

Slavery in the 21st century: An analysis of human trafficking in Southern Africa

By

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Declaration

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Dedication

This research is dedicated to the loving memory of my father, Mr Wilfred Gavhera who passed in August 2014. I love you.

List of Abbreviations and Acronyms

ACC	African Children’s Charter
ADA	Austrian Development Agency
APF	Asia Pacific Forum
ASI	Anti-slavery International
AU	African Union
CLGS	Centre for Law, Gender and Sexuality
CRC	Convention on the Rights of the Child
DSD	Department of Social Development
ECOWAS	Economic Commission of West African States
FDI	Foreign Direct Investment
FRELIMO	Mozambique Liberation Front
GAATW	Global Alliance Against Traffic in Women
GADN	Gender and Development Network
HSRC	Human Sciences Research Council
HSTC	Human Smuggling and Trafficking Center
ILO	International Labour Organisation
IMF	International Monetary Fund
IOM	International Organisation of Migration
MNC	Multinational Corporations
NHRC	National Human Rights Commission
NIWD	Nissa Institute for Women’s Development
POCA	Prevention of Organized Crime Act
RENAMO	Mozambican National Resistance
SADC	Southern African Development Community
TVPA	Trafficking Victims Protection Act
UN	United Nations
UNCTOC	United Nations Convention against Transnational Organised Crime
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USCCR	United States Commission on Civil Rights
WHO	World Health Organisation

Abstract

Trafficking in human beings is a global phenomenon that has gained increasing international attention in recent years. The trafficking of persons takes place in almost all social, political, cultural, economic and legal contexts. Recently, the phenomenon of human trafficking has been identified as a form of modern slavery, as a threat to human security and also as one of the greatest human rights challenges of our time. Human trafficking is the third largest form of organised crime after arms and drugs. Several factors have been push or pull factors that attract or drive individuals from their countries of origin. As a result of this global epidemic of human trafficking, certain international, regional and national legislative instruments have been enacted that aim at prosecution, protection and preventative measures.

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CHAPTER ONE: BACKGROUND AND OUTLINE OF RESEARCH PROBLEM

1.1 Background and history of human trafficking

The idea of trafficking people finds its origins in the historical slave trade where approximately 10 million African men, women and children were forced to cross the Atlantic Ocean and brought to the United States of America for the purposes of profit (Shelly, 2010: 35). Scholars such as Toge-Lawson (2008) state that human trafficking's roots can be traced to colonialism, slavery and forced servitude as people were sold and forced into slavery, where they were often beaten, dehumanized and not remunerated for their work (ibid). Trafficking of persons is one of the greatest human rights challenges of our time.

According to Lawrence and Roberts (2012) contemporary human trafficking is a modern re-articulation of an age old human story. It emerges from the same deep social inequalities that render people vulnerable, poor, illiterate and desperate (ibid). Furthermore, it occupies the same social and economic space in which reside others who are sufficiently wealthy powerful and willing to use and abuse the labour and bodies of others. At present, slavery and servitude are still international realities. Hundreds and thousands of people across the globe still suffer in silence in slave-like conditions of forced labour and commercial sexual exploitation from which they cannot free themselves (Fitzgibbon, 2003: 81). The trafficking of persons is the third largest illicit international commerce after drug trafficking and weapon smuggling (Rudolph and Schneider, 2013: 2). Human trafficking has created an underground economy of illegal labour markets and businesses where enormous profits are made. Estimates show that around 1 billion dollars is generated every year in the industrialized countries alone because of human trafficking (UNODC, 2012: 68).

Trafficking of persons is an economic problem for the majority of people, mainly females seeking to escape poverty where they are enticed into trafficking by the deceitful promises of economic gain. Trafficking in persons is a gender issue, as inequality in power relations strengthen women's secondary standing in society (Mollema, 2013: 20). As such, it also reinforces cultural discrimination¹ because it is rooted in a global culture of discrimination which denies women equal rights with the prevalence of violence against women, unequal power relations, gender inequalities, feminization of poverty, sexual objectification and

¹ Cultural discrimination refers to exclusion, restriction or hate that is directed at a person or a group on the basis of perceived or real differences in cultural values and beliefs.

commercialization of women and ingrained sex stereo types and gender based discrimination (Ezeilo, 2013: 2). There are wide spread practices that can broadly be described as cultural and based upon traditional values yet they deny the equal treatment of women and girls, and often lead to abuse. For instance, sacrificing a female child to early marriage so that the parents get money for themselves.

In the past, borders of states were soft and people were not required to produce visas and passports if they has to cross borders into other states for earning livelihood (Singh, 2013: 485). Soft borders were substituted by the hard borders, with the passage of time. The movement of people across borders is now regulated by visa regimes. Due to the prohibition of free cross-border movement in modern states by visa regimes, illegal migration of individuals across borders has risen (Singh, 2013: 485). Human traffickers who disguise themselves as travel agents began to expedite trans-border migration through the use of illegal means. This eventually led to the illegalisation of the process of migration therefore creating an opportunity for the development of a transnational organized crime called human trafficking (2013: 486).

Due to the complexity of the nature and pattern of human trafficking, it is fitting that this research makes use of a multifaceted response to human trafficking in which a human rights framework, a migration framework and a human security framework play important roles. This research is therefore influenced by these paradigms as a single approach is unlikely to resolve intricate issues of exploitation which are found in human trafficking.

Protecting the rights of a victim such as the right to personal liberty and the right to move amongst other rights is at the core of the human rights-based approach. Trafficking in persons is a severe abuse of human rights of a person that is trafficked and thus applying a rights-based approach is crucial to an adequate address of modern day slavery (Tsugami, 2012: 1). Enactment of laws has not necessarily ensured that human trafficking is eradicated because the trafficking of persons is more than just a matter of law and crime. The trafficking of persons is a crime against humanity that poses perennial threats to human security as well (Tsugami, 2012: 3). Therefore, there is need for greater emphasis on human trafficking's direct effect on human security.

According to the migration framework, trafficking in persons cannot be divorced from the issue of irregular migration patterns where individuals involuntarily cross borders under the deceit that they acquire better living conditions for instance (Peacock, 2013: 230). This study

will therefore also use this paradigm to show that irregular migration has been a vehicle where people have been exploited for the means of trafficking.

This research will use a mixture of exploratory and explanatory approaches to research. By using an exploratory approach, the research will be able to explore the meanings of the human trafficking trends. Explanatory research is also an important approach in this research because it attempts to find possible causes for a certain phenomenon, in this case human trafficking. It attempts to identify for example the factors that lead to a person becoming a victim of trafficking. When this is explored in further detail, there is possibility to prevent human trafficking and also education for potential victims of this menace. The information gathered for this research will be qualitative.

There are many reports, documents and research papers published on the topic of human trafficking. While many of these reports provide valuable qualitative insights into trafficking patterns, there however have been limitations with regard to research based on hard data. Due to the lack of reliable quantitative information, this study will have limitations in that there will be less understanding about the scope and development of human trafficking. Other limitations of this study will be related to the nature of the subject itself which is inherently difficult as it involves hidden populations. A desktop review will be conducted to establish a baseline of available public information. It will take account of studies, reports and other relevant documentation produced by governments and academic researchers. The data or statistics provided by the above might not be reliable as it only consists of a subset of the total population of trafficked victims.

The knowledge gaps in the current body research is that most of the existing literature suffers from a Western centric approach where studies done have centred on human trafficking in terms of the experiences of Europe and the United States. Furthermore, there is lack of literature produced from the source countries' perspective which is why this research will explore the push factors that drive victims into the hands of traffickers. The knowledge gap also shows that there is lack of geographical balance as there is a critical absence of information about Southern Africa for instance which has been chosen as a case study. The bulk of the research has been dedicated to the estimation of human trafficking in Western Europe and Northern America whilst very little is known about the volume of human trafficking elsewhere. So, this study intends to remedy these gaps by looking at Africa.

This study aims to prove that Africa has been at the centre of this story, but one which has not equally captured the world's attention.

1.2 Research questions

1. What is the nature, structure and pattern of human trafficking?
2. What are the push and pull factors which are either encouraging or forcing people to be victims of this menace?
3. What are the implications of human trafficking for Southern Africa?
4. Why have efforts to prevent, suppress and punish human traffickers have produced minimal positive results?

1.3 Research objectives

1. Objective number 1 is to identify the purposes of human trafficking and the significant driving factors.
2. Objective number 2 is to identify the link between human trafficking and issues of migration in the perspective of globalization.
3. Objective number 3 is to identify national and international legislative measures and policy frameworks utilised by Southern African countries to mitigate trafficking of persons.
4. Objective number 4 is to evaluate responses regarding the combat of human trafficking in the SADC region.

1.4 Research methodology

In order to capture the subjectivity and phenomenon of human trafficking, a qualitative methodological approach seemed appropriate. This study will be qualitative in that it will include various secondary sources. Qualitative data will be used for the purposes of examining and illustrating issues that pertain to the trafficking of persons. There will be a thematic content analysis which searches for themes related to human trafficking such as law enforcement, policy and public response.

