and explanations of terms for policymakers and legal practitioners, as well as the methods to be employed to combat them, when dealing with an issue that still is not entirely understood, condensing knowledge into simple categorisations does not necessarily imply a successful outcome.⁴⁹¹ An example of this is seen in the modern conflation of human trafficking with transnational organised crime and vast criminal networks have also proved to be over-simplistic.⁴⁹² A political trade-off has helped elevate the perceived threat of human trafficking, as a violation of human rights, to one of imminent danger to states, their borders, their economies and their security. However, over-simplification of the issue and ways to address it are not the only concern, even more problematic is the ideological and moral battle that was fought over the question of prostitution (which took centre-stage during the negotiations) and its impact on the development of the discourse. The contemporary international legal framework contains remnants of previous treaties and conventions, as well as the accompanying discourses and moral panics that fuelled them. This section examines them more closely in order to provide a deeper understanding of what the current international legal framework actually implies and the issues which have shaped it.

⁴⁹⁰ That takes into consideration the notion of agency – i.e. an individual’s ability to make rational choices, which also encompasses decisions to take risks or open oneself up to exploitation. Commentators like James Hathaway lament that the Trafficking Protocol only addresses a small subsection of slavery, and largely ignores the millions of slaves and millions more who are subject to various forms of exploitation. See James C. Hathaway, ‘The Human Rights Quagmire of “Human Trafficking”’, *Virginia Journal of International Law*, Vol. 49:1, (2008): 1 – 59.

⁴⁹¹ Conceptualising and addressing a highly complex and uncertain phenomenon such as human trafficking in simple terminology and the employment of linear causality / rationality have potentially proven to be a great disservice to its victims who remain hidden and overlooked.

⁴⁹² Major organised criminal groups or organisations are yet to be smashed or brought to book for their role in the trade in human beings. Although a great deal of resources have been spent by certain states over the past decade in combating human trafficking – there have been few tangible results in relation to the purported scope and immensity of the problem.

2.1 Legacies of the Past

The term human trafficking, as discussed in Chapter 1, is a derivative of the terminology used in the late 19th discourse which equated the migration of women, particularly unchaperoned women of child-bearing age, with that of forced prostitution and sexual slavery – and the ubiquitous ‘white slave trade’.⁴⁹³ Various pieces of international legislation were developed during the early to mid-twentieth century that helped cement such concepts. The *International Agreement for the Suppression of the White Slave Traffic* (1904)⁴⁹⁴ was the first such convention against ‘white slavery’ – the ‘traffic’ of women and girls into prostitution whether by force or deceit. It sought to ‘suppress the “criminal traffic” of women or girls compulsively procured for “immoral purposes”’⁴⁹⁵. Article 2 of the 1910 *Convention against White Slavery*⁴⁹⁶ obligated signatory states to punish,

Whoever, in order to gratify the passions of another person, has, by fraud, or by means of violence, threats, abuse of authority, or any other method of compulsion, procured, enticed, or led away a woman or girl over age, for immoral purposes.

According to Gallagher, whilst references to the ‘white slave trade’ and ‘white slavery’ were discarded by 1927 for their inability to typify the scope and nature of the problem, subsequent international treaties and agreements continued to refer to the ‘traffic’ of women and children abroad for the purposes of prostitution.⁴⁹⁷ Notably, the *International Convention for the Suppression of the Traffic in Women and Children* (1921)⁴⁹⁸ and *International Convention for the Suppression of the Traffic in Women of Full Age* (1933)⁴⁹⁹ both concentrated on the organized movement of women and girls overseas for the purpose of prostitution, whilst the former also incorporated the notion of coercion. These early agreements, because of the very nature of international law and state sovereignty, were limited in scope – dealing only with the process of recruitment. ‘The end results of that recruitment, typically the detention of a woman or girl against her will in a brothel, were considered outside the scope of international

⁴⁹³ As discussed in Chapter 1, the ‘white slave trade’ denoted the forcible or fraudulent recruitment of young European women and girls into prostitution.

⁴⁹⁴ 1 LNTS 83 of 4 May 1904, which entered into force 18 July 1905.

⁴⁹⁵ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 13. The very language imbued with what was to become associated with Victorian morality and norms, is very suggestive of the stance and trajectory that the nascent trafficking discourse was to take.

⁴⁹⁶ International Convention for the Suppression of the White Slave Traffic (3 LNTS 278, 4 May 1910, entered into force 8 August 1912).

⁴⁹⁷ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 14.

⁴⁹⁸ 9 LNTS 415, 30 September 1921, entered into force 15 June 1922.

⁴⁹⁹ 150 LNTS 431, 11 October 1933, entered into force 24 August 1934.

action⁵⁰⁰. These early trafficking treaties focused specifically on the transportation of women and girls into prostitution – they did not address the notion of slavery as a whole, nor other potential forms exploitation. The *Convention to Suppress the Slave Trade* of 1926 and the *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery* of 1957 deal more holistically with the notion of slavery and exploitation by requiring all states to bring about the abolition of slavery ‘in all its forms’ and ‘prevent and suppress the slave trade’⁵⁰¹.

In 1949, the newly established United Nations drafted the *Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others*⁵⁰² (1949 Trafficking Convention). As with previous conventions the concepts of ‘traffic’ and ‘trafficking’ were not defined.⁵⁰³ The 1949 Trafficking Convention, whilst extensive in scope, dealing with both ‘the *process* of trafficking (procurement, etc.) as well as the *result* (exploitation of prostitution)’⁵⁰⁴, remains abolitionist in spirit and purpose. This is apparent in Article 1 of the 1949 Trafficking Convention which requires state parties to punish:

any person who, to gratify the passions of another:

- (1) *procures or entices or leads away, for the purposes of prostitution, another person, even with the consent of that person;*
- (2) *exploits the prostitution of another person, even with the consent of the person.*

As Gallagher infers, Art. 1(1) captures the popular and contemporary understanding of human trafficking.⁵⁰⁵ Quirk argues that ‘[t]he focus here is not trafficking, which is not defined, but prostitution and pimping’⁵⁰⁶. It is this 1949 Trafficking Convention that needs to be viewed as the foundational definition of what constitutes human trafficking, which was accepted and

⁵⁰⁰ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 14.

⁵⁰¹ See Art. 2. It provides a far more expansive and inclusive definition of slavery and practices which lead to the exploitation of a person’s labour.

⁵⁰² 96 UNTS 271, 2 December 1949, entered into force 25 July 1951.

⁵⁰³ Also, ‘the absence of any *travaux préparatoires* renders impossible any meaningful analysis of this omission.’ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 14.

⁵⁰⁴ *Ibid.*, 15.

⁵⁰⁵ *Ibid.* Gallagher also points to the gender neutral language which may allow for the convention to be extended to male victims, as well as the absence of any reference to the transnational nature of the crime. It is this convention’s definition of trafficking with its emphasis on prostitution which neo-abolitionist feminist groups, such as the Coalition against Trafficking in Women, favour and advocate be implemented in contemporary debates on human trafficking.

⁵⁰⁶ Joel Quirk, *Unfinished Business: A Comparative Survey of Historical and Contemporary Slavery*, The Slave Route Project: UNESCO, Wilberforce Institute for the Study of Slavery and Emancipation: University of Hull, (2008): 30.

indeed extended⁵⁰⁷ over time – during the latter half of the twentieth century.⁵⁰⁸ However, it is the Convention's very conflation of prostitution with trafficking and 'sweeping conception of prostitution as exploitation [which] would have required states to make such deep legal changes that many felt it was incompatible with their Constitutions and legal codes'⁵⁰⁹ that have ensured that it never gained widespread acceptance. Nevertheless, the 1949 Convention, as well as its predecessors, has cast a long shadow on the debates surrounding human trafficking.

The overarching themes and concepts of these conventions imbued with imagery of innocent naïve young women and children tricked and transported to some far off land to be used and abused as sex slaves was readily revived and adapted at the advent of the 21st century and the new phenomenon of 'modern day slavery' and 'human traffic'. Spurred on by episodic mass migration of women from the global South in a world with suddenly seemingly porous borders, the apparent expansion of organised crime and the shadow economy, and the rise of a new pandemic disease – HIV/AIDS – and 'fear about transmission through migration (particularly prostitute migration)⁵¹⁰ all played important roles in reinvigorating and reorienting the threat posed by human trafficking – particularly the notion of the evils associated with prostitution. This rediscovered discourse was driven primarily by feminist neo-abolitionist organisations who proved influential in their lobbying and demands for the international legal framework to be revised and its perceived inadequacies to be addressed in preventing the cross-border trafficking of women and children and resultant sexual

⁵⁰⁷ This narrow understanding of human trafficking and its linkage to prostitution are witnessed in the following United Nations resolutions: UN Economic and Social Council, *Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, UN Doc. E/RES/1982/20, 4 May 1982; UN Doc. E/RES/1983/30, 26 May 1983; UN General Assembly, *Traffic in Women and Girls*, UN Doc. A/RES/49/166, 23 December 1994; *Traffic in Women and Girls: Report of the Secretary-General*, UN Doc. A/50/369, 24 August 1995. However, the latter two do extend beyond the traditional narrow scope of understanding to also incorporate the notion that human trafficking transcends sexual exploitation and is linked to migration. They also offer insight into the later debate of what constitutes human trafficking. The UN General Assembly resolution identifies trafficking as the illegal activities related to trafficking as the result of movement. Whereas, the Secretary-General's report holds that 'it is the *process* that defines trafficking, not the end result.' Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 18. Of significance is that these two reports laid the foundation for the later legal definition of human trafficking, when read together, offered a potentially wider understanding of human trafficking by incorporating both the process and result. *Ibid.*, 18.

⁵⁰⁸ By the 1970s and 1980s, however, it had become problematically intertwined with the concept of migrant smuggling which was only addressed in 2000 with the drafting of the two supplementary protocols of the *United Nations Convention against Transnational Organized Crime*. See Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 15, *supra* note 14.

⁵⁰⁹ Penelope Saunders and Gretchen Soderlund, 'Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse', *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 20.

⁵¹⁰ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 16.

exploitation. In the sometimes cyclical nature of history, discourses are often revised, rediscovered or reinvented to stem some form of reoccurring moral panic – in this instance where migration and prostitution transect. As in the previous discourse, the acceptance of prostitution is seen by radical feminists (of the neo-abolitionist variety) to institutionalise ‘the oppression and corruption of women and [is] not successful in stemming the spread of venereal disease’⁵¹¹ echoing the sentiments of Josephine Butler.

However, migration, and indeed the so-called ‘feminisation of poverty’ and accompanying migration, had taken on a darker twist. Impoverished women and children, as well as men, were employing ever more precarious methods to gain entry into first world ports of entry. Whether fleeing embittered and repressive social, economic or political situations, war zones, or merely migrating for work and/or education in the developed West, through legitimate routes or illicit ones to find refuge, a promise of survival or even a form of prosperity, many migrants opened themselves up to exploitation and ultimately trafficking. The lines between migrant smuggling and human trafficking at the end of the twentieth century became increasingly blurred.⁵¹² Countries of destination, many suffering from asylum fatigue, such as the United States and its European counterparts, rapidly sought to raise the barrier to entry through stricter border controls to keep the ‘undesirables’ out. This in turn, only led migrants and in some cases refugees to take more daring and more precarious risks to enter these states illegally – turning in many instances to people smugglers and other networks (including familial ones). The illicit movement of people across borders, often facilitated by emerging crime groups in Eastern Europe and Southeast Asia, quickly caught the attention of law enforcement in favoured countries of destination.⁵¹³ This effectively served to widen the ambit of what constituted trafficking – by shifting ‘the conceptualization of trafficking – from [merely] prostitution to unregulated migration and forced labor’⁵¹⁴.

⁵¹¹ Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations*, New York: Oxford University Press, (2006): 33. See Chuang (2010), Doezama (2000) and Outshoorn (2005) for a comprehensive discussion on the re-emergence of the myth of ‘white slavery’ and the negative portrayal of prostitutes and how this intersects with the political debates surrounding human trafficking.

⁵¹² Whilst the various forms of exploitation that they were exposed to became not only increasingly diverse, but also the nature and purpose of exploitation became more extreme. It is from these migratory experiences that human trafficking started to become identifiable in contradistinction to the debts often incurred through facilitate illicit migration.

⁵¹³ Anthony M. DeStefano, *The war on human trafficking: U.S. policy assessed*, New Brunswick: Rutgers University Press, (2008): 19.

⁵¹⁴ Kamala Kempadoo, ‘From Moral Panic to Global Justice: Changing Perspectives on Trafficking’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): xii.

Through this reformulation, human trafficking had been effectively ‘subsumed under the heading of international criminal activity’⁵¹⁵ and thus organised crime. This is reflected in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*⁵¹⁶ (Trafficking Protocol). It was assumed that organised crime, in the form of criminal networks and groups, like the Russian Mafia, the Albanians, the Japanese Yakuza and Chinese Triads, were the drivers behind this global trade in human beings and were profiting from this – much like the global drug trade. However, what seems to have gone missing in many initiatives and policies to counter-trafficking, and even from a general understanding of human trafficking as a phenomenon, is that contrary to popular media accounts (and even information emanating from governments) that place stereotypical organised crime at the heart of the problem, the ‘level of organized crime intervention [does not] seem necessary for trafficking to proliferate. Instead, organized crime involvement often [centres] around a series of specialized smaller conspiracies, with various divisions of labor’⁵¹⁷. Indeed, by locating human trafficking within the framework of the *United Nations Convention against Transnational Organized Crime*,⁵¹⁸ it has been raised to the same level of crime as that of drug and weapon trafficking.⁵¹⁹ As Kempadoo notes,

*Anti-trafficking in this framework is synonymous with a war on international crime, and represents an attack on the movement of persons, weapons, or drugs that defy or circumvent legal boundaries and borders... Punishment of those who assist others to circumvent national immigration restrictions and disrupt older patterns and flows of migration thus stands at the very heart of the contemporary UN anti-trafficking policies.*⁵²⁰

Three key themes emerge from this which need to be explored in more detail to fully comprehend their effect on negotiations in drafting the Trafficking Protocol and subsequent

⁵¹⁵ Kamala Kempadoo, ‘From Moral Panic to Global Justice: Changing Perspectives on Trafficking’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): xiii.

⁵¹⁶ UNGA Res. 55/25.

⁵¹⁷ Anthony M. DeStefano, *The war on human trafficking: U.S. policy assessed*, New Brunswick: Rutgers University Press, (2008): 20 – 21. In other words, many different individuals and groups with loose or overlapping connections at various stages in the trafficking process are involved – and not one particular, easily identifiable group.

⁵¹⁸ 2225 UNTS 209.

⁵¹⁹ The 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementing the United Nations Convention against Organized Crime (UNGA Res. 55/255) forms the third pillar of the Organized Crime Convention.

⁵²⁰ Kamala Kempadoo, ‘From Moral Panic to Global Justice: Changing Perspectives on Trafficking’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and prostitution reconsidered: new perspectives on migration, sex work, and human rights*, Boulder: Paradigm Publishers, (2005): xiii.

legal and policy developments internationally: (i) organised crime, (ii) migration, (iii) prostitution. This is addressed in the discussion below.

3.0 The Modern Anti-Trafficking Discourse: Migration, Organised Crime, Prohibitive Regimes (Prostitutes) and U.S. Influence

Two states stand out in the negotiations leading up to the formulation of the Trafficking Protocol – Argentina and the United States⁵²¹. Argentina championed the plight of minors who had fallen prey to the horrors of trafficking. They had proposed a separate convention in this regard due to their frustration with the slow progress that had been made in negotiating an additional protocol to the *Convention on the Rights of the Child*⁵²² addressing child prostitution and pornography. Moreover, ‘Argentina was also concerned that a purely human rights perspective to this issue would be insufficient and accordingly lobbied strongly for trafficking to be dealt with as part of the broader international attack on transnational organized crime’.⁵²³

However, while the proposed new convention was discussed at the 1997 session of the UN Commission on Crime Prevention and Criminal Justice, a greater number of states put forward that the most effective way to address this issue would be to develop a protocol that was part of the overarching UN Convention. This is where the United States appears to begin to take centre stage in the nascent trafficking discourse. Suffusing the language of human rights with the prevailing law enforcement obsession with organised crime, the United States ‘viewed the gathering impetus for a global pact on organized crime as an opportunity for the United States to propose a document that would address trafficking in women and children, two particularly vulnerable groups’⁵²⁴. Along with the United States’ trafficking protocol which was to serve as a guide for UN deliberations, Argentina and the United States presented a combined document⁵²⁵ to the Ad Hoc Committee on the Elaboration on the

⁵²¹ Concomitantly to the discussions surrounding human trafficking taking place at the United Nations (around 1998), the United States was also focussing on human trafficking as a serious threat. Indeed, as DeStafano (2008: 18) asserts the interests of the United States in this regard served as a catalyst that shaped and formed the international agreements, and ultimately the international discourse. For a detailed discussion of how the international trafficking legal framework was developed see Gallagher (2010).

⁵²² *Convention on the Rights of the Child* of 1989, 1577 UNTS 3.

⁵²³ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 77.

⁵²⁴ Anthony M. DeStefano, *The war on human trafficking: U.S. policy assessed*, New Brunswick: Rutgers University Press, (2008): 18.

⁵²⁵ The combined document was divided into two options for negotiators – each highlighting the individual standpoints of the two countries. Argentina sought to deal exclusively with women and children, whereas the United States offered the more inclusive category of persons. From these two options it is clear to see where the alternating use or emphasis on both ‘women and children’ and ‘persons’ comes to the fore – and the different definitions and requirements for the crime. Anthony M.

Convention against Transnational Organized Crime. It is from this combined document that the final trafficking protocol has drawn heavily – and indeed from where our current definition originates and what categories or forms of the crime may take. However, as Chuang correctly observes, ‘U.S. law and policy have fuelled controversy over anti-trafficking strategies, both [in the U.S.] and abroad’⁵²⁶. This is due to the simultaneous enactment of the United States’ comprehensive domestic legislation on human trafficking, the *Trafficking Victims Protection Act of 2000* (TVPA)⁵²⁷. The ramifications and indeed legacy of this are discussed later in this chapter.

The Trafficking Protocol offers an internationally recognised (legal) definition of what constitutes human trafficking.⁵²⁸ This is derived from Article 2 of the Protocol which divides human trafficking into three separate elements: (i) action (recruitment, transportation, transfer, harbouring, or receipt of persons); (ii) means (threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power, or abuse of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person); and (iii) purpose (exploitation – as defined in Art.3 to include, at a minimum, exploitation of prostitution, other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs). Hathaway is particularly critical of the definition of trafficking provided in Art.3. He avers that the trafficking definition represents a departure from the internationally agreed upon prohibition of slavery. Moreover, he expresses alarm that the Trafficking Protocol is only concerned with ‘prohibiting forms of dealing which facilitate or lead to exploitation. There is, in consequence, no obligation flowing from the Trafficking Protocol to do anything about the condition of being exploited, much less to provide a remedy to exploited persons’⁵²⁹.

However, as Gallagher notes, ‘[i]t has provided both a framework and an impetus for the generation of a comprehensive range of international, regional, and national norms and standards’⁵³⁰.

DeStefano, *The war on human trafficking: U.S. policy assessed*, New Brunswick: Rutgers University Press, (2008): 19 – 20.

⁵²⁶ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1657.

⁵²⁷ Trafficking of Victims Protection Act of 2000 (TPVA), Pub. L. No. 106-386, div. A, amended by the Trafficking of Victims Protection Reauthorization Act of 2003 (2003 TPVRA) and the Trafficking of Victims Protection Reauthorization Act of 2005 (2005 TVPRA), and the William Wilberforce Trafficking of Victims Protection Reauthorization Act of 2008 (2008 TVPRA).

⁵²⁸ Art. 3

⁵²⁹ James C. Hathaway, ‘The Human Rights Quagmire of “Human Trafficking”’, *Virginia Journal of International Law*, Vol. 49:1, (2008): 10.

⁵³⁰ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 5.

*In addition to recognizing a broader category of victims, a new international law on trafficking needed to provide the necessary infrastructure to ensure cooperation among governments with respect to protection of trafficked persons, prosecution of traffickers, and prevention of the underlying causes of the phenomenon.*⁵³¹

It also introduces three significant policy dimensions: (i) prosecution (and the criminalisation, investigation and punishment of traffickers), (ii) protection (of victims), and (iii) prevention (of the crime of human trafficking).⁵³² This is illustrated in the table below.

Table 2: Requirements of signatory governments who have ratified the Protocol under the three policy dimensions (based on articles 5 – 13)

Prosecution (Art. 5)	Protection (Art. 6 – 8)	Prevention (Art. 9 – 13)
Adoption of anti-trafficking law	No punishment of victims	Implementation of campaigns for anti-trafficking awareness ⁵³³
Adoption of child trafficking law	Imposing no self-identification in order to prove their status as a victim ⁵³⁴	Training government and military officials (including peace keepers)
Application of other relevant laws	Assistance for legal proceedings	Facilitating information exchange among relevant authorities
Stringency of penalties	Ensuring the physical safety of trafficking victims within a state's territory	Monitoring borders, train stations, airports (and other points of entry)
Level of law enforcement	Harmonisation of domestic law to ensure the possibility of obtaining compensation ⁵³⁵	Adopting national action plans for combating trafficking in persons

⁵³¹ Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1662.

⁵³² United Nations Office on Drugs and Crime, *Trafficking in Persons: Global Patterns*, 2006. DeStefano (2008: 23) notes that the 'Three Ps' synonymous with the trafficking protocol and global responses: (i) protection, (ii) prosecution, and (iii) prevention, are the result of pressures placed by the Clinton administration to promote its position on human trafficking.

⁵³³ Art. 9(2).

⁵³⁴ This refers to the protection of the privacy and identity of trafficked persons where appropriate, and is also extended to domestic law where possible. See Art. 6(1) of the Trafficking Protocol and the *Legislative Guide*, at 283. For an in-depth discussion see, Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010).

⁵³⁵ Art. 6(6) does not stipulate what type of compensation this entails. Moreover, this provision has been watered down so that states are not obligated to use the proceeds of seized or confiscated profits of any organised crime group to compensate victims of trafficking.

Collection of crime statistics	Provision of residence permits ⁵³⁶	Promoting cooperation with NGOs and international organisations
	Basic services for housing	Facilitating cooperation with other governments
	Medical treatment	
	Job training	
	Assistance for rehabilitation ⁵³⁷	
	Assistance for repatriation ⁵³⁸	

Article 5 stipulates prosecutorial measures to be taken by states. States are obligated to criminalise the ‘combination of constituent elements making up the crime of trafficking... not the elements themselves’⁵³⁹. While the requirement that states impose appropriate penalties was omitted in the final text of the Protocol, the *mutatis mutandis* requirement obliges states in the absence of a specific provision to follow the relevant provisions of the UN Convention against Transnational Organized Crime. In accordance with Article 11(1) of the Convention, states are required to ensure that ‘sanctions adopted within domestic law take into account and be proportionate of the gravity of the offenses’⁵⁴⁰.

The provisions that appear under the heading of protection (Articles 6 – 8) are qualified in nature – insofar as the resources of the state are available to provide them. Article 6(3) provides for assistance for rehabilitation. The receiving state is obligated to provide such services until the trafficked person is repatriated to their country of origin – whereupon this

⁵³⁶ This provision concerns the status of the victim in the receiving state – where the victim of trafficking might legitimately need to remain in the receiving state on humanitarian grounds, such as where a real threat or possibility exists that they may be re-victimised. As per Art. 7(1) states are required to consider adopting measures that will allow victims to remain either temporarily or permanently, on a case by case basis, in the receiving state.

⁵³⁷ This includes physical, psychological and social services for trafficked persons. See Art. 6(3) of the Trafficking Protocol. As Art. 6(3) is not obligatory this has a direct impact on the provision of material assistance, employment, education and training options.

⁵³⁸ Art. 8(1) stipulates that countries of origin are to facilitate and accept the return of trafficked nationals and permanent residents. Art. 8(2) requires receiving states to ensure the safe return of that trafficked person. Moreover, receiving states are required to have due regard for the status of any legal proceedings which relate to the returning person being a victim of trafficking. While it is preferable that repatriation be on a voluntary basis – there is no obligation placed on the returning state. Moreover, in terms of Art. 8(3) and 8(4) due regard must be given in verifying the identity and nationality of the trafficking victim, and accordingly their travel / identity documents, by having open lines of communication with the state of origin.

⁵³⁹ *Legislative Guide*, at 267 – 269, cited in Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 80.

⁵⁴⁰ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 80.

becomes the obligation of that state. However, there is a catch to this provision. As Gallagher notes, a state is not in breach of ‘either the letter or the spirit of the Convention if it decides to provide no material, medical, or other assistance whatsoever to any trafficking victim of trafficking within its territory’⁵⁴¹ due to the anticipated high costs that would be incurred by the state.

The provisions that are found in Article 9 – 13 provide guidance to states for preventive measures such as the education of relevant role-players (such as law enforcement) and awareness-raising programmes. It is from here that the notion of the ‘fourth P’ is also derived, namely partnerships (in the form of cooperation with the relevant stakeholders and role-players within and between states, as well as the incorporation of civil society). These provisions are qualified in nature and are linked to the resources available to the state. The prevention component of the Trafficking Protocol was primarily designed with addressing the supply-side of trafficking – limiting the number of persons vulnerable to trafficking. However, time has shown that attempting to address the supply-side of the problem has borne little fruit. As Marshall notes, ‘[t]his lack of progress on the supply side is hardly surprising given the size of the potential supply pool, that is the number of potential migrants who, in the absence of effective protection, are vulnerable to being exploited’⁵⁴². Prevention programmes in the past have focused more on keeping people out and limiting migration through awareness programmes and feeble attempts to tackle the root causes (such as poverty, gender discrimination and education). More recently, policies, programmes and research have begun to look at limiting trafficking by addressing the demand side of the problem – with mixed results, and even criticism weighed against some initiatives, due to the focus of such endeavours.⁵⁴³

While many obligations of ratifying states are voluntary and resource dependent, particularly in terms of protection, the notion of protecting and promoting victims’ human rights should be viewed as a small but important victory for human rights advocates. Human rights advocates were able to demonstrate the inextricable link between successful criminal prosecution and trafficked persons’ human rights.⁵⁴⁴ Sadly, ‘[e]ven this limited platform

⁵⁴¹ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 83.

⁵⁴² Phil Marshall, ‘Addressing the Demand Side Trafficking’, 24 January 2012, available at <http://rightswork.org/2012/01/addressing-the-demand-side-of-trafficking> – last accessed January 2012.

⁵⁴³ See Ann Jordan, ‘A need for more evidence and U.S. accountability’, Rights Work, (2011): 1, available at <http://rightswork.org/2011/07/2011-state-department-trafficking-in-persons-report>; and USAID, *Tackling the Demand that Fosters Human Trafficking: Final Report*, August 2011.

⁵⁴⁴ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1663.

proved difficult for rights advocates to advance... because the highly charged debates over prostitution reform sent the negotiations [and much of the international discourse, policy and laws thereafter] careening off on a tangent'⁵⁴⁵. Moreover, the Trafficking Protocol is viewed by many as being flawed and many of its provisions can be categorised as either being weak, non-binding or vague. This is the result of numerous compromises and the underlying tensions that existed between numerous states, but also powerful caucuses, heavily influenced by diametrically opposed views on what constituted trafficking, voluntary prostitution, and what the obligations of states should be – particularly with regard to the provisions relating to protection. Also, as implied by the UN Convention against Transnational Organized Crime, states may link the provision of victim assistance to willingness to cooperate with law enforcement and criminal justice. Non-committal language such as 'shall endeavour' or 'to the extent possible' leave much open to the interpretation of implementing states. While the Trafficking Protocol has introduced elements of the human rights framework within its provisions, in the form of protective and preventive measures, it is criticised for not placing a greater burden on state parties themselves and failing to precise in language, definition or even the root causes (inequalities) that have created and sustained the problem.

The Trafficking Protocol is fraught with definitional problems⁵⁴⁶ and has been wed to the *UN Convention against Transnational Organized Crime* which arguably serves to constrain and dictate the political and legal discourse of trafficking at all levels of the system. This is also apparent in the scope of the Trafficking Protocol itself. As Iñiguez de Heredia correctly observes, Article 4 of the Trafficking Protocol only addresses 'trafficking activities that are done by an organised group and characterised as trans-national are addressed, fails to tackle those situations where the group is not clearly organised and where the event is constrained within domestic boundaries... this way of framing the scope of application is contradictory and limitative of the capacity to prosecute'⁵⁴⁷. This represents a glaring omission for many commentators. However, it is in the realm of domestic legislation that we see attempts to address this serious flaw by taking into account that much human trafficking takes place internally (i.e. within the borders of a state) in terms of recruitment, transportation and destination.

⁵⁴⁵ Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1663. This is discussed in detail later in the chapter.

⁵⁴⁶ Stemming from the lack of definitions and explanations of terminology used throughout the Protocol. For example, 'exploitation of prostitution' and 'sexual exploitation' are not defined or explained in depth.

⁵⁴⁷ Marta Iñiguez de Heredia, 'People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000', *Human Rights Review*, Vol. 9, (2008): 306.

It is also a very interesting compromise and indeed fusion of what would normally have been an issue confined to the human rights framework with that of organised crime (and by extension law enforcement). As Gallagher succinctly notes,

*The significance of these developments should not be underestimated. The Vienna Process... represented the first serious attempt by the international community to invoke international law as a weapon against transnational organized crime. Perhaps even more notable was the selection of trafficking and migrant smuggling as the subjects of additional agreements. Both issues were, at the time of drafting, high on the international political agenda. While human rights concerns may have provided some impetus (or cover) for collective action, it was clearly the sovereignty/security issues surrounding trafficking and migrant smuggling, as well as the perceived link with organized criminal groups operating across national borders, that provided the true driving force behind such efforts.*⁵⁴⁸

The human trafficking discourse and indeed its placement under the auspices of the Transnational Organised Crime Convention demonstrate a trade-off. Recognising that if human trafficking, and all its constitutive elements, were to remain embedded within the international human rights framework, there was a very real chance that human trafficking would not receive the necessary and urgent attention it required. Moreover, in terms of resources, policy and law, human trafficking would remain on the back burner internationally. However, by wedding it to organised crime, and transnational organised crime at that, human trafficking was elevated to an issue which threatened the sanctity and security of states themselves – demonstrating a preoccupation with illegal migration as being ‘part and parcel of a supposed security threat posed by transnational organized crime as opposed to a concern with the human rights of migrants’⁵⁴⁹. As Chuang correctly notes, ‘[b]order-security concerns and potential involvement of organized crime in trafficking had given countries the political will to address trafficking that might not have existed had trafficking been framed as a human rights issue’⁵⁵⁰.

While this trade-off has produced several positive results – especially in highlighting the problem and international efforts to counter it, there have been some negative repercussions and indeed severe limitations that have emerged as a result. In some ways, the nascent

⁵⁴⁸ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 70 – 71. See also, Anne T. Gallagher, ‘Human Rights and Human Trafficking: Quagmire or Firm Ground? A Response to James Hathaway’, *Virginia Journal of International Law*, Vol. 49, (2009) 789 – 841.

⁵⁴⁹ Julia O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’, *Feminist Review*, No. 83, Sexual Moralities, (2006): 9.

⁵⁵⁰ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1662 – 1663.

discourse and international framework try to oversimplify⁵⁵¹ the phenomenon and ways to understand and address it. The very multifaceted nature of the human trafficking phenomenon and those who find themselves caught up in its web⁵⁵² transects readily available categorisations of victim and perpetrator and even the forms which trafficking might take (and even when one should consider it trafficking or abuse and severe exploitation). Human trafficking is ‘a dynamic phenomenon, the patterns of which evolve through time. These patterns change not only in response to varying demands at destinations, but also in relation to changing social, economic, and cultural patterns at points of origin’⁵⁵³. The problem lies not only in the fact that human trafficking is a dynamic phenomenon, is a *process* and not a singular act, but also that it has been likened to drug trafficking – borrowing heavily from this well-established discourse.

The human trafficking discourse has borrowed the terminology (such as ‘kingpins’ and ‘organised crime’ and ‘trafficking networks’) and even the methods of combating and monitoring and evaluating the so-called ‘war’ against such criminal networks. The model employed is an enforcement-based one targeting elusive kingpins and highly organised networks. In reality, as detailed in Chapter 1, human trafficking is more generally perpetrated by what is termed ‘disorganised crime’ – individuals, loose associations, complicit government officials (even unwittingly governments themselves), and family members. Human trafficking does involve networks, but these are often decentralised and more closely aligned to the facilitation of illegal migration. As a result, attempting to strike a devastating blow to a network by focusing on the ‘kingpins’, merely results in the advent of other new networks and so-called ‘kingpins’. In many instances, it would be more beneficial to focus on

⁵⁵¹ Not only are the systems and processes that facilitate human trafficking (particularly in relation to systems and processes employed by illegal migrants) oversimplified, but the discourse ‘fails to recognize the complexity and variety of social relations between irregular migrants and those who benefit directly or indirectly from their exploitation.’ Julia O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’, *Feminist Review*, No. 83, Sexual Moralities, (2006): 9. See also, Laura María Agustín, ‘Helping Women Who Sell Sex: The Construction of Benevolent Identities’, *Rhizomes*, 10, (Spring 2005); and Helma Lutz ‘Life in the twilight zone: migration, transnationality and gender in the private household’, *Journal of Contemporary European Studies*, Vol. 12, No. 1, (2004): 47 – 55.

⁵⁵² An at times almost bewildering range of persons and networks and institutions, ranging from quintessential and stereotypical victims to migrants with asserted agency (who are active participants in their own exploitation and later extrication there from) to traffickers and facilitators (*inter alia*, states, officials, private individuals, familial networks, organised criminal syndicates, legitimate businesses and so forth), to those who aid and sometimes rescue trafficked persons (such as law enforcement and shelters and NGOs).

⁵⁵³ David A. Feingold, ‘Trafficking in Numbers: The social construction of human trafficking data’ in Peter Andreas and Kelly M. Greenhill (Eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, (2010): 69.

familial networks and their social contacts.⁵⁵⁴ ‘The analogizing of human trafficking networks to drug trafficking networks has both a rhetorical and administrative appeal for many governments and international agencies’⁵⁵⁵. As with the ‘war on drugs’, the United States has made itself the *de facto* leader in the ‘war on trafficking’ – with potentially the same results emanating from policy and laws that are more ideological, more driven by a particular morality, than by practical reality. This ‘cookie-cutter’ approach to phenomenological issues is disingenuous and over-simplistic. By trying to homogenise experiences, forms that human trafficking might take, who the perpetrators are and how they operate, and how the phenomenon should be addressed – it is the trafficked individual who falls by the wayside.⁵⁵⁶ This is nowhere more apparent than in the United States own domestic legislation and foreign policy orientation.⁵⁵⁷

3.1 A Moral Discourse and its Effects on Policy and Law

The question of prostitution lies at the heart of the human trafficking discourse and any policies or legislation that emanate from it. Indeed, it has proven to be a decisive and thorny issue in the drafting of the international legal framework, as well as in regional and domestic legislation and initiatives. Prostitution, whether coerced or not, and concomitant forms of sexual exploitation drive the human trafficking discourse. The broad heading of labour trafficking (and ancillary forms of human trafficking) has been neglected as a result – more often than not viewed as an addendum in the discourse. There is nothing new or salacious about labour trafficking – states and individuals⁵⁵⁸ are complicit in this form of trafficking that is intricately linked with the competitive global market. Whether it be sweat shops in Asia, and sometimes the United States, producing cheap consumer goods or cocoa plantations in Africa, the exploitative labour practices linked to the production of such goods is deemed negligible by many in practice. It is often written off to regional differences in basic conditions of employment, pay, benefits and even culture. Workers in the global South are

⁵⁵⁴ See David A. Feingold, ‘Trafficking in Numbers: The social construction of human trafficking data’ in Peter Andreas and Kelly M. Greenhill (Eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, 2010.

⁵⁵⁵ *Ibid.*, 47.

⁵⁵⁶ Individual experiences to a large extent are not assessed unless they fall within the ambit of conventional understanding. Dominated by the narrative of sex trafficking and sexual exploitation, policy emanates from a stylised and one-dimensional understanding of the phenomenon and its victims. Very few, if any, official responses actually take the victim into account. There is much rhetoric about ‘vulnerability’, factors relating to ‘supply and demand’ which are stitched onto human depravity, but little in the way of reflection or sensitivity for individual experiences – the steps leading up to a person becoming trafficked, how they survived or coped with their situation, how they perceived themselves before, during and after the period of exploitation, their own agency, how they were extricated from the situation and what their experiences were thereafter.

⁵⁵⁷ Trafficking Victims Protection Act and the ubiquitous TIP Report. See also funding suggestions for USAID to support organisations and even countries which opt to criminalise the purchasers of sex. USAID, *Tackling the Demand that Fosters Human Trafficking: Final Report*, August 2011.

⁵⁵⁸ Ordinary citizens and legitimate businesses.

seemingly expected, and indeed accepted widely, to work under poor conditions for little pay with few if any rights. Few consumers care where their goods are produced and under what conditions, as long as they have ‘value for money’.⁵⁵⁹ In many people’s eyes, it is the global economy and its destructively competitive nature that creates such disparities. Even the International Labour Office was forced to acknowledge that ‘the line dividing forced labour in the strict legal sense of the term from extremely poor working conditions can at times be very difficult to distinguish’⁵⁶⁰.

Sex trafficking, on the other hand, represents unspeakable horrors committed upon innocent women and children. It speaks to the depravity of mankind – of insatiable lusts – and ever increasing demand.⁵⁶¹ It is here, where the brutality of sexual exploitation (in the form of forced prostitution) is amalgamated with the dark desire of ownership (i.e. slavery). Two evils which must be banished forever from this world. This however well-intentioned sentiment has produced a dangerous conflation and has resulted in an ideological and moral divide. Moreover, it has overshadowed, and some might argue tainted, attempts to understand the phenomenon of human trafficking holistically and its root causes – not to mention how it should be addressed. Moral concern is often supplanted in the trafficking discourse with moral panic⁵⁶² which is disingenuously denigrating to those who have become entangled in the web of human trafficking. This is witnessed in both international anti-trafficking laws and policies and those in the United States.⁵⁶³

Saunders and Soderlund⁵⁶⁴ point to the emergence of the human rights discourse, in the aftermath of the Cold War, as the dominant global moral framework as the driving force behind new trafficking narratives. ‘Feminist interventions on behalf of women in this arena have frequently relied on discourses of vulnerability and injury to advance claims, thereby

⁵⁵⁹ Although with increased awareness campaigns about exploitative labour practices, consumers, at least in Europe, are more willing to pay higher prices for goods if they know the goods or products have been ethically produced.

⁵⁶⁰ International Labour Office Report (2005: 8) cited in Julia O’Connell Davidson, ‘Will the Real Sex Slave Please Stand Up?’, *Feminist Review*, No. 83, Sexual Moralities, (2006): 9 – 10. She also laments that the Trafficking Protocol in this regard is a ‘highly selective instrument’ as framed within the Convention against Transnational Organized Crime, ‘interventions that flow from the Protocol are necessarily only triggered by immigration offences and/or organized criminal activity.’

⁵⁶¹ Demand is linked to the global economy, rampant capitalism and the darkside of globalisation and the need for ever cheaper, reusable and profitable goods (i.e. the commoditisation of people).

⁵⁶² See Ronald Weitzer, ‘Flawed theory and method in studies of prostitution’, *Violence against Women*, Vol. 11, No. 7, (July 2005): 934 – 949, and Ronald Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’, *Politics & Society*, Vol. 35, No. 3, (September 2007): 447 – 475.

⁵⁶³ Many of which were drafted and enacted at around about the same time.

⁵⁶⁴ Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 16 – 24.

producing and legitimizing “trafficking in women and girls” as a global concern and universal framework for understanding prostitution⁵⁶⁵. As Chung notes, the sustained focus on sex trafficking and prostitution ‘reflects the potent influence of prostitution-reform debates on the anti-trafficking movement’⁵⁶⁶. This has not only been witnessed in forerunner and influential states in endeavours to combat human trafficking, but also in traditionally conservative states (like South Africa) who joined the game late.⁵⁶⁷ It is these very debates that have created an ideological chasm between whether prostitution in itself is coercive⁵⁶⁸, and thus definable as human trafficking, or whether only acts of forced prostitution should be deemed trafficking.⁵⁶⁹

Moreover, these ‘factions battling over whether the trafficking definition should encompass voluntary prostitution’⁵⁷⁰ have arguably negatively impacted on definitional understanding, phenomenological conceptualisation and the very laws and policies to combat it both internationally and in the United States. The neo-abolitionist faction⁵⁷¹ led primarily by the United States has had the greatest impact – arguably due to the United States hegemonic position, but also because of its access to a globalised mass media.⁵⁷² However, such an approach is criticised for silencing views and initiatives that do not readily conform to the dominant, morally conservative and intransigent, discourse. Moreover, the appropriateness of such a course of advocacy, policy action, and an international legal framework that has to a

⁵⁶⁵ Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 19.

⁵⁶⁶ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1657.

⁵⁶⁷ Interestingly, more open and liberal states, such as Germany and the Netherlands, have been placed under increasing pressure to revisit their prostitution laws. Sweden, and the so-called Swedish model of toleration (partial criminalisation), where ‘johns’ or consumers of prostitution are criminalised and penalised, is held up internationally as the benchmark, particularly by the United States, for combating sex trafficking.

⁵⁶⁸ This is typically referred to as the ‘neo-abolitionist’ position – which was heavily advocated by the Bush Administration in both domestic legislation and foreign policy. As detailed in Chapter 1, the neo-abolitionists are a seemingly antithetical alliance of conservatives, feminists and evangelical Christians trying to stamp out prostitution globally.

⁵⁶⁹ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1657 – 1658.

⁵⁷⁰ *Ibid.*, 1663.

⁵⁷¹ Saunders and Soderlund ascribe the lack of analysis and reflection by activists, NGOs and policymakers in relation to the preceding moral panics surrounding human trafficking, and over-zealousness of such individuals and the mass media that would ultimately lead to the forging of ‘dubious alliances’. See Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 20.

⁵⁷² The so-called ‘CNN effect’ on foreign policy, political agenda setting and acceleration of policy decision-making has been well documented. See Steven Livingston, *Clarifying the CNN Effect: An Examination of Media Effects According to Type of Military Intervention*, Research Paper R-18, John F. Kennedy School of Government, Harvard University, 1997.

large extent been shaped by voices and groups emanating primarily from the United States⁵⁷³ is also questioned. As Iñiguez de Heredia avers,

*[T]he criminalisation of prostitution within an instrument specifically for trafficking has been proven, once again, inefficient in targeting real situations of trafficking and has weakened the potential strength of an international instrument to furthering the universal protection of human rights.*⁵⁷⁴

However, it should be noted that while the Trafficking Protocol does not expressly provide a treaty-based prohibition of prostitution – it does leave the door open for individual states to address this question in their definition and criminalisation of human trafficking in their domestic legislation. Moreover, in terms of the Trafficking Protocol, by negating consent as an available defence for alleged traffickers, ‘[n]ot only do the elements of coercion, deception and force that are the focus of [the UN] definition, vitiate any free and informed consent, but the provision explicitly states that consent to being trafficked is considered irrelevant.’⁵⁷⁵ As a result, it remains unclear and hotly contested by feminists, in terms of the international legal definition, whether a woman can even consent to work in the sex industry or migrate to work in such an industry. This suggests that the irrelevance of consent has added weight to the argument advocated by neo-abolitionists (discussed below) that no woman wittingly consents to a life of prostitution – voluntary or otherwise.

3.2. Neo-Abolitionists and their Global Battle

Neo-abolitionists⁵⁷⁶ view themselves as the legitimate successors of the abolitionist movement at the turn of the twentieth century. They consciously chose the title ‘neo-

⁵⁷³ Saunders and Soderlund point to the about turn of the United States’ delegation during negotiations in Vienna around the Trafficking Protocol. As the Clinton Administration favoured a broad definition of trafficking (and not a narrow one focusing solely on prostitution) it was perceived as being ‘pro-prostitution’ by the influential feminist coalition. Whilst the feminist coalition served to ‘skilfully [invoke] visceral fears of sex trafficking as a violation of women’s human rights to win support for limiting the definition of trafficking to prostitution’, conservative politicians within the United States used this opportunity not only to campaign against the Clinton Administration, but also use the powerful rhetorical device of the 1949 Convention to bolster its abolitionist stance. As a result, U.S. delegates changed their stance and advocated for a narrow definition of trafficking. Penelope Saunders and Gretchen Soderlund, ‘Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse’, *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 21. For an in-depth discussion see, Anthony M. DeStefano, *The war on human trafficking: U.S. policy assessed*, New Brunswick: Rutgers University Press, (2008).

⁵⁷⁴ Marta Iñiguez de Heredia, ‘People Trafficking: Conceptual issues with the United Nations Trafficking Protocol 2000’, *Human Rights Review*, Vol. 9, (2008): 306.

⁵⁷⁵ Monique Trépanier, ‘Trafficking in Women for Purposes of Sexual Exploitation. A Matter of Consent?’, *Canadian Women Studies*, Volume 22, Numbers 3-4, (2003): 50.

⁵⁷⁶ The Neo-abolitionist movement / coalition is represented by the following key players: radical feminist organisations (Coalition Against Trafficking in Women and Equality Now, represented by individuals such as Kathleen Barry, Catherine MacKinnon and Linda Lederer), neo-conservatives (such as Michael Horowitz) and evangelical Christian groups (led by Chuck Colson).

abolitionist' to distinguish themselves in the nascent trafficking discourse and are resolute in their worldview and means of combating trafficking. According to the feminist component of this coalition, all prostitution is seen as being both exploitative and degrading to women – a social evil that is tantamount to violence against women and misogyny – which needs to be eradicated. Woe be unto any woman who thinks she has chosen a life of prostitution voluntarily for she is surely suffering from Gramscian 'false consciousness'⁵⁷⁷. From this perspective women are ironically infantilised and patronised by the very feminist organisations who seek to liberate them. These women, who prostitute themselves, are seen to be without agency as they have internalised the views of their oppressors and have come to identify with them by claiming that they voluntarily entered into a life of prostitution. The other coalition partners 'believe the wrong of prostitution lies in its departure from traditional social values rooted in heterosexual, patriarchal marriage and family, with sexuality expressed only within those confines'⁵⁷⁸. It is from her that the neo-abolitionist perspective draws its moralistic flavour.⁵⁷⁹ It is a perspective that, in general, fails to take in the rich tapestry of life, not to mention the various different realities that exist.⁵⁸⁰ As Saunders and Soderlund citing Jenkins note,

*Because in the U.S. women's human rights had been created around a notion of sexuality as harm and a tool for violation it was very easy for a small number of conservative feminists to convince progressives to agree with them on the sex trafficking issue. The "politics of substitution" functioned on multiple levels during this episode: it obscured conservative machinations with emotive, over-inflated reports of the perceived social problem and it demonized solutions that did not conform to dominant definitions of the problem.*⁵⁸¹

This narrow interpretation and understanding of human trafficking and its conflation with prostitution is even reflected in the way that neo-abolitionists advocate that prostitution in general should be addressed – and by extension sex trafficking. There exist four regulatory

⁵⁷⁷ Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1664.

⁵⁷⁸ *Ibid.*, 1665.

⁵⁷⁹ See Gretchen Soderlund, 'Running from the Rescuers: New U.S. Crusades Against Sex Trafficking and the Rhetoric of Abolition', *NWSA Journal*, Vol.17, No.3, (Fall 2005): 64 – 87, for a general discussion.

⁵⁸⁰ Chuang does note, however, that some in this movement are beginning to acknowledge that a small percentage of prostitutes enter the profession voluntarily. However, since the number of women who do so are negligible, it remains of vital importance to abolish prostitution in its entirety. Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1665.

⁵⁸¹ Penelope Saunders and Gretchen Soderlund, 'Threat or Opportunity? Sexuality, Gender and the Ebb and Flow of Trafficking as Discourse', *Canadian Woman Studies*, Volume 22, Numbers 3-4, (2003): 21 citing P. Jenkins, *Intimate Enemies: in Contemporary Great Britain*, New York: Aldine de Gruyter, (1992): 12 – 13.

approaches⁵⁸² of how states characterise and address prostitution: (i) complete criminalisation (prohibition); (ii) partial criminalisation (toleration); (iii) decriminalisation⁵⁸³; and (iv) legalisation⁵⁸⁴.

Neo-abolitionists favour the toleration model of partial criminalisation. Under this regime, it is not the prostitutes who are penalised (as in the complete criminalisation model), but their clients ('johns'), pimps, brothel owners and other third parties in the belief that it is the express role of criminal law 'to stigmatize the buyers of sex as socially or morally tainted'⁵⁸⁵. Prostitutes are seen as needing to be rescued and rehabilitated. By extension, anti-trafficking legislation can and should be used in the drive to abolish prostitution.⁵⁸⁶ This model of toleration has become known as the Swedish model (where it is actively pursued) and is advocated by the United States – especially in its annual TIP report.⁵⁸⁷ This model is touted as the way forward in combating human trafficking – especially in the sex industry. As Jordan notes, 'it promotes the myth – or at least unproven strategy – that arresting clients will stop prostitution and also stop trafficking in prostitution'⁵⁸⁸.

However, as with much research and policies that are peppered throughout the human trafficking discourse there exists 'no objective, methodologically sound, replicable research demonstrating that the Swedish law is responsible for any changes in the incidence of prostitution or trafficking in Sweden'⁵⁸⁹. Indeed, whilst being actively supported and encouraged as a model that should be emulated globally by the United States, the Swedes themselves have grudgingly admitted that there exists little, if any, evidence that this model

⁵⁸² Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1668. See also for a discussion in the South African context, the South African Law Review Commission's discussion document on prostitution reform – in which it discusses the same options. South African Law Review Commission, 'Sexual Offences: Adult Prostitution', *Discussion Paper 0001/2009, Project 107*, 2009.

⁵⁸³ Decriminalisation only penalises acts illegal under criminal law, such as rape and assault. It leaves prostitution and those involved outside the criminal framework. Chaung (2010): 1669.

⁵⁸⁴ Legalisation actively regulates prostitution in terms of zoning laws, licensing and public health. Examples of this model can be found in Germany and the Netherlands. However, this is an extremely costly option – and in many instances, the state cannot afford measures such as mandatory health checks and this falls by the wayside. This is the case in Germany, where police officials lament this, as this was one way of not only tracking the movement of prostitutes but also allowed them greater access to potential trafficking victims. (From an interview conducted with a Kriminal Haupt-Kommissar responsible for dealing with cases of human trafficking in June 2011).

⁵⁸⁵ Janie A. Chuang, 'Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy', *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1669.

⁵⁸⁶ *Ibid.*

⁵⁸⁷ See 2011 Trafficking in Persons Report.

⁵⁸⁸ Ann Jordan, 'A need for more evidence and U.S. accountability', *Rights Work*, (2011): 1, available at <http://rightswork.org/2011/07/2011-state-department-trafficking-in-persons-report> - last accessed 27 July 2011.

⁵⁸⁹ *Ibid.*

has been in any way successful.⁵⁹⁰ However, lack of evidence has done little to sway Sweden's belief in addressing the demand-side of sex trafficking by criminalising its end-users. Interestingly, the ones most affected by this policy, the sex-workers themselves, have not been consulted and have not bought into the idea. As Marshall asserts, '[a]t the end of the day, Sweden is pursuing a policy around sex work that is not supported by those most affected, and often has direct and indirect negative consequences on them'⁵⁹¹. Nevertheless, it remains a powerful advocacy tool for the United States and abolitionist organisations across the globe. This is because the Trafficking Protocol itself leaves so much open to interpretation by individual state parties, its conspicuous omission of definition / terminology (specifically in relation to the terms 'exploitation of the prostitution of others and 'sexual exploitation'), its failure to legally define and distinguish between trafficking and migration for sex work⁵⁹², and the 'irrelevant consent' clause of Article 3(b)⁵⁹³ only serve to add to the confusion what really trafficking, at least in terms of prostitution, actually entails. It is this very compromise, the omission of definition of terms as evinced in Article 3(a) of the Trafficking Protocol, that is greatly criticised by legal commentators. Jordan notes, that '[u]ndefined crimes violate international human rights norms and most (or all) of the world's constitutions'⁵⁹⁴. Ratifying states are thus tasked with the responsibility of defining these terms in accordance to their own domestic laws and indeed political and moral agendas.

On the other side of the ideological divide, and constitutive part of the hurdle in coming to an agreed definition of human trafficking (in terms of prostitution), are referred to in the

⁵⁹⁰ See the Swedish Institute, 'Selected extracts of the Swedish government report SOU 2010:49: "The Ban against the Purchase of Sexual Services". An evaluation 1999-2008', Swedish Institute, (November 2010). Critics of this model warn that 'criminalising prostitution and clients simply gives more power to criminals. It forces independent sex workers into the hands of third parties who offer protection from arrest and police abuse. Once the industry is pushed underground, organised crime takes over, and trafficking into forced prostitution increases.' Ann D. Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings', *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (March 2002): 31.

⁵⁹¹ Phil Marshall, 'Addressing the Demand Side Trafficking', 24 January 2012, available at <http://rightswork.org/2012/01/addressing-the-demand-side-of-trafficking> - last accessed 26 January 2012. Prostitutes have been forced to engage in ever riskier behaviour to attract business, having lost many of their preferred clients as a result – often seeking out seedier and less secure areas, like unlit back alleys and the vehicles of customers, and going with whoever wishes to purchase their services. This ultimately means that sex workers expose themselves to even greater abuses and risks to personal safety.

⁵⁹² See Laura María Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry*, New York: Zed Books Ltd, 2007; Erin O'Brien, 'Dark Numbers: Challenges in measuring human trafficking', *Dialogue e-Journal*, 7(2), (2010): 1 – 21, available at <http://www.polsis.uq.edu.au/dialogue/articleerin2.pdf>; Barbara Sullivan, 'Trafficking in Women', *International Feminist Journal of Politics*, 5:1, (2003): 67 – 91.

⁵⁹³ 'The consent of a victim of trafficking in persons to the intended exploitation...shall be irrelevant where any of the means [cited in Article 3(a)] are used.'

⁵⁹⁴ Ann D. Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings', *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (March 2002): 32.

literature as ‘non-abolitionists’. The loose affiliation of the members of this constellation predominantly consists of groups⁵⁹⁵ and individuals who oppose the neo-abolitionist agenda, ‘whether [they be] for political, moral, or pragmatic reasons’⁵⁹⁶, are unified in their resistance to the continued criminalisation of prostitution. They view the neo-abolitionist approach as bordering on being paternalistic and opening up women to even greater exploitation and harm at the hands of the state and police.⁵⁹⁷ They do share the view that human trafficking needs to be addressed and penalised. However, they maintain that the label of trafficking should be constrained to ‘those cases that fit into the paradigm of forced or coerced labor’⁵⁹⁸.

The dichotomy that emerged between neo-abolitionists and non-abolitionists in negotiations covering the Trafficking Protocol was also mirrored in concurrent debates over prostitution reform in negotiations around the United States’ domestic trafficking law.⁵⁹⁹ The *United States Trafficking Victims Protection Act of 2000* (TPVA) represents the incorporation of neo-abolitionist views in domestic legislation criminalising all forms of human trafficking, but also defining and categorising sex trafficking (into the commercial sex industry – prostitution) as a distinct act. ‘Sex trafficking’ in the TPVA is defined as ‘the recruitment, harboring,

⁵⁹⁵ Such as the Human Rights Caucus. The Human Rights Caucus consisted of the International Human Rights Law Group (the United States), the Global Alliance Against Trafficking in Women (based in Thailand), KOK (Germany), La Strada (Eastern European states), the Foundation Against Trafficking in Women (the Netherlands), amongst others. Together with the International Labour Organisation, the UN Office of the High Commissioner for Human Rights, the UN Commissioner for Refugees, and the UN Children’s Fund favoured the qualified requirement of ‘force’ or ‘fraud’ or ‘coercion’ for prostitution as trafficking. These groups also opposed the neo-abolitionist view that all forms of prostitution should be equated with trafficking. As Chuang observes, ‘[w]hile the U.N. agencies rejected the neo-abolitionist conflation of trafficking with prostitution, they did not seek to use anti-trafficking law to establish affirmative rights for those in the sex industry.’ This omission also leaves sex workers open to a wide range of exploitative practices just short of trafficking, with little or no protection afforded to them. This scenario can be even more problematic for persons who migrated expressively for sex work in another country. Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1673.

⁵⁹⁶ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1670.

⁵⁹⁷ *Ibid.*, 1670 – 1671. National and political contexts play an important role for non-abolitionists as to whether and when they agree or disagree over whether decriminalisation or legalisation is a better approach in affording rights and protection to sex workers, and removing some of the stigmatisation associated with their jobs. Decriminalisation and legalisation are each fraught with their own issues and problems in application. See Chuang (2010): 1671.

⁵⁹⁸ *Ibid.*, 1671.

⁵⁹⁹ This is because not only were the two legal instruments being discussed and negotiated around the same time, as highlighted earlier in the chapter, but also because many of the most vocal and influential advocates on both sides of the moral and political divide originated in the United States. This dichotomy is still very much evident in the human trafficking discourse. It is an unfortunate by-product of unresolved and conflicting moral, ideological and political worldviews and accompanying agendas. The biggest losers in all this, are not the non-abolitionists, but the victims that such legal instruments seek and claim to protect. Such instruments remain hollow past the point of rescue and repatriation. They offer little in the way of empowering those at risk or those who have been trafficked. Awareness campaigns and services offered by the state to those who cooperate in prosecution of their traffickers do not attempt the motivations of individuals whose paths have crossed with those of traffickers.

transportation, provision, or obtaining of a person for the purpose of a commercial sex act⁶⁰⁰. This definition represents an emblematic victory for the neo-abolitionists. It expressly removes the qualification of force or fraud or coercion that is required in the Trafficking Protocol. Of importance, is that such a definition also encompasses non-coerced (i.e. voluntary) migrant prostitution / sex work.⁶⁰¹ Moreover, through astute political manoeuvrings the neo-abolitionists secured their political agenda of exporting their ‘crusade’ globally when George W. Bush took office in 2001.

3.3 Intensification and Growth of the Neo-Abolitionist Movement

It may be argued that the influence of the neo-abolitionist movement is evident in U.S. policy, law and international reports advocating ways and means to combat human trafficking – effectively paving the way to establishing a global prohibitive regime.

*The TVPA contains a provision that ultimately became a powerful vehicle for the neo-abolitionists to promote their anti-prostitution agenda worldwide. The TVPA includes a unilateral economic-sanctions region designed to “encourage” other countries to cooperate with U.S. anti-trafficking efforts.*⁶⁰²

The neo-conservative Bush Administration (2001 – 2009) was the primary supporter and exporter of the neo-abolitionist movement across the globe. This is witnessed in the composition of bureaucrats during this administration and the government’s foreign policy orientation. Prostitution was to be combated on all fronts. The TVPA controversially introduced the possibility of negative sanctions to states who failed to comply with the minimum standards set out in it by 2003. The threat of negative sanctions combined with the government’s abolitionist leaning in its anti-prostitution policy effectively ‘factored into perceptions – if not the reality – of what would be required of other countries in order to avoid sanctions’⁶⁰³. By not only threatening to impose sanctions and ‘name and shame’ states (in the annual TIP Report) who failed to comply with the minimum standards set out in the TVPA, but also in a segment of its foreign policy that was virulently anti-prostitution, and official fact sheets which adamantly conflated prostitution with human trafficking, the United States effectively became the helmsman of the anti-trafficking discourse. It went so far as to

⁶⁰⁰ Section 103(8) of the TVPA.

⁶⁰¹ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1679.

⁶⁰² Ibid.

⁶⁰³ Ibid., 1681. A similar moralistic approach was followed in relation to preventing and combating HIV/AIDS in Africa.

urge states in its ‘Model Law to Combat Trafficking in Persons’ published by the Department of State ‘to adopt a definition of trafficking that encompasses non-coerced prostitution’⁶⁰⁴.

This reductionist influence has grown steadily over time, from the negotiations surrounding the international legal framework and United States laws⁶⁰⁵ on human trafficking to present debates surrounding prostitution reform and human trafficking in South Africa. As Chuang notes, ‘[c]ontrary to [even] the U.S. and international legal definitions of trafficking, the neo-abolitionists have succeeded in characterizing trafficking as primarily about, if not limited to, prostitution (both “forced” and “voluntary”)... [constructing] trafficking as a moral or social problem driven by social deviance or entrenched male patriarchy’⁶⁰⁶. By reducing the sheer complexity of the phenomenon and the situations and environments in which it occurs to a singularity further disempowers the numerous individuals who find themselves caught up in the web of human trafficking. Potentially far more expansive and problematic segments of human trafficking, such as labour trafficking, go largely unacknowledged in many international and domestic efforts to combat trafficking as a result. Moreover, the influence of this foreign policy trajectory further undermines the relevance and authority of the Trafficking Protocol itself.

This exploration of the neo-abolitionist movement and its official state backing partly demonstrates how various alignments in the international human trafficking discourse have come to have a direct impact in the development of domestic trafficking discourses. The legacy of such a prohibitive regime still needs to be assessed, but as the past dictates, prohibitive regimes based on particular moral or ideological grounds have had little success. By contrast, they have served to drive what they sought to address or eradicate further underground and actually encouraged the trade in such prohibited goods and services.

[T]here is a historic failure of prohibition-based approaches in areas of sufficient demand and supply to actual prohibit anything – alcohol, illicit drugs, cross-border migration and prostitution as examples. Rather, the major success such policies have had has been to promote organized crime. Prohibitive approaches to the sex trade simply provide a business incentive to traffickers and exploiters, already acting

⁶⁰⁴ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1682.

⁶⁰⁵ One need only peruse the 2003, 2005 and 2008 TVPRA to see this and withdrawal or restrictions on funding by USAID to states and non-state actors alike who were seen to actively support prostitution as work or debates about prostitution reform. This is discussed in more detail in Chapter 1.

⁶⁰⁶ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1682 – 1683.

*outside the law, to increase revenues through the use of children who attract a premium, and to lower costs, through use of trafficking victims.*⁶⁰⁷

3.4 Forgotten Voices

At the far end of this narrative is the victim. Often devoid of agency and a silent witness to all these policy debates and legal instruments is the trafficked person. Such individuals are largely missing from the discourse as a whole. Where they do appear, for the most part, their voices have been sanitised, their stories told through third parties (mainly NGOs) and their unique experiences diluted into stereotypical portrayals of victimisation. Moreover, there is a worrying sub-narrative emerging which sets trafficked persons up as both innocents and sinners, and in both contexts in need of their immortal soul being saved. The clichéd portrayal of survivors having ‘found God’ and now being ‘Christians’ is a good example of the biased and emotive narrative that has been constructed as a result. This evident in many interviews and articles found on faith based advocacy organisation websites. An excerpt from such an account can be found below:

When a pimp approached 16-year-old Jessica Richardson at the Portland diner where she was working in 1995, Jessica was primed to accept his offer. She had been sexually abused at age 5, and then her dad was murdered when she was 10. “I desperately needed to be accepted and loved. And when I didn’t have my father and was already used to being sexually exploited, it just seemed to fit that all I was good for was sex,” says Richardson.

Soon after meeting the “incredibly charming man,” Richardson was turned out, first in Portland, then at sporting events and hotels up and down the I-5 corridor, the West Coast’s track for trafficking. After 15 months of the nightmare, then an unplanned pregnancy, Richardson fled her pimp at age 18.

Now a Christian and member of City Bible Church in east Portland, she is one of the best-known survivors in the city, speaking to churches and schools to expose the lie that says anyone is only good for sex and testify to Christ’s transforming love and acceptance.⁶⁰⁸

The use of such language begs the question whether all victims of trafficking were somehow afflicted with moral turpitude before they were found and rescued and thus not pious enough or for some character flaw were not worthy of God’s protection and thus ended up being trafficked. Painting victims’ experiences, and their characters, with such broad brushstrokes is

⁶⁰⁷ Phil Marshall, ‘Addressing the Demand Side Trafficking’, 24 January 2012, available at <http://rightswork.org/2012/01/addressing-the-demand-side-of-trafficking> - citing Judge Kirby – last accessed 26 January 2012.

⁶⁰⁸ Available at http://blog.christianitytoday.com/women/2011/11/the_thin_line_between_traffick.html and disseminated on the South African webpage of Red Light (a faith based anti-trafficking organisation) at <http://redlightweb.co.za/?p=334> – last accessed January 2012.

another shortcoming of the contemporary trafficking discourse. The role played by some faith based organisations – for all their good deeds and good intentions – needs to be monitored closely. Moral fervour can have negative and unintended consequences when attempting to address such a fluid phenomenon as human trafficking from a rigid and potentially myopic worldview. The discourse neglects the fact that trafficked persons are not automatons devoid of agency, nor are they necessarily passive victims who are enthralled and manipulated by their traffickers into a world of ‘sin’. Changing this perception of who constitutes a victim and when it is appropriate to even use that term would go a long way in realigning the discourse itself so anti-trafficking initiatives actually do what they purport to do – and put the trafficked person first.

Moreover, it is not only over-zealous NGOs and some faith based organisations who are to blame for this portrayal and perhaps reinvention of the trafficking victim but also those policymakers⁶⁰⁹ who have shaped and perpetuated the discourse in its current incarnation. As Davies and Davies point out, ‘the existence of the trafficked woman is a tangible benefit to those who gain financially or politically from her existence’⁶¹⁰. The trafficked woman in particular is a political construct – used to shape and even manipulate policy, donor-funding and ultimately ‘reconstruct the trafficked woman her “needs” according to [political traffickers’] political priorities (Davies 2002).’⁶¹¹ Controversially, Davies and Davies go so far as to postulate that, at least within the European Economic Area (EEA), an active facilitation by political traffickers of criminal traffickers is apparent, ‘with the political traffickers having the power to direct the course and extent of criminal trafficking enterprises’⁶¹². In other words, there exists a symbiotic relationship between traffickers and the political pundits (role players and policymakers) who benefit from having such an alliance. The trafficking discourse and its actors are political constructs – behaving in spaces and indeed ways that have been fashioned for them. The worrying conclusion that can be drawn from this is that an accurate reflection of victims does not exist, which in turn has worrying policy implications – not to mention the efficacy of any anti-trafficking measures.

⁶⁰⁹ Davies and Davies (2010) refer to them as ‘political traffickers’ for benefiting from trafficked women both financially and politically. They are able to do so through an unthinkable (and not so apparent) alliance with criminal traffickers by creating a space within which trafficking can take place. John Davies and Benjamin Davies, ‘So if you are not “Natasha,” who are you? Revealing the other trafficked women and their uses?’ in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 218.

⁶¹⁰ Ibid.

⁶¹¹ Ibid.

⁶¹² Ibid.

By creating and defining what should be understood as a victim of trafficking (particularly in the case of women), as well as who the traffickers are and how (they should) operate and in which contexts, it would appear for all intents and purposes that human trafficking (as a discourse) is more of a fabrication that has become a self-fulfilling prophecy. The voices of trafficked victims remain unheard. While international, regional and domestic laws and policies read well – intended to combat the so-called ‘evil trade’ in human lives and protect and rehabilitate or repatriate its victims – such laws and policies have been crafted by states and individuals with specific interests and political agendas. Musto⁶¹³ lays the blame on the doorstep of social service providers or NGOs who serve as gatekeepers between trafficked persons and researchers. In this particular role, they ‘create and disseminate particularized definitions and ideologies of trafficking. Far from benign, [they] have led the “anti-trafficking movement”... by advising policymakers, training law enforcement, and drafting anti-trafficking legislation, in addition to providing a wide range of services to individuals who have been trafficked.’⁶¹⁴ All trafficked persons are viewed as victims, without agency, needing to be rescued. All trafficked persons fit a particular mould (with accompanying regional differences and background stories). This has been accomplished by conflating almost every form of abuse or exploitation that occurs in the migratory process with human trafficking. This is witnessed in the conflation of labour trafficking with sex trafficking and voluntary prostitution with sex trafficking.⁶¹⁵

*[T]he dominant discourse on trafficking has conflated trafficking with sex work, underscored mobility restrictions of certain populations, and defined those trafficked as victims. Informed by the dominant discourses, many countries have taken measures such as police rescue, enforced “rehabilitation,” and deportation of those not deemed as trafficked “victims”.*⁶¹⁶

Jordan has shown that this has been achieved through the failure to acknowledge the agency of trafficked persons, by objectifying them, negates their humanity and ultimately their human rights.⁶¹⁷ The dominant discourse tends to overlook the fact that trafficked persons are

⁶¹³ Jennifer Lyne Musto, ‘The NGO-ification of the anti-trafficking movement in the United States: A case study of the coalition to abolish trafficking and slavery’ in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010).

⁶¹⁴ *Ibid.*, 23. This also appears to be the case in the emerging South African discourse and policies in which NGOs like Molo Songololo have played a pivotal role in advising the government on human trafficking since it became an issue of concern that needed to be addressed.

⁶¹⁵ As discussed in detail in Chapter 1.

⁶¹⁶ Tiantian Zheng, ‘Introduction’ in Tiantian Zheng (ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 2.

⁶¹⁷ Ann D. Jordan, ‘Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings’, *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (March 2002).

more likely to be ‘strong, risk-taking individuals who have made rational choices and exercised their own agency in deciding to migrate’⁶¹⁸. Moreover, in attempting to restrict the mobility of certain populations by conflating trafficking with undocumented migration, many states are actively complicit in driving this form of migration ever deeper underground, forcing migrants to approach smugglers and other individuals to gain passage and entry to desired points of destination. Ironically, such illicit migrants are more vulnerable to traffickers because of their illegal status and lack of protection (or even recognition) of basic human rights as afforded by international human rights law in receiving states.

All of which leaves us with the unpalatable question, ‘Is human trafficking really what we have been led to believe?’ Are the policies and legal frameworks that have been subject to such fierce debate and criticism of any real worth? Or will they be consigned to the dustbin of history, like previous anti-trafficking conventions and measures, as much ado about nothing due to a poor or skewed understanding of the phenomenon itself? As Davies and Davies warn, ‘the inherent failings of trafficking as a conceptualization of vulnerability in migration [are such] that in 30 years time the trafficking protocol would probably be forgotten and modern trafficking would be remembered as just another inadequate moral panic about the mobility of poor women (Davies 2009a)’⁶¹⁹. This casts doubt on the legitimacy and authenticity of the dominant discourse as a whole and the policies and legal frameworks that have emerged from it. If the current international legal framework and other frameworks across the globe that have been crafted are to survive or remain relevant in any shape or form overtime, policymakers, NGOs and governments need to do away with the melodrama and stereotyping that has shaped the discourse and start interrogating what really matters – the forgotten and silenced voices of those who have been trafficked. Should states, policymakers and researchers fail to do so human trafficking will remain an elusive and intractable problem.

⁶¹⁸ Ann D. Jordan, ‘Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings’, *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (March 2002): 30. For a revealing insight into how some trafficked domestic workers (undocumented migrants) see themselves as both slaves and waged workers, as well as debates surrounding agency, see Leah Briones, ‘Beyond the victim: Capabilities and livelihood in Filipina experiences of domestic work in Paris and Hong Kong’, in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 62 – 82.

⁶¹⁹ John Davies and Benjamin Davies, ‘So if you are not “Natasha,” who are you? Revealing the other trafficked women and their uses?’ in Tiantian Zheng (ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 215.

4.0 Unilateral Oversight Mechanisms: The United States and the Trafficking in Persons Report

As detailed in the Chapter 1, one of the most significant problems that researchers face when grappling with the tenebrous phenomenon of human trafficking is the paucity of reliable data and accurate statistics. Attempting to find reliable data not based on methodologically weak premises is challenging. This has resulted in an inability for any real comparison over time and between states of different states' anti-trafficking policies. While the U.S. Department of State's annual Trafficking in Persons Report attempts to do so, by ranking a state's actions in combating trafficking in relation to and compliance with the *United States 2000 Victims of Trafficking and Violence Protection Act* (TPVA)⁶²⁰, it remains dubious as to how accurate these rankings are,⁶²¹ and by extension their relevance. In 2006, the U.S. General Accountability Office (GAO) cautioned that the assessment of states compliance to anti-trafficking policies was not transparent and vulnerable to subjectivity, not to mention methodological weaknesses, gaps in data and numerical discrepancies rendered the accuracy of the government's estimates and assessments in doubt.⁶²² As Andreas and Greenhill note, '[n]ot unlike today, historical episodes of criminalizing and prohibiting an activity made it harder to measure with any accuracy – though this did not inhibit confident official statistical truth claims (and in some cases this seemed to actually invite statistical abuse, because the reported number of illicit activities were difficult to falsify)'⁶²³.

The Trafficking Victims Protection Act's TIP Report represents a unilateral compliance mechanism of international efforts to combat trafficking. As a certification system which assesses foreign government compliance, it has 'emerged as a high profile component of U.S. foreign policy'⁶²⁴. But more than this, it has worrying implications for the international legal

⁶²⁰ Section 110 of the 2000 TPVA, requires the U.S. Department of State to issue an annual report detailing the nature and extent of *severe forms* of human trafficking on a country-by-country basis. In 2009 this review of trafficking and assessment of efforts to combat it was extended to all countries – and not just state with a 'significant' trafficking problem.

⁶²¹ Although the TPVA sets out the three policy dimensions of the Trafficking Protocol – prosecution, protection and prevention – it fails to differentiate between the different levels of compliance in its tier-ranking system. This results in states often having the same overall ranking but for diverse reasons. See Seo-Young Cho, Axel Dreher and Eric Neumayer, 'The Spread of Anti-Trafficking Policies – Evidence from a New Index', *Center for European Governance and Economic Development (Cege)*, Discussion Paper Number 119 – March 2011.

⁶²² U.S. GAO, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Antitrafficking Efforts Abroad*, U.S. General Accountability Office, 2006.

⁶²³ Peter Andreas and Kelly M. Greenhill, 'Introduction: The Politics of Numbers', in Peter Andreas and Kelly M. Greenhill (eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, (2010): 12.

⁶²⁴ H. Richard Friman, 'Numbers and Certification: Assessing Foreign Compliance in Combating Narcotics and Human Trafficking', in Peter Andreas and Kelly M. Greenhill (eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, (2010): 108.

regime, and formal compliance mechanisms⁶²⁵, where one state's domestic legislation effectively makes it solely responsible for monitoring, evaluating and reporting on the progress of individual state's efforts to combat human trafficking. This denotes a self-legitimising act – that flies in the face of the Trafficking Protocol and Organised Crime Convention. If one reads the wording of the Trafficking Victims Protection Act (TVPA), it becomes evident that states are not evaluated according to obligations placed on them by the Trafficking Protocol – but on the minimum standards for the elimination of trafficking as established by the TVPA. 'Under the Trafficking Victims Protection Act, governments are required, at a minimum, to (1) prohibit and appropriately punish trafficking and (2) make serious and sustained efforts to eliminate such trafficking'⁶²⁶. These minimum standards as established by the TVPA are listed in the annual Trafficking in Persons Report.⁶²⁷ While the TIP report has extended the ambit of its focus onto the multifarious forms of human trafficking – ranging from forced labour and involuntary servitude to debt bondage and slavery, there remains a special emphasis on sex trafficking (for the purposes of commercial prostitution) in how states are evaluated according to minimum standards set out by the TVPA.⁶²⁸ The TVPA also establishes a ranking system based on four tiers (of categorisation):

- Tier 1 – countries who fully comply with the minimum standards established by the TVPA;
- Tier 2 – countries who do not fully comply with the minimum standards established by the TVPA but are making significant efforts;
- Tier 2 Watch List – countries who do not fully comply with the minimum standards established by the TVPA but are making significant efforts, and 'a) The absolute number of victims of severe forms of trafficking is very significant or is significantly increasing;

⁶²⁵ Formal compliance mechanisms have been established under the Organized Crime Convention. 'Article 32(1) of the Organized Crime Convention establishes a Conference of the Parties "to improve the capacity of States to combat transnational organized crime and to promote and review the implementation of [the] Convention."' Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 466. While there is no formal provision for oversight or monitoring of states compliance provided in the Trafficking Protocol, the Conference of the Parties (established under the Organized Crime Convention) did extend its monitoring functions to the Trafficking Protocol and its implementation by states. Moreover, a Working Group was established in 2008 to assist the COP and serves to 'provide important guidance on how certain provisions should be interpreted and implemented.' Ibid. 471. This is realised in legislative guides and model laws of UN Office on Drugs and Crime and other UN agencies pertaining to trafficking in persons.

⁶²⁶ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 481.

⁶²⁷ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2011*, available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm> - last accessed January 2012.

⁶²⁸ Point 11 of the minimum standards set out by the TVPA, evaluates a state on: 'Whether the government of the country has made serious and sustained efforts to reduce the demand for (A) commercial sex acts; and (B) participation in international sex tourism by nationals of the country.' See Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2011*, available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm> - last accessed January 2012.

b) There is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) The determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year⁶²⁹;

- Tier 3 - countries who do not fully comply with the minimum standards established by the TVPA and are not making any significant efforts to do so.

The tier ranking system is one not without criticism. This surpasses the methodological weaknesses detailed above. One of the problems with the tier-ranking system, other than it suffers from many of the same flaws as the one used for drug trafficking⁶³⁰, is that ‘while tier ranking provides an aggregate score of compliance with anti-trafficking policies, it fails to recognize the different levels of compliance in the three main policy dimensions – prosecution, protection and prevention’⁶³¹. In other words, states can be ranked on the same tier level of compliance, but for very different reasons. Moreover, in the absence of reliable comparable data across states one wonders how the U.S. Department of State is even able to accurately rank and compare the anti-trafficking efforts of 184 states.

In order to ensure compliance with the measures set out in the TVPA, and reauthorisations of the act, the United States can invoke economic sanctions against states who consistently fail to comply or make efforts to do so. ‘[T]he U.S. President is authorized to deny the provision of nonhumanitarian, non-trade-related assistance to any Tier Three country... In addition, such countries will also risk U.S. opposition to their seeking and obtaining funds from multilateral financial institutions.’⁶³² The use of the TIP Report as a diplomatic tool appears to be quite persuasive approach in realising the United States foreign policy orientation towards human trafficking and prostitution. As Chuang notes,

⁶²⁹ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2011*, available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm> - last accessed January 2012 (emphasis removed).

⁶³⁰ As Friman notes, ‘as in the case of narcotics, the certification system assesses the extent to which governments are cooperating with the United States more than it assess the extent to which these cooperative efforts are successful.’ H. Richard Friman, ‘Numbers and Certification: Assessing Foreign Compliance in Combating Narcotics and Human Trafficking’, in Peter Andreas and Kelly M. Greenhill (Eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, (2010): 105.

⁶³¹ Seo-Young Cho, Axel Dreher and Eric Neumayer, ‘The Spread of Anti-Trafficking Policies – Evidence from a New Index’, *Center for European Governance and Economic Development (Cege)*, Discussion Paper Number 119, (March 2011): 2.

⁶³² Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 484.

*Since its creation, the U.S. anti-trafficking sanctions regime has had tremendous influence on the development and implementation of anti-trafficking laws worldwide. Most notably, the sanctions regime became a prime vehicle for promoting an anti-prostitution agenda worldwide, particularly couple with broad-ranging neo-abolitionist legal reforms and policies during the Bush Administration.*⁶³³

This is indeed a controversial component of the TVPA and the annual TIP report, which through its country ranking system, determines which states are non-compliant and the extent to which economic sanctions are to be imposed. While this has been heavily criticised by many states and commentators⁶³⁴, not in the least pointing out that some states which find themselves consistently ranked as Tier 3, are states which the United States perceives as ‘unfriendly’⁶³⁵ to its interests or safety, it has proven to be a very effective vehicle for providing impetus to states to conform and at the very least move to criminalise trafficking. In the case of the TIP Report, Warren maintains that the ‘rankings are as much about “national reputation” as actual evidence-based objective hierarchies of compliance... The concreteness of these national rankings, which have a history of being based on country narratives rather than statistical monitoring, cannot really obscure their politicized, constructed nature’⁶³⁶.

Moreover, up until 2010 the United States did not include itself or evaluate its own efforts in the TIP report – raising further questions to the report’s objectivity and credibility. As Gallagher explains, ‘by choosing to apply its own standards rather than internationally accepted legal norms, the United States has been able to determine the criteria against which international compliance for all States is to be measured. This may well contribute to a global and national-level acculturation of norms that are qualitatively distinct from those established by international law’⁶³⁷. In other words, such a unilateral move on the part of the United States could very well, in accordance to the law of unintended consequences, undermine the international anti-trafficking regime and the formal compliance mechanisms that were expressively established for this purpose.

⁶³³ Janie A. Chuang, ‘Rescuing trafficking from ideological capture: Prostitution reform and anti-trafficking law and policy’, *University of Pennsylvania Law Review*, Vol. 158: 1655, (2010): 1680.

⁶³⁴ Melissa Beale, ‘The Edge of Trafficking: The Trafficking in Persons Report: Who is the United States to Judge?’, *The Cutting Edge*, 29 November 2011 – available at <http://www.thecuttingedgenews.com/index.php?article=53229> – last accessed 29 January 2012.

⁶³⁵ Countries with communist regimes or are under military junta like Cuba, Burma, North Korea and Sudan have consistently found themselves ranked as Tier 3. This is in contrast to ‘friendly’ states such as Pakistan, India and Nigeria who all have more significant trafficking problems.

⁶³⁶ Kay B. Warren, ‘The Illusiveness of Counting “Victims”’, in Peter Andreas and Kelly M. Greenhill (Eds.), *Sex, Drugs and Body Counts: The Politics of Numbers in Global Crime and Conflict*, Ithaca: Cornell University Press, (2010): 119 – 120.

⁶³⁷ Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, (2010): 497.

5.0 Conclusion

In this chapter I have explored the intersection of complex and controversial subjects that have all influenced and shaped not only the international legal framework, but also the trajectory of the dominant discourse. I have critically engaged the contemporary international legal framework by examining its genesis and tracing how legacies of the past have influenced the current debates surrounding trafficking and the myriad of issues that intersect with it. I have shown that past debates or unresolved issues often re-emerge over time in different guises and settings. What has become evident, however, is that the trafficking discourse and the international legal and policy frameworks that attempt to combat it are heavily influenced by the past, as well as dominant voices and their political and moral agendas.