This study is based on desktop research which refers to seeking facts, general information on a topic, historical background and study results that have been published or exist in public documents. This information will be acquired from websites, journals, government reports, discussion papers and relevant books (Yin, 2009). Since most research that is undertaken by government departments is easily accessible on the internet. As illustrated by the term, desk research is the research method which is mostly attained by sitting at a desk. Desktop research involves the collection of data from existing resources therefore it is often perceived as a low cost technique unlike field research (Mbeke, 2013: 21). This study will utilize desk research because it is effective and also fast and inexpensive as most of the basic material could be simply acquired which can be used as benchmark in the research process.

Basically, there exists two types of desk research that is, internal desk research and external desk research. Internal desk research can be treated as the most reasonable starting point of research for any organization. Much of the information is generated internally within the organization. The main advantage of using internal desk research is that it contains internal and existing structural resources to organize the collected data in such a way that it is not only resourceful but also usable (Global Reporting Initiative, 2013:10). Desk research that is internal is practically very cheap and effective as internal recourses are deputed and the expenses in attaining data from outside is less.

Desk research that is external involves research prepared outside the organizational confines and relevant information is collected. Online desk research, governmental published data and customer desk research are examples of outside resources.

- Online Desk Research - A lot of unconceivable data is accessible online on the internet. It is essential for an institute to source for specific information while fetching out material as billions of pages are accessible through the internet. There might be two approaches for looking for information that is relevant from the internet. The first involves browsing directly for specific information from industrial, marketing or business sites and extracting the information out of these sites (<http://www.managementstudyguide.com>). Refining the searching methods is the important aspect in a way that the results provided are promising and relevant for a specific subject. To do this, it is essential that the researcher knows the importance of the research and follow the instruction intelligently as this reduces the efforts made and time expended in searching.

•Government published data – A great extent of informations is usually published by government online which can be utilised in the research process. This data is interrelated to social, financial and economic aspects. Most of the time government websites are free to access and they encompass most prominent information (<http://www.managementstudyguide.com>). Therefore, this can be the cheapest medium of collecting the data.

•Customer desk research – Communicating with existing or a prospect customer is one of the great and most prominent ways of extracting information for research. Customers are the one who are considered the most knowledgeable as they are actually using products and services and are aware of the present market trends more than any other (<http://www.managementstudyguide.com>). Therefore the opinion and information delivered by customers is the most accurate and useful data which can be used most effectively in the further practice of research.

This study will use external desk research as the required information is easily accessible. There is also reduction on the expenditure on research activity as information can be easily collected from libraries therefore external desk research is economical (<http://www.managementstudyguide.com>). The data available in published form is generally reliable as it is collected by responsible agencies and institutions, thus bringing accuracy to the conclusions drawn through desk research. Moreover, the absence of interviewee bias makes the research more reliable.

1.5 Significance of the study

The study of human trafficking is important in the 21st century as this criminal activity has become so complex such that people need comprehensive insight of the scope of the problem which includes techniques used by traffickers. The trafficking of persons is an issue that affects many individuals thus the research raises awareness on the effects of trafficking locally and also for the Southern Africa region. Comprehensive research on human trafficking in Southern Africa is lacking, therefore this present study will make a contribution to addressing this gap in research.

This study can make a valuable contribution to research on the awareness of factors that drive human trafficking and as well as the potential counter approaches that can be implemented in Southern Africa to address this problem. The study may also be valuable helping legislators and policy implementers to better understand the phenomenon of human trafficking and so

that they are better able to mitigate the trafficking of persons. Furthermore, this research may be of practical value to Southern African countries that are in the process of drafting anti-trafficking legislation better suited to the African context. These countries may find guidance in by examining the experiences of other countries within the region that have dedicated anti-trafficking legislation.

1.6 Scope of the study

This study offers a broad account of the phenomenon of human trafficking. It should be noted that human trafficking is multifaceted and can be looked at from different angles like examining the phenomena in the context of migration, human rights and human security. Therefore, this research will be an in-depth study covering all these aspects of human trafficking as it is vital to deal with this phenomenon by means of a holistic and integrated approach. The research will focus on the trafficking of persons in Africa with particular focus on the Southern African region.

This study broadly covers the trafficking of all persons and does not investigate a specific group of trafficked victims. The research however indicates that two groups which are particularly vulnerable to human trafficking are women and children.

1.7 What is human trafficking?

It is important to provide a clear definition of trafficking lest it be confused with regular migration and human smuggling. According to the United Nation's Trafficking Protocol, human trafficking is "the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation" (UN, 2000: 2). Exploitation shall include exploitation by prostituting others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (UN, 2000: 2).

Human smuggling is another phenomenon related to human trafficking. Before the drafting of the UN definition, human trafficking was frequently regarded as the smuggling of persons and a form of illegal migration (Mollema, 2013: 49). A distinction is made between human trafficking and human smuggling although there are linkages between the two. Human smuggling refers to the illicit assistance of crossing the border between the smuggler and the

smuggled person, and their affiliation ends once the fee has been paid and the person smuggled has successfully entered the country of destination (2013: 49). Smuggling is voluntary whereas trafficking involves abuse of the victims to produce illegal profit for the traffickers. Smuggling of individuals is always cross-border whereas trafficking does not have to be. Human trafficking can happen irrespective of whether the victims are transported to another country or if only removed from place to place within the same country (HSTC, 2006: 3). Unlike smuggling, trafficking is a process which does not end but encompasses the continual, repeated compulsion and mistreatment of victims to make profit for traffickers. It is important to note that people smuggling at times lead to trafficking, in the sense that some trafficked persons might start their journey by agreeing to be smuggled across the border, however they are but deceived, compelled or forced into an exploitative situation later in the process (HSTC, 2006: 2). Therefore, human smugglers may present an opportunity that sounds more like smuggling to potential victims. Smuggling may not be the planned intention at the outset but a 'too good to miss' opportunity to traffic people presents itself to the smugglers at some point in the process.

1.7.1 Purposes of human trafficking

The trafficking of persons can be linked to several categories of exploitation such as sexual exploitation, forced labour, organ harvesting and child laundering.

1.7.1.1 Sexual exploitation

Sexual exploitation refers to all practices where a person is able to achieve sexual satisfaction or monetary gain through the abuse or exploitation of a person by denying them their right to dignity, equality, autonomy, physical and mental well-being (Mollema, 2013: 63). This form of exploitation involves abusive sexual acts that are performed without the victims consent and can include, but is not limited to prostitution and pornography. Victims consist of those who have been deceived with the promise of better lives than those they had; which results in them being exposed to violence and abuse. According to estimates, 60% of imported prostitutes in Italy come from the African continent (Fitzgibbon, 2003: 82). Meanwhile, prostitution of children is on the rise throughout Africa driven by the prevalent mistaken belief that sex with a virgin will cure HIV/AIDS or that sexual intercourse with a child reduces the prospect of contracting HIV/AIDS or other sexually transmitted diseases (2003: 82).

Although the contemporary sex industry is said to have originated from the United States of America during the 1960s, it has tremendously expanded and has become disturbingly

industrialised. This has been accredited to a liberalisation of laws that regulate prostitution and pornography and a wide range acceptance of the sexual abuse of men and women exploitation (Mollema, 2013: 65). Women have become a trade in themselves, commodities to be bought and sold by organised crime syndicates, individuals, tourists, military personnel and men looking for sexual entertainment.

Estimates reveal that from the year 2000 the global sex industry makes US\$52billion a year (Fitzgibbon, 2003: 82). The value of the global trade in women as commodities for sex industries creates a situation in which the sex industry targets and consumes young men and women who are usually under age. Traffickers worldwide have grasped this opportunity to enrich themselves by exploiting people for sexual purposes (Fitzgibbon, 2003: 82). Demand for many forms of commercial sexual services has fuelled human trafficking and led to the growth of sex markets.

1.7.1.2 Forced labour

The Global Report on human trafficking estimated that human trafficking for forced labour is the second most common form of trafficking, which constitutes 18% of the various forms of trafficking. According to the International Labour Organization (ILO) at least 12.3 million people are victims of forced labour globally as a result of human trafficking (Fitzgibbon, 2003: 82).

Forced labour can be defined as all work or service which is extorted from any person under the menace of any penalty and for which the said person has not voluntarily offered himself (2003: 81). This involves victims that are often forced to work long hours through the use of coercion by withholding majority of their wages if not all. Victims are subject to violence therefore they lack freedom of choice of work. Individuals used in forced labour include men, women and children who will be forced to work in farms or manufacturing industries (Mollema, 2013: 65). Forced labour is often found in less privatized sectors of economies like agriculture, construction, mining, industrial and manufacturing.

A lot of countries have approved the ILO's Conventions on the Minimum Age of Employment and Elimination of the Worst Forms of Child Labour, as well as the UN's Convention on the Rights of the Child. However, the labouring of children is still quite common and extensively accepted in various parts of the world. Estimates that have been made suggest that 80 million children are victims of forced labour in Africa, trapped in jobs into which they were compelled or misled (Fitzgibbon, 2003: 82). Such children are often

between the ages of 5 and 14, with the biggest percentage being young girls who are used for domestic work (ILO, 2012: 1).

People that are trafficked for the purposes of forced labour are coerced to work in a similar manner as to that of sexual exploitation. This includes for instance, threats of physical violence against the victim or family members and also deprivation of freedom. Victims of human trafficking are deceived when it comes to the nature of working conditions or the nature of work they engage themselves in (Mollema, 2013: 70).

1.7.1.3 Organ harvesting

There has been a shortfall of transplantable organs across the globe which has resulted in the use of illegal methods to procure organs in an attempt to fulfil organ donation requests. This method of human trafficking entails the exploitation of an individual for the purpose of obtaining profit on the organ black market (Aronowitz, 2013: 77).

Organ harvesting involves victims being trafficked specifically for the purpose of removing their organs. It is the removal of kidneys that has dominated this illegal trade internationally because of the high demand (Aronowitz, 2013: 74). However, there is also indigenous trade in particular body parts such as genitalia, heart, eyes and skull for the use in traditional medicine and *muti*.² There is a belief that these organs can be a cure for ailments like HIV and AIDS as well as being able to increase influence, wealth, health and fertility (UNESCO, 2007: 29). Reports show that traffickers traffic people to sell their organs at exorbitant prices to patients who desperately require organ transplants. This form of trafficking has been fuelled by a shortage of healthy organs to use in transplants as the demand is not met by the limited number of donated organs (Kruger, 2010: 69). With dialysis and transplantation surgery increasing in the sphere of the private sector the negative costs of social equity means those that have the financial means are able to purchase transplant organs and do so. Those people that are economically disadvantaged provide human organs for a paltry sum (UNESCO, 2007: 31). With the rise of a global market for bodies, organs and tissues, there has been a great risk of the harvest of organs from poor and needy clients with the aim of satisfying the wealthier clients.

1.7.1.4 Child laundering

The illegal acquisition of children often operates on covert levels. There are numerous instances where babies are kidnapped however there have been cases where poor, pregnant

² A word used to describe traditional African medicine.

and single women have been targets by criminal syndicates who forcibly hold them captive until birth where the child is taken and sold (Kruger, 2010: 70). This act entails trafficking.

Child laundering occurs when children are unlawfully obtained through fraud, force and deceit therefore child laundering involves illegally obtaining children by abduction or purchase for purposes of adoption. The laundering of children is a form of exploitation and thus qualifies as a form of human trafficking. Child laundering syndicates are often expansive with multiple hierarchies of people motivated by large profits (Smolin, 2007: 116). These illegal adoptions are often to the detriment of small children as they are detached and placed outside the protection given to them by legal adoption systems.

Child adoption is usually regulated and overseen by government agencies but a lack of adequate legislation and legal controls and the unsuccessful implementation thereof, has enabled traffickers to continue with this type of trafficking (Kruger, 2010: 72).

1.8 Nature and extent of human trafficking

Human trafficking has been recognised as a worldwide problem that plagues all nations and no country is immune. Notwithstanding the increase in the literature on human trafficking, reliable information on the magnitude of the problem remains limited (Kruger, 2010: 83). Several sources have provided general indications and estimates on the scope of human trafficking. A significant body of literature recognises that human trafficking is a multibillion dollar industry and that about 800 000 new victims are trafficked across national borders annually (Kruger, 2010: 90). According to estimates made by the ILO, the minimum number of persons in forced labour in the world at any given time as a result of human trafficking was 2.4 million (Kruger, 2010: 83).

There exist numerous intricacies and hurdles in the analysis of the nature and extent of human trafficking due to the fact that this menace is a generally underreported crime. The magnitude of this global problem is much higher than that which is listed in print, electronic media and law enforcing agencies (Singh and Singh, 2013: 490). Human trafficking has a hidden nature which is why the scope of human slavery is unknown globally.

Trafficking in human beings is a brutal, cynical form of exploitation where traffickers prey on and profit from the adversities, distress and vulnerability of other people. In Africa it is common for children; especially boys from poor families to leave their homes to work on plantations, where they end up labouring under conditions of slavery (Karlsson, 2003: 17). Individuals overtaken by war or natural disasters who have been displaced are even more

exposed and marginalised. These people become vulnerable and dependent thus they are easily exploited for other people's gain.

It should be noted that illicit migration of a person may change from smuggling to trafficking and sometimes it may turn from trafficking into smuggling subject to communication skills, education and familiarity with the language of the individual (Karlsson, 2003: 17). People that fall victim of human trafficking are often slow or medium profile people having poor communication skills with low level of intellect.

While the nature of any one victim's experience can vary, a classic case of human trafficking for sexual exploitation would involve deceptive recruitment for employment in another country, travel organised by the traffickers, confiscation of legal documents on arrival and finally exploitation in prostitution maintained by the use of physical violence and other means of coercion (Nagle, 2013: 2).

Structure of dissertation

This study is divided into six chapters which are briefly outlined below:

Chapter One: Background to the research

This chapter provides an introduction to the study. It explores the background to the study and the reason for choosing this particular topic. In addition, the chapter discusses the objective of the study and the key questions which the study seeks to answer. Subsequently, the wide-ranging destructive consequences of this crime, not only for trafficked persons but also for the global community are charted in this chapter.

Chapter Two: Literature Review

This chapter shall explore the phenomenon of human trafficking as explored by scholars. This includes human trafficking in the context of sexual slavery for men, women and children. This chapter also examines trafficking of men, women and children in non-sexual contexts.

Chapter Three: Political, socio-economic and cultural causes of human trafficking

To further inform the comprehension of human trafficking, Chapter 2 provides an insight into the phenomenon of human trafficking by presenting the root causes that contribute to the menace.

Chapter Four: Conceptual Framework

This chapter introduces three conceptual frameworks. The research will be anchored on: human rights based approach to trafficking, human trafficking as a human rights issue and human trafficking as a migration issue. A claim is made that these approaches to human trafficking need to be explored in order to understand a complex phenomenon like human trafficking.

Chapter Five: Human trafficking in the context of globalization

This chapter makes an analysis of how globalization and regional integration have contributed to human trafficking. The chapter notes how the rush to integrate trading blocs and to compete in the international marketplace has led unscrupulous entrepreneurs and international criminal organizations to create a supply chain of men, women and children for exploitation in various industries.

Chapter Six: International and regional legislative measures and policy frameworks used to mitigate human trafficking

This chapter discusses and describes current international and regional legal frameworks on the trafficking of persons and their development. These frameworks enjoin states parties to comply with numerous obligations to combat human trafficking.

Chapter Seven: Counter trafficking responses regarding human trafficking in the SADC region

In chapter six, 9 countries from Southern Africa are selected to show how various national laws in these countries are used to respond to the problem of trafficking. This chapter show that national laws are at different stages of development and countries have made considerable and commendable progress in combating human trafficking. However, much remains to be done.

Chapter Eight: Recommendations and conclusion

Chapter seven provides possible recommendations to the scourge of human trafficking that Southern Africa can implement to combat that trafficking of persons. This chapter will also give a general conclusion to the study

CHAPTER TWO: LIRATURE REVIEW

2.1 Introduction

In recent years, the trafficking of persons has gained a lot of attention as a large scale and intricate criminal and social problem. It is a multi-dimensional problem that affects every region of the world and scholars believe that the impact of globalization has made this phenomenon even worse (Rahman, 2011: 58). There exists extensive literature on the phenomenon of human trafficking. A large number of the current research focuses on the trafficking of women and children for the purpose of sexual exploitation. Most of the existing literature focuses on human trafficking in Western Europe and Northern America. Previous research has not given sufficient focus to human trafficking in non-sexual contexts where the victims include men. This research aims to address this research gap by looking at the trafficking of persons in Africa since little is known about the volume of trafficking in this region. Moreover, this research will also attempt to address the gender bias that exists in mainstream literature, which has limited the focus on men as victims of trafficking. The study will not only look at exploitation for sole purpose of sexual exploitation but will look at other forms of exploitation in the form of organ removal, slavery and child labour.

2.2 Overview of literature

The trafficking of human beings is not a new phenomenon in the 21st century. Trafficking of women for prostitution was reported even before the 1920s and was referred to as white slavery (Ngwira, 2011: 6). It is argued that the mid-Atlantic trade and the Barbary slave trade were the oldest form of organised trafficking in the African region (). Despite being an old phenomenon, human trafficking as a transnational crime has lately taken complex, dramatic, appalling and even deadly new dimensions with the wake of globalization. Hathaway (2012) states that estimates from various government sources and non-governmental organizations suggest that approximately 600 000 to 2.5 million people are enslaved at any given time (ibid). These estimations have also shown that between 600 000 and 2.5 million people are trafficked annually (UNODC, 2008: 6).

According to Sawadogo (2012), globalization has ironically increased the power vacuum by empowering criminal networks in a manner which has led to trafficking increasing proportionally in relation to the intensification of globalization in much of Africa (96). National governments and fragmented systems of global governance like the International Monetary Fund (IMF) have been lacking in both sufficient legitimacy and effective power

(Lamentowicz, 5). The global market is not regulated by any global political authority and there is no central authority in control. Criminal networks have taken advantage of this and they continuously threaten communities globally.