Moreover, I have demonstrated that the officious role of certain actors (state and non-state) could have ruinous effects on the long-term saliency and legitimacy of the current international legal framework. Also, the absence of the voices that such instruments seek to protect does not bode well for the sustention of the discourse. Within the international legal framework, victims remain largely disempowered and arguably driven by policies surrounding the limitation of migration and/or sex work further into situations where they are ever more vulnerable to exploitation and harm. Such policies do not take into account the motivations and risks taken by individuals who seek to carve out their own particular destinies away from their countries of origin. Moreover, while the language of human rights and the preservation and protection of rights is used throughout the discourse, and indeed the legal instruments assessed, what they lack is substance. The Trafficking Protocol has emerged as more of an instrument for prosecution than victim protection, offering little in the way of addressing root causes or the demand for human trafficking.

Finally, I considered the unilateral role by the United States in monitoring and enforcing compliance of anti-trafficking measures in accordance with its own established minimum standards (and not those of the Trafficking Protocol). I showed that the United States' compliance mechanism in the form of tier ranking of states was little more than a political construct designed to manipulate states to conform to U.S. foreign policy orientations – and how it has deemed human trafficking should be understood and combated. This in itself has had a significant impact on the dominant discourse and the way that domestic legislations and programmes are crafted. The neo-abolitionist stance, at the root of many disputations about human trafficking, has been reinforced as a result and plays out in the way that many states approach human trafficking and (forced) prostitution. In addition, anti-prostitution laws and models touted by the United States are more readily accepted and implemented by some

states into domestic legislation and policy, in part, for fear of a poor ranking on the TIP Report and sanctions levelled against it.

In the next chapter I look at the South African legislative and policy framework. I assess the debates surrounding the South African Trafficking in Persons Bill, analyse the ramifications of its provisions as well as some of the larger debates surrounding it, and analyse the contemporary and transitional policy framework.

Chapter 4: Forging a Domestic Legal and Policy Framework – The South African Response to Combating Trafficking

*A curious question... is why the governments who agreed to the UN Trafficking Protocol chose to put most of their focus on efforts to stop individuals being moved into situations in which they would be exploited, rather than putting more energy into stopping cases of exploitation from occurring at all.*⁶³⁸

1.0 Introduction

South African efforts to combat human trafficking have been driven by a combination of factors. These include, South Africa's obligations derived through its ratification⁶³⁹ of the Trafficking Protocol and 'the seeming international preoccupation with trafficking, in an attempt to position the issue within the larger context of other global human rights abuses'⁶⁴⁰. In conjunction with international pressure exerted in the form of the United States TIP Report, and the dominant global discourse, the advocacy role played by influential local NGOs and their proximity to media and politicians when human trafficking became a hot topic. This congruence of factors, however, did not lead to the desired outcome that NGOs and other advocates had been pressing for – the speedy enactment of legislation. Indeed, the *Prevention and Combating of Trafficking in Persons* (TIP Bill) was only introduced to Parliament on 15 March 2010.

This was the culmination of a protracted process driven by the South African Law Reform Commission (SALRC) through its investigation into human trafficking in South Africa which began in 2003.⁶⁴¹ This resulted in a series of consultative workshops, an issue paper⁶⁴² and a discussion document⁶⁴³ that was circulated nationally. A final report was submitted to the Minister of Justice and Constitutional Development in November 2008.⁶⁴⁴ A final circulation

⁶³⁸ Mike Dottridge, 'Introduction', *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World*, GAATW, (2007): 12.

⁶³⁹ 20 February 2004.

⁶⁴⁰ Jacqui Gallinetti, 'Don't shout too loud: Reflections on the outrage against human and child trafficking', *South African Crime Quarterly*, No. 33, (Sept. 2010): 11.

⁶⁴¹ The goal was to have produced a comprehensive Trafficking in Persons Bill by 31 March 2007. See <http://www.info.gov.za/issues/humantrafficking/strategy.htm> – last accessed April 2012.

⁶⁴² Circulated in 2004.

⁶⁴³ South African Law Reform Commission, *Trafficking in Persons – Discussion Paper 111* (Project 131), circulated in 2006.

⁶⁴⁴ Vigneswaran attributes this slow progress to the role played by the ANC government and its reversion to its core legislative agenda in 2009 following its removal from the Tier 2 Watch List. He notes that South Africa's ranking as a Tier 2 Watch List country for four consecutive years (from 2005 – 2008) threatened not only its standing as 'an African leader on human rights issues' but also its dependence on 'elements of its \$USD half a billion aid budget' from the United States as the primary motivation for the government to table legislation in 2008. Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG

of the proposed TIP Bill was made in May 2009. Throughout most of 2011 there were Parliamentary hearings on the TIP Bill, with numerous points of contention.⁶⁴⁵ On 4 June 2012 the TIP Bill was finally adopted by the National Assembly. As a section 75 bill not affecting provinces, it currently⁶⁴⁶ sits with the Select Committee on Justice and Constitutional Development of National Council of Provinces where a number of its provisions are being debated. Although no timeframes have been given, anti-trafficking practitioners believe that it should pass into law in the first quarter of 2013.⁶⁴⁷

The formulation of the adopted TIP Bill represents an intersection of the dominant discourse and accompanying anti-trafficking legislation with the South African legal discourse on human trafficking and anti-trafficking provisions. A dissection of the TIP Bill demonstrates linkages with the dominant discourse and provides the context for the ensuing discussion. Certain reoccurring themes⁶⁴⁸, which are found in the dominant discourse, are also evident in the South African discourse. The Trafficking Protocol and the other two protocols which fall under the UN Convention on Transnational Organised Crime are formulated to combat transnational crime, and more specifically organised criminal groups. This language and logic is firmly embedded in the TIP Bill, and indeed in the South African discourse. 'Rather than merely responding to criminal instances *in situ*... officials [are encouraged] to think more broadly about criminal enterprise and to inquire into the expanding networks and associations which increasingly support and encourage contemporary crime.'⁶⁴⁹

Elements of the adopted TIP Bill reflect the international and local context in which the draft Bill was first crafted by the SALRC. Discussions and consultative processes which took place from 2003 to 2008 coincide with the height of the United States' influence on the human trafficking discourse under the Bush Administration and its abolitionist slant. During this era, the Bush Administration through its unilateral monitoring mechanism, the TIP Report, put pressure on governments across the world to introduce anti-trafficking legislation and support the abolition of prostitution.⁶⁵⁰ The two were seen as being synonymous with one another. Prostitution is perceived in the dominant discourse as the primary driver of human trafficking

Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 14.

⁶⁴⁵ Discussed later in this chapter.

⁶⁴⁶ As of November 2012.

⁶⁴⁷ Participant Observation: KZN HPPB Task Team meeting (28 November 2012).

⁶⁴⁸ These themes include prostitution, sexual exploitation and human trafficking, victimology, migration, security and organised crime.

⁶⁴⁹ Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 20.

⁶⁵⁰ Discussed in detail in Chapter 3.

for forced prostitution / sexual exploitation, and thus receives the most attention. The Bush administration offered assistance to states to become compliant to the Trafficking Protocol, and its legal standpoint on trafficking, by providing assistance in drafting domestic anti-trafficking legislation through the *US State Department Model Law to Combat Trafficking* of 2003.

There exists, however, a multiplicity of international legal instruments and agreements, highlighted in the tables below, that also have created binding obligations on South Africa to bring its national legal framework and policies in line with these provisions. Regional legal instruments serve an additional function by facilitating bilateral and multilateral cooperation that is essential to combating trafficking, and 'are gaining increasing importance, especially where the foundational documents are supplemented by instruments specifically aimed at addressing human trafficking'⁶⁵¹.

In this chapter, I consider the South African legislative and policy response to human trafficking. The chapter is divided into three parts. The first part critically reviews existing and transitional legislative arrangements and the piecemeal approach to combating trafficking in South Africa. The second part critically assesses the newly adopted Trafficking in Persons Bill and explores the ramifications of its provisions as well as some of the larger debates surrounding it (which fed in to the emerging domestic discourse and the dominant discourse internationally). The third part offers a critical analysis of the contemporary and transitional policy framework.

⁶⁵¹ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 34.

The following tables list the international legal framework which frames South Africa's obligations under international law to prevent and combat human trafficking.

INTERNATIONAL LEGAL FRAMEWORK

International Human Rights Law	International Labour Law	Transnational Criminal Law
<p>International Convention for the Suppression of White Slave Traffic (1910)</p> <p>International Convention for the Suppression of Women and Children (1922)</p> <p>Slavery, Servitude, Forced Labour and Similar Institutions Convention (1926)</p> <p>United Nations Convention for the Suppression of the Traffic in Persons and the Exploitations of the Prostitution of Others (1949)</p> <p>Universal Declaration of Human Rights (1948)</p> <p>United Nations Supplementary Convention on the Abolition of Slavery (1956)</p> <p>United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979)</p> <p>United Nations Convention on the Rights of the Child (1989)</p> <p>Optional Protocol on the rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)</p>	<p>International Labour Organisation Convention against Forced Labour No. 29 (1930)</p> <p>International Labour Convention No. 105 on the Abolition of Forced Labour (1957)</p> <p>Convention Concerning the Prohibition and Immediate Action for the Eliminations of the Worst Forms of Child Labour No. 182 (2000)</p>	<p>United Nations Convention Against Transnational Organised Crime (2000)</p> <p>United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000)</p>

The tables below indicate the various regional human rights instruments and initiatives which inform South Africa's attempts to criminalise and prevent and address human trafficking.

REGIONAL INSTRUMENTS

European Human Rights System	African Human Rights System	Other Regional Instruments
<p>EU Framework Decision on Combating Trafficking (2002)</p> <p>Council of Europe Convention on Action against Trafficking in Human Beings (2005)</p>	<p>African Charter on Human and Peoples' Rights (1981)</p> <p>African Charter on the Rights and Welfare of the Child (1990)</p> <p>Protocol on the Human and People's Rights on the Rights of Women in Africa (2003)</p> <p>African Youth Charter (2005)</p>	<p>South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (2002)</p> <p>Revised Arab Charter on Human Rights (2004)</p>
Inter-American Human Rights System		
<p>American Convention on Human Rights (1969)</p> <p>Inter-American Convention on International Traffic in Minors (1994)</p>		

REGIONAL INITIATIVES

South African Development Community	Economic Community of West African States	African Union
<p>SADC Declaration on Gender and Development (1997)</p> <p>SADC Protocol on Gender and Development (2008)</p> <p>The 10 Year SADC Plan of Action on Combating Trafficking in Persons, Especially Women and Children (2009-2019)</p>	<p>Declaration on the Fight against Trafficking in Persons (2001)</p>	<p>Solemn Declaration on Gender Equality in Africa (2004)</p> <p>Ouagadougou Action Plan to Combat Trafficking in Persons, Especially Women and Children (2006)</p>

The consequent obligation derived from international legal instruments and agreements has entailed a number of amendments to existing laws and the drafting and enactment of new laws. The primary focus of these amendments and the move to align the South African legal framework with those obligations incurred by the complex system of international law aimed at eradicating slavery, forced labour and trafficking⁶⁵² has been the Trafficking Protocol. This is evinced in the formulation and explicit wording of the TIP Bill.

Regional legal instruments and initiatives also inform the South African counter-trafficking response in terms of international cooperation and jurisdiction. Of particular importance in the South African context are the legal agreements and initiatives that fall under the African Human Rights System and more specific regional initiatives which all prohibit trafficking and obligate member states who have ratified or acceded to these agreements to protect the rights of people (especially young women and children) through efforts to prevent trafficking and address gender inequality. One shortcoming of many of these regional initiatives is that they fail to protect young males from being trafficked. Moreover, while these African regional initiatives are both necessary and admirable, in terms of providing international cooperation and jurisdiction, regional coordination and cooperation, establishing minimum standards, promoting and protecting human rights of vulnerable groups and monitoring and evaluation they are problematic in their application. Many states have not ratified or acceded to these agreements or initiatives.⁶⁵³

The Ouagadougou Action Plan also informs the South African counter-trafficking response. It was established in 2006 between the European Union and African Union in recognition of the need to effectively combat human trafficking through comprehensive regional and international cooperation.⁶⁵⁴ It is seen as a framework that will allow for the speedy ratification and implementation of the Organised Crime Convention and Trafficking Protocol throughout the African Union and ensure compliance with the minimum standards set out therein. While there still is no single trafficking legal framework in South Africa (this will only be realised when the TIP Bill is enacted into law), there are a number of amendments to

⁶⁵² Jacqui Gallinetti, 'Don't shout too loud: Reflections on the outrage against human and child trafficking', *South African Crime Quarterly*, No. 33, (Sept. 2010): 13.

⁶⁵³ For instance, the SADC Protocol on Gender and Development has only been ratified by two member states and as such has not come into operation as yet. As a result many of these agreements remain largely aspirational at present, as too the obligations derived therefrom. Moreover, Kruger notes that the SADC Plan of Action and the ECOWAS Declaration on the Fight against Trafficking in Persons are not legally binding instruments. Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, University of the Free State, November 2010: 286. For a definition and discussion on the 'soft' law of trafficking see Anne T. Gallagher, *The international law of human trafficking*, Cambridge: Cambridge University Press, (2010).

⁶⁵⁴ Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, University of the Free State, November 2010: 282.

existing laws which have been introduced in a fragmentary or piecemeal fashion⁶⁵⁵ to deal with the problem of human trafficking. As a result, there are limitations as to the scope and application of these provisions, which are transitional in nature.

2.0 The South African Response: A little bit of this and a little bit of that

The South African response to anti-trafficking to date has been fragmented and slow, and finds itself in what only can be described as a transient state. This slow pace of progress in fulfilling the state's obligations under international and regional legal instruments, particularly the Trafficking Protocol, and the minimum standards derived from the TVPA has been severely criticised in the United States TIP Report for a number of years.⁶⁵⁶ There are a small number of pertinent legal amendments that have been made over the past few years: the *Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007* (Sexual Offences Amendment Act) and the *Children's Act 38 of 2005*. The *Sexual Offences Amendment Act* criminalises trafficking for the purposes of sexual exploitation only.⁶⁵⁷ This means that other forms of trafficking and linked exploitative practices are not dealt with by this law.⁶⁵⁸ However, the act of trafficking for the purpose of sexual exploitation is only

⁶⁵⁵ Like much South African legislation / legislative reforms.

⁶⁵⁶ Up until 2008, South Africa was ranked as a Tier 2 (Watch List) country for the fourth consecutive year by the U.S. TVPA for failing to 'comply with the minimum standards for the elimination of trafficking'. Although South Africa was upgraded to Tier 2 in 2009 it still does not fully comply with the U.S. determined minimum standards for the elimination of trafficking. However, provincial task teams have in the interim been established throughout most of the country and comprehensive legislation was introduced to Parliament in 2010.

⁶⁵⁷ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 40 – 42; Justice and Constitutional Development Media Briefing, 'Briefing Document: Prevention and Combating of Trafficking in Persons Bill, 2010', 15 March 2010: 1 – 2, available at <http://www.pmg.org.za/briefing/-prevention-and-combating-trafficking-persons-bill-briefing-minister-justice>; Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, University of the Free State, November 2010: 402. This reflects the dominant discourse's preoccupation with trafficking for the purposes of sexual exploitation (i.e. the prostitution of others).

⁶⁵⁸ In the absence of a specialised and comprehensive law on human trafficking, trafficking may be prosecuted using a range of existing laws that criminalise acts that form part of human trafficking, such as the common law crimes of abduction, kidnapping, slavery, rape, murder, attempted murder, common assault, extortion, *crimen iniuria*, criminal defamation, and fraud. In addition to common law crimes there are numerous statutory offences that may be used to prosecute traffickers and protect victims. These Acts include, the *Righteous Assemblies Act 17 of 1956*; the *Sexual Offences Act 23 of 1957*; the *Intimidation Act 72 of 1982*; the *Child Care Act 74 of 1983*; the *Human Tissue Act 65 of 1983*; the *Films and Publications Act 65 of 1996*; the *International Co-operation in Criminal Matters Act 75 of 1996*; the *Basic Conditions of Employment Act 75 of 1997*; the *Domestic Violence Act 116 of 1998*; the *Witness Protection Act 112 of 1998*; the *Prevention of Organised Crime Act 121 of 1998*; the *Financial Intelligence Centre Act 38 of 2001*; the *Immigration Act 13 of 2002*; the *National Health Act 61 of 2003*; and the *Prevention and Combating of Corrupt Activities Act 12 of 2004*. See also, Bronwyn Pithey, 'Do new crimes need new laws? Legal provisions available for prosecuting human trafficking', *SA Crime Quarterly*, No. 9, September 2004. For a comprehensive discussion of applicable laws and measures in the absence of specialised human trafficking legislation see, UNODC and SADC, 'Chapter 6: Key Laws and Measures – South Africa', in *Combating Trafficking in Persons: A 2005 Assessment of the Laws and Measures Relevant to Human Trafficking in Selected SADC Countries, Malawi, Mozambique, South Africa and Zambia*, November 2007.

deemed an offence where consent by the victim is absent.⁶⁵⁹ This deviation from the Trafficking Protocol is significant. Article 3(d) of the Trafficking Protocol renders consent irrelevant (i.e. it is negated) where any of the prohibited means have been used or where the trafficked individual is a minor (under the age of 18). Moreover, Kruger and Oosthuizen⁶⁶⁰ have shown that the *Sexual Offences Amendment Act* only negates consent for children under the age of 12. They question the position regarding the ability to consent ‘voluntarily or without coercion’ of children between the ages of 12 and 17.⁶⁶¹ This is addressed by the *Children’s Act* which is a specialised piece of legislation that deals exclusively with children under the age of 18.

However, there are several shortcomings with the *Children’s Act*. Many of its provisions only came into force in 2010 and application of these provisions has not always been satisfactory.⁶⁶² Moreover, its anti-trafficking provisions only came into effect on 1 April 2010.⁶⁶³ This suggests that, as with the *Sexual Offences Amendment Act*, those who are supposed to implement the amendments to these acts are either ill-informed or not trained in these newly criminalised acts and how they should be addressed. However, this is not limited to law enforcement and criminal justice responses, but also those coming from healthcare practitioners and social workers dealing with these cases. Moreover, it has been noted that due to lack of capacity and financial restraints and a general lack of resources, many individuals who deal with victims of such cases do not do so appropriately – that is to say, they have not been sensitised in how to respond, treat or interview such people (men, women and children). This is an on-going problem with many purportedly ‘victim-centred’ laws and policies.

*The Child Justice Act is a prime example of this – there is no scope (provision or resources) for after-hours social workers. This is why there is a need to budget into the mainstream after the Act comes into effect.*⁶⁶⁴

While this is not a new concern, it should be taken into serious consideration when the TIP Bill becomes passed into law in the first quarter of 2013 – and human trafficking becomes

⁶⁵⁹ Section 71(1) *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007: ‘A person (“A”) who traffics any person (“B”), without the consent of B, is guilty of the offence of trafficking in persons for sexual purposes.’

⁶⁶⁰ Hester B Kruger and Hennie Oosthuizen, ‘South Africa – Safe Haven for Human Traffickers? Employing the arsenal of existing law to combat human trafficking’, *Potchefstroom Electronic Law Journal (PER / PELJ)*, Volume 15, No 1, (2012): 322.

⁶⁶¹ Ibid.

⁶⁶² Personal Observation: Interview with the advocacy manager of Women and Men Against Child Abuse (WMACA) in KwaZulu-Natal (2012).

⁶⁶³ Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, LLD Thesis, University of the Free State, November 2010: 404.

⁶⁶⁴ Personal Observation: Interview with a member of the NPA (2011).

just another law among many other laws (that look good on paper but do not translate well into practice).

South Africa has first world legislation for a third world country. This is highly problematic and helps explain why legislation often fails due a lack of capacity and resources.

Training of law enforcement and other government departments will also be vital. For instance, the amended Sexual Offences Act was enacted in 2007 and even today many police officers don't know some of the basic amendments to the definition of what constitutes rape. Without more effective communication and holding individuals accountable (which there is a great lack of at present) passed legislation will be toothless / ineffectual. Those who have roles and duties defined by law or the legislation, need to read and sign national instructions – to ensure accountability and enforcement.⁶⁶⁵

It is feared that once legislation is in place, human trafficking will become 'just another crime'⁶⁶⁶. And not a pressing one. Moreover, a comprehensive national policy framework will only be drafted and adopted once the Bill passes into law. The lack of such a national policy framework reiterates the piecemeal approach to addressing human trafficking systematically. This also accounts for the reason why provincial task teams have been set up and work autonomously from the national intersectoral task team. Moreover, while information flows upwards to the national level – little appears to be disseminated downwards or to coordinate the responses at the provincial level.⁶⁶⁷

This raises a barrage of questions into the efficacy or impact of such task teams in the absence of a policy framework and more importantly resources and capacity. While it would appear from an analysis of the TIP Bill that a definite structure has been determined at the national level in the form of a consultative process between key government stakeholders, which clearly delineates the various role players and their responsibilities and functions, it remains somewhat uncertain if or how the provincial task teams will change not only in structure but in terms of mandate once the Bill has been enacted.⁶⁶⁸ Moreover, it is unclear that once a

⁶⁶⁵ Personal Observation: Interview with a member of the NPA (2011).

⁶⁶⁶ Personal Observation: Interview with a member of the NPA (2011).

⁶⁶⁷ Participant Observation: 2009 – 2012; Personal Observation: Interview with a member of the NPA (2011). See also, Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010.

⁶⁶⁸ For instance, the KZN intersectoral task team, better known as the Human Trafficking, Prostitution, Pornography and Brothels (HPPB) Task Team, primarily focuses on trafficking for the purposes of sexual exploitation and a range of other exploitative sexual practices that intersect with this aspect of human trafficking. Only in the past year or so has the task team begun to extend its focus to labour trafficking and related exploitative practices such as debt bondage. What remains uncertain at present is the extent to which this task team will change organisationally and alter its focus once the Bill becomes law.

national policy framework comes into play⁶⁶⁹ whether there will be situational analyses conducted at both national and provincial levels to tailor-make responses to combat trafficking. If this is not done, this could result in a disconnect between policy and lived experience⁶⁷⁰ of those who may or may not be categorised as trafficked.

3.0 The Trafficking in Persons Bill: Considerations and Ramifications

The objects of the TIP Bill were to give effect to the Trafficking Protocol by creating a comprehensive national legal framework criminalising the trafficking in persons, prosecuting those individuals involved, preventing trafficking and protecting victims of trafficking and generally combating human trafficking.⁶⁷¹ However, this first part has been removed from the clean TIP Bill adopted by the National Assembly in June 2012. Instead, it reads more broadly ‘[t]o give effect to the Republic’s obligations concerning the trafficking of persons in terms of international agreements’. The rationale for this cited in the minutes of the Portfolio Committee on Justice and Constitutional Development’s deliberations on the Prevention and Combating of Trafficking in Persons Bill⁶⁷² was that the provisions of an international convention to which the country had acceded to and ratified were not always binding in their entirety. ‘A country could attach certain conditions and obligations to its accession to a convention, so that the entire Convention may be regarded as not binding’⁶⁷³. Moreover, the UNODC cautioned against the inclusion of the Trafficking Protocol as a schedule to the TIP Bill. The Portfolio Committee deemed the omission of the text of the Trafficking Protocol from the clean TIP Bill necessary, as its inclusion could open the State to litigation if anything in the TIP Bill were inadvertently in conflict with the provisions of the Trafficking Protocol.⁶⁷⁴ This demonstrates that South Africa’s interpretation of the Trafficking Protocol

⁶⁶⁹ Clause 40 stipulates that within one year of the commencement of the Act the national policy framework be approved and tabled in Parliament.

⁶⁷⁰ For an insightful view into how the disconnect between policy and lived experience can manifest itself, see Pardis Mahdavi, *Gridlock: Labor, migration, and human trafficking in Dubai*, Stanford, California: Stanford University Press, 2011.

⁶⁷¹ Justice and Constitutional Development Media Briefing, ‘Briefing Document: Prevention and Combating of Trafficking in Persons Bill, 2010’, 15 March 2010: 3, available at <http://www.pmg.org.za/briefing/-prevention-and-combating-trafficking-persons-bill-briefing-minister-justice>.

⁶⁷² Portfolio Committee Justice and Constitutional Development, *Deliberations on the Prevention and Combating of Trafficking in Persons Bill [B7- 2010]*, 15 August 2011, available at <http://www.pmg.org.za/report/20110816-deliberations-prevention-and-combating-trafficking-persons-bill> – last accessed August 2012.

⁶⁷³ Adv. Gerhard Nel, Head: Policy Development and Legislative Inputs, Office of the National Director of Public Prosecutions (NDPP), *Portfolio Committee Justice and Constitutional Development: Deliberations on the Prevention and Combating of Trafficking in Persons Bill [B7- 2010]*, 15 August 2011, available at <http://www.pmg.org.za/report/20110816-deliberations-prevention-and-combating-trafficking-persons-bill> – last accessed August 2012.

⁶⁷⁴ See footnote 22, page 6 in the 6 September 2011 version of the TIP Bill. Available at <http://www.pmg.org.za/report/20110906-deliberations-prevention-and-combating-trafficking-persons-bill-0> – last accessed August 2012.

follows the spirit of the agreement, if not the actual wording. It also allows for variations in legal system and domestic context. In addition, it enables South Africa to incorporate other international or regional obligations derived from other pertinent agreements preventing and combating human trafficking, not to mention advances. This implies that a literal reading or interpretation of the Trafficking Protocol cannot be used against the State should the case be that some of its provisions deviate from that of the Trafficking Protocol. However, as many of the Trafficking Protocol's provisions are largely aspirational, it is doubtful whether such litigation would succeed.

The preamble of the TIP Bill is limited in its recognition of the causes of human trafficking. It ascribes 'the search for improved socio-economic circumstances' (impliedly caused by poverty and/or unemployment) and 'the demand for the services of victims of trafficking' as the factors that render people vulnerable to being trafficked. Simply put, the laws of supply and demand determine the vulnerability of persons. The preamble is thus broad and vague. Whilst technically correct, this presents a limited recognition and understanding of the diverse ways that people become vulnerable to being trafficked. It also fails to recognise the diversity of victims and how this may impact the ways, and into what exploitative practices, they are trafficked into. Nor does it, more importantly, delineate what the services of victims of trafficking might be, or what informs our understanding of demand. It merely lists and for the most part defines what types of trafficking are included under the Bill, in Chapter 1 and 2. Moreover, it does not indicate what actions will be taken to limit demand for the services of victims of human trafficking. It does not indicate if these services will be criminalised – as in the case of sex work/prostitution (which is problematic in itself). The ways in which (i.e. purposes) trafficked people are exploited do not always coincide with the services that might provide. Demand for the services of trafficked persons is more complex than this and represents the last link in the chain. It does not consider that many of the consumers of the services of trafficked persons do not necessarily demand their services, but are in the search for cheap products which trafficked persons may play a part in their production. This represents a far more complex interlinking of trafficked persons, legal / illegal business, end products and end users/consumers. Moreover, as Marshall highlights 'many sectors into which people are trafficked are already covered by labor laws and standards. However, these are not routinely enforced'⁶⁷⁵.

As human trafficking is a series of discrete acts (and not a singular event), just as what renders one person vulnerable and another not, it becomes problematic when attempting to

⁶⁷⁵ Phil Marshall, 'Addressing the Demand Side of Trafficking', (2012): 3 – available at <http://rightswork.org/wp-content/uploads/2012/01/Addressing-the-Demand-Side-of-Trafficking.pdf>

understand what the legislators' intention is with this limited recognition of the causes of trafficking. As Kreston notes, 'by failing to acknowledge all the causes of trafficking... it fails to provide an all-encompassing plan for eradication of the crime. By ignoring the part that systemic misogyny and patriarchal culture plays in this crime, and in all crimes of violence against women and children, it misses a decisive opportunity to bring a crucial dynamic behind this crime into the open'.⁶⁷⁶ Dealing with structural violence is key to combating vulnerability and the continuum of exploitation and abuse along which trafficking victims find themselves at the most extreme end.

3.1 Definitions and Contentions

While clause 1 of Chapter 1 of the TIP Bill does offer a definition of 'abuse of vulnerability', it is limited in the sense that it only refers to abuse in a general sense that acts as a conduit that 'leads a person to believe that he or she has no reasonable alternative but to submit to exploitation'. It does not define conditions of vulnerability⁶⁷⁷ as a cause or factor in and of itself. It merely lists the following states as being subject to abuse of vulnerability: (i) illegal status (of a migrant who has either overstayed their visa or is undocumented), (ii) pregnancy, (iii) disability, (iv) addiction to any dependence-inducing substance, (v) childhood, (vi) social circumstances, and (vii) economic circumstances. While the TIP Bill acknowledges that this is not an exhaustive list, it again misses the mark and fails to recognise the importance of understanding the root causes of trafficking (and the multidimensionality of this phenomenon).

The TIP Bill does not adequately define or distinguish between the 'abuse of power and position of vulnerability' as noted in the Trafficking Protocol and other international legislative frameworks and model laws⁶⁷⁸ in relation to the aforementioned conditions of vulnerability. It would appear from a reading of the TIP Bill that the drafters have taken into consideration the UNODC's Model Trafficking Law (2009)⁶⁷⁹ and other sources. The TIP Bill thus substantially considers only some of the nine commonly held conditions affecting vulnerability: (i) childhood, (ii) gender, (iii) poverty, (iv) social and cultural exclusion, (v) limited access to education, (vi) political instability, war and conflict, (vii) social, cultural and

⁶⁷⁶ Susan S. Kreston, 'Trafficking in children in South Africa: An analysis of pending legislation', *Child Abuse Research in South Africa*, 8(1), (2007): 46.

⁶⁷⁷ 'Conditions of vulnerability are usually the result of political, social, cultural or economic practices and policies that fail to ensure equal access and protection to all members of a society.' Michèle A. Clark, 'Vulnerability, prevention and human trafficking: the need for a new paradigm' in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 71.

⁶⁷⁸ See Anne T. Gallagher, *The international law of human trafficking*, Cambridge: Cambridge University Press, (2010).

⁶⁷⁹ See http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf.

legal frameworks, (viii) movement (i.e. migration – irregular or forced), (ix) demand.⁶⁸⁰ It also omits to acknowledge the link between agency (of those who may or may not be classified as being trafficked) and structures⁶⁸¹ (institutions or conditions) that might support or restrict agency. Moreover, structural constraints that hinder migrants (regular, irregular, undocumented or forced) and vulnerable segments of the population from entering the formal economy serve to drive them into the informal economy – which is customarily unregulated and where legal recourse and protection of rights are systematically denied – are not acknowledged or addressed. This is problematic as any prevention policies that are crafted once the Bill becomes law in the first quarter of 2013 might not take these points into account and severely limit counter-trafficking initiatives in the future – and serve to disconnect policy from lived experience.

Reducing vulnerability or conditions of vulnerability should be one of the cornerstones of any counter-trafficking policy. However, this is a notoriously difficult endeavour and could account for why it has been overlooked in the draft legislation and possibly future policy. This stems from the fact that ‘vulnerability is not a static, absolute state, but one that changes according to the context as well as to the capacity for individual response. The development of indicators requires careful attention to the unique characteristic of the group being assessed in order to develop the most effective preventive solutions’⁶⁸². Moreover, prevention policies will remain ineffectual where there are no real or acceptable alternatives available to those individuals or sections of a population who are considered to be the most vulnerable. The lack of cognisance of this in the recently adopted TIP Bill represents a worrisome omission.

Also questionable are the scope of some of the definitions provided under Chapter 1 of the TIP Bill. While some acts criminalised under the TIP Bill are clearly defined and sufficiently extensive in scope – such as the definition of ‘debt bondage’, other terms are limited – such as ‘servitude’⁶⁸³. It is assumed that servitude, the labour or services of a person, can only be

⁶⁸⁰ Michèle A. Clark, ‘Vulnerability, prevention and human trafficking: the need for a new paradigm’ in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 71 – 75.

⁶⁸¹ As Mahdavi notes, ‘[s]tructures can include systems such as education, employment sector, and state regulations, or socially constructed categories such as class, race, gender, ethnicity, and group identity. Individuals often find and exercise agency even within the structures that seek to limit them.’ Pardis Mahdavi, *Gridlock: Labor, migration, and human trafficking in Dubai*, Stanford, California: Stanford University Press, (2011): 14.

⁶⁸² Michèle A. Clark, ‘Vulnerability, prevention and human trafficking: the need for a new paradigm’ in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 69.

⁶⁸³ "servitude" means a condition in which the labour or services of a person are provided or obtained through threats of harm to that person or another person, or through any scheme, plan or pattern

obtained through coercion into this state through the use of threats of harm to the trafficked person or another. This is a problematic assumption. It does not take into account the role that debt bondage plays in obligating a person to work-off their calculated debts in service to another. Debt may even be inherited.⁶⁸⁴ Some individuals accede to this willingly, under the misassumption that once his or her debts (for travel expenses, visas and even placement fees in the case of migration for work) have been paid or worked-off that person will start being paid or freed from their contract to their employer. Threats of harm only become relevant after a period of time. Either when the indentured person realises that his or her debt has been worked-off and they still are not receiving payment for their services, or when the person tries to extricate themselves from this position. As Mahdavi⁶⁸⁵ has recently shown, trafficked people's (especially migrants) acquiescence to such conditions (i.e. working months without pay, exceptionally long hours, lack of food and water, having to sleep on the floor, being denied the use of the telephone, being beaten by their employer, or even locked in the house / their room at times) are factored in their conscious decision to gain such employment.⁶⁸⁶ The trafficked person in this regard is subject to abuse and exploitation, but entered into the situation willingly and in a number of cases aware of the risks posed.⁶⁸⁷

Solely regarding a condition of servitude as being forced using 'the threat of harm' is limiting. It would have been more beneficial to define 'servitude' as 'the condition of a person who is unlawfully compelled or coerced by another to render any service to the same person or to others and who has no reasonable alternative but to perform the service, and shall include domestic service and debt bondage'⁶⁸⁸. Migrants and children are particularly at risk of this form of trafficking. Often unaware of their rights or legal recourse such individuals are readily exploited and controlled by their 'employers' or relatives who have them work for them in exchange for food and board (or the promise of an education). Policing this will be exceptionally difficult, as unlike sexual exploitation (sex trafficking) it is not in the public

intended to cause the person to believe that, if the person does not perform the labour or services in question, that person or another person would suffer harm.

⁶⁸⁴ In India, for instance, debt bondage is intergenerational and children inherit the debts of their parents, and their parents' parents, which they are obligated to work off.

⁶⁸⁵ Pardis Mahdavi, *Gridlock: Labor, migration, and human trafficking in Dubai*, Stanford, California: Stanford University Press, 2011.

⁶⁸⁶ The question of consent-nullifying behaviour comes into play in this instance.

⁶⁸⁷ Informal networks (such as those based on ethnicity or nationality) play an important role in relating information to migrants back home – of their experiences, risks and ultimately the benefits of engaging in such work. States with development policies that rely on overseas remittances compound this issue. Migrants are more willing to take calculated risks where they know the potential rewards are high (and remittances can be sent home to support their families).

⁶⁸⁸ 'Seventh Revised Draft of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,' UN Doc. A/AC.254/4/Add.3/Rev.7, July 19, 2000 quoted in Anne T. Gallagher, *The international law of human trafficking*, Cambridge: Cambridge University Press, (2010): 37.

consciousness and ‘behind closed doors’ (in the sense that such individuals might not come into contact with people outside the home / family). Awareness-raising and education, in their current form, may not be enough. Awareness campaigns ‘often assume that the target group is unaware of the dangers involved in human trafficking. They do not take into consideration the possibility that some choose to take that risk, or allow themselves to be exploited because of the potential for financial gain’⁶⁸⁹.

Moreover, there are some unanswered questions as to the status of a trafficked person⁶⁹⁰ (or when they may be deemed to be trafficked) if they escape from a condition of servitude or forced labour, without outside intervention in the form of law enforcement or NGOs, and enter the informal economy (often in the form of illicit work, such as sex work). Should this be seen as a consequence of them being trafficked and still a victim of circumstance, or active agents responding to structural constraints? Undeniably, such individuals are still precariously vulnerable and risk being further abused and exploited or trafficked. How and when do we determine that they are worthy of assistance in terms of the TIP Bill? How do such individuals prove that they were trafficked (particularly where they are illegally in the country) and have been able to extricate themselves from such exploitative situations?⁶⁹¹ It is these unanswered questions and the predominantly law enforcement based approach framed in a language of human rights, protection and victim-empowerment that is of concern.

The TIP Bill only provides for victims of trafficking not to be prosecuted where the offence committed was a direct result of being trafficked.⁶⁹² There remains the potential for victims of trafficking who have extricated themselves from the hold of their traffickers and have entered the informal economy and have engaged in acts that constitute offences under South African

⁶⁸⁹ Liv Tørrres and Denise du Toit, *Southern African Counter-Trafficking Programme SACTAP Review*, Norad Collected Reviews (6/2010): 19.

⁶⁹⁰ Discussed later in the chapter.

⁶⁹¹ This is particularly relevant to cases of servitude and other forms of forced labour. At present, trafficked victims of sexual exploitation are more likely to receive assistance in instances where they have been able to extricate themselves from such exploitative situations. What remains untested is the case of irregular migrants who have not been trafficked for sexual exploitation, but bound by debt bondage are forced to work in extremely brutal and exploitative conditions. A range of such scenarios exist, such as forced labour on farms, illegal mining, domestic servitude and sweat shops. Infringements of labour law are seen primarily as the ambit of labour inspectors. However, in the case of inspecting farms, for instance, labour inspectors have to give notice to the owner that they will be inspecting the farm and working conditions. A gap or loophole currently exists in terms of current labour policy.

⁶⁹² Clause 22(1) ‘When deciding whether to prosecute a victim of trafficking, the prosecutor must give due consideration to whether the offence was committed as a direct result of the person’s position as a victim of trafficking’.

law⁶⁹³ to be prosecuted or even deported (in the case of foreign nationals). International experience⁶⁹⁴ has shown that no matter how well intentioned anti-trafficking legislation is, the approach to its enforcement is not rights based. Migrants and sex workers tend to fare worse in this global prohibitive regime. In the South African context, what remains to be seen is how well this new law will protect trafficked persons and who it will neglect.

The objects of the TIP Bill are however comprehensive and more definitive than those of the Trafficking Protocol. It even underscores the notion of partnerships as being vital to combating trafficking by providing for the co-ordinated implementation, application and administration of this Act, the drafting of a national policy framework and combating trafficking in a coordinated manner.

3.2 Criminalising Human Trafficking

Chapter 2 of the TIP Bill is wide in scope and application. It criminalises human trafficking⁶⁹⁵ and creates and clearly defines new offences that are part and parcel of what may be termed human trafficking, such as debt bondage⁶⁹⁶, the possession, destruction, confiscation, concealment of or tampering with documents⁶⁹⁷, using services of victims of trafficking⁶⁹⁸, and conduct facilitating trafficking in persons⁶⁹⁹. Proposed penalties are dealt with in clause 13 of the TIP Bill. The scope and application of the bill is wide and includes ‘[a]cts aimed at committing an offence under chapter [2], or acts which incite, instigate, command, direct, aid, promote, advise, recruit, encourage or procure any other person to commit an offence under chapter [2] or any person who conspires with any other person to commit such an offence, will be an offence of involvement in trafficking in persons’⁷⁰⁰.

⁶⁹³ Such acts may include *inter alia*, engaging in survival prostitution / sex work, staying in the country illegally (migrants who have over-stayed their visa or entered into the country illegally or who are without documentation), working off the books, petty theft, and so forth.

⁶⁹⁴ See Chapter 3.

⁶⁹⁵ Clause 4.

⁶⁹⁶ Clause 5.

⁶⁹⁷ Clause 6.

⁶⁹⁸ Clause 7 – ‘Any person who intentionally benefits, financially or otherwise, from the services of a victim of trafficking or uses or enables another person to use the services of a victim of trafficking and knows, suspects or ought reasonably to have known or suspected that such person is a victim of trafficking, is guilty of an offence.’

⁶⁹⁹ Clause 8.

⁷⁰⁰ Justice and Constitutional Development Media Briefing, ‘Briefing Document: Prevention and Combating of Trafficking in Persons Bill, 2010’, 15 March 2010: 3 – 4, available at <http://www.pmg.org.za/briefing/-prevention-and-combating-trafficking-persons-bill-briefing-minister-justice>

Clause 7 may prove to be problematic in application due to the onerous burden of proof to determine that a person intentionally benefited from the services of a victim of trafficking or suspects or ought reasonably to have known or suspected that person was a victim of trafficking, due to a number of reasons. Firstly, the very clandestine nature of human trafficking and the range of exploitative labour practices that it coincides with can make it difficult to determine whether a person is trafficked or being exploited (where other legislation would apply). Secondly, the human trafficking phenomenon intersects with legitimate business and ordinary, law-abiding citizens and this further muddles what a reasonable person should have known or suspected – especially where it is difficult to determine whether a person has been trafficked. Moreover, many businesses or individuals may be end users of the services of trafficked persons and completely unaware that these services or products have been derived from exploitative labour practices or situations that may be classified as human trafficking. Similar criticism can be levelled at the wording of clauses 8 and 9. Unless intention or knowledge that a person or persons have been trafficked can concretely be proven (in the form that the person accused was a direct part of a trafficking operation or knowingly used the services of a trafficked person), it is doubtful whether there will be many successful prosecutions under these clauses. However, it does provide a strong incentive for landlords, media, electronic communications service providers, and carriers to be more mindful of human trafficking and how easily one may become complicit in the facilitation of the crime and to endeavour to take steps to prevent this.

In accordance with the Trafficking Protocol all three constitutive elements of trafficking are clearly delineated. However, the reader does have to refer back to Chapter 1 defining the particular terms used in order to fully appreciate this. While it is broad in scope, acknowledging a diverse array of factors that constitute the ‘action’ and ‘means’ elements of trafficking⁷⁰¹, it is this third element – the ‘purpose’: ‘for the purpose of any form or manner of exploitation’ that deviates from the format of the Trafficking Protocol as it does not delineate the forms exploitation might take in this section. Exploitation is defined in the

⁷⁰¹ Human trafficking is defined in Chapter 1 of the TIP Bill as: (1) 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. (2) Any person who— (a) adopts a child, facilitated or secured through legal or illegal means; or (b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence.

Chapter 1 (under definitions) as including but not being limited to: (i) all forms of slavery or practices similar to slavery, (ii) sexual exploitation⁷⁰², (iii) servitude, (iv) forced labour, (v) child labour, (vi) the removal of body parts, (vii) the impregnation of a female person against her will for the purpose of selling her child when the child is born. Sexual exploitation is a contentious term deliberately left undefined in the Trafficking Protocol.

Within the international context, and approaches to anti-trafficking, the definition offered by the *US State Department Model Law to Combat Trafficking* (Model Law) definition of ‘exploitation’ is of particular interest. Through its provision of a definition on exploitation, the Model Law effectively takes a stance on prostitution. Exploitation is defined as the ‘exploitation of the prostitution of another; engaging in any other form of commercial exploitation, including but not limited to pimping, pandering, procuring, profiting from prostitution, maintaining a brothel, child pornography’⁷⁰³. Sexual exploitation, in the draft TIP Bill, was initially defined as ‘the commission of any sexual offence in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act or any offence of a sexual nature in any other law against a victim of trafficking, and includes forcing a victim of trafficking to participate in the production of pornographic material or to perform any act of a sexual nature in, but not limited to, a strip club, massage parlour, brothel or escort agency.’ It was subsequently altered, in the adopted version, to refer to the definition of sexual exploitation as defined by the *Sexual Offences Amendment Act* or any offence of a sexual nature in any other law. Women and children are viewed as being especially vulnerable to becoming victims of sexual offences, such as participating in adult prostitution and sexual exploitation of children. Moreover, prostitution is referred to in this Act as sexual services, and engaging the sexual services of a person over the age of 18 is criminalised.⁷⁰⁴ This indicates that women who participate in prostitution are seen as victims – even though the act of prostitution (offering sexual services for a fee) is viewed as a criminal offence. This broad interpretation is in line with the US Model Law and the current South African legal position.

⁷⁰² The use of the broad term ‘sexual exploitation’ is criticised by some commentators. This stems from the South African Law Reform Commission’s original inclusion of the term and was linked to the definitions found in the *Sexual Offences Amendment Act*. Sexual exploitation is defined as the commission of ‘any sexual offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act; or (b) any offence of a sexual nature in any other law.’ Lansink avers that legislators should have used unambiguous terms only: ‘terms which are defined or accepted in international law, such as forced labour or services, slavery or practices similar to slavery and not included the controversial term sexual exploitation. Forced prostitution would already be covered by forced labour or services or practices similar to slavery.’ Annette Lansink, ‘Human rights focus on trafficked women: An international law and feminist perspective’, *Agenda*, Volume 20, Issue 70, (2006): 51.

⁷⁰³ Stop Violence Against Men and Women, ‘U.S. State Department Model Law to Combat Trafficking’, 1 September 2005, available at http://www.stopvaw.org/u_s_state_department_model_law_to_combat_trafficking.html

⁷⁰⁴ See section 11 of Act 32 of 2007.

However, these two provisions deviate from the Trafficking Protocol only so far as it leaves ‘exploitation of the prostitution of others’ and ‘other forms of sexual exploitation’ undefined, ‘deferring to the decisions of individual states on whether to abolish or regulate prostitution and other commercial sex work’⁷⁰⁵. During the public workshops held by the SALRC and culminating in a report, the Sex Workers Education and Advocacy Taskforce (SWEAT) advocated that the term ‘sexual exploitation’ not be defined as they argued that ‘anyone made to sell sex against their will is not participating in prostitution, but is being sexually exploited’⁷⁰⁶. In the initial draft, the SALRC offered a broad definition of sexual exploitation, which Lansink points out ‘increase[d] the probability of including voluntary adult sex work into the definition of sexual exploitation and thereby trafficking’⁷⁰⁷. However, as evinced from the adopted TIP Bill the definition of sexual exploitation was aligned with that of the *Sexual Offences Amendment Act*.

The formulation of the wording in the preamble of the *Sexual Offences Amendment Act* creates a problematic duality by viewing women as being both victim and criminal. It also underscores the notion that women are seen as without agency and that entry into a life of prostitution is as a result of discriminatory social practices, particularly patriarchy, and economic conditions in South Africa. South Africa (like the United States) is, for all its liberal constitution, a conservative country which actively seeks the abolition of prostitution. Sex workers are seen as victims of circumstance who need to be rescued or exited from a life of sexual exploitation. It is widely believed amongst many anti-trafficking practitioners in South Africa that sex workers do not really enter a life of prostitution willingly and that consensual sex work is a myth.⁷⁰⁸ The reality driving individuals into sex work and keeping them in this industry, however, is much more complex. In addition, toleration or regulation of prostitution is seen as a gateway to further exploitation, increased demand and ultimately trafficking. This line of thought is followed in the TIP Bill. It also reinforces the ‘rescue and rehabilitation’ logic and rhetoric which is prevalent in the dominant discourse.

The ‘rescue and rehabilitation’ strategy promotes a gender essentialism that fails to take into account multiple and contradictory subject positions. Such strategies do not

⁷⁰⁵ Stop Violence Against Men and Women, ‘U.S. State Department Model Law to Combat Trafficking’, 1 September 2005, available at http://www.stopvaw.org/u_s_state_department_model_law_to_combat_trafficking.html

⁷⁰⁶ South African Law Reform Commission, ‘Project 131: Report on Trafficking in Persons’, (August 2008): 36.

⁷⁰⁷ Annette Lansink, ‘Human rights focus on trafficked women: An international law and feminist perspective’, *Agenda*, Volume 20, Issue 70, (2006): 49.

⁷⁰⁸ Participant Observation: Informal discussions with members of the KZN HPPB Task Team and National Freedom Network (2011 – 2012). This gendered discourse readily accepts and reproduces the dominant human trafficking discourse’s conception of victims and vulnerability.

*empower women but actually add to controlling women and policing their bodies. While patriarchy and contemporary discourses have produced a dominant masculinity, rescuing women does not present a solution but becomes just another technique of power, contributing to the production of the helpless victim.*⁷⁰⁹

Thus, the stereotypes and misconception of the victims of trafficking, particularly women, are repeated in the South African discourse and anti-trafficking legislation.

A positive attribute of having an expansionist interpretation of sexual exploitation (and exploitation in general) in the TIP Bill, however, is that it does acknowledge the role that gender violence plays in creating and maintaining conditions of vulnerability that extend past the crime of human trafficking. Sexual violence has become part and parcel of South African society and is even used as a tool of social control. '[G]ender violence is maintained by a patriarchal social order, females' financial dependence on males, and a social and legal regime hostile to women's complaints of physical abuse'.⁷¹⁰ It is thus important for anti-trafficking policies to reflect the realities of South African society. Human trafficking is a final product on the extreme end of the spectrum of abuse and exploitation. For anti-trafficking policies to be successful in this regard, and indeed for anti-trafficking legislation to make an impact, societal factors and the structures that facilitate abuse and exploitation need to be addressed as part of the bigger picture. Preventing and combating human trafficking is not merely about bringing perpetrators to book, or preventing individuals from being moved into situations of exploitation, but stopping exploitation from occurring in the first place. It is the enforcement of human rights, equality and non-discrimination in society that need to be championed, a strong political will, not to mention enforcement, needs to be witnessed in this regard, as well as a societal shift in how we treat are fellow (wo)man, not to mention children (who are the most vulnerable).

Removed from the list delineating exploitation, although defined elsewhere in Chapter 1 are debt bondage (which is considered by some as both a means and purpose element of trafficking) and forced marriage. Addressed in Chapter 2 clause 5, debt bondage is defined as a separate offence. Forced marriage⁷¹¹ and the adoption of a child (whether legally or

⁷⁰⁹ Annette Lansink, 'Human rights focus on trafficked women: An international law and feminist perspective', *Agenda*, Volume 20, Issue 70, (2006): 51.

⁷¹⁰ Henry Trotter, 'Navigating Risk: Lessons From the Dockside Sex Trade for Reducing Violence in South Africa's Prostitution Industry', *Sexuality Research & Social Policy*, Vol. 4, No. 4, (December 2007): 106.

⁷¹¹ Forced marriage is defined in Chapter 1 of the TIP Bill as 'a marriage concluded without the consent of each of the parties to the marriage'. This definition needs to be read in conjunction with clause 11(1)(a) which negates consent in the case of a minor (or by their guardian), and clause 11(1)(b) negates consent of an adult where the means listed in clause 4 have been employed. However, it is submitted that not enough is understood in the South African context as to the numerous forms that

illegally) for the purpose of exploitation are deemed ‘guilty of an offence’ which falls under the general definition and criminalisation of trafficking in persons. In clause 4(1) the combination of action, means and resultant purpose of ‘any form or manner of exploitation’ is criminalised and deemed guilty of the offence of trafficking in persons.

The distinction between what constitutes child trafficking and trafficking of adult persons in this section is not clearly highlighted and is at first glance not in line with the Trafficking Protocol. As Gallagher notes, ‘means are not required to be established in relation to trafficking in children’⁷¹². However, the negation of consent and means is only addressed in clause 11(1)(a) with regard to children⁷¹³ – thus bringing it into line with the provisions of the Trafficking Protocol. Kruger and Oosthuizen in their discussion of existing legislation to combat trafficking note that ‘[u]nlike the Palermo Protocol, the *Children’s Act* requires the prohibited action to be committed by “any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception” for the purpose of exploitation... The formulation of the “means” element in the definition of “trafficking” in the *Children’s Act* has therefore been “criticised for creating a greater evidentiary burden”⁷¹⁴ than is required by the

forced marriage might take, ranging from social, cultural and religious traditions to monetary reasons (such as settling a debt or attempting to break the cycle of poverty). South Africa is home to migrants from across the globe with distinct cultural and/or religious practices that might include child and forced marriage. These types of forced marriages also need to be considered and addressed. In the South African context, the cultural practice of *ukuthwala* as a form of forced marriage of predominantly minor girls needs to be tested against the incorporation of forced marriage as human trafficking where the purpose of exploitation (e.g. whether it be for sexual or domestic services) is present. This will be an interesting test for prosecutors and the courts when the TIP Bill is enacted. There is still much debate as to whether *ukuthwala* constitutes human trafficking as forced marriage. In the past, *ukuthwala* involved the abduction of a young girl or woman to compel her family to sanction marriage negotiations. It did not, however, involve the kidnapping, rape or forced marriage of young girls (consent by each party to a marriage in customary law also applies) by much older men. While section 31 of the Constitution recognises cultural rights (i.e. customs), it provides that the exercise of such rights should not be in conflict with any of the provisions of the Bill of Rights. As the Department of Justice and Constitutional Development notes: ‘In this day and age, the kidnapping and abduction of girl-children that have barely reached puberty cannot be reconciled with the ancient practice of Ukuthwala, which was condoned by communities but subjected to delictual sanctions’. Department of Justice and Constitutional Development, *Publications: UKUTHWALA*, available at <http://www.justice.gov.za/brochure/ukuthwala/ukuthwala.html>; Participant Observation: KZN HPPB Task Team (2011); Personal Observation: Informal discussion with Tineke Belder (2011) – who was conducting fieldwork research into the practice of *ukuthwala* in the Bergville and Loskop region of KwaZulu-Natal.

⁷¹² Anne T. Gallagher, *The international law of human trafficking*, Cambridge: Cambridge University Press, (2010): 47.

⁷¹³ 11. (1) It is no defence to a charge of contravening section 4, 5, 6, 7, 8, 9(1) or 10 that— (a) a child who is a victim of trafficking or a person having control or authority over a child who is a victim of trafficking has consented to the intended exploitation, or the action which was intended to constitute an offence under this Chapter or that the intended exploitation or action did not occur, even if none of the means referred to in section 4(1)(a) to (j) have been used.

⁷¹⁴ Daksha Kassan, ‘*Trafficking in Children*’ in CJ Davel and A Skelton (Eds.), *A Commentary on the Children’s Act 38 of 2005*, Wetton: Juta and Co, (2007): 18–6 quoted in Hester B Kruger and Hennie Oosthuizen, ‘South Africa – Safe Haven for Human Traffickers? Employing the arsenal of existing law

Palermo Protocol.⁷¹⁵ The TIP Bill will repeal this definition of trafficking once it comes into effect.

Clause 4 allows for an expansive and fluid interpretation of what constitutes exploitation. However, this is not without criticism. As Gallagher observes, this can serve to obscure ‘important differences between trafficking and exploitation as well as between different exploitative practices’⁷¹⁶. For instance, not all cases of forced labour are necessarily cases of trafficking, although many of the elements may be shared. Nor is every production and dissemination of pornographic material necessarily linked to trafficking through exploitation. Nor has every child exploited and ultimately trafficked necessarily been adopted. All three constitutive elements, in the case of adults, need to be present.⁷¹⁷ Exploitation and exploitative practices, unfortunately, are interwoven into the fabric of our society and many criticise the fact that ‘victims of trafficking... receive more policy attention and assistance than those who are deceived and exploited but without having been relocated’⁷¹⁸. Until exploitation and the structural violence that facilitates this, is sufficiently addressed as a stand-alone problem, it is doubtful if leeway will be made in effectively combating trafficking.

3.3 Policy Frameworks and Implementation of the Act

In the clean version of the adopted TIP Bill the express creation of an intersectoral committee, previously dealt with under Chapter 2, has been removed altogether and replaced with the coordinated implementation, application and administration of the TIP Bill or as the title of clause 41 refers to the coordination of responsibilities, functions and duties relating to implementation of the Act. The Director-General: Justice and Constitutional Development is responsible for administration and implementation of the Act, in consultation with a comprehensive list of governmental stakeholders: the National Commissioner of the South African Police Service, the National Director of Public Prosecutions, the Chief Executive Officer of the Government Communication and Information System, the Commissioner of the South African Revenue Service and the Directors-General: Health, Home Affairs,

to combat human trafficking’, *Potchefstroom Electronic Law Journal (PER / PELJ)*, Volume 15, No 1, (2012): 318.

⁷¹⁵ Hester B Kruger and Hennie Oosthuizen, ‘South Africa – Safe Haven for Human Traffickers? Employing the arsenal of existing law to combat human trafficking’, *Potchefstroom Electronic Law Journal (PER / PELJ)*, Volume 15, No 1, (2012): 318.

⁷¹⁶ Anne T. Gallagher, *The international law of human trafficking*, Cambridge: Cambridge University Press, (2010): 49.

⁷¹⁷ The means element in relation to a child victim of trafficking is removed in clause 11(1)(a), and consent nullified in relation to adult victims in clause 11(1)(b).

⁷¹⁸ Liv Tørres and Denise du Toit, *Southern African Counter-Trafficking Programme SACTAP Review*, Norad Collected Reviews (6/2010): 11.

International Relations and Cooperation, Labour, Social Development, State Security Agency and Women, Children and People with Disabilities.

The Director-General: Justice and Constitutional Development, after consultation with the aforementioned key stakeholders, is mandated / tasked under clause 41(1) with developing the national policy framework with guidelines for the implementation and monitoring of the national policy framework and the Act. Moreover, clause 41(1)(b) ensures the creation of an integrated information system ‘to facilitate the effective monitoring and implementation of this Act and to recommend interventions relating to trafficking in persons by collating and analysing the information obtained in terms of sections 25(4)(c), 39, 44(1)(d), 44(3), 44(5)(c), 44(7)(c) and 44(9)(c).’ This will allow for more reliable statistics, identification of trafficking hotspots, routes and vulnerable sections of the population, profiling victims and perpetrators (and developing identification guidelines). Such measures will hopefully facilitate dynamic prevention and combating of human trafficking strategies and policies that are both pre-emptive and reactive.

However, with the marked absence of civil society in the legislation, clause 41(1)(d)(iii) which advocates the establishment of public awareness programmes or other measures that ‘discourage the demand for and the supply of victims of trafficking that foster the exploitation of those victims, especially women and children’⁷¹⁹, rings hollow. International best practice⁷²⁰ advocates an inclusivist approach, where all the relevant actors⁷²¹ are involved in the development of prevention programmes, but also buy-in to limit demand (for instance, no longer supporting certain companies or sectors where forced labour is known to be used). Currently the primary drivers of awareness raising programmes are non-governmental and international organisations (ranging from the Salvation Army, churches, anti-trafficking networks, to the IOM and the ILO). The question that remains to be answered in this regard is what the role of civil society will be once the Bill is enacted. The lack of provision for representation of such organisations in the consultative process in crafting and implementing anti-trafficking policy is worrisome.

Many well-established organisations and networks have provided an impetus for linking organisations, government departments, and provincial task teams in a concerted effort to

⁷¹⁹ The TIP Bill does not identify what constitutes the demand for victims of trafficking or what ‘programmes or other measures’ may be undertaken other than awareness-raising or how demand might be tackled.

⁷²⁰ See UNODC, ‘Model Law against Trafficking in Persons’, available at http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf

⁷²¹ Individuals, communities, NGOS and civil society and government departments.

counter-trafficking and the dissemination of knowledge and expertise. They are often the glue which holds such anti-trafficking efforts together and have become valuable allies to government departments in identifying and providing assistance to trafficking victims. This is also borne out by international experience.⁷²² ‘Less than 30% of victims are identified by law enforcement agencies. The majority of victims are identified through referrals from NGOs, Shelters, hotlines and outreach work.’⁷²³ The types of organisations involved in anti-trafficking in South Africa are not limited to psycho-social service providers (e.g. crisis centres and shelters). Properly accredited and vetted such organisations are useful in raising awareness and other preventative and protection programmes. And since the reality is that many government departments (like the Department of Social Development) farm their work out to such organisations – they should be acknowledged and included in some form. Moreover, this omission also contradicts current policy and entrenched practices in the field of counter-trafficking.⁷²⁴ Anti-trafficking organisations, such as NGOs, can provide a wealth of information to government stakeholders, in particular law enforcement, as to the ways in which traffickers are constantly adapting their modus operandi, types of trafficking and the profile of victims that they assist, as well as the type of prevention and protection strategies that achieve the best results. Being relegated to filling in statistical information which is sent to the Department of Social Development could result in changing patterns of trafficking not being picked up and traffickers eluding capture and prosecution. This could potentially result in certain subpopulations of trafficking victims not being assisted where they do not fit the generalised profile. Indeed, such organisations which are at the frontline of counter-trafficking are a valuable resource to government role-players in finding adaptive solutions and developing innovative policies to prevent and combat human trafficking in South Africa and should not be omitted from the process.

The omission of non-governmental organisations and civil society and formation of an intersectoral committee from the clean TIP Bill in the prevention of trafficking is instructive. This is a complete about-turn from the current national trafficking in persons intersectoral task team (the national task team) which is part of the Tsireledzani Programme. The composition of the national task team is as follows: National Prosecuting Authority (SOCA Unit), Department of Justice and Constitutional Development (Legislation), SAPS (Organised Crime Unit and Port of Entry Policing), Border Control Operational Coordinating Committee

⁷²² See Jennifer Lyne Musto, ‘The NGO-ification of the anti-trafficking movement in the United States: A case study of the coalition to abolish trafficking and slavery’ in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010).

⁷²³ Themba Shabangu, ‘Workshop Report: Human Trafficking. Multidisciplinary measures to address the problem of Human Trafficking’, *Idasa and the African-Asian Society*, (October 28, 2010): 16.

⁷²⁴ Discussed in more detail in Chapter 6.

(BCOCC), Department of Home Affairs (Inspectorate), Department of Social Development (Victim Empowerment), International Organisation for Migration (IOM), Molo Songololo (non-governmental organisation – child trafficking and exploitation), United Nations Office on Drugs and Crime (UNODC).⁷²⁵ It is unclear whether the current national action plan⁷²⁶ and programme to combat human trafficking, *Tsireledzani*, will completely come to an end or will continue in the interim while a national policy framework⁷²⁷ is crafted in terms of the Act. Also whether the decisive role currently played by the IOM⁷²⁸ once the TIP Bill has been enacted will remain the same.

In earlier drafts of the TIP Bill, an intersectoral committee was to be established which ‘where appropriate, *after consultation with relevant non-governmental organisations*’⁷²⁹, establish public awareness programmes or other measures for the prevention and combating of trafficking in persons’⁷³⁰. Previous versions of the TIP Bill highlighted the model which South Africa currently follows in its attempts to combat and eradicate human trafficking, based on prevention, protection, prosecution, partnerships and international cooperation. By omitting or removing the supportive role played by civil society and NGOs from the equation, the concept of partnerships becomes flat and applicable only to the various government

⁷²⁵ Tsireledzani Programme Coordinating Unit (PCU), Sexual Offences and Community Affairs (SOCA) Unit, NPA, ‘Programme of Assistance to the South Africa government to prevent, react to human trafficking and provide support to victims of the crime’, (SA/002/05), *Status Quo Report*, 2 March 2010.

⁷²⁶ Discussed later in the chapter.

⁷²⁷ Which may take up to two years to realise.

⁷²⁸ For a detailed review on the IOM in Southern Africa and its South African Counter-Trafficking Programme (SACTAP) which has contributed to the development of anti-trafficking legislation through direct dialogue with key government stakeholders, provided training and capacity building for different government departments/officials and civil society, see Liv Tørres and Denise du Toit, *Southern African Counter-Trafficking Programme SACTAP Review*, Norad Collected Reviews 6/2010. The IOM sees a comprehensive approach to combating trafficking, within the wider context of migration, as vital. Partnerships in implementing IOM programmes and activities are done in conjunction with government institutions, NGOS and other international organisations. While not catered for in the TIP Bill, it is assumed that the IOM and its SACTAP programme which is mainly funded by the Norwegian government, will still play an important role and provide important services in counter-trafficking in South Africa.

⁷²⁹ Emphasis added. Portfolio Committee on Justice and Constitutional Development Deliberations on the TIP Bill dated 1 March 2011, are supportive of this approach and the establishment of an ISC and its administration and provision of a national policy framework. In the deliberations over Clause 41, it was submitted that the Inter-Sectoral Committee (ISC) be responsible for the establishment of provincial ISCs. It was noted that provincial ISCs had been successfully implemented in terms of the Child Justice Act. Initially, clause 39 (now 40) provided that the ISC be able to make recommendations for law reform to the relevant departments or institutions. As noted elsewhere, the provision for an ISC was later removed. Justice and Constitutional Development Portfolio Committee: Prevention and Combating of Trafficking in Persons Bill [B7-2010]: deliberations, 1 March 2011, available at <http://www.pmg.org.za/report/20110302-combating-trafficking-persons-bill-deliberations-clauses-17-44>.

⁷³⁰ See omitted Chapter 2: Public Awareness clause 3(1).

departments and their representatives. An earlier version of clause 40 is demonstrative of this reformulation of the understanding as to who should be involved in implementing the Act:

- (5) The Intersectoral Committee may invite—
 - (b) representatives from the non-governmental sector and civil society to its meetings with the view to fostering cooperation between government and civil society in the implementation of this Act; and
 - (c) persons to its meetings, when necessary, for technical assistance, support or advice.

The minutes of the Justice and Constitutional Development Portfolio Committee deliberations on the TIP Bill, dated 23 August 2011, show that most members were against the establishment of such an intersectoral committee, which they felt was not needed. The reasons cited for this were varied but followed a similar trajectory: Mr Jeffery (ANC) was of the opinion that intersectoral committees (ISCs) were difficult to manage, and questioned whether there was really a need to have them. The applicable departments (i.e. stakeholders) could meet to discuss issues pertaining to the implementation and administration of the Act without this having to be formally provided for in legislation. He questioned whether there would be enough work as there were few reported cases of human trafficking. He was of the opinion that already established intersectoral committees on Child Justice and Sexual Offences were sufficient.⁷³¹ However, what is unclear is how already established intersectoral committees will be incorporated or adapted once the TIP Bill is enacted. Ms Schäfer (DA) was more in favour of not having the ISC specifically provided for in the Bill. She reiterated Mr. Jeffery's sentiments that if officials were meeting in any case, there was no need to formalise this in the legislation.⁷³² Dr Oriani-Ambrosini (IFP) did not feel that human trafficking warranted as much attention when compared to the statistics for other crimes. '[H]e felt that too many structures and too much time was being devoted to this problem, when this could be better used where it was more needed'⁷³³. It may be inferred from this that the drafters were not willing to provide for an ISC because of budgetary considerations to fight a crime where there was little real evidence of (in terms of reported cases and prosecutions). Indeed, the portfolio committee acknowledged that there were only 34 reported cases of human trafficking (as of 2011), but noted that there were often numerous victims per case and because of a lack of accurate statistics the actual number of victims of human trafficking was problematic to assess.⁷³⁴

⁷³¹ Justice and Constitutional Development Portfolio Committee: Prevention and Combating of Trafficking in Persons Bill [B7-2010]: deliberations, 23 August 2011, available at <http://www.pmg.org.za/report/20110823-deliberations-preventions-and-combating-trafficking-persons-bill>.

⁷³² Ibid.

⁷³³ Ibid.

⁷³⁴ Justice and Constitutional Development Portfolio Committee: Prevention and Combating of Trafficking in Persons Bill [B7-2010]: deliberations, 23 August 2011, available at

Perhaps the omission of provisions for an intersectoral committee stems from the fear that ‘too many cooks would spoil the broth’ and conflicting agendas of different organisations vying for power and resources or from experience with other intersectoral committees or even issues of security and confidentiality. All of which are relevant considerations. However, a platform for civil society is required. Consultative forums with civil society networks should take place in order to allow for a dynamic and adaptive anti-trafficking policy framework. A similar format to those of the provincial task teams, with its inclusive approach, could be more beneficial in addressing human trafficking and limiting demand if managed efficaciously.

The fate of provincial intersectoral task teams is also not addressed in the TIP Bill. It is assumed that many of these questions will be resolved once a national policy framework has been crafted. Read with the rest of the clause and/or chapter, it is suggested that a band-aid approach, that only addresses how the problem manifests itself and one which is primarily reactive (in the sense of prosecution and rescuing, rehabilitating and repatriating victims) will be followed. While it does provide for the protection and empowerment of victims and their human rights, the prevention component seems to be limited to public awareness-raising and education. The TIP Bill does not cater for creating systemic solutions to the root causes that create vulnerability to abuse and exploitation in the first instance and demand in the second.⁷³⁵ It merely pays lip-service to it. This is comparable to other pieces of South African legislation which promise much but whose implementation has been problematic, if not unsuccessful. To realise clause 41(d)(iii) would take considerable resources, capacity, long-term planning and policies and programmes which would have to address the structural violence that is endemic in South African society. These are issues that existing policies are supposed to address, but have not succeeded. It is thus questionable how demand for and supply of victims of human trafficking will be effectively discouraged other than through punitive measures (i.e. prosecution).

<http://www.pmg.org.za/report/20110823-deliberations-preventions-and-combating-trafficking-persons-bill>

⁷³⁵ It is submitted that it merely panders to this notion: Clause 41(d)(iii) ‘establishing public awareness programmes or other measures for the prevention and combating of trafficking in persons designed to— discourage the demand for and the supply of victims of trafficking that foster the exploitation of those victims, especially women and children.’

3.4 Quo Vadis Civil Society? Shelters and dealing with trauma

There is still, however, a decisive role for non-governmental organisations (social development organisations), who have been accredited under the Act, in the protection and rehabilitation of victims under Chapter 5 as an accredited organisation dealing with adult victims of trafficking (i.e. shelters).⁷³⁶ The provision of psycho-social, rehabilitative services to victims of trafficking who have been severely traumatised and in all likelihood have a range of health issues is of paramount importance. However, there are a number of practical issues at hand that might jeopardise the adequate provision of shelter, rehabilitative and therapeutic services, as well as the provision of programmes to educate and integrate trafficked individuals back into society (either in South Africa or their country of origin). The case of child trafficking victims which are provided for under the *Children's Act* face similar problems.⁷³⁷ In 2012, the Department of Social Development cut funding (i.e. its budget) to NGOs and other civil society service providers significantly. So much so, that earlier in the year many NGOs and Non-Profit Organisations (NPOs) were on the verge of collapse. Moreover, the Lottery Board that was established to cover the shortfall of what the Department of Social Development could not has been severely criticised for ignoring the plight of NGOs to rather fund politically aligned organisations.⁷³⁸

*The work of non-governmental organisations (NGOs), cited as contributing 30 percent of civil services in South Africa (SA), is critical to meeting the development needs of the country. In recent years, NGOs nationally have faced dire circumstances due to the reduction of funding by, or the exit of, key funders both local and international, inadequate funding and, in numerous cases, delayed disbursement of funds by the South African government. These funding shocks – financial challenges with deep negative impact – have resulted in many NGOs downsizing staff, services and branches, or closing altogether.*⁷³⁹

⁷³⁶ The Children's Act provides for the reporting, care and rehabilitation of child victims of trafficking. The provisions in the TIP Bill refer to sections of the Children's Act in this regard. See Chapter 4, clause 18.

⁷³⁷ There are numerous concerns about child welfare providers and the Department of Social Development which are currently being raised in the media. There are a number of children's homes in KwaZulu-Natal that have not been registered by the Department of Social Development, and this has resulted in one reported case of a home being closed after a High Court Order was made. The children were summarily removed. Other homes face closure as they have no access to funding because they are not registered. In a country where there are 3.5 million orphans, a number which is growing daily, the flaws in the registration process are putting more and more young lives at risk. See Charmel Bowman, 'Registering of homes "needs to change"', *Sunday Tribune*, 19 August 2012: 11. See also, Candice Bailey, 'Child Welfare scandal sparks outcry', *IOL News*, 1 March 2011, available at <http://www.iol.co.za/news/south-africa/gauteng/child-welfare-scandal-sparks-outcry-1.1034332#.UCzY3pZXJnU>.

⁷³⁸ Personal Observation: Interview with a director of a shelter (2012).

⁷³⁹ Sangonet, *Wanted: Resilient NGOs*, 18 June 2012, available at <http://www.ngopulse.org/article/wanted-resilient-ngos>.

This is a worrying trend that warrants more attention by the Department of Social Development which relies heavily on NGOs ‘in terms of service delivery... to close the gap caused by a shortage of social workers’⁷⁴⁰. However, a director of an accredited shelter that may assist victims of trafficking, indicated that many of these graduates were of an inferior calibre and felt that the distance learning institution that had been tasked to educate social workers was instead ‘churning them out like a sausage factory’⁷⁴¹. The South African Institute for Race Relations reported that the national population to social worker was 5 446 to one.⁷⁴² NGOs are the primary providers of care to the abused, abandoned, disabled, homeless and substance-addicted in the form of crisis centres, shelters, homes, hospices and rehabilitation centres. In the context of victims of abuse and by extension human trafficking, there are very few shelters provided by the government / Department of Social Development. This burden has been transferred to civil society.

Many NGOs are reliant on the funding provided by the Department of Social Development to keep their doors open. However, the amount received is often insufficient to guarantee a continued existence and donor-funding does not always cover the gap. ‘The problem described repeatedly was that funding was being strangled by an uncaring bureaucracy at the department of social development. NGOs are asked to present business plans, and then never hear from the department again. If they do receive funding, it isn’t nearly enough. Many are receiving between 9% and 20% of what they need to run.’⁷⁴³ With the hefty budget cuts for the 2012/2013 financial year and likely beyond, it will not be surprising if numerous NGOs will have to shut their doors, and turn away some of the most vulnerable of our society who so desperately need the services that they provide. In addition, many of these shelters and homes are operating at full-capacity – often having to turn away individuals or try placing them elsewhere. This is highly problematic as soon demand could outstrip capacity and all the Department of Social Development seem to be doing about it in the short-term is cutting funding – and not addressing demand itself by employing more social workers or building

⁷⁴⁰ Department of Social Development 2012 Strategic Plan, available at <http://www.pmg.org.za/report/20120320-department-social-development-2012-strategic-plan>. It was also noted that bursaries were being awarded to students to study social work to try and alleviate this shortage. Moreover, the department estimates that it requires 16 000 social workers for children services alone. However, 992 graduates of this government scholarship scheme have not been employed by the department due to budgetary constraints (or what some consider poor budgetary management). See, Poloko Tau, ‘A good thing gone bad’, *The Star*, 17 May 2012, <http://www.iol.co.za/the-star/a-good-thing-gone-bad-1.1298498#.UCzaqZZXJnU>.

⁷⁴¹ Personal Observation: informal discussion with a director of a shelter (2012).

⁷⁴² South African Press Association, ‘Sairr: shortage of social workers’, available at <http://www.iol.co.za/business/business-news/sairr-shortage-of-social-workers-1.1362163#.UCzY2JZXJnU>

⁷⁴³ Siphon Hlongwane, *Cash-strapped NGOs rage against government, lottery – is anyone listening?*, 31 January 2012, available at <http://dailymaverick.co.za/article/2012-01-31-cash-strapped-ngos-rage-against-government-lottery-is-anyone-listening>

more facilities run by the department itself or providing a conducive environment for NGOs who could do so. In terms of human trafficking, there are only 15 approved shelters across the country (which form part of the IOM referral system network)⁷⁴⁴.

By cutting the funding that NGOs receive the Department of Social Development is ultimately failing the people (children and adults) who need it the most. Moreover, there have been allegations that the Department has purposely delayed the registration of NGOs, thereby effectively denying them access to government funding, and this has resulted already in the closure of some homes. As Venter notes, '[i]t is due to this ineptitude that NGOs and NPOs will eventually have no other choice but to shut down operations. The resulting crisis will see the sick, the elderly and the destitute clamouring for relief from government institutions, who, in the first place, do not have the means or the capacity to take care of the most vulnerable in our society'.⁷⁴⁵

Moreover, the Department of Social Development has been criticised by service providers as not following the spirit of legislation and changing their policies willy-nilly to the detriment of social development organisations.⁷⁴⁶ While other NGOs and social development organisations have ensured that they do not rely on and survive without any government funding, through external funding and donations, they still are operating in challenging financial environments. A director of an accredited shelter avowed that the only funding that it received from the Department of Social Development was to pay for the social worker provided by the department and received R50 a day for each individual that they care for registered with the Department of Social Development.⁷⁴⁷ This shelter can only accommodate

⁷⁴⁴ Liv Tørres and Denise du Toit, *Southern African Counter-Trafficking Programme SACTAP Review*, Norad Collected Reviews (6/2010): 6 – 7.

⁷⁴⁵ Willie Venter, *Social development budget cuts leave NGOs in Crisis*, 6 July 2012, available at <http://www.da-mpu.co.za/index.php/newsroom/press-releases/346-social-development-budget-cuts-leave-ngos-in-crisis>; See also Jos Dirx, 'Bad Idea, South Africa: Do Not Cut Social Development Funding', 21 July 2012 available at <http://hypervocal.com/politics/2012/south-africa-cut-social-development-funding-ngos/#>.

⁷⁴⁶ Personal Observation: Interview with a director of a shelter (2012).

⁷⁴⁷ Personal Observation: Interview with a director of a shelter (2012). Many shelters are put in a precarious situation where they must breach the confidentiality and anonymity of their clients and provide biographical details (name, address, contact details, identity number or passport number) to the Department of Social Development in order to receive a stipend to look after each victim of abuse or exploitation. Such NGOs are concerned that this could be provided by the Department of Social Development with such details, the confidentiality provided to clients is breached and that there exists the danger that such information might be acquired by third parties (like the abuser or traffickers). Corruption is perceived to be quite prevalent in government institutions, so this is a very real concern. While it is important that the Department of Social Development undertake measures to limit fraud by NGOs, the safety of the clients they provide service and shelter to need to also be taken into consideration.

14 abused and trafficked women.⁷⁴⁸ However, the Department of Social Development, contrary to best practice of providing separate accommodation and care, now wants such shelters to also take in male victims. This particular shelter is not designed to house men and boys nor does it have sufficient capacity to do so.⁷⁴⁹ This is also not in the spirit of the adopted TIP Bill which unequivocally provides in Chapter 5, clause 25(2)(c) for ‘the provision of separate facilities for male and female victims of trafficking’. It is prudent to keep male and female victims of rape, abuse, violence or trafficking separate in the first instance because of the physical and psychological harm that they suffered at the hands of their abusers or traffickers and their specialised needs. By forcing shelters that provide temporary housing, psychological and medical care for female victims of violence, abuse and exploitation to also take in male victims would negatively impact on the care provided to the disproportionate number of female victims of such crimes. Many multipurpose shelters are small dormitory-style shelters and this means that male victims would be housed in the same room or house as female victims which is not appropriate. Moreover, it reduces the privacy, safety and comfort of victims of the opposite sex who need an environment that induces feeling of security and trust so that they may embark on the healing process (emotionally, mentally and physically). This would also have the consequence that already established shelters would end up having to turn away female victims due to a lack of capacity to accommodate them – putting the lives of victims at risk. It should not be the burden of already established shelters to now attempt to accommodate male victims. Rather funding should be provided by the Department of Social Development to establish shelters that cater for male victims. The Department of Social Development, however, aims to have 35 shelters across the various provinces accredited by 2014 to accommodate victims of trafficking. Currently, there are 22 shelters pre-assessed for accreditation.⁷⁵⁰

Moreover, it is unclear from the legislation if or to what extent accredited organisations might be funded for the plethora of services⁷⁵¹ they are expected to provide to victims of trafficking and information they are expected to gather on victims of trafficking⁷⁵². Victims of human

⁷⁴⁸ The director of this shelter intimated that the needs and provision of services for victims of trafficking is vastly different to those of domestic violence, abuse, rape or incest. Personal Observation: Interview with a director of a shelter (2012). This is supported by the views and experiences of other service providers interviewed. Personal Observation: Interview with Mitternachtsmission (2011), Justice Acts (2011) and National Freedom Network (2011).

⁷⁴⁹ Personal Observation: Interview with a director of a shelter (2012).

⁷⁵⁰ Department of Social Development, *VEP – Human Trafficking Current Status*, Presentation, 26 November 2012: 17 – 18.

⁷⁵¹ See clause 26.

⁷⁵² Clause 25(4)(a).

trafficking often suffer from a range of chronic abuses⁷⁵³ that distinguishes them from other victims of prolonged abuse, and require specialised psycho-social services, both therapeutic and rehabilitative, to deal with their unique psychological, emotional, physiological and health needs. In addition, the information that accredited organisations are obligated under clause 25(4)(a) to obtain or extract from victims of trafficking is substantial. If accredited service providers are not adequately equipped or trained to deal with victims of trafficking (in terms of counselling and interviewing techniques), there exists the very real danger of subjecting such victims to secondary trauma or victimisation.⁷⁵⁴ Victims of trafficking are placed in shelters where they are expected to receive adequate comfort and care. Social workers, psychologists and other individuals offering services at such places need to be acutely aware that human trafficking has a psychological aspect of control – the victim is in the thrall of another. By placing the victim in a shelter, he or she is subject to a different form of control – effectively substituting one form of control with another.⁷⁵⁵ Thus, as Gallagher and Pearson recommend, ‘[s]helters must also ensure that victims’ needs are met in other ways and that the environment does not in any way replicate their trafficking experiences’⁷⁵⁶.

Victims of crime, especially violent crime or sexual abuse, are exceptionally vulnerable after they are extricated from the event or experience. The dangers of psychologically extending the abuse or trauma have been recognised in dealing with rape survivors:

... a victim’s well-being may be affected not only by the rape but also by the help seeking interactions after the assault. The trauma... extends far beyond the actual assault and any helping intervention strategy must address the particular difficulties faced by . . . survivors and prevent secondary trauma.

When... [a] victim’s needs are not met by the very people they turn to for help the effects can be quite devastating. Because traumatic incidents invariably cause

⁷⁵³ UNDOC, *Anti-trafficking Manual for Criminal Justice Practitioners. Module 3: Psychological reactions of victims of trafficking in persons*, United Nations: New York, (2009): 3.