Literature on human trafficking has revealed that the trafficking of persons is a multidimensional problem that has an effect on all regions of the world and scholars believe that it has been made worse by the influence of globalization (Sawadogo, 2012: 96). Although globalization has its advantages like economic development, higher living standards and new economic opportunities for nations, organized crime has taken advantage of fast moving technological advances like the internet and the free flow of goods and services to prey on possible victims (Peeperang et al, 124). According to Ngwira (2011), human trafficking is one of the vulnerabilities that migrants have been facing for years (6). This has become a concern for countries because the trafficking of persons is directly linked to the violation of victims' human rights. Ngwira (2011) also states that the turn of the 21st century has seen an increase worsening in the susceptibility of victims trafficking due to a global increase in the numbers of emigrants who feed the supply side of the market (6).

2.2.1 Sexual slavery of women and children

Mainstream research into human trafficking focuses mainly on the sexual slavery of women and children. It is this perspective that has gained the most attention around the world and that is commonly related with the phenomenon of human trafficking, even though men as well as women and children of all ages become victims of human trafficking for various purposes (Fong and Cardoso, 2010: 312). The works by Lehti (2006) and Aromaa (2007), Batsyukova (2005) and Fergus all focus mainly on the trafficking of women and children for the purposes of sexual exploitation. Sex trafficking is considered the largest specific subcategory of transnational modern-day-slavery. However, it would not be in existence if it were not for the demand for commercial sex booming around the world. Statistics show that between 70 to 90 percent of the modern trafficking in women and children in Europe and Asia can be associated with prostitution and other forms of sexual exploitation (Lehti and Aromaa, 2006: 133).

Prostitution is a practice that is also widespread throughout East Africa, particularly in Ethiopia and is also on the increase in Uganda and Kenya (Fong, 2004: 5). More traumatic are circumstances where young girls and women are captured from conflict zones and forced to work as sex slaves to rebel commanders or even sold as slaves to wealthy men in Sudan

and the Gulf States (Adepoju, 2005: 78). In Kenya, the traffic of young girls to Europe by syndicates controlled by Japanese businessmen and of girls from India and parts of South Asia to Kenya is important for the local sex industry (2005: 78).

Scholars say that trafficking of women to Europe for prostitution is more dominant in West Africa. Research reveals that about 60% of foreign prostitutes in Italy emerge from African countries, the majority from Nigeria (Fong, 2004: 5). In Africa, human traffickers who recruit women and girls are commonly women who have some connection in the industry, in particular the Middle East. To make trafficking easy for them, these women at times engage in prostitution themselves and return to their villages to recruit young girls by promising them jobs and a better life elsewhere (Adepoju, 2005: 77). Therefore, they are often in a position of trust or a relative or acquaintance of the women recruited. For Southern Africa, trafficking in women and children for sexual exploitation is a growing problem, particularly in Lesotho, Mozambique, Malawi, South Africa and Zambia. In the Southern African region, South Africa is considered the destination for regional and extra-regional trafficking activities (Adepoju, 2005: 79).

The trafficking of women and children for sexual exploitation has contributing factors that fuel it such as poverty, weak law enforcement, harmful social practices, structural inequality, the profitability of transnational crime and corruption (US State Department, 2008: 10). These create an enabling environment for this crime to continue especially in those nations where sex tourism is prevalent. One manifestation of child commercial sexual exploitation is child sex tourism. Young girls below the age of 18 who live close to tourist spots are often lured by gifts and cash by tourists from Germany, the Netherlands and the UK to engage in pornographic sex acts (Adepoju, 2005: 80). More than 250 000 sex tourists visit Asia each year including 13% from Australia (UNODC, 2012: 23). At times the unsuspecting children go with the tourists to Europe and end up as sexual slaves for the traffickers or are even dispersed into the paedophile network (Adepoju, 2005: 80).

The increase of technology is another factor that has facilitated this predatory behaviour in tourist destinations as the explosion in the internet and the growing use cell phones have given perpetrators additional tools to victimize children (US State Department, 2007: 23). Sex tourists use chat rooms and specialized websites to sexually abuse children. It is also argued that gender inequality contributes to high numbers of women being trafficked into the sex industry. The prostitution of women is an expression of structural inequalities between

genders and all women involved in prostitution are in a way victims of a society that is patriarchal (Lehti and Aromaa, 2006: 141). Global poverty, lack of education and illiteracy affects females in greater numbers than men. These vulnerabilities, along with community and family stigma associated with sexual violence, are possible factors that have contributed towards the trafficking of women and girls for sexual slavery (2006: 141).

Ngwira (2001) observes that the sex industry within human trafficking exposed victims to several sexual and reproductive hazards which included unwanted pregnancies, failed abortions and sexually transmitted infections (8). The victims' health becomes aggravated because of their exclusion from the health care system.

2.2.2 Men in human trafficking

Trafficking of adult men appears to be less common than trafficking in women and children (UNODC, 2012: 26). Nevertheless, men may become vulnerable to trafficking in certain circumstances. For instance, if they have a low socio-economic standing in their own country and a lack of legal status abroad they may be vulnerable (UNODC, 2012: 27). Existing literature reveals that men are usually trafficked for labour exploitation. Previous research also establishes that most labour traffickers are often prominent doctors or businessmen with money; influence and respect in their communities such that they possess the means acquire victims (Ngwira, 2011: 9). Between 2007 and 2010 and more recently, national authorities identified more than 4500 adult male victims of human trafficking (UNODC, 2012: 27). Men represent about 15% of the victims detected globally (2012: 27). For many countries in the Middle East, local economies and households thrive on the immigration of foreign labourers. Men from South Asia, Sub-Saharan Africa and East Asia come to this region for work as domestic servants, construction workers and labourers in other low-skilled professions (US State Department, 2008: 29).

Sexual exploitation of men is largely underreported due to the more hidden nature of male prostitution, cultural and gender stereotypes that do not consider it possible for men to be sexually exploited and also inadequate legal systems and reporting frameworks that may not identify victims correctly (UNODC, 2012: 20). More often, male victims of human trafficking have been denied assistance, further marginalising them and discouraging them to come forward. However, the US State Department has indicated that 2% of men are victims of sex trafficking but the figures are most likely under-represented in global statistics (US State Department, 2008: 29).

2.2.3 Trafficking of women and children in non-sexual contexts

The trade and trafficking of children and their trap in bonded and forced labour are evidently the worst forms of child labour. Child soldiering is an exceptional and severe demonstration of trafficking in persons that involves the illegitimate enrolment of children through force, fraud or coercion to be exploited for their labour in conflict areas (Tiefenbrun, 2007: 3). Such unlawful practices may be executed by government forces, paramilitary organizations and rebel groups (Tiefenbrun, 2007: 10). Estimates by the United Nations Children's Fund (UNICEF) reveal that more than 300 000 children below the age of 18 are presently being oppressed in more than 30 armed conflicts worldwide (US State Department, 2008: 24). The majority used as child soldiers are between the ages of 15 and 18, while some are as young as 7 or 8 years of age (2008: 24).

What has contributed to the trafficking of women and children for purposes other than sexual exploitation is that, women and children especially in Africa are perceived as a cheap and an easily available source of labour (Fong, 2004: 7). The high demand for domestic servants and labourers in commercial agriculture plantations has placed both young girls and boys in a position of vulnerability to human trafficking. Estimates show that in Nigeria 8 million children are used for different worst forms of child labour and that these children work as domestic servants, street vendors and agricultural labourers (Fong, 2004: 6).

While current research acknowledges that human trafficking transcends gender, it does accept that women and girls are amongst the most affected demographic group of victims (Singh, 2004: 341). The development of this transnational crime has depended on the existence of source countries where people demand better economic living conditions and also destination countries where people and industries demand cheap labour or prostitution to enlarge their profits (Seyhan, 2009: 3). Human trafficking is still an issue that has yet to receive widespread coverage in the mass media despite the fact that it is a growing problem which needs to be addressed.

The existing literature reveals a number of pull and push factors that have provided incentives for human trafficking. These have placed men, women and children at risk of becoming victims of trafficking. According to Sawadogo (2012), these factors constitute endemic poverty, limited access to education, government corruption, weak legislative frameworks, high unemployment, conflicts and a general lack of opportunities especially for women (97). This study will examine both the impact of these push-pull factors as well as those external

factors that have played a role in causing human trafficking such as the impacts of globalization, natural disasters and also immigration policies.

Research on trafficking in human beings in Africa typically recognizes poverty as one of the most visible cause for trafficking (Njoh and Etang, 2012: 32) Another strong determinant is the vulnerability of women and children because this can make them an easy target (Nilanja, 2010: 5). Patterns of instability, oppression and discrimination as well as social and cultural prejudices and the prevalence of gender violence also present additional challenges that may place women and children at greater risk (Nilanja, 2010: 5). Regions that suffer high levels of economic depression leave women and girls more vulnerable to being tricked and coerced into sexual servitude (SIA, 2008: 2). Increasing levels of unemployment have also left many women facing economic hardship. Moreover cultures that undervalue women and girls leave them at a greater risk of being abused and trafficked (SIA, 2008: 2). Human trafficking can be extremely profitable, especially in areas where opportunities for education and legitimate employment may be limited. According to the United Nations Office on Drugs and Crime (UNODC), the greatest numbers of traffickers are from Asia, followed by Central and South-eastern Europe and Western Europe (UNODC, 2012: 25).

Apart from poverty, scholars such as Njoh and Etang (2012) have also stated that cultural and traditional patterns can contribute to the growth of human trafficking (37). Traditional nurturing grounded in the culture of assigning children to wealthier relations or families to provide a better education and living, is a culturally acknowledged phenomenon in Africa (Fong, 2004: 2). However, these traditional practices have been abused over the years. Parents are not aware of the dangers associated with these customs, even if they have given their children away in good faith for economic gain. Children are transferred from one person to the other in the transaction and are trafficked to work in the most hazardous environments (Fong, 2004: 2). Parents have been ignorant regarding the risks involved in entrusting their children to other persons in this era of where economic achievement is paramount. In Africa, family harmony is sometimes over-valued which can lead to parents not questioning the motivations of relatives when they entrust their children to them. (Njoh and Etang. 2012: 39).

Globalization has produced a growing awareness of Western socio-economic advantages among people or poorer, developing countries and has led to a pursuit of legal and illegal methods of migration (Maja, 2009: 20). International concerns regarding heightened national security, stemming from the global war on terrorism, have implications on illegal methods of

migration, in particular human trafficking (Maja, 2009: 20). Restrictive immigration policies have for long been associated with a variety of economic problems. Recently, it has become clear how restrictive immigration laws also produce harmful social consequences, particularly when it comes to the age old problem of human trafficking. Maja (2009) states that restrictive immigration policies have create broad zones of exclusion, a common strategic response to instability and crisis and a means by which to identify, control and exclude those who are deemed to be a threat to social order or economic prosperity (22). These policies have motivated potential migrants to turn to irregular channels of smuggling and trafficking as their only means of escape (Maja, 2009: 22). Contemporary studies argue that enacting more restrictive immigration laws are unlikely to significantly reduce human trafficking and may in fact increase it (GAATW, 2010: 11). Imposing restrictive policies may create a greater reliance on criminal networks offering illegal means of gaining entry into Western countries.

In recent years, there has been a continuous increase in the smuggling of migrants for trafficking to and from Africa, as well as inside the continent. Many countries have found it challenging to regulate and avert the smuggling of human beings, partly because they do not possess effective policies intended to combat trafficking in persons (Adepoju, 2005: 75). Countries also lack the capacity to respond adequately as there are no national legislations to deal with the problem of trafficking (Adepoju, 2005: 76). Scholars have observed that an increase in illegal migration due to strict border controls is also linked to the increase of trafficking (Seyhan, 2009: 5). Ngwira (2011) argues that increased involvement of criminal groups in migration turns human smuggling to human trafficking and exposes victims to other abuses (14). Those who migrate across borders, generally are neither adequately informed about the conditions and risks of working abroad, nor are they informed of methods for safe migration.

Research conducted in Africa demonstrates that the region has not been spared from an increase in human trafficking. The International Organisation of Migration (IOM) records indicate that trafficking between Southern Africa and Europe and within Southern Africa itself has taken place for at least a century (Singh, 2004: 12). Trafficking in women and children for sexual exploitation is a significant problem in Southern Africa with Botswana, Lesotho, Mozambique, South Africa, Swaziland, Zambia and Zimbabwe all serving as source countries for trafficking activities in the region (Swart, 2012: 64). Thailand, China and Eastern Europe are the extra-regional sources for victims trafficked to South Africa (Swart,

2012: 64). Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe are the transit countries while South Africa was the destination country for regional and extra-regional trafficking activities (Swart, 2012: 64).

There are a number of objectives that this study is aiming at. One is to examine the link between human trafficking and gender in order to establish why it is that women and children are more vulnerable than men. Another is to explore the effectiveness of laws on human trafficking in order to determine whether these laws are being enforced accordingly. This study is significant in that it encompasses several issues that are of social significance such as child labour, child and adult prostitution which are issues that relate to human rights.

Despite the rising profile of human trafficking across the globe and periodic efforts to raise public awareness in Southern Africa, the region remains a fertile ground for traffickers who prey on the vulnerabilities created by the factors mentioned above. Observations made show that modern day traffickers often abuse lack of political will at the highest levels of governments to effectively tackle trafficking and its root causes (Adepoju, 2005: 75). The weakness of interagency coordination and low funding levels for organisations tasked with prosecuting traffickers, preventing trafficking and protecting victims also enable traffickers to thrive (Adepoju, 2005: 70).

CHAPTER THREE: POLITICAL, SOCIO-ECONOMIC AND CULTURAL CAUSES OF HUMAN TRAFFICKING

3.1 Introduction

Trafficking is a complex phenomenon. Human trafficking can be socio-cultural, economical and politically induced according to and within the context of incidence. Human trafficking often occurs from less developed countries to more developed countries where people are rendered vulnerable to trafficking by virtue of poverty, conflicts, natural disasters, high unemployment, limited access to education and other conditions (Mollema, 2013: 75). These factors tend to exert pressures on victims that 'push' or 'pull' potential victims into migration and hence into the control of traffickers. Many of these factors are specific to individual trafficking patterns and to the states in which they occur. To a large extent, trafficking in human beings is a symptom of poverty, unemployment and lack of opportunities which force millions of people to look for better lives away from home. While no certain figures can be determined, it is reported that trafficking for forced labour alone generates US\$31.6 billion in illegal profits annually, whereas trafficking for sex exploitation is about US\$33.9 billion each year (Nagle, 2013: 2).

3.1.1 Endemic poverty

The trafficking of persons has attracted global attention as a result of its detrimental consequences for development. This is especially so in the African context where the incidence of human trafficking, especially women's trafficking has been increasingly attributed to the incidence of poverty worsened by the neo-imperialist capitalist pattern of development culture which maximizes individual profiteering and well-being above communal well-being (Fayomi, 2009: 65).

More than any other continent, Africa is endowed with immense untapped wealth of natural resources. Estimates that have been made suggest that the African continent possesses 120 billion barrels of oil reserves and 600 million hectares of uncultivated arable land (ADBG, 2013). However, while these positive growth prospects are encouraging, Africa continues to be a prototype of a poverty stricken region evidenced by the socio-economic indicators of most countries, which reflect pervasive impoverishment (Fayomi, 2009: 63). Researchers have focused almost entirely on the part played by poverty in the human trafficking process as most victims are trafficked from poor to more affluent countries (Fayomi, 2009: 63). Lack

of economic opportunities most often provides the incentive for potential victims to fall prey to traffickers.

While factors such as conflicts, corruption and gender inequality all contribute greatly to the increase of human trafficking in Africa, perhaps the single greatest contributing factor to the trafficking of persons is poverty.

While it could be said that all people can be at risk of being trafficked due to the clandestine nature of human trafficking, some people are however more at risk than others. Observations made show that most victims of trafficking come from poverty stricken households and this makes them vulnerable to traffickers (ILO, 2007: 22). Human trafficking is an issue that is almost inevitable for low income families. The poor economic situation that people in developing countries find themselves in greatly contributes to the spread of trafficking. Individuals have become victims of human trafficking because of their lack of income. In their search for a better life elsewhere they are susceptible to trafficking (ILO, 2007: 22).

In all African countries, poverty has been ranked first on the list of trafficking vulnerability. Poverty has affected much of the populace in Africa in that families are desperate to survive and provide for themselves. This despair is what human traffickers prey on.

3.1.2 Lack of opportunities for women/Gender inequality

Globally the number of women trafficked is more than that of men. This gender discrepancy is often accredited to the feminization of poverty rising from the failure of existing societal and cultural structures to provide equivalent and fair educational and employment prospects for women (Fayomi, 2009: 64). Gender has had massive effects on all aspects of the process of trafficking which ranges from factors that contribute to trafficking to the nature of the laws and policies developed to deal with the trafficking of persons (Mollema, 2013: 82). Gender inequalities and the failure of the State to guarantee women's human rights weakens women's lack of capabilities and potentials for seeking societal considered respectable means of employment and thereby increasing opportunities for women's trafficking (Fayomi, 2009: 65).

The realities of some women are characterized, among other things by race, class and gender-based access to resources and opportunities defining the political, social and economic disparities and discriminations in society. This is as a result of patriarchal norms and values still widespread in society than women's positions in the society. Women are often perceived as inferior to men and consequently get subjected to violence, exploitation and abuse

(UNESCO, 2007: 36). Thus there is an anomaly in Southern Africa that whilst constitutions guarantee fairness and a numerous of laws have been passed to implement women's rights to equality with men, social norms and values do not always encourage women to claim their right to equality. There exists different cultural and social norms that support violence, for instance traditional beliefs that men have a right to control or discipline women through physical means makes women vulnerable to violence and sexual abuse (WHO, 2009: 4).