⁷⁵⁴ More worryingly, there are a number of ‘illegal shelters’ in operation – i.e. non-accredited/registered shelters. There have been instances where victims of trafficking have been referred to or put into the care of these shelters (by SAPS). Participant Observation: KZN HPPB Task Team (2012). This represents a grave shortcoming not only by the Department of Social Development who is responsible for the monitoring and evaluation of social development organisations, but also by others within the system. By placing victims of trafficking in unregistered shelters, this could potentially expose them to the risk of being re-victimised or re-trafficked or traumatised further still. There are a host of issues to the type of psycho-social care and support that they might be receiving at such shelters and their safety. Personal Observation: Interview with a member of a faith-based organisation (2012).

⁷⁵⁵ Personal Observation: Interview with a director of a shelter (2012). For an in-depth discussion and analysis, see Anne Gallagher and Elaine Pearson, ‘The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking’, *Human Rights Quarterly*, 32 (2010): 73 – 114.

⁷⁵⁶ Anne Gallagher and Elaine Pearson, ‘The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking’, *Human Rights Quarterly*, 32 (2010): 107.

*damage to relationships, people in the survivor's world have the power to influence the eventual outcome of the trauma. In the aftermath... survivors are extremely vulnerable. Their sense of self has been shattered and their faith in the world as a safe place has been destroyed. Rebuilding some form of trust, even if it is minimal, is the primary task of anyone wanting to help...*⁷⁵⁷

As human trafficking for the purposes of sexual exploitation, particularly of women and children, is regarded in South Africa as one of the most prevalent forms of human trafficking, assisting a victim of such a crime should be done in a humane and sensitive manner – in line with best practices and cognisant of the dangers of re-traumatisation. As Kammerer and Mazelis note, ‘[l]iving through traumatic events changes the ways the self and the world are experienced. In the words of Judith Herman (1992b, p. 135), “[t]he core experiences of... trauma are disempowerment and disconnection from others.” Alternatively phrased, trauma as event – or events – creates trauma as experience, at the center of which is damage to individual agency, “self-in-relation” (Miller, 1976), trust, and safety’⁷⁵⁸. Moreover, as trauma is multifaceted, it makes it difficult to address or treat without comprehensive understanding and sensitivity of the effects that the person assisting the victim might have. Kammerer and Mazelis find that trauma is cumulative, additive and summative.

*[T]he impact of trauma is not only cumulative – the more times a traumatic event is experienced the greater the impact – but also additive: exposure to additional different types of trauma is correlated with greater impact (Finkelhor, Ormrod, Turner, & Hamby, 2005; Turner & Lloyd, 1995; Turner et al., 2006). To this we would add that the impact of trauma is summative: the combination of event(s) plus impact is what individuals carry forward through time inscribed in memory, sense of self, and behavior.*⁷⁵⁹

The track record of service providers in South Africa who deal with victims of sexual abuse and rape, for instance, ranging from social development organisations, the police, nurses, doctors and district surgeons, and even communities and religious organisations response to trauma has left much to be desired in this regard and have resulted in the stigmatisation of

⁷⁵⁷ Women Against Violence Against Women: Rape Crisis, Cape Town Trust, ‘Secondary Trauma,’ available at <http://rapecrisis.org.za/information-for-survivors/secondary-trauma/> - last accessed August 2012. For an extensive discussion on trauma and re-traumatisation see, Nina Kammerer and Ruta Mazelis, ‘After the Crisis Initiative: Healing from Trauma after Disasters. Resource Paper: Trauma and Retraumatization’, Paper presented at the After the Crisis: Healing from Trauma after Disasters Expert Panel Meeting, April 24 - 25, 2006, Bethesda, MD, available at http://gainscenter.samhsa.gov/atc/text/papers/trauma_paper.htm

⁷⁵⁸ Nina Kammerer and Ruta Mazelis, ‘After the Crisis Initiative: Healing from Trauma after Disasters. Resource Paper: Trauma and Retraumatization’, Paper presented at the After the Crisis: Healing from Trauma after Disasters Expert Panel Meeting, April 24 - 25, 2006, Bethesda, MD, available at http://gainscenter.samhsa.gov/atc/text/papers/trauma_paper.htm.

⁷⁵⁹ Ibid.

victims.⁷⁶⁰ As the UNODC cautions in their *Anti-trafficking Manual for Criminal Justice Practitioners*:

*Traumatic experiences suffered by victims of trafficking in persons are often complex, multiple and can occur over a long period of time. For many individuals who are trafficked, abuse or other trauma-inducing events may have started long before the trafficking process... No two victims of trafficking are the same and the impact trafficking has upon each individual varies. You cannot make assumptions about how individuals might or should react. You must treat each person as an individual and on his or her own merit.*⁷⁶¹

Without comprehensive training of all service providers, especially those in law enforcement and criminal justice, a victim of trafficking might come into contact with, and monitoring the way they are dealt with, the TIP Bill will become yet another piece of victim-centred legislation that ultimately fails the victims and leads to further traumatisation and potentially re-victimisation. The potential for this exists in two places in the TIP Bill: Chapter 4, clause 19(5)(a)(ii) and clause 19(9) ‘must where necessary, as a measure of last resort and with the written consent of the person concerned, take him or her into protective custody⁷⁶² if there is an immediate threat to the safety of that person, for a period until the station commander of the police station in question is satisfied that the threat has ceased to exist’ and Chapter 5, clause 25 dealing with the placement of victims of trafficking with an accredited organisation.

As Gallagher and Pearson observe, ‘[o]ne of the most unusual features of the legal and political discourse around trafficking is the strong emphasis on the rights and vulnerabilities of victims... Protection of trafficked persons’ rights is now recognized as a vital aspect of an effective national response’.⁷⁶³ Victims and suspected victims of trafficking are placed in shelters (accredited organisations) or under witness protection where they can remain for months and in some cases even years. There exists the risk that some shelters may restrict an individual’s freedom of movement to protect their personal safety, or where an investigation and trial against a trafficker where victim testimony is required is delayed. Such a restriction will have a direct impact on the victim’s basic human rights not to mention psyche.

⁷⁶⁰ See Women Against Violence Against Women: Rape Crisis, Cape Town Trust, ‘Secondary Trauma,’ available at <http://rapecrisis.org.za/information-for-survivors/secondary-trauma/>, last accessed August 2012.

⁷⁶¹ UNODC, *Anti-trafficking Manual for Criminal Justice Practitioners. Module 3: Psychological reactions of victims of trafficking in persons*, New York: United Nations, (2009): 2.

⁷⁶² “protective custody”, for purposes of section 19, means the detention or confinement of a person by the South African Police Service for the purpose of protecting that person in any place which is used for the reception, detention or confinement of a person who is in custody of the South African Police Service and includes all land, buildings and premises adjacent to that place and used in connection therewith.

⁷⁶³ Anne Gallagher and Elaine Pearson, ‘The High Cost of Freedom: A Legal and Policy Analysis of Shelter Detention for Victims of Trafficking’, *Human Rights Quarterly*, 32 (2010): 75.

Where an imminent threat to a victim's safety is apparent, after written consent, that individual may be moved to protective custody – usually some form of detention in a prison cell or safe house (witness protection). Protective custody measures are not conducive to the victim's fragile emotional, psychological and physical state. Nor are they adequately equipped for the needs of such victims often suffering from post-traumatic stress disorder and in all likelihood substance dependence. As a result, there have been instances where victims who were expected to testify against their traffickers have fled and can no longer be found.⁷⁶⁴ This represents a double blow – to the prosecution of such traffickers, but more seriously to the health and well-being of the trafficked person who is then at risk of being re-trafficked or abused and exploited. For anti-trafficking legislation to effectively function in this regard, other forms of abuse and exploitation which traumatise victims must be addressed and the way such victims are treated by the system.

Protection of the victim is paramount. If a victim of trafficking does cooperate with law enforcement and the prosecuting authority, the protection of themselves, their families and their identities should become a prerogative. The *US State Department Model to Combat Trafficking in Persons*⁷⁶⁵ provides that in court proceedings a victim's past should not be overly scrutinised (particularly by the defence's counsel). This ensures that where a woman, for instance, might have engaged in voluntary sex work in the past, her trafficking experience and the abuse and exploitation to which she was subjected to as a result remain something separate. '[T]he admissibility of evidence of a victim's past sexual behavior is limited.'⁷⁶⁶ Moreover, a process that is sensitive to the victim's vulnerability to further traumatisation during the court proceedings also needs to be taken into consideration. It is hoped that the national policy framework, and various directives by different stakeholders catered for in the TIP Bill, will ensure that such an approach is followed.

3.5 Child Victims of Trafficking

One of the key concerns that arise from the adopted TIP Bill is the lack of explicit provision for the protection of child victims of trafficking. The protection of child victims of trafficking is provided for by the *Children's Act* and care provided for by the Department of Social Development, who may refer child victims of trafficking to accredited child care organisations (such as Child Welfare). As mentioned earlier in this chapter, there are a number of crises currently faced by the Department of Social Development that renders its

⁷⁶⁴ Personal Observation: Interview with Provincial Coordinator: DPCI Human Trafficking – KwaZulu-Natal, 2012; Participant Observation: KZN HPPB Task Team Meeting, 29 March 2012.

⁷⁶⁵ See http://www.stopvaw.org/u_s_state_department_model_law_to_combat_trafficking.html

⁷⁶⁶ Available at http://www.stopvaw.org/u_s_state_department_model_law_to_combat_trafficking.html

provision of protection and care to child victims of trafficking, as well as long-term needs, questionable. There are currently operational gaps, and issues of capacity, that make it difficult for the different departments to coordinate their responses in rescuing children from exploitative and abusive situations. For instance, '[m]ajor systemic issues surround DSD (Department of Social Development). At night because there are no social workers available, SAPS doesn't know what to do with children.'⁷⁶⁷ The TIP Bill provides, in chapter 4, for the identification and referral of child victims of trafficking. Although detailed in a separate piece of legislation, the *Children's Act*, the TIP Bill does not provide measures protecting the rights of child victims or in the best interest of the child. Kreston maintains that the TIP Bill falls short in this regard as there is no mention of the appointment of a guardian ad litem or counsel for the child.⁷⁶⁸

Adult victims of trafficking are dealt with comprehensively in the TIP Bill in terms of protection, rehabilitation and reintegration, while dealing with children is deferred to the *Children's Act*. As noted earlier in this chapter, the needs of victims of trafficking are different from those of other forms of abuse and exploitation. Similarly are the needs of child victims of trafficking and their increased vulnerability and fragility. Children are lumped together under one category to be dealt with by the *Children's Act*. This could mean that child victims of trafficking may not be afforded adequate psycho-social care – especially in relation to their long term needs and reintegration into society. It also takes for granted that the child's welfare will be adequately looked after and that the Department of Social Development has the capacity and resources to realise this. '[T]here is absolutely no provision for specialized care that addresses the unique needs of child trafficking victims... Just as no specialization is implemented for the child's care, neither is their specialized training for their care providers, which is also noticeable by their absence'.⁷⁶⁹ This could result in re-victimisation and further psychological harm to the child, and result in developmental and behavioural challenges.

Chapter 7, clause 31(1) ensures that a foreign child victim of trafficking may not be repatriated if this is not in the best interests of the child or if the child risks being harmed or killed have not been considered by the Director-General: Social Development. Removed is the consideration of whether a child might be re-trafficked upon repatriation which is more likely where the child has been trafficked by relatives or comes from a polygamous and patriarchal society. Dottridge and Jordan note that children, who come from polygamous and

⁷⁶⁷ Personal Observation: Interview with a member of the NPA (2011).

⁷⁶⁸ Susan S. Kreston, 'Trafficking in children in South Africa: An analysis of pending legislation', *Child Abuse Research in South Africa*, 8(1), (2007): 49.

⁷⁶⁹ *Ibid.*

patriarchal societies, or where families are fractured and domestic violence ranks high, are more likely to be vulnerable to being trafficked.⁷⁷⁰ Moreover, poverty, underdevelopment and lack of equal opportunity are commonly cited as factors which render women and children more vulnerable and more likely to be trafficked. However, Dottridge and Jordan refer to the work of Lisa Rende Taylor who found that ‘rural girls and their families make “trade-off decisions” between their aspirations and the risks entailed in turning these into reality’⁷⁷¹. This translates into the fact that structural constraints and how individuals (parents and children) negotiate within these constraints and assert agency results in a conscious decision to choose sex work or trafficking. Such ‘trade-off decisions’ demonstrates rationality and expected utility – and thereby agency on the part of those making the decision. As Rende Taylor⁷⁷² cautions, prevention and intervention should be about creating more appealing alternatives than simply addressing the broad concepts of poverty and lack of education which tend to oversimplify the root causes of trafficking. Her study found that status provided just as an important role as the provision of subsistence. Without viable alternatives, in terms of employment or social and economic mobility, many individuals (both adults and children) will consciously choose the path of exploitation if the perceived pay-offs or benefits are worth the risk. ‘Academics and policy makers must... recognize the subtleties of the challenges and frustrations confronting people living in the less developed parts of our rapidly developing world’.⁷⁷³ Just as importantly, policies aimed at prevention should be ethno-culturally sensitive. Such considerations need to be evaluated by policy makers when determining how the TIP Bill should be implemented.

3.6 Branding Victims of Human Trafficking: Questions of Status and Repatriation

Another point of contention is the issuance of a letter of recognition, issued to adult persons only⁷⁷⁴, essentially labels a person a ‘victim of trafficking in persons’. While the rationale behind this is to allow victims, both foreign and domestic, access to health, therapeutic and rehabilitative services it effectively brands as a victim – and this, in turn, might become a site of stigmatisation. Such identification provides that victims of trafficking are not prosecuted for crimes they may have committed as a direct result of being trafficked.⁷⁷⁵ Although not expressly stated in the TIP Bill, identification of a victim of trafficking through the issuing of

⁷⁷⁰ Mike Dottridge and Ann Jordan, ‘Children, Adolescents and Human Trafficking: Making Sense of a Complex Problem’, *Issue Paper 5*, Center for Human Rights and Humanitarian Law: American University Washington College of Law, May 2012: 3.

⁷⁷¹ *Ibid.*

⁷⁷² Lisa Rende Taylor, ‘Dangerous Trade-offs: The Behavioral Ecology of Child Labor and Prostitution in Rural Northern Thailand’, *Current Anthropology*, Vol. 46, No.3, (June 2005): 411 – 431.

⁷⁷³ *Ibid.*, 423.

⁷⁷⁴ In terms of Chapter 4, clause 18(6) the Department of Social Development is responsible in determining whether a child is a victim of trafficking.

⁷⁷⁵ Clause 22(3).

a letter of recognition, also facilitates the provision of health services, and other psycho-social services for a foreign victim of trafficking, and is afforded public health care services as provided in section 27 of the *Constitution of the Republic of South Africa, 1996*.⁷⁷⁶ The issuing of a letter of recognition has a direct correlation to the status of foreign victims. This affords a foreign victim protection from being summarily deported where they have no other documentation (in cases where traffickers have confiscated or destroyed their passports or they have no valid documentation). However, it may have unintended consequences when a foreign victim of trafficking is repatriated home. The letter of recognition that identifies that person as a victim of trafficking may identify them in their country of origin as a criminal (particularly where prostitution is illegal and harshly punished).⁷⁷⁷ Where a foreign victim decides to stay in the country for a reflection and recovery period, the TIP Bill provides that he or she will be granted a visitor's visa. It is hoped that when the victim of trafficking is repatriated to their country of origin that this is the only piece of documentation that they are required to travel with to avoid stigmatisation or even face criminal charges upon their arrival.

Clause 15(1) allows for foreign victims 'despite the provisions of the Immigration Act' to be granted a visitor's visa to stay in the country for a recovery and reflection period not exceeding three months. The recovery and reflection period, which may be extended for a further three months, allows foreign victims to access therapeutic and rehabilitative services, in the hope that the victim will cooperate with law enforcement and prosecuting authorities in the investigating and prosecution of their case. If the trafficked person does not wish to cooperate with law enforcement and prosecuting authorities, within 30 days of a visitor's visa being granted, then clauses 15(2) and 15(3) apply. Foreign victims of trafficking may not be summarily deported⁷⁷⁸, as occurred in the past, where they were unwilling or unable to cooperate with law enforcement or prosecuting authorities. However, victims who are 'unwilling or unable to cooperate' will be repatriated to their country of origin once the recovery and reflection period and/or visitor's visa has expired.

While standard international practice, this approach is problematic as it may not take into consideration, or may not be sufficiently sensitive to, the prolonged and repeated trauma

⁷⁷⁶ Clause 21.

⁷⁷⁷ Nivedita Parsad, 'Praxis' in Bundesweiter Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess e.V., *Frauenhandel in Deutschland*, (2008): 72.

⁷⁷⁸ Where a person suspected of being trafficked is found not to be after an investigation by the Department of Social Development, may have their letter of recommendation revoked, see clause 19(11), as well their visitor's visa by the Director-General: Home Affairs and then be deported. If abused or not properly conducted by specially trained personnel, this could see some foreign victims being deported as the officials conducting the investigating were not conversant with the diversity of human trafficking and its victims.

experienced by the trafficked person. Some victims of trafficking do not want to be labelled as ‘victims’, whilst others are too traumatised to relive past exploitation and abuse. ‘The behaviour of trafficking victims can be difficult for third parties to understand, while victims can find it difficult to comprehend what has happened to them, or to discuss it with or explain it to others. Victims may appear to those around them, even support persons, to be uncooperative, irritable, hostile, aggressive or ungrateful’⁷⁷⁹. Where victims of trafficking are uncooperative, the Director-General: Social Development is tasked with assessing whether it is safe to repatriate a foreign victim of trafficking back to their country of origin. Clauses 31(2) and 32 are not without criticism. While clause 31(2) places an onus on the Director-General: Home Affairs to ensure that the following has been considered before a foreign victim is repatriated: the safety of the person during the repatriation process, the safety of the person in their country of origin, and whether the person will be harmed or killed should they return to their country of origin. Removed from this subsection is the concern of the person being re-trafficked. Moreover, clause 32 tasks the Director-General: Social Development to find ‘suitable family members or an institution or organisation that renders assistance to victims of trafficking in the country’ and who are willing to provide assistance to repatriated person.

*The DHA believed that the Prevention and Combating of Trafficking in Persons Bill (the Bill) should, in light of the Immigration Act and Refugee Status Act, have the objective of either re-uniting victims of trafficking with their families or returning them to their countries of origin. Trafficking suggested that a person was removed unwillingly from his or her own country and DHA was of the view that such person should be assisted in going back to the home country and reunited with his or her family.*⁷⁸⁰

The views held regarding foreign victims of trafficking, and the concept of what constitutes human trafficking in the case of foreign nationals, is highly simplistic and problematic.⁷⁸¹

First it assumes that victims of trafficking are passive agents who were taken from their countries of origin against their will. The reality is that in most cases, the victim chose to

⁷⁷⁹ UN.GIFT and UNODC, ‘Summaries of the papers’, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 9. This assertion has been borne out in practice. Prosecutors and investigators working with victims of human trafficking in KwaZulu-Natal have noted similar problems. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁷⁸⁰ Department of Home Affairs comments on the Prevention and Combating of Trafficking in Persons Bill, Detailed Minutes, 16 November 2011. See also the submission of the Department of Home Affairs to the Portfolio Committee on Justice and Constitutional Development on Prevention and Combating of Trafficking in Persons Bill, 2010 – 15 November 2011.

⁷⁸¹ They also denote the institutionalisation and reproduction of the dominant discourse with regard to so-called ‘three Rs’ of rescue, rehabilitation and reintegration which are championed by the US driven trafficking discourse.

migrate. Moreover, some do not wish to return to their countries of origin.⁷⁸² It also fails to be cognisant of international lessons learnt with repatriation of victims to their countries of origin and/or reuniting them with their families. ‘Lessons learned reveal that the conventional assumption that victims should be repatriated and returned to live with their families is inappropriate and results too easily in victims being returned to a situation where they suffer further harm’⁷⁸³. The view held by the Department of Home Affairs fails to recognise that most victims know their traffickers – who in many instances are close relatives or family friends. This is especially true of child victims of trafficking.

Moreover, the structural conditions that render persons vulnerable in the first place still remain. ‘Problems may be compounded if, as often happens, trafficked persons are returned to their place of origin to face the same problems of unemployment, abuse, discrimination that compelled them to leave in the first place, all of which may be exacerbated by the new stigma’⁷⁸⁴. In many countries across the world repatriated victims of human trafficking face stigmatisation by family and community members – especially where victims (of either gender) were forced into prostitution. In addition, ‘[p]revention messages may unknowingly contribute to the stigmas surrounding a trafficked person, notably in the way they portray the negative results of a trafficking situation’⁷⁸⁵.

Re-victimisation can occur from the moment that a trafficked person is intercepted or received by government officials or organisations or family members upon arrival back in his or her country of origin. It also does not consider the complexity of familial relations or obligations or the unequal and discriminatory structure of a particular society. Children who have been sold or traded by their parents, or were sent to relatives and then trafficked, are at a very high risk of being re-trafficked. So too are those ‘who survived longer periods in a trafficking situation, a return to a situation of exploitation may provide the only alternative for which their practical skills and survival mentality are now oriented’⁷⁸⁶. This is also true for domestic victims of trafficking who may be repatriated to their home communities or families. Experience by the IOM has shown that even where victims of trafficking have been

⁷⁸² The victim identification evaluation process and repatriation process is seen by the Department of Home Affairs as a way of controlling irregular migration and preventing people from abusing the immigration system by claiming to be victims of trafficking.

⁷⁸³ UN.GIFT and UNODC, ‘Summaries of the papers’, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, New York: United Nations, (2008): 13.

⁷⁸⁴ Judith Dixon, ‘The impact of trafficking in persons’, in UN.GIFT and UNODC, *An Introduction to Human Trafficking: Vulnerability, Impact and Action*, Background Paper, United Nations: New York, (2008): 88.

⁷⁸⁵ *Ibid.*, 87.

⁷⁸⁶ *Ibid.*, 88.

returned home some do reappear – either as victims or perpetrators (recruiters).⁷⁸⁷ Women victims of trafficking have been known to become involved in the trafficking of other girls and women as ‘second wave’ recruiters.⁷⁸⁸ These are very real concerns that both the Director-Generals of Home Affairs and Social Development need to apply their minds to when ascertaining whether it is prudent to return a victim of trafficking to their place or country of origin.

3.7 Specialised Anti-Trafficking Units

The lack of provision for specialised anti-trafficking units in the adopted TIP Bill is another point of concern. Specialised rapid response teams / anti-trafficking units are not only seen as a minimum standard for combating human trafficking⁷⁸⁹, but are regarded by those on the ground (i.e. involved in the combating and prevention of human trafficking) as a vital and much needed resource.⁷⁹⁰ The establishment of specialised units to deal with the investigation and prosecution of human trafficking was recommended by the HSRC in their multidisciplinary report on the dimensions of human trafficking in southern Africa.⁷⁹¹ The TIP Bill is silent in this regard – and does not provide for the establishment of specialised anti-trafficking units. However, as Kruger notes, there exist a number of specialised units and sections which do at times deal with human trafficking: Sexual Offences and Community Affairs (SOCA) Unit, the Organised Crime Section, the Asset Forfeiture Unit and the Office for Witness Protection.⁷⁹²

Moreover, in terms of Result Area 2 of the Tsireledzani Programme (part of the European Commission funded programme of assistance to the South African government to prevent and react to human trafficking), an expert response team was to be established by the Programme Coordinating Unit (PCU) in 2010. This expert response team is supposed to place a multi-sectoral team on call to enable effective victim and case management (consisting of SAPS investigators, NPA prosecutors, social workers from the Department of Social Development, forensic health specialists from the Department of Health, and labour inspectors from the

⁷⁸⁷ Liv Tørres and Denise du Toit, *Southern African Counter-Trafficking Programme SACTAP Review*, Norad Collected Reviews (6/2010): 26.

⁷⁸⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012); Participant Observation: KZN HPPB Task Team Training Workshop (2012). See also, UNESCO, *Human Trafficking in South Africa: Root causes and Recommendations*, Policy Paper No. 14.5(E), Paris, 2007.

⁷⁸⁹ Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, LLD Thesis, University of the Free State, November 2010: 587.

⁷⁹⁰ Personal Observation: Interview with a member of the NPA (2011).

⁷⁹¹ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010.

⁷⁹² Beatri Kruger, *Combating Human Trafficking: A South African Legal Perspective*, LLD Thesis, University of the Free State, November 2010: 587, footnote 388.

Department of Labour); provide for skills transfer to provincial teams; develop a manual of operating procedures or protocols; design referral mechanisms; and monitor for effectiveness by the PCU.⁷⁹³ Inter-agency cooperation and coordination is vital for the effective combating of trafficking. If this model proves to be successful, it should be incorporated and reproduced at national and provincial levels, as well as be extended to regional initiatives. It is hoped that the national policy framework and various directives and instructions that are to be issued by the various departments once the TIP Bill is enacted will provide for the deepening of inter-departmental coordination and cooperation, as well as provide for specially trained units. Inter-agency cooperation, or lack thereof, and issues of jurisdiction are often the biggest stumbling blocks in attempting to provide a coordinated response to combating trafficking.⁷⁹⁴

However, there do appear to be problems and gaps in how human trafficking is dealt with in the field currently. In terms of provincial responses to human trafficking, the provincial task teams lack a formal mandate (in the absence of legislation). This has had a negative impact on the establishment of formal institutional mechanisms of coordination. As du Plessis and Collin find, '[t]he original design of the programme related to improved coordination through obtaining a formal mandate, establishment of national and provincial coordination structures, expert response teams, building capacity in CSO providing support services towards human trafficking'⁷⁹⁵. This also means that there is an apparent lack of protocols and operating procedures⁷⁹⁶ being sent down the chain of command by the national task team it is not surprising that issues of coordinating responses might be lagging behind.

These institutional concerns, which are faced by many of the government departments involved, need to be dealt with and rectified in order for a coordinated response to trafficking, as envisaged by the TIP Bill, to be realised. As human trafficking is such a complex crime, that exposes its victims to the most severe forms of exploitation and abuse, it is necessary for those who would combat it to be specially trained and equipped to do so. A coordinated and cohesive response to combating and preventing trafficking will only be realised through specialised and dedicated units or sections at both national, provincial and eventually at local (municipal) levels. However, as the prevalence of human trafficking remains an unknown in

⁷⁹³ Programme Coordinating Unit, SOCA Unit – NPA, *South Africa's Strategy to Counter Human Trafficking*, Media Briefing Session, 13 August 2008.

⁷⁹⁴ Personal Observation: Interview with a member of the NPA (2011); Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁷⁹⁵ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010: 12.

⁷⁹⁶ Provincial task teams, at least in the case of the KZN task team, are crafting their own protocols in order to ensure that all the roleplayers involved understand their roles and what needs to be done – from reporting a case to dealing with it and assisting victims.

the South African context, and reporting of the crime and prosecutions remain (for the time being) exceptionally low in comparison to other crimes, it remains to be seen whether budgetary constraints and considerations will hamper long-term investment in an effective response to human trafficking.

4.0 The South African Policy Framework: Under Construction

The absence of a comprehensive legal framework to combat and prevent trafficking in persons in South Africa is mirrored in the lack of a comprehensive policy framework. Like the legislative framework, it is under construction. In addition, ‘other areas of the law (such as the Regulations in terms of the Children’s Act) are currently under development’⁷⁹⁷. The current South African policy framework on combating and preventing trafficking in persons needs to be understood within the larger context of the government’s response to endemic crime, particularly violent crime (in the form of sexual violence), that is pervasive throughout South Africa. These policy initiatives include, the National Crime Prevention Strategy, Service Charter for Victims of Crime in South African and the Minimum Standards on Services for Victims of Crime, Anti-Rape Strategy for the Prevention of Sexual Violence against Women and Children, and National Strategy to Prevent and Respond to Human Trafficking for Sexual Purposes.⁷⁹⁸

4.1 National Crime Prevention Strategy and Victim Empowerment

The National Crime Prevention Strategy (NCPS), which was approved by Cabinet in 1996, seeks to reduce crime through a number of interventions: the criminal justice process, the reduction of crime through environmental design, public values and education, and transnational crime.⁷⁹⁹ The NCPS seeks to manage and coordinate policy development and implementation, which was neglected prior to 1996 and to allay the concerns of many South Africans who perceived the government affording greater rights and protection to criminals at the expense of victims and their human rights.⁸⁰⁰ The NCPS represents a reframing of policy moving away from focusing on the perpetrator through the criminal justice system to a

⁷⁹⁷ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 48.

⁷⁹⁸ South African Law Reform Commission, ‘Project 131: Report on Trafficking in Persons’, (August 2008): 23 – 25.

⁷⁹⁹ South African Law Reform Commission, ‘Project 131: Report on Trafficking in Persons’, (August 2008): 23.

⁸⁰⁰ Department of Social Development, *National Policy Guidelines for Victim Empowerment*, (2009) available at <http://www.info.gov.za/view/DownloadFileAction?id=111693>

victim-centred approach to crime prevention,⁸⁰¹ culminating with the introduction of the Victim Empowerment Programme in 1998.

*South Africa's Victim Empowerment Policy is based upon the concept of restorative justice... While services to and empowerment of victims in South Africa has increased somewhat in recent years, these services have not been managed as an integrated whole within and between the various government departments, nor with other stakeholders. Many services are also not yet comprehensive, or of the required standard... thus often exposing the client to further victimisation and discontent with service delivery. The manner in which the programme currently operates has limited impact in creating a victim-friendly criminal justice and associated system and reducing the negative impact of victimisation.*⁸⁰²

While the Victim Empowerment Programme (VEP) has been systematically improved, many of the aforementioned concerns still remain. Moreover, the national victim empowerment policy framework has been described as 'disjointed and not cohesive enough'⁸⁰³. Indeed, one of the greatest criticisms levelled at government in regard to victim empowerment is the lack of legislation for victims of general crime. Moreover, without specific legislation in this regard, it means that there are budgetary constraints and that restorative justice is not necessarily as effectively incorporated as it should be. Victim Empowerment Management Forums have been established under the VEP at local, provincial and national levels 'to ensure effective coordination and communication between all relevant stakeholders'⁸⁰⁴, realise improved service delivery to victims and their empowerment. Their main function is to provide strategic direction to the programme. This is coordinated by the Department of Social Development and supported by the UNODC. Provincial Victim Empowerment Forums (PVEF) have been accordingly established and relevant provincial government departments and civil society organisations (CSOs) that provide services to victims of crime and violence are represented on the forum. 'In order to implement activities on the provincial operational plan and also to ensure that information from local level reaches the provincial agenda'⁸⁰⁵. Local Victims Empowerment Forums have been established as sub-committees of the PVEFs to ensure broader scope, representation and harmonisation of services provide to victims of crime.

⁸⁰¹ Department of Social Development, *National Policy Guidelines for Victim Empowerment*, (2009) available at <http://www.info.gov.za/view/DownloadFileAction?id=111693>

⁸⁰² Ibid.

⁸⁰³ Kathleen Dey, Jennifer Thorpe, Alison Tilley, and Jennifer Wilson, *The Road to Justice: Victim Empowerment Legislation in South Africa*, Road Map Report, August 2011: 19.

⁸⁰⁴ Department of Social Development, *National Policy Guidelines for Victim Empowerment*, (2009) available at <http://www.info.gov.za/view/DownloadFileAction?id=111693>

⁸⁰⁵ http://www.justice.gov.za/VC/events/2009%2011_crime-victims-rights-week.html

While the objective of these structures, and policy, is admirable civil society organisations and other commentators have lamented that this forum is ineffectual – as they perceive it to be based more around discussing problems at hand and what should be done instead of actually doing it.⁸⁰⁶ This may be as a result of the institutional set-up and lack of clarified mandates by government departments who sit on these forums, which in turn creates problems of coordination and compliance.⁸⁰⁷ Moreover, CSOs also play an influential role in service delivery to victims of crime, and thus form an integral part of these forums. ‘However, in many instances these relationships are difficult because of a lack of understanding of each other’s roles and responsibilities or duplication of efforts’⁸⁰⁸. These gaps and issues need to be acknowledged and dealt with effectively, possibly through capacity building of service providers at local levels and the creation of legislation that caters for all victims of crime, and not just certain categories. Under the VEP national policy guidelines victims of human trafficking are noted as warranting special attention.⁸⁰⁹ The enactment of the TIP Bill will further help ensure that roles and mandates are sufficiently clarified in providing for victims of human trafficking.

4.2 Service Charter for Victims of Crime and Minimum Standards

The Service Charter for Victims of Crime in South Africa (Victims Service Charter) and the Minimum Standards on Services for Victims of Crime were approved by Cabinet in 2004, and form part of the VEP. The Victims Service Charter was developed by the Gender Directorate in the Department of Justice and Constitutional Development. In line with the NCPS, and designed to comply with the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), the Victims Service Charter represents the drive to provide a victim-centred approach to the criminal justice system through the improvement of service delivery to victims of crime and upholding their rights⁸¹⁰ – particularly in relation to dignity and privacy. Moreover, minimum standards are set for government departments which they are obligated to provide and maintain. The enforcement of the Service Charter for Victims of Crime in South Africa, and commitment to the VEP, are vital to protect victims of trafficking and minimise further trauma.

⁸⁰⁶ Personal Observation: Informal discussions with members of the KZN HPPB Task Team (2011 – 2012).

⁸⁰⁷ Kathleen Dey, Jennifer Thorpe, Alison Tilley, and Jennifer Wilson, *The Road to Justice: Victim Empowerment Legislation in South Africa*, Road Map Report, August 2011: 20.

⁸⁰⁸ Ibid.

⁸⁰⁹ Department of Social Development, *National Policy Guidelines for Victim Empowerment*, (2009) available at <http://www.info.gov.za/view/DownloadFileAction?id=111693>

⁸¹⁰ These rights include ‘the right to be treated with fairness and with respect for dignity and privacy, the right to offer information, the right to receive information, the right to protection, the right to assistance, the right to compensation, and the right to restitution.’ South African Law Reform Commission, ‘Project 131: Report on Trafficking in Persons’, (August 2008): 24.

4.3 Anti-Rape Strategy for the Prevention of Sexual Violence against Women and Children

The Interdepartmental Management Team (IDMT)⁸¹¹ is in the process of developing an anti-rape strategy that the government hopes will lead to the prevention and reduction of rape, as well as a multi-sectoral response to rape. Unfortunately, South Africa is thought to be the rape capital of the world.⁸¹² It is estimated that 500 000 rapes are committed annually.⁸¹³ Victims range from babies to the elderly. Gang-rape is not uncommon. Due to stigmatisation and often revictimisation by communities and service providers, including clinic staff, the police and criminal justice system, rape remains an under-reported crime. Many cases that are opened are never solved and conviction rates are also low. As Robertson points out, '[i]nadequacies in our criminal justice system create an environment where it is relatively easy to commit an offence of rape without any severe consequences. Rape has one of the lowest conviction rates of all serious crimes in South Africa. Offenders frequently evade arrest and conviction and continue to intimidate their victims and the victim's family... Sentencing tends to be lenient which creates an impression that rape is not seen as a serious crime'⁸¹⁴. This is still one area where the principles of victim empowerment have not been fully realised.

However, inroads have been made in the form of Thuthuzela Care Centres which are one-stop facilities 'aiming to reduce secondary trauma for the victim, improve conviction rates and reduce the cycle time for finalising cases'⁸¹⁵. They combine medical, psychological, investigative and prosecutorial services by coordinating and centralising the activities of all role players.⁸¹⁶ This initiative is led by the National Prosecuting Authority's Sexual Offences and Community Affairs Unit (SOCA) as a response to the urgent need for an integrated strategy for prevention, response and support for victims of rape and sexual abuse. These centres have been recognised by the United Nations General Assembly as a best practice model.⁸¹⁷ Such care centres also are vital for the provision of immediate services and gathering of forensic evidence for identified victims of human trafficking who may have been

⁸¹¹ 'In relation to human trafficking, a broadened IDMT will constitute the Programme Steering Committee (PSC), authorising and coordinating all activities. The Department of Home Affairs and the Department of Labour were incorporated into the PSC through a special resolution. The PSC will report through the National Director of Public Prosecutions to the Justice, Crime Prevention, Security and Social Cluster of Directors-General.' HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 11.

⁸¹² <http://rapecrisis.org.za/rape-in-south-africa/>.

⁸¹³ http://www.rape.co.za/index.php?option=com_content&task=view&id=875.

⁸¹⁴ Mary Robertson, 'An overview of rape in South Africa', *Centre for the Study of Violence and Reconciliation*, available at <http://www.csvr.org.za/wits/articles/artrapem.htm>. This sentiment is also shared by the advocacy manager of Women and Men against Child Abuse in relation to child victims of rape and abuse. Personal Observation: Interview with the advocacy manager of Women and Men against Child Abuse in KZN (2012).

⁸¹⁵ <http://www.npa.gov.za/UploadedFiles/THUTHUZELA%20Brochure%20New.pdf>.

⁸¹⁶ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 51.

⁸¹⁷ <http://www.southafrica.co.za/about-south-africa/government/justice-and-correctional-services>.

sexually abused and assaulted over a prolonged period of time. They form a vital link in the chain for protecting victims of trafficking.

4.4 National Strategy to Prevent and Respond to Human Trafficking for Sexual Purposes, and Tsireledzani

The National Strategy to Prevent and Respond to Human Trafficking for Sexual Purposes was developed by the national Trafficking in Persons Intersectoral Task Team. As the title implies, the strategy only focuses on trafficking for sexual exploitation. This is due to the fact that the NPA's SOCA Unit was responsible for the establishment of a national task team on trafficking in persons⁸¹⁸ in 2003 and mandated to facilitate a multi-sectoral response to the development and implementation of a National Action Plan to prevent trafficking in persons, to support victims of trafficking and to prosecute traffickers.

However, it was the TIP Report which had placed South Africa on the Tier 2 Watch List (poor rating) that galvanised government into action. As a result of this poor rating or assessment by the TIP Report the government established the 'Tsireledzani' programme with EU funding (for a period of 3 years). This served to establish at the national level, the national human trafficking task team – which is intersectoral like the provincial task team. It has been responsible for awareness-raising in the form of posters, campaigns and conferences around human trafficking.⁸¹⁹

Provincial task teams have also been established by the SOCA Unit. The KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels (HPPB) Task Team⁸²⁰ was the first of provincial task team to be established in October 2008. It has been cited as an example of best practice, and its model has been emulated in the set-up of other task teams in other provinces – with mixed results.

Tsireledzani is the government's initiative to combat human trafficking. The programme, funded by the European Commission, is headed by the National Prosecuting Authority (SOCA Unit) and involves government departments, international organisations and civil society partners.⁸²¹ It was launched at a conference in March 2009 to ensure South Africa's full compliance with the UN Organised Crime Convention and the Trafficking Protocol through the development of comprehensive legislation 'that is underpinned by a victim-centred empowerment approach, taking full account of the existing Victims Service Charter,

⁸¹⁸ The composition of the national task team is listed earlier in this chapter and mainly consists of government departments, as well as the UNODC, IOM and a local NGO Molo Songololo.

⁸¹⁹ Personal Observation: Interview with a member of the NPA (2011).

⁸²⁰ The KZN HPPB Task Team is discussed in detail in Chapter 5.

⁸²¹ These included International Labour Organisation, the International Organisation for Migration, the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the Human Sciences Research Council and non-governmental organizations

as well as relevant South African legislation⁸²² through research, training and awareness-raising. ‘The Tsireledzani conference generated a National Action Plan (NAP) to ensure cohesion between government departments, civil society and international organisations and improve their alignment with private efforts in combating human trafficking’⁸²³. The action plan is based on three pillars: prevention, victim support and response. A strategic framework based on six pillars⁸²⁴ was formulated:

1. Information (research and education)
2. Capacity building and development
3. Victim support and integration
4. Legislation and policy development
5. Monitoring and evaluation
6. Liaison and consultation

The European Commission (EC) funded programme of assistance to the South African government to prevent and react to human trafficking, signed on 15 June 2006, was designed and implemented against the backdrop of South African efforts to harmonise legislation to comply with the Trafficking Protocol. It was to fund a three year programme based on the six pillar strategic framework (the Tsireledzani counter-trafficking programme). The programme received 6,3 million Euro⁸²⁵. The Financing Agreement between the EC and NPA provided for the establishment of a Programme Steering Committee (PSC) to ensure good governance. The IDMT constitutes as the PSC.⁸²⁶ The EC has observer status on the PSC. The Financing Agreement provided for the implementation of the programme in two phases which started in December 2010 and ends on 31 December 2012. The programme outputs are supposed to: (i) ensure a deepened understanding of human trafficking in South Africa, (ii) develop a multi-sectoral, coordinated prevention and response to trafficking, (iii) increase public awareness and understanding of trafficking in South Africa and the South African Development

⁸²² Tsireledzani, available at <http://www.tsireledzani.gov.za/Content.aspx?id=80>.

⁸²³ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 12.

⁸²⁴ Tsireledzani Programme Coordinating Unit (PCU), Sexual Offences and Community Affairs (SOCA) Unit, NPA, ‘Programme of Assistance to the South Africa government to prevent, react to human trafficking and provide support to victims of the crime’, (SA/002/05), *Status Quo Report*, 2 March 2010: 5 – 6. These pillars or result areas are assessed below.

⁸²⁵ Based on the exchange at the time this equated to R59 850 000.

⁸²⁶ It was expanded to include the Department of Home Affairs, Department of Labour and the Border Control Operational Coordinating Committee (BCOCC). The PSC lead by the NPA (SOCA Unit) includes: Department of Justice and Constitutional Development (Gender), SAPS (Visible Policing), Department of Basic Education (Gender Equity Unit), Department of Social Development (Victim Empowerment and Gender), Department of Health (Gender), National Treasury (Integrated Justice Cluster), South African Broadcasting Corporation, Department of Correctional Services (Correctional Programmes), Department of Home Affairs (Inspectorate), Department of Labour (Employment Standards) and BCOCC.

Community (SADC) region, (iv) contribute to better crime investigation and prosecution, and (v) contribute to more effective assistance.⁸²⁷

In March 2010, Tsireledzani Programme Coordinating Unit (PCU) issued a status quo report⁸²⁸ detailing how the money had been spent and assessed the measurable outcomes of the programme. The report is divided into five result areas which were aligned with the draft legislation: (i) deepened knowledge and understanding of trafficking, (ii) enhanced coordinated cross-sector response, (iii) capacity building and development, (iv) public education and awareness, (v) evaluation and audit. However, it is a rather short and superficial document that looks more towards its limited successes than challenges faced, and results only partially achieved. As a result, the EC commissioned consultants to evaluate the success of the programme and whether funding should be renewed in the future.⁸²⁹

The mid-term review⁸³⁰ on the programme of assistance the South African government is more in-depth and more critical of both successes and challenges faced. It also paints a more accurate picture of the limitations faced by provincial task teams who operate without a mandate, or official budget. The report found that the programme was 'rated not satisfactory due to numerous delays, inadequate synergy between Result Areas and inadequate communication between National Task Team, and Provincial Task Team members, members of the Consultative forum and key stake holders'⁸³¹. The lack of a formal mandate and the informal process which was followed in the appointment of government representatives from the various departments were noted as having a particularly negative impact on decision-making and formal commitments.⁸³² Moreover, funds allocated for the programme had been decommissioned in some cases, and in others the NPA ended up covering costs incurred due to lack of compliance with the EU procedures (which were noted as not being compatible

⁸²⁷ Tsireledzani Programme Coordinating Unit (PCU), Sexual Offences and Community Affairs (SOCA) Unit, NPA, 'Programme of Assistance to the South Africa government to prevent, react to human trafficking and provide support to victims of the crime', (SA/002/05), *Status Quo Report*, 2 March 2010: 6.

⁸²⁸ Tsireledzani Programme Coordinating Unit (PCU), Sexual Offences and Community Affairs (SOCA) Unit, NPA, 'Programme of Assistance to the South Africa government to prevent, react to human trafficking and provide support to victims of the crime', (SA/002/05), *Status Quo Report*, 2 March 2010.

⁸²⁹ Participant Observation: Meeting with EC Consultant (2011).

⁸³⁰ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010.

⁸³¹ *Ibid.*, 4.

⁸³² *Ibid.*

with South African government procurement procedures).⁸³³ Additionally, R1,1 million that was to be allocated to NGOs who were identified as service providers to victims of trafficking was not spent. The programme design was found to be overly-ambitious and this is evinced in the inability to reach all the programmes targets.

Result Area 1 was found to be partially successful. Deepened knowledge and understanding of human trafficking was achieved in the form of the HSRC commissioned report on the phenomenon. However, as access to various government officials proved problematic and the reduced time in which the study was conducted (over 3 months instead of 12) meant that the quality of the final report was not as extensive or comprehensive as it could have been. In the end, the report did not provide evidenced-based knowledge about the phenomenon in South Africa, nor did it provide sufficient guidelines for the NPA as to how human trafficking could and should be addressed. Baseline statistics on the phenomenon were thus not produced, nor a Trafficking Information System developed as initially planned (as indicators could not be developed).

Result Area 2, one of the most important areas, yielded the least success. This is attributed to the absence of legislation and lack of official mandate, and the ‘capacity of the NPA to implement on provincial and lower levels of government and clarity on future implementation modality’⁸³⁴. Moreover, mandates of certain departments, like SAPS, pose challenges.⁸³⁵ For the most part, representatives do not have mandates to make any decisions on behalf of their departments.⁸³⁶ These issues are replicated at provincial level where no standardised guidelines exist.⁸³⁷ As the programme was not formally introduced through the government clustering process this has meant that representatives are appointed in an ad-hoc manner and as a result ‘centralised coordination within some of the key stakeholder departments are lacking’⁸³⁸. This also accounts for the high turnover of departmental representatives which can have a negative impact on consistency, efficiency and accountability of the various task teams.⁸³⁹ Little support is provided by the national task team to the provincial task teams, who

⁸³³ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010: 4 and 13.

⁸³⁴ *Ibid.*, 14.

⁸³⁵ This is discussed in more detail in Chapter 5.

⁸³⁶ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010: 19.

⁸³⁷ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸³⁸ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010: 15.

⁸³⁹ Participant Observation: KZN HPPB Task Team (2009 – 2012).

operate without budgets or guidance. Moreover, the flow of information between national and provincial task teams was found to be ‘very slow’⁸⁴⁰. The report found that the lack of funding to NGOS / CSOs who play a fundamental role in ‘filling the gaps at an operational level, caused by the lack of state coordinated strategy’⁸⁴¹ as a point of concern.

Result Areas 3 and 4 were the most successful, and managed to achieve most of their planned outcomes. This is partially because the IOM and ILO (both well-established international organisations with extensive expertise on human trafficking) were contracted to fulfil these two result areas: capacity building and training, and prevention, public education and awareness. The IOM, who was contracted separately by the EC, developed training material in the form of an inter-sectoral training manual for departmental trainers. The train-the-trainer manual focuses on pertinent issue areas for the different departments.⁸⁴² The IOM ‘is implementing the capacity-building and development component of Tsireledzani. This component will build the capacity of government officials, NGOs and media to prevent trafficking from South Africa, identify trafficked persons, improve the standard of physical protection and direct assistance offered to victims of trafficking in the country, and increase the number of trafficking cases investigated and prosecuted by law enforcement and justice officials.’⁸⁴³ According to PCU Status Quo Report, as of 2010, 1 200 officials had been trained using IOM material.⁸⁴⁴ In terms of Result Area 4, the ILO is responsible for awareness raising and public education. Various ‘low cost – high impact’ awareness raising tools and material have been developed, such as the production of banners, pamphlets, stickers and an awareness raising DVD. It has also conducted a desktop study on past and existing campaigns on human trafficking amongst target groups to determine levels of awareness on human trafficking.⁸⁴⁵

While the programme ultimately had many set-backs and not all result areas were fully realised, it draws attention to areas that necessitate more focus by the South African

⁸⁴⁰ Pieter du Plessis and Cecile Collin, *Mid-Term Review: Programme of Assistance to the South African Government to Prevent and React to Human Trafficking*, Final Draft Report, European Delegation South Africa, 23 May 2010: 15.

⁸⁴¹ *Ibid.*

⁸⁴² The training manual is divided into five modules: (i) Basics of Human Trafficking, (ii) Irregular migration and migration management aspects of human trafficking (Department of Home Affairs), (iii) Psychosocial and health aspects of trafficking (Department of Social Development and Department of Home Affairs), (iv) Investigation (SAPS and other police officials), and (v) Legislation (Prosecutors and Magistrates).

⁸⁴³ Tsireledzani available at <http://www.tsireledzani.gov.za/Content.aspx?id=98>

⁸⁴⁴ Tsireledzani Programme Coordinating Unit (PCU), Sexual Offences and Community Affairs (SOCA) Unit, NPA, ‘Programme of Assistance to the South Africa government to prevent, react to human trafficking and provide support to victims of the crime’, (SA/002/05), *Status Quo Report*, 2 March 2010: 11.

⁸⁴⁵ *Ibid.*, 12.

government in order to create an effective counter-trafficking regime. Such issues are extended to the national and provincial task teams and key stakeholder government departments in terms of what needs to be built upon and extended once legislation is enacted. Competing priorities need to be effectively dealt with, clear mandates and standard operating procedures / protocols need to be developed and distributed to the key role players and task teams, and adequate budgets need to be provided as well as funding for the very important role played by civil society and international organisations.

5.0 Conclusion

Human trafficking is a priority issue for the South African government, and the various government departments driving the process of complying with obligations derived from international agreements, such as Department of Justice and Constitutional Development and Directorate of Public Prosecutions. This is evinced in the formulation and adoption of the TIP Bill and various other policy and programme initiatives that seek to harmonise and coordinate South African responses to combating and preventing trafficking. While the foundation for this has been laid, many challenges still lie ahead for the government to formulate and successfully implement a coordinated and cohesive anti-trafficking strategy and programme that is victim-centred and effective.

By adopting an expansive definition and criminalisation of human trafficking and attendant exploitation in the TIP Bill, South Africa has fulfilled the political and legal obligations derived from the Trafficking Protocol and other international agreements. It attempts to follow international best practice by creating obligations to the government to provide for the protection of both foreign and domestic victims of human trafficking, and prohibits the summary deportation of victims. It also places a positive burden on the state to ascertain whether foreign victims can be safely repatriated back to their country of origins. Clear roles and functions are defined for a host of government departments, fostering the notion of cooperation and the implementation of the Act in a coordinated manner. NGOs and civil society, however, seem to be relegated to a service provider function under the Act. The implementation of the Act is of concern when compared to the experiences of implementation of other Acts. South Africa has many fine pieces of legislation, whose implementation often leaves a lot to be desired. The quick formulation of a national policy framework, provided the consultative process with other government departments is not protracted, will help the various role players budget and plan adequately. In addition, the formulation of best practice models adapted to the domestic context should mitigate this tendency of non-compliance with legislation and implementation. This also implies that the relevant government departments who are tasked with implementing anti-trafficking policy, directives and the Act are

accordingly trained and educated on the provisions of the Act and their roles and functions at all levels. The fostering of cooperation and open channels of dialogue between the various government departments (which have been given special roles and functions by the legislation) and information-sharing will be essential if the implementation of the Act is to be successful.⁸⁴⁶ Similarly, such provisions should also apply to the NGOs who are psycho-social providers and have a key role to play in the protection of victims, but also in prevention strategies. NGOs are typically at the frontline of prevention and protection measures. They have a wealth of direct experience, knowledge and networked resources and capabilities that should be leveraged in the form of private-public partnerships and in terms of policy formulation and evaluation. Time will tell how this plays out.

In the next chapter I turn to the formation of provincial task teams in the absence of legislation and resources, using the KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team as a case study. I look at its composition and evolution since its inception, and critically assess the efficacy and sustainability of its integrated counter-trafficking model.

⁸⁴⁶ The importance of ensuring cooperation and coordination of counter-trafficking strategies and programmes within and amongst government departments and agencies is discussed in Chapter 6. Moreover, the vital role that NGOs can play in counter-trafficking initiatives if properly leveraged and networked is also discussed.

Chapter 5: The KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team – A Provincial Response to Preventing and Combating Human Trafficking in South Africa

*One of the great mistakes is to judge policies and programs by their intentions rather than their results.*⁸⁴⁷

1.0 Introduction

The establishment of the KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team (KZN HPPB or task team) represents the realisation of result area two of the European Commission funded *Tsireledzani* programme⁸⁴⁸ of the government's initiative to prevent and combat human trafficking in South Africa. As part of Result Area 2⁸⁴⁹, the national task team was tasked with the process of decentralisation of its activities and remit to the provinces in order to ensure 'the effective implementation of the strategy at provincial level'⁸⁵⁰. In this chapter, I consider the efficacy of the implementation of the strategy at provincial level through the lens of the KZN HPPB task team and its development over a four year period – since its establishment in October 2008 until October 2012. Its initial structure and the identification of key role players and co-option of members to the provincial intersectoral task team is critically discussed as well as its evolution in relation to the structure of the organisation itself (the task team) and the system within which it is oriented, and the actors who form part of it. Moreover, the successes and challenges faced by the task team in implementing the national, and its own provincial, strategy are examined in relation to the task team's objectives of prevention, protection, prosecution and partnerships. Each one of these objectives is critically evaluated in terms of events, role-players, strategies, policies and outcomes or results.

⁸⁴⁷ Milton Friedman, Interview with Richard Heffner on *The Open Mind* (7 December 1975).

⁸⁴⁸ As discussed in the previous chapter, the *Tsireledzani* programme and the establishment of a national action plan on human trafficking (based on the pillars of prevention, victim support and response) are supposed to 'provide a blueprint for all those working to prevent trafficking and protect the people of South Africa and other nations from this terrible denial of human rights.' National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 5.

⁸⁴⁹ Result Area 2: enhanced coordinated cross-sector response. The goals of Result Area 2 were to establish the Programme Coordinating Unit, which was to support the national task team in the development of a National Action Plan. And in the case of provinces, the establishment of provincial task teams and the development of provincial action plans.

⁸⁵⁰ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 5.

2.0 Establishment and Implementation of Counter-Trafficking Strategies at the Provincial Level: The Case of the KwaZulu-Natal HPPB Task Team

The KZN HPPB task team was established on 2 October 2008 at the behest of the national task team which is led by the National Prosecuting Authority. Advocate Dawn Coleman of the Sexual Offences and Community Affairs Unit (SOCA) and Advocate Val Dafele (nee Lotan) of the Organised Crime Component (OCC) were tasked with setting up and steering the intersectoral task team in KwaZulu-Natal thus replicating the drivers of the counter-trafficking programme at the provincial level. The KZN HPPB task team was the first provincial task team to counter human trafficking in the country. It is an un-resourced agency of provincial government.⁸⁵¹ As one of the frontrunners in anti-trafficking in the country, its model has been used as the format to set up other provincial task teams across the country.

The purpose of the task team is to: (i) provide technical support to the Programme Coordinating Unit of the national task team, (ii) assist with policy development and inputs into the legislative process, and (iii) develop a provincial action plan to prevent and combat human trafficking.⁸⁵² I submit that it has fulfilled parts one and three of its purpose, and continues to do so. The provincial task team has had more superficial success or impact in terms of part two.⁸⁵³ It has provided input into the legislative process by commenting on the South African Law Reform's discussion document on prostitution, provided suggestions on how to amend the gaps in the sentencing provisions of the *Sexual Offences Amendment Act*, and has lobbied for the speedy approval and enactment of the TIP Bill. The task team has also sent regular reports of its activities up the reporting structure to the national task team.

Due to its unique composition of addressing not only human trafficking, but also pornography, prostitution and brothels, this means that the provincial task team addresses broader issues than those of the national task team. The mission of the provincial task team is '[g]uided by the constitutional rights of each individual... [to] ensure an integrated effort in eradicating HPPB through the prevention and protection of potential victims, and the prosecution of perpetrators by means of co-ordinated and orchestrated investigative actions'⁸⁵⁴. The objectives of the task team are fourfold, based on international norms and strategies of prevention, protection, prosecution and partnerships (4P model): (i) to increase

⁸⁵¹ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 2.

⁸⁵² KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team, *Progress Report 2009*, (2009).

⁸⁵³ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁵⁴ KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team, *Action Plan*, 2008/2009, 2010, 2011, and 2012.

knowledge, education and awareness about human trafficking, pornography, prostitution and brothels to empower all communities (*prevention*), (ii) to provide a holistic provision of services that turns victims of human trafficking, pornography, prostitution and brothels into survivors (*protection*), (iii) to ensure that proper processes are in place to investigate and prosecute cases involving human trafficking, pornography, prostitution and brothels (*prosecution*), and (iv) to encourage partnerships amongst governments, non-governmental organisations, and the community to monitor and address the causes and contributing factors to human trafficking, pornography, prostitution and brothels (*partnerships*).⁸⁵⁵ This model stems out of research conducted by the Chair of the KZN HPPB task team, Adv. Dawn Coleman, as to how other countries, such as Denmark, Ireland, Kosovo, Pakistan, Turkey, and the United Kingdom, deal with human trafficking.

*I conducted a lot of research on human trafficking in other comparable parts of the world, and looked at how they addressed trafficking. The task team is based on the traditional three 'P' framework: prevention, prosecution and protection. However, it became clear that partnerships would form an integral part of the task team.*⁸⁵⁶

This suggests that the drivers of the provincial task team were not given explicit directions or guidance on how to set the task team up, but were expected to establish a structure that conformed to the overall national action plan and Tsireledzani programme. However, as of 2012, '[t]he national action plan to combat trafficking in persons developed in a previous reporting period was not implemented or released'⁸⁵⁷. This makes it extremely problematic for the task team to fulfil one of its primary roles of aligning the task team's provincial action plan with that of the national action plan. Moreover, the provincial task team, while mandated by the national task team, was not provided with a budget or funding to coordinate and implement the national strategy.⁸⁵⁸ This also demonstrates the ad hoc nature of the provincial task team from its inception and an operational disconnect between the national and provincial level.

⁸⁵⁵ Dawn Coleman, *Trafficking in Persons: The current legal framework in South Africa*, Presentation, 2011, available at <http://www.kznhealth.gov.za/ht.pdf> – last accessed September 2012. See also, National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 9 – 10.

⁸⁵⁶ Personal Observation: Interview with Adv. Dawn Coleman (2011).

⁸⁵⁷ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed September 2012.

⁸⁵⁸ Although this was provided for in the EC funded programme. Participant Observation: KZN HPPB Task Team (2009 – 2012); Personal Observation: Interviews with Adv. Dawn Coleman (2011); director of the Open Door Crisis Care Centre (2012); advocacy manager of Women and Men Against Child Abuse (2012); a member of Red Light (2011 / 2012).

*But if you look at our task team, we have been in operation since 2008. We have not received one cent of any budget for anything that we have done. Everything that we do comes from ourselves, our organisations, ok? And if you think of all our reports that are going to government, there haven't been any real results from it. Other than we have been given accolades and the recognition. We are almost like the pioneering group... There's nothing else. There's no support. All the money is going to national. The head and body are separate. The meeting with the EU consultant showed us that. And it is unlikely that we will get further funding, because they are result-based. And there were no real results.*⁸⁵⁹

This is also something that has been picked up on by the latest TIP Report,

*Despite the government's considerable financial resources, anti-trafficking law enforcement personnel and protective services providers in much of the country lacked adequate funds and coordination mechanisms to respond to the trafficking challenges effectively. The absence of formal procedures for screening and identifying trafficking victims amongst vulnerable groups, including illegal migrants and women in prostitution, remained a significant gap.*⁸⁶⁰

This suggests that the national task team are not fulfilling their mandate, and are not sufficiently supporting provincial task teams, law enforcement and social development organisations and civil society or ensuring effective coordination mechanisms are in place. Provincial task teams are left to do this on their own, which has created a number of challenges in itself. Defining leadership roles of the task team is one thing, but providing the support for realising this is something else altogether – especially in the absence of national and provincial directives to ensure a coordinated and cohesive response. For instance, according to the *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015* states that the provincial task team provides ‘strategic leadership in implementation of the Tsireledzani programme in two major fronts: facilitation of a coordinated response by member departments and provision of oversight on implementation of this strategy by member departments; Its strategic niche is in coordination, capacity building and resource mobilization in the arena of human trafficking, pornography, prostitution and brothels.’⁸⁶¹ I contend that the provincial task team has fulfilled its strategic leadership role well in implementing the Tsireledzani programme considering the structural constraints within which it has to operate.⁸⁶² As a provincial task team it is imperative that the various departments represented on it are represented at both provincial and local levels (especially when referring to key role-players such as law enforcement, Department of Social

⁸⁵⁹ Personal Observation: Interview with a member of Women and Men Against Child Abuse (2012).

⁸⁶⁰ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed September 2012.

⁸⁶¹ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 9 – 10.

⁸⁶² Participant Observation: KZN HPPB Task Team (2009 – 2012).

Development, Department of Basic Education and Department of Health). The structural disconnect between national and provincial departments in KwaZulu-Natal is apparent⁸⁶³, but also with entrenched problems of communication between departments and agencies which caused some operational difficulties in the task team trying to fulfil its mandate and strategic leadership role.⁸⁶⁴

The provincial task team's strategic niche, as identified by the *Human Trafficking Planning Framework: KwaZulu-Natal 2010 – 2015*, indicates that this will be advanced by the following roles (which are used to assess the progress of the task team in this regard, and identify any challenges or gaps):

- Determination of roles and responsibilities of department members through Service Level Agreements;
- Establishment of sub-structures (sub-committees);
- Coordination of the provincial strategy for prevention, protection and prosecution;
- Identification of additional role-players where required;
- Alignment of the provincial action plan with the national action plan;
- Raise resources through alignment of departmental budgets and partnerships with business;
- Monitor and evaluate implementation; and
- Report to the Office of the Premier, Provincial DEVCOM and JOINTS.⁸⁶⁵

I find that the provincial task team has performed well, and fulfilled its obligations, in the eight areas of responsibility assigned to it.⁸⁶⁶ However, the task team has experienced a number of challenges and constraints in attempting to realise aligning the provincial action plan with that of the national action plan, raising resources by aligning departmental budgets and through partnerships with business, and the determination of roles and responsibilities of role-players where many of the members do not have the authority to make decisions. These challenges and constraints to the operation and efficacy of the task team are discussed later in the chapter.

⁸⁶³ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁶⁴ These challenges are discussed later in the chapter. Participant Observation: KZN HPPB Task Team (2009 – 2012); Personal Observation: Interviews and informal discussions with Adv. Dawn Coleman (2011); director of the Open Door Crisis Care Centre (2012); advocacy manager of Women and Men Against Child Abuse (2012); a member of Red Light (2012); KZN Department of Health (2012).

⁸⁶⁵ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 10.

⁸⁶⁶ Participant Observation: KZN HPPB Task Team (2009 – 2012).

In 2008/2009 members of the provincial task team consisted of a wide array of representatives.⁸⁶⁷ In the early days of the task team (2008 – 2010) there was consistent representation and attendance of bimonthly meetings by the various role-players and representatives.⁸⁶⁸ This slowly fell away for a number of reasons.⁸⁶⁹ After the core role-players were identified at the outset from the various departments who would play an important role in preventing and combating human trafficking in the province, other role-players and representatives were identified in a fluid manner through association on other forums or networks, such as the provincial and local Victim Empowerment Forums or by invitation.⁸⁷⁰ The provincial task team is a relatively open forum where members of organisations or the public, if invited, may attend.⁸⁷¹ It was also realised from the outset that departments involved in enforcement would have to be brought on board to ensure that they were educated on the phenomenon, what victims of trafficking indeed were and the protection of their basic human rights as victims of a heinous crime.⁸⁷²

... because in the absence of legislation there would be resistance from other departments if they were not invited to form part of the team from the get-go. Moreover, there were few protective measures available to suspected victims of trafficking. Victims would be (and still are) being charged (for criminal offences like prostitution) or even deported (where they are foreign nationals who are as a result

⁸⁶⁷ The task team consists of representatives from the National Prosecuting Authority (NPA), South African Police Services/Force (SAPS), Metropolitan Police (Metro), Asset Forfeiture Unit (AFU), South African Defence Force (SANDF), National Intelligence Agency, Films and Publication Board (FPB), Department of Justice and Constitutional Development, Department of Home Affairs, Department of Social Development, Department of Labour, Department of Community Safety, Department of Arts, Culture and Tourism, Commission on Gender Equality (CGE), South African Human Rights Commission (SAHRC), Airports Company South Africa (ACSA), Bobbi Bear, Childline, Children's Rights Centre, Women and Men against Child Abuse, Southern Sun Hotels, International Labour Organisation (ILO), International Organisation for Migration (IOM), United Nations Office on Drugs and Crime (UNODC), United States Embassy and the Canadian High Commission. The list of members has been extended over time. Notable inclusions are Red Light (a faith based organisation), Doctors for Life, The Salvation Army, Life Line, Ethembeni Crisis Care Centre, Umgeni Community Empowerment Centre, and Border Control Operational Coordinating Committee (BCOCC). These organisations have come to play increasingly important and active roles on the task team in terms of prevention and protection.

⁸⁶⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁶⁹ At its peak, in terms of membership attendance and participation at meetings, there were 93 representatives from different organisations and departments at the beginning of 2010. Due to a process of attrition, as well as high member turn-over, many of these early role-players who played a fundamental role in helping set up the structure of the task team as well as its action plan are no longer active members of the provincial task team. The ramifications of this are discussed in more detail later in the chapter when looking at partnerships. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁷⁰ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews with Adv. Dawn Coleman (2011); a member of Metro Police (2011); director of the Open Door Crisis Care Centre (2012); advocacy manager of Women and Men Against Child Abuse (2012).

⁸⁷¹ This poses a unique set of risks to the task team that will be discussed later in the chapter. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁷² Personal Observation: Interview with Adv. Dawn Coleman (2011).

*illegally in the country. Thus, it was important that higher structures (identified key role-players) be invited and they in turn would be asked to invite others.*⁸⁷³

One of the most important tasks of the task team on establishment was the creation of a provincial plan of action to combat human trafficking and ensure a coordinated response by its members as envisaged by Result Area 2 of the Tsireledzani programme.⁸⁷⁴ The relatively large numbers of representatives in 2008/2009 ensured that a comprehensive and representative action plan could be crafted that clearly delineated responsibilities in the four objective areas of the task team (prevention, protection, prosecution and partnerships) and ownership of the action steps to be taken, as well as targets and start and end dates.⁸⁷⁵ As Coleman describes her first experiences of the newly constituted provincial task team, ‘Having decided on the objectives (4P’s) of the KZN action plan we needed to look at activities that we could practically implement in the province to achieve these objectives. These activities were decided on by all of the stakeholders at the first meeting of the task team and the action plan was populated’⁸⁷⁶. This represents a pragmatic planning model which identifies achievable measures to be taken within the course of a given year. This is achieved by identifying key priority areas within each strategic objective, the strategies to be employed to realise these objectives, as well as which organisations and departments are responsible for executing these tasks, and thus allows for monitoring of progress to take place in the form of measurable objectives and outcomes.⁸⁷⁷

The format of the action plan remains unchanged since its inception, and is still divided into the task team’s four strategic objectives.⁸⁷⁸ It also represents a flexible and flat organisational model that is respectful of the diverse array of actors involved and provides a general forum where all members can communicate with one another, share insight into successes and challenges, and discuss the progress of individual and group or departmental efforts in addressing human trafficking according to the 4P model.⁸⁷⁹ Quarterly and annual reports are used to monitor and document the progress of the task team in fulfilling its objectives.⁸⁸⁰

⁸⁷³ Personal Observation: Interview with Adv. Dawn Coleman (2011).

⁸⁷⁴ Ibid.

⁸⁷⁵ Participant Observation: KZN HPPB Task Team (2009). Personal Observation: Interview with Adv. Dawn Coleman (2011).

⁸⁷⁶ Dawn Coleman, *Trafficking in Persons: The current legal framework in South Africa*, Presentation, 2011, available at <http://www.kznhealth.gov.za/ht.pdf> – last accessed September 2012.

⁸⁷⁷ Participant Observation: KZN HPPB Task Team (2009).

⁸⁷⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁷⁹ Ibid.

⁸⁸⁰ Ibid.

Moreover, apart from the general provincial task team where all members meet on a bimonthly basis, there are a number of very important sub-committees which meet separately namely, (i) the prosecution sub-committee which comprises only of prosecutors and law enforcement for security and strategic reasons, (ii) the prevention sub-committee which is more open and includes organisations and departments involved in prevention strategies and protection of victims of human trafficking, and (iii) the media sub-committee which has been established to release statements to the press on behalf of the task team and its members, implement media training and encourage responsible reporting on human trafficking.⁸⁸¹ The task team is in the process of setting-up an integrated intelligence sub-committee (comprising SAPS, Metro, NIA, and SANDF) to collect and assess information in order to establish a baseline to ensure that the task team's activities are more strategically focused.⁸⁸²

The drivers of the provincial task team are well respected both within the task team and outside it by anti-trafficking practitioners.⁸⁸³ The Chair is well-known and has a good reputation in the anti-trafficking community.⁸⁸⁴ She acts more as a facilitator and mediator in terms of leadership style, but is definitely the glue that holds the task team together. This can be attributed to her drive and passion to eradicate human trafficking and the attendant social problems of pornography, prostitution and brothels, and her excellent organisational skills which are supported and reinforced by the task team's Secretary and other key actors⁸⁸⁵. It is this efficiency, commitment and drive by the leadership of the task team that serves to motivate the members of the task team. This is attested in the perceptions of task team members as to the leadership of the KZN HPPB task team:

*Dawn is the heart behind it. Having a good leader is so important. Dawn has definitely taken that role and run with it.*⁸⁸⁶

We have strong, strong leadership... I think in terms of the leadership I don't think we could change or have a better person. If you think of the reporting, if you think of the

⁸⁸¹ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁸² Participant Observation: KZN HPPB Task Team (2011 – 2012).

⁸⁸³ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews and informal discussions with a member of Metro Police (2011); Thora Mansfield, Director of The Open Door Crisis Care Centre (2012); Germaine Horowitz, Advocacy Manager of Women and Men Against Child Abuse (2012); Natalie Ogden, a member of Red Light (2011 – 2012); members of the SAPS (2009, 2010, 2012); DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012); members of Justice Acts (2011); members of the National Freedom Network (2011 – 2012).

⁸⁸⁴ Personal Observation: Interviews and informal discussions with members of Justice Acts (2011); members of the National Freedom Network (2011 – 2012).

⁸⁸⁵ These key actors are drawn from both the prosecution and enforcement side, and the prevention and protection side. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁸⁶ Personal Observation: Interview with Natalie Ogden, a member of Red Light (2011).

*minutes coming out, if you think of the follow-up – it's exceptional. I think the team at the top are dedicated.*⁸⁸⁷

It also demonstrates the importance of the human factor in addressing and coordinating responses to human trafficking and other emotive issues, especially where there are significant financial and resource constraints. The potential for this model is great provided that it receives sufficient resources (i.e. funding and departments that are represented on the task team including this into their budgets), sustained commitment and buy-in from the various role-players and representatives, and strong, organised and dedicated leadership (in the long term if or when the current Chair of the task team is replaced once the legislation is enacted).⁸⁸⁸ These are two great challenges currently faced by the task team due to a lack of funding from the national level, as well as issues pertaining to representatives from departments who are not officially mandated to make decisions, not to mention the absence of human trafficking legislation, policy and directives.⁸⁸⁹ The absence of legislation, departmental policies and directives has been a great hurdle for the task team specifically with regards to protection and prosecution.⁸⁹⁰ This has meant that in many instances there is a lack of buy-in from various departments who are vital to the implementation of these objectives and protocols that have been developed by the task team to specifically deal with human trafficking and sex workers.⁸⁹¹ It is hoped that with the enactment of legislation such policy guidelines and (national) directives⁸⁹² will be speedily drafted and implemented to enable the effective coordination of anti-trafficking responses, and that the various departments and the task teams will be allocated special budgets so that they may deepen and widen their efforts to prevent and combat human trafficking.

⁸⁸⁷ Personal Observation: Interview with Thora Mansfield, Director of The Open Door Crisis Care Centre (2012).

⁸⁸⁸ Some members of other provincial task teams lament a lack of dedicated / passionate departmental personnel, or lack of organised and goal-oriented leadership. Personal Observation: Informal discussions (2011 – 2012) and responses to a questionnaire sent out nationally (2012).

⁸⁸⁹ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁹⁰ Ibid.

⁸⁹¹ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews and informal discussions with Adv. Dawn Coleman, NPA (2011); Germaine Horowitz, Advocacy Manager of Men and Women Against Child Abuse (2012); Natalie Ogden, a member of Red Light (2012); Thora Mansfield, Director of The Open Door Crisis Care Centre (2012).

⁸⁹² National directives, guidelines and instructions on human trafficking are currently being developed by the Department of Social Development, NPA and SAPS ahead of the TIP Bill coming into force in the first quarter of 2013.

3.0 Prevention

The provincial task team has been very effective in terms of primary level prevention.⁸⁹³ Awareness campaigns are the task team's key prevention component.⁸⁹⁴ Awareness campaigns are aimed at raising awareness about human trafficking to the general public, amongst departments and institutions, and more specifically in their efforts to highlight the dangers of human trafficking with school children, and to a lesser extent, tertiary level students.⁸⁹⁵ It has received both national and international accolades for its prevention strategy when compared to other provincial initiatives.⁸⁹⁶ The task team even received mention in the 2011 TIP Report for sponsoring a colouring-in competition for Grade 3 – 7 scholars in English and IsiZulu, with active participation from SAPS, the Department of Justice and Constitutional Development, the Department of Arts and Culture, as well as the Local Victim Empowerment Forums.⁸⁹⁷

Prevention has generally been limited to awareness-raising and the education of role-players and members on the task team, providing training for those in departments that could come into contact with victims of human trafficking and traffickers, and train-the-trainers and presenters who are supposed to train their departmental or institutional colleagues on human trafficking and those presenting to the general public.⁸⁹⁸ It was imperative for the task team that both members and the departments or organisations they represent be trained on human trafficking, and that as many people (particularly children who were viewed as being the most vulnerable to being trafficked) reached.⁸⁹⁹ The goal of such prevention strategies is to raise the public consciousness as to the global phenomenon of human trafficking as a threat to South African society, and how to recognise the risks associated with it. Awareness campaigns reached a peak in the run-up to the 2010 FIFA World Cup hosted in South Africa.⁹⁰⁰ Activities were geared toward this from 2009 onwards.⁹⁰¹ A great deal of time and effort was put in by the task team to ensure that it had a viable strategy and measures in place (protocol) to ensure that: (i) the public was informed about human trafficking by screening a DVD produced by the task team at banks, high schools, police stations, universities, clinics and hospitals, in courts and on buses, (ii) there would be a rapid and coordinated response by

⁸⁹³ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁹⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁹⁵ Ibid.

⁸⁹⁶ Ibid. Personal Observation: Interview with Germaine Horowitz, Advocacy Manager of Men and Women Against Child Abuse (2012).

⁸⁹⁷ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2011*, available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm> – last accessed September 2012.

⁸⁹⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁸⁹⁹ Ibid.

⁹⁰⁰ Participant Observation: KZN HPPB Task Team (2009 – 2010).

⁹⁰¹ Ibid.

the department members and social development organisations in the event that any human trafficking cases came to light, and (iii) places of safety (at Mr Price stores) were set up for children for the duration of the World Cup in shopping malls, and a three week holiday club for children was held.⁹⁰²

The KZN task team has trained numerous departments and organisations and have raised awareness in many of the 6 500 schools, either through CDs and DVDs that were distributed in 2009/2010 or through direct contact⁹⁰³, in the province over the past four years.⁹⁰⁴ Members of the task team have also participated in a number of awareness campaigns and events (based on education, presentations and training). The task teams endeavours and achievements in terms of prevention initiatives are detailed in the table below over the period 2008/2009 – 2012, which I have collated from information sourced from quarterly and annual reports and personal experience over this period:

Table 3: Human Trafficking Awareness Campaigns by Year

Awareness Campaigns by Year⁹⁰⁵ (Education, Presentations and Training)	
2009	Members of the task team gave presentations on human trafficking, pornography, prostitution and brothels to a number of schools, churches, Ward 58 councillors' community building initiative, 180 law students at UKZN. 1000 school pupils and 200 community members in Empangeni were educated on human trafficking and drugs. 5650 school children across the province were addressed on human trafficking, child pornography, prostitution, and the dangers of the internet.
	A HPPB presentation which needed to be cut on to a CD, and translated (voiced-over) into Zulu was developed by the task team. Funding was sourced to cut 7000 copies which would be distributed to schools (6500) and NGOs and CBOs (500).
	Key role-players were trained to create awareness in the province regarding human trafficking in light of the 2010 FIFA World Cup. Approximately 320 Metro police college students trained, 64 intersectoral role-players, 120 municipal clinic personnel were trained on human trafficking and child pornography. 38 counsellors and social workers, 13 ACSA security officers, 22 members from the Department of Community Safety were also trained on human trafficking. There were a number of media training workshops hosted by the International Labour Organisation – 16 in Durban and 25 in Johannesburg. 300 members of the Provincial Victim Empowerment Forum were trained on human trafficking and child pornography, as well as 80 Sudanese legal officers (in Pretoria) and 50 attorneys from legal NGOs.
	Training was conducted on 'Traffick Proof' – a human trafficking awareness and education tool. This resulted in 131 people being trained. Training for the law enforcement component of the task team by the US Customs Department on human trafficking was provided. 28 law enforcement officers were trained. A further 30

⁹⁰² Participant Observation: KZN HPPB Task Team (2009 – 2010).

⁹⁰³ The task team targets 100 schools per annum. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹⁰⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012). These figures are derived from an analysis of minutes of task team meetings and quarterly and annual reports.

⁹⁰⁵ Information sourced from quarterly and annual reports 2009 – 2012.