The oppression of women and children within patriarchal family and social structures where women are subordinated to men is one of the reasons why they fall prey to traffickers. It is also a major factor in the demand for sexual and other services, without which human trafficking could not prosper (Ngwira, 2001: 19). Not only do women and girls rarely enjoy the same opportunities as men and boys, they are the objects of discriminating attitudes and treatment. They are often regarded as a burden to the family and far less time and resources are invested in them. The prevailing acceptance of prostitution and the sex trade can be regarded as a symptom of this attitude (Karlsson, 2003: 17).

The patriarchal system prevailing in many countries has resulted in the unequal status of women. Social systems and gender stereotypes that exist within societies have reinforced women's subordinate status. This has eventually dependency, feelings of helplessness and low levels of self-esteem in females and make them more susceptible to any abusive condition (Mollema, 2003: 80). The family and community has therefore been instigators of discrimination against young girls and women. Subordination and dependency is seen as a norm for women and a position which they should succumb to. Being daughters, wives or mother is what characterises women in terms of their relation to men. These roles are what eventually define their position in the family, which is never equal to that of male members of the family (Mollema, 2003: 83).

Unequal gender relations have left many females with little power to make decisions that are concerned with their education, occupation and marriage. Moreover, investment of education for the girl child is rendered an unproductive investment as girls are considered to be suitable for domestic activities like cooking, cleaning and rearing children (Gonzales, 2006: 10). Traffickers have manipulated this situation through promises for a better life to these girls. Due to economic hardships, women often migrate, however they also migrate in response to gender-based repression. These women are usually less educated, socially isolated and far from safety nets of family and society which makes them easy targets for traffickers.

In some countries, women who cannot work because of a depressed economy and therefore a lack of employment opportunities will turn to sex trafficking and prostitution as a means to survive. A lot of families have sold their young children to traffickers as a result of desperation for money (Gonzales, 2006: 13).

3.1.3 Conflicts and displacement

Civil strife has devastated several nations causing incalculable injuries and deaths, mass displacements, widespread abuse and human rights violations. Armed conflicts have displaced people from their homes, leaving them vulnerable and easy to prey on. Conflicts, crises and natural disasters have led to a rise in unsafe migration thus the trafficking of persons has flourished in the mist of war (Nagle, 2013: 1). Conditions like human rights violations, drought, floods, ethnic conflict, armed militia activities and political oppression aggravate pre-existing positions of vulnerability for populations already at risk. These populations are usually those groups that are very poor who have already experienced discrimination because of gender, religion, race and class that leave them living in fragile environments (Nagle, 2013: 2).

Areas that are prone to conflict and wars are easy targets for those interested in exploiting a country's resources including its people. Conflicts affect vulnerable groups because they are most often discriminated against and excluded from a nation's wealth, education, policies of protection and prevention (Fitzgibbon, 2003: 80). Once exposed, they are at risk of being victimised again even in post-conflict scenarios by being exploited and traded by individuals within and outside their societies. Men, women and children continue to be victimised in African conflicts to serve as labourers and sex slaves for military and militia officers (Fitzgibbon, 2003: 83). Therefore, forced displacement due to internal armed conflict creates favourable conditions for human trafficking.

3.1.4 Corruption

Corruption as a phenomenon that is a global problem exists in varying degrees in different countries. Whereas it may be endemic in some countries, it could also be moderate or low in others. For the purposes of this research, it is necessary to pay closer attention to political or bureaucratic corruption.³ It is in terms of the effects of corruption on a society that a clearer

³ Political corruption is the abuse of political power by the government leaders to extract and accumulate for private enrichment.

link is established between corruption and human trafficking (UNODC, 2011: 4). In African countries that are developing, corruption has adversely affected governance and social structure (Agbu, 2003: 11). Provision of social services such as water, education and healthcare by the government is usually constrained. This has generally led to a retardation of economic development and to the deterioration of public infrastructures put in place (Transparency International, 2011: 1).

According to Mollema (2013: 94) countries with the least effort to fight human trafficking tend to also have high levels of official corruption. The political will and efforts made by a nation to combat human trafficking are therefore impeded by corruption. The acts of corruption vary from passivity, actively participating in and even organising human trafficking. In some instances, immigration officials receive bribes or even free sexual services in exchange for overlooking fake documents produced to them by human traffickers (Friesendorf, 2009: 90).

In many African countries, the public consider the police, political organizations and the judiciary as corrupt institutions. High acquittal rates and minimum sentencing patterns in case of convictions have raised serious doubts about the integrity of the police, public prosecutors and judges responsible for handling cases of human trafficking (Mollema, 2013: 94).

It is sufficient to say that in most African countries the prevalence of bad governance has led to very severe economic hardships for the masses; leading to the generation of economic migrants. Among these economic migrants are today's trafficked victims who, for want of something to eat, ignorance or greed or a combination of these fall victims of the international process of commodification of human beings and organized criminal syndicates (Agbu, 2003: 8). There is thus a correlation between high flows of trafficking and regional reputations of corruption and organized criminal networks.

3.1.5 Cultural practices

The origins of traditional practices are rooted in belief systems and opinions of morality and communally required actions that may be linked to survival needs. The practice of traditional customs is often harmful, particularly to women and girls.

In the African context, human trafficking has been around for centuries embedded in traditional practices. The trafficking of persons existed under a different name as it was overshadowed by culture. The exchange of women and children for sexual purposes reflects the deep cultural historical practices across the globe. Some cultures see women and children

as commodities that can be bought and sold at any moment (Long, 2002: 20). According to the Human Sciences Research Council report (2010: 9), the Zimbabwean practice *kuripangozi*⁴ can be seen as an example of human trafficking. Traditional practices have clearly consumed a huge influence on the rise of human trafficking symbolized by forced marriages in some cultures.

Many countries in Africa procure young girls through forced marriage. For instance, the traditional custom of *ukuthwala*⁵ in South Africa still exists where young girls under the age fourteen are kidnapped and forced into marriages with very elderly men in exchange for the payment of bride price (Hamman, 2011: 4). In certain African countries, forced marriage can be a way of using women to settle a tribal dispute. Where local customs are sometimes sustained by law, which treats women so explicitly as property, their commodification through trafficking is facilitated.

A lot of human trafficking cases have been unreported as certain cultures believe that children are supposed to take care of their parents who at times are so poor that they cannot afford to live (HSRC, 2010: 9). The value of tradition and customs has overlooked at most children's suffering at the hands of traffickers as some traditional customs are considered normal and moral (Hamman, 2011: 5). However, using poverty is no excuse to sacrifice a child to prostitution for instance in any culture. Keeping quiet about victims that are trafficked by means of these cultural practices will slowly destroy these people and their culture.

3.1.6 Weak or inadequate legislative frameworks

A lack of adequate, properly functioning legislative frameworks and effective judicial systems that are combined with corruption has been cited as factors accelerating the trafficking of persons (Temesgen, 2013: 6). This is because trafficking of persons is linked to forced labour, inadequate labour laws and regulations and also poor enforcement which creates problems for the victims of trafficking (Temesgen, 2013: 6).

⁴ This is a Shona custom which refers to marrying off a girl at an early age to appease the spirit of a dead person. A girl is given by the family of the accused person to the family of the deceased, as a wife to replace the loss of their relative. The Shona people believed that failure to appease the spirit of the dead will bring misfortune to the accused and his clan.

⁵ This is a South African practice of abducting young girls and forcing them into marriage, often with consent of their parents. The practice occurs mainly in rural parts of South Africa, in particular the Eastern Cape. Girls who are often involved in this practice are frequently under-aged, including some as young as eight.

A lack of effort by government in combating human trafficking is likely to correlate highly with the severity of trafficking problems. Several countries show evidence of a lack of political commitment and even state complicity through reluctance to implement the Palermo Protocol policies and guidelines (HSRC, 2010: 14). Certain member states have not yet made serious efforts to acknowledge the problem of human trafficking (Temesgen, 2013: 5). In Southern Africa, with the exception of Mozambique's Anti-Human Trafficking Act 2008, none of the criminal laws currently in place in the region adequately address all the essential elements of human trafficking as listed in Article 3 of the UN Trafficking Protocol. In the absence of comprehensive legislation, all countries in Southern Africa have laws in place that are at different stages which could be used to prosecute offenders for crimes commonly associated with human trafficking (Temesgen, 2013: 6).

3.1.7 Unemployment

Poverty, the demand for employment and secure livelihood options are contributors to trafficking. The deficiency of decent income making opportunities among Southern African people is closely connected to poverty (UNODC, 2011: 10).

With chronic shortage of paid work, particularly for unskilled labour on the rise, lots of people have been forced to seek for alternative incomes that are well paying elsewhere. Youth unemployment is high in many places. The labour market for young women is often very restricted, regularly more so than for young men (Temesgen, 2013: 5). Women are not as highly valued in terms of their labour as men in sectors such as agriculture and are therefore restricted to household work, sales and service jobs in the informal sector (Temesgen, 2013: 5).

The high levels of unemployment have resulted in growing pressure of migration. In addition, economic restructuring is driving people from the countryside to cities and from poorer to richer countries. Instability in the economic conditions and lack of employment prospects in the Southern African region has forced many to follow insecure and unreliable employment opportunities in other countries. People with little or no economic resources have been lured and easily trapped by traffickers (Rahman, 2011: 67).

3.1.8 Permeable borders

A tradition of movement and migration from one country to the other for trade and work as well as ignoring illegal activities such as the smuggling of goods vital for survival has

contributed to acceptance and expectations of unregulated movement (Mollema, 2013:). Porous borders combined with civil and political unrest and a lack of opportunities have ensured consistent flows of legal and illegal migrants in Southern Africa (UNESCO, 2007: 34). Open and unprotected borders have allowed many criminal syndicates to function freely causing a great deal of social, economic and security problems thus facilitating easy operations human trafficking.

Permeable borders have caused appalling social, economic and security problems and have therefore facilitated easy human trafficking (Koch, 2012: 9). Though Africa borders have border controls, human traffickers still have many opportunities to accomplish their criminal activities. Because of the nature of trafficking, prevention of trafficking of persons must begin before the border. Several cases have shown that traffickers often threaten to kill the victims' family resulting in them travelling undetected therefore across borders as normal immigrants (Koch, 2012: 9). The routes of trafficking are always fluid and new routes constantly replace old ones as traffickers look for ways to avoid detection (Mollema, 2013: 93).

Amid these flows, it is problematic to distinguish victims of human trafficking. Complacency among border officials when it comes to traffickers, the acceptance of bribes for travellers without documents has driven the process of human trafficking. However, is important to note that the absence of national law and the high risk of acting against well-funded criminal structures causes reluctance and limits the capacity of law enforcement officials to act (UNESCO, 2007: 34). Some law enforcement officials have said that human trafficking is a war that cannot be won. It has been difficult to maintain strict vigilance against human trafficking.

CHAPTER FOUR: CONCEPTUAL FRAMEWORK

4.1 Introduction

Human trafficking has begun to gain increased recognition in the recent decades as an issue of serious international concern. Although the seriousness of this issue has received heightened attention by the global community, there is still significant misunderstanding about the risks of trafficking and how it should be dealt with. There are a number of questions that arise with respects to this issue such as what the security and rights implications of human trafficking are and how has migration influenced the trafficking of persons? This chapter examines human trafficking from three perspectives. It describes the different approaches to looking at human trafficking as a security concern, human rights issue and also a migration issue. This is done so as to provide as comprehensive an understanding of the phenomenon as possible.

4.1.1 Human trafficking as a migration issue

Africa is a region that experiences a significant amount of migration in which people often move either willingly or under coercion in order to escape civil wars, armed conflicts, natural disasters and starvation (ASI, 2003: 3). With countless pressing political, social and economic problems in the region, the issues of trafficking have never been of significance on African governments' agendas. However, over the past few decades, as the sheer the magnitude of the problem has become apparent, this approach has begun to change (ASI, 2003: 4).

Pressures such as the neo-liberal globalization of the economy coupled with a widening of the North-South gap in terms of economies, technology, education and employment have resulted in a constant migration of people across borders. They leave their home countries and cross national borders either in search of a better life or to escape various forms of oppression. In the process these people tend to be exposed to various forms of exploitation in the process of migration (Peacock 2013: 231). Scholars like Rahman (2011: 57) and Peacock (2013: 232) connect human trafficking to the broader patterns emerging under conditions of globalization which are related to low-skilled labour migration across national and international borders. Aronowitz (2009) explains that the human trafficking often occurs within the context of migration (23). This can occur whether it is internal migration from rural to metropolitan areas within a country or external migration from developing countries to those that are more developed (Aronowitz, 2009: 8). When this occurs the result is that

both documented and undocumented immigrants are at risk of being trafficking and exploited. In general this type of trafficking is a crime most often perpetrated against undocumented migrants (McCracken et al, 2013: 10).

The illicit or irregular movement of people across borders with or without their consent has become an exploitative means of generating economic dividends as well as a source of dependable income and profit for a range of actors as (Peacock, 2013: 231). This means that addressing human trafficking is not only a matter of identifying victims and prosecuting offenders. It means looking at manner in which current migration and labour regulations create conditions under which 'undesirable' populations, most often from developing nations cross borders freely and work in countries of destination (Peacock, 2013: 232).

The concepts which will be explored within this conceptual approach are irregular migration, forced migration and also the push and pull factors pressuring people to migrate from their countries of origin. According to Koser (2005) irregular migration can be defined as the movement of people into a country without the proper authority for example, through clandestine entry or entry with fraudulent documents (ibid). Forced migration is defined as the movement of refugees and internally displaced people as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famines or development projects (Roberts, 2). Push factors come in many forms and at times these leave people with no choice but to leave their countries. Some of these can be poverty, civil war and lack of employment (Parkins, 2011: 11). Pull factors are those positive aspects of those countries that are responsible for dictating where migrants end up. These can consist of higher standards of living, political freedom and labour demand (Parkins, 2011: 12). The perception that the 'grass is greener on the other side' no longer remains a mere pipe dream because the ability to move in search of greener pastures has become a realistic aspiration. It should be noted that migration across and within borders occurs primarily out of economic need.

These concepts will inform the research approach that migrants who are disproportionately pulled by migrant networks are susceptible to several problems associated with human trafficking. These migrants are more likely to be deceived regarding migration options and working conditions in the destination countries. Most victims of human trafficking are initially migrants who end up being trafficked on the way to destination by coercion, fraud or deception (Cho, 2012: 2).

Migration is a dynamic process and encompasses diversified forms of temporal and geographic mobility. In today's global economy, poverty and unemployment have driven men, women and children to abandon their homes in search for better living conditions elsewhere. More and more people are on the move from poorer to richer nations all over the world. The contradiction in wealth between neighbouring countries is attractive to those wanting to escape poverty. Disparities between countries provide traffickers opportunities to exploit the vulnerable, who seek to cross porous and increasingly open borders (Peerapeng et al, 2013: 123). According to estimates from ILO, the migrant worker population is at 120 million (ILO, 2004: 1). It is commonly agreed that that human trafficking and the associated issues that have grown as a result of the gap between poor and rich countries, the lack of opportunities for young people to build up an existence and the deprived position of women in many countries which make the especially vulnerable for exploitation (Peeperang et al, 2013: 130).

Migrant networks have been actors at the centre of influencing the migration decisions of low-skilled individuals as these networks reduce informational costs of migration. The role played by migrant networks is the reduction of the costs associated with labour migration for instance through the provision of specific job information to potential migrants so that there is little probability of unemployment for immigrants. Cho (2012) suggests that migrant networks on one hand have positive effects for reducing inequality in source countries through the provision of employment opportunities for those that are low-skilled (2). Migrant networks may not always function as information and assistance providers and some may use inflows of low-skilled migration as opportunities to make money. Migrant networks may also have the undesirable effect of increasing human trafficking into destination countries by inducing low-skilled migration which most victims of human trafficking belong (Cho, 2012: 2).

With more and more Multinational Corporations (MNCs) shifting their industries to less developed nations, the numbers of people enthusiastic to migrate in search of work from rural areas into cities or countries where these industries are established will only rise (Banerjee, 2011: 120). It is those rich and developed countries that profit from the 'trade without boundaries' phenomenon. But this often results in the least skilled and most vulnerable workers from poor nations being exploited either in their own countries or when they become migrants to industrialized countries. This is because while governments support the flows of trade and finance they take very little action when it comes to protecting vulnerable workers

(Watawala, 2007: 12). Migration patterns have thus become so complex in recent decades and have spawned an entire industry of illegal trafficking (Chakraborty and Bhattacharya, 2007: 1).

Migration and the trafficking of persons are also connected to the developing feminization of the work force. The number of women migrants is increasing as they are forced to take on more responsibility in supporting their families fiscally (Banerjee, 2011: 125). Though not all migration ends in trafficking it should be born in mind that traffickers always utilize migration flows to access victims. The root causes of this problem that should be addressed are the economic and social inequality and disadvantages which give rise to illegal migration.

4.1.2 Human rights based approach to trafficking

There has been a massive growth of interest and advocacy concerning human trafficking but the scope of this has been limited to issues like migration, prostitution, criminal justice and forced labour perspectives. A more holistic human rights approach would need to combine both the human rights and slavery issues related to human trafficking and develop a framework suited to formulating strategies to combat slavery of all types. Trafficking has been conceptualised within a human rights framework as consolidation of human rights. This has gathered momentum in the 21st century through the growth of the international human rights movement and the proliferation of international human rights instruments and institutions (Lee, 2010: 31).

A rights-based approach refers to an idea and practice of development that guarantees fundamental social, economic and political human entitlements. It does this in ways that expand choices, promotes human dignity, well-being and empowerment equally for both men and women (D’Cunha, 2002: 3). All rights are equally important, inter-related and cannot be obtained in isolation. Human rights are universal but their priority should be accorded to those who are especially vulnerable and may not be able to exercise their rights. These categories usually include the poor, women, ethnic minorities, undocumented migrants and trafficked persons.