	<p>were trained by the US Embassy's ICE Department. 20 members were trained by the IOM.</p>
	<p>Representatives of the task team presented at the National Human Trafficking Conference.</p>
	<p>An annual awareness event was held. This took the form of a float parade in Durban for the Celebrate Durban Event. Members were dressed in black, had their mouths bound in red material, hands tied with rope and their legs chained. They helped raise awareness by holding up posters on human trafficking and distributing 25 000 pamphlets.</p>
	<p>During Human Trafficking Awareness Week in October, 10 000 pamphlets were distributed at Gugu Dlamini Park in Durban. Task team members were dressed in black, mouths bound with red cloth, hands tied with rope and legs chained. Posters were used to draw attention to the problem of human trafficking.</p>
	<p>Local newspapers and radio stations were identified and contacted to raise awareness on human trafficking in both urban and rural areas.</p>
2010	<p>3000 HPPB DVDs on human trafficking in English and Zulu were sponsored and produced. These were distributed ahead of the 2010 FIFA World Cup to high schools, police stations, buses, banks, Department of Health (clinics and hospitals), Department of Justice and Constitutional Development (courts), universities, and so forth.</p>
	<p>Members of the task team stood outside the Durban Magistrates Court, in 2010, in support of Adv. Dafe's (Lotan) case against sex traffickers⁹⁰⁶ dressed, in what has become the task team's 'trademark', black with a red piece of cloth symbolically binding their mouths shut and holding up posters and a banner on human trafficking, as well as distributing pamphlets.</p>
	<p>A Golf Day organised and hosted by Red Light was held to raise funds for awareness campaigns in and around Durban.</p>
	<p>Tsireledzani and 'Red Card' flyers were handed out at the launch of the Local Victim Empowerment Forum in Chatsworth, as well as the launch of Corrections Week at the Pietermaritzburg Correctional Facility.</p>
	<p>Presentations were given at schools (targeting about 5500 scholars), welfare organisations, churches, community youth sports clubs, the KwaZulu-Natal Deaf Association, the KZN Jewish Women's League, Department of Social Development (Midlands Cluster), health clinics (1167 people), tertiary colleges (600 students). Workshops were held at the Vryheid Local Victim Empowerment Forum, UNODC Victim Empowerment Forum, Mzinyathi District municipality officers, the KwaZulu-Natal Legislature Women's Parliament. A presentation was given at a Provincial Joints Meeting.</p>
	<p>Training workshops on human trafficking to create awareness and train awareness presenters were held with the BCOCC (Port of Durban), SAPS, SARS Customs, Department of Agriculture, Seaman's Mission chaplains, TNPA Security, 120 management level police officers, health promotions unit, community based organisations, Greytown Local Victim Empowerment Forum, Empangeni KZN Welfare Forum, Safer Cities Unit, and Umhlabuyalingana local municipality (Mozambique). An additional 327 people were trained in the province to continue training and hold presentations and increase awareness in their communities.</p>
	<p>There was on-going training for KZN HPPB members. This included, members being trained on the Justice Acts training tool 'Traffick Proof', two members attended a course on child pornography in Canada, training on Chapter 18 (relating to human trafficking) of the Children's Amendment Act 41 of 2007 which came into</p>

⁹⁰⁶ Discussed in the section on prosecution.

	operation on 1 April 2010. The US Embassy trained the law enforcement component of the task team on how to investigate human trafficking.
	A silent protest was held at the NPA stand at the Royal Show to raise awareness about human trafficking.
	Places of Safety / Holiday Clubs were organised for children during the World Cup.
	The Concerned Young People Organisation marched against human trafficking in Pietermaritzburg to the KwaZulu-Natal Legislature.
	Human Trafficking Week (3 – 10 October): awareness events.
	Colouring-in competition for primary schools (Grades 3 – 7).
	Roadblocks were conducted by the Department of Home Affairs on the North Coast of KZN – officials had banners on human trafficking and handed out pamphlets.
	Presentation by the Provincial Coordinator for Human Trafficking (Hawks) in KwaZulu-Natal at an Interpol and UNODC hosted conference in Malawi on addressing human trafficking.
	Members participated in 16 Days of Activism in a candle lighting ceremony and silent protest at Freedom Square in Pietermaritzburg.
	Newspaper articles and press releases on the task team and human trafficking formed part of the task team’s awareness raising campaign.
	A working relationship with the Independent Electoral Commission (IEC) by the Commission for Gender Equality was established. Human trafficking workshops in collaboration with the IEC for CBOs and NGOs in rural and peri-urban areas were conducted.
	3 members of the KZN HPPB Task Team were instructed by the National Office, Department of Justice and Constitutional Development to conduct training throughout South Africa’s other 8 provinces. Adv. Val Dafel (Lotan) from the KZN DPP Office trained stakeholders on a general background on human trafficking, legislation applicable to human trafficking, the KZN task team (its formation, memberships and action plan), and the human trafficking case which she had prosecuted. Asiya Khan (DOJ&CD KZN Regional Office) trained participants on Chapter 18 of the Children’s Act and the importance of intersectoral collaboration. Detective Warrant Officer Abby Dayanand (KZN Provincial Coordinator on human trafficking - SAPS) presented on the aspects of investigations.
2011	Presentations, using drama and workshops, at schools on human trafficking by task team member (Red Light) reached 9033 school children. A multilingual human trafficking DVD was shown at schools in Pinetown. Over 2000 adults and children were shown Red Light’s play on human trafficking, ‘The Game’. Presentations to schools by members of the task team in partnership with other role-players on child pornography, prostitution and human trafficking were conducted.
	Presentation by Red Light at a church event to 300 people.
	Presentations on human trafficking to tertiary institutions (Varsity College) by members of the task team.
	SAPS DVD on drugs and prostitution distributed to all the members of the task team.
	Training on prostitution was conducted for Estcourt LVEF members and Estcourt SAPS, Ladysmith SAPS, Howick SAPS and the N3 tollgate Incident Management. There was a training session on human trafficking for multidisciplinary role-players in Pietermaritzburg, training on child pornography for Newcastle LVEF, and training of task team’s law enforcement component on the Refugee Act.
	A member of the task team was trained in the UK on women’s issues (rape, domestic violence and human trafficking).
	2 members of the task team were trained on the Human Trafficking Bill regulations hosted by the Department of Social Development.
	HPPB facilitated training: Phoenix SAPS and King Shaka International Airport police station were trained on human trafficking. Educators in Mbewenhle were

<p>trained on human trafficking and pornography. Prosecutors were trained on sexual offences including human trafficking as part of the national prosecution task team in North West and Eastern Cape Provinces. Role-players at the newly established TCC in Port Shepstone were trained. TCC national training was conducted on gender-based violence. Multidisciplinary were role-players trained, in partnership with the Department of Community Safety and Development, on human trafficking and other topics in Paulpietersburg. Multidisciplinary role-players were trained on gender-based violence, including human trafficking and child pornography in Richards Bay. Training was conducted on gender-based violence, including human trafficking and child pornography in Durban. A border control training initiative on human trafficking to strengthen border control with DHA and SAPS was held in Jozini and Richards Bay.</p>
<p>Department of Education district coordinators (50 – 60 people) were trained to train RCL, SGBs and head of life orientation on human trafficking in order to educate children.</p>
<p>364 Youth Ambassadors from the Premiers Office were trained on human trafficking to enable them to educate communities.</p>
<p>Red Light driven initiative ‘Artists against Human Trafficking’ was launched.</p>
<p>A fundraising and awareness event on human trafficking held at the ICC was hosted by Red Light to raise money to enable them to present their play (The Game) to as many schools as possible across the province, especially in the rural areas.</p>
<p>The task team’s silent protest at the Royal Show has now become an annual event. The NPA showed their HPPB DVD at their stand. 200 Tsireledzani flyers and 200 human trafficking pamphlets printed by the task team were distributed to members of the public.</p>
<p>An awareness event was held in Edendale. This involved a presentation and 1200 pamphlets being distributed.</p>
<p>A Human Trafficking Open Forum was hosted by the eThekweni Municipality (Imagine Durban). Three speakers from the task team presented, Detective Warrant Officer Abby Dayanand (Provincial Coordinator Human Trafficking, Hawks – SAPS), Thora Mansfield (Executive Director – The Open Door Crisis Care Centre) and Natalie Ogden (Red Light).</p>
<p>Imagine Durban Event: 60 schools from rural areas were educated on human trafficking at the Durban Exhibition Centre.</p>
<p>There were a number of awareness events held. These included, Red Light’s prostitution ministry video and human trafficking awareness presentation to 300 people at the Rock Church, Red Light presentations to other church (50 people) and Women’s Day Event (200 people), Thora Mansfield of The Open Door Crisis Care Centre was the guest speaker at the LexisNexis Redlight Customer Event on human trafficking at the launch of the LexisNexis documentary ‘Redlight’ about child victims of trafficking. Thora Mansfield was part of LexisNexis’ panel discussion on human trafficking and spoke about survivors and the role of NGOs. Mansfield also was guest speaker on ‘Disabling the environment for sex trafficking by decreasing demand’ at the Combating Human Trafficking and Child Labour Conference in Johannesburg. Presentations were given by Adv. Coleman and Detective W/O Dayanand on human trafficking to multidisciplinary role-players in Durban, presentation to VW McCarthy and SAPS Community Policing Forum, as well as a presentation to NAPTOSA (60 teachers) on human trafficking.</p>
<p>A media campaign was developed through the media sub-committee. This resulted in a number of newspaper articles, press statements and radio interviews.</p>
<p>The sex workers protocol was drafted and finalised. It was signed off on by most of the members. The purpose of the protocol is to ensure that SAPS then be trained on the services offered by participating organisations so that SAPS would utilise them as alternatives to either arresting sex workers or merely transporting and dropping</p>

	them off in different areas. This protocol is still not in operation.
	Training manual and presentation developed on the dangers of the internet (internet safety) by Adv. Coleman in conjunction with the FPB as an awareness tool.
2012	The provincial task team action plan was revamped for 2012.
	A case of human trafficking was identified and reported by a member of the task team (Red Light) to SAPS of underage sex workers being held against their will at a Point Brothel. ⁹⁰⁷
	On-going awareness events at schools across the province.
	A presentation on human trafficking was given to a church group in KwaMashu Section D targeting concerned mothers and grandmothers.
	Presentations on human trafficking were given to educators and pupils at Department of Education Youth Camps.
	A presentation on the activities of the HPPB and the challenges of tackling human trafficking in KZN was given to municipal representatives and ward councillors in Pinetown and to the Premier's Office.
	Training of RCL, SGBs and Head of Life Orientation – one workshop has been scheduled thus far.
	Training of Youth Ambassadors from the Premier's Office.
	Training for key role-players in the province was conducted (30 sessions). New members of the task team were trained on human trafficking in order to train them as trainers.
	Members of the task team trained on the Internet Safety manual developed by Adv. Coleman. Members were given copies of the manual, together with a PowerPoint presentation on DVD and the film 'Trust' (provided by the FPB).
	Awareness events: The Royal Show – annual silent protest. Sustainable Living Exhibition – The Open Door Crisis Care Centre and the Salvation Army together with the Umgeni Community Empowerment Centre had stands at the exhibition creating awareness on human trafficking, internet safety, and gender-based violence.
	Adv. Val Melis presented at the Lost Coin Conference – a human trafficking conference in Port Elizabeth – on the prosecution of human trafficking.
	Kloof Harvest Church designed SH_T (Stop Human Trafficking) bracelets sold as a means of prevention awareness and fund raising activity.
	A media-subcommittee was established to implement media training and encourage responsible reporting on human trafficking.
	A workshop was held at the last meeting of the year to train members of the task team, particularly new members, on human trafficking and the adopted TIP Bill.

As indicated in the table above, education and awareness are the cornerstones of the task team's prevention activities. The expected outcome of prevention measures is to engender individuals and communities who are knowledgeable about human trafficking, as well as victims who are knowledgeable about their rights.⁹⁰⁸ As highlighted in the table above, considerable effort has been dedicated in terms of prevention ranging from awareness

⁹⁰⁷ Discussed later in the chapter.

⁹⁰⁸ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 11.

presentations, campaigns and events, training of, and workshops with, key role-players and the general public (particularly school children), and the development and distribution of information, education and communication material. By targeting schools across the province, the task team aims to create awareness amongst a segment of the population thought to be most at risk of being trafficking in South Africa – children. However, these constitute primary stage prevention strategies.⁹⁰⁹ The impact of such strategies, beyond basic awareness, in terms of preventing more people becoming victims of trafficking remains untested and unknown.⁹¹⁰

The highlighted prevention programmes were not provided with financial resources from the government or through the national task team⁹¹¹. Departmental members and civil society organisations had to source their own funding, sometimes through their general budgets or even from their own pockets, to realise this. In other incidences, funding was sourced from local businesses or through fund-raising events hosted by civil society organisations. A lack of funding means that prevention programmes and awareness campaigns are conducted by members on the task team on a purely voluntary basis. This also means that not all members of the task team are active in prevention activities. This has the consequence that prevention activities are currently limited by the number of people, and free time, available to conduct them. As a result, not all areas in KwaZulu-Natal (particularly remote, rural areas) have been visited by members of the task team conducting awareness campaigns and training.⁹¹² However, this does not mean that they are ignored by the task team. The extension of such prevention campaigns to such areas takes time. The number of awareness campaigns and areas reached are monitored throughout the year. New targets are made at the beginning of each year, after consultation with members of the task team, when the annual provincial action plan is drafted. Moreover, by conducting ‘train-the-trainers’ workshops throughout the province, it is hoped that those individuals trained can in turn train their own departments and organisations – and ultimately assist in their local communities in raising awareness about human trafficking and other dangers.

The provincial task team has achieved much in terms of awareness prevention; this is clearly indicated in their awareness and prevention campaigns. However, it is difficult to measure their success in this regard as no impact assessments have been carried out as to the efficacy of such prevention strategies. While the efforts and progress of the task team are monitored in terms of the quarterly and annual reports, no real evaluation of the prevention strategies has

⁹⁰⁹ Discussed in more detail later in this section.

⁹¹⁰ Participant Observation: KZN Task Team (2009 – 2012).

⁹¹¹ Apart from the Tsireledzani pamphlets that are distributed at awareness events, and posters and banners. Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹¹² Participant Observation: KZN HPPB Task Team (2009 – 2012).

taken place to date.⁹¹³ The reason for this is that this would be a herculean task to revisit (or even gain access to) the schools that they presented at and assess knowledge and understanding of the target group. This would entail further expenses for a task team without resources. Many schools do not have access to email, especially those in the rural areas, thus making it difficult to employ modern technology in this regard. It is also unclear whether schools would be willing to participate in such an endeavour.⁹¹⁴ Moreover, unless a survey is conducted with the general public, it will be difficult to assess the impact of human trafficking public education. This would also entail significant resources which the task team does not have access to. However, these are important steps that need to be taken in the near future so as to ensure that prevention strategies are effective and to avoid any adverse effects, identify gaps in knowledge and understanding, and adjust awareness and education materials, presentations and training accordingly. Once more, it is hoped that such considerations will be factored into the national policy framework and adequate budgets will be allocated for this at both national and provincial levels.

While these are important factors that need to be addressed in order to take prevention strategies to the next level, globally the lack of evaluation of such prevention campaigns appears to be the norm. As a report by the Group of Experts on Trafficking in Human Beings of the European Commission notes, too many resources have been spent on producing awareness-raising materials which have had little effect in practice as their focus has been ‘predominantly on the symptoms of trafficking as opposed to addressing the root causes of the problem... Moreover, they failed in addressing people to claim rights and make informed decisions, and in providing concrete alternative course of action to minimize risks. In addition, there has been limited effort to systematically evaluate the actual impact of prevention programs and in particular or awareness raising programmes in producing changes in behaviour and attitudes and reducing the likelihood of THB.’⁹¹⁵

The provincial task team uses a variety of educational and awareness materials to educate the public about human trafficking.⁹¹⁶ This ranges from the task team’s own produced awareness CD and DVD to the short film, *Dear Sister*⁹¹⁷, to awareness manuals (on human trafficking

⁹¹³ Ibid.

⁹¹⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹¹⁵ Group of Experts on Trafficking in Human Beings of the European Commission, *Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons*, Opinion No 7/2010: 11, available at <http://lastradainternational.org/lisidocs/EU%20experts%20group%20Opinion%20No%207.pdf> – last accessed September 2012.

⁹¹⁶ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹¹⁷ Media Village Productions, *Dear Sister*, 2011.

and internet safety). This locally produced short film reproduces the human trafficking discourse through its narrative of a young girl from a township in search of a better life (and employment opportunities) that can only be found in the big city. A friend of her brother's (male and of a different race than her) offers this brighter future for the young girl. Her brother readily sends his sister off to Cape Town unaware that his friend is a recruiter and will traffic his sister into a life of sexual servitude and exploitation. The film follows the brother in the search for his sister and her fate which leads him into the murky world of human trafficking. The narrative that the film conveys reinforces a number of aspects of the dominant discourse. As Huijismans notes '[w]hat makes narratives interesting is the way various and varied events are constructed into a standard storyline'⁹¹⁸. The intention of the short film is to raise awareness that human trafficking can happen to anyone. However, this is obfuscated through the employment of the intertwined narratives of poverty, gender and migration. We are presented with a dysfunctional family (in this instance two orphans) in which the older brother is burdened with role of sole bread winner and head of the household (and ultimately responsible for his younger sister's welfare). The orphaned children/young adults are used to great effect as a symbol of many of the socio-economic issues facing the majority of South Africans today caused by the legacy of Apartheid which entrenched a system of migration and social dislocation based on race. It suggests that dysfunctional, unstable and poor households are a causal factor in the problem of human trafficking by increasing vulnerability. Moreover, the narrative of the feminisation of migration (rural to urban) is also intertwined into this storyline. The myth of the city, which is foregrounded in this narrative, offers greater opportunities and socio-economic mobility. However, this can only be purveyed by 'the other'. In the film's narrative this is an outsider – a young man, of a different race, who comes from the big city and befriends the girl's brother. This suggests that the element of danger is from the outside. The recruiter is also used as a symbol of moral corruption to contrast the values of the family and community in which this story unfolds. Migration is also presented as a threat. By moving away from the safety of the home / community, the young woman puts herself in danger of being trafficked. This suggests that the problem of human trafficking is an individualised one and not a complex societal or structural problem. In addition, patriarchy and gender stereotypes are reinforced. Men are portrayed as figures with power. The brother is the one who allows or gives permission for his sister to migrate to Cape Town. The younger sister is trafficked, sexually exploited and held in captivity by men, and later is rescued by men. It successfully reframes the problem of human trafficking as being one of 'girls' and the exploitation of their sexuality. The narrative

⁹¹⁸ Roy Huijismans, 'The Theatre of Human Trafficking: A Global Discourse on Lao Stages', *International Journal of Social Quality*, 1(2), Winter (2011): 78.

thus depicts sex work (forced prostitution) as the endpoint of human trafficking, and reproduces many of the key preoccupations and conceptualisations of the dominant discourse.

The task team primarily use Justice Acts' presenter's manual, *Traffick Proof*⁹¹⁹, to train the trainers (i.e. those who will present on human trafficking and train others to do so) and to conduct presentations to a variety of audiences and scenarios.⁹²⁰ It is a comprehensive, well-conceived and user-friendly manual that has been developed by an NGO based in Cape Town and one of the most widely used manuals on human trafficking throughout South Africa. It is primarily aimed at high school children and adults and serves to educate them on what human trafficking is, the types of scenarios⁹²¹ that could result in a person being trafficked. It advocates that people should educate their communities on human trafficking in order to 'traffick proof' them, as well as tips on protection (what to look out for, avoid and keep yourself safe), numbers to call where it is suspected that someone has been trafficked, or if you yourself are trafficked, as well as contact details of a range of other service providers. It acknowledges that friends or family members can be the ones who sell a person into slavery and shies away from 'stereotypical images of men lurking in shadows'⁹²² or criminal masterminds (kingpins). In this sense, it encourages people to be more vigilant in their own communities, particularly in the context of domestic trafficking. It also provides information on how people might protect themselves and who to turn to for help.

A faith based organisation, Red Light Anti-Human Trafficking Initiative (Red Light), which has been a member of the task team since 2010, developed and financed a play on human trafficking that was performed to a number of schools across the province. Red Light educated approximately 9033 school children and their teachers on human trafficking employing this method in 2011.⁹²³ A collaboration between the Durban University of Technology, professional artists and the Umlazi-based Umsindo community group students

⁹¹⁹ Tonya Stanfield, *Traffick Proof*, Presenter's Manual, Justice Acts (Alliance of Christians against Trafficking).

⁹²⁰ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹²¹ The manual includes six common human trafficking scenarios: (i) sex trafficking of young women, (ii) child labour trafficking, (iii) trafficking of soccer players, (iv) trafficking of those taking jobs abroad, (v) trafficking of refugees, (vi) teen girls romanced by traffickers, and a list of other scenarios. The six common trafficking scenarios each include an illustrative story of how that person was 'tricked, transported, trapped and used'.

⁹²² UNICEF, *Action to prevent child trafficking in South Eastern Europe: A preliminary assessment*, (2006) cited in Group of Experts on Trafficking in Human Beings of the European Commission, *Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons*, Opinion No 7/2010: 11, available at <http://lastradainternational.org/lisidocs/EU%20experts%20group%20Opinion%20No%207.pdf> – last accessed September 2012.

⁹²³ Participant Observation: KZN HPPB Task Team (2011).

culminated in an award-winning production, 'To be like this rock', a play aimed at young adults to generate awareness about human trafficking. The DVD of the production was presented to the task team in 2011.⁹²⁴

Other task team members are equally committed to raising awareness and educating members of the public and government departments (key role-players) on the risks of trafficking, particularly in various strategic areas in the province, using *Traffick Proof* and the task team's CD/DVD. This is attested to in the significant number of people trained and educated on human trafficking throughout the province.⁹²⁵ The task team is currently assessing their training materials and resources in order to determine whether new or further material needs to be developed by the team that addresses specific target audiences.⁹²⁶ Members of the task team have also issued press releases and have done radio interviews on behalf of the task team to raise awareness about human trafficking.⁹²⁷ Members have also been involved in a number of public awareness events, including participating in a float parade, an annual silent protest at the Royal Show, and manning stands at the Durban Sustainable Living Exhibition.⁹²⁸

These efforts in the field of the task team's prevention activities also highlight the importance that partnerships play in working towards the same goal, as well as the dedication of its proactive members. However, as one member of the task team remarked, *'Awareness is just saying it's happening out there and becoming more aware. Education is getting to grips with it. So the structure needs to be different. We can't have one shoe fits everybody. You know there's got to be something more tangible in terms of the education.'*⁹²⁹ This statement is indicative that members of the prevention side of the task team are both reflective and dynamic in their approach to prevention. It also demonstrates that the task team is organically evolving from the primary stage of prevention that involves the development of general awareness about the phenomenon 'to stimulate a wider public discourse on the risks and issues associated with trafficking'⁹³⁰ to secondary⁹³¹ and tertiary⁹³² levels of prevention

⁹²⁴ Ibid.

⁹²⁵ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹²⁶ Participant Observation: KZN HPPB Task Team (2012).

⁹²⁷ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹²⁸ Ibid.

⁹²⁹ Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

⁹³⁰ Group of Experts on Trafficking in Human Beings of the European Commission, *Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons*, Opinion No 7/2010: 15, available at <http://lastradainternational.org/lisidocs/EU%20experts%20group%20Opinion%20No%207.pdf> – last accessed September 2012.

⁹³¹ Secondary stage prevention includes skills dissemination in order to empower at risk individuals and groups, thereby seeking to reduce their vulnerability to being trafficked.

strategies, as advocated by the European Commission's Group of Experts on Trafficking in Human Beings.

The issue of tertiary stage prevention has been noted by some members in the task team, particularly the NGO Red Light, who in their work of trying to assist sex workers to exit the industry have noticed that there are no facilities, like transitional housing, to support their reintegration into society and prevent them from returning to a life of prostitution.⁹³³ Red Light is looking to address this significant gap and provide a place where victims of trafficking and vulnerable sex workers are provided with a longer term support (through continued counselling, detox programmes, skills development, and assistance in finding gainful employment).⁹³⁴ Similarly, with victims of trafficking, shelters may only house them for 3 to 6 months (during which time they receive counselling, health care and skills training), but thereafter they are expected to be able to return to their families and communities – which is not always a desirable or appropriate course of action. Moreover, some victims cannot return home to their families or communities for fear of the stigma attached to their experiences. This often leaves a person vulnerable to being re-trafficked where there is no further support or indeed opportunities for them.⁹³⁵ This needs to be mitigated at all costs in South Africa and is an important prevention strategy that needs to be addressed and implemented. It remains to be seen to what extent secondary and tertiary levels of the task team's prevention strategy will be realised – in the absence of funding, dedicated budgets, and policy directives that would allow for this.

3.1 Recommendations

While the provincial task team faces severe financial and resource constraints its members continue to show their passion and dedication for preventing and combating trafficking. I make the following recommendations in the hope that once legislation has been enacted, and the national policy framework and departmental guidelines and directives are put into place, that counter-trafficking activities will be costed and budgeted for. The provincial task team plays a very important role in coordinating the actions of the various role-players and helps

⁹³² Tertiary stage prevention intersects with protection programmes by focusing on how to prevent re-trafficking of those who have been extricated from situations of exploitation.

⁹³³ Participant Observation: KZN HPPB Task Team (2012). Personal Observation: Informal discussion with Natalie Ogden, a member of Red Light (2012).

⁹³⁴ Personal Observation: Informal discussion with Natalie Ogden, a member of Red Light (2012).

⁹³⁵ There have been documented instances internationally where trafficked persons go back to their traffickers and to the lives they had before because they saw no viable alternative. There have been documented instances internationally where trafficked persons go back to their traffickers and to the lives they had before because they saw no viable alternative.

ensure that the provincial action plan is implemented. In terms of prevention, it is suggested that the task team endeavour to emulate international best practice:

- Evaluate its prevention strategy through impact assessments (i.e. evaluate the impact of prevention programmes and assess any behavioural or attitudinal changes in the target populations).
- Effective prevention methods should be both short-term (awareness-raising) and long-term initiatives (addressing root causes of human trafficking), and should be both reactive and proactive.
- Craft prevention programmes aimed at changing behaviours and attitudes (social tolerance) that facilitate exploitation and abuse⁹³⁶.
- Develop the research capacity of the task team.
- Prevention strategies should be informed through targeted research, including situational analyses (throughout the province), victim profiling and risk assessments (through interviews with trafficked victims in order to also better understand: (i) what unique set of factors rendered that person vulnerable to being trafficked, (ii) how trafficking is experienced by those exploited, and (iii) the involvement of the exploiters and other intermediaries who profit from trafficking⁹³⁷), an analysis of demand (that assesses what enables this type of exploitation, employer demand, consumer demand and third parties knowingly involved in the process of trafficking)⁹³⁸, and a critical assessment of factors (political, economic, social, cultural, legal or policy) that may create or sustain an environment that is conducive to trafficking⁹³⁹.
- Devise programmes, in conjunction with the relevant government departments (at local, provincial and national level), that empower vulnerable groups or segments of the population through poverty reduction and skills development, addressing the structural violence that pervades South African society, the promotion and protection of human rights (of citizens and non-citizens), and offer viable alternatives⁹⁴⁰.

⁹³⁶ Group of Experts on Trafficking in Human Beings of the European Commission, *Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons*, Opinion No 7/2010: 13, available at <http://lastradainternational.org/lsidocs/EU%20experts%20group%20Opinion%20No%207.pdf> – last accessed September 2012.

⁹³⁷ Ibid.

⁹³⁸ Elaine Pearson, *The Mekong Challenge. Human Trafficking: Redefining Demand. Destination factors in the trafficking of children and young women in the Mekong sub-region*, ILO: Bangkok, 2005.

⁹³⁹ Group of Experts on Trafficking in Human Beings of the European Commission, *Proposal for a European Strategy and Priority Actions on combating and preventing trafficking in human beings (THB) and protecting the rights of trafficked and exploited persons*, Opinion No 7/2010: 14, available at <http://lastradainternational.org/lsidocs/EU%20experts%20group%20Opinion%20No%207.pdf> – last accessed September 2012.

⁹⁴⁰ Attempts to prevent human trafficking will fail where there are no viable alternatives offered or courses of action that minimise risk. Patriarchal societies with marked structural violence and socio-economic inequalities, as is the case in South Africa, drive individuals into situations where they are

- Develop prevention strategies and policies, supported by the relevant government departments (and allocated funding), that realises the tertiary stage of prevention strategies.

4.0 Protection

Another key function of the task team, in the form of the 4P model, is that of protection. The strategic goal of the task team's protection strategy is to provide holistic services to victims (of human trafficking, pornography, prostitution and brothels) that will empower them and turn them into survivors. It has been recognised that victims of such crimes need access to comprehensive and multidisciplinary services which are to be provided by hospitals and clinics (especially the Thuthuzela Care Centres), shelters and other psycho-social service providers (such as social workers, psychologists and counsellors). To coordinate responses, and expeditiously extricate victims from situations of exploitation and abuse, provide them with necessary health, psychological care and places of safety (i.e. shelters), a rapid response team is being assembled.⁹⁴¹ It is hoped that this will be realised by the end of 2012. A rapid response team represents an intersection of the protection, prosecution and partnership sides of the task team's model. The expected outcomes of this strategy are to: (i) eradicate secondary victimisation, (ii) increase victims' / survivors' state of health, (iii) restore the dignity of victims and ensure justice, and (iv) reintegrate victims with their families.⁹⁴² The cornerstone of any protection strategy is and should be that the human rights of victims of trafficking are protected – and not infringed in any way after they have been extricated from situations of appalling exploitation where their human rights have been systematically denied.

South Africa ranks poorly in terms of protection according to Cho, Dreher and Neumayer's 2010 3P anti-trafficking index.⁹⁴³ South Africa is ranked 90th out of 183 countries which appear on this index. South Africa scored only 2 out of 5⁹⁴⁴ in its fulfilment of its obligations in terms of protection. This finding is supported by the perceived poor state of service provision and support by the Department of Social Development⁹⁴⁵ to victims of crime, the

prepared to take great(er) risks. Preventing trafficking is primarily a long-term endeavour whereby social, cultural, economic, legal and political factors need to be addressed in order to produce an environment that is not conducive to exploitation, abuse and trafficking. Moreover, such prevention strategies also need to consider migrants (both legal and undocumented) in order to protect their human rights.

⁹⁴¹ Participant Observation: KZN HPPB Task Team (2012).

⁹⁴² National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 11.

⁹⁴³ Available at, <http://www.human-trafficking-research.org/> – last accessed September 2012.

⁹⁴⁴ Sub-indices of three policy dimensions: Prosecution, Prevention, Protection: score 1 (worst) 5 (best), Overall index: score 3 (worst) – 15 (best). South Africa scored 10 out of 15.

⁹⁴⁵ Discussed in the previous chapter.

lack of shelters and long-term care facilities, and the general lack of capacity and accompanying diminished financial support. This is a point of concern, as the protection policy dimension and strategy should be one of the strongest measurements when assessing counter-trafficking initiatives and their measurable outcomes.

In the case of KwaZulu-Natal protection is largely the remit of NGOs and other social development organisations. The Department of Social Development provides the institutional structure within which these services take place, and acts more as an oversight, accreditation and limited funding body than one that is actively engaged in providing psycho-social services to the community. It is notoriously understaffed in terms of social workers⁹⁴⁶, who are invaluable and direly needed in a country which has exceptionally high levels of child abuse and neglect, rape, domestic violence and other social problems. As a result, many of its functions (i.e. roles and responsibilities) have been devolved to social development organisations. The key role-players in protection on the provincial task team include: Department of Social Development, Department of Health, law enforcement (including witness protection), NPA, NGOs and other service providers (such as interpreters).⁹⁴⁷ Protection activities and strategies to minimise trauma and secondary victimisation begin with the extrication of victims from trafficking situations.

Currently, most victims of human trafficking have been extricated through raids on brothels and are promptly taken to hospitals or clinics for medical treatment and shelters and/or witness protection safe houses.⁹⁴⁸ They are provided with psycho-social care and support at health care facilities and shelters. A lack of a rapid response team and protocol means that in practice there have been issues with reporting of suspected incidences of human trafficking by NGOs that have resulted in a delayed response to investigating and extricating victims.⁹⁴⁹ The real issues set in when one looks at the provision of psycho-social services (particularly the lack of long term provisions for rehabilitation, recovery and reintegration), witness protection, the manner in which referrals are made (incidences of victims of trafficking being placed in non-accredited and non-registered shelters), the failure to distinguish child victims of trafficking from other children who are placed by the Department of Social Development in places of safety and children's homes, secondary trauma and victimisation (including the way

⁹⁴⁶ This is not to say that there are no dedicated and hard-working departmental social workers. Rather the institutional structure within which they operate and the realities they face on the ground render these over-burdened individuals ineffectual at times. Institutional constraints, poor management and lack of vision and planning are what have caused a marked deterioration in the services provided by the Department of Social Development over the past decade.

⁹⁴⁷ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹⁴⁸ Ibid.

⁹⁴⁹ This is discussed in more detail in the section on prosecution (and investigation).

human trafficking incidences and identification of victims is reported), and the naïve belief that victims should necessarily be reunited with their families and communities.

Many victims of human trafficking come from broken homes or abusive households. It is often these situations of abuse and violence that some trafficked persons are seeking to free themselves from. In such circumstances it would be unadvisable to return a trafficked person to their family. Others may simply not wish to return. In other instances, risk of stigmatisation and thus re-victimisation of the trafficked person is another factor why a trafficked person should not be reunited or reintegrated with their family or community. In many instances, human trafficking is associated with prostitution / sex work and thus this label is cast on the trafficked person (whether or not true) and leads to victimisation (and even shunning) of or by relatives and the community. Another sad reality is that often traffickers or those who facilitated them being moved into a trafficking situation are known by the victims. They could be family, friends or members of their community. Reuniting or reintegrating a trafficked person in such an instance would not be in the trafficked person's best interests and the risk posed to their safety and further harm or being re-trafficked rises exponentially. Trafficked persons should be assessed on a case-by-case basis as to what their specific needs and wishes are, and whether it is suitable for them to be reunited and reintegrated with their family or community. This is provided for to a certain extent by the adopted TIP Bill⁹⁵⁰.

The cornerstone of protective measures and strategies is to ultimately protect and empower the victim(s). A raid that has reached the public domain will be used as an illustrative case. On 16 February 2012 Inn Town Holiday Lodge in the Point Area, Durban was raided in a joint operation by the police led by the Organised Crime Unit (and other units, such as the Criminal Record Centre, Family Violence and Child Protection (FCS), Sexual Offences Unit, Asset Forfeiture Unit and Metro police).⁹⁵¹ The raid resulted in 16 young women and girls being rescued from a brothel where they had been forced into prostitution. The youngest was 12 years old and pregnant. The Department of Social Development assisted in securing protection for the victims at various places of safety after the raid had been completed. However, while this was perhaps the biggest and most successful raid on suspected human trafficking in KwaZulu-Natal to date, not all aspects of what happened before and after the raid can be deemed to have been in the interests of protecting the victims or preventing secondary victimisation and further trauma. The fall-out of these events⁹⁵² has been a sharp

⁹⁵⁰ Discussed in the previous chapter.

⁹⁵¹ Tanya Waterworth, 'Raid rescues 16 under-age girls in Point', *Independent on Saturday*, 18 February 2012.

⁹⁵² This resulted in strained relationships between law enforcement and NGOs for a short period of time.

learning curve for the task team who have taken steps to ensure that such incidences are avoided in the future and that victims are protected.⁹⁵³

The background to the raid started in November 2011 when Red Light (an active member of the prevention and protection side of the task team) reported to the task team that they had come across information whilst ministering to sex workers in the Durban Point area that indicated that young women and girls were being held against their will in a brothel and being forced to prostitute themselves. They requested immediate assistance (i.e. that a raid should be conducted) as there were minors involved. From Red Light's perspective nothing appeared to happen resulting in frustration by the NGO who believed that time was of the essence. However, as the Provincial Coordinator of Human Trafficking in KwaZulu-Natal pointed out,

People must understand that human trafficking cases take a lot of work. This is what a lot of people on the task team don't understand. It's easy for people to say, why are the police taking so long? Where there are kids involved we just go straight in and do the rescue and then the investigation. Where there aren't any kids involved we do the investigation, rescue attempt then charges. We try to keep it in that fashion – simply because we would like to see successes in court. We can spend the whole day doing human trafficking cases but it's pointless if you won't be getting a conviction in court and you are wasting everyone else's time.⁹⁵⁴

Proper criminal procedure has to be followed by the investigating authorities and the manner in how raids and arrests are conducted. This helps explain the delay in the actual operation. However, the experiences of the NGO involved in reporting the case bear testimony to a lack of a reporting protocol for NGOs where information or evidence has been acquired to suggest that there is a case of human trafficking, and in this instance child trafficking as well. According to a member of Red Light it was the lack of a clear reporting structure, miscommunication and a lack of communication, blurred roles and responsibilities that caused many of the delays⁹⁵⁵, and which ultimately caused friction between some of the role-players. As Red Light recalls,

So what we were told was report it directly to Abby because he is the head of human trafficking in Durban. So what would happen is we would report it to him, whether or not anything happened. And what happened in this case, in recent weeks, is that witnesses came forward, Red Light was asked to take the witnesses to the NPA. We did so. Which firstly was not our job to do... We got a document opened by the NPA, we were explained to us and the witnesses that a case would be opened... and they don't need to testify again because the advocate that signed it, marked it as a human

⁹⁵³ Participant Observation: KZN HPPB Task Team (2012).

⁹⁵⁴ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

⁹⁵⁵ Personal Observation: Interview with a member of Red Light (2012).

trafficking case... This happened in November [2011]. In December, the girls had still not been contacted by anyone... The case was kind of being tossed and turned between people from my understanding. I'm not quite sure exactly what happened.

Apparently they already knew about this brothel in question. And I had sent emails to the relevant people, saying the girls are being beaten up, the pimps are stealing their clothes, they've got black eyes – we need to get them into witness protection... Basically to cut a long story short, nothing happened over December... [or] January... So here's (sic) these girls phoning us... they've got our numbers, so that means that the pimps can get our numbers... And these girls are phoning and saying "Please come help me I'm bleeding, my money is gone".

... it's already been reported, so do you report it again? Only to find out a case had never actually been opened, because they said "No, they needed another statement." In the span of November to February it just takes one phone call to say we need the witnesses in again. Which never happened.

... There were underage minors in this case, 12 years olds. Apparently an inspector had been assigned to it and he just didn't have the time or was just very busy. I don't actually know and I don't actually care because there are minors involved. There's proof that this is human trafficking. Girls were getting beaten up. Anyway, in February they started doing it again and they couldn't get hold of the girls. And we explained to them... You were meant to call them in November and now again it's Red Light's problem, it's the NGOs problem. And we get emails telling us to back off... So it's like this conflict between you're not allowed to get involved because of law but we can't work without you. And yet we're not going to send you the procedure and then we're going to moan at you if you don't follow procedure...

So eventually we'd get the number of the girl and they would say "No, you've got to bring them in." It's not our job to bring these girls in... But we do it because we know we cannot wait another two months or even another day. So eventually we got the witnesses in again. The warrant officer that was assigned the case took down the details, took down statements, and then promised to get them to one of the safety houses the next day because he realised the magnitude. And people got into trouble.⁹⁵⁶

This experience demonstrates that there needs to be more open channels of communication, not to mention clear roles and responsibilities, between NGOs on the ground, law enforcement and the prosecutorial side so as to ensure that such problems involving responsibility and implementation are avoided in future. It boils down to clear structures, roles and responsibilities and ultimately mandates being delineated and put into practice. Reporting protocols are needed for NGOs as to what steps they should take when reporting a case and who to contact. This also entails that there should be some form of feedback from investigating officers to confirm that a case has been opened and the matter is being investigated to mitigate the perception that 'nothing is getting done.'

Organisations who are not part of law enforcement are often uninformed as to the numerous stages that an enquiry needs to go through before it is determined that it is indeed a case of

⁹⁵⁶ Personal Observation: Interview with a member of Red Light (2012).

human trafficking that warrants investigation and appropriate action, whereby the prosecutorial side comes on board.⁹⁵⁷ However, as another NGO pointed out, '*[t]he reporting structure presented to us... was very vague. And things seem to have been lost in translation. Even though there is a structure in place it is not functioning as it should*'⁹⁵⁸. This indicates that task team members should not only be familiarised with reporting steps and investigative procedures in relation to human trafficking, but the structures in place need to properly clarified and enforced. Another issue that emerged is that witnesses (sex workers) were willing to give a statement to the police and wished to open a case, however they did not want to report to the Point police as they alleged that police at that station were 'collecting taxes' from the sex workers.⁹⁵⁹ This further complicated the issue for the NGO involved in getting the sex workers to report this, as they were not sure who was involved or who could be trusted in the local area. This relates to the challenge that corruption and issues of integrity play in effectively combating human trafficking in South Africa, and globally.⁹⁶⁰

Another breach of victim protection, and confidentiality, was that the media were informed of the raid which resulted in them being on the scene and in a number of incidences of irresponsible reporting. The question that echoed through the task team was who had leaked information that there was going to be a raid.⁹⁶¹ Leaked information can all too readily be passed on to suspected traffickers which can jeopardise the case and result in the victims being removed from a brothel and transported elsewhere. Moreover, this can create trust issues and questions of integrity between role-players. At the bimonthly main task team meeting in March 2012 the issue of media presence at the raid, the publication of what appeared to be official police photographs and members of the task team, who did not know all the facts of the case, commenting on the case in the media were discussed at length.⁹⁶² As one task team member ruminated, '*This tells us that someone in the police is informing people. And if they can get the press there, they can get anybody there. And why are they doing that? Distracting the public, while something else is going on behind the scenes. But also the police needed some positive press.*'⁹⁶³

⁹⁵⁷ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

⁹⁵⁸ Personal Observation: Interview with an advocacy manager for Women and Men against Child Abuse (2012).

⁹⁵⁹ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012); KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team, *Quarterly Report January to March 2012*, 2012.

⁹⁶⁰ The challenge posed by corruption is discussed in the section on prosecution.

⁹⁶¹ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012).

⁹⁶² Ibid.

⁹⁶³ Personal Observation: Interview with Women and Men against Child Abuse (2012).

It was agreed upon that an investigation would be undertaken to determine who informed the press about the raid.⁹⁶⁴ Members of the NPA lectured the task team on the risks posed by commenting on a case that is *sub judice* as any deviation in public information (i.e. the public record) could result in an acquittal and the victims being ‘thrown out onto the street’⁹⁶⁵. Moreover, other sensitive information could be unwittingly given out by individuals commenting on the merits of the case – such as where the victims were being housed or their identities.

Irresponsible reporting leads to sensationalism and moral panic and runs the danger of becoming a media hype which can further traumatise victims and lead to re-victimisation. This was witnessed in a human trafficking article which appeared in Move! Magazine in March 2012. Not only did the article identify the place of safety where six of the girls who had been rescued had been housed, but also published photos of them. To add insult to injury, the girls discovered this for themselves when one of them purchased the magazine.⁹⁶⁶ Not only were the girls’ identities exposed to a readership of 144 077 per issue⁹⁶⁷, but they were recognised and approached by people to ply their trade.⁹⁶⁸ This has serious ramifications. The girls were effectively re-victimised, suffering further trauma still and their security and that of the place of safety or shelter was breached. Two of the girls were so traumatised that they wanted to commit suicide. They all stated that they were now labelled forever and could not return to their communities because their families would be victimised.⁹⁶⁹ Such events ultimately fail the victims as their rights are not protected and they suffer secondary trauma and re-victimisation.

As a result of this incident, the task team underscored the need for an effective media sub-committee and media training that would control and monitor press releases so as to ensure that in the future organisation and departmental media representatives sent out joint press releases and that there were no contradictory statements that might jeopardise the case in court or harm the victim.⁹⁷⁰ In addition, media reporting on human trafficking cases could result in some suspects going into hiding and evading justice. It was agreed to by members of the task team who were present at the meeting that members needed to sign a confidentiality and non-disclosure agreement in order to preclude such incidents from occurring in the

⁹⁶⁴ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012).

⁹⁶⁵ Ibid.

⁹⁶⁶ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012).

⁹⁶⁷ <http://www.mediaupdate.co.za/?idstory=46913> – last accessed September 2012.

⁹⁶⁸ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012).

⁹⁶⁹ Ibid.

⁹⁷⁰ Ibid.

future.⁹⁷¹ Following these events, the task team has decided to actively seek out media houses and educate them on responsible reporting on human trafficking matters. A media training was conducted with about 40 journalists and editors from various media houses educating them on what should and should not be reported in human trafficking cases.⁹⁷² Moreover, clause 23 of the TIP Bill prohibits the disclosure of a victim's identity, their location, or any information which could jeopardise the investigation or prosecution of a case.

Nine of the victims and/or witnesses absconded from places of safety due to media exposure, as well as a lack of security and resources at some of the places of safety⁹⁷³, and out of fear. However, the organisation that was instrumental in assisting these girls, Red Light, has a deeper insight into the reasons why some of the witnesses who reported the case absconded.

So now the girls were taken to witness protection and left there. The warrant officer told the girls we'll come in so many days. He wouldn't come. The girls would get frustrated... [and contact me]. I contacted the safety house... and was told, "They're actually not allowed to have phones – how are they getting hold of you?" ... So we caused a bit of a stir getting involved again...

Then the girls ran away. They would send "please call mes" and we would send them to the warrant officer and he wouldn't be able to get hold of them. In my opinion it was because he only called three days later... They were out of the safety house for about two weeks before anything really got happening. Eventually I sent an email saying I'm not allowed to get involved – what do you want me to do?

Basically to cut a long story short, I got hold of the girls and I got hold of the warrant officer... [who said] he would meet them at this location. An hour later the girls would phone me and say, "Where the hell is he?" And I would phone the warrant officer and he would say, no, they weren't there so he left. So I would be like why didn't you phone them and he would be like "No I get too many calls a day." I don't care if you get too many calls a day – phone the frigging girls and meet them.

So from my understanding they've now been collected in March [2012] and they're planning on putting them in witness protection. But the other safety house won't take them back as they have breached every single protocol... We got a case reported in November. The witnesses which we initially started with that were the case forward bringers were only helped by March. Are we helping? I'm not sure.⁹⁷⁴

This has reinforced the perception among some of the task team members from both the civil society sector and prosecutorial sector that the police do not prioritise human trafficking

⁹⁷¹ Ibid.

⁹⁷² Participant Observation: KZN HPPB Task Team Meeting (30 May 2012).

⁹⁷³ KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team, *Quarterly Report January to March 2012*, 2012.

⁹⁷⁴ Personal Observation: Interview with a member of Red Light (2012).

cases.⁹⁷⁵ Law enforcement has been seen as the weakest link. Since the FIFA World Cup 2010, representatives from the various units of the police have steadily declined and it has become increasingly difficult for the task team to secure level agreements (in the form of protocols). In recent years, numerous meetings had been held by the leadership of the task team (NPA) and their superiors in an attempt to get SAPS back on board – particularly in terms of signing and implementing protocols on human trafficking and sex workers, and in particular a rapid response protocol.⁹⁷⁶ One of the reasons cited for the slow progress was that SAPS was undergoing major restructuring. Another is that SAPS were developing their own national instructions that were aligned to the TIP Bill, in anticipation of its enactment in the first quarter of 2013.⁹⁷⁷ The task team will revise and align their human trafficking protocol accordingly, so that it is in line with SAPS TIP instructions⁹⁷⁸, as well as Department of Social Development guidelines and NPA directives. This will hopefully ensure that collaborative activities and operations will be more coordinated and effective as a result.

When considering the service providers to victims of trafficking, places of safety, shelters, and also safe houses (witness protection) each provide different levels of care, medical and psychological attention, as well as rehabilitative programmes. The case in point also highlighted weaknesses in the Department of Social Development's referral system. The NPA reported that due to a lack of knowledge of procedure it took weeks to place minors who had been rescued, because one step⁹⁷⁹ had not been followed.⁹⁸⁰ They noted that this had been a hard lesson to learn and saw it as a 'wake-up call'⁹⁸¹. If a rapid response team had already been established this would not have become an issue as the Department of Social Development would be a member, and issues of placement of adults and minors would fall under their remit. Such a reoccurrence will hopefully be avoided in the future. However, more worryingly, is that '*there's very little being done in KwaZulu-Natal in terms of children*'⁹⁸². The relegation of children (minors) being a priority, and the lack of vetting or following correct procedure, resulted in some of the minors being placed in non-registered shelters.

We don't have safety houses that deal with human trafficking victims that can take in children. Open Door which is one of the main ones that take in victims, can't take in

⁹⁷⁵ Personal Observation: Informal discussions with a number of members of the KZN HBBP Task Team (March – May 2012).

⁹⁷⁶ Participant Observation: KZN HPPB Task Team (2011 – 2012).

⁹⁷⁷ Participant Observation: KZN HPPB Task Team Meeting – Prevention Sub-Committee (August 2012).

⁹⁷⁸ Participant Observation: KZN HPPB Task Team Meeting (26 September 2012).

⁹⁷⁹ Informing the Department of Social Development and filling in the requisite paperwork.

⁹⁸⁰ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012).

⁹⁸¹ Ibid.

⁹⁸² Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

children. And then you've got a seventeen year old that is a minor who is pregnant – where do you take her and her [unborn] child? So she's sitting there at the police station for however long it takes... The secondary trauma... it's not a place for a pregnant person, let alone a minor, never mind her children.

One of the witnesses who had a child... couldn't [be placed] at one of the shelters. She eventually didn't come because she's not bringing her child. So I think she will just stay where she is, have the pimps know that they're watching her.⁹⁸³

The lack of facilities that cater for child victims of human trafficking, or young adults with children, is a worrying gap in protective measures that needs to be addressed and prioritised by the Department of Social Development. In terms of protection, the responsibility ultimately lies with them to ensure that victims receive appropriate care, shelter and rehabilitation, and that they are not further traumatised or victimised in the process. They are also responsible for vetting and accrediting service providers. When victims of trafficking are placed in non-registered shelters by the police or the Department or even other NGOs this represents a failing on their part. It indicates that there is a lack of communication between agencies and organisations as to what the correct procedure is, and even more concerning that the Department itself does not seem to know which shelters are registered and accredited and which are not. A specialised referral mechanism needs to be established, monitored and enforced.

By placing victims into non-registered shelters the Department (or those who do so) are effectively putting victims' lives at risk and rendering them vulnerable to being re-trafficked. The location of shelters also needs to be kept absolutely secret. There have been cases reported from Eastern Europe and West Africa where 'individuals working with non-governmental organizations that assisted women were implicated in disclosing the addresses of shelters to traffickers. At least one case was reported of a woman re-trafficked directly from a shelter'⁹⁸⁴. The protection of victims of trafficking comes with numerous challenges as not only do psychological, emotional and the physical health of victims need to be taken care of first and foremost, but so too must their personal safety and anonymity be ensured.

Moreover, where a group of individuals, especially minors, have shared a trafficking experience, and perhaps even become reliant on one another it might be inadvisable to split them up (due to their age differences) as it might expose them to more discomfort and trauma when the only people that they are familiar with (and perhaps trust) are removed from their lives. Studies should be conducted on the feasibility of separating victims (in terms of impact

⁹⁸³ Personal Observation: Interview with a member of Red Light (2012).

⁹⁸⁴ United Nations Office on Drugs and Crime, *The Role of Corruption in Trafficking in Persons*, Issue Paper, (2011): 15.

on their mental health) in such instances. Victims of trafficking should be separated only after a psychological assessment has been conducted, and the risk of other victims exerting maleficent or undue influence on more vulnerable victims or exposing them to harm assessed. There have been cases in the past where an entire group of trafficked persons extricated from a brothel have absconded as one of the trafficked persons is either dependent on her traffickers or is in collusion with the traffickers⁹⁸⁵.

Moreover, many of these shelters and safe houses lack resources and the girls and young women are left to their own devices. In the case at hand, some of the young women ran away out of frustration that nothing was happening and they were not sufficiently stimulated. In addition, many of these facilities do not cater for the detoxing of trafficked persons or the provision of medical treatment. This is yet another challenge faced as both the girls and young women who were rescued and the witnesses who brought the case forward were all drug dependent.⁹⁸⁶ Without the proper support, counselling and care victims will abscond to support their habit. Detox programmes need to form part of comprehensive care and rehabilitation programmes. While the Department of Social Development does have detox facilities, it is suggested that partnerships with organisations like SANCA (South African National Council on Alcoholism and Drug Dependence) need to be formed so that social workers and counsellors at shelters and places of safety can be trained to deal with the special needs of drug dependent victims, in order to attempt to keep them from absconding and form part of not only the task team's protection strategy, but also tertiary level prevention.

Moreover, programmes need to be developed based on the social inclusion of trafficked persons – they need to extend from basic rehabilitation to long-term recovery. In addition, psycho-social service providers and other social development organisations need to be cognisant and appreciative of the fact that some trafficked persons do not identify themselves as 'victims'.⁹⁸⁷ All too often the discourse, both internationally and in South Africa, speaks of the victims – who need to be resourced, rehabilitated and repatriated. This assumes that victims of trafficking are easily identifiable. If this were the case, then many more cases of human trafficking would be brought to light.⁹⁸⁸

⁹⁸⁵ Personal Observation: Interview with a Director from the National Freedom Network (2011). In reality, many trafficked persons become recruiters or traffickers themselves. NGOs and those providing direct assistance and care for trafficked persons need to cognisant of the complexities of the victim-perpetrator cycle.

⁹⁸⁶ Participant Observation: KZN HPPB Task Team Meeting (29 March 2012). Personal Observation: Interview with a member of Red Light (2012).

⁹⁸⁷ See Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, 2005.

⁹⁸⁸ Prevention strategies should also be aimed at making victims of trafficking more visible.

*Without the identification of victims, the whole issue of assistance and protection becomes superfluous. In the absence of adequate identification, victims of trafficking do not have access to either rights or protection. It is important to point out that identification does not exclusively mean 'self-identification' or how victims relate to their personal experiences. Although it is still the case that victims contact the police or other organisations, this form of self-identification is not the most effective. Trafficked persons often do not perceive themselves as victims and are not aware of the legal implications of the term.*⁹⁸⁹

Furthermore, because of the complexity of human trafficking and the diversity of those who have been trafficked (based on migration status, agency, the stigma associated with being labelled, or even fear of reprisals), not all wish to identify themselves or be identified as victims. This is an area that will need considerable work and development by the task team, as well as nationally, in the future in devising appropriate and effective identification and assistance mechanisms. Currently, such mechanisms are still in their formative stages and linked to the task team's primary prevention strategy.⁹⁹⁰

The implications of victims of trafficking refusing to be identified as such can have serious implications for trafficking cases, and the successful prosecution of traffickers. South Africa's adversarial legal system means that cases can only be brought forward with agreement on the part of the victim.⁹⁹¹ In addition, this can have a negative impact on the victim of trafficking, who through refusal of identification and by extension assistance (protective measures) and an unwillingness to cooperate with authorities, will not be afforded the same level of care that self-identified victims of trafficking are and in extreme cases this could lead them to be deported to their country of origin (where they are undocumented migrants) or be charged with a crime. Service providers, law enforcement and prosecutors need to be sensitised on this particular aspect.

Victims of trafficking do not necessarily refuse to cooperate out of fear of reprisal, but because of questions of self-identification. This is one of the reasons why any recovery and reflection period should not be too short and allow time for trafficked persons to process what has happened to them and be informed of what their options are. Victims of trafficking do not always necessarily know or understand their rights, and seek to safeguard themselves through denial. This needs to be avoided by service providers, law enforcement and prosecutors

⁹⁸⁹ Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 42 – 43.

⁹⁹⁰ Participant Observation: KZN HPPB Task Team (2009 – 2012).

⁹⁹¹ Participant Observation: Presentation to task team by Detective Warrant Officer Abby Dayanand, DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), KZN HPPB Meeting, 23 January 2013.

communicating with them after they have been extricated from trafficking situations – not just bundling them up and transporting them to a health care facility or shelter.

Detailed information needs to be provided, also in writing, as to what their rights are, what services are offered, what processes they will go through (i.e. being interviewed by law enforcement and prosecutors as a witness, receiving medical attention, being housed in a shelter or safe house, timeframes and so forth), what will become of them and what their options are. The written information should be translated into different languages. South Africa alone has eleven official languages. Transnational victims of trafficking often are unable to communicate or understand English – written information should be provided for them in their own language as well. This entails the task team conducting research that profiles the most common countries of origin and putting together information packs for victims. These information packs then can be distributed to those in the frontline who are the most likely to encounter or extricate victims of trafficking.

Ideally, properly trained and vetted translators should be on scene for foreign victims of trafficking. Moreover, trafficked persons should be given sufficient time to come to a decision as victims of prolonged abuse and trauma experience a number of cognitive (decision-making) impairments related to the extreme psychological stress that they may have experienced. As a study by Brunovskis and Surtees⁹⁹² suggests, where victims of trafficking are not provided with sufficient information about assistance programmes being offered or they do not trust⁹⁹³ the service providers they are more likely to decline assistance. ‘Unless carefully crafted and adopted with flexibility, victim assistance programs can sometimes replicate the trafficking experience by removing victims’ prerogative from questions of housing, employment, residency, and disclosure. For example, in order to stay in many government shelters throughout the world, victims surrender their right of movement – they are restricted to the shelter grounds or may only leave with the permission of shelter staff.’⁹⁹⁴ Shelters that offer centralised services or follow a closed model were also found to have higher rates of victims of trafficking declining protective assistance. Where trafficked persons

⁹⁹² Annette Brunovskis and Rebecca Surtees, *Leaving the past behind? When victims of trafficking decline assistance*, Fafo and NEXUS Institute, 2007.

⁹⁹³ Where offers of assistance parallel the trafficking dynamic (promises of a better life, being transported elsewhere, and housed in shelter / controlled) victims of trafficking are less likely to trust the people attempting to assist them.

⁹⁹⁴ Office to Monitor and Combat Trafficking in Persons, ‘Topics of Special Interest’, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192359.htm> – last accessed September 2012.

had children or dependents to support, and needed to earn a living in order to do so, assistance was seen as a luxury that they could ill-afford.⁹⁹⁵

There are only two shelters in KwaZulu-Natal that can take in victims of trafficking – Ethembeni Crisis Care Centre and The Open Door Crisis Care Centre. 38% of all victims assisted and accommodated by shelters in South Africa, were accommodated in shelters in KwaZulu-Natal.⁹⁹⁶ The most prominent shelter in KwaZulu-Natal is The Open Door Crisis Care Centre (Open Door) Ikahya Le Themba which is an accredited short-term shelter (safe house) that caters for victims of human trafficking, domestic violence and rape. The aim of the Open Door which was established in 1997 at the behest of the police ‘is to sustain a holistic, multifaceted one stop crisis and trauma centre offering counselling, social services and support groups’⁹⁹⁷. The Open Door in its work as a crisis care centre sees approximately 800 clients per week.⁹⁹⁸ They are available twenty-four hours a day should the need arise and can take in victims at any time of the day or night. The shelter can only house 15 women at any given time, which is offered for a period of up to three months. The shelter is managed by a house mother, social worker and professional nurse to ensure that the rights of the victims are properly protected and that they receive adequate medical and psychological care.⁹⁹⁹ The shelter follows a closed model approach and offers centralised services. The shelter assists in the referral of victims to places of safety and institutions (depending on the case), assists victims with court preparation, and has an in-house life skills programme¹⁰⁰⁰.

The Director of the Open Door Crisis Care Centre, Thora Mansfield, has had many years’ experience in the field. She has received international accolades for her work with victims of rape, abuse and human trafficking, and for the programmes she has developed. She has been invited to attend conferences in the United States on human trafficking, visited a rape centre in Sussex, England to see what constitutes best practice in assisting victims of rape, as well as Siem Reap in Cambodia and Singapore to see what constitutes best practice in trafficking

⁹⁹⁵ Annette Brunovskis and Rebecca Surtees, *Leaving the past behind? When victims of trafficking decline assistance*, Fafo and NEXUS Institute, (2007): 8.

⁹⁹⁶ Department of Social Development, *VEP – Human Trafficking Current Status*, Presentation, 26 November 2012: 15. KwaZulu-Natal has the second greatest concentration of assisted victims after Gauteng with 47%.

⁹⁹⁷ <http://www.opendoor.org.za/> - last accessed September 2012.

⁹⁹⁸ Personal Observation: Interview with Thora Mansfield, Director of the Open Door Crisis Care Centre (2012).

⁹⁹⁹ Ibid.

¹⁰⁰⁰ <http://www.opendoor.org.za/> - last accessed September 2012. The Open Door’s skills development programme was extended in 2012 to incorporate not only beadwork and like handicraft (the bog standard of most shelters in terms of skills development), but also training in hairdressing to increase women’s chances of employability and a sustainable income upon exiting the shelter. Participant Observation: KZN HPPB Task Team (2012).

victim assistance and protection.¹⁰⁰¹ All the knowledge she has brought back has been translated into existing programmes that she has adapted on how to provide protection and assistance to victims of trafficking.

Mansfield has been one of the driving forces behind the task team in terms of prevention and protection. She is the chair of the prevention / protection / partnerships sub-committee and a relentless advocate for the continued momentum of the task team in its strategic objective areas (the 4Ps), and strong and active partnerships between the various role-players each with clear mandates, roles and responsibilities. Mansfield advocates the need for those in the frontline (i.e. primary law enforcement, departmental officials, social workers, health practitioners and NGOs) to be given in-depth training on how to identify victims and how to deal with them in order to provide assistance and protection that is on par with the task team's strategic objectives and which ultimately serves the victims.¹⁰⁰² She has repeatedly voiced her concerns of the lack of accredited and registered shelters and the dangers posed by allowing non-registered shelters to take in victims of trafficking as the level of care (psychological, emotional, physical) and the safety of the victims is an unknown in such situations.¹⁰⁰³ Attendance of unregistered and non-vetted organisations at task team meetings is also seen as a security threat.¹⁰⁰⁴

Mansfield's shelter is regarded by many in the field as a model of good practice. However, due to resource and financial constraints only a limited number of victims can be accommodated. In addition, the shelter can only provide care and rehabilitative services to them for a period of three months. It is unclear what happens to victims¹⁰⁰⁵ thereafter as there are no secondary rehabilitation programmes or facilities (i.e. transitional housing) in KwaZulu-Natal. Red Light are looking into setting up such a facility which will provide long-term rehabilitation and reintegration services and accommodation for victims of trafficking, and provide support for vulnerable sex workers who have exited the industry, in KwaZulu-Natal.¹⁰⁰⁶ There is a strong need for transitional housing where victims of trafficking, who have completed the first stage of rehabilitation, recovery and reintegration programmes offered at shelters, and after extensive screening and assessments, can be placed for a period of 6 – 24 months. Transitional housing refers to independent style living arrangements, where

¹⁰⁰¹ Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

¹⁰⁰² Ibid.

¹⁰⁰³ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Informal discussions with Thora Mansfield, Director of The Open Door Crisis Care Centre (2009 – 2012).

¹⁰⁰⁴ Personal Observation: Informal discussions with Thora Mansfield, Director of The Open Door Crisis Care Centre (2009 – 2012).

¹⁰⁰⁵ This was not disclosed by the interviewee.

¹⁰⁰⁶ Personal Observation: Informal discussion with Natalie Ogden, a member of Red Light (2012).

victims may start to reintegrate into society while still receiving the necessary support (material, psychological, emotional and medical) during this next phase in their recovery.¹⁰⁰⁷ Such facilities would require strong private-public partnerships to fund and support service providers and social development organisations in assisting victims of trafficking to reintegrate into society and ultimately their long-term recovery.

Moreover, shelters and other services providers often only offer rudimentary skills development – such as beadwork or handicraft. While learning and practicing such skills has significant therapeutic value, it is doubtful that such skills will necessarily provide victims the requisite skills to find gainful employment or adequately support themselves. It is important that shelters and service providers who see to the longer-term needs of victims of trafficking provide adequate programmes which produce marketable skills and competencies. Moreover, by limiting victims of trafficking to producing beadwork it denigrates their intelligence. Victims of trafficking need not be illiterate or uneducated. Such assumptions or generalisations stem from a lack of research into the profiles of victims in South Africa. Private-public partnerships are vital in this regard. Shelters and other service providers should provide victims of trafficking with hard and soft skills that cater for both men and women. Hard skills include, phone usage and etiquette, emailing, filing, faxing, and basic computer skills (such as introduction to Microsoft Office suite).¹⁰⁰⁸ Such skills would enable victims of trafficking to seek employment as receptionists, secretaries or administrative assistants. Soft skills are just as important for victims of trafficking to learn in order to interact appropriately and professionally and socialise with employers, co-workers, customers and the general public. Soft skills include appropriate language usage, business etiquette, social grace, attitude, conflict resolution, job interviewing skills, and time management skills. The Department of Education could sponsor educational material for those wishing to finish their schooling, or link with tertiary institutions like UNISA or Damelin (a distance learning university or college) or vocational training colleges (SETAS) to sponsor short courses or diplomas for victims to study (such as office administration, small business management, art and graphic design, photography, cosmology, hairdressing, brick-laying, plumbing, welding, boiler making and so forth) or arrange short internships for trafficked persons who have progressed to secondary rehabilitation.

¹⁰⁰⁷ Transitional housing is a service offered by the Polaris Project in the United States, and represents a model of good practice that should be emulated and adapted to the South African context. See <http://www.polarisproject.org/what-we-do/client-services/our-services/transitional-housing> – last accessed September 2012.

¹⁰⁰⁸ <http://www.polarisproject.org/what-we-do/client-services/our-services/job-training-program> – last accessed September 2012.

Such endeavours would assist in tertiary stage prevention which seeks to prevent victims of trafficking from becoming vulnerable to being re-trafficked or choosing to return to their traffickers or a life of exploitation (in the informal economy). In addition, they would fulfil the obligations set out in clause 28(1) and (2) of the TIP Bill which requires accredited organisations to assess the immediate and reasonable future needs of victims of trafficking, as well as providing an exit plan for that individual.

Transnational victims of trafficking also face a language barrier which may make it hard for them to communicate with counsellors or social workers. In such cases, international cooperation becomes vital. Partnerships and cooperation are required from foreign embassies through government level agreements. Often transnational victims might have to remain in the country to testify as witnesses, or cannot return to their country of origin. In such instances, educational materials (in their native language) and language skills (being taught English) are required to assist them to integrate into South African society. Partnerships and networks between non-governmental organisations in South Africa and countries of origin should also be established to assist trafficked persons who wish to return home. This will help ensure that trafficked persons have access to rehabilitation and reintegration services offered in their country of origin and assistance in finding employment. A needs assessment of each individual trafficked individual, and individualised care and support, is thus required. Moreover, it is imperative that there is on-going monitoring of the progress of victims of trafficking once they have exited shelters and rehabilitative and reintegration programmes, and that they continue to receive psycho-social support and care in order for protective assistance to be truly victim-centred.

*There is no a quick fix in addressing the needs of trafficking victims. Shelters are costly to maintain and they entail a huge investment in a small population of victims. The care they provide cannot end once a victim takes the first steps toward an independent life. Follow-up and continuity of care are an integral part of the rehabilitation, recovery, and reintegration process.*¹⁰⁰⁹

This does suggest that organisations and service providers who deal directly with victims of human trafficking will be taking on a greater burden. However, it is in the spirit of both the Trafficking Protocol and the adopted TIP Bill to endeavour to provide assistance and protection to victims of trafficking so that they be rehabilitated and reintegrated into society and empowered. It is also crucial that the relevant government departments (at national and provincial level) are actively involved, take responsibility for victim protection and

¹⁰⁰⁹ USAID, *The Rehabilitation of Victims of Trafficking in Group Residential Facilities in Foreign Countries: A Study Conducted Pursuant to the Trafficking Victim Protection Reauthorization Act, 2005*, (September 2007): 28.

reintegration, provide support and programmes where required, fund such initiatives and programmes, provide facilities for human trafficking victims, and oversee and manage the process. In the case of victims who are prepared to testify, victims are placed in witness protection and moved to safe houses for the duration of the trial. However, this does not always translate well into reality. As many cases are delayed (often for years) it is unclear what support and care victims of trafficking receive in such situations.

*The defence can play you for years. And that is why a human trafficking matter takes so long. So I've got victims in my cases, and I wish I could take you to them. I've got girls in the country since 2006. And they don't have papers to be in the country. I am the only one who keeps them legally in the country. They get picked on all the time. Police pick them up and look for papers and say you don't have them. Of course they don't have them they were trafficked. They came out of witness protection because it wasn't sustainable for their lives. Also you can't keep them in witness protection that long.*¹⁰¹⁰

The continued undocumented status of victims of trafficking, regardless of an absence of legislation, is a worrisome omission on the part of government and more specifically the Department of Home Affairs who should have provided these trafficked persons with temporary residence visas. Moreover, it is uncertain how they are supporting themselves – if they are being supported by the South African government, or their embassy – or if and where they might have found employment as without documentation (i.e. a work permit) they are not permitted to seek employment under South African law. In addition, being stopped by the police on numerous occasions and being unable to produce documentation also subjects such victims to secondary trauma and potential re-victimisation. The statement above also demonstrates the practical constraints facing law enforcement and service providers in providing for the longer term needs of victims, as well as ensuring that their rights are not infringed.

4.1 Recommendations

Protective measures should begin with victim identification and primary assistance. There needs to be strong political will and capacity to realise the goals of protection, which need to be included in mid- to long term planning of departments and organisations. The provincial task team is constrained in terms of resources and a clearly defined mandate that delineates the roles and responsibilities of the role-players engaged in protection activities. Blurred roles

¹⁰¹⁰ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

and responsibilities have created friction at times between members and a sense of a lack of accountability.¹⁰¹¹

Moreover, protection is seen primarily as the realm of NGOs who house, support, rehabilitate and reintegrate victims of trafficking. The Department of Social Development oversees case management and are viewed as unequal partners in the provision of protective measures and programmes. *‘But the demands on the organisations are absolutely appalling... The service provision from them is absolutely appalling.’*¹⁰¹² From the perspective of NGOs and other organisations involved in providing protective measures and programmes for victims of trafficking, it is felt that the provincial Department of Social Development needs to change the way it operates and improve its relationship with NGOs in order to provide better support of the work they do on their behalf. This also entails having social workers on call. The lack of available social workers is also a point lamented by law enforcement officials. *‘The Department of Social Development only works from 7:30 – 16:00. You’ve got to make prior arrangement with them to get a social worker. Unfortunately I don’t have the luxury for that’*¹⁰¹³. It is hoped that in the future a small number of social workers¹⁰¹⁴ will be assigned to deal exclusively to deal with cases of human trafficking. However, it should be noted that there are a number of provincial coordinators from various government departments and agencies who are part of the task team – in particular from the Department of Health, Department of Social Development and SAPS. They are the first points of call if role-players and members of the task team come across a suspected case of human trafficking.¹⁰¹⁵ Thus, I make the following recommendations:

¹⁰¹¹ Discussed above.

¹⁰¹² Personal Observation: Interview with a director of a shelter (2012).

¹⁰¹³ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰¹⁴ The Department of Social Development has numerous offices throughout the province – each with its own area of jurisdiction. There should be at least one social worker assigned to deal with cases of human trafficking per district, to ensure that such operational difficulties are avoided. In addition, the various offices of the Department of Social Development need to cooperate with one another. Moreover, as victims of trafficking are still largely invisible in South Africa, and not that many have been assisted over the past four years in KwaZulu-Natal, there is no need to have entire divisions dedicated to human trafficking – just one or two key personnel who can coordinate and manage anti-trafficking activities. This does not preclude all social workers and other employees of the Department from being trained in-depth on human trafficking, how to identify trafficking victims, and the procedures that need to be followed, as well as how to deal with victims of human trafficking. Once legislation is enacted, the Department of Social Development will be responsible for protective measures and victim assistance. It is hoped that lessons learnt over the past few years will be reflect upon at all levels to craft policies that are truly victim-centred and supportive of the organisations who deal with the victims.

¹⁰¹⁵ In the absence of a policy framework, provincial coordinators provide a vital link between role-players and facilitating assistance and protection of victims. As mentioned earlier in this chapter, government departments are currently developing national directions, guidelines, and instructions pertaining to their particular roles and responsibilities as delineated by the TIP Bill. Guidelines issued by the Department of Social Development in the first quarter of 2013 should facilitate the process of

- Formulate and distribute to members of the task team a reporting protocol, detailing clearly delineated roles, responsibilities and mandates.
- The Department of Social Development should compile a list of accredited shelters, where different groups of victims may be sent (women, men and children), how such shelters may be accessed¹⁰¹⁶, which should be circulated to the relevant role-players, such as law enforcement, Department of Health, Department of Education and NGOs involved – this would strengthen the referral system in place and circumvent victims being sent to unregistered and unaccredited shelters.
- There are not enough shelters in KwaZulu-Natal, let alone shelters specifically for victims of human trafficking¹⁰¹⁷.
- Budget funds to improve existing shelters, provide support to increase the capacity of existing shelters or construct new ones to cater for neglected groups of victims (such as men and children).
- Provision needs to be made for victims with children. Shelters should be established or extended which can provide for victims and their children.
- Draft policy that ensures that an integrated housing model is followed – that includes emergency / short-term shelters and transitional housing¹⁰¹⁸.
- Shelters should be regularly assessed to ensure that they meet minimum standards set out by the Department of Social Development as to safety, hygiene, sufficient professional staffing, and access to health / medical services and counselling.
- Shelters should be encouraged to provide vocational training that has real-world application to victims of trafficking – this needs to be heavily supported through partnerships between service providers, Department of Social Development, and

clearly defining the provincial department's roles and responsibilities and standard operating procedures in responding to suspected cases of trafficking. These guidelines will be aligned with the task team's rapid response protocol which will provide direction as to how the task team responds to cases of human trafficking, and who is responsible for what, as well as coordinating Departmental support and responses in extricating victims of trafficking, placement of victims in shelters, and the provision of therapeutic and rehabilitative care. Participant Observation: KZN HPPB Task Team Meeting, 23 January 2013.

¹⁰¹⁶ The location of shelters should never be disclosed. However, the relevant contact numbers or addresses of accredited drop-in centres should be circulated.

¹⁰¹⁷ Small shelters catering only to victims of human trafficking are required. International experience has shown that it is a real challenge to house women who have been trafficked with women who have suffered domestic violence and abuse as issues of hierarchy arise. This also pertains to questions of safety. Many women abscond, not only trafficked persons. Women who are in abusive relationships often are highly dependent on their abusers (partners). The security of such shelters or housing arrangements can be breached as a result. This is why it also important that shelters should change locations every two to three years. Personal Observation: Interview with members from Mitternachtsmission – Heilbronn, Germany (2011).

¹⁰¹⁸ USAID, *The Rehabilitation of Victims of Trafficking in Group Residential Facilities in Foreign Countries: A Study Conducted Pursuant to the Trafficking Victim Protection Reauthorization Act, 2005*, (September 2007).

Department of Education (Basic and Higher) who can provide bursaries for victims of trafficking to complete their education (high school or artisanal training) and budgets need to be allocated in this regard¹⁰¹⁹.

- Victim assistance should begin with identification, victims should be informed of their rights (verbally and in writing), the processes that will be followed, the programmes offered, and what their options are.
- A needs assessment should be conducted with each trafficked person in order to put together a rehabilitation and recovery programme that best suits their individual needs and long term recovery.
- Referral systems need to be refined.
- A pool of accredited and vetted interpreters needs to be sourced – they should be sensitised to the particularities of dealing with human trafficking victims.
- Service providers (organisations and NGOs) who are not shelters, but are involved in frontline activities, should be vetted and accredited by the task team or relevant government departments (like the Department of Social Development).
- Additional support, in terms of social welfare, should be provided for health care facilities (like the Thutazela Care Centres) that deal directly with victims of human trafficking
- Coordination mechanisms need to be put in place that ensure services rendered / delivered to victims is accessible and of a common standard¹⁰²⁰.
- There is insufficient funding being made available to organisations (specifically NGOs) who provide services for victims of human trafficking – clause 30(d) of the TIP Bill allows for compensation to the state which may be set off against the expenses incurred or reasonably expected to be incurred in connection with, inter alia, the care and

¹⁰¹⁹ This is a viable and sustainable policy option for government, as relatively small numbers are rescued and provided with assistance annually. In South Africa, the number remains well under 100. Short courses cost as little as R4000 – R9000 per person. By investing in the vocational training and basic education of victims of trafficking, it will allow victims to transition to independent living and sustainable incomes, practically realise their value and self-worth and encourage social inclusion and integration more quickly. This would also form part of tertiary prevention strategies whose aim is to reduce renewed vulnerability of victims of trafficking to being re-trafficked or finding jobs in the informal economy which could lead them to be exploited and their rights once more violated. Shelters are only provided with R50 per victim per day to provide for sustenance, shelter, rehabilitation and therapy / counselling. This equates to only R4500 for a 90 day reflection period. This suggests that the bulk of funding shelters and other service providers (NGOs) use to cater for the needs of victims of trafficking is sourced externally through donors.

¹⁰²⁰ Collaborative models are required to ensure that various agencies, departments and organisations ‘work together for cross-training purposes and to coordinate government services and benefits at the local level to ensure efficient delivery of services to human trafficking victims, while assuring victim confidentiality. These services include housing, legal guidance, counselling and life skills and job training.’ Office of the Attorney General, *Human Trafficking in California*, Final Report, State of California Department of Justice, February 2010, available at http://oag.ca.gov/sites/all/files/pdfs/publications/Human_Trafficking_Final_Report.pdf - last accessed September 2012.

accommodation of the victim. Such monies should be used to fund the direct costs of service providers in this regard. Moreover, asset forfeiture funds could also be used to fund service providers to provide legal and social services for victims, or could be used to maintain prevention and awareness strategies (i.e. outreach, training and victim identification), or as a general fund for task team activities.

5.0 Prosecution

The third integral part of the provincial task team's anti-trafficking model is that of prosecution, which is sub-divided into two parts: law enforcement and prosecution. This component of the task team has had a number of successes, but has equally faced a number of set-backs and challenges. While the prosecution side meets with the general HPPB task team at its bimonthly meetings, it also has its own side meetings that are closed to general members. This ensures that sensitive and pertinent information to on-going cases, planned raids, and other core strategies are not leaked. The prosecution side does, however, report back at the bimonthly general meetings as to progress on cases, or where a raid has been conducted its successes and challenges are discussed. This form of information sharing allows other task team members insight into the work being conducted by the prosecution side. It also allows the task team to reflect on and assess what methods employed have been the most successful. Where there have been challenges, such as issues concerning blurred roles and responsibilities due to a lack of clearly delineated protocols particularly where measures concerning protection and prosecution intersect (discussed in the section above), such challenges are discussed between the members concerned and the task team leadership in order to avoid such issues reoccurring in the future and to ensure a continued good working relationship.¹⁰²¹ This indicates that the task team follows a flexible collaborative model which allows for pragmatic adjustments to be made when the need arises. Moreover, this demonstrates that the individual component parts of the task team can work independently from one another as well, whilst still working towards the common goal of the task team – provided that members have a good indication of what their role and function on the task team is and counter-trafficking in general. The following section looks at law enforcement responses to combating and preventing trafficking within the context of the task team.

5.1 Law Enforcement

Law enforcement anti-trafficking activities are highly structured. They are divided between primary law enforcement and specialised units. Law enforcement at both levels is represented on the task team. However, representation by primary law enforcement is limited to a number

¹⁰²¹ Participant Observation: KZN HPPB Task Team (2012).

of police stations as opposed to cluster offices.¹⁰²² Specialised units like the KZN Family Violence, Child Protection and Sexual Offences Unit (FCS)¹⁰²³ and Asset Forfeiture Unit are represented at the provincial level on the task team, as is the human trafficking division of the DPCI.¹⁰²⁴ Human trafficking cases are handled by the Hawks, which forms part of the Directorate of Priority Crime Investigation (DPCI) of the SAPS. The provincial coordinator for human trafficking in KwaZulu-Natal, Detective Warrant Officer Abby Dayanand, heads and manages provincial human trafficking enquiries and investigations with a specially trained team of investigators. All information pertaining to human trafficking which comes in from the public or units must come to his desk. The human trafficking division of the Hawks has set criteria for selecting cases: they must have an international link to an organised criminal syndicate within a structured criminal business market.¹⁰²⁵ Experience in the field has reinforced this perspective.

I interviewed my victims for human trafficking and one of the things that was made very clear to me was that there was a clear and cut structure in place. From the time that they left Thailand 'til the time they reached the brothel here in KZN there was a clear structure in place. There were people everywhere along the route to guide them. From the time they left Thailand to reach the Thai airport, there were people to assist them. People they had never met in their life but they were willing to assist them. People from the immigration department, police officials in Bangkok. When they reached OR Tambo they came through immigration people were there to assist them. And not assisting other people – just them – a group of young Thai girls. The syndicate put in place – they structured every point they went – they weren't left unattended. That tells me that there is a complete structure in place. And it is an organisation that is dealing in a very syndicated manner and everyone who is linked to the syndicate and everyone is getting paid and they have a role to play. They have never met the kingpins, they have never met the big bosses. They have heard of the big boss, but they have never in their life met the big boss.¹⁰²⁶

The Hawks are the only division which is mandated to investigate human trafficking, because of its linkages to international organised crime. However, the provincial coordinator for

¹⁰²² There are 25 cluster offices throughout the province which coordinate 185 police stations. From an operational perspective it would make more sense to send representatives from the cluster offices to have a strong law enforcement contingency, or a representative from the provincial commander's office. Perhaps now that SAPS have finalised their human trafficking protocol/national instructions in line with the adopted TIP Bill, this will see more active participation from their side on the task team – as a forum that will help coordinate collaborative responses to human trafficking.

¹⁰²³ KZN FCS is brought in to deal with cases of child trafficking. 'Currently SAPS KZN has 25 FCS units with a total number of 172 officers who have been trained in detective training, and 20 Forensic Social Workers will be appointed in due course.' The FCS Units are lodged with the cluster offices. <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=24152&tid=52585> – last accessed September 2012.

¹⁰²⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁰²⁵ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰²⁶ Ibid. Issues of corruption and complicity by low level officials may be drawn from this. This is discussed in more detail later in this section.

human trafficking feels that domestic trafficking cases, in particular, where ‘*there is no structure to it and there is no international sting to it, then it must be done by the local police... we want people from the police stations to be actively involved – they are the first point of contact*’¹⁰²⁷. Only where local police stations cannot handle the case, if it is too big or they do not have the budget to handle it should the matter be referred to the Hawks. This would, however, require specialised training of detectives in primary law enforcement, and have to form part of the curriculum at police training colleges for this to be realised. National directives drafted in accordance with the soon to be enacted TIP Bill will address this.

There are a number of steps to be taken from when a provincial enquiry is registered with the Hawks to when it is determined whether or not it is a case that warrants further investigation, and an operation is conducted. Once a provincial enquiry is registered with the provincial coordinator, it is sent on to the Provincial Priority Crime Management Centre who place it on a tasking register and task the investigating units to gather information in order to ascertain whether the information provided is correct and that this is a suspected case of trafficking that fulfils the set criteria of the division.¹⁰²⁸ Once it has been verified that the information provided has substance, then the matter goes on to the planning phase. These are important steps, as the division has to take a lot of manpower, coordinate various departments and organisations, source interpreters, to the scene where the operation will be conducted (normally in the form of a raid). The next phase in the investigation process is to contact the state prosecutor and present the information to them. In KwaZulu-Natal this is Adv. Val Dafel. The prosecutor then determines whether there are any merits to the case. These numerous phases indicate that any human trafficking investigation will be time consuming and costly. Hence, there exists a need for a specialised and well-resourced investigatory team.

Human trafficking is addressed by the DPCI in terms of the *Prevention of Organised Crime Act* 121 of 1998 (POCA) in the absence of human trafficking legislation. Other legislation such as the *Criminal Business Act*, *Criminal Procedure Act*, *Sexual Offences Amendment Act* and the *Immigration Act* is also used. The absence of comprehensive human trafficking legislation is not seen as obstruction to law enforcement preventing them from using other legislation to protect victims and prosecute traffickers.

I say to them don't use lack of human trafficking legislation (or policy) as an excuse not to do your work. Because if somebody out there is in trouble, don't tell me you can't help them because there is no legislation. You still need to help them. There are

¹⁰²⁷ Ibid.

¹⁰²⁸ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

other legislations that you can use... Because I find people use that as an excuse not to do the work. 80% of our cases in KZN is (sic) sexual exploitation. In terms of sexual exploitation we've got section 71(b).¹⁰²⁹ So what is stopping us from using it? Everyone is saying let's wait for the legislation. When it comes into play we will train our staff. But I am saying to the station commanders – no do it now. Train them now.¹⁰³⁰

The human trafficking division of the DPCI has been innovative in its use of by-laws as a law enforcement tool to shut down a premises where the other acts, such as POCA or the Criminal Procedure Act, do not succeed. Collaborating with the fire department, building inspectorate, and health inspectorate they were able to close down the premises within a matter of minutes due to unsafe and unhygienic conditions, not conforming to fire regulations, lack of ventilation, and the construction of illegal structures. *'Now once we found that avenue, then every case we went on we insisted on taking the people from the by-law departments'*¹⁰³¹. In addition, Metro police officers have been trained in terms of using such by-laws to combat human trafficking, as they are the ones who are charged with enforcing the by-laws. Moreover, they have the mandate and authority to enter premises and inspect them in terms of the by-laws without requiring a search and seizure warrant.¹⁰³² This suggests that certain operations can be carried out more efficaciously using existing by-laws and regulations than other pieces of legislation – without the need for human trafficking legislation to be in place.

While Dayanand has conducted extensive training with various law enforcement officers, he maintains that it is of paramount importance that those who deal with human trafficking cases and investigations should not do it simply because they were assigned the role, but because they have a passion for it.¹⁰³³ Human trafficking is the type of crime that requires investigators and law enforcement personnel to be on call 24 hours a day. Without the passion drive he feels that cases may fall by the way side.¹⁰³⁴ This is a valid concern – not only in terms of jeopardising investigations, but also opening up such personnel to corruption, collusion or apathy and indifference (leading to victims of trafficking not being assisted). Corruption of public officials, ranging from law enforcement to immigration and other departments that come into contact with victims of trafficking, and the private sector is

¹⁰²⁹ *Sexual Offences Amendment Act.*

¹⁰³⁰ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰³¹ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰³² *Ibid.*

¹⁰³³ *Ibid.*

¹⁰³⁴ *Ibid.*

perceived as a causal factor facilitating human trafficking and allowing it to flourish.¹⁰³⁵ Corruption is thought to play a role in every stage of the trafficking process¹⁰³⁶ or ‘obstruct the investigation and prosecution of cases, and/or impede the adequate protection of victims of the crime’¹⁰³⁷. Moreover, pervasive corruption, which may involve numerous institutions or be linked to other states (such as the country of origin), can lead to the re-victimisation of victims of trafficking¹⁰³⁸ by: (i) corrupt officials¹⁰³⁹, (ii) private or individual groups¹⁰⁴⁰, (iii) the media¹⁰⁴¹, and (iv) states and international organisations¹⁰⁴². As Holmes avers, ‘they are victims not only of criminal gangs, but also of officials who cannot be trusted to help them counter the first form of victimisation. And if states turn a blind eye to their own officers’ corrupt involvement in trafficking and/or treat trafficked persons as criminals rather than victims, there is a third form of victimisation.’¹⁰⁴³

Zhang and Pineda¹⁰⁴⁴ suggest that corruption is driving force behind human trafficking and the most important factor in explaining it. South Africa which scored 4.1 on Transparency International’s Corruption Perception Index¹⁰⁴⁵ in 2011 is perceived to be a country with high

¹⁰³⁵ See, Leslie Holmes, ‘Human Trafficking & Corruption: Triple Victimisation?’ in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva, September 2009. See also, Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 / 2011; UNODC, *The Role of Corruption in Trafficking in Persons*, Issue Paper, 2011.

¹⁰³⁶ Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 (2011): 3.

¹⁰³⁷ UNODC, *The Role of Corruption in Trafficking in Persons*, Issue Paper, (2011): 4.

¹⁰³⁸ Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 (2011): 2.

¹⁰³⁹ Corrupt public officials may be corruptly involved in human trafficking either directly or indirectly. Direct involvement includes, but is not limited to, running a trafficking operation, participating in a trafficking operation, through collusion by alerting traffickers of impending raids, the illegal issuance of visas, passports and identity documents, returning victims of trafficking to their traffickers (or informing traffickers of their location). Indirect involvement includes, procuring the services of trafficked persons (for sex or domestic work), refusing to investigate allegations of trafficking or sabotaging the investigation, victim intimidation.

¹⁰⁴⁰ Private or individual groups refers to traffickers, their families, friends and networks. This should also incorporate familial members of the trafficked person, their friends and networks as in many cases victims have been trafficked by people that they knew or trusted.

¹⁰⁴¹ As the case mentioned in the section on protection, the media need to avoid reporting that reveals the identities of trafficked persons in order to prevent their further exploitation or victimisation. Also, by revealing a trafficked person’s identity or location, this puts them at risk of being found by their traffickers or may lead to stigmatisation by their families and communities.

¹⁰⁴² ‘When officials and staff in these bodies do not behave with ethics and integrity, they can lead to distorted actions. This can include providing support to corrupt officials, treating victims as criminals, and not adequately educating their staff and officers about how to handle victims of trafficking.’ Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 (2011): 2.

¹⁰⁴³ Leslie Holmes, ‘Human Trafficking & Corruption: Triple Victimisation?’ in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva, September (2009): 85.

¹⁰⁴⁴ Sheldon X. Zhang and Samuel L. Pineda, ‘Corruption as a Causal Factor in Human Trafficking’, *Organized Crime: Culture, Markets and Policies, Studies on Organized Crime*, Volume 7, (2008): 41 – 55.

¹⁰⁴⁵ <http://cpi.transparency.org/cpi2011/results/> – last accessed September 2012. The Corruption Perceptions Index (CPI) ranks countries based on how corrupt their public sector is perceived to be.

levels of corruption in the public sector. This is borne out in its lowest ranking to date on the Corruption Perception Index. The country's high levels of perceived corruption suggest that if Zhang and Pineda's finding are correct, human trafficking in South Africa will be largely affected and facilitated by corruption. Moreover, in countries with relatively closed borders, like South Africa, there is the potential for corruption among customs officers and border guards, especially in relation to the inequality of living standards and opportunities of surrounding countries.¹⁰⁴⁶ Bribes are used to facilitate the entry of victims of trafficking by transnational traffickers as the case of the Thai victims trafficked into South Africa demonstrates. Public officials in the Department of Home Affairs are at risk of being corrupted and this can result in issuing fake passports, visas or identity documents that may be used by traffickers. Law enforcement officials are often involved in corrupt practices, in assisting or colluding with traffickers, and in a small number of cases being traffickers themselves.¹⁰⁴⁷ Corruption should be viewed as a significant threat to anti-trafficking activities and programmes in South Africa, and those of the task team. The task team, but also national government, need to consider the risks posed by corruption and adjust policy and procedures relating to human trafficking accordingly. At the provincial level, a protocol needs to be developed that will vet each and every member on the task team. Transparency and accountability are key to the sustainability of the task team, and as a way to mitigate (and root out) corrupt practices. Awareness should be raised amongst members in this regard.

These concerns are not merely academic, indeed questions surrounding corruption and integrity surfaced in South Africa's first and most prominent human trafficking case. In December 2006, a Durban 'gentlemen's club' *After Dark* was raided by police. This resulted in the arrest of 26 Thai women and four men in what was initially assumed to be a normal prostitution matter.¹⁰⁴⁸ The raid led to the closure of the club and the discovery of other women at another property in Pinetown. It soon became evident that there was much more to

Countries are scored on a scale of 0 – 10. 0 denotes a country perceived to be highly corrupt, whereas 10 means that a country is perceived as very clean. 'The CPI focuses on corruption in the public sector, or corruption which involves public officials, civil servants or politicians. The data sources used to compile the index include questions relating to the abuse of public power and focus on: bribery of public officials, kickbacks in public procurement, embezzlement of public funds, and on questions that probe the strength and effectiveness of anti-corruption efforts in the public sector. As such, it covers both the administrative and political aspects of corruption.'

¹⁰⁴⁶ Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimisation?' in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva, September (2009): 94.

¹⁰⁴⁷ See, Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimisation?' in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva, September 2009; Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 / 2011; UNODC, *The Role of Corruption in Trafficking in Persons*, Issue Paper, 2011.

¹⁰⁴⁸ The Thai nationals were subsequently deported back to Thailand after being found to have contravened immigration laws.

the case than a brothel employing Thai sex workers. Moreover, it was alleged that the brothel owners would ‘use the corrupt police to scare the girls, telling them if they refused to obey their orders they would be thrown into jail for being in the country illegally’¹⁰⁴⁹. Work by outreach organisations (NGOs) involved in prostitution ministry and sex worker exit projects, have reported that police officers are often involved – acting as ‘tax collectors’ of sex workers and enforcers (de facto pimps), essentially collecting bribes to turn a blind eye to their trade or using their services for free.¹⁰⁵⁰ In addition, allegations were made by the victims against the investigating officer, and several Home Affairs officials were arrested for supplying illegal passports and fraudulent visas. As a result, Detective Warrant Officer Dayanand was brought on board to look into the matter and take over the investigative side of the case.¹⁰⁵¹ This highlights the role that corruption plays in human trafficking cases, and represents one of the greatest threats to trafficked persons and the successful investigation and prosecution of cases.

The integrity of members of the task team has also been called into question in the past. This accounts for one of the reasons why representatives from a division of the police left the task team in 2010. They also left the task team out of growing frustration for some of the processes, perceived inertia, and the lack of clear cut definitions and a finalised structure.

Even from the intelligence gathering side it was very fuzzy and... we were getting information from various sources... In the one particular incidence there was a guy who was known to the task team. We feel he had been very deeply involved in it (human trafficking). There was strong evidence to suggest that... And nothing ever came of it. There was this decision inertia, action inertia. So we left that one and then we got another set of information which was on a South African guy who travelled a lot to the States and the Far East and he was located in Ballito. But he had a previous history of targeting young blonde haired girls with blue eyes between the ages of 14 and 16. And exhibited what I would call classic grooming behaviour... a potential sexual offender... and the information that came from the US contact strongly suggested that he was involved in something. The guy is receiving a R150 000 every month from sources in the Far East. He has over R2 million in vehicles. Extremely suspicious behaviour. We did a huge amount of work... And nothing happened... they [claimed] the target is very difficult and very evasive...

¹⁰⁴⁹ Sibusiso Ngalawa, ‘Cops probed in human trafficking case’, *Independent Newspapers Online*, 24 December 2006, available at <http://www.iol.co.za/new/south-africa/cops-probed-in-human-trafficking-case-1.308717#.UFcevYaJ30U> – last accessed September 2012.

¹⁰⁵⁰ Personal Observation: Interviews and informal discussions with a number of NGOs involved in such activities (2011 – 2012).

¹⁰⁵¹ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012). He has been the provincial coordinator since 2008. Like the state prosecutors involved in prosecuting cases of human trafficking he had to learn rapidly on the job. This was accomplished through a lot of his own research, and seeking out experts in the field (both nationally and internationally) so that he could be trained on human trafficking. He has since become instrumental in training relevant law enforcement personnel not only on the phenomenon but how to investigate it.

*And then the other thing that worried us was the perceived integrity issues around certain people. And I thought well if we have integrity issues why am I here? Especially if you are dealing with a facet of it, where you dealing with information and investigations you don't want there to be, "Ooh we have a mole in the garden". Because we know how easy it is to find people. And you know it's just as if we didn't know what we were doing. So that's why we said, and other events, look let's rather we withdraw rather than become frustrated and that carries over to the rest of the people... I still think that the group does a hell of a lot good work.*¹⁰⁵²

Even in 2012, questions of corruption and trust and ethical issues, such as integrity, honesty, accountability and transparency, were noted by the task team leadership as warranting serious and immediate attention.¹⁰⁵³ However, how to circumvent these issues remains a challenge due to the diverse and autonomous roles of the task team's members. Each member on the team, as part of a department or organisation, works from their own institutional mandate independently in the field of human trafficking whilst simultaneously forming part of the provincial task team and coordinating efforts in certain fields. At present, it seems unlikely that oversight mechanisms will be able to be employed. This should be the task of the various departments and organisations to self-monitor their employees. What the leadership of the task team can and should do is raise awareness and educate members of the task team on the value and necessity of integrity, honesty, accountability and transparency in the fight against human trafficking and instil a culture that is synonymous with this. This can be realistically achieved by designing policies and a code of conduct that the members of the task team, through their membership, are obliged to abide by. The first step on this path has been taken with the introduction of a confidentiality and non-disclosure agreement that all members are to sign and adhere to.¹⁰⁵⁴ The purpose of the confidentiality and non-disclosure agreement is to ensure that sensitive information is not leaked to the media or public. Those who breach the terms set out in the confidentiality agreement will be asked to leave the task team.

5.2 Prosecution

The prosecution side of the task team is one of its strongest components. The first case of human trafficking for the purposes of sexual exploitation in South Africa was successfully prosecuted by Adv. Val Dafel.¹⁰⁵⁵ In 2007, after a 'buy and bust' operation at a brothel in Bartle Road, Umbilo (Durban), it emerged that Thai prostitutes had been recruited from Thailand by the brothel owner's wife to work as prostitutes in South Africa. However,

¹⁰⁵² Personal Observation: Interview with a member of the Metropolitan Police (2011).

¹⁰⁵³ Personal Observation: Informal discussions with a number of members (2012).

¹⁰⁵⁴ Participant Observation: KZN HPPB Task Team (2012).

¹⁰⁵⁵ The State v Basheer Sayed and Another, Umbilo Case: 471/10/2007 – 'Thai 2', Case No: 41/213/2008; Basheer Sayed, Somcharee Chulchumphorn v Levitt NO, The National Director of Public Prosecutions, Case No: AR101/2011, Case No: 5582/2010.

although they willingly entered the country to engage in sex work, they did not expect the harsh working conditions and exploitation that they were subjected to. They were forced to work off a R60 000 debt they had each ‘incurred’ in being transported to South Africa, before they would be able to earn any money for themselves. Basheer Sayed and his Thai wife Somcharee Chulchumphorn were subsequently charged and convicted on 19 counts relating to racketeering for the purposes of sexual exploitation, immigration offences, in terms of the *Organised Crime Act*, the *Sexual Offences Act*, and the *Immigration Act*. The couple were found to be guilty of managing a structured criminal enterprise through racketeering activities relating to Thai nationals being used as prostitutes and living of the earnings derived therefrom. This represents a milestone in South African anti-trafficking history. Moreover, it represents the success of a coordinated approach to both investigation and prosecution of a human trafficking case.

Unfortunately, due to mistakes on the court’s part, the conviction was set aside on review in the Pietermaritzburg High Court in a judgement delivered on 25 June 2012.¹⁰⁵⁶ ‘*My case that got thrown out, the Basheer Sayed case with Val Lotan got thrown out on a technicality because the interpreter was not sworn in. Now we lost a major case because of that. Now we have to start again. Where do I get my witnesses? Back from Thailand?*’¹⁰⁵⁷ As Judge Steyn in her judgement found,

*This case has demonstrated that it is not merely sufficient to be bilingual or fluent in a language, an interpreter should be able to have a basic understanding of the legal process, since it is expected of an interpreter to translate exactly what was said and if the translation is improper, due to a lack of understanding, it would result in evidence being distorted.*¹⁰⁵⁸

Judge Steyn subsequently ordered that the trial be started anew in the Durban Regional Court, in front of a new Magistrate. She found that irregularities Sayed and Chulchumphorn had complained of were real and impacted on the evidence adduced before the Regional Court, since ‘evidence was considered as admissible evidence when it should have been regarded as inadmissible evidence’¹⁰⁵⁹. This judgement has serious implications. The prosecutor and investigating officer now had to not only locate the women who returned to Thailand, but convince them to return to South Africa to testify again. According to the prosecutor, the

¹⁰⁵⁶ Basheer Sayed, Somcharee Chulchumphorn v Levitt NO, The National Director of Public Prosecutions, Case No: AR101/2011, Case No: 5582/2010.

¹⁰⁵⁷ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰⁵⁸ Basheer Sayed, Somcharee Chulchumphorn v Levitt NO, The National Director of Public Prosecutions, Case No: AR101/2011, Case No: 5582/2010. Judgement delivered 25 June 2012: 9, available at <http://www.saflii.org/za/cases/ZAKZPHC/2012/38.html> - last accessed September 2012.

¹⁰⁵⁹ Ibid.

witnesses who had testified do not want to come back and start the process all over again.¹⁰⁶⁰ Understandably so, as court cases are generally harrowing experiences for victims of trafficking (and crime in general) having to face their traffickers and relive their experiences. Another witness has been found, but it is uncertain as yet if she will testify.¹⁰⁶¹

Justice for the victims could be jeopardised due to a technically. Important lessons can be learnt from this by the judiciary as to the proper procedures that need to be followed in cases where interpreters are used. Moreover, the experiences of this case indicate the need for training by magistrates on the particularities of human trafficking cases. Article 9(1) of Directive 2011/36/EU of the European Parliament and Council¹⁰⁶² ensures that investigation into or prosecution of human trafficking is ‘not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement’¹⁰⁶³. It is suggested that South Africa should consider following a similar route. Moreover, testimony by foreign nationals in their mother tongue should be recorded. This would mean that a recorded testimony exists and where issues with the interpreter arise, that may be used (and translated into English) if the witnesses are unavailable or unwilling to testify in a retrial. Human trafficking cases are as unique as the crime and require innovative approaches to trying them.

5.3 Recommendations

The investigatory and prosecution components of the task team are relatively strong. However, a number of issues pertaining to primary law enforcement, corruption and integrity, and the courts arise that need to be addressed. The following recommendations are made in this regard:

- Representatives from as many of the 25 Clusters in KwaZulu-Natal as logistically possibly should be encouraged to be part of the task team (or at a bare minimum attend the prosecution side meetings).
- Alternatively, a representative from the Provincial Commander’s Office who would be responsible with relaying information, and facilitate specialised training on investigating cases of human trafficking, to the clusters should be in attendance.

¹⁰⁶⁰ Participant Observation: Report-back by Advocate Val Dafel on the prosecution side of the task team (update / progress on active cases) at a bimonthly KZN HPPB Task Team meeting (26 September 2012).

¹⁰⁶¹ *Ibid.*

¹⁰⁶² EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011).

¹⁰⁶³ Article 9(1), EU Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011): L101/7.

- There needs to be continued specialised training of law enforcement, border control, Home Affairs, prosecutors¹⁰⁶⁴ and magistrates.
- A specialised human trafficking unit needs to be established to ensure coordinated responses and investigations that help provide a strong foundation for cases to be prosecuted. The unit should also be linked to key government departments to facilitate communication and information sharing.
- Corruption needs to be addressed at all levels by raising awareness, educating and training task team members on the patterns of corruption and the threat posed by it.
- Risk assessments which identify sectors vulnerable to being corrupted need to be conducted¹⁰⁶⁵.
- Control mechanisms need to be established to ensure standard operating procedures are followed, and any deviation is quickly picked up on¹⁰⁶⁶.
- A code of conduct needs to be developed and implemented amongst task team members.
- Those who violate the trust of the task team, or have been found (after a proper investigation) to have engaged in corrupt activities should be named and shamed.
- The leadership of the task team needs to ensure that there is transparency of performance¹⁰⁶⁷.
- The task team should partner with anti-corruption practitioners¹⁰⁶⁸.
- Innovative approaches based on good practice models of prosecution and witness testimony should be followed.

6.0 Partnerships

Partnerships have been recognised globally as the vehicle through which human trafficking should be combated and prevented. Partnerships at international, regional, national and local levels are important in this regard. Communication and dialogue form the basis of creating and sustaining viable long term partnerships that work to a common purpose and are not at odds with one another. As human trafficking presents itself in two forms, transnational and domestic, inter-agency and inter-governmental partnerships are the key to finding collaborative and innovative ways of combating and preventing the phenomenon. This makes

¹⁰⁶⁴ Adv. Dafel would like to see a cluster or core team of prosecutors trained in human trafficking matters. A lack of highly trained prosecutors could be detrimental to the sustainability being able to competently prosecute human trafficking cases. This is an integral resource that needs to be developed.

¹⁰⁶⁵ See, Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimisation?' in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Vienna and Geneva, September 2009; Transparency International, *Corruption and Human Trafficking*, Working Paper, #03 / 2011; UNODC, *The Role of Corruption in Trafficking in Persons*, Issue Paper, 2011.

¹⁰⁶⁶ UNODC, *The Role of Corruption in Trafficking in Persons*, Issue Paper, (2011): 29.

¹⁰⁶⁷ Ibid.

¹⁰⁶⁸ Ibid., 30.

it a significant issue for both domestic and foreign policy. Partnerships form the crux of the provincial task team. It is the partnerships that have been formed, through the conduit of the task team, that are arguably the most important variable in effectively preventing and combating human trafficking.

*‘Partnerships play a vital role in the provincial task team. It is believed that without this particular function of the task team – it would not be the success it is, or even able to operate effectively’*¹⁰⁶⁹. The task team’s strategic goal in this regard is to encourage partnerships between government, civil society and the community to monitor and address the causes and contributing factors to human trafficking, pornography, prostitution and brothels.¹⁰⁷⁰ It seeks to foster ‘an effective, efficient and expeditious provincial response and implementation of human trafficking interventions’¹⁰⁷¹. This is to be realised through the creation of synergy and the leveraging of resources, capabilities and assets in a coordinated manner to redouble the performance of the task team. Key priority areas include the: (i) clarification of the task team mandate, (ii) establishment of sub-structures, (iii) established of a database on finalised HPPB matters, and (iv) developing monitoring and evaluating systems for the task team.¹⁰⁷² These four areas are assessed below in terms of the expected outcomes¹⁰⁷³.

Partnerships are viewed by task team members as being a vital component of the task team. The general consensus is that there should be representatives from every department or organisation which is involved in combating and preventing human trafficking or could come into contact with victims or perpetrators of trafficking on the task team. *‘I would like to see more stakeholders from various government departments to be present as they can have a great influence on the detection and treatment of victims’*¹⁰⁷⁴. It is believed that by working together as a cohesive unit, bringing diverse perspectives, experiences and skills on board, and sharing information on successful and ineffective strategies or initiatives that duplication can be avoided and unnecessary mistakes can be prevented. It is felt that because human

¹⁰⁶⁹ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹⁰⁷⁰ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 12.

¹⁰⁷¹ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 12.

¹⁰⁷² Ibid.

¹⁰⁷³ The expected outcomes are a(n): (i) clear mandate and effective performance of task team members, (ii) operational intelligence sub-committee, (iii) increased and improved stakeholder relations, and (iv) improved planning and efficient utilisation of resources. National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 12.

¹⁰⁷⁴ Personal Observation: Questionnaire – Kloof Harvest Church (2012).

trafficking is such an immense issue, it cannot be tackled by only a handful of people – no matter how dedicated and motivated. Rather, a coordinated collaborative approach is required. *‘We need to stand behind and encourage each other to keep going. It can seem futile what one is doing but realising that we are part of something bigger is very helpful. One puzzle piece cannot form a whole puzzle’*¹⁰⁷⁵. Partnerships are generally seen as being a successful component of the task team and of importance to the success of the task team.¹⁰⁷⁶

Achievements of the partnership component of the task team are measured in the bimonthly minutes of the meetings and the quarterly and annual reports. The provincial task team is perceived to be more effective than other task teams across the country, owing in part to a strong and directed leadership and committed members from various sectors.

*The KZN task team is viewed as being successful in comparison to most other provinces. It has a good reputation because ‘things get done.’ This is because early on it was decided that there needed to be someone who would take overall responsibility of driving the task team. This role was given to the NPA... It is the ultimate responsibility of the person driving the task team to ensure that even though tasks and responsibilities are allocated to individuals and organisations or departments in terms of the action plan that they are monitored.*¹⁰⁷⁷

However, while the task team has been successful in co-opting representatives from the various government departments, institutions, law enforcement, civil society and even the community on to the task team, a clear mandate and effective performance of task team members has not been fully achieved, and requires attention. Institutional constraints, the absence of legislation and policy, and the high turnover of (government) representatives means that it has been challenging for the leadership of the task team to define its mandate and delineate or enforce the roles and responsibilities of its members, even where service level agreements and protocols have been signed. This has resulted in a more fluid approach that can accommodate such obstacles.

However, some members have felt that this has been to the detriment of what they saw as a strong team at its inception. *‘But we don’t seem to have clear cut boundaries as to what we should be doing and who is doing it... And to come month after month and do nothing defeats the purpose. So I think as a task team we have to go back to what’s it about – intersectoral with everybody doing their job in their specific field, reporting back and being able to get*

¹⁰⁷⁵ Ibid.

¹⁰⁷⁶ Personal Observation: Interviews, informal discussions and questionnaires with members of the KZN HPPB Task Team (2012).

¹⁰⁷⁷ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

*back to being a strong team.*¹⁰⁷⁸ In addition, it is felt that there needs to be more engagement by members who should be doing more to fulfil the task team's objectives. Law enforcement, for instance, feels that it is not getting the support that it needs. *'... everything is about awareness, awareness, awareness. And I know you need a certain amount of awareness. When are you going to get reactively involved in the actual enforcement part of it? Where I need you the most. Where I need funding the most... I feel that people who are on the team must be willing to go that extra step. Because your role does not only stop with awareness. It must go towards enforcement as well – to assist us.'*¹⁰⁷⁹ However, this will be difficult to achieve if direction is not given to those on the frontline – training members in outreach, victim identification, first response, and victim assistance, not to mention mandates and clarified roles on operations (raids).

Another challenge that the task team is perceived to face is the difficulties related to getting different departments and agencies to work in a coordinated way together. Coordination mechanisms have been limited to an extent, due in part to the high level of member turnover and lack of attendance at meetings.¹⁰⁸⁰ The high turnover of members has an effect on the task team's cohesiveness and efficacy as new members have to be brought up to speed (through information sharing and training), and as many representatives are not decision-makers. This has resulted in task team members not being asked to make any real decisions – or apply their minds to them. Apart from budgetary constraints, this could account for why it is perceived by some that little is being done by the government departments.

However, compounding this is the fact that most government representatives do not have the authority to make decisions that are binding on their department. *'What is needed for a successful task team is passion – in other words the so-called passion drive. This is often lacking in government departments and their representatives who are tasked to sit on a task team'*¹⁰⁸¹. Coordinating responses thus becomes difficult where institutional buy-in is lacking or reticent. The challenge that exists for the leadership of the task team is fitting all the pieces of the puzzle together. Once more, it is hoped that once a national policy framework, as well as departmental policies, have been designed and implemented that issues of coordination will be resolved and there is operative interaction between all the actors concerned – within and between government departments, law enforcement, the judiciary and civil society.

¹⁰⁷⁸ Personal Observation: Interview with Director of The Open Door Crisis Care Centre (2012).

¹⁰⁷⁹ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹⁰⁸⁰ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁰⁸¹ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

Stakeholder relations also require attention and work. A perception exists amongst civil society groups / NGO sector that *‘many organisations are inactive, many government departments see it as the NGOs responsibility and many NGOs are understaffed and under-funded to accept that responsibility... Some members have a role to play and are need in the team... yet are hindering the process rather than assisting due to perceived threats and unnecessary red tape.’*¹⁰⁸² This indicates that relations between NGOs and various government departments have become somewhat strained – due to the perceived imbalance of responsibilities and performance. Moreover, certain government departments are not seen to be ‘pulling their weight’. ‘At the grass roots level where the problem is most acute, non-governmental organizations and other civil society groups protect victims and raise awareness among vulnerable groups. These groups are the eyes and ears of the global community, the front line of the anti-trafficking movement’¹⁰⁸³. This sector needs more support by (national) government and recognition in the fight against human trafficking and the fundamental roles that they play. Such partnerships need to be taken more seriously in relation to the services and support provided in anti-trafficking programmes in South Africa. For instance, in terms of prevention, individual members of the task team (primarily NGOs and members of the NPA, law enforcement and Department of Social Development) have been actively involved in awareness-raising.

Awareness campaigns have been conducted throughout the province and the majority of schools in the province have been targeted. However, it has been questioned by a number of NGOs as to why the Provincial Department of Education does not become actively involved and incorporate human trafficking as part of the curriculum.¹⁰⁸⁴ This would not only save time but the costs incurred by organisations driving often hours to visit a school (without any form of compensation). *‘But when we talk about education, what are they doing to ensure that this gets into the schools? We go to 17 schools every single week. And what support do we get from them? Zilch. Nothing. So this continuous free, free, free is at a great cost.’*¹⁰⁸⁵

Collaborative relationships between government departments and NGOs are not as strong as they should be in KwaZulu-Natal and is this mirrored in that task team. One organisation noted that while they had good partnerships with the Department of Health and Department of Social Development in Gauteng (where the organisation is based) they were met with nothing

¹⁰⁸² Personal Observation: Questionnaire – Red Light (2012).

¹⁰⁸³ UNODC, *The Global Initiative to Fight Human Trafficking*, (2007): 6, available at <http://www.unodc.org/pdf/gift%20brochure.pdf> – last accessed September 2012.

¹⁰⁸⁴ The Department of Basic Education is developing material to be included into Life Orientation classes, but to date this has not been put into practice.

¹⁰⁸⁵ Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

but ‘complete resistance’ in KwaZulu-Natal.¹⁰⁸⁶ However, this problem is also shared between government departments as well. There appears to be a lack of inter-departmental communication.¹⁰⁸⁷ This is not a problem unique to the task team, but appears to be a universal one. Similar issues are faced internationally as well.

*Inter-agency cooperation in terms of jurisdiction is also a major stumbling block. This is most apparent in cross-border cases between provinces. SAPS gives grief to other SAPS or agencies when they go outside their own borders. There is also a real need to establish links with other countries and agencies. This should be done under the auspices of the national task team. Links should be established with other countries, especially countries of origin, and their national task teams – and meetings should be held to exchange information and strategy.*¹⁰⁸⁸

Concerted efforts in developing capacity and political will are the only way to overcome such issues, especially where the principles of partnerships have already been mooted and are needed to work towards a common purpose – combating and preventing human trafficking. Disagreements or questions of ownership or issues of territoriality between departments or agencies need to be put aside or resolved in the fight against human trafficking. This is especially important when it comes to the role of law enforcement and the different agencies involved. *‘In terms of the role of law enforcement, the relationship with management (SAPS and Metro) is strained and this has created tensions and problems in working relationships. In the past, Metro would hand over information or cases to SAPS and nothing would get done thereafter. This has resulted in reluctance from Metro to buy-in to the task team.’*¹⁰⁸⁹

The real challenge that lies ahead for the task team is to ensure that role-players can be held accountable. Working relationships between and within departments and organisations involved in anti-trafficking should be monitored and where an issue crops up be flagged for immediate intervention. Dialogue and open channels of communication are vital. There is a perception amongst role-players from the civil society sector that there is not enough dialogue and that not much gets done with feedback. *‘So I think partnerships are important. You need to choose your partners. You need to see where the gaps are. And all too often in partnerships we are working apart and the dialogue of working together is imperative.’*¹⁰⁹⁰

¹⁰⁸⁶ Personal Observation: Interview with Women and Men against Child Abuse (2012).

¹⁰⁸⁷ A representative from the KwaZulu-Natal Department of Health explained that this was common place and cited an example of where they had attempted to approach the Department of Education their help was not wanted. Personal Observation: Informal discussion at the Prevention Subcommittee Meeting (20 August 2012).

¹⁰⁸⁸ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹⁰⁸⁹ Ibid.

¹⁰⁹⁰ Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

Attendance by the relevant role-players needs to be increased in order to sustain the cohesiveness of the task team, its programmes and operations and ensure that protocols and standard operating procedures are followed, so that it continues to work efficaciously and grow from strength to strength. In this sense, partnerships need to be proactive and mandates clearly delineated. Government departments need to shift from being reactive to being proactive, particularly when dealing with a hidden crime such as human trafficking – whereby successes cannot always be tangibly measured. *‘However, all in all the task team is going well as it is mainly NGO based – and this is the strength of the task team.’*¹⁰⁹¹ Moreover, drawing from the strengths of a strong NGO base, public-private partnerships should be encouraged and developed in combating and preventing human trafficking at both the provincial and national level.

In 2011 the task team was able to align itself and its action plan with the Premier’s Flagship Programmes. This alignment facilitated the training of 360 youth ambassadors in 2011. In 2012, youth counsellors are being targeted along these lines through the Department of Community Safety and Liaison. *‘This aligning process is seen as being very important. Not only does this serve to create more widespread recognition of the task team, but also is a source of indirect funding’*¹⁰⁹² to conduct these training programmes. Provincial task team partnerships and the exchange of ideas and strategies are important in combating and preventing human trafficking in South Africa. In 2011, Adv. Coleman presented on the KwaZulu-Natal task team model to the Eastern Cape task team and assisted them in drafting their strategic plan.¹⁰⁹³ This is a good example of the worth and necessity of partnerships, and forging the way ahead to determine and practice good and/or best anti-trafficking practices in South Africa.

The establishment of sub-structures within the task team has to a large extent been fulfilled. Early on in the task team’s existence the need for sub-structures was recognised and established.¹⁰⁹⁴ The task team consists of three functioning sub-structures: (i) prevention (which incorporates protection and partnerships), (ii) prosecution, and (iii) media. In 2011 it was identified that an intelligence sub-committee or sub-structure was required and this is in the process of being established. This is in accordance with the expected outcomes of the

¹⁰⁹¹ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹⁰⁹² Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹⁰⁹³ Participant Observation: KZN HPPB Task Team (2011); KZN HPPB Annual Report, January – December 2011.

¹⁰⁹⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

2010 – 2015 Strategic Framework.¹⁰⁹⁵ However, it is thought that this process might have been delayed due to the issues at the management level between SAPS and Metro mentioned above.¹⁰⁹⁶ Negotiating this sub-structure (and the team's human trafficking protocol) has been a challenge for the task team as meetings requested with the relevant authorities did not happen.¹⁰⁹⁷ It is hoped that this will rapidly change with the TIP protocol recently adopted by SAPS in August 2012, and with it the rapid response team will also become a reality in early 2013.

The sub-structures consist of a dedicated core of members.¹⁰⁹⁸ In the case of the prevention sub-committee it is largely populated by NGOs and has sporadic attendance from government departments.¹⁰⁹⁹ This is problematic as prevention is and should be a task and responsibility of all members. This also means that departments and organisations are often not kept in the loop as to what is happening in these areas. Sporadic attendance is seen as a threat to the efficacy and cohesiveness of the task team. This is one of the challenges identified by the task team which is being reviewed and addressed.¹¹⁰⁰

The need for a database on finalised human trafficking matters of the task team, and to monitor human trafficking in KwaZulu-Natal, in an attempt to ascertain the extent of human trafficking in the province was noted in 2010.¹¹⁰¹ This became a priority throughout 2010 and 2011 and members were encouraged to enter data on forms provided as to any suspicious activities, or suspected cases or assisted trafficked persons, or lodged cases and send to the NPA for collation.¹¹⁰² By the end of 2011, no forms had been received.¹¹⁰³ This item was removed from the action plan for 2012.¹¹⁰⁴ This indicates that although there is the perception that organisations and departments may be coming into contact with possible victims of trafficking this is not being reported, nor are some of these cases being referred to the police

¹⁰⁹⁵ National Prosecuting Authority, Human Trafficking Programme Coordinating Unit, Sexual Offences and Community Affairs Unit, *Human Trafficking Strategic Planning Framework: KwaZulu-Natal Province 2010 – 2015*, First Draft, (2009): 12.

¹⁰⁹⁶ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹⁰⁹⁷ Participant Observation: Minutes of KZN HPPB Task Team Meeting, 2 February 2012.

¹⁰⁹⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁰⁹⁹ Ibid.

¹¹⁰⁰ Participant Observation: Minutes of KZN HPPB Task Team meeting, 2 February 2012. Personal Observation: Informal discussions with Adv. Dawn Coleman, NPA (2012); Thora Mansfield, Director of The Open Door Crisis Care Centre (2012); Adina vom Orde, Kloof Harvest Church (2012); Natalie Ogden, Red Light (2012); Germaine Horowitz, Women and Men against Child Abuse (2012).

¹¹⁰¹ Participant Observation: KZN HPPB Task Team Annual Report, *January – December 2010*.

¹¹⁰² Participant Observation: KZN HPPB Task Team (2010 – 2011).

¹¹⁰³ Participant Observation: KZN HPPB Task Team Quarterly Report, *July – September 2011*.

¹¹⁰⁴ Participant Observation: KZN HPPB Task Team (2012); KZN HPPB Task Team Action Plan (2012).

for investigation. This is one key priority area where the task team have come up short. It signifies a lack of buy-in from task team members in this regard.

Databases are important for monitoring and evaluation and providing data for evidence-based policies, strategies and programmes. This means that the only centralised data that the task team has on human trafficking, pornography, prostitution and brothel matters are those that have passed through official reporting channels – such as case dockets and court cases, and to a lesser extent the number of victims placed in shelters. This hampers oversight of trends or suspected trafficking cases where a victim is not prepared to come forward to authorities. It is also unclear how detailed the information gathered by shelters and other service providers is in relation to trafficked persons. Biographical information and other basic details as the type of trafficking, basic background and trafficking experience are reported to the Department of Social Development. However, it is not known what is being done with that information, or whether the information is detailed enough. Are cases being compared? Are the myriad of different factors that render individuals vulnerable to being trafficked being assessed? It would seem at present that information pertaining to victims of trafficking is being acquired through direct contact and experience in the field. The concern remains, however, that important information is not being shared and that the picture of victims being painted is either generalised or over-focused on one particular area of the victims' experiences (i.e. being trafficked by a transnational criminal syndicate for the purposes of sexual exploitation). A centralised database that collates information from a variety of sources (departments, agencies and organisations) dealing with trafficked persons is thus essential to cross-check, compare and analyse the data in order to develop specialised programmes and strategies.

While a centralised database is far from becoming a reality, if ever, the task team through its prevention sub-structure has developed a database for its awareness raising activities.¹¹⁰⁵ The database was developed by Red Light in collaboration with Durban University of Technology Information Technology students.¹¹⁰⁶ A database based on this design is expected to be up and running by mid-2013 and administered by Red Light. The database has been designed to collate information from the various organisations and departments who are involved in awareness raising and training. While the information on the database does not pertain to cases or victims, merely awareness campaigns and locations visited for this purpose, it was felt that this information needed to be protected. As a result individuals, organisations and

¹¹⁰⁵ Participant Observation: KZN HPPB Task Team – Prevention Subcommittee (2012).

¹¹⁰⁶ I was asked by the Chair of the KZN HPPB Task Team to assess the database and report back on whether it would meet the needs of the task team. Participant Observation: KZN HPPB Task Team – Prevention Subcommittee Meeting (20 August 2012).

departments who are members of the task team will be granted access to the site after applying for a password. Those using the site will be able to upload the following information: basic biographical data and contact details, training received, schools / universities / businesses booked to be visited, once presentations have been completed information pertaining to the number of people addressed, the material used, as well as two feedback forms need to be filled in. The first feedback form will be completed on site by the line manager / teacher and will assess the following: appropriateness of the presentation, resource tools used (i.e. materials like DVDs or a particular manual), satisfaction with the presentation and/or presenters, as well as any suggestions or comments. The second feedback form is to be completed by the presenters themselves and will assess the reception of the presentation, any challenges, notable successes, as well as general comments. The feedback forms will allow the task team to track the progress of awareness raising activities, assess their impact and appropriateness (depending on the target audience), allow for adjustments to be made in material / approach and serve as a good tool for monitoring and evaluation of the task team's prevention strategy. An added benefit of the database is that once information has been added as to the locale of the presentations and numbers addressed, this will be automatically reflected on a map of KwaZulu-Natal. This will provide a useful graphical representation of which areas and regions have been reached and those that warrant attention. There are further options available such as costing (i.e. transportation and other costs per trip). Monthly reports will be generated from the database. Moreover, at the end of each year the information derived from the database will allow the task team to put together a final report on progress made in terms of awareness raising, identify gaps and put forward suggestions for the coming year. The awareness database should become a useful tool for the task team provided that members are prepared to use it.

The last key priority area is that of monitoring and evaluation anti-trafficking programmes and strategies. 'Monitoring and evaluation are extensions of the analysis that originally identified the appropriate mix of policies and programmes needed to address trafficking. The process measures and demonstrates whether the strategy or programme is working, helps in targeting and retargeting existing interventions and provides useful feedback that can be used in strengthening various interventions and evaluation.'¹¹⁰⁷ Monitoring the effectiveness of the task team and its interventions is achieved through quarterly reports and annual reports. They are compiled by Germaine Horowitz, Advocacy Manager for Women and Men against Child Abuse, and a long standing member of the task team. These reports are disseminated by

¹¹⁰⁷ UNODC, 'Toolkit to Combat Trafficking in Persons', *Global Programme against Trafficking in Human Beings*, (2006): 192.

representatives to their respective heads of departments.¹¹⁰⁸ Reports are also sent to the national task team. The task team regularly reports back to the Provincial Victim's Empowerment Forum (PVEF) which in turn feeds back into the Provincial Integrated Justice Forum.¹¹⁰⁹ The task team's objectives and plan of action have been put onto the operational plan of the PVEF. This is seen as an important strategy by the task team to ensure that government role-players, by being included on the operational plan of the PVEF, cannot refuse to adhere to what has been set out in the task team's plan of action.¹¹¹⁰ This provides a modicum of institutional responsibility and accountability.

*The KZN task team maintains a link or relationship with the national task team by updating them of everything that is being done – through reports. There are no meetings of provincial task teams with the national task team. It maintains a sense of autonomy with regards to strategy and operation, prevention and protection, to cater for the particular needs in KZN. However, this must feed into the National Strategic Objectives.*¹¹¹¹

The quarterly reports are essential for assessing the degree to which the different tasks, interventions and programmes are being met. At the beginning of every year a plan of action is drafted with the members of the task team present. Priority areas are identified in terms of prevention, protection, prosecution, and partnerships and targets set. Compliance and success is measured in terms of a percentage rating.¹¹¹² Progress on the task team's action plan is reported on at every bimonthly meeting ensuring transparency of process and measurability of performance. An annual report is compiled that assesses the achievement of operational and strategic objectives.¹¹¹³ 'Monitoring and evaluation of anti-trafficking programmes consists of assessing progress in terms of programme implementation, achieving objectives and creating a sustainable impact on the lives of trafficking victims'¹¹¹⁴. The monitoring component is done professionally and exceptionally well. However, the evaluation component is somewhat lacking. The task team is currently considering how this might be accomplished. For instance, evaluating the impact and success of prevention strategies is notoriously difficult. This has not been successfully achieved internationally and has resulted in a number of states and organisations reassessing their prevention strategies so that there are measurable outcomes that can be evaluated. While monitoring the number of schools or places where awareness campaigns have been conducted is straightforward, it is nearly impossible (especially without

¹¹⁰⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹⁰⁹ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹¹¹⁰ Ibid.

¹¹¹¹ Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹¹¹² Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹¹³ Ibid.

¹¹¹⁴ UNODC, 'Toolkit to Combat Trafficking in Persons', *Global Programme against Trafficking in Human Beings*, (2006): 195.

resources) to evaluate the impact of such campaigns and whether they have resulted in behavioural or attitudinal changes. Devising programmes that allow for this is a challenge that is currently faced by the task team. Evaluation has an important function to play in benchmarking of activities and determining what constitutes good or best practice. It facilitates the development of programmes and interventions that has the highest impact whilst simultaneously being the most cost effective. In addition, it identifies gaps in strategy and allows for this to be addressed. It is strongly suggested that evaluation should be a team activity conducted by role-players with sufficient expertise on the task team.

6.1 Recommendations

Partnerships between the different role-players on the task team, between and within departments and organisations, are one of the most vital aspects of any anti-trafficking initiative or strategy. Overall, the task team performs well in this regard. However, issues of institutional capacity, roles and responsibilities (mandates), sporadic attendance and a lack of resources are perceived as limitations that need to be addressed in order to ensure the sustainability of a task team renowned for its efficacy and impact in combating and preventing human trafficking in KwaZulu-Natal. I make the following recommendations in order to provide some insight as to how these issues might be addressed:

- Hold a workshop with all the task team members (at the beginning of the new year) to review the task team's mandate in relation to its 4P model, national and provincial strategic objectives. The task team mandate requires further clarification, individual roles and responsibilities need to be formally delineated, clearly defined boundaries need to be set and documented in the form of a protocol / task team policy.
- Realise the establishment of an intersectoral rapid response team by 2013, and an intelligence sub-structure to support this.
- Cost the annual provincial plan of action in consultation with the various departments and organisations. Submit costing to the national task team and lobby for national and/or provincial government to allocate a budget for the task team as a cohesive unit fulfilling its mandate (not individual actors).
- Alternatively, in the interim, lobby participating government departments, institutions and organisations, as well as the Premier's Office, more aggressively to contribute to funding their roles and responsibilities (i.e. institutional mandate) as determined by the costed action plan.

- Create a special purpose fund to attract and leverage resources¹¹¹⁵ both nationally and internationally.
- Extend active membership of other sub-structures through the identification and targeting of key role-players.
- Foster proactive partnerships.
- Meet with provincial departments on a one-to-one basis to negotiate for senior public officials or appoint provincial coordinators who are capable of making decisions to regularly attend meetings.
- Develop a monitoring mechanism that oversees role-player attendance. An agreement or code of conduct should be signed by members obligating them to attend at least 4 bimonthly meetings a year, or where they cannot attend to send a proxy. NGOs who are either not actively involved or fail to attend meetings may be asked to leave the task team (but can be kept in affiliation to the team through volunteer or outreach work in their communities).
- Develop a centralised database that belongs to the task team (and not an individual department or organisation) through funding sourced from the special purpose¹¹¹⁶ fund.
- Develop a network of volunteers who will be able to raise awareness on human trafficking in their communities¹¹¹⁷.
- Improve dialogue, channels of communication, interdepartmental and interagency cooperation and collaboration at all levels.
- Develop policies that target specific institutional capacities that may be utilised to their full advantage in anti-trafficking.
- Develop and lobby for support structures so that a truly collaborative approach is fostered and sustained.
- Create an informal contact group with other task teams to create long-term momentum¹¹¹⁸.
- Monitor and evaluate role-player performance.

¹¹¹⁵ UNODC, *The Global Initiative to Fight Human Trafficking*, (2007): 5, available at <http://www.unodc.org/pdf/gift%20brochure.pdf> – last accessed September 2012.

¹¹¹⁶ The realisation of this might prove to be problematic. It is, however, a goal that the task team should strive to achieve.

¹¹¹⁷ Volunteers are not required to attend task team meetings. They are associated with the task team and used solely for the purpose of community engagement and awareness-raising / primary prevention. Having a pool of trained volunteers would ease the burden faced by many organisations and departments in relation to prevention and strengthen partnerships by creating a wide local network of support.

¹¹¹⁸ UNODC, *The Global Initiative to Fight Human Trafficking*, (2007): 5, available at <http://www.unodc.org/pdf/gift%20brochure.pdf> – last accessed September 2012. UNODC, *The Global Initiative to Fight Human Trafficking*, (2007): 5, available at <http://www.unodc.org/pdf/gift%20brochure.pdf> – last accessed September 2012.

- Develop an evaluation system based on good practice models as advocated by the UNODC¹¹¹⁹ utilising baseline studies and situational analyses.
- Incorporate the most important voice of all in programme development and interventions and assist in the evaluation of their impact, those of trafficked persons¹¹²⁰. It is important in the empowerment of persons who have been trafficked that they are allowed to make a contribution to preventing and combating this scourge through sharing of their lived experiences and offering insight as to what impact current policies or programmes would have had on them prior to their trafficking situation – i.e. whether they would have prevented them from being trafficked. Moreover, trafficked persons can offer invaluable insight in the evaluation of protective measures and whether rehabilitative and reintegration programmes are suitably crafted to cater for their particular needs.¹¹²¹

7.0 Conclusion

The KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team may be considered as a model of how to structure a task team based on the four anti-trafficking pillars of prevention, protection, prosecution and partnerships. Its successes have been achieved through good leadership, strategic planning, inclusion of role-players from all sectors and levels, a high degree of flexibility and commitment, dedication and determination of its (active) members who are all working toward the common purpose of combating and preventing human trafficking. Development of the task team's counter-trafficking strategies have been based on the 4P model, and mainly focused on cases of sexual exploitation. While initial conditions and structure of the task team¹¹²² account for why counter-trafficking strategies are primarily geared towards sex trafficking, it is not clear whether incidences of trafficking are overwhelmingly for sexual exploitation – as current statistics, based on actual cases, suggest. Approximately 80 percent of all reported trafficking cases in KwaZulu-Natal

¹¹¹⁹ See UNODC, 'Toolkit to Combat Trafficking in Persons', *Global Programme against Trafficking in Human Beings*, 2006.

¹¹²⁰ This should be done on a purely voluntary basis. (This does not mean that their identities need be revealed or that they would necessarily have to attend task team meetings – this should be decided by the trafficked person themselves).

¹¹²¹ '[W]e need to support trafficking survivors to be at the policy table so they can testify and claim their rights and entitlements, and policymakers can listen and learn what needs to be done. Let's face it. It is only by listening to the women and men and girls and boys who have been trafficked that we can mount a response that is effective.' Michelle Bachelet, *Fighting Human Trafficking: Partnership and Innovation to End Violence against Women and Children*, Speech delivered by UN Women Executive Director at the UN General Assembly Interactive Dialogue, 3 April 2012, available at <http://www.unwomen.org/2012/04/remarks-of-michellebachelet-fighting-human-trafficking-partnership-and-innovation-to-end-violence-against-women/> - last accessed September 2012.

¹¹²² The task team was set up by the NPA's Sexual Offences and Community Affairs Unit and the Organised Crime Component. It encompasses not just human trafficking but also pornography, prostitution and brothels. This suggests that initially the task team were predisposed to look more towards crimes of a sexual nature or with a link to organised crime.

are for sexual exploitation. This may only be the case because the focus of the task team has been almost exclusively on trafficking for the purposes of commercial sexual exploitation. The task team has, however, widened its scope over the years and now also focuses on labour trafficking. However, discussion of labour trafficking remains largely silent at task team meetings. It is also a possibility that as labour trafficking is thought to take place mainly in rural areas, near the borders, on farms and thus is not perceived as much of a threat in terms of scale¹¹²³ it does not warrant the same attention and limited resources which are dedicated to cases of trafficking for sexual exploitation. It is suggested that more resources be allocated to investigating potential cases of labour trafficking in KwaZulu-Natal. This could prove to be a site of greater and more widespread exploitation than currently assumed.

Task team activities are driven by a dedicated core of individuals from various sectors. It is mainly through the work of these individuals that the team has been such a success. Collaborative partnerships also factor high in the way the task team operations are conducted, victims are assisted and protected, traffickers are prosecuted and prevention strategies are implemented. Challenges and set-backs have been viewed as learning experiences by the task team. Programmes and strategies are accordingly adjusted or reformulated. The strategic objectives of the task team have for the most part been achieved. Certain objectives, particularly in terms of prevention and protection, can only be achieved in the long-term and require on-going attention. The task team has performed consistently well in the areas of primary prevention, prosecution and to a lesser extent in the areas of protection, partnerships and law enforcement.

The task team remains overly focused on primary prevention strategies, in the form of awareness campaigns and basic training for various role-players on human trafficking, to the detriment of secondary and tertiary level prevention. This is explained by the fact that the task team does not see tertiary prevention as part of its mandate. This, however, is a serious omission that needs to be addressed. It is hoped that more guidance will be provided from the national task team or government once the TIP Bill has been enacted and the policy framework has been developed.

[P]olicies that attempt to deal exclusively with the consequences of human trafficking instead of dealing with its root causes are in any case bound to fail. There is no alternative but to engage with the root causes, no matter how complex, difficult and

¹¹²³ Personal Observation: Interview with Adv. Dawn Coleman, SOCA Unit, NPA (2011).

*forbidding they may be. Anti-trafficking initiatives must offer real prospects of escaping from the cycle of poverty, abuse and exploitation.*¹¹²⁴

Prevention and protective strategies need to be further developed. The efficacy and impact of prevention strategies used by the task team has not been assessed. Programme evaluation is thus needed in order to determine whether such awareness campaigns have had any marked effect in changing attitudes and behaviours, reducing vulnerability and thus incidences of human trafficking. Current prevention strategies need to be assessed and extended to incorporate long-term initiatives, such as addressing the root causes of trafficking. In addition, situational analyses should be conducted by the task team in order to understand the peculiarities of human trafficking in the province in order to devise prevention strategies with the highest potential impact. Funding¹¹²⁵, departmental buy-in and long-term commitment are required to realise this goal. This will hopefully be bolstered with the enactment of the TIP Bill in 2013.

In terms of protection, South Africa ranks poorly not only on an international 3P anti-trafficking index¹¹²⁶, but also in terms of actual provision of protective services and measures (which is mainly left up to under-resourced shelters run by NGOs). In the case of the task team, mixed results have been witnessed. Shelters run by NGOs with limited resources and support from the Department of Social Development temporarily house and rehabilitate victims of human trafficking. However, there have been instances where victims extricated from trafficking situations have been placed with non-accredited shelters – thus placing them at risk in terms of personal safety, but also in terms of rehabilitation and access to appropriate clinical care. Improved referral systems and the establishment of a rapid response team should help mitigate such a reoccurrence.

In terms of victim assistance and protection, specifically the protection of the identity of victims, the task team has fared poorly due to a lack of clearly delineated responsibilities and duties of its members. In the first instance, journalists were tipped off to a raid that extricated under-aged girls who had been coerced into prostitution from a brothel in the Point area. This exposed the operation and the identity (and later location) of the trafficked minors to the general public, not to mention potentially alerting traffickers who might then elude arrest and prosecution. In the second instance, involving the same case, the identities and photos of

¹¹²⁴ Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 22.

¹¹²⁵ Government funding models need to be overhauled if the fight against human trafficking is to be taken seriously.

¹¹²⁶ See, Seo-Young Cho, Axel Dreher and Eric Neumayer, '3P Anti-Trafficking Index', 2011, available at, <http://www.human-trafficking-research.org/>.

those who had been placed in a safe house were revealed in a national magazine. Not only were these young women re-traumatised but they were subsequently recognised by members of the public and could have put their lives at risk. However, since these events took place, the task team has attempted to ensure that victims' identities are protected and that members of the task team do not reveal sensitive information to the media or comment on the merits of a case under consideration by a court through the introduction of a confidentiality and non-disclosure agreement that all members must sign and adhere to. In addition, all press releases are now to go through a media sub-committee, and journalists in mainstream media have been trained on how to responsibly report on cases of suspected human trafficking. The occurrence of such events also points to the lack of guidance by the national task team and the absence of specific anti-trafficking legislation and policy which would ensure that minimum standards be met in terms of the protection of trafficked persons.

The government needs to start providing direct care and accommodation to victims of trafficking, and primary and secondary rehabilitation programmes. It needs to allocate more funding to NGOs who currently do this job for them, as to date they remain insufficiently funded. In terms of protection, the provision of secondary rehabilitation, skills development, job training and transitional housing is urgently required as slowly more and more cases of trafficking come to light, and thus realise secondary and tertiary protection level strategies which have been neglected to date. The road to recovery for victims of trafficking is long, and not necessarily guaranteed. A nine week rehabilitation programme as introduced by the Department of Social Development in 2011 is arguably not sufficient for the needs of trafficked persons – who should be assessed and treated on a case-by-case basis. Moreover, international and domestic models of good practice in terms of victim assistance and protection for victims of trafficking should be assessed and adapted accordingly to ensure that the best possible care is provided for their rehabilitation and recovery.

Blurred roles and responsibilities have been another challenge faced by the task team which needs to be addressed. This has manifested itself where protection and prosecution intersect. The role and responsibility of individual organisations and departments on the task team has not been clearly delineated. This has resulted in NGOs overstepping the mark at times out of ignorance and a perceived lack of communication with and inertia by role-players from the prosecutorial side – particularly law enforcement. It is vital that all role-players understand what their role and function on the task team is, and where their boundaries are. A clear reporting structure or protocol is thus needed to ensure that such issues are not repeated, as well as delineating the roles and responsibilities of members of the task team.

The prosecution of human trafficking cases in KwaZulu-Natal have set the benchmark for the rest of the country. However, the importance of having magistrates trained in the specific peculiarities of a human trafficking case and properly trained interpreters have been highlighted and serve as an important learning curve for future cases. Moreover, the need for a team of specialised prosecutors is also required to handle the complexity of human trafficking cases – and should not be the remit of only one prosecutor. In terms of law enforcement, while there have been notable successes in the form of investigations, raids and rescuing of trafficked persons by dedicated and passionate personnel, questions of integrity and corruption have arisen, as well as a lack of interdepartmental cooperation. However, such issues extend beyond law enforcement and are applicable to all role-players on the task team. Anti-corruption strategies in relation to anti-trafficking have been neglected not only by the task team but by the national task team. Such strategies should form an integral part of the task team's strategic objectives and key priority areas.

Continued lack of funding, varying levels of government commitment and capacity, however, are perhaps the greatest challenges or threats to the task team and its long term success (and sustainability). These also have an impact on partnerships. As the task team matures it should also consider formulating policies, programmes and interventions (and lobby national government / task team in terms of policy recommendations) that deal with the root causes of human trafficking in KwaZulu-Natal. Situational analyses will have to be conducted in this regard and trafficked persons should be included in the process to give deeper insight and meaning to anti-trafficking initiatives. The provincial task team has come a remarkably far way in the span of four short years and achieved much without resources. It is still in the process of consolidating its structure and mandate. It is hoped that issues pertaining to collaboration and cooperation of the various role-players will be speedily resolved through dialogue and political will (without having to wait for the enactment of the TIP Bill).

The importation of the dominant human trafficking discourse is noticeable in the way it has shaped and restricted counter-trafficking activities in KwaZulu-Natal and South Africa. This is observable not only in the formation, structure and composition of the task team at its inception in 2008 (which reproduces the structure and strategy of the national task team and South African government on human trafficking as sexual exploitation), but also in the narratives which the task team as a 'discourse coalition' create and reproduce. At a subnational level, the task team reflects the global preoccupation with the framing and problematisation of human trafficking as threat, by transnational organised crime, to the security and sanctity of the state (including its ability to be the moral authority for its citizens) and a gross violation of human rights. International pressure, particularly in the form of

successive poor rankings by the United States Department of State's TIP Report (and in effect foreign policy), resulted in the political decision to address the phenomenon of human trafficking in South Africa through the establishment of its national strategy to prevent and respond to human trafficking for sexual exploitation driven by the NPA's SOCA unit. Similarly, the KZN HPPB task team was established by the NPA's SOCA unit and OCC which in turn limited the conceptualisation and focus on the problem of human trafficking as being one of transnational organised crime, sexual exploitation and (irregular) migration (and porous borders). As a result, at both the national and sub-national level, various forms of labour trafficking have been largely ignored. In addition, the counter-trafficking model of the task team, which is based on the counter-trafficking experiences of other states (and unconsciously their particular discourses on human trafficking), also reflects the acceptance and reproduction of the acceptable ways that human trafficking should be prevented and combated, and by whom. It further lends itself to the primarily criminal justice and law enforcement response to human trafficking that is witnessed in the dominant discourse.

The presence of representatives from the Consulates of the United States and Canada on the task team at its outset is also instructive. Law enforcement personnel, particularly those who dealt with border control at key entry points, were trained by U.S. Immigration, Customs and Excise (ICE) on how to detect and investigate human trafficking. This exchange of ideas and collaboration represent another way in which a discourse coalition was created in KwaZulu-Natal. Narratives concerning the problem of human trafficking were readily accepted by most counter-trafficking actors as the ideology espoused by the dominant discourse was not incongruent with their own beliefs pertaining to sexuality and sexual exploitation, as well as on questions of vulnerability, victimology and root causes. Most counter-trafficking actors, whether they are from government departments or civil society, demonstrate a strong conservative, Christian bias that aligns itself to the abolitionist slant of the dominant discourse. It is thus not surprising that key preoccupations and conceptualisations of the dominant discourse were so readily and unquestionably accepted and reproduced. Alternative viewpoints and discourses are thus largely missing from the task team.

This demonstrates the power of the dominant discourse by reproducing many of the same conceptualisations relating to the role played by transnational organised crime, the abolition of sex work (as a primary source of exploitation and trafficking), the problematisation of migration and need for stronger border control, the logic of rescue, rehabilitation and repatriation, and the homogenisation of groups vulnerable to trafficking – particularly women and children – which further entrench and legitimise it locally. They also demonstrate how the discourse itself, as an exercise in dominance, influences cognition, knowledge and action

through its reproduction and institutionalisation by discourse coalitions who are able to control the context of the discourse through the use of particular narratives. In this way, counter-trafficking activities are both shaped and restricted through the importation and indigenisation of the dominant human trafficking discourse.

In the next chapter I turn to the concept of anti-trafficking networks and governance structures based on collaboration and coordination to combat human trafficking networks. I examine the role that networks play in combating and preventing human trafficking in South Africa. I look at the prominent anti-trafficking networks and/or coalitions that have been formed in parallel to provincial task teams and their influence on counter-trafficking in South Africa.

Chapter 6: Anti-Trafficking Networks in South Africa – Linking Cooperation and Coordination of Anti-Trafficking Strategies with Governance

*A hierarchy is a clumsy tool to use against a nimble network: It takes networks to fight networks*¹¹²⁷.

*It takes an emergent complex system to fight a complex system*¹¹²⁸.

1.0 Introduction

Human trafficking is increasingly combated and prevented through anti-trafficking networks and governance structures domestically, regionally and internationally. The importance of such anti-trafficking networks, or more appropriately emergent complex adaptive systems¹¹²⁹, is gradually being acknowledged by governments, international organisations, non-governmental organisations, practitioners in the field and academics. The threat that networks¹¹³⁰, particularly transnational criminal networks and terrorist networks, pose to the security of states and the global security has resulted in an evolution in the way security governance is perceived and the means by which such threats may be contained over the past decade. Complexity theory and complex systems analysis has led to the reimagining of how networked threats, and (security) governance responses¹¹³¹ through the vehicle of counter-networks, may be effectively used to combat and contain such threats to the sovereignty of states, domestic and international security. In this chapter I reflect on the concept of network organisational forms or complex adaptive systems that are starting to emerge in the fight against human trafficking in response to the fluid and variegated trafficking networks. As traditional hierarchies and bureaucratic organisational forms have had limited success or application in combating and containing human trafficking networks, it has become apparent

¹¹²⁷ John Arquilla, 'It Takes a Network', *Los Angeles Times*, 25 August 2002, available at <http://www.rand.org/commentary/2002/08/25/LAT.html> – last accessed October 2012.

¹¹²⁸ Phil Williams, 'Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 416.

¹¹²⁹ Complex adaptive systems and complexity theory are discussed in detail in Chapter 2.

¹¹³⁰ John Arquilla and David Ronfeldt refer to the ever-growing threat posed by network-based conflict and crime for the 21st century. Network-based threats to security and stability have been coined *netwar* and claim that '[v]arious actors across the spectrum of conflict and crime are already evolving in this direction.' Hence the very real need for innovative responses based on the logic of fighting fire with fire. John Arquilla and David Ronfeldt, 'The Advent of Netwar (Revisited)', in John Arquilla and David Ronfeldt (Eds.), *Networks and Netwars: The Future of Terror, Crime, and Militancy*, RAND, (2001): 6, available at <http://faculty.cbpp.uaa.alaska.edu/afgjp/padm610/networks%20and%20netwar.pdf> – last accessed October 2012.

¹¹³¹ As discussed later in this chapter, governance plays an integral role in dealing with threats or phenomenon that are transnational in nature, and do not respect national borders, human rights or the rule of law, and which require innovative strategies involving cooperation and coordination of multi-level responses. The need for such networks, or emergent complex adaptive systems, in the fight against human trafficking networks is vital.

that innovative and flexible methods, in the form of coordinated and collaborative networks or complex adaptive systems, will be more effective in addressing such a complex and diverse phenomenon that obviates simple solutions. Emergent counter-trafficking networks are considered in relation to complex systems of governance, through formal and informal cooperation and coordination, following a bottom-up approach¹¹³² which exist in place of hierarchical counter-trafficking structures and initiatives which have not had a discernible impact on reducing human trafficking. The chapter is divided thus into two parts. The first section interrogates the concepts of human trafficking networks and the need for the restructuring of anti-trafficking networks, as new forms of (security) governance against human trafficking, which are limited in their ability to effectively combat these dark networks on all levels due to issues of cooperation and coordination. The last section looks at how emergent counter-trafficking networks, as complex adaptive systems, function in practice in the South African context and critically assesses the extent to which such networks combating and preventing human trafficking are being effectively structured and utilised.

2.0 Dark Networks and the Emergence of Complex Anti-Trafficking Systems

Human trafficking networks are complex systems that are but one constitutive part of the multiplicity of global governance problems, known as dark networks¹¹³³, which have been fomented by globalisation and which are thought to threaten global and domestic security. Dark networks are flexible, fluid, adaptive and reactive and take on numerous organisational forms, each of which is dependent on the diversity of actors (or agents) that form the complex system and the structure or system within which they operate and interact. Networks are an integral part of complex systems. As Johnson notes, ‘the study of Complexity is the synonymous with the study of agents and networks together’¹¹³⁴. The study and comprehension of the variegated forms of dark networks and the collection of agents therein, which engage in human trafficking, needs to be embarked upon by governments and anti-trafficking practitioners – including NGOs who are on the frontline of anti-trafficking activities. As Langewiesche observes, well-established dark networks should not be thought of as being ‘a rigid structure that can be shattered and shut down but rather... an informal web

¹¹³² As identified by Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 416.

¹¹³³ A term coined and developed by H. Brinton Milward and Jörg Raab in their article, ‘Dark Networks as Problem’, *Journal of Public Administration Research and Theory*, 13(4), (2003): 413 – 439; see also H. Brinton Milward and Jörg Raab, ‘Dark Networks as Problems Revisited: Adaptation and Transformation of Islamic Terror Organizations since 9/11’, Paper presented at the 8th Public Management Research Conference at the School of Policy, Planning and Development at University of Southern California, Los Angeles, September 29 - October 1, 2005.

¹¹³⁴ Neil F. Johnson, *Simply Complexity: A clear guide to complexity theory*, Oxford: Oneworld Publications, (2009): 13.

of flexible connections, capable of reshaping itself with ease'¹¹³⁵. This is because networks by definition are 'decentralized arrangements in which multiple actors (nodes) sharing an interest in a specific issue area are dispersed and loosely connected. Exchange can be formal and institutionalized, but is more often informal and voluntary'¹¹³⁶. However, the interaction and coordination of actors and networks produces a complex system where the whole is more than the sum of its constitutive parts and the linkages that comprise the system. 'Systems show properties that are truly emergent, irreducible to explanations that take into account only lower level components' properties'¹¹³⁷. Complex adaptive systems are based on their ability to self-organise through connectivity and diversity which in turn allows for greater adaptability and co-evolution. However, 'each complex system has its own emergent properties and unpredictability... inherent indeterminacy sets obvious limits on what is possible to predict when dealing with conscious complex systems... command-and-control methods are useless in complex situations'¹¹³⁸. This resistance to external control is in part due to the fundamental attributes or properties of such complex systems which allows them to interact and adapt to the environments within which the system is located. As Williams observes,

*human traffickers... have many advantages over governments and law enforcement agencies. These include: the capacity to hide human trafficking in the huge volume of travel facilitated by globalisation; the initiative in terms of the methods, timing, and routes used for human trafficking; and the capacity to neutralise or overcome some of the control mechanisms and regulatory measures imposed by governments through corruption and co-option.*¹¹³⁹

However, this does not merely refer to transnational trafficking. In the developing world, as in South Africa, rapid urbanisation and migration from rural to urban areas are increasingly placing such migrants at risk. Indeed, the profile of those assisted by NGOs in South Africa demonstrates that many have migrated from rural to urban areas in the search for better prospects or escaping an abusive or deprived home life, or have done so with similar

¹¹³⁵ William Langewiesche, 'The Wrath of Khan: How A.Q. Khan made Pakistan a nuclear power – and showed that the spread of nuclear weapons cannot be stopped', *The Atlantic*, November 2005.

¹¹³⁶ Cornelius Friesendorf, 'Pathologies of Security Governance: Efforts Against Human Trafficking in Europe', *Security Dialogue*, Vol. 38(3), (2007): 385. See also, Mette Eilstrup-Sangiovanni and Calvert Jones, 'Assessing the Dangers of Illicit Networks: Why al-Qaida May Be Less Threatening Than Many Think', *International Security*, Vol. 33, No. 2, (Fall 2008): 7 – 44.

¹¹³⁷ Pierpaolo Andriani, 'Diversity, Knowledge and Complexity Theory: Some Introductory Issues', *International Journal of Innovation Management*, Vol. 5, No. 2, (June 2001): 257 – 258.

¹¹³⁸ Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, London and New York: Routledge, (2010): 51.

¹¹³⁹ Phil Williams, 'Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 388 – 389.

intentions from neighbouring countries¹¹⁴⁰. ‘Global urbanisation is an additional factor which not only makes it easy for traffickers to concentrate their recruitment efforts, but also removes some of the norms and inhibitions often associated with more rural societies, thereby ultimately making victimisation easier’¹¹⁴¹. Moreover, as human trafficking is deeply embedded in a range of structural and proximate factors¹¹⁴² which create and perpetuate vulnerability, discrimination and inequality – a continuum of exploitation – that allows for this crime to go unabated, it is vital that a holistic approach is adopted and followed that extends past mere rhetoric. Cooperation and collaboration are stressed as being the cornerstone of counter-trafficking initiatives, whether they stem from obligations derived from international legal frameworks (such as the Trafficking Protocol) regional agreements, inter-agency protocols or domestic policy.

*Governments have become so accustomed to dealing with each other that they have really been unprepared for the diversity of actors, including trafficking organisations and networks – playing major roles in global political and economic life. Because trafficking is generally a transnational activity, only collective, multilateral or transnational responses will succeed in have a major impact.*¹¹⁴³

A holistic approach to counter-trafficking therefore requires cooperation on multiple levels within and between multiple agencies, organisations and actors that is sensitive to diverse perspectives, institutional biases and agendas. It also requires unfettered and frequent communication between nodes in order for ‘more holistic, coordinated and realistic solutions to social issues’¹¹⁴⁴ to be developed and realised. This applies to counter-trafficking efforts within a domestic context, as well as at the transnational level where most formalised cooperation and collaboration between state actors, international organisations and NGOs is to be found. These formalised channels of interaction between actors and organisations are the basis for state-sanctioned counter-trafficking networks. However, a multitude of informal

¹¹⁴⁰ In the case of irregular or forced migration, migrants often engage with the criminal underworld or smugglers to facilitate their passage. Participant Observation: KZN HPPB Task Team (2009 – 2012); Personal Observation: Interviews with members of Justice Acts (2011); members of the National Freedom Network (2011); a member of RedLight Human Trafficking Initiative (2011/2012); Thora Mansfield, Director of The Open Door Crisis Care Centre (2012); Germaine Horowitz, advocacy manager of Women and Men against Child Abuse (2012).

¹¹⁴¹ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 394.

¹¹⁴² Sally Cameron and Edward Newman, ‘Trafficking in humans: Structural factors’, in Sally Cameron and Edward Newman (Eds.), *Trafficking in Humans: Social, Cultural and Political Dimensions*, United Nations University: United Nations University Press, 2008.

¹¹⁴³ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 384.

¹¹⁴⁴ Jane Wei-Skillern and Sonia Marciano, ‘The Networked Nonprofit’, *Stanford Social Innovation Review*, (Spring 2008), available at http://www.ssireview.org/articles/entry/the_networked_nonprofit - last accessed October 2012.

networks¹¹⁴⁵ coincide with formalised structures and systems and range from collaboration and information sharing within and between agencies, like law enforcement at local and national levels, as well as regional or even international where Interpol is concerned, as well as international organisations such as the UNODC, to NGOs, individual actors, the media and even businesses, to strategic coordination through national plans of action, task teams, transnational referral mechanisms and monitoring and evaluation mechanisms like the TIP report.

The international legal framework, the Transnational Organised Crime Convention and its supplementary protocols – in particular, the Trafficking Protocol, forms the structural environment for transnational cooperation and has provided an entrenched law enforcement bias to counter-trafficking strategies and activities, and are replicated at varying levels through regional frameworks and agreements. These structures are reflected and modified to varying degrees at the domestic level to suit particular national legislative systems and the level of commitment by states to prevent and combat human trafficking. However, many of these efforts are flawed or limited. As Limanowska and Konrad have found, numerous states lack functioning coordination structures that are required to network anti-trafficking actors.¹¹⁴⁶ Such coordination and cooperation problems are noted in both the developed and developing world, particularly between law enforcement agencies within a state (due to questions of jurisdiction) and between states or at the regional level.¹¹⁴⁷ However, even at the transnational level issues of coordination and ownership loom large resulting in tensions between international organisations. For instance, the United Nations made the UNODC custodian of the Trafficking Protocol and charged it with its implementation.¹¹⁴⁸ However, in some regions¹¹⁴⁹ experience on the ground has been that the IOM has seen coordination and implementation of the Trafficking Protocol as its core business.¹¹⁵⁰ This in turn has led to a lot of confusion surrounding coordination and cooperation, as well as the duplication of

¹¹⁴⁵ Informal networks are typically based on relationships built through trust and are to be found between and within agencies and NGOs. Informal networks are important in circumventing institutional boundaries and limitations in terms of cooperation. Such networks should be bolstered and nurtured.

¹¹⁴⁶ Barbara Limanowska and Helga Konrad, 'Problems of Anti-Trafficking Cooperation', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 427.

¹¹⁴⁷ Personal Observation: Interview with a Kriminal Haupt-Kommissar of the German police responsible for human trafficking in Heilbronn (2011); Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012); Interview with Advocate Dawn Coleman, NPA (2011).

¹¹⁴⁸ Personal Observation: Interview with a former member of the regional office of UNODC – East Africa (2011).

¹¹⁴⁹ In East Africa for instance.

¹¹⁵⁰ Personal Observation: Interview with a former member of the regional office of UNODC – East Africa (2011).

programmes within the UN.GIFT collaborative structure. Such issues are again reflected at local levels, where NGOs are added to the mix. Coordination and cooperation are either inconsistent or strained between government agencies (such as law enforcement) and NGOs involved in anti-trafficking, or between government agencies (such as law enforcement and social development).¹¹⁵¹

Issues of cooperation can and do result in re-victimisation of trafficked persons and a denial of their basic rights.¹¹⁵² Such problems are attributed to the fact that ‘coordination structures have tended to work in closed loops, failing to network with or open up to other actors’¹¹⁵³. Cooperation and coordination between cohort organisations and agencies in countries of origin and destination are also disjointed. Thus, where transnational trafficked persons are repatriated to their country of origin they are either met with little or no assistance regarding their rehabilitation or reintegration and are in some cases even arrested upon repatriation and socially stigmatised. This is why it has become increasingly important for anti-trafficking NGOs and service providers like crisis care centres and shelters to form partnerships and networks with other like organisations both locally and in countries of origin to ensure a relatively smooth transition and reintegration of the trafficked person to avoid further trauma or revictimisation.

While cooperation, through the vehicle of networked partnerships, is written large in anti-trafficking literature and government statements, it remains ‘more an ideal than empirical reality... [and] is an inherent feature of, and the price to pay, for non-hierarchical, flexible modes of national and transnational governance’¹¹⁵⁴. A growing number of anti-trafficking practitioners and researchers are calling for more effective cooperation to be institutionalised both horizontally (between organisations or agencies) and vertically at the local, regional and international levels to ensure a cohesive and coordinated approach to counter-trafficking.¹¹⁵⁵

¹¹⁵¹ As indicated by the South African experience in the previous chapter. Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹⁵² As discussed in the previous chapter. See also, Barbara Limanowska and Helga Konrad, ‘Problems of Anti-Trafficking Cooperation’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 428.

¹¹⁵³ Barbara Limanowska and Helga Konrad, ‘Problems of Anti-Trafficking Cooperation’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 427 – 428.

¹¹⁵⁴ Cornelius Friesendorf, ‘Conclusions’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 491.

¹¹⁵⁵ See Barbara Limanowska and Helga Konrad, ‘Problems of Anti-Trafficking Cooperation’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, September 2009.

Moreover, the politicisation of counter-trafficking research and initiatives has meant that certain agendas and biases have dominated the human trafficking discourse and limited, for a good part of the last decade, the ability of anti-trafficking practitioners to fully comprehend or study the multifarious and changeable nature of the phenomenon, the structural and proximate factors that cause and foment it, traffickers and all those incidental to trafficking networks and operations¹¹⁵⁶, and ultimately the victims of human trafficking. Policies and programmes arguably still do not fully take the victim's perspective, experiences and needs into account – as trafficked persons remain largely unheard and unseen, and reduced to mere statistics or witnesses for the prosecution.¹¹⁵⁷ Bureaucratic statistical data accumulated from victims' interviews, through law enforcement, criminal justice practitioners or even social development organisations, only serve as descriptive devices, and do not add real value to counter-trafficking strategies or policies in their current format.¹¹⁵⁸

Shelters and other protective organisations that offer assistance to trafficked persons are often placed in a precarious situation where information provided to them by victims is not necessarily confidential. For instance, in some European states service providers, such as social workers who work in shelters, may be forced to act as witnesses in trafficking cases and testify in court. This means that the defence counsel can obtain information that a trafficked person might have told a service provider in confidence.¹¹⁵⁹ So while a victim-centred approach is advocated by both state and non-state actors, there still remain large gaps and flaws in the implementation and realisation of such policies.

In addition, the consequences and impact of counter-trafficking initiatives and policies remain by and large unevaluated.¹¹⁶⁰ This means that the consequences and impact of such policies and programmes, even the effects of interactions between counter-trafficking actors, remain largely unknown. This has led to a lack of institutional learning and '[t]oo many counter-trafficking projects [being] initiated without prior study of past projects, leading to the wheel being reinvented or, worse, to mistakes being repeated'¹¹⁶¹. Functional counter-trafficking systems are needed to combat human trafficking networks. Anti-trafficking networks should form the core elements of inter-state and intra-state counter-trafficking strategies and

¹¹⁵⁶ Along the continuum of exploitation.

¹¹⁵⁷ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹⁵⁸ Ibid.

¹¹⁵⁹ Personal Observation: Interview with members of Mitternachtsmission – Heilbronn, Germany (2011).

¹¹⁶⁰ See Cornelius Friesendorf, 'Conclusions', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 499 – 500. Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹⁶¹ Ibid., 499.

structures. The inclusion of proper programme evaluation mechanisms and channels of open dialogue and divergent perspectives would allow for greater interaction and innovation, and thereby adaptability, flexibility and greater strength and cohesiveness of counter-trafficking actors and networks that allow for regional and local peculiarities. Minimum standards, common protocols and levels of protection and assistance for trafficked persons should be obligatory, instead of largely aspirational. Addressing many of the structural problems that currently face state and non-state actors involved in counter-trafficking networks and strategies would go a long way in creating a more resolute and consummate counter-trafficking regime.

Human trafficking networks, like their counter-trafficking counterparts, are under-researched. Understanding their organisational structures and the simple order-generating rules that define them is largely lacking. The interaction among agents or actors within a system determines patterns of observable behaviour. It is the interactions amongst actors within a particular system which enables it to self-organise, adapt to the environment and survive. However, initial conditions (such as the original environment within which the system was created or operates and of the actors themselves) can greatly affect the products or outcomes of that system or actors therein.

*In contrast to command and control or bureaucratic systems, emergent coordination does not rely on organising principles that rest outside the system itself. Instead, it is based on the network of interactions exchanged by the agents in a cooperative and competitive way. The structure of coordination is then the network itself.*¹¹⁶²

The ability to determine and understand how systems are structured and how they adapt and survive has serious implications for disrupting or containing human trafficking networks, and on the flipside ensuring that counter-trafficking strategies and structures perform at an optimal level of coordination and cooperation to minimise programme duplication and ineffectual implementation. As little insight currently exists into the motivations, typologies or modus operandi of human traffickers, how such networks are structured and coordinated, the extent to which their diverse operations intersect with legitimate businesses and markets, or even the magnitude of collusion and co-option by public officials, it is difficult to craft policies and programmes that can effectively disrupt or destroy such networks. Counter-trafficking strategies and programmes are thus implemented in a challenging environment where successes cannot be readily measured and are often aimed more at addressing the

¹¹⁶² Pierpaolo Andriani, 'Diversity, Knowledge and Complexity Theory: Some Introductory Issues', *International Journal of Innovation Management*, Vol. 5, No. 2, (June 2001): 269.

symptoms rather than the root causes of the problem.¹¹⁶³ In order to ultimately understand the phenomenon of human trafficking it is vital to study the events and phenomena which emerge from the collection of interacting agents and structures. However, while understanding these emergent complex systems should help counter-trafficking efforts become more innovative, it is vital for anti-trafficking practitioners, law enforcement agencies and governments to be aware that there is no panacea for human trafficking – only incremental, long-term steps¹¹⁶⁴ that may be taken to address the root causes of the phenomenon. In all likelihood, as long as inequality, deprivation, abuse and exploitation continue to exist and thrive so too will human trafficking. Addressing the root causes of human trafficking requires more political will and capacity, levels of cooperation through transnational governance and resources, than we are ever likely to see.

While many anti-trafficking practitioners, especially those in law enforcement, are beginning to look at the markets, and the structure of those markets, within which human trafficking networks operate they are often limited in their conceptualisation of human trafficking organisations or networks as highly structured and tight criminal enterprises with an archetypal ‘kingpin’.¹¹⁶⁵ Drawing from lessons learnt in combating drug cartels, it has become apparent that even where there is an identifiable vertical hierarchical structure within the criminal organisation, if the head is chopped off – as was the case with the elimination of the Colombian drug lord Pablo Escobar – the criminal enterprise will continue to flourish. This is attributed to experiential learning by actors within such organisations or networks and the fact that although the original network may be destroyed, agents and elements which survive transmute into new network structures.¹¹⁶⁶ This loose coupling combined with integrated roles for all those involved with the trafficking operation has been noted by law enforcement in the South African context, and efforts are being made to study and understand the structure and composition of such criminal networks and the markets in which they operate.¹¹⁶⁷ Williams¹¹⁶⁸ offers a provisional typology, drawing from the few empirical studies that have

¹¹⁶³ This is also in part attributable to current global governance structures and inter-state relations.

¹¹⁶⁴ Taken in both countries of origin and destination.

¹¹⁶⁵ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012); Interview with Advocate Dawn Coleman, NPA (2011).

¹¹⁶⁶ Brint Milward, *Dark Networks as Organisational Problems*, Cambridge Colloquium on Complexity and Social Networks, 9 March, 2006.

¹¹⁶⁷ Personal Observation: Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012).

¹¹⁶⁸ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 396 – 400. See also, Alexis A. Aronowitz, ‘The Traffickers: Their Methods of Operation and Organization Structure’, in *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Connecticut:

been conducted on human trafficking networks, to assist anti-trafficking practitioners to gain an understanding of the complexity and diversity of such networks. There are five different types of human trafficking networks which are distinguishable from one another based on the: (i) size of the network¹¹⁶⁹, (ii) composition of the network¹¹⁷⁰, (iii) degree of organisation¹¹⁷¹, (iv) type of network structure¹¹⁷², and (v) level of trust¹¹⁷³:

- Flux networks – are generally more transactional than organisational whereby individuals or groups associate and interact with one another on a purely ad hoc, informal basis. Flux networks tend to be small in size and are based on short-term transactions borne out of opportunity and opportunism. Typically traffickers who form part of flux networks may be friends or acquaintances, familial relations, or lovers of the victims. As such, these are highly decentralised and are based on temporary partnerships where trust and power is limited. Flux networks posed a limited threat in terms of engaging in systemic corruption or collusion with public officials. ‘The difficulty, however, is that these amorphous and

Praeger Publishers, 2009; Louise Shelley, ‘The Business of Trafficking’ in *Human Trafficking: A Global Perspective*, Cambridge: Cambridge University Press, 2010.

¹¹⁶⁹ The size of any given human trafficking network is difficult to determine with any accuracy as ‘it is not always possible to distinguish relationships that are inextricably related to the criminal activities being carried out from those who are incidental to the illicit operations.’ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 396. This is where the amorphous intersection of licit and illicit markets, businesses, intermediaries, supply chains and end-users becomes problematic and often indistinguishable. Moreover, as with any network sizes vary from small to large.

¹¹⁷⁰ The composition of networks is as diverse as the different types of networks which exist. As such, networks may be comprised of individuals or groups in either tight or loose associations, based on kinship, technical expertise, or opportunity. The more grouped the network, the more powerful it tends to be.

¹¹⁷¹ Transactional networks are limited in structure as they are usually only once-off commercial transactions, whereas network organisations have a high(er) degree of organisation and a more durable structure.

¹¹⁷² Network structures themselves are differentiated by whether they consist of a core of organisers (centralised structure) or are decentralised and self-organising. Decentralised and self-organising networks are more difficult to counter as agents are able to operate autonomously of each other, whilst still having ‘a clear division of labour among the various groups involved.’ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 396. In this way differentiated groups will act as recruiters, transporters, intermediaries or brokers, enforcers, or seek to influence / corrupt or co-opt public officials and private actors. This also allows for domestic trafficking networks to have transnational groups operating as part of their structure and vice-versa.

¹¹⁷³ Trafficking networks range from individuals to group conglomerations and can be defined by relationships that are either ad hoc or enduring. They can be organised from top down or bottom up, and can either be specialised or more generalised in their activities, and operate with varying levels of trust among those who form part of it. Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 397.

fluid networks make constantly moving targets with few, if any, critical nodes whose removal could cripple them'¹¹⁷⁴.

- Broker networks – are also transactional networks but are characterised by a greater degree of predictability and stability of membership. Brokers are defined as ‘people with particular skills, good contacts, and reputations for trustworthiness... who are the key to connectedness and enable the network to function with efficiency and predictability’¹¹⁷⁵. While brokers make good targets for law enforcement, they are expendable and replaceable and it is doubtful if such a disruptive action on the network would have a lasting effect.
- Chain networks – function in the same way as supply chain networks of commodities do (from supplier to producer to consumer). Some agents are suppliers, others intermediaries, or purchasers of out-puts by trafficked labour, or end-consumers. Agents or small clusters of groups, which are isolated from one another, are linked together in the supply-chain. These links are vulnerable to disruptive action by law enforcement.¹¹⁷⁶
- Mesh networks – are complex chain networks with multiple chains and combinations of groups which ‘coordinate... sans the synchronisation provided by core groups. [They] are decentralised and “self organising”’: they contain independent nodes that perform specific tasks and transact directly with other nodes without mediation and oversight by core groups. While some nodes may contain influential leaders, relations among different groups are characterised by horizontal rather than vertical accountability’¹¹⁷⁷. Mesh networks are inherently more stable and more enduring and resilient than other types of trafficking networks due to higher degrees of trust and established corruption linkages.¹¹⁷⁸
- Hub or core networks – are typically large networks characterised by a broad range of criminal activities, often operating through a franchise system, a clear division of labour, and a steering group or common decision-making centre.¹¹⁷⁹

¹¹⁷⁴ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 397.

¹¹⁷⁵ Ibid., 398.

¹¹⁷⁶ Ibid.

¹¹⁷⁷ Michael Kenney, ‘The Architecture of Drug Trafficking: Network Forms of Organisation in the Colombian Cocaine Trade’, *Global Crime*, 8:3, (2007): 244. See also, Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 399.

¹¹⁷⁸ Phil Williams, ‘Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 399.

¹¹⁷⁹ Ibid., 400.

Using the nascent typology collated by Williams, law enforcement agencies and anti-trafficking practitioners and researchers in South Africa, should begin to conduct empirical research on the types of trafficking networks that are operating in the South African human trafficking market in order to direct resources and capacity in disrupting such networks more effectively. Such research would also help design appropriate, evidence-based preventive measures and policies that attempt to limit demand and afford protection and assistance to those at risk. This can only be achieved through cooperation and information sharing between different government agencies and organisations that are involved in prosecution and protection. This also implies that intelligence-led policing is imperative in the identification, perhaps even infiltration, and ultimately disruption of such networks as one aspect of a holistic approach to counter-trafficking. The demand for human trafficking and the markets also need to be simultaneously addressed. However, as Friesendorf cautions, '[w]hen police do act, they push the industry underground... traffickers have since become more cautious. They have switched from brothels to private apartments, from landlines to mobile phones, and from international to internal trafficking'¹¹⁸⁰. An even a more worrying trend that has recently emerged is the use of the underground internet, or darknet, by traffickers and other criminals to anonymously send and receive information and make tracking IP addresses virtually impossible.¹¹⁸¹ It should not be forgotten that trafficking networks are complex systems which evolve and adapt to the changing environments in which they operate and to threats or events from external actors or systems. This means that trafficking networks and markets are constantly evolving and transforming themselves not only to keep in step with fluctuating demand, but also actively engaging in threat reduction or avoidance through collusion or corruption of public officials or systems, the use of modern communications technology and even playing the (legal) system against itself.

While there has been success arresting low-level criminals, those benefitting the most from the crime have remained shielded. As any good businessman would, traffickers take every precaution to limit liability while increasing profit. They are aware of the scope of the law, the level of awareness and recognition of the problem of trafficking in various settings, as well as dire socioeconomic conditions. Traffickers select their victims carefully and are creative in deceiving them. Traffickers are very responsive to the markets and given how profitable trafficking is, they have infinite incentive to be innovative. This fact, combined with the ad hoc nature of coordination between

¹¹⁸⁰ Cornelius Friesendorf, 'Pathologies of Security Governance: Efforts Against Human Trafficking in Europe', *Security Dialogue*, Vol. 38(3), (2007): 391.

¹¹⁸¹ The use of the underground internet by child pornographers and traffickers was brought to the public attention in 2011, when the hacktivist group *Anonymous* took down a server in India that was being used as a platform for the distribution of child pornography. See <http://www.dw.de/dw/episode/202/0,,16237727,00.html> – last accessed October 2012.

*stakeholders in the anti-trafficking sector, they continue to change their tactics faster than the sector is able to adjust responses.*¹¹⁸²

This is one of the reasons why prevention, protection and prosecution strategies that are linked through networked partnerships and are based on cooperation and the promotion of human rights are seen by anti-trafficking practitioners as vital components of holistic counter-trafficking.¹¹⁸³ The ability to share information and experiences, and address trafficking in a coordinated manner, is vital in order for counter-trafficking strategies not to lag too far behind ever-changing trafficking trends and modus operandi. Thus, ‘it is vital that there are networks not only *among* actors pursuing the same governance approach (such as police, border guards, and prosecutors, all of whom pursue a law enforcement and criminal justice approach), but also *between* actors pursuing different approaches (such as networks between the police focusing on the prosecution of traffickers and NGOs focusing on the protection of trafficked persons.’¹¹⁸⁴ Governments cannot afford to attempt to address human trafficking in isolation from one another or the multiple intersecting issues that create an enabling environment for human trafficking to occur and endure. Human trafficking as a phenomenon has no respect for the boundaries of the state, nor for legal systems and the rule of law or human rights. The improvement of coordination and formalisation of cooperation at different levels (local, national, regional and international) is seen as being increasingly important in the fight against human trafficking.

3.0 South African Counter-Trafficking Networks

Partnerships have come to play a pivotal role in anti-trafficking strategies both domestically and internationally. Partnerships extend to inter-agency coordination and cooperation, within and between government departments, and incorporate international organisations and local NGOs, as well formalised relationships with consulates, embassies and foreign agencies. This myriad of partnerships, and actors, has resulted in the creation and expansion of anti-trafficking networks with varying degrees of scope and influence. This is mirrored in the domestic context where identifiable anti-trafficking networks exist. The organisations and/or actors which comprise such anti-trafficking networks have differing degrees of capacity,

¹¹⁸² Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 5.

¹¹⁸³ Personal Observation: Interviews with Advocate Dawn Coleman, NPA (2011); members of Justice Acts (2011); members of the National Freedom Network (2011); a member of RedLight Human Trafficking Initiative (2012); Thora Mansfield, Director of The Open Door Crisis Care Centre (2012); Germaine Horowitz, advocacy manager of Women and Men against Child Abuse (2012). Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹¹⁸⁴ Cornelius Friesendorf, ‘Pathologies of Security Governance: Efforts Against Human Trafficking in Europe’, *Security Dialogue*, Vol. 38(3), (2007): 386.

competency and impact in the South African discourse. While not as prevalent as their North America, European or Asian counterparts, possibly due to a lack of funding opportunities, legislation and an enabling environment, the membership or composition of already established anti-trafficking networks is expanding.

The distinction in the South African context is that there are few organisations, specifically NGOs, whose activities or focus is exclusively anti-trafficking. Most are engaged in broader activities and social problems. Organisations typically have extended their areas of activity to incorporate human trafficking. Even one of the most predominant and longest standing NGO actors in the local human trafficking discourse, Molo Songololo, a children's rights and protection organisation that extended its ambit to child trafficking as it was exposed to the realities of it. Similarly, crisis care centres, shelters, organisations like The Open Door Crisis Care Centre, Doctors for Life, LifeLine, Childline, the Children's Rights Centre, Bobbi Bear, the Salvation Army and so forth, all have extended their activities and programmes to include and address parts of human trafficking¹¹⁸⁵ in South Africa or form part of networks which do. Such networks have for the most part grown organically to fill in structural gaps that exist in the anti-trafficking community. Organisations which are purely dedicated to anti-trafficking fall into three categories: those that have been established in the past few years¹¹⁸⁶, those who are local branches or chapters of international anti-trafficking NGOs¹¹⁸⁷, and those who are affiliated to international anti-trafficking coalitions¹¹⁸⁸.

Areas of influence and impact are also limited to the province or even city where the organisations are based. Few organisations have branches or chapters throughout the country. However, rich and vibrant anti-trafficking networks exist with multiple relational layers and linkages domestically (provincially and nationally), regionally and internationally that allow for information sharing, the growth of knowledge systems and expertise, strategies, tools and referral mechanisms to be developed, and lobbying and advocacy activities. It is these organisations and networked partnerships which are the focus of this section. Selected South African networks and networked partnerships, based in the Western Cape and Gauteng, which

¹¹⁸⁵ Organisations typically focus on particular issue areas within the trafficking phenomenon, such as child trafficking or trafficking for sexual exploitation (and prostitution), or offer assistance and protection in the form of crisis care centres or shelters for women and girls. Men and other forms of trafficking, like labour trafficking, are largely ignored or are region (province) specific. There are few organisations which focus on areas other than advocacy, prevention and/or protection.

¹¹⁸⁶ Such as Justice Acts, Anex CDW, Red Light, S-Cape and STOP Trafficking of People.

¹¹⁸⁷ Such as Not for Sale Campaign.

¹¹⁸⁸ Such as Embrace Dignity – a Cape Town based NGO affiliated with the international NGO CATW – which focuses solely on prostitution as a form of sexual exploitation and oppression, and sex trafficking. See <http://www.embracedignity.co.za/> - last accessed October 2012.

exist alongside formal state-created counter-trafficking networks, are critically assessed in relation to their counter-trafficking activities and interactions.

3.1 Networking in the Western Cape

Starkey defines a network as ‘a group of individuals or organizations who come together around one or more clearly defined commonalities to exchange information and/or undertake joint activities and who organize themselves in such a way that their individual autonomy remains intact’¹¹⁸⁹. The process of networking (interaction of actors) is perceived as being more important than the actual structure of the network. Wei-Skillern and Marciano observe that networked organisations perceive themselves as being ‘nodes within a constellation of equal, interconnected partners, rather than as hubs at the center of their non-profit universe’¹¹⁹⁰. In South Africa, organisations, particularly NGOs, are connected through formal networked structures like SANTAC (Southern African Network Regional Network Against Trafficking and Abuse of Children), Tshwane Counter Trafficking Coalition, Western Cape Counter Trafficking Coalition and the National Freedom Network, and more informal, collaborative networks based on networked partnerships, such as ANEX (Activists Networking against the Exploitation of Children)¹¹⁹¹ and Justice Acts.

Networks, like organisations involved in anti-trafficking efforts, are differentiated by focus, issue area and scope. Anti-trafficking networks, coalitions and organisations are most prevalent in the Western Cape, where most have their bases. SANTAC is a southern African wide network¹¹⁹² that seeks to ‘build synergies amongst Southern Africa institutions and individuals to fight against all manifestations of child abuse, in particular child sexual and commercial exploitation, child labour and trafficking of children for any purpose, through lobby and advocacy, protection, law reform, rehabilitation and care services for victims’¹¹⁹³. It also has links to internationally based organisations, such as Terre des Hommes (Germany) and Save the Children (Mozambique, Swaziland and Sweden).

¹¹⁸⁹ Paul Starkey, *Networking for Development*, International Forum for Rural Transport and Development: United Kingdom, (1998): 14.

¹¹⁹⁰ Jane Wei-Skillern and Sonia Marciano, ‘The Networked Nonprofit’, *Stanford Social Innovation Review*, (Spring 2008), available at http://www.ssireview.org/articles/entry/the_networked_nonprofit - last accessed October 2012.

¹¹⁹¹ Anex is a children’s rights organisation, based in the Central Karoo district advocating for the end of all forms of exploitation and child abuse. <http://www.anexcdw.org.za/> - last accessed October 2012.

¹¹⁹² SANTAC has affiliates throughout most of the SADC region. 8 organisations form part of the SANTAC network in South Africa, and 15 partners throughout SADC. However, many of South Africa’s neighbours do not have any affiliates, such as Lesotho, Swaziland, and Botswana.

¹¹⁹³ <http://www.santac.org/eng/About-us> - last accessed October 2012.

The chairperson of SANTAC's General Assembly Board is Molo Songololo. Molo Songololo is a Cape Town based influential children's rights NGO with numerous links and partnerships throughout South Africa. It is involved in awareness and advocacy, education and training, victim empowerment, and child/youth empowerment in the Western Cape.¹¹⁹⁴ In addition, Molo Songololo has been instrumental in bringing human trafficking to the attention of the government and public eye. It is a member of the national task team and also has contributed to the drafting of the TIP Bill. Molo Songololo has arguably had more influence on counter-trafficking policy development in South Africa than any other NGO involved in anti-trafficking. 'Molo Songololo's direct influence resulted in the South Africa government setting up a National Inter-governmental Task Team to Combat Trafficking in Persons, 2003, develop a National Plan of Action Against Trafficking in Persons; adopting and implementing a National 2010 FWC Child Protection Plan; as well as drafting a National Policy Framework Against Child Exploitation, 2011. The organisation also participates in various national and provincial government and NGO forums concerning the rights and protection of children'¹¹⁹⁵. While influential, the quality of early human trafficking research reports (which form the basis of all human trafficking knowledge in South Africa) produced by Molo Songololo were fraught with methodological weaknesses and dubious extrapolations.¹¹⁹⁶ Despite this, Molo Songolo's success and influence in networking circles should not be overlooked. This is attested in its wide circles of influence in the South African, and Southern Africa, counter-trafficking community and its various partnerships and long list of foreign donors and sponsors¹¹⁹⁷. Molo Songololo is not only connected to SANTAC, but is also a partner of Anex¹¹⁹⁸ which in turn partners with Justice Acts, and all are members of the Western Cape Counter Trafficking Coalition (CTC).

Indeed, Molo Songololo, Anex CDW, Rape Crisis and the IOM are the founding members of the CTC in response to the need for a coordinated provincial response to human trafficking in December 2007. Twelve organisations¹¹⁹⁹ active in the field of prevention, protection and prosecution are the original members of the CTC. The CTC should not be confused with the provincial task team which was set up by the NPA and launched in 2010. The CTC was

¹¹⁹⁴ See <http://www.molosongololo.com/what-we-do/projects/> - last accessed October 2012.

¹¹⁹⁵ A letter from the Director of Molo Songololo, Patric Solomons, available at <http://www.molosongololo.com/who-we-are/> - last accessed October 2012.

¹¹⁹⁶ As discussed in Chapter 1.

¹¹⁹⁷ See <http://www.molosongololo.com/who-we-are/> - last accessed October 2012.

¹¹⁹⁸ Anex has fourteen listed partners, including two networks Justice Acts and the Counter Trafficking Coalition.

¹¹⁹⁹ Apart from the founding members, these include the Commission for Gender Equality, Southern African Catholics Bishops Conference's Parliamentary Liaison Office, Gender Advocacy Programme, Mosaic, Institute for Security Studies, Western Cape Network on Violence against Women, and Saartjie Baartman Centre.

originally established to coordinate, support and develop tools to strengthen a provincial response to trafficking in persons through: (i) collective response to draft human trafficking legislation and policy, (ii) the establishment of a database to keep track of information on trafficked persons in the Western Cape, (iii) the development of tools to assist victims of trafficking, and (iv) collaboration with relevant stakeholders.¹²⁰⁰

The CTC in the Western Cape is a good example of a South African anti-trafficking network which comprises mostly of organisations and institutes from the NGO sector. It demonstrates Rosenau's concept of 'framgregation' and uncertainty inherent in emergent complex systems, as well as sensitivity to initial conditions (membership composition and dominant perspectives) as well as its emergent structure and environment. 'Proper reflection of complexity and its far-reaching implications, thus, also sheds light on diverse coordination mechanisms and forms and hence promotes an understanding of the structures of different allocation and coordination forms, their interrelations and potential combinations'.¹²⁰¹ The ability to identify different coordination mechanisms and their networked structures allows for greater leveraging of scarce resources, individual and networked capabilities and strategies – and ultimately greater impact.¹²⁰²

The CTC has grown in membership composition since 2007 to approximately 20 organisations, and has since become linked with another network which operates nationally, the National Freedom Network¹²⁰³ – indicating a symbiosis between actors and networks, as well as diverse intersecting coordination mechanisms, in the South African context. It also has indirect or informal linkages to other organisations and networks through networked partnerships of its members. For instance, Justice Acts¹²⁰⁴ is both a faith based organisation and network which was formed by Youth with a Mission (YWAM) – an international Christian organisation. Justice Acts in turn set up S-Cape as part of its 'Justice Restores' programme.¹²⁰⁵ The programme is part of the organisation's prostitution outreach and includes a rehabilitation programme, job and skills training, education and a six month discipleship training (for rehabilitated sex workers and victims of trafficking to become motivational speakers). S-Cape is a long-term facility for underage female victims of

¹²⁰⁰ http://www.anexcdw.org.za/index.php?option=com_content&view=article&id=28:combating-trafficking-in-persons-coalition-ctc&catid=7:stop&Itemid=16 – last accessed October 2012.

¹²⁰¹ Wolfram Elsner and Gero Hocker, *Simple and Complex Organizational Forms: Markets, Hierarchies, and Networks in an 'Organizational Triangle'*, Faculty 7 Business Studies & Economics Department of Economics, University of Bremen, Discussion-Papers Series No. 010–2008: 3.

¹²⁰² Personal Observation: Interviews and informal discussions with members of Justice Acts (2011) and National Freedom Network (2011/2012).

¹²⁰³ Discussed later in this chapter.

¹²⁰⁴ Alliance of Christians Against Trafficking and Slavery.

¹²⁰⁵ Personal Observation: Interview with a member of Justice Acts – Cape Town (2011).

trafficking and sexual exploitation and provides victims assistance and rehabilitation. It was set up shortly before the 2010 World Cup in response to the need for a shelter that could deal with child victims of trafficking, and in March 2011 it officially opened its doors and has since assisted twelve young women.¹²⁰⁶

Justice Acts is networked to a wide range of organisations, government agencies and other networks. Justice Acts has branches in Uganda and New Zealand, and is linked to local and international missionary organisations.¹²⁰⁷ It has become the authority in South Africa on human trafficking prevention education through its widely used *Traffick Proof* manual.¹²⁰⁸ It has links to STOP Trafficking of People which is a focus of the Connect Network. STOP identifies itself as a Christian value-based organisation that seeks to raise awareness and educate the public about human trafficking (particularly for sexual exploitation). The Connect Network is a Christian response to women and children at risk in the greater Cape Town area. It has 109 members who consist of NPOs and churches. Connect Network in turn is linked to VIVA an international networking agency with a membership of 2 800 organisations and churches across the world. VIVA deals with children at risk and has programmes in the areas of education, safety, advocacy and health to keep children safe from risk, hunger, abuse and exploitation and seeks to empower them through networked action.¹²⁰⁹ VIVA in turn is networked with the National Freedom Network, one of the first national anti-trafficking networks to be established in South Africa, which was founded by a former strategist for the VIVA network, Justine Demmer.¹²¹⁰ The National Freedom Network which was established in 2011 has 264 members (predominantly NGOs and faith based organisations) and is affiliated with the CTC and two provincial task teams: the KZN HPPB Task Team and the Gauteng Trafficking in Persons Task Team.¹²¹¹

The organisations and networks¹²¹² which form part of the CTC were instrumental in developing a coordinated rapid response strategy for victim assistance and protective services in the Western Cape.¹²¹³ Justice Acts and S-Cape were influential in providing the groundwork for this by establishing working relationships with other key trafficking victim

¹²⁰⁶ There are only a couple of shelters in the Western Cape that can accommodate victims of trafficking. See http://www.s-cape-home.org/?page_id=273. Personal Observation: Interview with a member of Justice Acts, Cape Town (2011).

¹²⁰⁷ Personal Observation: Interview with members of Justice Acts (2011).

¹²⁰⁸ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹²⁰⁹ See <http://www.viva.org/home.aspx> - last accessed October 2012.

¹²¹⁰ Personal Observation: Interview with the founder of the National Freedom Network, Justine Demmer (2011).

¹²¹¹ Personal Observation: National Freedom Network response to questionnaire (2012).

¹²¹² Such as the National Freedom Network and Not for Sale Campaign.

¹²¹³ Personal Observation: Interview with members of Justice Acts (2011); Interview with Justine Demmer, founder of the National Freedom Network (2011).

protection and assistance organisations already in 2010, and thus creating a victim assistance network.¹²¹⁴ These efforts, in conjunction with government agencies, resulted in the formation of the Human Trafficking Rapid Response Team in 2011.¹²¹⁵ As a result the concept of emergency safe houses was also introduced into the local trafficking discourse.¹²¹⁶ Emergency safe houses, as well as transitional housing and long term facilities¹²¹⁷, are seriously lacking in South Africa creating significant gaps in victim assistance and protection.

The introduction of emergency safe houses is an emergent property of the interaction of the particular of nodes (actors) of this complex system and has had an impact on counter-trafficking in the Western Cape. ‘In 2011, the city of Cape Town supported the establishment of three NGO-run safe houses for trafficking victims; two of these already open provide short-term emergency care, while victims await transfer to DSD-accredited shelters’¹²¹⁸. Not for Sale Campaign (NFS) was responsible for the establishment of one of the short-term emergency assistance centres in 2011, as well as collaborating in the development of the rapid response team.¹²¹⁹ NFS is also networked with Justice Acts, as well as the CTC, and provides a lot of investigative support for other NGOs in the identification and assistance of victims of trafficking in the Western Cape and works alongside law enforcement in this regard.¹²²⁰ Justice Acts incorporates TIP forms with their *Traffick Proof* presentations. Their target audience is then requested to fill out these forms and provide any stories about human trafficking now that they have the vocabulary and conceptual understanding of the crime. These forms are then sent off to NFS for analysis or follow-up.¹²²¹

As noted elsewhere in this dissertation, provision of victim assistance and protective services, including safe houses, shelters, rehabilitation, skills training and reintegration is left in the hands of private service providers (i.e. NGOs). Adequate financial support, direct care and facilities for victims of trafficking provided for by the Department of Social Development are still lacking. The inception of a rapid response strategy and team has resulted in coordinated

¹²¹⁴ See, Miryam Danam, *S-Cape 2 Phase Plan*, available at http://www.justiceacts.org/uploads/files/File/restores_2PhasePlan.pdf - last accessed October 2012.

¹²¹⁵ Personal Observation: Interview with members of Justice Acts (2011); Interview with Justine Demmer, founder of the National Freedom Network (2011).

¹²¹⁶ Personal Observation: National Freedom Network response to questionnaire (2012).

¹²¹⁷ As discussed in the previous chapter.

¹²¹⁸ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹²¹⁹ Personal Observation: Interview with members of Justice Acts (2011). See also, <http://www.notforsalecampaign.org/news/2012/08/02/from-south-africa-utilizing-africas-largest-social-network-to-end-slavery/> – last accessed October 2012.

¹²²⁰ *Ibid.*

¹²²¹ Personal Observation: Interview with members of Justice Acts (2011).

law enforcement mechanisms and victim referral mechanisms.¹²²² This indicates that the relationship and interactions among organisations and government agencies, particularly between law enforcement and NGOS, are generally cooperative and collaborative allowing for effective coordination in the area of victim assistance and protection.¹²²³ In terms of measurable impact, this has resulted not only in the ‘increased coordination in the investigation of trafficking cases and effective gathering of evidence and testimony, but further enabled victims’ rapid access to care through strengthened partnership with NGOs’¹²²⁴. As Elsner and Hocker emphasise, ‘the real-world organizational dimension builds upon direct interdependence and direct interaction processes, cumulatively learned and habituated forms of cooperation to overcome social dilemmas and solve coordination problems’¹²²⁵.

The diversity of membership of the CTC has created competition and friction between some of its members who hold divergent views on prostitution and how this relates to human trafficking. However, it has also resulted in attempts to silence perspectives and voices that deviated from the status quo or were seen as disruptive. It also highlights institutional and personal biases¹²²⁶ of the different members of the CTC, and the determination of what constitutes legitimate voices or actors in the network. Divergent perspectives can be a good source of positive competition and innovation. However, they can also cause conflict in any organisation or network and lead to inertia or decision-making trajectories that have limited real-world impact. As Elsner and Hocker have demonstrated, ‘Complexity typically stems from dilemma-prone direct interdependence, resulting strong strategic uncertainty, mutual externalities, collectivities, and bounded rationality, which are ubiquitous dimensions of any social behavior. Complexity triggers subsequent evolutionary process... Evolutionary

¹²²² Personal Observation: Interview with members of Justice Acts (2011); Interview with Justine Demmer, founder of the National Freedom Network (2011).

¹²²³ It also suggests that counter-trafficking networks in the Western Cape have not encountered the same blockages and issues of coordination between different agencies and organisations as those by the KZN HPPB task team (discussed in the previous chapter). This could indicate a number of possibilities. Firstly, civil society and counter-trafficking networks are stronger, more numerous and more cohesive than in KwaZulu-Natal. Secondly, there is a more amiable relationship and trust between law enforcement and NGOs involved in anti-trafficking activities. Thirdly, there is better provincial coordination and organisation of government agencies, like law enforcement, and issues of local jurisdiction are not as problematic. Further research is required to compare provincial responses to counter-trafficking in South Africa, the actors who comprise the system and environmental effects on efficacy and impact.

¹²²⁴ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹²²⁵ Wolfram Elsner and Gero Hocker, *Simple and Complex Organizational Forms: Markets, Hierarchies, and Networks in an ‘Organizational Triangle’*, Faculty 7 Business Studies & Economics Department of Economics, University of Bremen, Discussion-Papers Series No. 010–2008: 13.

¹²²⁶ The majority of organisations have a Christian agenda (and are either faith-based organisations or self-identified Christian organisations). This helps account for the predominantly abolitionist stance of the CTC and its members.

process, however, may also lead to mutual blockage, lock-in on an inferior path, or some other complicated system orbit'¹²²⁷. Thus, while it is important from the onset to have clear definitions and delineations of what an organisation or network stands for, its beliefs system, objectives and vision to avoid a mismatch of interests, philosophies or agendas – it is also imperative that diverse or competing perspectives where they arise should be taken into consideration to allow for institutional learning and innovation.

The Cape Town coalition is doing really well. At first it was going really slowly and it had a lot of political problems. The political problems down there are to do with a specific organisation called SWEAT joining the coalition and causing divisions. So you've got two camps of thought around prostitution, around what is trafficking. And each playing it from their point of view.

... And because in the beginning when it was a small group and SWEAT was still very active they said they won't get involved at all in the sex industry or lobbying against the sex industry or say anything against it they will just do human trafficking. But the two are so inextricably linked when it comes to trafficking for sexual purposes. And the other girls actually felt that we had to stand up against that industry. And... a lot of people were actually thinking we would like to keep it illegal because we should deal with it as something women shouldn't have to be subjected to this whether they are trafficked or not.¹²²⁸

These so-called 'political problems' highlight competing agendas, as well as groupings amongst actors. SWEAT (Sex Workers Education and Advocacy Taskforce)¹²²⁹ formed a working partnership with the Institute for Security Studies which resulted in the publication of a book on the sex industry in Cape Town in 2008 entitled, *Selling Sex in Cape Town*.¹²³⁰ It was the culmination of a two year study on sex workers in Cape Town and about any evidence of human trafficking into the industry. Their findings went against the grain of commonly held assumptions, and even previous studies by the IOM and Molo Songololo on human trafficking for the purposes of sexual exploitation or sex workers subject to entrenched debt bondage, in the province. Gould and Fick¹²³¹ found that while working conditions, levels of coercion, exploitation and abuse varied widely between street-based and brothel based sex workers, incidences of what could be categorised as human trafficking were much lower than expected and indeed found little evidence for trafficking for the purposes of commercial sex

¹²²⁷ Wolfram Elsner and Gero Hocker, *Simple and Complex Organizational Forms: Markets, Hierarchies, and Networks in an 'Organizational Triangle'*, Faculty 7 Business Studies & Economics Department of Economics, University of Bremen, Discussion-Papers Series No. 010–2008: 3.

¹²²⁸ Personal Observation: Interview with the founder of the National Freedom Network, Justine Demmer (2011).

¹²²⁹ SWEAT joined the CTC in 2008. See, http://www.sweat.org.za/index.php?option=com_k2&view=item&layout=item&id=109&Itemid=106 – last accessed October 2012.

¹²³⁰ Chandré Gould in collaboration with Nicole Fick (SWEAT), *Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City*, Institute for Security Studies, 2008.

¹²³¹ Ibid.

in Cape Town.¹²³² They also recommended the decriminalisation of adult prostitution and that it should be recognised as legitimate work and be regulated by labour legislation.

This represented a dichotomy within the CTC and incongruence of beliefs, perspectives and agendas of the actors¹²³³, and wide circles of networks, that constitute it. As demonstrated at the international level, networks need to be cautious in limiting institutional democracy or divergent perspectives as this can result in aspects of human trafficking being not adequately addressed or ignored, skewed research and understanding, ineffectual programmes and policies, as well as a lack of institutional learning. Unfortunately, it is doubtful whether consensus will ever be reached by all actors in relation to the contentious issue of prostitution and its effects on human trafficking. Each approach comes with its own drawbacks and none is a panacea for addressing why people enter into sex work in the first place or the continued demand for bought sex (coerced or voluntary) exists. However, even if one accepts the abolitionist argument for the continued criminalisation of prostitution and that all prostitution is exploitation, as the dominant view suggests¹²³⁴, then the CTC and its members should be far more vocal about affording protection to the basic rights of sex workers¹²³⁵ first and foremost to protect them from abuses by law enforcement, or inability to report cases of rape, assault or intimidation, discrimination by health care practitioners or social stigmatisation that many organisations unwittingly contribute to.

Members of the CTC, however, go beyond mere rhetoric and are active in the provision of viable alternatives and training of market-related skills. Many of its members, like Justice Acts and other Christian based organisations which are all linked in partnership and networks, like STOP, Straatwerk, Inter-Outreach Ministries¹²³⁶, Not for Sale, and the Salvation Army

¹²³² As discussed in more detail in chapter 1.

¹²³³ Between those who favour an abolitionist approach and those who favour decriminalisation and regulation.

¹²³⁴ Personal Observation: Interviews with members of Justice Acts (2011); Justine Demmer, founder of the National Freedom Network (2011); and responses to a questionnaire by members of the Western Cape Counter Trafficking Coalition (2012).

¹²³⁵ This is something that SWEAT is very active in with regards to its advocacy and networking programme. SWEAT also facilitated sensitisation training of law enforcement personnel by sex workers in 2012. SWEAT also engages in outreach programmes. However, their focus is not on saving or rescuing adult sex workers from a perceived life of exploitation. They seek instead to empower them through education about their human rights in order to make informed decisions, and has programme interventions which focus on their immediate health and safety needs. SWEAT offers workshops for sex workers on life skills and safer sex practices. 'SWEAT works to ensure that sex workers rights are defended, that sex workers have access to health and other services and that sex workers are respected and valued members of society.'
http://www.sweat.org.za/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=23&Itemid=50 – last accessed October 2012.

¹²³⁶ Like Justice Acts, Inter-Outreach Ministries has links to the international organisation, Youth with a Mission. Up until 2011, they offered residential care and a six month life skills and discipleship

are actively involved in street ministry – i.e. trying to get sex workers to exit the industry and reconnect with God. S-Cape is a good example of a faith based facility that caters to this and provides spiritual care, rehabilitation, education and skills development of trafficked and sexually exploited minors.¹²³⁷ It is also one of the few long-term shelters in the country that caters exclusively to victims of human trafficking. Most shelters that are accredited by the Department of Social Development to take in victims of trafficking in South Africa are multi-purpose and almost all exclusively cater to women and to a lesser extent children (particularly girls). This has several implications for male victims of human trafficking.¹²³⁸

International funding from the IOM for safe houses was cut in 2011, the same year as inroads were being made in the Western Cape as to the establishment of emergency assistance centres (i.e. emergency safe houses) and long-term shelters and the establishment of a rapid response protocol.¹²³⁹ This has had a negative impact on safe houses who are now operating in a challenging financial environment, and do not receive any real financial support from the Department of Social Development for the work that they do in their stead. Lack of capacity, poor project and financial management, and coordination problems were cited as the reasons why the international donor funding for anti-trafficking efforts in South Africa was revoked.¹²⁴⁰

*IOM was a channel for a lot of funds from all sorts of places for anti-trafficking work. They didn't manage it properly and a lot of the money got taken back. Because they weren't using it. And that's just from lack of networking, lack of control. I was so frustrated I just wanted to pull my hair out when I heard about that. They did call at one stage for the submissions for the funding but it was like this massive process of having to write these application forms... Instead of working with us and to have one programme and we just slot everyone in so we could submit one... They used to give R3000 per month for a trafficked victim who went into a safe house. So most of the shelters we are using are for domestic abuse which is also a problem by the way.*¹²⁴¹

Another issue relating to the IOM, that has been noted by anti-trafficking practitioners both in the Western Cape and KwaZulu-Natal is that the national toll-free human trafficking hotline,

programme for former sex workers and women trafficked for sexual exploitation. Inter-Outreach Ministries has now refocused their area of work to training on street ministry, rehabilitation and the opening of safe houses. See, <http://www.interoutreach.org.za/about.htm> - last accessed October 2012.

¹²³⁷ Personal Observation: Interview with members of Justice Acts (2011).

¹²³⁸ Discussed in the next chapter.

¹²³⁹ Personal Observation: Interview with a member of the Western Cape Counter Trafficking Coalition (2011).

¹²⁴⁰ Ibid.

¹²⁴¹ Ibid.

0800-555-999, was either defunct or in a state of serious disrepair in 2011.¹²⁴² One organisation went so far as to claim that the hotline was not being run properly by the IOM in South Africa.¹²⁴³ This could imply that there were problems with its victim assistance and referral mechanism upon which the functions of the helpline are based and what SACTAP is credited for. As of 2012, the hotline is once more fully operational¹²⁴⁴. However, while operators will answer questions they will not provide any direct assistance as it did in the past. Instead, callers will be referred to other organisations or government agencies.¹²⁴⁵ It is uncertain the extent to which this tailoring down of victim assistance services via the helpline will affect the quality of its victim referral mechanism or the dissemination of information and awareness raising about human trafficking or how it will impact on the communication of ‘qualitative and quantitative data related to human trafficking in data collected from the helpline [to] gauge the impact of awareness raising campaigns, [or serve] as a vital research tool where victim assistance and prevention is concerned’¹²⁴⁶.

Mirroring international experience, coordination and internal cohesion of the CTC was perceived to be a problem in the first few years of its existence.¹²⁴⁷ There has been a perceived shift in terms of this since mid-2011 with the development of a rapid response team which is directly linked to government agencies involved in counter-trafficking and accompanying protocol and strategy. Leadership and member involvement thus play a decisive role in the efficacy of the CTC. As with the case of KwaZulu-Natal, sporadic attendance by organisations who are members of the CTC is perceived to have a direct impact on the cohesiveness and impact of the CTC in counter-trafficking in the Western Cape.¹²⁴⁸

The CTC has not been managed very well up until to now [2011]. And I think there are many members of the CTC and they are all doing fantastic work but there hasn't been a cohesion, there hasn't been a unity.

So it's got the formal structure, but in terms of what they have actually gotten done – it's not a lot from what I can see. And I think it's largely due to funding. And if we

¹²⁴² Participant Observation: KZN HPPB Task Team (2011). Personal Observation: Interview with members of Justice Acts (2011); Interview with Justine Demmer, founder of the National Freedom Network (2011).

¹²⁴³ Personal Observation: Interview with the founder of the National Freedom Network, Justine Demmer (2011).

¹²⁴⁴ Participant Observation: KZN HPPB Task Team (2012).

¹²⁴⁵ Participant Observation: KZN HPPB Task Team Meeting, 26 September 2012.

¹²⁴⁶ http://www.anexcdw.org.za/index.php?option=com_content&view=article&id=27:stop-stop-the-trafficking-of-persons&catid=7:stop&Itemid=16 – last accessed October 2012.

¹²⁴⁷ Personal Observation: Interview with members of Justice Acts (2011).

¹²⁴⁸ Personal Observation: Interview with a member of the Western Cape Counter Trafficking Coalition (2011).

*look at the CTC and the people running it I just don't feel that it's run with passion. But it is a coalition... The CTC should be a lot more productive than it is.*¹²⁴⁹

A perceived lack of cohesion may be indicative of a lack of trust and value alignment whereby organisational interests compete with and take precedence over commitment to the social impact of the network¹²⁵⁰, in this instance preventing and combating human trafficking. Reciprocity and trust are the building blocks of effective networks that are supportive of competitors – such as NGOs and local government departments active in the same area. There are times when control needs to be relinquished and other actors be allowed to steer either the network or act independently in pursuit of the same vision or objective. No one organisation or network, no matter how large or how well-resourced, can do it alone. Preventing and combating human trafficking can only be achieved through the collaborative work of many, with a shared vision, each bringing their own knowledge and expertise. Identifying the strengths and expertise of the various nodes that constitute any given network will allow for more effective coordination, as well as the strategic employment of nodes to deal with different anti-trafficking programmes and aspects of the problem, which in turn should result in a greater and more sustainable impact.

Moreover, the perception of the ubiquitous passion-drive that defines successful organisations and networks is another common thread that is observed in the South African context.¹²⁵¹ Where it is perceived that passion is lacking in either the chairperson or its members (particularly government role-players) the success and efficacy of it is called into question or doubted. This in turn has an impact on morale and the cohesiveness of any networked organisational form. Another significant shift in the CTC is that the chairperson / coordinator stepped down because of funding issues in 2011.¹²⁵² This resulted in one of the four core team members of the National Freedom Network becoming the chairperson.¹²⁵³ It is arguable that in conjunction with other emergent phenomena, such as the coordinated strategy planning which was initiated in 2010 and the realisation of a rapid response team in 2011, the replacement of the chairperson with a person with greater passion for anti-trafficking has resulted more positive interaction and innovation processes between actors. It remains to be

¹²⁴⁹ Personal Observation: Interview with a member of the Western Cape Counter Trafficking Coalition (2011).

¹²⁵⁰ Jane Wei-Skillern and Sonia Marciano, 'The Networked Nonprofit', *Stanford Social Innovation Review*, (Spring 2008) available at http://www.ssireview.org/articles/entry/the_networked_nonprofit - last accessed October 2012.

¹²⁵¹ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews and informal discussions with South African anti-trafficking practitioners (2011 – 2012); responses to nationally circulated questionnaire (2012).

¹²⁵² Personal Observation: Interview with a member of Justice Acts (2011).

¹²⁵³ Personal Observation: National Freedom Network response to questionnaire (2012).

seen what parallel and intersecting trajectories the CTC will take in the future, in relation to the rapid response team and coordination and cooperation with government agencies and provincial structures.¹²⁵⁴

Government agency commitment (particularly follow-through), drive, issues of capacity and coordination (bureaucratic complexity) are also seen as being problematic by NGOs who are members of the CTC and Western Cape provincial task team.¹²⁵⁵ Such issues mirror experiences faced by organisations involved in counter-trafficking networks and formal, institutionalised structures like provincial task teams in both KwaZulu-Natal and Gauteng. In 2010, Justice Acts approached the Department of Social Development with a number of proposals to establish an accredited safe house for victims of trafficking before the World Cup, or barring that a trauma clinic. Their proposal was summarily rejected much to the chagrin of the organisation because the Department had been active in discussions about human trafficking and in regular attendance at meetings.

*And then we heard nothing from them. And they approached us just before the World Cup saying, "We realised that we do want a safe house specifically for victims of trafficking." They had gotten an order from above. So they approached us. Asked us to put a proposal together for them. We did that within the deadline... We were supposed to hear back in a week. I am still waiting. I'm relational, so I would be asking... what's going on with the proposal? And nothing. Nothing. And that's an on-going experience.*¹²⁵⁶

The organisation experienced similar problems in Gauteng.¹²⁵⁷ The safe house that they were working with in that province contacted the Department of Social Development as they found that there were issues with housing victims of sex trafficking, and exited sex workers, with victims of domestic violence. As has been the case elsewhere in the world, it soon became evident to those running safe houses and directly interacting with victims of trafficking, or those who have exited from the sex industry, that their needs are very different to those of other forms of abuse or prolonged trauma. *'They don't mix well. And they have different needs. And we are getting more of our ladies from off the street. And they called Social Development and said we want to become a safe house for victims of trafficking and ladies coming out of prostitution. And they said until the Bill is passed we cannot and will not fund*

¹²⁵⁴ For instance, a member of Justice Acts relayed that the NPA run Western Cape provincial task team (of which they are also a member) only met once in 2010. Meetings were often cancelled and minutes of meetings were never received. The NPA also sporadically sits in on meetings of the CTC. Personal Observation: Interview with a member of Justice Acts – Cape Town (2011).

¹²⁵⁵ Personal Observation: Interviews with members of the Western Cape Counter Trafficking Coalition (2011) and responses to a questionnaire (2012).

¹²⁵⁶ Personal Observation: Interview with a member of Justice Acts – Cape Town (2011).

¹²⁵⁷ Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

you'¹²⁵⁸. This suggests that government departments are reluctant to budget and provide funding for anti-trafficking service providers in the absence of legislation and specific policy. Also, bureaucratic hierarchal organisations, which government departments represent, are rewarded or penalised based on a system of 'metrics that are easily identified and readily counted, on narrow notions of organisational missions and on political salience and expediency'¹²⁵⁹. Where a social problem cannot be readily and tangibly accounted for, it is often viewed as not warranting the same attention or resources as other more pressing and pervasive social problems do, unless otherwise directed through legislation or policy. Thus, while human trafficking remains a politically salient issue due to international pressure and local NGO advocacy, it remains an immeasurable crime with very few visible victims.

For the financial year 2011 – 2012, only 87 identified victims of trafficking – 44 South African and 43 foreigners – had been assisted and accommodated in shelters by the Department of Social Development, and other government agencies, nationally.¹²⁶⁰ 41 victims were accommodated in shelters in Gauteng, followed by 33 in KwaZulu-Natal, and only 11 in the Western Cape.¹²⁶¹ This helps account for the perceived reticence by the Department of Social Development and other government agencies that are tasked with the protection and assistance of victims of trafficking. Whether or not the actual number of trafficked persons identified and assisted by government agencies and NGOs escalates rapidly, remains stable or even declines after human trafficking legislation is enacted in South Africa, it should still be a policy priority of the Department of Social Development to budget for, fund and oversee the establishment of safe houses and short to long term shelters and transitional housing that exclusively caters for the unique needs of trafficked persons.¹²⁶² However, it also should ensure that there are specialised facilities for children, as well as men who to date have not received the protection and assistance that they should from government or service providers.

Counter-trafficking networks in the Western Cape are outwardly successful, particularly in relation to the networked interactions and activities of numerous NGOs and faith based

¹²⁵⁸ Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

¹²⁵⁹ Phil Williams, 'Combating Human Trafficking: Improving Governance Institutions, Mechanisms & Strategies', in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 387.

¹²⁶⁰ Department of Social Development, *VEP – Human Trafficking Current Status*, Presentation, 26 November 2012.

¹²⁶¹ *Ibid.*

¹²⁶² The Department of Social Development has started to take steps in terms of its state of readiness report to implement the TIP Bill once enacted, and policy development, through national and provincial consultative workshops held throughout the country in 2011 (at the national level) and 2012 (at the provincial level) on TIP Bill regulations, norms and minimum standards that take into consideration the accreditation of service providers and budgeting of financial support. Department of Social Development, *VEP – Human Trafficking Current Status*, Presentation, 26 November 2012.

organisations (and their affiliated networks) with shared or congruent visions / missions and methods of operation. The CTC as a node network has been able to achieve many of its stated objectives. It has been effective in providing a collective response to draft human trafficking legislation and policy, as well as allowing for autonomous submissions from the institutional perspectives of its membership. The actors who constitute the CTC are some of the most influential counter-trafficking actors within the South African trafficking community. Molo Songololo and the IOM have been instrumental in the establishment of human trafficking research in the country, both sit on the national task team, and have been actively involved in participating in the deliberations around anti-trafficking legislation. Anex (CDW), SWEAT, and the ISS have publically commented on the draft anti-trafficking legislation. Others like STOP Trafficking of People, in conjunction with their partner the Family Policy Institute, protested the perceived delayed passing of anti-trafficking legislation outside of Parliament in October 2011 during portfolio deliberations on the bill.

Organisations and networks belonging to the CTC have been particularly efficacious in the area of protection through the development of tools to assist victims of trafficking, as well as leading the way nationally in terms of the creation of prevention (awareness, training and education) material. The establishment of the rapid response protocol and Rapid Response Team serves as an emulative strategy for the coordination and collaboration of organisational responses in the identification and assistance of victims of trafficking – and ultimately assisting the investigation and prosecution of trafficking matters.

However, there still remain a number of strategic gaps. While it has been acknowledged by a number of sources¹²⁶³ and organisations¹²⁶⁴ that perceived to be high levels of child trafficking for domestic servitude or forced (farm) labour in the Western Cape, focus in terms of activities (safe houses and shelters) appears to have been predominantly on trafficking for sexual exploitation of women and girls. Until relatively recently, heterogeneous forms of labour trafficking appear to have been largely ignored both by the Department of Labour and many organisations. While the Department of Labour is represented on the national task team and provincial task teams, it has failed to recognise labour trafficking or take any proactive steps to address labour trafficking. As criticised in the 2012 TIP Report, ‘instances of labor trafficking involving foreigners have been deemed episodes of “localized migrant abuse.”’ Additionally, the DOL has never identified a case of forced child labor; rather, it failed to

¹²⁶³ See Laura Gauer Bermudez, “*No Experience Necessary*”: *The Internal Trafficking of Persons in South Africa*, International Organization for Migration (IOM) Regional Office for Southern Africa: Pretoria, South Africa, October 2008.

¹²⁶⁴ Such as Anex CDW and Molo Songololo.

identify potential trafficking victims among child laborers and generally classified such cases as involving “children in need.” Labor inspectors are not adequately trained to identify cases of trafficking, including those involving children.¹²⁶⁵ The apathy and inertia of the Department of Labour is problematic. Labour trafficking is more diverse than forms of trafficking for sexual exploitation, and forced labour often intersects with sexual exploitation and forced marriage.¹²⁶⁶ Moreover, ordinary, law abiding citizens are more likely to be the end-users of goods and products produced by forced labour. The exploitation of migrant workers (of which there are a number of different categories) is highly replicable and can readily lead to instances of labour trafficking. Forced labour includes domestic servitude, farm labour, in the textile, mining and manufacturing industries, and at sea on fishing vessels.

On 25 June 2012, four Cambodian men were rescued from South African owned fishing vessels off the Cape coast. Ironically, the KwaZulu-Natal Provincial Coordinator of the Hawks for human trafficking had to be contacted to coordinate rescue operations.¹²⁶⁷ This indicates that there are issues or gaps in protocol and coordination in relation to the extrication of victims of forced labour (at sea) and different government agencies. For a province with a recognised rapid response team, this indicates that either certain forms of trafficking were either not taken into account or when a new and unknown problem was introduced the system could not handle it and the ability of actors to interact productively and coordinate responses unravelled. The four rescued men had been held in slave-like conditions for 9 months, and had been originally promised jobs in the fishing sector in Japan. Instead they were sent to Giant Ocean International Fishery Co. Ltd in South Africa, where their wages were withheld and they were often beaten. They were repatriated home on 5 July 2012. Awareness of this trafficking trend is growing globally. Cambodian men and children are typically trafficked for forced labour onto Thai fishing vessels and is indicative of the complicated nexus of migration, smuggling and labour trafficking.¹²⁶⁸ This incident has prompted some trafficking networks, like STOP and NFS¹²⁶⁹, to become more cognisant of

¹²⁶⁵ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹²⁶⁶ Fiona David, *Labour Trafficking*, Australian Institute of Criminology, AIC Reports: Research and Public Policy Series 108, 2010.

¹²⁶⁷ Participant Observation: Report by DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand, to members of the KZN HPPB Task Team at a training workshop, July 2012.

¹²⁶⁸ See Radio Free Asia, *Trafficking Victims Return Home*, 5 July 2012, available at <http://www.rfa.org/english/news/cambodia/trafficking-07052012182450.html> - last accessed October 2012.

¹²⁶⁹ See STOP, *New Trafficking Trend in South Africa*, 27 June 2012, available at <http://stoptraffickingofpeople.wordpress.com/> - last accessed October 2012; NFS, *New Trafficking Trend in South Africa*, 25 June 2012, available at <http://www.notforsalecampaign.org/global-initiatives/south-africa/?story=16887> – last accessed October 2012.

such forms of trafficking and extend their areas of activities to also preventing and combating such forms of labour trafficking. On the whole, collaboration with relevant stakeholders, especially with NGO and international organisations, has been for the most part positive. This is borne out in the ever increasing circles of association, particularly faith-based, and sticky node networks that have become the hallmark of counter-trafficking in the Western Cape.

3.2 Networked Partnerships in Gauteng

Anti-trafficking networks appear to be more limited in composition, interaction and activity when compared to the Western Cape. However, there are more formalised networks linking international organisations, like the IOM, ILO and UNODC, with the Gauteng provincial and national task teams. As a result, more concentrated governance and formal network structures exist in Gauteng.¹²⁷⁰ This has also resulted in fewer civil society organisations being invited and allowed to participate on the Gauteng Task Team. Networked partnerships in relation to the Gauteng task team are discussed in this section, and the dearth of civil society participation in this formalised structure is considered.

The Gauteng Trafficking in Persons Task Team, also referred to as the Gauteng Rapid Response Task Team for Human Trafficking, was established with a strategic planning session in December 2010. Adv. Carina Coetzee from the NPA is the chairperson of the task team. Diane Hall (National Coordinator of the National Freedom Network) acts as the task team's secretary. It has a membership of approximately 20 organisations – predominantly represented by role-players from government.¹²⁷¹ Reflecting the concentration of government actors on the national task team, based in Pretoria, the Gauteng provincial task team (established by the NPA) predominantly comprises government role-players from the national level (and from those based in Pretoria). It is unclear how the structure of the Gauteng task team was determined. It is possible that the person tasked with setting it up decided simply to replicate the composition of the national task team at provincial level, and did not actively seek out relevant role-players in the province. This had the effect that many provincial and local role-players were initially not aware of the formation of the task team.¹²⁷² *'So it is bad*

¹²⁷⁰ However, it is uncertain how well these connections and linkages are being leveraged by either the international organisations involved, who all form part of UN.GIFT, or government agencies / the South African government. Issues of knowledge sharing and management are discussed later in the section.

¹²⁷¹ Personal Observation: Interviews and responses to a national questionnaire by members of the Gauteng Task Team (2011 – 2012).

¹²⁷² Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

*communication, bad research on who to invite, who is around doing stuff. So it seems like it's just poorly thought out and planned*¹²⁷³.

The structure of the task team has also had a deleterious effect in terms of forming and entrenching partnerships with civil society organisations active in counter-trafficking activities.¹²⁷⁴ NGOs and other civil society organisations were largely excluded from the task team's structure.¹²⁷⁵ This has led to the opinion by some NGOs that vital role-players from civil society have been excluded from the task team. '*There seems to be a big NPA representation but a very small NGO and Civil Society membership*'¹²⁷⁶. The overall perception exists, among NGOs who are members of the task team that the task team is not as active as it should in terms of counter-trafficking programmes, strategies and protocols being put into action. '*The task team is not happening, in my opinion. Already the first meeting was cancelled this year [2012]*'¹²⁷⁷. This suggests that organisations are operating more autonomously and with less strategic direction, planning or support from the provincial task team. It also suggests that cohesiveness and impact are limited when compared to other provinces, and that coordination as a result is problematic. This has been attributed to the lack of a clear and functioning structure.

The prevention sub-committee is viewed as being the most proactive component of the task team.¹²⁷⁸ A Johannesburg based NGO, Heart Reach¹²⁷⁹, has been the main driver of awareness campaigns in schools across the province, integrating *Traffick Proof* into their school presentations. However, its reach and impact are not at the level where members would like it to be. This is ascribed to a lack of resources (i.e. to fund such programmes) and capacity (manpower) making it impossible for the task team to coordinate and run its own prevention campaigns. Instead, the task team supports member initiatives.¹²⁸⁰ Protection has also

¹²⁷³ Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

¹²⁷⁴ Personal Observation: NGO members of the Gauteng task team response to a questionnaire (2012).

¹²⁷⁵ Ibid.

¹²⁷⁶ Personal Observation: National Freedom Network / Member of the Gauteng task team response to questionnaire (2012).

¹²⁷⁷ Personal Observation: Usindiso Ministries / member of the Gauteng task team response to a questionnaire (2012).

¹²⁷⁸ Personal Observation: Interviews, informal discussions and electronic communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2011 – 2012); Interview with a member of Justice Acts (2011); Heart Reach response to a questionnaire (2012); Usindiso Ministries response to a questionnaire (2012).

¹²⁷⁹ Heart Reach is a faith based organisation which teaches abstinence based sex education at schools and to youth groups, as well as educating youth about human trafficking – using the *Traffick Proof* manual.

¹²⁸⁰ Personal Observation: Electronic communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2012).

increasingly improved. This is attributed to the co-option of the Hawks onto the task team.¹²⁸¹ This has also resulted in the forging of important links between law enforcement and civil society. *'[A]nd now there is further development with one Task Team member having met with the HAWKS and offering to be the point of connection between HAWKS and civil society'*¹²⁸².

Passion is seen to be the prerequisite for effective counter-trafficking. Consensus among NGOs who participate on the task team exists that *'role-players should be selected not only by the different government departments that they're in but also because they have a passion to make a difference'*¹²⁸³. Some government department representatives are seen to lack passion and direction, or are too busy with other work obligations. *'They don't fully understand what they are dealing with. It's just part of their job description'*¹²⁸⁴. This demonstrates the importance of recruiting government representatives who have a passion and drive for the social problem at hand, and are thus committed to the vision and objectives of the task team. A perceived lack of passion or personal commitment to the mission of the task team by its leadership can also negatively influence other government department representatives who are overextended and burdened with heavy workloads and are stretched for time to meet all their obligations. However, this reflects divergent views from organisations participating on the task team, and the distinction between those organisations which form part of its core structure and those who were co-opted later onto the task team (and have less influence).

As the task team's secretary indicated, *'There is a small core team within the wider Task Team that works very well together – good communication and cooperation. However, on the whole sometimes communication is a problem as everyone has another job to do and we are all generally very busy'*¹²⁸⁵. This has resulted in a polarisation between the tight core and the organisations that do not form part of it. This manifests itself in a lack of interaction, cooperation and coordination between the organisations and networks that do not form part of the task team's core team. This could also explain conflicting perspectives and opinions as to the success and cohesion through coordination and cooperation of the task team.¹²⁸⁶ These are typically political challenges which are revealed in 'the various conflicting agendas or lack of

¹²⁸¹ Personal Observation: Electronic communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2012).

¹²⁸² Ibid.

¹²⁸³ Personal Observation: Member of the Gauteng task team response to questionnaire (2012).

¹²⁸⁴ Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

¹²⁸⁵ Personal Observation: Electronic communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2012).

¹²⁸⁶ Personal Observation: NGO members of Gauteng Task Team responses to questionnaire (2012).

motivation that decrease the buy-in of stakeholders¹²⁸⁷. This has a negative impact on cooperation and coordination and at the worst can inculcate a culture of inertia and ennui whereby members are just going through the motions. The experiences of NGOs who are members of the Gauteng task team suggest that organisationally, power and influence have been concentrated in a strong centre (core) and this has resulted in bottlenecks in coordination and cooperation with actors who fall outside of it, and a lack of meaningful constructive interaction.¹²⁸⁸ This also suggests that an environment that is conducive to innovation and progress is lacking or hampered by such organisational problems. Moreover, during its first year of existence, a serious lack of coordination and communication was also noted.¹²⁸⁹

*And I think for us from the Joburg side, it seems very scattered and all over the place. So they will have meetings... and certain role-players will be called in and certain stuff was discussed, but it was not communicated to everybody what was decided, what was said, what's happening... For us, the NPA and Social Development have been fabulous in terms of representation, in terms of being there. But in terms of communication and follow-up and follow-through there's nothing. It's just very segmented.*¹²⁹⁰

Communication between agencies and organisations, both horizontally and vertically, is of paramount importance in the sharing of information and knowledge in order to allow for coordinated and cooperative interaction. Institutionalised habits and operating procedures, poor administrative capacity or a lack of trust could be at the root of this issue. A lack of inter-agency communication and cooperation are not uncommon. 'Information is often viewed as a resource that organizations can use to explain their role and impact in a field. Therefore, some organizations perceive sharing this valuable resource as diminishing their unique contribution within a sector. This fear leads to a resistance by organizations to consistently share their experiences, and data.'¹²⁹¹ However, this is a hurdle to networked coordination and collaboration of diverse actors, can lead to misinformation and inadequate programmes and protocols, and ultimately adapting and reacting to the fluid threat of human trafficking. Failure to communicate, collaborate and cooperate can result in disruptive and

¹²⁸⁷ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 15.

¹²⁸⁸ Proximity to the national task team might also be a contributing factor. Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011); Usindiso Ministries response to a questionnaire (2012).

¹²⁸⁹ This has improved since the core team of the Gauteng task team began to form itself organically. Issues of communication, interaction, cooperation and coordination are not as marked with this grouping of role-players on the task team.

¹²⁹⁰ Personal Observation: Interview with a member of Justice Acts – Johannesburg (2011).

¹²⁹¹ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 15.

rescue operations being put in jeopardy or victims being re-traumatised and re-victimised and thus failing to provide protection and assistance. Moreover, none of the government institutions and agencies which are members of the task team solely focuses on human trafficking. As noted earlier in this chapter, human trafficking has been added as another issue area to be addressed by that particular institution or agency. Thus, while government departments are mandated to send representatives to such task teams this does not necessarily guarantee cooperation or even that decisions will be made in the absence of a specialised legislative framework and policy. As Garcia and Larsen observe, '[t]his dynamic means that significant reform in the human trafficking programs may be perceived as a critique of the overall work of the institution. Therefore, the needed changes may not occur due to resistance to broader institutional changes'¹²⁹². However, this does not mean that the task team is unaware of the challenges that face it or is not attempting to resolve them. *'In Gauteng specifically, we are still working on implementing a successful strategy that flows smoothly but have started working on it... We are slowly getting the right people on board the Team (i.e. passionate people who care about the work) and finding a way of working together and acting quickly on cases that come up, despite all the challenges and lack of current structure.'*¹²⁹³

Many of the structural challenges faced by the Gauteng task team are similar to those of other task teams throughout the country: (i) a lack of manpower and funding, (ii) a coordinated response¹²⁹⁴, (iii) training of key role-players (like law enforcement and airport staff)¹²⁹⁵, data collection on cases¹²⁹⁶, (iv) safe houses that cater specifically for victims of human trafficking, and (v) provision of drug rehabilitation for victims of trafficking.¹²⁹⁷ It is thus essential for the various government departments and other organisations that are represented on the task team to formalise and deepen collaborative relationships with one another through memoranda of understanding, protocols and strategic planning that can be implemented. More oversight and evaluation of interactions and fulfilment of responsibilities is required.

¹²⁹² Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 16.

¹²⁹³ Personal Observation: Electronic communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2012).

¹²⁹⁴ Finding ways to effectively coordinate responses is being addressed by the task team.

¹²⁹⁵ The Gauteng task team is currently training key personnel.

¹²⁹⁶ A database is being compiled by a member of the task team in conjunction with the National Freedom Network.

¹²⁹⁷ Personal Observation: Interviews and informal discussions with members of the Gauteng Task Team (2011 – 2012); responses to questionnaires (2012).

The Gauteng task team is viewed as the opposite of the KwaZulu-Natal and Western Cape task teams in terms of networked partnerships. Where they are inclusive, collaborative, innovative and adaptive, the Gauteng task team appears to be more closed, static, disjointed and ineffectual. There exists a polarisation between government agencies and some members of the civil society sector in terms of levels of trust, inclusion, commitment, buy-in and passion.¹²⁹⁸ On the whole, the lack of inclusion and forming of strategic partnerships with NGOs is problematic. Partnerships, particularly with civil society organisations, are seen as paramount in the effective prevention and combating of human trafficking. Civil society organisations are at the frontline of counter-trafficking. They are the ones who are most likely to come into direct contact with victims of human trafficking. In addition, such organisations are the providers of assistance and protection, in the form of shelters and rehabilitation, to trafficked persons. They are the frontrunners in prevention awareness-raising measures. And for the most part, are more likely to be the ones who identify victims of trafficking and refer matters to law enforcement for investigation. By failing to properly consult and include such anti-trafficking organisations in formal structures like the task team, a wealth of valuable information and feedback on the impact of programmes and measures is lost. Moreover, this also means that access to wider networks is hindered and resources and capacity are not optimally leveraged.

However, while some anti-trafficking organisations feel excluded from the task team, international organisations are well represented. This means that the Gauteng task team can make good use of leveraging the expertise and resources of such organisations, like the IOM's and SACTAP's referral mechanism, training materials and research. The IOM is one of six organisations who form part of the official collaboration UN.GIFT.¹²⁹⁹ This represents an extensive and powerful global anti-trafficking network. However, this collaboration also recognises the need and importance of forming partnerships with NGOs. 'Particularly because none of the six member organizations solely focuses on human trafficking, the knowledge and experiences of NGOs in the field is essential to informing the global strategy and programming priorities of international organizations'¹³⁰⁰. The Gauteng task team and other formal counter-trafficking structures should take heed of this in relation to the South African

¹²⁹⁸ Personal Observation: Interviews and informal discussions, and responses to questionnaires, with NGO members of the Gauteng Task Team (2011 – 2012).

¹²⁹⁹ UN.GIFT comprises the International Labour Organization (ILO), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migration (IOM), and the Organization for Security and Cooperation in Europe (OSCE).

¹³⁰⁰ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 3.

context – particularly in the formulation of national and provincial policy frameworks once legislation is enacted.

Apart from the Gauteng task team there are a number of civil society organisations and networks involved in counter-trafficking in the province. These include Women in Action, Childline Gauteng, World Hope South Africa, Counter Trafficking in Persons Office¹³⁰¹, Child Welfare (Tshwane and Johannesburg), Child Trace, Children's Rights Committee, Red Cap Foundation, Genderlinks, Media Monitoring Africa, Heart Reach, Usindiso Ministries, the Salvation Army, Justice Acts, and the National Freedom Network. A counter-trafficking coalition, with which the National Freedom Network works actively, is operational in Pretoria and is run by the Tshwane Leadership Foundation. The Tshwane Leadership Foundation is a faith based organisation that works with churches and communities towards urban transformation and deals with women and girls at risk.¹³⁰² However, efforts to form a Johannesburg based counter-trafficking coalition have been largely unsuccessful and hollow.¹³⁰³

Moreover, the seemingly peculiar inability to set up a functional anti-trafficking non-governmental coalition in Johannesburg mirrors certain issues faced by the Gauteng task team. The Johannesburg Coalition which previously existed is now defunct, and although organisations are in favour of setting up a new coalition, no one can be found to coordinate it.¹³⁰⁴ The former Johannesburg coalition was formed, like the task team, in December 2010 with the development of working plan. However, the coalition did not meet again until July 2011. It was suggested by another network that the reason why this coalition was not getting off the ground was because it did not have a passionate person steering the coalition and that those involved with its coordination were simply too busy with other obligations.¹³⁰⁵ The rationale for the creation of a Johannesburg based counter-trafficking coalition was to create a tight networking team which could work together with the Gauteng task team. Justine Demmer, founder of the National Freedom Network, explained the need for a coalition of

¹³⁰¹ A joint venture between the Leadership Conference of Consecrated Life and the South African Catholic Bishops Conference.

¹³⁰² It evolved out of the work of Pretoria Community Ministries, and was created in 2003 'to strengthen the unfolding inner-city movement of churches, communities and programmes with capacity, resource development, advocacy and policy work, communication and marketing, and spiritual nurture.' <http://www.tlf.org.za/index.htm> - last accessed October 2012.

¹³⁰³ Personal Observation: Interviews with the Founder of the National Freedom Network, Justine Demmer (2011), and members of Justice Acts (2011).

¹³⁰⁴ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011); Electronic Communication with Diane Hall, National Coordinator of the National Freedom Network and Secretary of the Gauteng Task Team (2012).

¹³⁰⁵ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

anti-trafficking organisations was borne out of frustration, the perceived imbalance of power relations, and the subordinate role played by civil society organisations on the Gauteng task team.

*Because they can't always try to work through the task team because they are subordinate on the task team. They have to wait for them to schedule meetings, they have to wait for them to say what they are going to do. And they are just not moving fast enough. So rather set up something else and work alongside them so that they can actually come and input good stuff in. So we've started to develop that.*¹³⁰⁶

It remains to be seen whether this coalition will be established and whether it will thrive. Coalitions or networks are sensitive to their initial conditions and environments. Where there is too much competition, too tight control of power, or a fear of losing identity can result in a lack of trust, cooperation and the ability to coordinate the interactions of actors. This is counterproductive and often results in information or resources not being pooled or shared. Where organisations, such as NGOs, are largely excluded from the decision-making process, or their opinions and expertise are not taken into consideration, this can have a negative impact on counter-trafficking strategies and impact, and lead to an intractable disaffection between NGOs and government agencies. 'However, contradictory to the instinct that tight control of information will enhance their influence, in fact, collaboration will grant NGOs greater leverage as a community to accomplish their common goal in a sustainable and efficient manner'¹³⁰⁷. Collaboration and cooperation are just as important as the ability to coordinate networks in order to realise its mission and objectives. It also allows for greater adaptability in reacting to ever changing trafficking trends and victim profiles and needs and helps overcome some of the bottlenecks of institutionalised approaches to counter-trafficking. Cooperation allows for different interests of various actors to be met, for autonomy and flexibility to be maintained and common goals to be reached more efficiently. 'Cooperation is a central element to the protection of the rights of trafficked persons. Cooperation can be implemented by states through various means such as legislation, regulations or directives. Formalized cooperation is recommended in order to frame the cooperation successfully, to combine the different roles and objectives of the actors and to avoid possible conflicts.'¹³⁰⁸ The existing impediments to cooperation and coordination within the Gauteng task team

¹³⁰⁶ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³⁰⁷ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 15.

¹³⁰⁸ UN.GIFT, *Guiding Principles on Memoranda of Understanding between Key Stakeholders and Law Enforcement Agencies on Counter-trafficking Cooperation*, IOM (March 2009): 19, available at http://www.ungift.org/docs/ungift/pdf/humantrafficking/Guiding_Principles_annexe.pdf - last accessed October 2012.

warrant more research and analysis in order to rectify these problems and advance an effective and adaptive network approach to counter-trafficking in this province.

3.3 The Role of the National Freedom Network in Combating and Preventing Human Trafficking in South Africa

The National Freedom Network (NFN)¹³⁰⁹ was formed in 2011, the brainchild of Justine Demmer a former strategist for the VIVA and strategy manager for British American Tobacco. Demmer was contracted with VIVA, a Christian networking agency that works with children at risk throughout the world, for two years and worked on the ground with them in Cape Town. She was employed to assist NGOs to become sustainable and viable enough to receive proper donor funding. Once that contract ended, she returned to VIVA in the United Kingdom to work on their strategy. It was during this time that she became passionate about human trafficking in South Africa and stated networking around the issue.¹³¹⁰ Demmer met with Stephen Clarke, Director of Thare Machi Education (TME) a British based charity which seeks to assist women and children in the developing world reach their potential through basic education in their own language.¹³¹¹

TME has developed interactive DVDs on health (like HIV/AIDS prevention and care for someone with the disease, malaria, and basic hygiene) and life skills. These DVDs are available in the indigenous languages of the local population and have been developed mainly for illiterate people who are not able to understand information pamphlets.¹³¹² TME has also produced an interactive DVD on human trafficking.¹³¹³ Clarke arranged for Demmer to be sent back to South Africa through VIVA in 2009 to do strategy and networking on the ground around human trafficking and distribute TME's DVDs.¹³¹⁴

And it worked really well because at the end of 2009 we held a symposium here to kick it all off where we got Stop the Traffik UK and Cherie Blair to talk at the British Consulate. And the benefit was that we got the top places coming in. Because it was

¹³⁰⁹ The NFN and its organisational members and coalitions work with government and international partners in counter-trafficking. NFN is affiliated to the following international networks and advocacy organisations: Thare Machi Education, VIVA, Stop the Traffik, European Freedom Network, and Chab Dai. The NFN consists of a group of core members who act as representatives in each province. NFN coordinators are all volunteers and unpaid. The work they do is based on their passion and commitment to eradicating human trafficking and assisting victims.

¹³¹⁰ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³¹¹ <http://www.tme.org.uk/pages/Mission-statement.html> - last accessed October 2012.

¹³¹² Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³¹³ <http://www.tme.org.uk/pages/Human-Trafficking-Script-English.html> - last accessed October 2012.

¹³¹⁴ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

*them, they all came. So you had the head of the Hawks, the head of the Salvation Army, the head of DSD, a lot of kings came from the Eastern Cape because they've got a problem. So everybody was there. And they gave the go-ahead for their organisations to get involved and to start working with us.*¹³¹⁵

This experience demonstrates the power of strong networking, and the drawing card of having wide circles of influence and connections to high profile individuals, like the wife of the former Prime Minister of the United Kingdom, Cherie Blair. Cherie Blair is a patron of Stop the Traffik and TME. The problem of human trafficking was discussed at the conference with a range of relevant role-players from both government and civil society. It was agreed by those present that cooperation and the exchange of ideas between actors should be promoted and led by a coordinator representing those involved.¹³¹⁶ This conference provided the impetus for Demmer to return to South Africa and start the networking process with anti-trafficking organisations and coalitions, and forming strategic relationships with them.¹³¹⁷

Demmer quickly became active in the anti-trafficking community in the Western Cape, particularly the CTC, and assisting in programme development and forming new relationships and partnerships with other organisations and institutions. *'And because I've had a lot of experience at VIVA with networking you can add a lot of value just by being there and talking'*¹³¹⁸. Demmer spent six months interacting with NGOs involved in counter-trafficking and found that the same problems and gaps kept on reappearing. From there she helped formulate strategies and programmes that could be adopted. *'Our main aim is to keep on inputting strategy in the main process at every level. Find out what is going on, have that conversation, be at that meeting. Try and get some overall advocacy going. So we're really wanting the whole of South Africa involved... So we just want to keep on networking. We're sharing everything we've got. We're sharing with key partners. We are looking for key partners in every province so we can share information.'*¹³¹⁹ Establishing a network with key role-players in each province is essential for the sharing of information and communication of experiences between actors at multiple levels, and between provinces. It also paves the way for effective cooperation and coordination.

¹³¹⁵ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³¹⁶ 'Trying to Stop the Traffik', September 2009, available at <http://cherieblair.org/highlights/2009/09/trying-to-stop-the-traffik.html> - last accessed October 2012.

¹³¹⁷ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³¹⁸ Ibid.

¹³¹⁹ Ibid.

An information-sharing network that allows for the pooling of experience and knowledge potentially is a powerful tool in counter-trafficking. This also circumvents some of the issues of asymmetrical power capabilities and resources that exist between organisations and agencies in hierarchical organisational forms. By highlighting and sharing experiences, successful strategies or trends faced in each province, collaborative organisations (such as task teams and coalitions) and the actors that comprise them may be able to readily adapt or even restructure programmes for victim identification, assistance and protection or disruptive operations. Currently actors, especially task teams, do not communicate with one another or readily share information.¹³²⁰ This is also witnessed in the lack of communication, cooperation and coordination between provinces and regionally with neighbouring states and relevant agencies. Collaboration and cooperation are especially important for provincial task teams, and anti-trafficking networks, since human trafficking does not respect jurisdictions or state boundaries. More needs to be done to formalise cooperation and coordination between provinces and regional partners.

This is gradually becoming a reality. For instance, Save the Children (South Africa and Mozambique), a partner of the NFN, has been instrumental in forming the Cross Border Coordination Group (CBCG).¹³²¹ The CBCG hosts biannual bipartite meetings with official government representation from Mozambique (Ressano Garcia) and their South African (Mpumalanga) counterparts. It includes representatives from both countries' national prosecuting authorities, border police, immigration and social welfare, and a range of NGOs who deal with children and children's rights. This represents a very important step forward in transnational cooperation in relation to child protection, especially to ensure the safe migration and effective border control for children on the move and child victims of trafficking. The objectives of the CBCG, as stated in its Terms of Reference 2011 – 2014, are to facilitate the development and distribution of guidelines on migration and safer repatriation procedures to be followed by the referral groups in Mozambique and South Africa, and share views, experiences and perceptions about the current repatriation practices which will lead to recommendations on acceptable standards that ensure the protection of children. This stems from the cases where undocumented and unaccompanied minors from Mozambique have been found in South African border towns and along its borders, and the problems encountered in terms of repatriation, child protection and children's rights.¹³²² The CBCG found that: (i) border control have not followed correct protocol and have dropped these

¹³²⁰ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹³²¹ Narciso Cumbe, *Report on the 2nd Meeting of the Cross Border Coordination Group*, Save the Children Mozambique, Pequenos Libombos, 23 March 2012.

¹³²² *Ibid.*

children off at the Mozambican Ressano Garcia border post without any repatriation notification and profile of the migrants intercepted who are invariably a mixture of adults and children, (ii) Mozambique does not have procedural regulation on repatriation services, especially for children on the move, (iii) articulation and communication processes between South African and Mozambican authorities and with several social actors on protection of children on the move is deficient, coupled with excessive bureaucracy within South African referral system, (iv) while children are interviewed several times in South Africa, they are handed over to the Mozambican authorities without a single copy of the file containing information pertaining to the child, circumstances in which the child was found, care given, days spent in South Africa, resulting in the child having to be re-interviewed by Mozambican authorities, (v) children arrested in irregular migration situation in South Africa are transported together with adults with whom there is no any guardianship relation and in deplorable conditions, and (vi) protection and assistance provided to children on the move both in South Africa and Mozambique is weak. The purpose of the CBCG is thus to remedy these problems through cooperation and transnational coordination, and developing a Plan of Action based on the four pillars (of identified issue areas): institutional coordination, transport, social assistance, and legal framework.¹³²³

Formalised cooperation mechanisms between provinces should be overseen and encouraged by the national task team. Too much information is being funnelled up to the national level, and not enough communication, cooperation or coordination is filtering back down to, and between, the provincial levels. A lack of coordination and cooperation from national level may be ascribed to the lack of an operational national plan of action. As Limanowska and Konrad observe, 'it quickly became apparent that systems such as National Coordinators and National Plans of Action lack effectiveness. National Plans of Action were mostly compilations of various activities, usually financed and conducted by IOs and NGOs (including awareness raising campaigns and training activities), instead of systematic, sustainable plans endowed with sufficient financial and personnel investment from

¹³²³ See, Narciso Cumbe, *Report on the 2nd Meeting of the Cross Border Coordination Group, Save the Children Mozambique, Pequenos Libombos*, 23 March 2012. A conference to address these concerns and formulate a Plan of Action will take place on 31 October 2012 in Nelspruit, South Africa. Individuals, organisations and task teams who are linked to the National Freedom Network were invited to participate in the conference. This indicates more open and inclusive behaviour by NGO-driven initiatives that seek broad participation to find solutions for a complex, transnational problem and the strength of information sharing and knowledge management.

governments.’¹³²⁴ It is suggested that the situation in South Africa is not dissimilar from their findings in South Eastern Europe.

While parallel organisations, like anti-trafficking networks, which are capable of operating at national and provincial levels are important – especially in providing leverage and cohesion for NGOs involved in awareness-raising, training, and victim identification, protection and assistance – they should not develop in isolation from one another and further entrench problematic coordination between government agencies and NGOs. Interaction and communication, the sharing of ideas and expertise is thus essential in developing levels of trust and ultimately reciprocity between and within networks and organisations involved in counter-trafficking. This has a strategic advantage as well. Information gathering and information sharing amongst role-players is vital if the anti-trafficking sector is ‘to ever keep pace with the changing tactics of traffickers. Individual stakeholders cannot have a complete understanding of the challenges which need to be addressed. Only together and through the use of effective KM¹³²⁵ strategies which include collaboration will the anti-trafficking response have success’¹³²⁶. Counter-trafficking organisations, especially those which come into direct contact with victims of trafficking and provide protective services, should be seen as government’s most valuable asset in the combating and preventing of human trafficking in South Africa.

The National Freedom Network is attempting to fill in certain gaps and problems identified by anti-trafficking practitioners and organisations, through networking, advocacy and information sharing through the integration of information flows. The information acquired by the NFN includes prevention strategies and lessons learnt based on the three ‘R’s of rescue, rehabilitation and reintegration – essentially creating a national database of counter-trafficking actors. *‘The projects that we are running ourselves is the network one. Who’s doing what, where and the programmes they are running. The programmes go all the way through the prevention work, and all the different types of prevention work to detection, how do you find them, roadblocks when they are transporting them, how do you stop the transport, when they are actually in a place, how do you rescue, how do you do this from there to*

¹³²⁴ Barbara Limanowska and Helga Konrad, ‘Problems of Anti-Trafficking Cooperation’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 448.

¹³²⁵ Knowledge management.

¹³²⁶ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 6.

*rehabilitation, reintegration.*¹³²⁷ By identifying which organisations or individuals are active in which particular counter-trafficking activity, it allows the network to identify gaps in prevention and protection strategies and try to fill in those gaps with the relevant role-players or provide training for those who wish to extend their areas of expertise and activity.

In terms of structure, the NFN views itself as forming national ‘backbone’ that the counter-trafficking community in South Africa can plug into.¹³²⁸ The goal of the NFN is to network and provide open channels of communication between role-players, share information flow, and to enable the sharing of resources by providing a core structure for strategy and connectivity.¹³²⁹ The structure of the NFN ‘backbone’ aims to counteract and disrupt what they have identified as the six steps of human trafficking operations: (i) trick, (ii) transport, (iii) trap, (iv) torture, (v) trade, and (vi) terminate, with their own strategies at each level: (i) resist, (ii) roadblock, (iii) rescue, (iv) rehabilitate, (v) return, and (vi) reintegrate.¹³³⁰ This is graphically illustrated in the figures below:

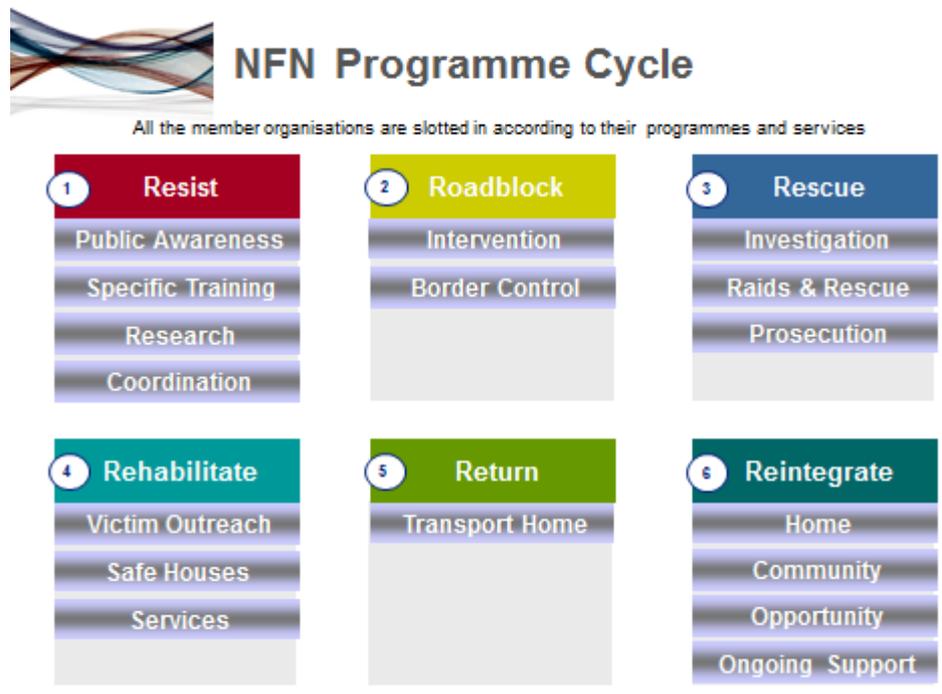
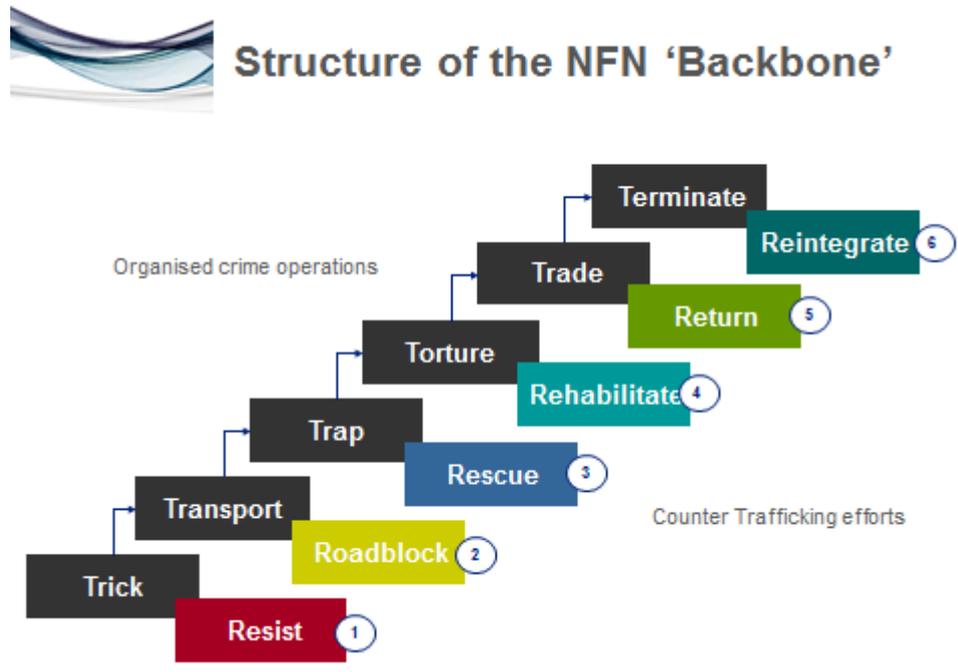
¹³²⁷ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³²⁸ Participant Observation: Minutes of KZN HPPB Provincial Task Team Meeting, 29 March 2012.

¹³²⁹ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011). Participant Observation: KZN HPPB Provincial Task Team Meeting, 29 March 2012.

¹³³⁰ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011). See also, National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> - last accessed October 2012.

Figure 4: Structure of the NFN 'backbone' and NFN programme Cycle



Source: <http://www.slideshare.net/tharemachi/national-freedom-network-for-web>

Each step of NFN's counter-trafficking strategy incorporates programmes and services where members may be positioned, and allows for greater oversight of activities, competencies and needs, and leveraging of expertise and skill. It also helps identify weak links or gaps in these identified counter-trafficking areas, both nationally and provincially, and in some instances transnationally. They have also adapted this strategy to accommodate their rapid response cycle and assist organisations, particularly those who are new to counter-trafficking, to understand the services that are required and offered to victims of trafficking according to where they find themselves on the 'cycle of rescue and care'¹³³¹. It would appear that the NFN is lobbying for parallel structures to be set up per province with a coordination body related to its rapid response cycle.¹³³² In other words, this would result in the creation of a hub network with a provincial coordinator who is directly or vertically linked to a rapid response team, as well as a law enforcement contact, who in turn facilitates forming relationships with other law enforcement contacts, the IOM and helpline managers, NGOs, coalition members, the Department of Health, Department of Social Development, interpreters, emergency houses and safe houses.¹³³³

The concern exists that this could be problematic as it can create duplication and competition for scarce resources and with formalised and pre-existing structures if not managed properly, and further entrench coordination and cooperation problems between government departments or formal counter-trafficking structures, like task teams, and NGOs, and result in the worst case scenario in deadlock. For instance, establishing such a structure in KwaZulu-Natal would be counter-productive as it has a well-functioning and inclusive counter-trafficking task team that has and encourages networked partnerships with all the relevant role-players.¹³³⁴ This structure, which does exist in the Western Cape and functions well, is thus not replicable everywhere. It may be argued that this structure functions and survives in the Western Cape because of the unique counter-trafficking environment and history of counter-trafficking, and organisations and coalitions, in that province. The structure advocated by the NFN is needed where key role-players from civil society are excluded from counter-trafficking decision-making processes, policy or programme development and/or formal structures and networks. The network and its structures are employed to compliment and support counter-trafficking activities, as witnessed in the case of Gauteng. *'In terms of NFN impact in Gauteng, we have presented to many people on trafficking, encouraged local*

¹³³¹ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> - last accessed October 2012.

¹³³² Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³³³ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> - last accessed October 2012.

¹³³⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

*churches to get involved and support other NGOs and safe houses in the work, trained up and recruited people to start / join prostitution outreach teams, and trained individuals and organisations on trafficking as well as guiding them on where best they can make an impact in the process of fighting trafficking.*¹³³⁵ It can and should be used to expand activities and areas of expertise and knowledge in relation to prevention and protection strategies, and filling strategic gaps. Moreover, the envisaged structure can be used as a tool to mesh activities, resources and expertise in order to strengthen the network.

At present, the NFN have representatives who are tasked with coordinating provincial activities through information and resource sharing in the Western Cape, Gauteng, Northern Province and Orange Free State.¹³³⁶ Network links have extended to the North West Province and the Eastern Cape. In KwaZulu-Natal the NFN had a representative join the provincial task team very briefly (for a few months at the beginning of 2012) and who has since left.¹³³⁷ The KZN HPPB Task Team has been in contact with one of the national coordinators of the NFN, Diane Hall, who informed the task team as to the activities and objectives of the network.¹³³⁸ The task team has since joined the NFN's mailing list and receives information and news through their weekly email network which contains information on human trafficking incidents and cases, both internationally and locally, as well as news articles, research on human trafficking and profiles of local anti-trafficking practitioners and their organisations.¹³³⁹ Individual members of the task team, like Red Light and the Salvation Army, have also become network members, and have been profiled in their weekly newsletter. The weekly email newsletter is a valuable resource for anti-trafficking practitioners across South Africa. The newsletter sources a variety of information and research from around the world and locally and shares it with its members. Hall has managed the sharing of information professionally and competently, and does not attempt to influence members with her own personal opinions.¹³⁴⁰ Instead, she attempts to stimulate discussion amongst members, and even includes research and articles which may be that may be regarded as somewhat controversial by some (i.e. that presents findings from a different perspective or refutes commonly held assumptions). Information sharing and integration is

¹³³⁵ Personal Observation: Electronic communication with Diane Hall, National Coordinator of the National Freedom Network (2012).

¹³³⁶ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³³⁷ Participant Observation: KZN HPPB Task Team (2012).

¹³³⁸ Other organisations who are members of the task team such as Red Light, the Open Door Crisis Care Centre, and Umgeni Community Empowerment Centre have had direct contact with the NFN.

¹³³⁹ Participant Observation: KZN HPPB Task Team (2012).

¹³⁴⁰ National Freedom Network, 'Network News', July 2011 – October 2012.

one of the NFN's strongest attributes and is a service that was long overdue in the South African counter-trafficking community.

Many of the NFN's strategies overlap with formal provincial strategies. However, its strategy does present itself as a useful tool for those provinces without provincial task teams or counter-trafficking coalitions, or to supplement existing strategies and programmes, and identify and fill strategic gaps. The NFN strategy uses the six step NFN programme cycle as its template¹³⁴¹, and is divided into advocacy and strategy objectives.

In area one, resist, the NFN seeks to extend awareness of human trafficking as a domestic problem to all South Africans and thus mobilise communities to inform and protect themselves.¹³⁴² It also intends on bringing in international expertise to assist in prevention measures. In terms of awareness-raising, the NFN seeks to have a counter-trafficking educational DVD in every school across the country. It is currently doing this in conjunction with TME and its interactive DVDs.¹³⁴³ However, in other provinces, like KwaZulu-Natal, provincial task teams have their own awareness-raising material and DVDs that they are distributing to the schools across the province.¹³⁴⁴ Once again, the importance of not duplicating efforts and programmes is important. The NFN seeks to be the source of providing 'industry news' which it has thus far been very successful at doing. It is also currently in the process of mapping members through the introduction and launch of its 'Freedom Registry' with which it seeks to create visibility of the network. The 'Freedom Registry' is an existing project based in the United States for anti-trafficking organisations. It is also replicated in Canada.¹³⁴⁵ The 'Freedom Registry' is an initiative by one of the NFN's international partners, Chab Dai. The registry which is currently being set-up is designed to be an online database of organisations within South Africa combating human trafficking. The vision behind the 'Freedom Registry' is to increase collaboration between anti-trafficking stakeholders, to reflect good practice standards, and to measure gap areas within the current national response to human trafficking.¹³⁴⁶ Ultimately, the NFN foresees its role as developing one single strategy blueprint and action plan that facilitates the integration of

¹³⁴¹ See figure 4 above.

¹³⁴² National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachinational-freedom-network-for-web> – last accessed October 2012. National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachinational-freedom-network-for-web> – last accessed October 2012.

¹³⁴³ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³⁴⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹³⁴⁵ See <http://freedomregistry.org/aboutus.html> - last accessed October 2012.

¹³⁴⁶ National Freedom Network, 'Network News', 3 August 2012.

operations across the country.¹³⁴⁷ However, the danger which lies therein is that a single strategy and action plan may not allow for provincial variation, differing resources and capabilities and may not be flexible enough to take into consideration the ever shifting patterns and types of human trafficking and needs of victims as they present themselves. Strategies and actions plans that incorporate good practices and allow for counter-trafficking organisations and agencies to adapt them to suit their unique needs and situation could form a good foundation for inculcating agreed-upon minimum standards and operating procedures.

Step two in the NFN programme cycle, roadblock, seeks to target and disrupt the trafficking supply chain.¹³⁴⁸ It also seeks to find strategies that improve early victim identification, and develop protocols for law enforcement, border control and business organisations at ports of entry.¹³⁴⁹ Once again, provincial task teams are active in this regard. Points of entry have been identified as strategic points where personnel need to be trained and sensitised in order to identify victims of trafficking. Rather, the NFN should do a needs assessment and identify the provinces where this has not been addressed, or where possible evaluate the impact and efficacy of such protocols where they have been implemented. Its network members, most of who are NGOs, should be instructed on how to support such disruptive activities whilst not infringing the law / protocol or impeding investigations.

Step three, rescue, focuses on lobbying and advocacy activities by local and international actors to pressure for the passing of human trafficking legislation. It also advocates that prostitution laws should be addressed from ‘the TIP perspective’.¹³⁵⁰ It is unclear what the NFN mean by this as the Trafficking Protocol intentionally does not address the issue of prostitution and leaves this up to ratifying states and their domestic legislation. However, as many of its members are faith based organisations who share an abolitionist stance toward prostitution, it is inferred that the NFN seeks the continued criminalisation of prostitution in South Africa, and possibly the criminalisation of demand (i.e. buying of sex). The NFN encourages the exploration of how human trafficking intersects with drug trafficking and money laundering.¹³⁵¹ This is an important area of further investigation for anti-trafficking practitioners as anecdotal evidence in South Africa suggests that victims of trafficking are

¹³⁴⁷ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

¹³⁴⁸ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁴⁹ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011); Interview with Diane Hall, National Coordinator of the National Freedom Network (2012).

¹³⁵⁰ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁵¹ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011).

increasingly being used as drug mules.¹³⁵² This also reflects shifting international trends. ‘One example is the case of HT in Mexico where traffickers have transitioned from using victims for sexual exploitation to using them for activities not clearly classified under the Palermo Protocol. Women are reportedly used as “mulas” to carry drugs across borders, as “sicarias” forced to entertain and then kill the anti-drug military task force, or as “halconas” trained to learn codes to inform drug lords of military activities’¹³⁵³. The NFN could play an integral role in compiling and analysing shifting human trafficking trends, as well as methods of coercion (physical or psychological), and profiles of victims to enable counter-trafficking strategies and the anti-trafficking sector to adapt accordingly and for counter-trafficking measures not to become outdated and ineffectual. As Garcia and Larsen caution, ‘Traffickers’ new tactics narrowly subvert the legally defined requirements for prosecution... Another sign of the changing trends of traffickers in response to new legal standards is the distance high level traffickers and crime syndicates now place between themselves and the actual acts of coercion, force and exploitation’¹³⁵⁴. Thus, it is essential that protective service providers and other organisations which deal directly with victims of trafficking, including law enforcement and prosecution, are able to communicate with one another and share information and experiences.

Networks like the NFN and other formalised networked partnerships, like task teams, are important platforms for facilitating a cooperative and collaborative approach to counter-trafficking in South Africa. Moreover, the NFN sees detailing what is needed to implement trafficking legislation as a strategic objective.¹³⁵⁵ The NFN should combine this with an external monitoring and evaluation mechanism of government implementation to help ensure accountability and transparency in this area. The NFN also seeks to incorporate communities into counter-trafficking activities by encouraging communities to identify traffickers.¹³⁵⁶ Recruiters often come from the same community as their victims. However, it is not certain how successful such a campaign will be in fractured communities with high levels of relative poverty and/or (gender) violence, where migration is the norm, and where families often tacitly consent to the trafficking of their child or relative. Moreover, the danger exists that recruiters or traffickers may make themselves invaluable to economically depressed and

¹³⁵² Personal Observation: Interview with the Director of the Open Door Crisis Care Centre (2012).

¹³⁵³ Alejandra Vargas Garcia and Rozanne Larsen, *Global Gap Analysis of Knowledge Management Systems Applied by Anti-Human Trafficking NGOs*, UN.GIFT, Harvard Kennedy School, John F. Kennedy School of Government, (2012): 5 – 6.

¹³⁵⁴ *Ibid.*, 5.

¹³⁵⁵ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011). National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemach/national-freedom-network-for-web> – last accessed October 2012.

¹³⁵⁶ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemach/national-freedom-network-for-web> – last accessed October 2012.

neglected communities – as witnessed with drug lords / cartels. In such circumstances, communities tend to be more loyal to those who provide them with much needed social capital and material goods or the promise of such.

Step 4, rehabilitate, advocates programmes which meets the needs of child victims of trafficking (ages 10 – 18).¹³⁵⁷ Due to financial and institutional constraints child victims of trafficking are not afforded adequate assistance or protection. This is an area of counter-trafficking that needs to be further developed and services extended (by both NGOs and government departments). The NFN also seeks to enlist partners active in drug rehabilitation for victims of trafficking.¹³⁵⁸ This is another problematic area for protective service providers. Skills transfer in this regard and the extension of rehabilitative programmes on site would strengthen the programmes and services offered by organisations. Another important gap that the network has identified and actively seeks to close is through the establishment of places of safety for men and boy victims of trafficking. Currently men and boy victims of trafficking are being failed. They have little recourse to assistance or protection programmes, let alone places of safety or shelters. This is an area that needs to be urgently addressed by the counter-trafficking community and the Department of Social Development. The NFN also wants to introduce their rapid response cycle in all the provinces to improve victim assistance.¹³⁵⁹ However, it is arguable in provinces like KwaZulu-Natal or Western Cape which have their own rapid response protocol and team that such a duplication is unwarranted. It would serve, however, as a good blueprint for provinces without such protocols or task teams, or where official counter-trafficking activities are seen as ineffectual. Lastly, it advocates the establishment of 72 hour emergency safe houses that are immediately accessible for housing and statements¹³⁶⁰ – in order to bypass some of the problems faced where there is a lack of accredited shelters or spaces. The establishment of such emergency safe houses is much needed across the country, especially in proximity to borders.

Step five, return, seeks to mobilise support and advocate funding for the transportation of victims back to their countries or communities of origin.¹³⁶¹ This, however, is already provided for in the adopted TIP Bill which will soon be passed into law. In terms of

¹³⁵⁷ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁵⁸ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011). National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁵⁹ Ibid.

¹³⁶⁰ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁶¹ Ibid.

transnational victims of trafficking, agreements and collaboration between the South African government and the foreign embassy or government facilitates the repatriation of victims to their country of origin and the protection of their rights. An integral strategic objective of the NFN is to form partnerships with organisations in countries of origin, especially protective service providers, to meet repatriated victims as they land in the country and debrief them.¹³⁶² This should also help protect their human rights and prevent revictimisation or further trauma at the hands of the local authorities.

The last step in the NFN programme cycle, reintegrate, serves to identify economically viable options for trafficked persons, and for trafficked persons to have access to rehabilitation programmes in a safe house in the country of origin 'where culture and language is understood'¹³⁶³. While ensuring that rehabilitation continues to take place in a transnational victim of trafficking's country of origin, this is not always feasible. There are many scenarios where a victim may not want to or be able to return to their country of origin, or where protection and assistance may be sub-optimal or lacking. Protective service providers in South Africa should also be sensitised to the cultural idiosyncrasies of transnational trafficked persons. This should form the foundation of training of those engaged in rehabilitation and reintegration services, as well as understanding the unique psychological, emotional and health requirements of different categories of trafficked persons. Thus, the NFN should advocate and help equip protective service providers in South Africa with the requisite training and skills, and seek to form working relationships through networked partnerships with like organisations in countries of origin. The NFN does recognise the need for skills development and education of transnational victims of trafficking and advocates that they should be sent home with opportunities for income generation.¹³⁶⁴ The reason why many transnational victims ended up in situations of exploitation and trafficking in the first instance is that they were seeking to leave their country of origin as no opportunities existed or better ones lay elsewhere. The impact and effectiveness of skills development programmes and income generation are still to be tested in relation to trafficked persons. Finally, the NFN seeks for partner organisations in countries of origin to assist in the reintegration of transnational victims of trafficking.¹³⁶⁵ This is an important support mechanism and can help

¹³⁶² National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁶³ Ibid.

¹³⁶⁴ Personal Observation: Interview with Justine Demmer, Founder of the National Freedom Network (2011); Informal discussion with Diane Hall, National Coordinator of the National Freedom Network (2012). National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

¹³⁶⁵ National Freedom Network Presentation (2012), available at <http://www.slideshare.net/tharemachi/national-freedom-network-for-web> – last accessed October 2012.

trafficked persons find stability and certainty in the process of reintegrating, and potentially help prevent victims from being re-trafficked or re-victimised. It is hoped that a similar supportive network structure will be developed for domestic victims of human trafficking in South Africa.

4.0 Conclusion

The deepening and widening of counter-trafficking networks at all levels, as well as the inclusion of non-state actors in decision-making and policy, need to be supported by states and bureaucracies in order to counteract seemingly superior and more flexible and adaptive dark networks. More collaborative research into dark networks in the South African context involving data gathered and analysed from intelligence units, law enforcement, criminal justice, protective service providers, victims and (convicted) traffickers is required. There also needs to be a cognitive shift in the way that human trafficking is combated and prevented.

Networked partnerships between and among anti-trafficking actors following different approaches to counter-trafficking which are adaptive, agile and innovative, whether they be law enforcement or human rights based, are required. Formalised cooperation and coordination between counter-trafficking actors, within and between states, should be one of the key priorities of any holistic counter-trafficking strategy. Many of the inherent challenges currently faced by governments, government agencies and non-state actors, in creating and sustaining cooperation and coordination structures and networks may be ascribed to competition, lack of trust and information sharing, questions of ownership and jurisdiction, and bureaucratic complexity. The very structure of coordination is what constitutes the network, and more effective coordination and cooperation structures should translate into more effective counter-trafficking networks, and better resource allocation. As such cooperation frameworks which form the basis for the coordination of actors and activities need to be developed following a multidisciplinary, holistic approach. As suggested in the *UN.GIFT Vienna Forum Report*, effective cooperation frameworks should be based on: (i) a common definition of the purpose of cooperation, (ii) cooperation should not be limited to a law enforcement (or criminal justice) approach, (iii) cooperation should be formalised and based on written agreements (memoranda of understanding) in order to protect human rights, (iv) information management and data sharing need to be part and parcel of cooperation agreements, (v) evaluation mechanisms should be an integral part of cooperation structures, (vi) responses to human trafficking and victim assistance need to be as diverse as the crime is,

(vii) a victim-centred approach should be a common goal, and (viii) there should be a specialist representing all involved parties to build trust and enhance communication.¹³⁶⁶

The role of NGOs should be delineated and formalised on human trafficking task teams, and in relation to national plans of action. Monitoring and evaluation mechanisms of programme impact, actor interaction, and counter-trafficking strategies need to be included and implemented to ensure more effective coordination and cooperation. Moreover, victim protection should be of paramount importance and protocols, minimum standards and models of good practice should be put into effect. ‘[T]he effects of cooperation on the people that to be protected’¹³⁶⁷ should be monitored and evaluated by counter-trafficking task teams and networks. Information sharing and knowledge management are important tools in the acquisition of data about trafficking trends, trafficking networks, victim profiles and methods of coercion and exploitation. This will allow for the streamlining of responses, and more targeted prevention, protection, investigation and prosecution strategies. Coordination and cooperation structures between law enforcement, other government agencies, international organisations and NGOs, as well as businesses, is needed in order for counter-trafficking strategies and networks to adapt as readily as human trafficking networks and markets do.

Networks allow for more political power and information sharing in the South African context. Many of the organisations involved in counter-trafficking in the Western Cape and Gauteng are linked through networked partnerships, and wider network circles – including the National Freedom Network which operates at the national level. Counter-trafficking strategies, actors and networks mirror many of the challenges faced globally in terms of cooperation and coordination. In the Western Cape and to a lesser extent Gauteng, anti-trafficking organisations (i.e. NGOs) have formed parallel networks to those of formal counter-trafficking structures (provincial task teams). In the Western Cape, anti-trafficking networks are well established and demonstrate greater levels of cooperation and coordination amongst actors who tend to share a common vision and similar agendas. Diversity and divergent perspectives are not tolerated by all actors. This has resulted in internal competition and friction at times. However, perceived success and impact is based on leadership capabilities and passion, as well as the ability to neutralise elements perceived to be obstacles to progress. The Counter-Trafficking Coalition was established and developed in the absence of a provincial task team, which is only a relatively recent development. Many of its members

¹³⁶⁶ UN.GIFT, *The Vienna Forum Report: A way forward to combat human trafficking*, New York: United Nations, (2008): 45 – 46.

¹³⁶⁷ Barbara Limanowska and Helga Konrad, ‘Problems of Anti-Trafficking Cooperation’, in Cornelius Friesendorf (Ed.), *Strategies Against Human Trafficking: The Role of the Security Sector*, Study Group Information, Vienna and Geneva, (September 2009): 449.

have been active and influential in the counter-trafficking community in terms of prevention and protection, as well as in the drafting of human trafficking legislation and policy, for a number of years. Organisations belonging to the CTC are also represented on the provincial task team, and government agencies, such as the NPA, have attended CTC strategic meetings. This indicates an intersection of anti-trafficking networks / structures and strategies in the Western Cape which has also allowed for the development of common protocols or responses, such as the rapid response team and the establishment of emergency safe houses.

Counter-trafficking structures in Gauteng tend to be more limited and based more on the cooperation and coordination of government agencies. NGOs not part of the counter-trafficking 'inner-circle' tend to be largely excluded from decision-making processes or representation in formal networks, like the Gauteng task team, and have been ascribed a subordinate role. The situation in Gauteng reflects issues of cooperation and coordination between government agencies and NGOs elsewhere in the world. This is seen as an impediment to effective counter-trafficking knowledge management, strategic planning, programme development and implementation. This also implies that counter-trafficking strategies and resources are not being employed to their full advantage, and that monitoring and evaluation mechanisms of actors interactions and programme impact is largely absent from this structure. Moreover, issues of coordination and cooperation also manifest themselves in the lack of functional NGO counter-trafficking coalitions / networks in the province.

The National Freedom Network, as a national counter-trafficking network predominantly for NGOs, is one of the first networks of its kind in the South African context. It represents an important step in the evolution of the counter-trafficking community and supportive structures that exist in South Africa. The NFN has formed key links and partnerships with hundreds of organisations involved in counter-trafficking activities in South Africa, as well as formal structures like provincial task teams, and international partnerships. It acts as a conduit for information integration and exchange, as well as facilitating networking between member organisations and advocacy. Information sharing and the pooling of expertise and resources is essential for determining good practices and minimum standards, minimising programme duplication, optimising prevention and protection strategies, and coordinating responses.

The NFN also uses the information acquired from organisations to identify gaps in the various counter-trafficking approaches, areas and strategies, and seeks to fill with them by sourcing the relevant role-players or initiatives. It has devised its own counter-trafficking strategies, in terms of its six step programme cycle, that it wishes to see implemented as a blueprint in all

provinces across South Africa. However, many of these programmes and strategies overlap with established provincial counter-trafficking programmes. Also, by sanctioning only one approach to counter-trafficking in South Africa this could lead to stagnation and lack of institutional learning so important for allowing for innovative and adaptive solutions to the shifting tactics and trends of human trafficking, as well as victim needs. Rather, these strategic objectives could be used as baselines for provincial strategies and structures to further develop and adapt to their particular needs, expertise, capabilities and resources. If properly leveraged, anti-trafficking networks have the potential to wield greater influence on human trafficking policy and decision-making processes, focus resource allocation for the protection and assistance of victims of trafficking and investigations, act as external monitoring and evaluation mechanisms of policy implementation, and establish and streamline best practices. Counter-trafficking networks in South Africa should also tap into international anti-trafficking networks, such as the one created by the UN.GIFT, in order to gain access to training tools, connect with larger support networks, share information and experiences (trafficking trends, challenges, successes and models of good practice), and resources (such as available funding).

In the next chapter, I turn to the South African human trafficking discourse. I deconstruct the domestic discourse and demonstrate that the particular discourses being used have an impact upon the responses to human trafficking in South Africa. I evaluate whether a holistic approach that is cognisant of the complexities of human trafficking is being followed.

Chapter 7: The South African Human Trafficking Discourse Deconstructed – Contrasting Perspectives and Political Agendas

*While trafficking can be examined from a number of different perspectives, it is virtually impossible to separate any one of these from the other. Just as trafficking must be viewed as a process rather than as a single offense, it must also be understood and examined in relation to issues of globalization, supply and demand, migration, law enforcement, and human rights.*¹³⁶⁸

1.0 Introduction

Human trafficking as a phenomenon has been problematised as a diverse range of issues from a broad variety of perspectives which manifests itself in a series of competing discourses. This has also resulted in a number of different actors involved in combating and preventing human trafficking, all of whom ‘identify trafficking as a problem for very different reasons and often have very different political agendas with regard to the issue’¹³⁶⁹. Anti-trafficking actors range from states, to neo-abolitionist NGOs, to varied and scattered international and non-governmental organisations (that focus on issue areas like migration, labour rights, children’s rights, sex workers’ rights, and human rights). Human trafficking is frequently perceived as either: (i) a moral problem (in relation to prostitution / sex work), (ii) a problem of organised crime, (iii) a problem of migration (forced or voluntary), (iv) a problem of globalisation (and markets), (v) a problem of poverty, or (vi) a human rights problem (often linked to gender and/or ethnic and cultural discrimination).¹³⁷⁰ Points (i) to (iv) are often combined to depict human trafficking as a threat to the state and a problem of security.

Human trafficking is increasingly conceived as a multidimensional, socially complex problem which represents the intersection of all of these issues at various stages along a continuum of exploitation and manifests itself in abusive practices that denigrate human rights. Newman

¹³⁶⁸ Alexis A. Aronowitz, ‘Contrasting Perspectives on Human Trafficking’, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Connecticut: Praeger Publishers, (2009): 29.

¹³⁶⁹ Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country study*, Save the Children, (2002): 5.

¹³⁷⁰ For example see, Alexis A. Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Connecticut: Praeger Publishers, 2009; Sally Cameron and Edward Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions*, United States of America: United Nations University Press, 2008; Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, 2005; Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, 2007; Louise Shelley, *Human Trafficking: A Global Perspective*, Cambridge: Cambridge University Press, 2010; Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, 2005.

and Cameron¹³⁷¹ problematise human trafficking from the perspective of structural and proximate factors that intersect in diverse ways to render individuals and regions vulnerable to trafficking. This perspective has gained increasing salience in the international discourse, particularly the approaches advocated by international organisations and researchers involved in counter-trafficking, that the root causes of the problem (which relate to various structural and proximate factors in countries of origin, transit and destination) be addressed in order to effectively and holistically address human trafficking. However, the dominant discourse still overwhelmingly focuses on two perspectives: human trafficking as a security problem, and human trafficking as a moral problem. This is in part underscored and supported by the politics of human trafficking, the international legal framework, the Trafficking Protocol falls under the umbrella of the Transnational Organised Crime Convention, the *de facto* international compliance and evaluation system set up by the United States in the form of the TIP Report, and the powerful influence of neo-abolitionist NGOs. Debate tends to concentrate around the criminalisation of prostitution and demand, which inextricably links prostitution to human trafficking for the purposes of sexual exploitation. Anti-trafficking campaigners, particularly those belonging to neo-abolitionist groups tend to conflate prostitution with human trafficking and advocate that both be eradicated at all costs. This represents the moralisation of human trafficking.¹³⁷² Others actors, particularly governments and law enforcement agencies, maintain the need for tighter border control to prevent migrants being trafficked into countries of destination, and others still are concerned with rescue, repatriation and reintegration.

Such approaches often limit the scope of interventions and serve to fragment methods of counter-trafficking. Prevention and awareness programmes tend to focus on keeping transnational migrants ‘at home’; law enforcement and national security factor high and measures are undertaken to tighten border controls, intercept trafficked and smuggled migrants at points of entry; the logic of ‘raid and rescue’ of women and children trafficked for sexual exploitation prevails; and victims are repatriated to their country of origin (or communities) as expeditiously as possible and are often left ‘to endure the poverty and unemployment that drove them to migrate in the first place’¹³⁷³, or socially and culturally abusive environments (families and communities). The different ways in which human trafficking is problematised and relates to the dominant discourse has a direct impact on the

¹³⁷¹ Sally Cameron and Edward Newman, ‘Trafficking in humans: Structural factors’, in Sally Cameron and Edward Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions*, United States of America: United Nations University Press, 2008.

¹³⁷² Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 35.

¹³⁷³ Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country study*, Save the Children, (2002): 55.

way human trafficking will be approached and addressed within any given state and by the range of anti-trafficking actors who influence decision-making, policy and programmes. This chapter considers how human trafficking is problematised in the South African context in order to deconstruct the domestic discourse. It critically analyses how particular human trafficking discourses employed in the domestic context impact upon the responses to human trafficking in South Africa. Finally, it evaluates whether a holistic approach that is cognisant of the complexities of human trafficking is being developed and pursued.

2.0 Deconstructing the Problem of Human Trafficking in South Africa

The human trafficking discourse in the South African context is similar to that of the dominant international discourse. The politics and discourse of human trafficking in South Africa intersects and overlaps with the international discourse as both are propelled by competing political agendas based on morality, criminality, public order, human rights, labour and migration.¹³⁷⁴ Wijers and Lap-Chew have categorised these as the ‘moral approach’, the ‘law and order approach’, the ‘human rights approach’, the ‘migration approach’, and the ‘labour approach’¹³⁷⁵ to human trafficking. Each in turn is supplemented (to varying degrees) with or linked to discursive narratives about poverty, inequality, gender, development, health, economics and exclusion. These five approaches or problems form the conceptual basis for deconstructing the domestic trafficking discourse in South Africa. As Alpes appositely asserts, ‘[d]epending on “whose problems” shape and produce any given analysis or approach, anti-trafficking programs can lead to quite disparate outcomes’¹³⁷⁶. Thus, it is integral to understand how human trafficking is problematised in South Africa and which approaches are followed in order to understand the impact and (unintended) consequences counter-trafficking initiatives might have in South Africa. This also facilitates the analysis of whether such policies and programmes are holistic and effective, or whether they neglect to incorporate certain actors or perspectives and thus ultimately fail the victims of trafficking and those vulnerable to being trafficked in South Africa.

¹³⁷⁴ Maybritt Jill Alpes, ‘Escaping statism: From the paradigm of trafficking to the migration trajectories of West African sex workers in Paris’, in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 117.

¹³⁷⁵ Marjan Wijers and Lin Lap-Chew, *Trafficking in Women: Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*, Utrecht, Foundation against Trafficking in Women: (1997): 189 – 210.

¹³⁷⁶ Maybritt Jill Alpes, ‘Escaping statism: From the paradigm of trafficking to the migration trajectories of West African sex workers in Paris’, in Tiantian Zheng (Ed.), *Sex Trafficking, Human Rights and Social Justice*, London and New York: Routledge, (2010): 117.

2.1 Human Trafficking as a Moral Problem

One of the dominant themes in the South African discourse is that of human trafficking as a moral problem. It is primarily attributed to the (market) demand for the sexual exploitation of women and children (i.e. trafficking for the purposes of commercial sexual exploitation in prostitution and pornography) which is engendered by a morally deficient or immoral society.¹³⁷⁷ Thus, it is viewed by a number of faith-based organisations, like the Salvation Army, as a moral issue in which the church needs to be involved.¹³⁷⁸ This is borne out in the high percentage of faith-based organisations that form part of the counter-trafficking community and networks, and official structures like provincial task teams, in South Africa.

Immorality, the disintegration of familial structures, greed, a lack of respect for the value of life coupled with poverty are reoccurring sub-themes and are cited as contributing factors or root causes of human trafficking in this context. Little distinction is made between sex trafficking and voluntary sex work. Both are seen as sites of exploitation and abuse.¹³⁷⁹ This view, and the common conflation of prostitution and human trafficking, is widely supported in the South African literature¹³⁸⁰, media reports and perceptions of the general public. Sex workers are lumped together with trafficked persons as objects of pity, in need of being rescued. ‘By collapsing the process with the purpose, the abuse and violence inherent in trafficking is mistaken for the actual site of work and form of labor’¹³⁸¹. Following a neo-abolitionist perspective, many believe that prostitution is exploitation and that the young women who enter it do not do so of their own accord – there is always some underlying reason, whether it be poverty or substance addiction, as to why they were forced to enter into a life of prostitution.

Prostitution or sex work itself is viewed as something immoral – a vehicle of social decay, fractured families, venereal disease and perversion – that needs to be eliminated.¹³⁸² This is disingenuous to those who find themselves in a trafficking situation held against their will and subject to prolonged abuse, trauma and exploitation, and those who voluntarily sell sex (and have the agency and freedom to make their own choices). The moralisation of sex and human

¹³⁷⁷ Personal Observation: Usindiso Ministries response to a questionnaire (2012); Doctors for Life response to a questionnaire (2012).

¹³⁷⁸ Personal Observation: The Salvation Army response to a questionnaire (2012).

¹³⁷⁹ With regard to sex work, there is a certain truth to this assertion, however, it is based on context and should not be considered a universal truth.

¹³⁸⁰ The South African literature is discussed in chapter 1. Definitional issues are typically not addressed, nor the difference between transactional sex and trafficking or child trafficking and child abuse.

¹³⁸¹ Jyoti Sanghera, ‘Unpacking the Trafficking Discourse’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 11.

¹³⁸² Personal Observation: Responses to a nationally circulated questionnaire by NGOs (2012).

trafficking means that no real consideration is given to those who do not fit the stereotype of the abused and desperate prostitute. However, it is a powerful political tool in the human trafficking discourse and has a great deal of influence on how human trafficking is conceived and combated.

This perspective fails to acknowledge the different categories of sex workers, and that not all sex workers are street- or brothel-based, some belong to more exclusive escort agencies or work out of upmarket apartments. Accordingly, not all sex workers have pimps or brothel owners to whom they have pay a portion of their earnings to, or those who assault them. Many are 'self-employed' or work with other sex workers. This also means that not all are drug, alcohol or gambling dependent and suffering from ill-health and sexually transmitted diseases. The stereotypical sex worker is to be found in red light districts: the street walkers, those who prostitute along truck routes and stops, and those based in low-end, seedy brothels where the ability to negotiate condom usage is low and violence is generally high. These are also sites where the most sex worker outreach and ministries are conducted, and locations (i.e. brothels situated in known red light districts) where most raids to rescue suspected victims of trafficking take place.

The predominant focus of most counter-trafficking initiatives and resources currently focuses on extricating victims of trafficking from forced prostitution and sexual exploitation through the raiding of brothels.¹³⁸³ These are the more visible faces of a hidden population. However, more sexual services are now discretely offered in the suburbs¹³⁸⁴ and it is plausible that more trafficking for the purposes of sexual exploitation is taking place in these areas, especially where minors are concerned. Mapping of the sex industry in the different major cities and suburbs is thus required, and more intelligence-led, proactive policing and community engagement is needed in this regard.

Debate rages about removing women from the industry, but little is discussed in way of protecting their basic rights or acknowledging their personal choices.¹³⁸⁵ Many advocate the abolition of prostitution and the simultaneous criminalisation of the purchasers of sex.¹³⁸⁶

¹³⁸³ Many of the victims are either young women or girls who have migrated to the country, or from other parts (typically rural) of the country to one of the major cities. Their reasons are manifold.

¹³⁸⁴ Personal Observation: Interview and informal discussions with Adv. Dawn Coleman, NPA (2011 – 2012); Interview with DPCI Provincial Coordinator of Human Trafficking in KwaZulu-Natal (Hawks), Detective Warrant Officer Abby Dayanand (2012). Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹³⁸⁵ Personal Observation: Interviews with members of Justice Acts and National Freedom Network (2011).

¹³⁸⁶ Participant Observation: KZN HPPB Task Team (2009 – 2011).

However, such efforts can push the industry underground, make voluntary sex workers more vulnerable to abuse and even being trafficked, be forced to lower their prices, take more risks and lose more trusted, regular customers (who typically are married). Moreover, as long as there are no viable alternatives for sex workers, or those at risk (including those who might be trafficked), and as long as structural violence remains pervasive, then it is doubtful that there will ever be any real impact in this regard. Indeed, sex workers are often subjected to violence, abuse and exploitation in countries, like South Africa, where sex work is a criminal act, where it is exceptionally difficult to lay a charge against a client for rape or assault, because their basic human rights are not protected or enforced.

The KZN HPPB Task Team, for instance, has tried to address some of these issues through the implementation of its sex worker protocol thereby providing sustainable and appropriate alternatives to sex workers seeking to exit the industry.¹³⁸⁷ The sex worker protocol is a collaborative and coordinated effort amongst NGOs involved with sex worker outreach and those offering support services to sex workers.¹³⁸⁸ It seeks to assist sex workers exit the industry and provide them with support services – such as counselling, rehabilitation and skills development programmes. It also creates a referral system to these NGOs that offer shelter accommodation and support services to sex workers through: direct requests by sex workers, Metro and SAPS, Special Crime Unit, Department of Justice and Constitutional Development, Department of Social Development, church outreach ministries, clinics and hospitals and other NGOs.¹³⁸⁹ This is a good example of proactively assisting, and ensuring access to justice for, sex workers. Sex workers form a vital link in intelligence-gathering as to where brothels are, or suspected cases of sex trafficking might be, or may at some stage be victims of trafficking themselves.¹³⁹⁰

Other forms of trafficking for sexual exploitation outside the sex industry receive less attention. The perversion of cultural practices, like *ukuthwala*¹³⁹¹, and forced marriage (which

¹³⁸⁷ Participant Observation: KZN HPPB Task Team (2011 – 2012).

¹³⁸⁸ The NGOs involved include, Bobbi Bear, Childline, Doctors for Life, LifeLine, Red Light, The Open Door Crisis Care Centre, Umgeni Community Empowerment Centre, Women and Men against Child Abuse.

¹³⁸⁹ KZN HPPB Task Team, *Sex Worker Protocol*, 2011.

¹³⁹⁰ Personal Observation: Electronic communication with Natalie Ogden, a member of Red Light (2012).

¹³⁹¹ The kidnapping and raping of young girls by older men. These pubescent girls are held against their will as ‘wives’ in rural areas of the Eastern Cape and KwaZulu-Natal where this is being practiced. Communities are complicit in the practice, as well as law enforcement in those areas. Families often fail to report cases where monetary compensation or livestock have been given. This also has a very negative effect on the women’s rights in these areas. The Department of Justice and Constitutional Development has taken steps to hold various individuals accountable for reporting

essentially constitutes trafficking for the purposes of sexual exploitation) receive little sustained attention from counter-trafficking practitioners in practice as most focus is placed on trafficking for forced prostitution.¹³⁹² Little research has been conducted on how cultural practices might facilitate human trafficking in the South African context. Child abuse is thought to be rampant in rural areas and informal settlements across the country. More research should be conducted by government agencies (like law enforcement, Department of Social Development, Department of Health, Department of Basic Education and Department of Labour) at local and provincial levels and result in active interventions in order to protect children from being trafficked for sexual exploitation or forced labour. Again, social factors, the resistance of communities, issues of capacity and resources, and poor implementation of existing legislation currently hamper any real engagement in this regard.

Moreover, as witnessed in the focus of official structures, like task teams, and anti-trafficking coalitions there appears to be more of an emphasis on trafficking for the purposes of sexual exploitation than any other form of human trafficking – even though they are acknowledged. In KwaZulu-Natal, for instance, the commonly held perception that sex trafficking is a widespread problem in the province and that little evidence exists for forms of labour trafficking.¹³⁹³ Indeed, if one goes by documented / reported cases in the provinces there is an 80:20 split in suspected cases of sex trafficking and labour trafficking.¹³⁹⁴ NGOs do not focus their operations on the various forms of labour trafficking, except in the form of prevention campaigns. Organisations like Doctors for Life exclusively focus on forced prostitution and assisting sex workers exit the industry.¹³⁹⁵ Similarly, other organisations focus on sex worker outreach or assisting victims of sex trafficking.

A gendered approach is taken and men and boys trafficked into the sex industry, or elsewhere, also tend to be overlooked. This means that no one is really looking for incidences of labour trafficking, especially not the Department of Labour if the 2011 and 2012 TIP Reports are anything to go by. This point was reiterated by Detective Warrant Officer Abby Dayanand who reported to the KZN HPPB task team that the Department of Labour had no provisions in

incidences of *ukuthwala* and educating communities and traditional leaders. It is uncertain how much progress has been made in this regard.

¹³⁹² Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews and informal discussions with South African anti-trafficking practitioners (2011 – 2012).

¹³⁹³ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interview with Adv. Dawn Coleman, NPA (2011).

¹³⁹⁴ Personal Observation: Interview with Detective Warrant Officer Abby Dayanand, Provincial Coordinator for Human Trafficking, Hawks (2012).

¹³⁹⁵ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Doctors for Life response to questionnaire (2012).

place to deal with victims of labour trafficking – they simply fined businesses and ‘moved on’¹³⁹⁶.

The number of those trapped in exploitative labour practices could be significantly higher than those trafficked for sexual exploitation, as there are simply a greater number of industries in the formal and informal economies where people could be severely exploited and abused. KwaZulu-Natal, for instance, has vast areas of farming land where children and adults, from rural areas or surrounding countries, could be held against their will in trafficking situations of domestic or farm work, the mining sector is another site of poor working conditions, exploitation and migrant workers, so too the textile industry, and even the construction and security industries. Moreover, South Africa is highly xenophobic and (undocumented) migrant workers might put themselves into situations of exploitation and trafficking because they have no power to negotiate or protect their rights.

If no agency is properly monitoring and investigating what is going on in these areas, or any counter-trafficking organisations interacting with migrants, refugee organisations or diaspora communities, then it comes as no surprise that very little evidence for labour trafficking exists. However, this is somewhat understandable as this would take greater resources, manpower and capacity than are currently available. The experience in South Africa with regards to human trafficking as a moral problem, which is linked to the sex industry, reinforces Kempadoo’s assertion that despite the shift witnessed in international definitions of trafficking at the advent of the new millennium from being exclusively preoccupied with prostitution to now include broader issues of migration and situations of forced labour, the sex industry remains a key focus of many anti-trafficking policies and agencies.¹³⁹⁷ This is borne out in existing transitory and amended legislation in the absence of a comprehensive anti-trafficking legal framework. The focus has been almost exclusively on trafficking for sexual exploitation, and child trafficking. This is witnessed in amendments to the *Sexual Offences Amendment Act* and *Children’s Act*. Labour trafficking is only effectively dealt with in the adopted TIP Bill which is still to be enacted. Thus, it is of little wonder that addressing labour trafficking in South Africa lags behind that of sex trafficking.

¹³⁹⁶ Participant Observation: Presentation by Detective Warrant Officer Abby Dayanand, Provincial Coordinator for Human Trafficking, Hawks at KZN HPPB Task Team Meeting, 23 January 2013.

¹³⁹⁷ Kamala Kempadoo, ‘Sex Workers’ Rights Organizations and Anti-trafficking Campaigns’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): 149.

*The sex industry – as an “institution” and the individuals who control it – has long been blamed for the exploitation of trafficked women. Such crude assertions deny the complexity of intersecting variables that impact on individuals to make them vulnerable to trafficking, the demands of... the purchasers of sex services and the ruthless, focused industry of those coordinating trafficking efforts who force people to live and work under highly exploitative, slavery-like conditions... “Prostitution” must be disentangled from “migrant sex work” and “human trafficking”. Only then can considered debate ensue and real progress be made on the reduction of trafficking in women for prostitution.*¹³⁹⁸

The pronounced focus on sex trafficking may also be attributed to the fact that South Africa has one of the highest rates, and disturbing kinds, of sexual violence in the world, reinforced by patriarchy and gender inequality, that creates an environment conducive to trafficking for sexual exploitation in terms of demand and supply. However, this does not mean that trafficking for forced prostitution should be focused on to the exclusion of other forms of horrific exploitative practices and the systematic denial of human rights that may be found in labour or organ / body part trafficking situations, or how different forms of trafficking and other crimes intersect with one another. A continued emphasis on prostitution and trafficking for the purposes of sexual exploitation could result in less resources being allocated to combating other forms of trafficking once legislation has been enacted and policy developed, to the detriment of those who find themselves trafficked for purposes other than sexual exploitation because the numbers and research are lacking.

2.1.1 A Critique of Initiatives Dealing with Human Trafficking as a Moral Problem

Counter-trafficking initiatives and measures which address human trafficking as a moral problem typically focus on three areas: prevention, protection and prosecution. In terms of prevention, all forms of trafficking are acknowledged and communities are made aware of the various different scenarios of how human trafficking might manifest. Most public awareness campaigns and presentations use training material developed by Justice Acts, *Traffick Proof*. However, in terms of protection (victim identification and assistance), many of the organisations involved in counter-trafficking in South Africa, particularly protective service providers, tend to focus almost exclusively on sex trafficking (forced prostitution) together with sex worker outreach / ministry and exit programmes. In addition, because a majority of NGOs involved in prevention and protection are faith-based, many of the safe houses and shelters' rehabilitation and reintegration programmes are coupled with religious overtures and discipleship programmes that run in conjunction with their rehabilitative services and life

¹³⁹⁸ Sally Cameron, 'Trafficking in Women for Prostitution', in Sally Cameron and Edward Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions*, United States of America: United Nations University Press, (2008): 104. Moreover, labour trafficking can also coincide with sexual abuse of the victim that has nothing to do with the sex industry. Rape is used as a tool of social control in South Africa.

skills development. Such organisations form the backbone of prevention and protection measures and assistance, and counter-trafficking initiatives in South Africa would fall flat without their tireless devotion and passion. They have truly been the pioneers in counter-trafficking in South Africa, and their dedication to combating and preventing human trafficking is acknowledged and appreciated.

Indeed, faith-based organisations involved in counter-trafficking have a fundamental role to play in victim identification and assistance, rehabilitation, reintegration and recovery. However, it is suggested that there is also a need for neutral and secular organisations that can cater for trafficked persons (or even sex workers who have exited the industry) who do not identify themselves as Christian (either because they belong to one of the other major faiths like Islam, Hinduism, Judaism, Buddhism, Paganism or Animism, or are atheists). Moreover, it is unclear whether victims of trafficking or those exiting the sex industry would be turned away from rehabilitative programmes where their belief systems are incongruent with those of the organisation. Exclusion should not be based on faith or lack thereof. Sensitisation to victims of trafficking who do not fall into this category nor wish to be ministered to is thus required in the South African context. This needs to be recognised in South Africa as by creating moral hierarchies and unintentionally judging trafficked persons¹³⁹⁹ through religious dogma and lectures of how their souls need to be saved couched in the language of ‘sin and sinners’ can result in alienation, a sense of stigmatisation (based on perceived poor choices and attendant questions of self-worth) and victims absconding from places of safety or even returning to a life in the informal economy (like sex work) or their traffickers.

This is not to suggest that the programmes or approaches faith-based organisations involved in protection and assistance are necessarily causing discomfort (or further trauma and/or re-victimisation) to trafficked persons. Rather it is a call for the appreciation by such protective service providers that the needs, and approaches / programmes thus required, of trafficked persons are as diverse as they are. Such an approach is followed, for instance, by The Open Door Crisis Care Centre which is a faith-based organisation based in KwaZulu-Natal. It is aligned with the Anglican Church. However, it does not minister or provide pastoral care to the diverse array of clients, including victims of trafficking, who pass through its doors and shelter.¹⁴⁰⁰ Instead, they prioritise and see to the psychological, physical, emotional and health requirements of the individual first and foremost. Where the client indicates that they need or

¹³⁹⁹ This is particularly relevant when considering trafficked persons who have been extricated from situations of sexual exploitation where not only physical but emotional and psychological coercion were employed to manipulate and force / keep a person to be subjected to situations of exploitation and abuse.

¹⁴⁰⁰ Personal Observation: Interview with Director of The Open Door Crisis Care Centre (2012).

want their spiritual well-being also attended to the organisation provides them access to such services, or refers them to an appropriate place of worship and spiritual counsel.¹⁴⁰¹ Similarly, Rauch Counselling Centre, based in the Western Cape and linked to the Methodist Church, offers Christian-based counselling. However, they do not impose their beliefs on any of their clients, and offer their services to all.¹⁴⁰² It is suggested that other protective service organisations who deal directly with victims of trafficking (in their rehabilitation, reintegration and recovery) follow a similar model where pastoral care and/or discipleship training is an option that victims of trafficking may choose as part of their rehabilitation, not a requirement or obligation. Alternatively, referral mechanisms should be further developed and integrated so that victims of trafficking, once stabilised and properly assessed, may be placed in appropriate safe houses and rehabilitative care facilities that cater to their particular needs. Networks have an important role to play in this regard, as they can serve as a useful database and map what type of organisations are active throughout the country in order to facilitate this process.

Moreover, partnerships between faith-based and secular organisations involved in counter-trafficking should be extended and strengthened in order for greater collaboration and coordination of rehabilitation and reintegration programmes. Faith-based and secular organisations should be encouraged to meet on an annual or bi-annual basis, either within their own province or even nationally (if facilitated through an anti-trafficking network) ‘to examine how providers could address the needs of victims, to reach consensus on core values, and to develop a strategic framework on how to function with other service providers as “equally valid partners in the process of healing”’¹⁴⁰³. This would assist in creating holistic approaches to protective services, victim assistance and rehabilitation, reintegration and recovery programmes in South Africa, as well as establishing benchmarks for good practice within the counter-trafficking community.

The language of morality tends to divert attention from another concern overlooked in the literature and in practice, the seeming willingness to trust faith-based organisations blindly. Faith-based organisations are seen as symbols of moral authority. Religious institutions, unfortunately, have a long and dark history of being sites of sexual abuse (particularly of children) and individuals who belong or represent them not immune to committing ‘acts of

¹⁴⁰¹ Personal Observation: Interview with the Director of The Open Door Crisis Care Centre (2012).

¹⁴⁰² Personal Observation: Rauch Counselling Centre response to questionnaire (2012).

¹⁴⁰³ Pamela G. Bond and Dana D. DeHart, *Collaborative Response to Crime Victims in Urban Areas: Final Evaluation Report*, (August 2006): 4, available from http://www.riskingconnection.com/rc_pdfs/RC_ResearchPage/Evaluation%20report%20excerpt%20Si-dran%20Crime%20Victims%20project.pdf – last accessed October 2012.

evil'. Proclamations of faith alone do not guarantee that a particular actor or organisation may not be corruptible or part of the trafficking chain (for instance, as a recruiter or end-user). It is strongly suggested that all actors and organisations active in the field of counter-trafficking need to be thoroughly vetted and their activities regularly monitored – especially those who are members of official structures (task teams) or are directly involved with victim assistance and rehabilitation. Accreditation, monitoring and evaluation mechanisms, partially realised in the TIP Bill, are essential in this regard.

Prosecution, primarily in the form of raids conducted on brothels, and linked with victim protection is another site where the moralisation of human trafficking and the stigma of prostitution and (undocumented) migration¹⁴⁰⁴ intersect. This has had, at least in one case, unintended consequences for suspected victims of human trafficking. Undocumented migrants continue to be deported or expeditiously 'repatriated' to their countries of origin.

Even in provinces with a strong counter-trafficking community and structures in place, and extensive training, things can and do go wrong. For instance, on 28 September 2012 it was reported in Eyewitness News that a brothel in Cape Town had been raided by the Hawks, and other law enforcement officials, and had rescued a Nigerian woman who claimed to have been trafficked, and arrested two other women (one of whom was alleged to run the brothel).¹⁴⁰⁵ According to SWEAT, a sex workers' rights and advocacy NGO, the story was misreported. Two women were indeed arrested and one of them was reported to be a victim of human trafficking. According to the woman's legal representative she had not given any indication of being trafficked and was legally in the country on an asylum seeker permit. 'The police officers detained both women in the police cells. If indeed she was trafficked, surely detention should not be regarded as being rescued. This is a clear indication of how the conflation between trafficking and sex work has violated fundamental human rights. It will only result in further victimising of marginalised communities'¹⁴⁰⁶.

This case shows the pitfalls of moralising human trafficking and its continued conflation with prostitution. As long as sex workers are treated by the law and law enforcement as criminals there are bound to be more cases where actual victims of trafficking are confused with

¹⁴⁰⁴ As well as human trafficking as a problem of migration.

¹⁴⁰⁵ Rahima Essop, *CT cops raid 'human trafficking' den*, 28 September 2012, available at <http://ewn.mobi/news/Local/ct-cops-raid-human-traffickingden/13938?nocache=134883653450659cb6bb3cd> – last accessed October 2012.

¹⁴⁰⁶ Stacey-Leigh Manoek quoted in an article by Jenna Prashma, *Sensationalist reporting damages struggle for human rights*, 2 October 2012, available at http://www.sweat.org.za/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=11&Itemid=136 – last accessed October 2012.

voluntary sex workers (especially where victims refuse to identify themselves as such) and this could result in their detention, receiving a criminal record (and thus branded), and in cases where they are undocumented migrants being deported. The consequences of such actions ultimately fail the victims.

However, the reaction to the position by SWEAT in this case in local anti-trafficking circles demonstrates the schism between those involved in counter-trafficking who view human trafficking as a moral issue and those who view it as a human rights or labour issue. The SWEAT article advocated as a result of this incident that prostitution should be decriminalised in order to protect the rights of women who find themselves in such situations, and make sex workers more visible and accessible to role-players and creating safer working environments. Their position was summarily criticised by Melanie Hamman of Media Monitoring Africa who asserted that ‘the incorrect reporting on either voluntary sex work or human trafficking for sexual exploitation should not be used to deflect attention away from the fact that many women in South Africa are victims of trafficking who need the law and civil society to stand up for them’¹⁴⁰⁷. However, it is suggested that Hamman has misinterpreted the gist of the SWEAT article which advocates the expansion of human rights protection to those who are the most marginalised in society. The article served to highlight current flaws in approaches to brothel raids and suspected victim detention and protection. Nowhere did it denigrate the importance of assisting victims of human trafficking by law enforcement or civil society. Rather, her assertions come across as attempting to silence divergent views on sex work, and the intersections of migration and human trafficking.

Finally, from this perspective victims of trafficking are largely unseen and unheard. Former victims who do make statements are typically those who have been rehabilitated and are in the care of faith-based organisations. The following is one of the very few accounts written by a victim of human trafficking in South Africa in the form of a devotional that was circulated to members of the National Freedom Network:

It has always been said that money buys everything and anything, and with that being true, money can buy humans as well! The harsh reality is that once you are bought for a price, a Dollar (or Rand) sign is all you are meant to be. You do not count for anything else, nobody will see in your eyes that you could be a Wife or a Mother one day. Once the clock strikes for operation you are there for one thing only... money!

Money buys food, houses, cars, and even fame.....! The Recruiter also needs all these things, and once they taste that it comes easy, they want more!!! Most of them also have wives and children that have needs, and THEY must supply.

¹⁴⁰⁷ National Freedom Network, Network News, 12 October 2012.

So what encourages a person to sell other humans for an income?

I always wondered if they ever felt any emotions towards the girls, but I guess they were also like sheep standing and waiting to be auctioned. They had bills to pay, food to set on the table, school fees to pay... money was and is the goal. The Operation needs to grow and entertainment is what keeps your stress levels down, right?? They are very good at picking out the best for the highest bid; they know WHAT the clients want!

They are very good at seeing a pretty face with potential. They know that you will be the best once they break you in! They have excellent taste, they have all that money can buy, but it is never enough.... they always want MORE!

They know how to change you. They know the new trend in styles and fashion! They make sure that you become someone else. But they also know when you don't profit them anymore....

They don't ask questions like: Where do you come from? Where are your families? The only thing that matters is that the money comes in! They don't care when you cry, when you get beaten up, when you get raped over and over again, when a 'client' wants more than you can give! You are alone... you cry by yourself... you suffer in silence. When your body is in pain, and you can't take one more client... they don't care... you have to do it!

To this day I remember one evening clearly. I was tired and was used by one client after another and I could not face another. I remember taking a knife to the cubicle; for some reason I decided to end my life that night. I was forced to do things I was tired of; every muscle in my tiny body was aching; I felt dirty and he was doing things to me you can't imagine. That's when I pulled the knife on him. He started to hit me, and call me names... he dragged me by my hair to reception and demanded his money back! The owner was forced to pay him back every cent. I was badly beaten up by the owner and called a 'devil'! Yes, I was called the devil! How do you justify that?

The truth though, is that they are also just humans... they are blind guides. They know what they are doing but they live in the dark. And the truth is... that Jesus loves them as well!

Would it make me feel any better if I could put my arms around them and tell them that I forgive them? Yes... yes it would!!

I say they live in dark, and they do. They are taken over by the force of money... but deep down inside of each one of them is a soft side... a human side that needs to be touched by the Great "I AM".....!!!

We are all fighting against the darkness of Human Trafficking, and with each tear a victim sheds, God's tears multiply. But God's tears multiply because He wants to touch the hearts of the ones causing it! I believe if we deeply start to pray for the Recruiters, God's love and power will break the chains.

If I can stand in the middle of a thousand Recruiters today, I wouldn't be afraid, because I live in the Light and they are in the Dark... and I know that God's light will embrace them...¹⁴⁰⁸

¹⁴⁰⁸ National Freedom Network Devotional, 25 September 2012.

This survivor of trafficking's words are both inspirational and informative of her trafficking situation and how she has processed the abuse and exploitation that she was subjected to. It also shows how she has come to terms with what was done to her by her traffickers and those who used her services. In her case, faith was a powerful tool in helping her find peace for what had happened to her, to heal, and enabled her to forgive the person(s) who recruited and kept her in this exploitative situation. The approach taken by the National Freedom Network in this regard is positive, allowing the victim to speak for herself and share her story – and not through a third person which is often the case and which can result in personal biases and judgements being made in the retelling. This type of an approach, which strongly protects the victim's identity, is one that should be emulated in order to give victims a voice, to allow for their experiences to be shared as a form of knowledge management, remove the stigma of being a victim of trafficking (particularly of those who were forced to prostitute themselves) and ultimately empower them.

Protective service providers tend to be very 'protective' of victims of human trafficking, often dissuading victims from being interviewed by police and prosecutors or going through legal proceedings to avoid further traumatisation or revictimisation.¹⁴⁰⁹ However, because of the structure of the South African legal system which is adversarial, their good intentions can have negative effects on the course of justice, and cases being dropped due to a lack of evidence. Many anti-trafficking practitioners feel that victims should not have to testify in court for human trafficking cases to proceed.¹⁴¹⁰ This is something advocated internationally as well, and should be explored further in the South African context. Moreover, victims of trafficking should be incorporated into formal counter-trafficking structures and decision-making forums. Their voices and experiences should be the most important when crafting counter-trafficking policies. More interaction is thus required with survivors of trafficking to ascertain how effective protective measures (particularly those associated with rehabilitation and reintegration) are. More understanding is required whether it is beneficial to place victims of trafficking in multi-purpose shelters and facilities and what their individual needs are.

Similarly, victims of trafficking need to be interviewed more extensively as what rendered them vulnerable to trafficking prior to being trafficked, at what stage in the migratory process or entering into a work environment (including sex work) did their situation transform into one of exploitation and trafficking. Their insight into current prevention programmes and

¹⁴⁰⁹ Personal Observation: Interview with Detective Warrant Officer Abby Dayanand, Provincial Coordinator for Human Trafficking, Hawks (2012).

¹⁴¹⁰ Personal Observation: Interview with Justine Demmer, founder of the National Freedom Network (2011).

campaigns would also be useful in determining efficacy and impact. Thus, survivors of trafficking should be empowered by encouraging their participation in task teams, organisations and networks involved in counter-trafficking in South Africa. The inclusion of victims of trafficking in decision-making structures, and the discourse, are the missing link in a holistic approach to addressing human trafficking in South Africa.

2.2 Human Trafficking as a Problem of (Transnational) Organised Crime and Public Order

Like its international discursive counterpart, the problem of (transnational) organised crime as threat to statal and domestic security, endangering state sovereignty and the ability of the state to protect its citizen from harm, is a dominant and undisputed theme in the South African discourse. Transnational organised crime, facilitated by globalisation and (illicit) migration, is seen to drive the process of human trafficking, corrupting officials and threatening the sanctity of the state. Human trafficking is thus conceived as a problem of law and order / criminal justice. ‘From this perspective, the “abuse of migrants becomes fully the fault of traffickers who must be stopped, not the by-product of exploitative employment practices, restrictive immigration policies, and vast economic disparities between rich and poor nations”¹⁴¹¹. The logic of this most commonly adhered and accepted to understanding of human trafficking and approach to it is that once organised crime groups and networks are disrupted and destroyed, or the costs for traffickers becomes too high, there will no longer be a market for human trafficking, and the exploitative (and immoral) practices that accompany it. It represents ‘an alarmist interpretation of the threat posed by foreign gangsters and organised crime networks, takes border control as the basis of the state’s sovereignty and as intrinsic to its logic of being’¹⁴¹².

In the South African context, human trafficking is understood as a form of organised crime.¹⁴¹³ It reinforces the commonly held view of the relationship of the state with the trafficking problem. Organised criminal syndicates typically are thought to have an international connection and traffickers, and their transnational victims, become the ‘Other’. In reality, South African citizens also form part of the trafficking chain or networks, and not all traffickers or networks are (highly) organised or transnational. While the diverse profiles

¹⁴¹¹ Wendy Chapkis, ‘Trafficking, Migration, and the Law. Protecting Innocents, Punishing Migrants’, *Gender & Society*, 17, No. 6 (2003): 926. See also, Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 32 – 33.

¹⁴¹² Maggy Lee, ‘Introduction: Understanding human trafficking’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 6.

¹⁴¹³ Personal Observation based on interviews, informal discussions, and questionnaires. This is also supported in the South African literature and official documents.

of traffickers, organised crime groups and networks are acknowledged, in practice the link to transnational organised crime, inherited from the Trafficking Protocol, international agreements and discussions around globalisation, has affected the scope of investigations by law enforcement who typically look for the international link, as well as a structure to the criminal enterprise. This suggests that different forms of trafficking groups or networks, and traffickers, may be disregarded at present where they do not fit the standardised international profile or pushed on to primary law enforcement who might not have the same expertise, capacity or resources as specialised units. This is problematic.

‘Police and court (official) statistics provide us with a good, but limited, picture of people who have been arrested on (suspicion of) human trafficking charges. This is only a limited picture, for it tells us nothing about those traffickers who have not yet come to the attention of the authorities’¹⁴¹⁴. Research with regard to the profile of traffickers, trafficking networks and transnational organised crime remains scarce and incomplete. Most studies only offer anecdotal evidence or broad references and document patterns of trafficking into and within South Africa. Trafficking flows tend to follow migration and smuggling routes, or inter-provincial migration. None document the structure of the market (beyond rudimentary discussions on supply and demand), how they intersect with legitimate businesses or other forms of organised crime, how these networks work and may be differentiated from one another, the extent to which officials in South Africa are (at risk of being) co-opted into the trafficking process, or assess traffickers’ political and economic motivations, or who they are. So while, South African anti-trafficking practitioners operate under the assumption that all human trafficking cases are organised crime, as defined and underscored by the Trafficking Protocol, international organisations and the official South African government stance, a complete picture does not exist to support this in every instance. Anti-trafficking practitioners, particularly those in law enforcement, are thus operating with insufficient data and intelligence as to what constitutes human trafficking as an organised crime, and the particular forms this might take.

Moreover, many in law enforcement are constrained, like the Hawks, to only deal with human trafficking cases that fulfil two criteria: (i) there is an identifiable criminal structure, and (ii) it has transnational links. Anti-trafficking practitioners are also constrained by an international discourse that is well-established and widely accepted. This has resulted in many instances, in the domestic discourse accepting the assumptions of the dominant international discourse

¹⁴¹⁴ Alexis A. Aronowitz, ‘The Traffickers: Their Methods of Operation and Organization Structure’, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Connecticut: Praeger Publishers, (2009): 51.

with little research as to the situation on the ground or fully appreciating regional and historical peculiarities that might affect the nature of the trafficking process in the South African context. As a member of Metro Police commented, ‘*So we sort of slavishly adhere to something that other people have conceptualised and packaged. And one size fits all. Yes, all countries. Yes, it will fit in brilliantly – just knock that square peg into the round hole. Don’t worry about the rough bits*’¹⁴¹⁵.

Factors facilitating organised crime and human trafficking, the study of which might prove equally helpful in preventing and combating trafficking are either not properly understood or researched in the South African context, such as: (i) state weakness in countries of origin, (ii) multiple transit countries and routes available to traffickers to traffic victims through, (iii) the political-criminal nexus, (iv) police corruption, (v) widespread public (familial or community) collusion, (vi) globalisation and technology, (vii) diaspora and migrant networks, (viii) the low risks of trafficking, (ix) uncertainty about ownership of the problem, and (x) variability in combating trafficking.¹⁴¹⁶ In the South African context, police corruption and collusion of border control officials is well documented.¹⁴¹⁷ The lack of sufficient understanding of the factors facilitating human trafficking in the South African context is in part due to the fact that very little research on human trafficking in South Africa exists, and most has focused on either describing patterns of human trafficking, trying to estimate the scope of the phenomenon from insignificant datasets, or focusing primarily on trafficking for purposes of sexual exploitation. This puts counter-trafficking measures from a law enforcement perspective at a disadvantage as the multidimensionality of the problem has not been fully explored. More intelligence-led policing is required in this regard, as well as assistance from civil society organisations who come into direct contact with victims of human trafficking and wider circles of people.

2.2.1 Preventing and Combating Human Trafficking and Organised Crime from a Law Enforcement Perspective

A law enforcement / criminal justice approach to human trafficking, which dominates international and domestic efforts institutionalised by the international legal framework and

¹⁴¹⁵ Personal Observation: Interview with a member of the eThekweni Metropolitan Police (2011).

¹⁴¹⁶ Phil Williams, ‘The Role of Transnational Organized Crime’, in Sally Cameron and Edward Newman, ‘Trafficking in humans: Structural factors’, in Sally Cameron and Edward Newman, *Trafficking in Humans: Social, Cultural and Political Dimensions*, United States of America: United Nations University Press, (2008): 145 – 150.

¹⁴¹⁷ Personal Observation: Interview with a member of Women and Men against Child Abuse (2012); Interview with Detective Warrant Officer Abby Dayanand, Provincial Coordinator for Human Trafficking, Hawks, (2012). See also, HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010.

domestic legislation, means that responses are typically reactive and aimed at victim identification and extraction, and the prosecution of traffickers. This has also meant a shift in how law enforcement and border control deal with migrants (documented and undocumented) as potential victims and worthy of protection. However, as Vigneswaran notes, ‘anti-trafficking campaigners confront a range of policies, incentive structures and institutional cultures which act against these international policing and protective mandates’¹⁴¹⁸. In the case of South Africa, this has meant that despite increased awareness and training of border control officials, police, and home affairs officials, victims of trafficking are still being summarily deported due to their illegal status. Victims of trafficking are still being confused with migrants who have been smuggled illegally into the country.¹⁴¹⁹ In some cases, foreign victims of trafficking may indeed have entered the country illegally, but this should not preclude them from being worthy of protection or being recognised as victims of a trafficking situation. In addition, victims of trafficking for sexual exploitation are still being arrested and charged with prostitution across the country.¹⁴²⁰

The law enforcement approach thus fits uneasily with questions of migration and migrant (human) rights, as it is primarily concerned with illicit migration, prostitution and threats to the state. The law enforcement approach typically advocates the principle of deterrence in the form of more stricter border controls (to keep traffickers out) or models of pre-emption that seek to protect the integrity of national borders and stop traffickers and trafficked persons (not to mention smuggled migrants) before they reach a state’s boundaries. This is currently practiced in a host of countries, like the United Kingdom and the United States, but the success of such strategies is dubious. A similar view is widely advocated in the South African context by anti-trafficking practitioners from both civil society and government agencies. It operates from the faulty assumption that stricter border controls means that undesirables can effectively be kept out or intercepted at the border. However, such draconian measures typically push the phenomenon further underground and results in migrants actively seeking out smugglers or traffickers or trafficking networks to facilitate their entry into the country opening them up to further human rights abuses and exploitation, and renders them more invisible. This also accounts for why the migration-trafficking nexus is so amorphous and why it often intersects with the migration-smuggling nexus.

¹⁴¹⁸ Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 20.

¹⁴¹⁹ Personal Observation: Interview with Advocate Dawn Coleman, NPA (2011). See also, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹⁴²⁰ Ibid.

By tightening border controls and immigration laws this also has the unintended consequence of negating the potential of migrants to be victims and retransforms them into potential criminals. Moreover, the prevalence of corruption and collusion at points of entry by a range of public officials means that restrictive border controls can be readily circumvented. It also does not take into consideration that trafficked persons may have entered the country legally, and only later became trafficked and trapped in situations of acute exploitation. A law enforcement approach that primarily focuses on the deterrence of external threats and the sanctity of statal borders means that instances domestic trafficking, that are not linked to international criminal syndicates and are opportunistic or facilitated through familial collusion, may be largely ignored and allowed to flourish.

In the South African context, the notion of organised crime (combined with trafficking for prostitution) is the dominant theme.¹⁴²¹ Measures taken by law enforcement and criminal justice practitioners all look for links to organised crime. The Hawks who are mandated with investigations of human trafficking in South Africa are constrained by the structure of human trafficking operations and links to transnational groups. Moreover, they are only beginning to understand and delve deeper into the various forms that organised crime in the form of trafficking networks takes and how this relates to the South African market for human trafficking.¹⁴²² This suggests that there may be significant gaps in how traffickers and their organisations are identified, investigated or disrupted. To date, only small-time operators or low-level traffickers have been arrested and prosecuted. No kingpins or key actors within any trafficking organisation have been identified or brought to book in South Africa. This means that although traffickers have been arrested and prosecuted, no real impact has been made in terms of either disrupting trafficking networks, organisations or reducing the prevalence of human trafficking in South Africa.

However, counter-trafficking is still relatively new in South Africa and law enforcement and prosecutors are operating in largely unknown territory. Resources have not been adequately

¹⁴²¹ The moralisation of human trafficking accounts for why anti-trafficking practitioners support a law enforcement approach in the South African context, and why there is less discussion of upholding migrants' rights and discussions about victim protection in this context. Law enforcement and criminal justice are seen as the defenders of victims and their rights. There is less critical engagement in the South African context as to why this might not always be the case, or how migrants who are also victims of trafficking may have their rights infringed or be exposed to more abuse and exploitation because of punitive measures aimed at migrants in the form of immigration and employment laws, legal recourse, or by engaging in criminal activities in the informal sector, like sex work, to survive made them vulnerable to being trafficked. Migrants trafficked for prostitution are seen as being worthy of pity and protection. Migrants who do not fall into this category are largely ignored or unrecognised in practice.

¹⁴²² Personal Observation: Interview with Detective Warrant Officer Abby Dayanand, Provincial Coordinator for Human Trafficking, Hawks, (2012).

allocated to allow for large-scale and often lengthy investigations of organised criminal groups to take place. Operations are limited as a result. ‘Raid and rescue’ operations seem to be the most prevalent forms of reactive counter-trafficking policing in the South African context.¹⁴²³ This means that victims assisted by law enforcement tend to be those forced into brothel-based prostitution, and the more visible victims of the crime. This also suggests that operations are focused at the end of the trafficking supply chain, the purpose of exploitation and not the process or attempt to reduce demand.

The allocation of resources and expansion of capacity to counter-trafficking intelligence, rescue and disruptive operations, as well as much needed further training and research into trafficking organisations, networks, business markets and modus operandi, should assist in strengthening and improving law enforcement responses to human trafficking in South Africa. South Africa, unlike many of its international counterparts, cannot be criticised for spending great resources on law enforcement measures to the detriment of preventive and protective measures. Little money or resources, apart from education and training of officials, are being invested in formal counter-trafficking initiatives at all. It is still uncertain whether this situation will be any different once legislation has been enacted. Moreover, as human trafficking is primarily viewed as a transnational phenomenon, the South African government should encourage and fund, in conjunction with states in the region or countries of origin and transit, ‘pilot transnational policing operations, which focus on areas where good evidence exists of a transnational criminal enterprise, and use the resources of international agencies to exhibit how they can be tackled’¹⁴²⁴.

2.3 Human Trafficking as a Human Rights Problem

Human trafficking is viewed as an egregious violation of human rights.¹⁴²⁵ Addressing human trafficking from a human rights approach is advocated by a broad range of anti-trafficking practitioners and academics in order to secure and protect the rights of trafficked persons and avoid re-victimisation by the state. The conceptualisation and situating of human trafficking as a human rights problem may be attributed to the entrenchment of human rights as a matter of international relations, the proliferation of human rights institutions, organisations and agreements, and general public consensus for the need to protect and uphold human rights – especially those of vulnerable and marginalised groups like ethnic minorities, women,

¹⁴²³ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁴²⁴ Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 21.

¹⁴²⁵ This view is supported by numerous organisations and individuals who were interviewed or responded to a questionnaire which was circulated nationally (2011 – 2012).

children, refugees and migrants from the mid-twentieth century onwards. State sovereignty from this perspective is viewed as a duty to protect human rights. Thus, as Donnelly asserts, human rights ‘far from undermining or eroding state sovereignty, are embedded within sovereignty’¹⁴²⁶. However, tension does exist between a human rights approach to the problem of human trafficking and a law enforcement / organised crime approach.

A majority of states follow a law enforcement approach, which is supported and institutionalised by the Transnational Organised Crime Convention and its supplementary protocols, international organisations and domestic legislation. This has led to the securitisation of human trafficking, migrant smuggling, and transnational criminal actors. Some commentators, like Herbert¹⁴²⁷ or Truong¹⁴²⁸, go so far as to suggest that anti-trafficking legislation and policies, despite being couched in the language of human rights and victim protection, do not support or preserve human rights (of victims) but instead are tools of social control and regulation of autonomy. This represents a dichotomy between ‘the competing concerns of human rights protection for victims of trafficking and the interests of states in immigration controls and border integrity’¹⁴²⁹.

Many anti-trafficking practitioners, and human rights lawyers, suggest that the positioning of the Trafficking Protocol under the auspices of the Transnational Organised Crime Convention and not within the human rights system should be considered as a mixed blessing.¹⁴³⁰ While it galvanised states into action to address the threats posed by transnational organised crime, and although certain rights have been reinforced and others have been extended, the rights and protection of victims of trafficking remains largely aspirational and not obligatory. Migrants are seen to fare worse under such an international system where they are ascribed the dual status of victim and criminal. Moreover, while the language of human rights looms large in the international and domestic discourses, their application in practice is left wanting, and the implications and effects of legislation pertaining to migration and immigration control, in relation to human trafficking, are not considered or reviewed. Coordination and

¹⁴²⁶ Jack Donnelly, *Sovereignty and human rights*, available at <http://mysite.du.edu/~jdonnell/papers/hrsov%20v4a.htm> – last accessed October 2012.

¹⁴²⁷ Laura Hebert, ‘The Sexual Politics of U.S. Inter/National Security’, in Alison Brysk and Austin Choi-Fitzpatrick (Eds.), *From Human Trafficking to Human Rights: Reframing Contemporary Slavery*, United States: University of Pennsylvania Press, 2011.

¹⁴²⁸ Thanh-Dam Truong, *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, 2006.

¹⁴²⁹ Maggy Lee, ‘Introduction: Understanding human trafficking’, in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 9.

¹⁴³⁰ For example, see Anne T. Gallagher, *The International Law of Human Trafficking*, New York: Cambridge University Press, 2010; Ann D. Jordan, ‘Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings’, *Gender and Development*, Vol. 10, No. 1, Trafficking and Slavery (March 2002): 28 – 37.

cooperation are not based on a mutual respect and accord for victims' rights, but rather to protect state sovereignty and address security threats. This is the case in the South African discourse as well.

The South African Constitution is seen as the cornerstone of democracy and the protection of human rights. Human trafficking is a flagrant infringement of those human rights enshrined in the Bill of Rights. Moreover, human rights are seen as being universal, indivisible and inalienable and are afforded to all regardless of race, gender, nationality or any other such distinction. The adopted TIP Bill also recognises human trafficking as infringement of certain human rights enshrined in the constitution and seeks to redress these through punitive and protective measures. The adopted TIP Bill calls for the protection of trafficked persons rights, including those of (undocumented) migrants who have been trafficked and affords them the same basic medical and psycho-social care as domestic victims of the crime.

However, these provisions occur within the context of punitive and security (law enforcement) measures which actively seek to keep trafficking at bay through more focus at points of entry, as well as an environment which is not 'friendly' or supportive towards foreign nationals from other African states. Migrants, refugees and asylum seekers are viewed as a nuisance and a threat to the economic security of poor, unskilled South Africans. Moreover, a number of nationalities are stereotyped as typically belonging to the criminal underworld and responsible for the scourge of drugs, prostitution and human trafficking rings in urban centres. This means that while a victim-centred approach based on the enforcement of human rights is advocated in many instances policy does not translate well into practice.

Victims, domestic and foreign, are subjected to trauma and re-victimisation throughout the legal process of bringing their traffickers to book. Protective and rehabilitative services are limited as civil society organisations are charged with this responsibility and receive little official support. Moreover, protection is only offered for a short duration – i.e. during the course of the trial – and does not adequately extend to the protection of victims or their families from intimidation or reprisal further down the line.¹⁴³¹ In terms of witness protection, the system in South Africa is inadequate and witnesses (victims) are left on their own once the legal proceedings have come to an end or repatriated to their countries of origin.¹⁴³² In addition, protective services in relation to reintegration and recovery, arguably one of the most important phases of victim protection, are virtually non-existent. It is also unknown what health care is afforded transnational victims of trafficking after their initial reception and

¹⁴³¹ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁴³² Ibid.

stabilisation following extraction from situations of trafficking. Similarly, in terms of employment opportunities in the formal economy that provides victims with viable alternatives to work in the informal sector where exploitation is most prevalent.

Moreover, following international trends, the repatriation of transnational victims is seen as being of paramount importance.¹⁴³³ This could potentially be a site of the greatest failing by states to ensure the protection of the human rights of victims. Many transnational trafficked persons come from states with a weak rule of law, widespread corruption and collusion with trafficking networks and prohibitive regimes. This means that many transnational victims may be arrested on return to their country of origin to face charges of prostitution (where they have been trafficked for the purpose of sexual exploitation), they face re-victimisation, being re-trafficked, or being confronted with the same lack of opportunities and/or discrimination that prompted them to migrate in the first place. Truly upholding the human rights of victims would mean that governments formalise cooperation and coordination of repatriation and reintegration of transnational victims of trafficking, in conjunction with international organisations and NGOs, and monitor the repatriation and reintegration process to ensure accountability and transparency. In addition, domestic victims of trafficking should be afforded the same level of care in terms of reintegration and the accessing of employment opportunities through education and skills development. Victim protection, and thus the protection and restoration of their human rights, primarily lies with NGOs, law enforcement, criminal justice and other government agencies. There needs to be more collaboration and coordination, as well as monitoring and evaluation, in the South African context to ensure that such protective measures are benchmarked and good practices are ensured.

2.3.1 The Human Rights Approach in Practice

The human rights approach to combating and preventing human trafficking in South Africa is closely tied with addressing the root causes of the problem, the structural inequalities and proximate factors which exacerbate and foment the phenomenon. This is also acknowledged, at least superficially, by the adopted TIP Bill. However, actually addressing issues of relative poverty and deprivation, development, gender inequality, lawlessness, corruption, forms of discrimination, intergenerational disparities, and structural violence is far more problematic and complex in terms of resources, capacity and political will. Such issues intersect with and manifest as a broad range of societal ills and problems. These issues also are global, and need to be simultaneously addressed in countries of origin and destination (of which South Africa is both).

¹⁴³³ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews, informal discussions and responses to questionnaires by anti-trafficking practitioners in South Africa.

Supported by the dominant international discourse and approach, migrant women trafficked into prostitution are seen as pitiful and especially worthy of assistance – they are linked to a moral crusade to save them from a life of coerced sex. This serves to narrow the focus of anti-trafficking initiatives and actors in South Africa. The existence of trafficked (migrant) men is largely ignored.¹⁴³⁴ They are seen as active agents and do not really form part of the dominant domestic discourse, beyond a mere mention in the forms that trafficking might take or that protection and services for them are lacking. Even NGOs active in victim protection and rehabilitation do not place trafficked men as a priority on their agenda.¹⁴³⁵ This is reflected in the lack of shelters or safe houses or rehabilitation programmes available to men. In terms of facilities catering for male and child victims, or female victims with children, of trafficking it may be argued that this is where protective measures and the protection of victims' rights fall short in the South African context.¹⁴³⁶ This is also the case with regard to long-term rehabilitation and reintegration programmes. Thus, one of the greatest challenges to the South African government in addressing human trafficking is trying to find an equilibrium between affording victims of trafficking, particularly transnational migrants (whether they are documented or not), equal rights and protective services and protecting them from traffickers (in relation to human rights and social justice), and protecting state sovereignty through border control and immigration laws from external threats (and the illicit movement of people).

2.4 Human Trafficking as a Problem of Migration

Human trafficking characteristically occurs within the context of migration and globalisation. The inequalities brought and exacerbated by globalisation, within and between countries, contribute to the push and pull factors that increasingly lead people to migrate. 'Instead of tackling xenophobic reactions to the issue of migration, many governments have sought political advantage by promoting more restrictive immigration policies. Such policies only reduce the opportunities for regular migration, thereby providing greater opportunities for traffickers to operate'¹⁴³⁷. International migration and internal migration are both seen as factors which contribute to the proliferation of human trafficking, people smuggling, and the vulnerability of victims before, during and after transit. The precarious situation migrants

¹⁴³⁴ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁴³⁵ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Interviews and informal discussions with NGOs involved in anti-trafficking (2011 – 2012).

¹⁴³⁶ Participant Observation: KZN HPPB Task Team (2009 – 2012). Personal Observation: Informal discussions with members of Justice Acts (2011), National Freedom Network (2011 – 2012), Red Light (2012), The Open Door Crisis Care Centre (2012), Women and Men against Child Abuse (2012).

¹⁴³⁷ Mike Kaye, *The migration-trafficking nexus: combating trafficking through the protection of migrants' human rights*, Anti-Slavery International, November 2003: 13.

often find themselves in during the migratory process often renders them vulnerable to traffickers and other forms of abuse and exploitation. Abuse, discrimination and exploitation prior to deciding to migrate are key factors that influence individual vulnerability. Women and increasingly unaccompanied children seek to escape lives of poverty, deprivation, abuse, familial, cultural or political violence, discrimination and a lack of opportunities in their home communities or countries. ‘This understanding has led to two connected, though different strategies: on the one hand, a human rights approach that would see “trafficked women” as an exception to the “normal” illegal migrants; on the other hand, an approach that shows trafficking to be a direct result of migration policies’¹⁴³⁸. South Africa, as the economic powerhouse of Africa, is seen by many in the region, and further afield, as an ideal country to migrate to in search of economic opportunities and personal freedoms. Political and civil strife in the Great Lakes region, and economic collapse in Zimbabwe, resulted in influxes of asylum seekers and refugees, as well as ‘economic migrants’ from the mid-1990s onwards. This perceived large influx of foreign nationals has led to repeated xenophobic violence and discrimination, not to mention human rights abuses by law enforcement officials. The slow process of documenting asylum seekers and refugees by the Department of Home Affairs has furthered exacerbated matters as many foreign nationals remain undocumented and thus unable to find gainful employment.

*Migration has a profound impact on receiving societies; it can change society and its institutions. This to a large extent, explains the controversies that surround migration policy... The entry of migrants often recruited or attracted to employment in the “3-D” (dirty, dangerous, difficult) jobs shunned by native workers, often exacerbates the segmentation of the labour market and contributes to fragmentation in the working class... many migrants today remain excluded from employment, housing, health and education... and [are afforded] limited opportunities for taking part in civic life.*¹⁴³⁹

The undocumented status of many migrants, and foreign nationals in the country without work permits, has meant that many have resorted to work in the informal economy, are subject to severe labour exploitation and poor working conditions, and are especially vulnerable to being trafficked into forced labour or subject to debt bondage. Regional migration, especially among men, from neighbouring countries, and internal migration is common and may be traced back to the colonial and Apartheid days which entrenched this system of labour migration. Networks play an important role in the history and facilitation of migration from Mozambique and Zimbabwe to South Africa. Social ties with diaspora communities and prospective migrants are used to ‘find work, accommodation and new

¹⁴³⁸ Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 33.

¹⁴³⁹ IDASA, *Migration and Social Cohesion*, Newsletter, 24 November 2008: 4, available at http://www.idasa.org/our_products/resources/output/migration_social_cohesion_2/?pid=samp_archives

networks of social support in South Africa'¹⁴⁴⁰. Such networks are also increasingly used to recruit vulnerable migrants into trafficking situations. This is supported by Fitzgibbon who contends that traditional practices of child placement and long-established patterns of seasonal labour migration (circular migration) have been transformed into conduits for human trafficking.¹⁴⁴¹

Many migrants, particularly women and children from other countries, do not have passports or identity documents and due to a lack of documentation chose to use smugglers or traffickers to enter the country illegally. These women are often raped and abused throughout their journey, and even where they make it into the country unharmed are often subjected to sexual violence by predators because of their undocumented status and lack of legal recourse. Others yet, find themselves locked into debt bondage and have to work in the sex industry to pay back their debts. Moreover, diaspora communities within South Africa are also recruiting women and children of their own ethnic groups to be trafficked as prostitutes and 'wives' for migrant men¹⁴⁴², and into forced labour (as well as men and children).

Burgeoning rural-urban migration is also noted, as rural areas in South Africa are neglected by the government in terms of development, education, infrastructure and employment / economic opportunities. Children are also migrating unaccompanied, either being sent to stay with relatives or to cities where many believe more opportunities exist or are escaping abusive home lives or neglect, and are at risk of being exposed to violence, sexual assault and abuse, and being trafficked and exploited in the process. The HIV/AIDS epidemic that has ravaged Southern Africa has also left an estimated 1.9 million children orphaned in South Africa alone.¹⁴⁴³ A significant number of this population have little or no access to social services, identification, or adequate care, education, nutrition or health services, and are arguably the most vulnerable and neglected segment of South African society to being trafficked or subject to various forms of abuse.

¹⁴⁴⁰ Marie Wentzel, Johan Viljoen and Pieter Kok, 'Contemporary South African migration patterns and intentions', in Pieter Kok, Derik Gelderblom, John Ocho and Johan van Zyl (Eds.), *Migration in South and southern Africa: dynamics and determinants*, HSRC Press, (2006): 173, available at <http://www.hsrcpress.ac.za/product.php?freedownload=1&productid=2094>.

¹⁴⁴¹ Kathleen Fitzgibbon, 'Modern-Day Slavery? The Scope of trafficking in persons in Africa', *Africa Security Review*, 12(1), (2003): 83 – 84.

¹⁴⁴² See J. Martens, M. Pieczkowski, B. van Vuuren-Smyth, *Seduction, Sale & Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa*, 3rd Edition, IOM Regional Office for Southern Africa, Pretoria, May 2003.

¹⁴⁴³ <http://thepositivechangeproject.org/south-africa-and-aids-orphans/> - last accessed October 2012.

2.4.1 Addressing the Problem of Migration

Migration, people smuggling and human trafficking are viewed as separate but interrelated issues in the South African context.¹⁴⁴⁴ Relative economic prosperity, a demand for cheap labour and sexual services, long-standing migration routes and the feminisation of poverty and migration are all cited as ‘pull factors’.¹⁴⁴⁵ Conversely, poverty, relative deprivation, civil and political strife, socio-economic inequalities, and gender discrimination are generally viewed as ‘push factors’. Migration to South Africa more often than not is in the form of circular (seasonal) and irregular or forced migration. South Africa’s restrictive immigration¹⁴⁴⁶ policies means that many migrants wishing to escape the hardships and discrimination in their home countries cannot do so through legal channels¹⁴⁴⁷. Instead many turn to smugglers and traffickers to fulfil their migration needs and facilitate their entry into the country, often with dire consequences.

Migration to South Africa has prompted the call by anti-trafficking practitioners for increased border security and tighter controls, as well as cooperation with neighbouring countries to stop the transit of trafficked persons or migrants. The Department of Home Affairs, in conjunction with the police, is active in this regard. While numerous officials have been trained in recent years about human trafficking¹⁴⁴⁸, and ostensibly its link to migration, there have been documented cases as recently as 2011 where the Department of Home Affairs deported foreign victims of trafficking.¹⁴⁴⁹ In addition, prosecutors were often not informed of this and victims were deported before they had a chance to interview the victims or allow them to participate in legal proceedings against their traffickers.¹⁴⁵⁰

Vigneswaran¹⁴⁵¹ attributes such incidences to the institutional culture of such agencies and policies which encourage the rigid enforcement of immigration law and casts doubt on whether trafficking legislation will alter institutional habits. ‘In this respect, it is doubtful that the training trickling down from the human trafficking initiatives will fundamentally

¹⁴⁴⁴ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 147.

¹⁴⁴⁵ Ibid.

¹⁴⁴⁶ Unskilled labour is unwelcome in South Africa, as much of its own population fall into this category.

¹⁴⁴⁷ Numerous migrants lack proper documentation – i.e. birth certificates or passports.

¹⁴⁴⁸ Primarily in the form of awareness training.

¹⁴⁴⁹ Participant Observation: KZN HPPB Task Team (2011 – 2012). See, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹⁴⁵⁰ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹⁴⁵¹ Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 20 – 21.

transform the disposition of police officers towards migrants from one of prosecution to protection'¹⁴⁵². This stance is mirrored in the international discourse which, depending on the context, tends to identify 'unauthorised, unwanted and forced migrants as lawbreakers, a public order risk, a menace to national sovereignty, an existential threat to our way of life, or a combination of all of the above'¹⁴⁵³. Thus, migrants who also happen to be victims of trafficking are burdened with a dual persona: as a threat (to the state) and as a victim of a heinous crime.

It is uncertain how many unidentified victims of trafficking have been summarily deported due to their undocumented or illegal status in South Africa. This suggests that while inroads have been made in training and sensitising officials to human trafficking and the profile of many of its victims, many are still falling through the gaps due to entrenched institutional biases and cultures, not to mention xenophobic attitudes, or corruption. In addition, the illegal status of many transnational victims of trafficking also means that many are not willing to identify themselves as victims for fear of being deported (or even imprisoned), and thus many remain in situations of exploitation or trafficking. Moreover, little research exists as to the fate of victims of trafficking once they have been repatriated (or deported) to their country of origin. Thus, it is unknown how many trafficked persons seek opportunities to migrate from their countries again, or put themselves at risk of being re-trafficked in the process.

Moreover, while South African victims of trafficking receive treatment for their physical injuries and a range of diseases, including HIV/AIDS, at government clinics and hospitals, provision of anti-retroviral treatment for foreign (migrant) victims of trafficking is difficult to obtain from government facilities. This has meant the IOM has had to provide direct assistance in this regard.¹⁴⁵⁴ According to the adopted TIP Bill this worrying gap in victim protection and assistance will be addressed when the legislation is enacted. Foreign victims of trafficking will have the same access to medical care and treatment at government health facilities as citizens do.

While the root causes of human trafficking are acknowledged in relation to the context of migration, little is being done to address it in South Africa, in other countries of origin or globally. 'Because of the global governance paradigm on trafficking does not address the root

¹⁴⁵² Darshan Vigneswaran, *Methodological Debates in Human Rights Research: A Case Study of Human Trafficking in South Africa*, MMG Working Paper 12-07, Max Planck Institute for the Study of Religious and Ethnic Diversity, (2012): 22.

¹⁴⁵³ Maggy Lee, 'Introduction: Understanding human trafficking', in Maggy Lee (Ed.), *Human Trafficking*, Devon: Willan Publishing, (2007): 12.

¹⁴⁵⁴ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 146.

causes for the undocumented movement and employment of people around the world, it also fails to significantly reduce “trafficking”... A displacement rather than an eradication of the problem has become the pattern, and trafficking practices morph and mutate in unpredictable ways¹⁴⁵⁵. The ‘migration-trafficking nexus’ is an important area of concern for South Africa, countries in the region and globally. Migration is intrinsically linked to the global economy and globalisation. Increased restrictions on movement, and tighter border controls only serve to drive the phenomenon deeper underground and thereby making it more difficult to address in any way, shape or form. Until the various structural and proximate factors which create vulnerability and facilitate exploitation and abuse in the form of human trafficking are addressed, then it remains doubtful whether any counter-trafficking measures will have any real impact as they are aimed at the site or process of exploitation (i.e. the symptom) and not the conditions which cause it to flourish.

2.5 Human Trafficking as a Labour Problem

Human trafficking as a labour problem is often linked to migration and the demand for malleable, exploitable labour, often in the form of migrant workers. Human trafficking as a labour issue intersects both the formal and informal economy, protected and unprotected labour, and is driven by globalisation which ‘has resulted in the unprecedented mobilization of unskilled and low-skilled labor to fill labor-deficit markets’¹⁴⁵⁶. Discussions about the laws of supply and demand dominate this issue, and the structural conditions created by markets and global inequality which create an enabling environment for trafficking to occur in. Prevention strategies are predominantly aimed at curtailing supply. Although, incorporating strategies aimed at limiting demand are growing in credence and popularity amongst anti-trafficking practitioners. Human trafficking, however, is overwhelmingly understood and addressed from the perspective of sexual exploitation which pervades the dominant discourse internationally and locally. This is witnessed in the majority of prevention strategies which are aimed at curtailing the supply and demand for commercial sex, and thus trafficking victims. The concept of trafficking for forced labour, while understood and acknowledged in theory and through international agreements and harmonised national legislation, is in practice largely ignored by anti-trafficking practitioners (ranging from NGOs to law enforcement and labour inspectors).¹⁴⁵⁷

¹⁴⁵⁵ Kamala Kempadoo, ‘From Moral Panic to Global Justice’, in Kamala Kempadoo with Jyoti Sanghera and Bandana Pattanaik (Eds.), *Trafficking and Prostitution Reconsidered: New Perspectives on Migration, Sex Work, and Human Rights*, Boulder: Paradigm Publishers, (2005): xvi.

¹⁴⁵⁶ Alexis A. Aronowitz, ‘Contrasting Perspectives on Human Trafficking’, *Human Trafficking, Human Misery: The Global Trade in Human Beings*, Westport, Connecticut: Praeger Publishers, (2009): 26.

¹⁴⁵⁷ Participant Observation: KZN HPPB Task Team (2009 – 2012).

It is used by those anti-trafficking practitioners who advocate that prostitution should be seen as a legitimate form of work, and be governed by labour legislation like other professions, and that it would be more useful to understand human trafficking for the purposes of sexual exploitation as a form of forced labour and exploitation. This would create a sense of equality, of uniform worthiness, to assist victims of all forms trafficking. It would also satisfy the political agenda of anti-trafficking practitioners and activists who favour the regulation of sex work, and seek to temper the abolitionist (moral) domination of the human trafficking discourse. This view is supported only by a few anti-trafficking organisations and researchers in South Africa, such as SWEAT, the ISS and affiliated researchers. It is a valid point of view that should not be discredited due to its lack of popularity in the South African context. The overemphasis on counter-trafficking efforts to curtail sex trafficking in South Africa, and globally, has meant that '[t]oo few resources are allocated to the detection and identification of cases of different forms of trafficking and the protection of victims'¹⁴⁵⁸. This stems from the uneasy distinction, particularly of migrants who might be in the country illegally, of victim and criminal.

The symbolic threat posed by migration to the state and its subjects supersedes the protection and enforcement of migrant workers' rights, unless they have been trafficked for the purposes of sexual exploitation. More resources and efforts are often dedicated to keeping undesirables out, or intercepting trafficked persons in transit and repatriating them as quickly as possible – making them the sending (or transit) state's problem. Similarly transnational victims who have been extricated from situations of trafficking are expeditiously repatriated to their country of origin once they have assisted the prosecution and given testimony in court.¹⁴⁵⁹ The prevailing rationale that prevails through the international and domestic discourse is that victims (transnational or domestic) want to be returned and reunited with their families and communities. It does not take into account that conditions in the home country or family / community might be the reason why the person chose to migrate in the first place, or that their families or communities were complicit in their trafficking experience. The adopted TIP Bill, however, obligates the Department of Social Development to assess the feasibility of a safe return of a transnational victim to their country of origin. Where it is found that the person would face harm or the risk of being killed, the trafficked person will be allowed to stay in South Africa.¹⁴⁶⁰

¹⁴⁵⁸ OSCE, *A summary of challenges facing legal responses to human trafficking for labour exploitation in the OSCE region*, Vienna, (May 2008): 6, available at <http://www.osce.org/cthb/31918> - last accessed October 2012.

¹⁴⁵⁹ Participant Observation: KZN HPPB Task Team (2009 – 2012).

¹⁴⁶⁰ See Chapter 3, clause 15 and 17, Chapter 7 clause 31, of *Prevention and Combating of Trafficking in Persons Bill*, 7 of 2010.

There is increasing awareness amongst the international community ‘that trafficking for labour exploitation can be found in multiple economic sectors, including agriculture, construction, hospitality and domestic service. According to the International Labour Organization (ILO), about 40% of trafficking takes place for forced commercial sexual exploitation, about one third for other forms of forced economic exploitation and a quarter for a mixture of the above or for undetermined reasons’¹⁴⁶¹. More cognisance of this needs to be demonstrated in the South African context where migration, entrenched inequality and discrimination, economic desperation and exploitation intersect in both the formal and informal economy – all the factors required to make South Africa particularly vulnerable to incidences of trafficking for labour exploitation.

2.5.1 Human Trafficking as a Labour Problem in South Africa

In the South African context, little attention is paid to trafficking for labour exploitation. This is borne out in the lack of cases being reported, investigated or prosecuted. Indeed, in 2011 there was only one case of trafficking for labour exploitation identified by South African authorities¹⁴⁶², and similarly thus far in 2012¹⁴⁶³. However, of the labour trafficking cases that have been brought to the public eye, it would seem that the concentration of labour trafficking cases has been in the Western Cape¹⁴⁶⁴ (with five pending labour trafficking cases over the period 2010 – 2011) and Gauteng.

While, the number of cases being detected and prosecuted is significantly lower than those for sexual exploitation, the number of victims assisted is considerably higher. For instance, in December 2009, 260 illegal miners working for organised criminal groups at a gold mine in Barberton, Gauteng were handed over to law enforcement. More than 80 of them were minors from Mozambique and Zimbabwe who have been forced to work as ‘mine robbers’¹⁴⁶⁵. This suggests that there could be significantly higher numbers of trafficked persons working in traditionally exploitative sectors like mining and agriculture where a steady supply of migrant labour is required.

¹⁴⁶¹ ILO, *A Global Alliance against Forced Labour*, Geneva, 2005 cited in OSCE, *A summary of challenges facing legal responses to human trafficking for labour exploitation in the OSCE region*, Vienna, (May 2008): 8, available at <http://www.osce.org/cthb/31918> - last accessed October 2012.

¹⁴⁶² Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012. Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹⁴⁶³ Participant Observation: KZN HPPB Task Team (2012).

¹⁴⁶⁴ Due to incidences of child trafficking for domestic work.

¹⁴⁶⁵ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2010*, available at <http://www.state.gov/j/tip/rls/tiprpt/2010/142761.htm> – last accessed October 2012.

Moreover, as indicated in research conducted by the ILO, trafficking for labour exploitation also intersects with sexual exploitation which is not necessarily for commercial purposes. In South Africa, sexual abuse and the use of rape as a tool of social control are not uncommon, and thus persons trafficked for domestic work, agricultural work, or marriage may be subjected to both labour and sexual exploitation. This also suggests that concentrating counter-trafficking efforts on the commercial sex industry may be to the detriment of larger, more hidden subpopulations of trafficked persons. As advocated in a European Experts Group on Trafficking in Human Beings Report, counter-trafficking policies should rather ‘focus on the forced labour and services, including forced sexual services, slavery and slavery like outcomes of trafficking – no matter how people arrive in these conditions –, rather than (or in addition to) the mechanisms of trafficking itself’¹⁴⁶⁶. Thus, it is suggested that more emphasis be placed on trafficking for labour exploitation which includes forced prostitution and other forms of sexual exploitation, rather than disproportionately focusing on trafficking for commercial sexual exploitation which excludes other forms of trafficking.

3.0 Preventing and Combating Human Trafficking in South Africa – Holistic in Theory, Fragmented in Practice

A holistic, multidisciplinary approach to human trafficking is touted by anti-trafficking practitioners, international and regional agreements, and domestic responses as the way forward in effectively preventing and combating human trafficking. Cooperation and coordination between strategic role-players are stressed as being important in order to ensure an integrated approach to counter-trafficking. The adopted TIP Bill further emphasises this ideal, and advocates a comprehensive approach to dissuade and end the demand for trafficked persons. However, moving beyond addressing human trafficking in a technical or technocratic manner through the coordinated and collaborative efforts of various role-players, it is also of vital importance to ensure that interventions are victim-centred, and counter-trafficking efforts protect and promote a human rights approach to victim assistance. Ensuring an integrated, victim-centred approach is provided by the adopted TIP Bill, and various obligations derived from the Trafficking Protocol, and other legal instruments that address human trafficking (and human rights).

¹⁴⁶⁶ Experts Group on Human Trafficking, *Report of the Experts Group on Trafficking in Human Beings*, European Commission: Directorate-General Justice, Freedom and Security, Brussels, 22 December 2004: 53. See also, Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 36.

The realisation of a holistic approach to counter-trafficking is witnessed in the organisational and operational structure of successful provincial task teams, like that of the KZN HPPB task team, which follow an integrated approach to counter-trafficking based on the 4P model of prevention, protection, prosecution and partnerships. However, an integrated approach to counter-trafficking goes further than the activities and interventions witnessed at the provincial level. Ensuring a comprehensive and holistic approach to counter-trafficking requires not only inter-agency coordination and cooperation, but also a strong legislative and policy framework, standard operating procedures, protocols, agreed upon minimum standards and good practices that realises this. Counter-trafficking programmes operate in a relative vacuum in this regard due to a lack of coordination and information sharing from the national task team, not to mention an implementable National Action Plan. A lack of communication, cooperation and coordination between provinces, and sometimes even within provinces further exacerbates this.

Moreover, addressing the structural factors or factors which engender vulnerability that allow human trafficking to flourish should be the most important endeavour of the government. This is provided for in the TIP Bill. However, it is uncertain the extent to which this will be addressed beyond awareness campaigns once the TIP Bill is enacted, as such endeavours would be protracted and costly – the anathema of most policy interventions which are based on short-term results. ‘A comprehensive response to human trafficking requires long-term and cross-sector interventions’¹⁴⁶⁷. Indeed, counter-trafficking and victim assistance is a long-term commitment, acquiesced to by governments who have ratified the Trafficking Protocol and harmonised their national legislation accordingly.

Simply passing legislation without costing and funding projects and programmes aimed at preventing and combating human trafficking in South Africa and the region or sending states would render the official South African response to human trafficking relatively meaningless. Counter-trafficking funding should first and foremost be sourced from and be provided by the South African government. Political commitment to counter-trafficking requires the allocation of budgets that actually allow for counter-trafficking programmes to operate at proper capacity. This requires dedicated resources and personnel, as well as comprehensive training of all public officials who might in their day-to-day work come into contact with victims of trafficking, or are required to detect, investigate and prosecute those involved in trafficking.¹⁴⁶⁸

¹⁴⁶⁷ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 170.

¹⁴⁶⁸ Progress has been made in this regard.

Prevention strategies which are not directed at the most at risk and vulnerable segments of the population, or do not go beyond mere primary prevention (the extent of the majority of South African prevention campaigns), will have limited impact in changing behaviours, reducing the number of persons putting themselves at risk to be trafficked or into situations of exploitation, preventing trafficked persons from being re-trafficked or becoming second wave traffickers themselves, or even influencing demand. Victim assistance which is limited to short-term shelter and rehabilitation or vague reintegration strategies will not reduce victim vulnerability or empower trafficked persons, or provide them with the tools necessary for their long-term recovery. Thus, in the South African context, while the government has seemingly committed itself to an integrated, holistic approach to counter-trafficking this is still to be realised – owing in part to the lack of funding being allocated to counter-trafficking task teams, government agencies actively involved in counter-trafficking initiatives, national coordination and direction, as well as the lack of comprehensive victim assistance.

The lack of a national legislative and policy framework is perhaps the greatest impediment to formalised and effective counter-trafficking in terms of coordination and cooperation, and the expansion of operations and assistance. Counter-trafficking organisations and task teams operate in a (government) funding vacuum. There is no official budget for counter-trafficking activities in the South African context. This has a direct bearing on the scope and impact of their activities, operations and capacity. It is hoped that budgetary considerations¹⁴⁶⁹ will be included in the deliberations and formulation of the national policy framework, and that provincial task teams become formalised counter-trafficking structures which are allocated operational budgets as well.

Moreover, provincial task teams and anti-trafficking organisations / networks should be invited to participate in policy formulation as they have a wealth of experiential knowledge and expertise to share that can only benefit policymakers in crafting a durable and comprehensive national policy framework. Additionally, trafficked persons should also be consulted. There is still so much unknown about trafficking victims and their trafficking experiences and they can offer much insight into the trafficking process, vulnerability, the specific needs of trafficked persons in terms of victim assistance, rehabilitation, reintegration and recovery (that perhaps are not addressed by protective service providers), their experiences with government agencies, law enforcement and criminal justice practitioners,

¹⁴⁶⁹ Prevention strategies, victim assistance, rehabilitation, reintegration programmes, specialised units and investigating teams, specialised prosecutors and magistrates, at national and provincial level, as well as bilateral and multilateral counter-trafficking initiatives all need to be budgeted for.

and their needs during and after legal proceedings in which they testify against their traffickers. By restricting access to trafficked persons or not allowing trafficked persons to participate in discussions around trafficking, no matter how good the intentions of the organisation concerned, means that they remain a hidden population with no real voice. To truly empower survivors they should be allowed the choice to participate in advocacy and decision-making concerning them and their experiences, and ultimately regain their agency and assist in their recovery.

A good example of where this is already a reality stems from the United States and the anti-trafficking organisation CAST (Coalition against Slavery and Trafficking). CAST launched a ‘Survivor-Advisory-Caucus’ in 2003 that helps give trafficked persons a voice and allows them to become anti-trafficking advocates. This initiative has had a tangible impact on policies and public awareness and has led to the development of stronger protection for victims.¹⁴⁷⁰ ‘Each year, based on their own experiences, the Caucus identifies key areas of state legislation which they believe are most important to the identification and protection of trafficking victims... to focus its energies on’¹⁴⁷¹. Anti-trafficking organisations and networks who assist victims of trafficking and provide protective services, like shelters and safe houses, could help empower trafficked persons in a similar fashion and allow them to contribute to preventing and combating human trafficking in South Africa – and particularly assisting in improving the identification and assistance of victims of trafficking. This would also allow for a more integrated and holistic approach to counter-trafficking in South Africa. When transitional housing and longer-term facilities are finally realised in the South African context, and if adequate funding can be secured from international donors and the government, then protective service providers could train (rehabilitated) trafficking survivors to assist in the reception, rehabilitation and recovery of newly extricated trafficked persons.

The competing political and moral agendas and accompanying approaches, discussed above, have also meant that a truly holistic or comprehensive approach to counter-trafficking is not followed in practice. Morality and the politics of risk¹⁴⁷² feature highly in the South African human trafficking discourse. This has resulted essentially in a fourfold focus of counter-trafficking activities: human trafficking as forced prostitution (and a moral problem), human trafficking as a threat to the sovereignty of the state (by transnational organised criminal groups and migrants), human trafficking as a human rights issue, and human trafficking as a problem of migration. Human trafficking for the purposes of sexual exploitation dominates

¹⁴⁷⁰ An area where South Africa is relatively weak in relation to the protection of victims of trafficking.

¹⁴⁷¹ <http://www.castla.org/caucus-of-survivors> - last accessed October 2012.

¹⁴⁷² Discussed in Chapter 1.

counter-trafficking operations (in the form of brothel raids), victim identification and assistance, and to an extent also limits the scope and focus of addressing trafficking from a human rights perspective. There are next to no shelters and safe houses that exclusively cater for victims of trafficking, adult or child, and none for men. This means that men, and children, who have been trafficked for forced labour are systematically denied assistance.¹⁴⁷³

Where foreign nationals are the victims of this broad form of human trafficking, this is ascribed to migrant abuse.¹⁴⁷⁴ Indeed, child trafficking for forced labour goes unnoticed and unrecognised by the Department of Labour, and as indicated for a number of consecutive years by the TIP Report this department has made no proactive effort to address labour trafficking.¹⁴⁷⁵ This is worrisome as the Department of Labour is represented on national and provincial task teams and represents a weak link in counter-trafficking measures. Intervention is needed in this regard.

Migration (as a result of social, political and economic insecurity), particularly from the region, is problematised as a supply factor¹⁴⁷⁶ that fuels human trafficking. Stricter border controls and more intensive border policing typically is the common response of many anti-trafficking practitioners – as a way of keeping the problem (and migrants) out.

*It must be recognised that human trafficking cannot be managed by measures of exclusion and control only. The emphasis on control, deterrence and immediate repatriation of victims of trafficking is often the beginning of a vicious circle. And awareness must be raised of the fact that State policies that primarily opt for measures of self-protection as opposed to a more comprehensive approach to the issue are counterproductive and therefore part of the problem.*¹⁴⁷⁷

Thus, while a holistic approach to human trafficking is favoured officially, and by anti-trafficking practitioners across the board, institutional cultures and biases, competing agendas

¹⁴⁷³ The lack of services and shelter accommodation for men has resulted in male victims not being assisted – i.e. in terms of protection. Participant Observation: Detective Warrant Officer Abby Dayanand, Provincial Coordinator for human trafficking (Hawks/SAPS), Presentation, KZN HPPB Task Team Meeting, 23 January 2013.

¹⁴⁷⁴ Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012. Participant Observation: Detective Warrant Officer Abby Dayanand, Provincial Coordinator for human trafficking (Hawks/SAPS), Presentation, KZN HPPB Task Team Meeting, 23 January 2013.

¹⁴⁷⁵ See Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2011*, available at <http://www.state.gov/j/tip/rls/tiprpt/2011/164233.htm>; Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2012*, available at <http://www.state.gov/j/tip/rls/tiprpt/2012/192368.htm> – last accessed October 2012.

¹⁴⁷⁶ See HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010.

¹⁴⁷⁷ Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 20.

and approaches influence the manner and extent to which human trafficking is effectively dealt with in South Africa. Moreover, a holistic approach to counter-trafficking includes not only strategic and inclusive partnerships, effective coordination and formalised cooperation, but also addressing the structural and proximate factors that engender and perpetuate vulnerability and exploitation. Addressing the root causes of human trafficking is just as important as victim identification and comprehensive assistance, protection, case investigation and disruptive operations, and the prosecution of traffickers.

4.0 Conclusion

The South African human trafficking discourse closely mirrors the dominant international discourse. This has affected the scope and impact of counter-trafficking in the South African context as many categories of victims are either not identified or assisted outside of the sex industry (sex trafficking). This is in part due to a lack of a comprehensive anti-trafficking legal framework criminalising other forms of trafficking and policy direction or a national action plan, a lack of coordination and cooperation (largely at the national level), the dual status of transnational migrants and the politics of risk, the moralisation of human trafficking, and the international reframing of threats to national sovereignty in the context of globalisation. Moreover, victim assistance remains inadequate as there is no official referral mechanism or standard operating procedures available.¹⁴⁷⁸ This is left up to international organisations, like the IOM through SACTAP, or NGOs and provincial task teams.

It would seem that a lack of a comprehensive and holistic approach to counter-trafficking in South Africa is due to the inertia witnessed at the national level. The national counter-trafficking strategy, as a model of good practice, should include: (i) the appointment of a national coordinator, (ii) the establishment or formalisation of national and provincial multidisciplinary expert working groups and provincial task teams, (iii) the adoption and realisation of a comprehensive national plan of action with timeframes, a clear division of labour and responsibilities and adequate budgeting¹⁴⁷⁹, and (iv) ‘the integration of meaningful approaches to human trafficking into a multi-year strategy focusing on [provincial], national, regional and international cooperation’¹⁴⁸⁰.

¹⁴⁷⁸ HSRC, *Tsireledzani: understanding the dimensions of human trafficking in Southern Africa*, National Prosecuting Authority, March 2010: 167.

¹⁴⁷⁹ Danish Red Cross, *Good practices in response to trafficking in human beings: Cooperation between civil society and law enforcement in Europe*, (2005): 18. This will hopefully be achieved when the national policy framework is developed. However, this might be years away still.

¹⁴⁸⁰ Ibid.

Counter-trafficking in South Africa occurs within an unfavourable environment. Without comprehensive legislation, without a policy framework and directives or mandates for government agencies, without a national plan of action (with clearly defined tasks, responsibilities and objectives), without clear formal structures, models of good practice and standard operating procedures, and without adequate resources and capacity, counter-trafficking measures will remain at their present level, with only a few cases being detected and prosecuted and a small number of victims being assisted every year. Political will and commitment are needed to effectively prevent and combat human trafficking in South Africa, in the region and internationally, in order to create an environment that is conducive and enabling for counter-trafficking strategies and enforcement.

Finally, human trafficking must be conceptualised by all anti-trafficking practitioners as a complex and multidimensional problem which cannot be reduced to a singular perspective or a partial view that fits a particular political or moral agenda or that, in practice, is based on exclusion. It is thus important for anti-trafficking practitioners and the government to be aware of the different agendas and approaches that inform the South African human trafficking discourse and counter-trafficking strategies in order to understand the (unintended) consequences and impact that the various approaches followed have, leverage their diverse strengths and transform them where need be.

CONCLUSION

Whatever politics surround the trafficking issue, it is clear that the phenomenon will attract nations' attention and energy for years to come. Human migration occurs on a vast scale globally; and even if only an infinitesimal portion of those 200 million migrants involves trafficked persons, the number of victims remains sizeable. Powerful economic needs impel people to put themselves at risk by turning to traffickers. Only when governments address those needs will such risky behaviour be reduced. In the meantime it is the next best thing for governments and human rights advocates to protect the victims who are caught up in the trafficking business so that they have a chance to live their lives in dignity.¹⁴⁸¹

Human trafficking is *the* problem for policymakers in the 21st century. It represents the convergence of a number of issues fuelled by the uncertainty caused by the end of the Cold War which heralded another epoch of mass migration, spurred on by globalisation, the global economy (and its shadow twin), diminished territorial integrity of states, and the need by state actors to regain control. It is a phenomenon that has been linked to virtually every conceivable threat to the security of the state, including undocumented / illegal migration, transnational organised crime and international terrorism. However, human trafficking is a phenomenon that encompasses so much more than a perceived threat to the sovereignty and security of states and their citizens. It is the ultimate manifestation of many of the systemic social, structural, economic, cultural and political problems which continue to entrench discrimination, inequality, exclusion and exploitation across the globe. Human trafficking occurs along a continuum of exploitation. It is both a process and a phenomenon. While not a new phenomenon, or even a new global concern, it has received renewed interest because of its perceived gendered nature and the politicisation of the feminisation of migration (and migrant prostitution). International attempts, in the form of international legal conventions and protocols, regional agreements, governance networks, and replicated in national policies, to address human trafficking represent a confluence of a multitude of problems at a fortuitous point in time, to allow for the resurgence of the state and its *raison d'être*.

As discussed in Chapter 1, many of the same concepts, issues and debates which defined the previous incarnation of human trafficking, namely the 'white slave trade', were resurrected and form the foundation of the dominant international human trafficking discourse. As a result, an inordinate amount of focus has been placed on sex trafficking (trafficking for the purposes of sexual exploitation) of women and children to the detriment of other forms of trafficking and men as victims – even though human trafficking is regarded as being far more diverse and complex than previous incarnations / discourses of the 'trade in human beings'.

¹⁴⁸¹ Anthony M. DeStefano, *The War on Human Trafficking: U.S. Policy Assessed*, New Brunswick, New Jersey: Rutgers University Press, (2008): xxvii.

The International Labour Organisation and a growing number of researchers have posited that more people are trafficked into situations for labour exploitation. And yet, this one dimensional image of women and girls as victims of sex trafficking, sold and trapped in life of forced prostitution, remains the quintessential conceptualisation of what human trafficking entails. This image is reinforced due to the lack of research on the diverse forms of labour trafficking, not to mention organ / body part trafficking, trafficking for forced marriage, and its victims, and the tendency of organisations (and states) involved in human trafficking advocacy to circulate fabricated guestimates based on small, unrepresentative samples and focus on forced prostitution / sexual exploitation to further their own moral, political or ideological agendas. In South Africa, the same problems abound.

Research has focused predominantly on the trafficking of women and children for the purposes of sexual exploitation. In addition, relatively little research has been conducted on human trafficking in South Africa. What little research has been conducted has been primarily by advocacy organisations that uncritically cite previous, methodologically unsound studies and take on their contentions and assumptions as fact. Even international organisations and research institutes are guilty of this. There are only a small number of studies which are critical of the way in which human trafficking is studied in South Africa, or attempt to develop a methodology to study trafficked persons as a hidden subpopulation. In addition, all the studies are exploratory and none are longitudinal. As a result, evidence about human trafficking, patterns of trafficking, and the traffickers themselves is largely anecdotal.

Trafficking survivors remain under-studied in the South African context, and their voices remain largely unheard. Thus, while trends or dimensions of trafficking may be inferred in the South Africa context, these studies are largely unable to provide reliable and extensive data that is required for effective policy design and governance. Counter-trafficking (actors, systems, governance), and indeed human trafficking as a business, as well as the demand side of human trafficking, remains under-studied in the South African context. The impact of counter-trafficking strategies and operational issues remain largely unevaluated. There is a need in South Africa for comparative (complex systems) analysis of counter-trafficking actors, initiatives, strategies and structures across provinces to assess the efficacy of counter-trafficking governance and linked policy in South Africa. More empirical research is required on all aspects of what constitutes human trafficking, and the efficacy of counter-trafficking, in the South African context before a national policy framework is developed.

As maintained in Chapter 1, developing policies without empirically grounded research data results in the entrenching of the very dynamics that make trafficking so profitable and

difficult to address. Emulating international good practice is not enough, if the problem is not fully understood or appreciated in the domestic context, or the specificity of needs of trafficking survivors, anti-trafficking practitioners and government agencies is not taken into consideration (and accordingly supported), or where the domestic environment itself cannot support such interventions and programmes. The paucity of empirical research into human trafficking networks and groups, as well as a business, means that individual states craft policies and develop strategies based on assumptions and generalisations that may not be applicable to their domestic context or only present a partial picture of the scope and dimensions of the problem. Moreover, by focusing on one aspect of what human trafficking is (in terms of type, victims, and traffickers) more insidious and widespread forms of trafficking could be overlooked.

In general, human trafficking is conflated with other problematised and politicised issues to further particular political, moral or ideological agendas. Despite an internationally accepted legal definition of what constitutes human trafficking, in the form of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* of 2000 (Trafficking Protocol), there remains entrenched problems of definition in terms of victimology and focus in practice. When read with its sister protocol, the *UN Protocol against the Smuggling of Migrants by Land, Sea and Air*, the gendered nature of human trafficking becomes evident. Men are viewed primarily as active agents who seek out smugglers to assist them to cross transnational borders illegally. Whereas women and children are agentless victims who do not migrate out of choice – rather they are trafficked into situations of extreme exploitation, primarily into the sex industry. As noted in Chapter 7, this has resulted in men, especially trafficked migrant men, largely being ignored by anti-trafficking practitioners and counter-trafficking governance even though they are included in domestic human trafficking narratives and recently adopted legislation¹⁴⁸². As the case in South Africa demonstrates, there is a disconnect between rhetoric and practice. Moreover, competing perspectives, approaches and agendas have a marked effect on counter-trafficking responses and in turn the way actors conceive and understand the problem of human trafficking to be.

The influence of the dominant international discourse is evident in the domestic discourses on human trafficking in South Africa. Thus, it becomes important for anti-trafficking practitioners to be aware of the foundation upon which their strategies, activities and policies are based in order to understand the potential for skewed outcomes. As noted, the dominant discourse places an inordinate emphasis on trafficking into prostitution and women and

¹⁴⁸² *The Prevention and Combating of Trafficking in Persons Bill* [B7-2010].

children as helpless, naïve victims who are duped, brutalised and forced into this life by transnational organised crime groups and networks. This, however, is a one dimensional depiction of the problem, and of the process of human trafficking. Rather, it demonstrates that the contemporary human trafficking discourse is grounded in prohibition, sexuality and politics, and is the result of political wrangling by disparate perspectives (and even foreign policies) about human trafficking as prostitution.

Internationally, this has resulted in draconian attempts to limit migration through tighter border controls (to keep ‘undesirables’ out or intercept them at points of entry), policies that seek to prevent women migrating abroad, or foreign policy stances that seek the abolition of prostitution. In South Africa, calls for more stringent border controls to prevent human trafficking, and people smuggling, are standard practice by anti-trafficking practitioners – whether they be NGOs or government agencies. However, there appears to be little critical engagement with what the consequences of such an action or policy might be.

Indeed, migrants expose themselves to risk in order to enter into third states. The more restrictive immigration policies become, the more risk and exploitation migrants expose themselves to in order to enter a desired country, and the more likely that they will turn to smugglers and traffickers to facilitate their entry. In addition, such policies tend to drive the phenomenon further underground, and actually have more negative effects on migrants through policies of exclusion (than on their traffickers). Moreover, the eradication of prostitution is a driving motivation of many anti-trafficking practitioners and governance in South Africa. In this regard, the South African human trafficking discourse closely mirrors the dominant international discourse which equates voluntary prostitution to exploitation, and in some instances as human trafficking. As a result, strategies and programmes are focused on extricating sex workers from the industry in the form of outreach programmes, and raiding brothels in order to rescue women and girls trafficked for the purposes of sexual exploitation. This is evinced in Chapters 5 through 7 where the South African response in the form of adopted legislation, current policy framework, governance (in the form of task teams and counter-trafficking networks), and approaches to human trafficking are explicated.

In addition, as explained in Chapter 3, human trafficking is constructed as a problem of transnational organised crime (and is placed under the umbrella of the *UN Convention Against Transnational Crime* of 2000), and as such legislation and policy tend to be more focused on law enforcement approaches and prosecution. Incorporating a human rights approach has been a more incremental addition globally, as the language of the Trafficking Protocol is largely aspirational in terms of victim protection (and protective services

provision) and the protection of human rights. Debates over prostitution dominated the Trafficking Protocol negotiations, and the issue of human rights was placed on the backburner. Moreover, by conceptualising human trafficking as a problem of transnational organised crime, states, law enforcement and other anti-trafficking practitioners operate from the misperception that all trafficking is facilitated by transnational organised crime groups or networks. There are definitional issues as to what constitutes ‘organised crime’ and its link to human trafficking. Rather, linking human trafficking with organised crime is seen as a way of bolstering the state, particularly the role of law enforcement. However, such an approach fails to recognise the diversity of trafficking operators from individual opportunists to familial networks, or the collusion of communities in the trafficking process. As a result, families, communities and local trafficking networks or operators may be overlooked. In this sense, human trafficking is a crime which is organised, but not necessarily organised crime.

In addition, human trafficking intersects with legitimate businesses, ‘law-abiding’ citizens and even governments who through particular policies actually (unintentionally) support the trafficking business and its products (i.e. goods produced in sweatshops, agricultural and marine products, precious gems and minerals from the mining sector, infrastructure built in the construction industry, and so forth). Thus, human trafficking as an issue of demand needs to be addressed in terms of responsible corporate governance and public / consumer education.

As in demonstrated in Chapter 4, South Africa has adopted human trafficking legislation which combines a law enforcement and human rights approach. Once enacted, it will seek to prosecute and punish traffickers and protect victims through the provision of psycho-social services. It is hoped that the national government will allocate funding for shelters and protective services, as well as resources and budgets for government agencies and departments involved in counter-trafficking, like law enforcement, and in particular its network of provincial human trafficking governance structures – the provincial intersectoral task teams. More participation by provincial task teams in policymaking and strategy is required. Moreover, by adopting an expansive definition of trafficking it seeks to address it as a form of exploitation. In addition, it acknowledges the need to address the ‘root causes’ of human trafficking, and thus limit both demand and supply. These are systemic problems which transcend the adopted legislation (and future policy framework). However, when compared to the implementation of other progressive, victim centred legislation and policy in South Africa the extent to which these ‘root causes’ will be addressed becomes questionable due to the amount of resources, capacity and political will required. However, addressing these larger problems is exactly what states need to do.

By and large, human trafficking as a discourse is situated in a historical paradigm and discursive narrative tradition based on sex trafficking or the trafficking of women and children for the purposes of sexual exploitation. Sex trafficking and prostitution, grounded in the abolitionist feminist tradition, form the dominant paradigm. A significant proportion of the research is biased and written from a particular and narrow perspective to serve political, ideological and moral agendas. Indeed, human trafficking has become a moral and political battlefield between those who favour abolition of prostitution and those who advocate prostitution as work and reimagining almost all human trafficking as extreme labour exploitation. This is explained in Chapter 3 in relation to the development and genesis of the international legal framework, in the form of the Trafficking Protocol.

This debate which has served to polarise the discourse, is not limited to advocacy organisations, but extends to states as well. This has resulted in the political debates surrounding prostitution, migration and human trafficking which have played out in the international arena. The neo-abolitionist stance has long been supported in United States foreign policy and aid, as well as in its unilateral compliance and evaluation mechanism, the TIP Report. Moreover, the securitisation of human trafficking by states has resulted in an uneasy union of humanitarian ('politics of pity') and security ('politics of risk') discourses.¹⁴⁸³ This is also witnessed in the South African context, as explained in Chapters 4 through 7.

In chapter 6 I explain the role that the networks that form part of counter-trafficking governance in South Africa have to play. It alludes to the process of political mobilisation and manipulation, however unintentional and well-meaning, employed counter-trafficking coalitions and networks to define policy by articulating what the identities, interests and appropriate actions of others should be. Indeed, such coalitions and networks demonstrate little tolerance for beliefs, identities, interests or proposed actions which are incongruent to theirs. Similarities can be seen, with Callon's four key moments (explained in Chapter 1), in the formation of primarily civil society organisation based anti-trafficking coalitions, as well as a national counter-trafficking network, as parallel human trafficking governance structures. The success of the mobilisation of such coalitions and networks, supported by the way in which the media frames the problem of human trafficking, can have a significant effect on policy trajectory, and the way in which the human trafficking discourse develops in South Africa. As demonstrated in Chapter 7, depending on the way in which human trafficking is

¹⁴⁸³ Claudia Aradau, 'The Perverse Politics of Four-Letter Words: Risk and Pity in the Securitisation of Human Trafficking', *Millennium: Journal of International Studies* Vol.33, No.2 (2004): 251-277.

conceptualised and approached, anti-trafficking responses, programmes and strategies can result in disparate outcomes with unintended consequences.

Developing policies without consulting the ones most affected, the victims of trafficking, can have direct and indirect negative consequences for them as well. For instance, as shown in Chapter 3, the Swedish model of criminalising the purchasing of sex (i.e. the buyer) has not resulted in ending prostitution or the trafficking of women into prostitution in Sweden. Rather it has resulted in sex workers being exposed to more risk and harm, not to mention less bargaining power (in terms of condom usage) and lower rates. Nevertheless, it remains a powerful advocacy tool employed by the United States. Calls for the Swedish model (i.e. the criminalisation of the purchaser of sex) to be followed are also witnessed in the South African context, as shown in Chapters 5 through 7. The dichotomy which exists between neo-abolitionists and non-abolitionists is explained in Chapter 3. This dichotomy is also witnessed in the South African context and is discussed in Chapters 6 and 7. In the South African context, this dichotomy is not as pronounced, due to the significantly smaller amount of advocacy groups and researchers who favour a non-abolitionist stance, and seek to reclassify human trafficking broadly as a form of extreme labour exploitation (i.e. labour trafficking) in relation to sex work. Advocacy groups and counter-trafficking networks tend to be populated by faith based organisations with a strong neo-abolitionist leaning.

Victims, and even the survivors, of trafficking remain a hidden population. They bear silent witness to policy debates and legal instruments aimed at protecting them, strategies and programmes aimed at prevention, and the programmes that are supposed to rehabilitate and reintegrate them. Trafficked persons are not given voices, nor are they empowered to participate in decision-making forums or form part of human trafficking governance structures. They remain passive agents in the human trafficking discourse – objects and narrative devices rather than individuals. Rather it is the protective services providers who retell their experiences, or only permit trafficked persons whose narratives are consistent with their own to recount their stories. Trafficked persons are used as devices of interestment in order to articulate identities and further agendas. Some well-meaning protective service providers even dissuade trafficked persons from testifying in criminal proceedings in order to prevent their re-traumatisation. This, however, can result in charges being dropped against traffickers, and justice not being served, due to the adversarial criminal justice system in numerous states, including South Africa. The lack of victim participation in anti-trafficking policymaking is discussed in Chapters 4, 6 and 7. Trafficked persons have a valuable role to play in dialogue amongst policymakers and anti-trafficking practitioners – particularly formal structures like task teams. They remain a missing dimension in human trafficking governance.

Civil society has a vital role to play in counter-trafficking. Civil society organisations are the primary providers of protective (psycho-social) services to victims of trafficking, and assisting in victim rehabilitation, reintegration and recovery. They are the most active actors involved in advocacy and prevention strategies, in the form of awareness campaigns and education. As witnessed in the international discourse and the formation of international law, in the form of the Trafficking Protocol, as well as national discourses (such as in the United States and in South Africa), they play a powerful role in lobbying for legislation by engaging governments and multilateral institutions (and can have a reach that is both local and global), have had a significant impact on policy (including foreign policy orientation in the case of the United States), form part of counter-trafficking governance structures and help realise national and provincial counter-trafficking objectives. In the case of South Africa, civil society organisations are the primary providers of victim assistance, and source of victim identification.

As explained in Chapters 4 through 6, they operate in a challenging environment without much needed funding or resources from government, in particular the Department of Social Development, to shelter and rehabilitate trafficked persons. As a result, South Africa ranks poorly in terms of protection. Shelters tend to be multipurpose and short-term. International and domestic experience, as explained in Chapter 6, have shown that multipurpose shelters are not suitable facilities for women who have been extricated from the sex industry, and who for the most part are substance dependent. More research needs to be conducted as to what is the most suitable for trafficked persons. There are no shelters for trafficked men, nor are there specialised facilities that cater for child victims of trafficking. In addition, trafficked women with children also are not accommodated.

It is uncertain about the extent to which programmes offered are culturally sensitive to victims from a diverse array of backgrounds, nationalities and religious persuasions. Little or no research has been conducted in South Africa with victims once they have left these short-term shelters or safe houses as to whether their particular needs were met, or what could be done to improve their experience whilst 'under the control' of someone else after been extricated from a trafficking situation. There is virtually no transitional housing, or secondary rehabilitation facilities, for trafficked persons who require longer term therapy, training and skills development, or gradual reintegration into society. A longer-term facility (shelter), however, does exist in the Western Cape. In the South African context, there are next to no programmes that facilitate a victim's reintegration into society and recovery which may be a lengthy process. In terms of transnational victims of trafficking, the National Freedom

Network, en par with international norms and adopted legislation in South Africa, advocates the need for partner organisations in countries of origin to facilitate the process of rehabilitation and reintegration once victims have been returned home. It is hoped that many of these glaring gaps will be addressed once legislation is enacted and the national policy framework is developed. It is important that the multiplicity of counter-trafficking actors, particularly those from civil society (who come in direct contact with victims of trafficking) be allowed to engage in dialogue with policymakers and form part of consultative forums during this process. As noted above, provincial intersectoral task teams also have an important role to play in such processes as they can bring a wealth of experiential knowledge to the table.

Counter-trafficking coalitions and networks need to form strong partnerships with official structures, like human trafficking task teams, and other government agencies, and international organisations, in order for effective human trafficking governance based on cooperation and coordination to be achieved. The need for agile and adaptive counter-trafficking networks and integrated governance structures is explained in Chapter 6. Complex threats and social problems are increasingly being addressed through complex networks / systems which are more flexible than traditional bureaucratic organisational forms. Indeed, there is growing realisation amongst anti-trafficking practitioners that human trafficking is a problem which obviates simple solutions. Collaboration and coordination of law enforcement agencies, across jurisdictions and national boundaries, is important in this regard, as well as with international organisations and civil society organisations.

Human trafficking as a complex problem requires governance and not government in order to address and combat it – as traditional methods are ineffectual. Governance, in this sense, refers to the ways in which stakeholders across multiple levels coordinate related interests to address shared problems through partnerships, networks and dialogue. This is in contradistinction to government which refers to the traditional centralised, hierarchical patterns of power and decision-making, which as a result often lacks the capacity to effect change by acting alone. Thus, a holistic and integrated approach to counter-trafficking is needed. This requires cooperation and coordination on multiple levels within and between numerous agencies, organisations and actors that is sensitive to diverse perspectives, institutional biases and agendas, and facilitates open dialogue, positive competition and information sharing. Counter-trafficking networks which link local, regional and international networks together through institutionalised vertical and horizontal cooperation and coordination, and above all dialogue and information sharing, are potentially one of the most powerful tools that states have in combating human trafficking. However, as human

trafficking is a multidimensional problem it requires policies and strategies that are flexible and adaptive. There is no one strategy or policy that is panacea or quick fix for human trafficking. Rather preventing and combating trafficking by states requires long-term incremental steps which also address the root causes of the problem.

Issues of formalised cooperation and coordination need to be addressed, as well as corruption and collusion by public officials, and NGO workers, who aid trafficking networks. Strategies that focus on addressing corruption and collusion and its link to human trafficking are much needed in the South African context. Moreover, as witnessed with highly adaptable and agile human trafficking networks, the ability to share information and experiences, and address trafficking in an integrated and coordinated manner, is essential to prevent counter-trafficking strategies from lagging too far behind ever-changing trafficking trends and modus operandi.

Partnerships that extend into governance play a pivotal role in counter-trafficking strategies domestically and transnationally. Such partnerships and networks should be leveraged by state actors in their global fight against trafficking. Counter-trafficking networks are also important in that they can be used as forums where the diversity of perspectives and actors is acknowledged and all perspectives are given legitimacy, which in turn facilitates knowledge management, and the sharing of experiences in order for good and best practices to be benchmarked and developed. In South Africa, there are a number of parallel governance structures and approaches to counter-trafficking. These have mainly been formed by civil society organisations involved in counter-trafficking. They have formed loose and open relationships and links with formal counter-trafficking governance structures, such as the provincial intersectoral task teams on which some of their members also sit.

These coalitions and networks are predominantly found in the Western Cape and at the national level. The Counter-Trafficking Coalition (CTC) is a parallel counter-trafficking structure which was formed prior to the establishment of the provincial task team in the Western Cape. It represents the influence that civil society organisations together with international organisations, such as the IOM, can have in shaping strategies and responses to trafficking. The organisations that belong to the CTC have played influential roles in lobbying government to develop and pass legislation, with one organisation, Molo Songololo, even forming part of the national task team. Justice Acts has developed a training manual which has become the standard resource for anti-trafficking practitioners across South Africa, and utilised by provincial task teams in their awareness raising campaigns. Emergency safe houses and even a long term shelter, run by S-Cape, catering exclusively to victims of trafficking have been established in the Western Cape – a first in South Africa. The CTC is

also linked to the National Freedom Network (NFN), and the chairperson of the CTC is one of the core members of the NFN.

The diversity of its membership has led to friction and competition which mirrors the dichotomy inherent in the dominant international human trafficking discourse. While most of its members are NGOs who are either Christian faith-based organisations and follow a neo-abolitionist stance on prostitution and human trafficking, there are a small number of members who are non-abolitionist and advocate the decriminalisation of prostitution and extension of labour and human rights to sex workers. The way this dichotomy plays out in the public sphere is noted in Chapter 7. The dominant perspective, however, has been taken in the programmes and strategies of the CTC, as demonstrated in the formulation of their rapid response strategy. However, by limiting or trying to delegitimise divergent perspectives networks run the risk of aspects of human trafficking which transcend sex trafficking being not adequately addressed or ignored. It can also lead to skewed research and understanding, ineffectual or limited programmes and policies, as well as a lack of institutional learning. However, one of the greatest challenges facing the CTC is not diversity, but a lack of government agency commitment and drive, and issues of capacity and coordination, as witnessed in other counter-trafficking structures, such as the KwaZulu-Natal Human Trafficking, Prostitution, Pornography and Brothels Task Team.

Human trafficking governance in Gauteng paints a different picture. There are no parallel counter-trafficking coalitions or networks. Indeed, civil society organisations have been unable to effectively collaborate and coordinate with one another in order to get this off the ground. Moreover, the Gauteng human trafficking task team also has had issues of cooperation and collaboration resulting in a small core team of active members emerging. There is also a much smaller contingency of NGOs who have been co-opted on to the task team in relation to the KZN task team. This has resulted in relations between some NGOs and the task team becoming strained, and the perception that cohesiveness and impact of the task team and strategies are limited. This reinforces the perception of a lack of cooperation, coordination and interaction between organisations that do not form part of the core team. Many of the structural problems faced by the Gauteng task team are noted in other task teams throughout South Africa.

Some of the observed structural problems faced by task teams include a lack of resources, capacity, coordinated and collaborative responses, networked partnerships, and integrated data collection and knowledge management. The National Freedom Network, as a national advocacy and strategic network, was formed primarily for civil society organisations to fill

these gaps and create a united lobbying group which could influence government and human trafficking policy. It has an extensive network of member organisations and affiliation to provincial task teams. It has devised counter-trafficking strategies which it advocates should be the blueprint for all counter-trafficking initiatives in South Africa. However, it inadvertently can create competition and duplication of programmes and initiatives by advocating that counter-trafficking organisations form their own coalitions in provinces throughout the country. It is submitted that while it is important for civil society organisations involved in counter-trafficking and victim assistance be networked with one another to pursue a particular human trafficking governance approach, they need to be mindful that their initiatives are not in conflict or duplicate officially sanctioned structures and initiatives. This would serve to defeat the purpose of working towards the same goal in a cooperative and coordinated manner. Moreover, it assumes that civil society organisations will be ascribed an inferior role in counter-trafficking activities and participation on decision-making structures and policymaking. This might be a pre-emptive and defensive positioning, as deliberations on the TIP Bill, as discussed in Chapter 4, suggests that civil society organisations might be excluded from such forums once legislation is enacted, or have limited participation on them. Then the need for strong parallel networks and human trafficking governance would emerge in the South African context. Nevertheless, it is important for such networks to maintain open dialogue and interact with other counter-trafficking actors and structures in order for effective counter-trafficking policies and strategies to be developed and implemented.

The European Commission (EC) funded programme of assistance to the South African government to prevent and react to human trafficking, *Tsireledzani*, has proven to be problematic and its many stated objectives (six pillar strategic framework) not fulfilled. The overly ambitious nature of the programme, numerous delays, inadequate synergy between result areas and inadequate communication between the national task team, provincial task teams, members of the consultative forum and key stakeholders were cited by EC commissioned consultants as reasons why the programme proved to be problematic. Moreover, the lack of a formal mandate, as replicated at the provincial level, and informal process of appointing government / departmental representatives had a negative impact on decision-making and formal commitments. This in turn resulted in issues of coordination and cooperation, within the national task team itself, and at the national and provincial levels (with all the relevant role-players).

While the Tsireledzani programme faced numerous set-backs¹⁴⁸⁴ and not all result areas were realised¹⁴⁸⁵, it has highlighted areas that need to be addressed and developed further by the South African government, the national and provincial task teams and key stakeholder government departments once legislation is enacted. The national task team, or whatever structure takes its place, must be more effective in terms of formalising cooperation and effectively coordinating counter-trafficking strategies and initiatives amongst and between role-players at the national, provincial and even regional or transnational level. Competing institutional priorities need to be effectively dealt with through integrated cooperation and coordination mechanisms, clear mandates and standard operating procedures and protocols need to be expeditiously developed by the relevant government role-players and distributed to the provincial task teams and government role-players, and formal budgets need to be provided, as well as funding for the very important role played by civil society in counter-trafficking and victim assistance.

As explained in Chapter 5, the KZN intersectoral task team is used as a case study to analyse the efficacy of counter-trafficking strategic objectives, through the lens of the task team's integrated '4P model' of prevention, protection, prosecution and partnerships, and to understand the nature of human trafficking governance in the province. The experience of actors who comprise the task team, and the varying levels of impact and success of the task team's objectives / strategies, is instructive. The KZN task team follows an integrated, holistic approach to counter-trafficking as demonstrated by its membership composition and 4P approach to counter-trafficking. It has an open / flat and inclusive model which allows for relevant role-players to be co-opted onto the task team, including NGOs. Members' perspectives and voices are given equal weighting, and decisions are made through popular consensus.

As an un-resourced agency of the provincial government, it has been relatively successful in fulfilling its devolved role of coordinating counter-trafficking activities and developing a provincial action plan in KwaZulu-Natal. The task team was established by the Sexual Offences and Community Affairs Unit and Organised Crime Unit of the National Prosecuting

¹⁴⁸⁴ Such as an overly ambitious programme design, lack of a formal mandate and informal appointment processes, lack of communication between role-players and between national and provincial task teams, and the decommissioning of funds.

¹⁴⁸⁵ For instance, one of the primary aims in terms of Result Area 1 of the Tsireledzani programme was to ensure a deepened a knowledge and understanding of human trafficking in South Africa. This was partly realised in the HSRC report. However, the report failed to provide evidence-based knowledge on the phenomenon, or provide baseline statistics or guidelines for government role-players due a reduced project timeframe. In terms of Result Area 2, the absence of legislation and official mandate has affected implementation at provincial and local levels, and a lack of communication and support by the national task team has compounded these challenges.

Authority (NPA) in 2008, the first provincial intersectoral task team in South Africa. The orientation of the task team at its inception, due to the units which were mandated to establish it, and transitional legislation, meant that the task team's primary focus was on human trafficking for the purposes of sexual exploitation and as a form of transnational organised crime. Only relatively recently has their focus extended to incorporate other forms of human trafficking. Moreover, the task team has received little in way of support or coordination from the national task team, even though this should be one of its core functions.

Knowledge management and information sharing by the national task team also is limited. Information in the form of reports by the provincial task team flow up to the national level on a regular basis, however, little information trickles back down. Open channels of communication and dialogue between provincial task teams and with the national task team are imperative for sharing of information, strategies, good practices, and aligning activities as per their mandate. By encouraging dialogue and networked partnerships through formalised cooperation amongst provincial task teams, the national task team could facilitate the process of experiential knowledge sharing required for sound policymaking once national legislation is enacted and effective knowledge management which is vital for human trafficking governance. Moreover, cooperation and coordination amongst provincial task teams is also important, as human trafficking respects no boundaries or jurisdictions.

While the provincial task team operates under structural constraints, it has fulfilled its strategic leadership role in implementing the *Tsireledzani* programme (South Africa's response to preventing and combating human trafficking). The provincial task team developed a pragmatic provincial action plan based on realistic and measurable outcomes by identifying key priority areas within each strategic objective of its 4P model, the strategies to be employed to realise these objectives, as well as which organisations and departments are responsible for executing these tasks that are reviewed and amended on an annual basis. Progress is monitored on a bimonthly and quarterly basis. This has proven to be an effective way in which to structure and monitor a provincial action plan and ensure transparency and accountability by role-players. However, one shortcoming is the lack of evaluation of the impact of such initiatives, strategies and programmes – particularly in terms of prevention and protection. Despite the absence of legislation and a national policy framework, the task team performs well overall. However, a lack of departmental policies and directives, in the interim, has had a negative impact on departmental cooperation and commitment and the realisation and implementation of task team protocols.

The case study of the KwaZulu-Natal provincial task team analysed the efficacy of the implementation of the task team's strategic objectives in terms of prevention, protection, prosecution and partnerships. The task team has been particularly successful in terms of prevention – particularly primary prevention which most of its awareness campaigns are limited to. In addition, it has been proactive in training departmental officials, and key role-players, across the province about human trafficking. It also hosts training for its own task team members who are in turn equipped to train other relevant stakeholders. All of these activities are achieved without a budget or funding from either national or provincial government. Task team members have to source their own funding either through departmental general budgets or from their own pockets. Awareness-raising is done on an entirely voluntary basis indicating the dedication and commitment of those task team members who perform this function.

In terms of protection, South Africa ranks poorly. Many of the problems witnessed at the national level are replicated at the provincial level. Protective service providers, primarily NGOs, provide victim assistance and rehabilitation. The Department of Social Development has not provided the requisite support or resources to protective services providers and victims of trafficking. Although they are ultimately responsible for overseeing and coordination victim assistance and protection, in reality they do little more than accredit shelters and safe houses and refer victims. However, even here there have been significant problems, as discussed in Chapters 4 and 5. There have even been incidences where victims of trafficking were placed in non-accredited facilities. Shelters and safe houses lack resources and much needed funding, and as a result remain short-term facilities with limited capacity. Transitional housing and longer-term rehabilitation, reintegration and recovery strategies are thus lacking in KwaZulu-Natal. There are no shelters which cater for trafficked men or boys. However, the services and programmes provided at accredited shelters, in particular that of The Open Door Crisis Care Centre, have received international acclaim and conform to international norms and standards.

In terms of protection, there is a very real need for protective service providers to form networked partnerships and collaborate with one another to establish benchmarks for good practice in South Africa. Moreover, by forming a network such organisations could also refer trafficked persons at different stages of recovery to appropriate programmes and facilities in the South African context, as well as liaise and partner with similar protective service providers in countries of origin. Programmes and facilities need to be extended and developed further in the South African context. Moreover, more support in the form of funding, resources, cooperation and coordination are required from the Department of Social

Development. The realisation of the rapid response team will go a long way in ensuring that victims of trafficking are expeditiously placed in accredited shelters with minimal traumatisation and receive appropriate medical, therapeutic and rehabilitative care.

The protection of victims' identities from the media, and maintaining confidentiality by anti-trafficking practitioners who assist or come into contact with them, is of paramount importance. This has been a very important lesson that the task team had to learn first-hand. The issue of victim confidentiality and protection of identity is dealt with in the adopted TIP Bill. However, unless lived experiences are relayed to other anti-trafficking practitioners, especially provincial task teams, these mistakes could be replicated in other provinces before legislation is finally enacted and a policy framework finally developed. Task teams need to be more proactive in sharing information and experiences in this regard and developing models of good practice.

In terms of prosecution and investigation (law enforcement), the task team has been relatively successful, although they have faced a number of set-backs. In terms of law enforcement, the Hawks are the only division of SAPS who are mandated to investigate suspected incidences of human trafficking because of its link to transnational organised crime. There are strict methods of enquiry and processes that need to be followed in order for the Hawks to register a provincial enquiry. Unfortunately, many NGOs are not aware of this protocol and perceived inaction on the side of law enforcement has resulted in tensions and a lack of trust. Clearer lines of communication and explanation of processes are required in this regard. Innovative ways of using by-laws have been employed by the provincial coordinator of human trafficking to combat human trafficking in the absence of comprehensive legislation, and have (criminal) business premises shut down.

However, one issue that has not been dealt with in KwaZulu-Natal or in South Africa with regards to human trafficking is that of corruption and collusion by public officials. Collusion by public officials refers to the direct or indirect ways that person may be complicit in trafficking activities¹⁴⁸⁶. Issues pertaining to corruption, trust and ethical issues, such as integrity, honesty, accountability and transparency need to be addressed by the task team and form part of its prevention and prosecution strategies. In addition, all members should be vetted in order to participate on the task team and a code of conduct should be adhered to.

¹⁴⁸⁶ Direct collusion with traffickers is where a public official may, for instance, alert traffickers to impending raids, facilitate entry into the country by providing fraudulent documentation, recapture victims, and actively take part in trafficking operations or indirectly through the use of a victim's services or refusing to investigate a suspected case of trafficking.

Currently, the task team has a confidentiality and non-disclosure agreement which members are required to sign and abide by. This is an important first step in addressing some of these very real problems which face anti-trafficking practitioners and governance structures across the globe. In terms of prosecution, there have been a number of setbacks. One of its most prominent cases was dismissed and a retrial was ordered, due to errors made by the court and an untrained interpreter. However, as the victims were Thai foreign nationals who have been repatriated home, it is uncertain as yet if any will return to testify in a new trial scheduled for early 2013.

Lastly, partnerships form the cornerstone of the task team and its counter-trafficking initiatives and strategies, and the most important component in effective counter-trafficking. Communication and dialogue, and the inclusion of a variety of role-players, form the foundation of sustainable and viable long term partnerships that work to a common purpose and not in competition with one another. One of the task team's strengths lies in its ability to leverage partnerships and coordinate responses. However, there are some challenges that the task team faces in this regard. Coordination mechanisms have been limited due in part to the high level of member turnover, a lack of attendance at meetings, and government representatives with no decision-making powers. The lack of a national policy framework, and departmental policies and mandates, has also meant that formalised cooperation and coordination is difficult to realise.

Moreover, a perceived imbalance of responsibilities and performance has resulted in some instances in strained relations between NGOs and government departments. NGOs feel that there are a number of government departments which are inactive or are not carrying their weight in terms of realising the task team's strategic objectives. This is an area that needs to be addressed and partnerships strengthened through more political commitment and support by government departments.

The successes and challenges faced by the provincial task team have shown that concerted and coordinated efforts based on partnerships are vital for effective counter-trafficking and human trafficking governance in KwaZulu-Natal and South Africa. Thus, human trafficking governance in KwaZulu-Natal has been predominantly successful and serves as a benchmark for other provincial structures, and a model worth replicating in the South African context. Collaborative partnerships factor high in terms of devising strategies and conducting operations, and implementing strategies ranging from victim assistance and protection, to prosecution and prevention strategies. Challenges and set-backs are treated as learning experiences, and results in a pragmatic approach whereby programmes and strategies are

accordingly adjusted or reformulated. In many ways, this is indicative of a complexity approach to counter-trafficking governance.

Counter-trafficking governance in KwaZulu-Natal, and elsewhere, is defined and constructed by the interrelationships of diverse actors, whose capacity to cope (adapt) collectively with new challenges transforms them into a complex adaptive system. As intimated by Johnson¹⁴⁸⁷, coherent behaviour witnessed in the KwaZulu-Natal intersectoral task team and counter-trafficking networks arises from positive competition and cooperation amongst the actors who form part of it, and the ways in which it is leveraged. As a result, in terms of emergent phenomena, measurable outcomes and events, it is far more than the mere sum of its parts. This study identified and analysed the multiplicity of heterogeneous actors and systems involved in counter-trafficking in KwaZulu-Natal, across provinces, nationally and internationally, who interact with each other in a rich variety of ways and the influence that these interactions and dialogue¹⁴⁸⁸ have in constructing and maintaining discourses and particular approaches to preventing and combating trafficking, both at the international and domestic level. Moreover, the empirical findings of the study support Kavalski's assertion that the complex adaptive systems investigated are not uniform, and that the strength of relationships between actors varies. In addition, actors as component parts of a complex adaptive system are not constrained by the system itself, and are able to participate in a diverse array of subsystems. Thus, complexity is identifiable by its relationships rather than its constitutive parts.¹⁴⁸⁹ Geyer and Rihani's claim that the use of complexity theory allows for a novel interpretation of political and social reality, in this instance counter-trafficking governance, through recognition of the limits of knowledge and prediction and the manner in which policy-making and interventions are approached is also supported.¹⁴⁹⁰

It has shown that a host of interlinked and overlapping concerns are faced by contemporary policymakers in addressing a multidimensional and amorphous problem such as human trafficking, rendering simple solutions impossible. Rather, as increasingly acknowledged at the international and regional level, combating human trafficking requires governance structures based on formalised cooperation and coordination, that allows for open dialogue

¹⁴⁸⁷ Neil Johnson, *Simply Complexity: a clear guide to complexity theory*, Oxford: Oneworld Publications, 2007.

¹⁴⁸⁸ See, Anna Carline and Zoe Pearson, 'Complexity and Queer Theory Approaches to International Law and Feminist Politics: Perspectives on Trafficking', *CJWL/RFD* (2007): 73 – 118.

¹⁴⁸⁹ Emilian Kavalski, 'The fifth debate and the emergence of complex international relations theory: notes on the application of complexity theory to the study of international life', *Cambridge Review of International Affairs*, Volume 20, Number 3, (September 2007): 435 – 454.

¹⁴⁹⁰ Robert Geyer and Samir Rihani, *Complexity and Public Policy: A new approach to 21st century politics, policy and society*, Oxon: Routledge, 2010.

and a multiplicity of actors at multiple levels to interact, promotes positive competition, adaptability and innovation through information sharing and knowledge management. Such an approach is also followed in KwaZulu-Natal which incorporates actors active at local, provincial and international levels, and also links to the national level.

Similar parallel counter-trafficking structures have also emerged at two levels, one provincially in the Western Cape and another at the national level. Describing these complex counter-trafficking systems (governance structures and approaches) in terms of how they work and what they produce is crucial for anti-trafficking practitioners and policymakers to determine how the systems' performance can be changed or optimised / improved, and ultimately have more impact.

Effectively addressing human trafficking remains a conundrum for policymakers and anti-trafficking practitioners, as different approaches produce disparate outcomes and unintended consequences. However, one thing remains clear amongst the multiplicity of actors and competing perspectives and agendas, diverse structures and systems, the voices of trafficked persons remain unheard, and the need for their participation largely ignored. While addressing human trafficking has evolved over the past decade, the absence of trafficked persons in helping formulate policy, strategies and programmes that directly aimed at them remains a constant.

Moreover, formalised cooperation and coordination of networks, structures, agencies and actors at multiple levels (vertically and horizontally) within states, and between states and regions, needs to be encouraged and supported by governments and international organisations. Multilateral support and multilevel governance is required in counter-trafficking. In this way, more effective and coordinated responses to trafficking can be achieved by states and other actors through collaboration and leveraging of resources and capabilities. Cooperation and coordination are written into South Africa's adopted TIP Bill. It will be up to the government and policymakers to ensure that this is realised in implementation.

Moreover, the South African government needs to ensure that all victims of trafficking, whether they are male or female, foreign or domestic, are protected and their human rights restored and safeguarded through the extension and provision of services and facilities that cater to their specific needs, and are treated with sensitivity, dignity and respect by public officials and service providers. The protection of victims of trafficking and the provision of rehabilitative and therapeutic services should not remain the sole (financial) burden of civil

society organisations. Moreover, in practice other forms of human trafficking need to be given the same attention and prioritisation that sex trafficking has.

Counter-trafficking governance in South Africa is thus influenced by the complex interaction of actors, systems and discourses which in turn determines the way in which the problem of human trafficking in South Africa is approached. The human trafficking discourse at both the international and local level significantly influences and impacts upon the manner in which human trafficking is understood and approached in practice by the actors involved – creating internal, operational constraints to counter-trafficking governance in the South African context. Political will and commitment are required in order to realise effective counter-trafficking and victim assistance and protection, while inroads are being made in addressing the diverse structural and proximate factors that render individuals vulnerable to trafficking, which make human trafficking one of the most profitable and hard to stop industries in the world. Despite these challenges and constraints, the KwaZulu-Natal intersectoral task team has managed to create an integrated counter-trafficking model which strives to put the interests of the victims of trafficking first and has begun to make inroads in effectively preventing and combating human trafficking in KwaZulu-Natal. However, provincial task teams, which comprise of a variety of government role-players, from law enforcement and criminal justice to health, education and social development, as well as civil society organisations (and international organisations), require support and official funding to realise their counter-trafficking strategic objectives. Unless states prioritise this hidden crime and the systemic issues that transcend it, as well as committing themselves to integrated, holistic contextually driven responses to addressing this complex phenomenon, it will remain an unsolvable problem for generations to come.

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ADDENDUM A

39 role-players involved in counter-trafficking in South Africa, and abroad, participated in this study. As participants were offered anonymity, apart from those who chose otherwise, their identities are not revealed in this study. A list of participants is on file with my supervisor and the postgraduate office.

ADDENDUM B

HUMAN TRAFFICKING QUESTIONNAIRE: KZN HPPB TASK TEAM

Biographical Details:

Name (Optional):

Name of Organisation / Department:

Size of Organisation / Department:

Member of the Task Team since:

Number of Representatives from Organisation / Department on the Task Team:

General:

1. Please could you tell me a bit about your organisation / department and what you do?
2. How and when did you become involved in addressing human trafficking?
3. What forms of human trafficking do you address?
4. What training have you received on human trafficking? Please list.
5. What is the scope of your or your institution's role and activities in addressing and responding to human trafficking?
6. What type of approach does your organisation / department have in addressing human trafficking? Please could you explain your response citing examples where possible.
7. Under what constraints does your organisation / department operate in relation to anti-trafficking?
8. How do you define the term 'human trafficking'? How does your organisation / department advocate that human trafficking should be addressed? Please explain this to me.

KZN HPPB Task Team:

9. What do you understand the objectives and function of the KZN HPPB task team to be? Please explain this to me.
10. What is your role and function / mandate on the task team?
11. How often do you attend meetings? Which sub-committees are you involved in?
12. What programmes and activities (counter-trafficking initiatives) are you engaged in on the task team?
13. Who do you understand the stakeholders on the task team to be? Do you feel that enough stakeholders are adequately represented on the task team? Please explain your response.
14. To what extent do you feel that members of the task team are adequately trained and equipped to address human trafficking according to their various roles and mandates (e.g. law enforcement, prosecution, protection, prevention)? Please explain your response citing examples where possible.
15. How do you understand the fourth 'P' of the task team – partnerships? What does this mean to you?

16. To what extent are partnerships needed / necessary in combatting human trafficking? Please explain your response.
17. In your experience, how successful do you think the partnership component of the task team has been? Are there any areas that need to be addressed? Please explain your response citing examples where possible.
18. In your experience, what successes has the task team had? Can this be attributed to the task team acting as a cohesive unit? Or the work of individuals? Please explain citing examples where possible.
19. In your experience, how well do the individual actors work together as members of the task team? Please explain using examples where possible.
20. What challenges has the task team faced in the past? How has it overcome / addressed these challenges? Please explain using examples where possible.
21. What challenges or constraints does the task team face? (For example, what extent does a lack of legislation / national policy framework / lack of resources, etc. play?) Please explain your response citing examples where possible.
22. In your experience, has the high turnover of members on the task team had any effect on its cohesiveness and efficacy? Please explain this to me.
23. Are there any gaps or issues in the way the task team is structured or operates that you feel needs to be addressed? Please explain this to me.
24. Do you feel that the task team is a successful and sustainable model that should be emulated? Please explain your response.
25. Is there anything else you would like to add?

HUMAN TRAFFICKING QUESTIONNAIRE

Name of Institution / Organisation:

Size of Institution / Organisation:

A. General

1. In what field is your organisation or institution active?
2. At what level is your organisation or institution active? (Please tick and provide additional information where applicable)
 International Regional National
 Provincial Local
3. What are your organisation focus on?
4. What services does your organisation provide?
5. What training do your staff receive in relation to human trafficking? What role do they play in training?

B. Role of Organisation

1. In what areas is your organisation involved in addressing human trafficking? Please tick.
 Prevention Prosecution Protection Medical Assistance
 Rehabilitation Advocacy Law Enforcement
 Other:
2. When and for what reasons did your organisation become involved in anti-trafficking?
3. What role does your organisation play in addressing human trafficking?
4. Does your organisation offer policy advice to government in relation to anti-trafficking? Please tell me about this.
5. How does your organisation define human trafficking?
6. Has your organisation's definition / understanding of human trafficking developed over time? If so, please explain.
7. What forms of human trafficking does your organisation deal directly with? Please tick the appropriate box(es):
 Sexual exploitation Forced prostitution Forced marriage
 Forced labour Labour servitude Debt bondage
 Domestic servitude Child labour Child prostitution
 Forced marriage Organ / Body-parts Illegal adoption / selling of children
 Other:
8. Is your organisation recognised by any body? Please tell me about this.

9. Under what constraints does your organisation operate in relation to anti-trafficking?
10. What programmes, if any, have you initiated? What specific successes have you achieved?
11. What does your organisation see as the root causes of human trafficking?
12. How does your organisation advocate that human trafficking should be addressed?

C. Partnerships and Networks

1. Does your organisation belong to one of the provincial intersectoral task teams established to combat trafficking? If so, please state which one.
2. When was the task team established? When did your organisation join?
3. What is the approximate size of the task team?
4. How often do you meet?
5. What are the priorities of the task team? How does the task team advocate combating trafficking?
6. How did you come to be invited to join the task team?
7. How are decisions made? Please provide an example.
8. How are tasks allocated? Please provide an example.
9. How do you determine whether progress is being made?
10. In your opinion, have any vital role-players been excluded from the task team? Please specify who and why you think they should be included.
11. How, if in any way, has the task team evolved since you joined?
12. Does your organisation belong to any networks or coalitions? If so, when did you join? In what capacity are you a member?
13. How did your organisation become aware of the network? What was the process in which you gained membership / association?
14. How do you communicate and exchange ideas with the network and other organisations or individuals who are members?
15. What is the role and purpose of the network?
16. What role does your organisation play in this network?
17. How influential / vocal do you think the network is? Please provide an example.
18. Does the network speak with a 'unified voice'? To what extent do your organisation's policies / ideas / programmes converge or diverge with those of the network's?

19. For what reasons did you or your organisation decide to join a network or coalition?
20. What is your organisation's role / involvement in other networks or forums that deal with human trafficking?
21. In what ways are decisions / policies made in these networks or forums?
22. Are you involved in any other forms of dialogue with government? Please provide an example.
23. To what extent does your organisation have an 'independent voice' in initiating programmes combating trafficking? Do you require consensus or approval from other organisations / networks / task team?
24. If you belong to a network or task team, does the network's policies / programmes / initiatives supersede yours? If so, under what circumstances and why?
25. Has your organisation experienced any 'strategic coordination' problems implementing your programmes or working with other actors? Please explain citing examples where possible. If so, how could such efforts be more effectively coordinated in future?
26. Is there a need for task teams or networks in the fight against human trafficking? Please explain why. What value do they bring?
27. What gaps have you / your organisation identified in combating human trafficking in South Africa? Are these primarily conceptual / resource-driven / policy-driven / lack of open dialogue / lack of effective coordination? How do you feel this could be resolved? Please provide examples.
28. Is there anything else you would like to add? Please do so here.