The trafficking of persons is a global phenomenon which occurs in most precarious sectors with weak labour rights such as the sex industry and the agricultural sectors (Shamir, 2012: 80). Trafficked persons are exploited and experience a series of rights violations, ranging from restriction of movement to violence and abuse (D’Cunha, 2002: 5). A human rights based approach is a conceptual framework which deals with a phenomenon such as human

trafficking that normatively has its basis on international human rights standards and that is operationally focused on the promotion and protection of human rights (Haddadin and Klimova-Alexander, 2013: 2). Prioritising human rights affords a comprehensive response, with the capacity to protect vulnerable persons and to prevent and suppress the act of trafficking in human beings (Budiani-Saberi and Columb, 2013: 5). For instance, a human rights approach recognizes and guarantees the special rights of children as it is in their best interests. The Convention on the Rights of the Child and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children provide special measures for children. This is because children are at a stage where their knowledge and experience of the world is limited therefore their ability to discern and make decisions in their best interests is affected (D’Cunha, 2002: 10). Children therefore require special protection from factors that have a greater impact on them.

This approach requires an analysis of both the human rights violations that occur during trafficking as well the states responsibilities under international human rights law. Moreover, it seeks to detect and amend the discriminatory practices and unjust distributions of power that trigger trafficking, that conserve impunity for traffickers and that refute justice to victims of trafficking (Budiani-Saberi and Columb, 2013: 906). A human rights-based approach to human trafficking infers that any analysis or response to trafficking should be guided by human rights norms and principles, placing the protection of rights holders at the centre of all efforts or strategies to combat this phenomenon (Budiani-Saberi and Columb, 2013: 905). This approach is a way to retain the focus on vulnerable persons and ensure that human trafficking is not simply reduced to a problem of organized crime.

There various concepts that are fundamental within the human rights based framework are human rights, human dignity and universal set of values based on law (ADA, 2010: 6). Human rights are rights that are inherent to all human beings despite of nationality race, sex and colour. Central to these rights would be human life and dignity, with the latter referring to an individual’s sense of self-respect, physical and psychological integrity and empowerment (ADA, 2010: 6). Something is of universal value if it has the same value or worth for all people. These concepts are fundamental for this research because they show that trafficking and exploitation are violations of fundamental universal rights and that people lacking these rights are the most vulnerable to trafficking and exploitation. Moreover, this approach reorients the analysis and response by showing that receiving states have a responsibility to protect the human rights of all residents in their territory. This will allow

crime and border control efforts relevant to trafficking to be rights-based and subject to monitoring. The violation of human rights has been seen as both a cause and a consequence of trafficking, therefore it is vital that the protection of all human rights be placed at the centre of any measure taken to prevent and end trafficking (Lee, 2010: 31).

A human rights approach offers a conceptual and normative framework for reorienting the trafficking debate towards the exploitation of persons, regardless of their immigration status and as a framework for action that serves to empower and mobilise trafficked persons. Human rights may serve as a tool for developing affective policies and also holding states accountable for their efforts which includes their human rights obligations towards non-citizens (Lee, 2010: 33).

4.1.3 Human trafficking as a human security issue

Discussions that are concerned with policies aimed at addressing human trafficking in Africa generally address them from the international 'common' perspective and view problems like human rights violations, as a consequence of migration and as an issue of organised crime (UNESCO, 2008: 10). This approach does offer valuable insights on and possible solutions for the matter at hand, but it lacks insight on the other core causes of human trafficking. Human trafficking is not only a serious violation of human rights but also a crime against humanity that poses recurrent threats to human security (Tsugami, 2012: 3). Human security and human rights are likewise deeply connected. Both are concerned with identifying a fundamental set of universal concerns that span poverty and violence. The concept of human security is related theoretically to the liberal school of thought in international relations and security studies which focuses on individuals as key subjects of security (Remacle, 2008: 5).

Trafficking in persons is a particularly atrocious criminal activity where criminals deliberately seek out the weakest and most defenceless members of a society in order to manipulate them for personal gain. They do this by frequently exploiting conditions of poverty or forced migration due to civil unrest or the collapse of economic systems (Clark, 2003: 247). When looking at human security, it is important to include trafficking in persons as a distinct manifestation of globalization. The growth of trafficking in humans has reached such a magnitude that it presents a significant human rights crisis in countries of origin, transit and destination (US State Department, 2009: 8). Certain people are specifically at risk for being exploited because of their specific vulnerabilities (Clark, 2003: 248). Economic, political and social factors have all contributed to the formation of an intensified status of

insecurity among certain segments of a population. Traffickers have also ensured greater success for themselves through identifying and targeting individuals who are vulnerable (Clark, 2003: 247).

Traditionally, security threats were assumed to come from other states. In the Post-Cold War era, it has become gradually evident that security comprises far more than matters of national defence. Non-military threats such as poverty, hunger, disease and the trafficking of persons equally threaten people across borders (Watawala, 2007: 3). Human trafficking therefore, affects human security in the way that it contributes to the spread of disease, demographic decline, humiliates women, deprives children of education and leads to the destruction of communities (Tsugami, 2012: 3). Security threats have not been limited to a national level but rather spread across international levels which is visible in the globalization process as well (Tsugami, 2012: 5). While human security focuses on the provision of basic material needs and realization of human dignity, its focal point is also on emancipation from oppressive power structures. It is not only about protecting people from violent threats but also empowering them to cope with situations such as meeting basic needs like food, shelter, healthcare and education (Uddin, 2014: 20).

A human security framework is one where states are expected to preserve both the security of their domestic borders as well as the security of the persons living inside these borders (Tadjbakhsh, 2005: 5). It is the responsibility of the states to protect their citizens from any harm and conflict whether it be internal or external. Citizens are entitled to the enjoyment of a wide range of rights and be able to live their lives with a sense of dignity and absence of fear, as such states have an obligation to ensure that citizens enjoy this (Tadjbakhsh, 2005: 5). A human security framework will therefore provide the basis for the specific policy and institutional changes that are necessary to protect vulnerable populations from the risk of being trafficked in their countries of origin as well as in countries of transit and destination (Clark, 2003: 248). Human security is a dynamic and practical policy framework for addressing widespread and cross-cutting threats facing governments and people. This perspective also focuses attention on threats that are not captured by the poverty agenda of the conflict agenda such as global crime and in this instance human trafficking. In its most basic form, human security represents freedom from fear and freedom from want. This term is people-centred and not threat centred (UNESCO, 2008: 3). It therefore consists of physical safety, economic well-being, social inclusion and the full exercise of human rights.

Human security is a term characterised by the following: it is universally applicable, its components are interdependent, it emphasizes prevention and it is people centred (UNDP, 2009:7). The focus is on the security of the individual and the community, not the state and its territory. Human security approaches still regard states as playing a fundamental part in securing the safety of citizens, but also assert that non-state actors play equally important roles in securing individuals (Koser, 2005: 21). The discourse that arises from this approach is primarily concerned with human-induced problems such as migration, widening economic inequality and security concerns affecting individuals and communities like trafficking. Human security thus views the individual not only as an object of security, but also as a subject of security. If empowered to act, individuals can provide for their own security (Potgieter, 2013: 3). Human security thus differs from other perspectives through its focus on the downside risks that can threaten the well-being of all people, both affluent and poor. This conceptual framework also offers a more complete set of criteria for assessing the impact of globalization on human well-being, encompassing as it does socio-economic aspects and personal safety from the consequences of violent conflicts. These aspects are essential for people to enjoy human security (Fukuda-Parr, 2003: 167).

By knowing that threats to human security differ significantly across and within countries, and at different points in time, the application of human security calls for an assessment of human insecurities that is comprehensive, context specific and preventive (UNGA, 2013: 3). Such an approach helps focus attention on current and emerging threats to the security and well-being of individuals and communities. By placing people and the conditions in which they live at the centre of analysis, the human security concept focuses not only the physical safety of the affected individuals, groups and communities but also addresses the root causes behind human trafficking (Uddin, 2014: 20).

The concept that is key to this framework is human security. This refers to the protection of fundamental freedoms that are essential in life. It means protecting people from critical and pervasive threats and situations by creating political, social, environmental, economic, military and cultural systems that together give people the building blocks for survival, livelihood and dignity (Tadjbakhsh, 2005: 10). The advancement of human security gives rise to more immediate and tangible results that comprehensively address the root causes behind the threats. It identifies priorities based on the actual needs, vulnerabilities and capacities of Governments and people. These elements combined help to strengthen actions taken by Governments and other actors in support of human security.

Human security is concerned with human development and human rights for the protection of the vital core of human life. While a concept like human rights focuses on absolute levels of deprivation, human security focuses on the risks of sudden change for the worse (Fukuda-Parr, 2003: 170). Risks of sudden change for the worse, either as a result of financial market contagion or the spread of disease is aggravated in the age of globalization. Security threats not only affects the poor but also the affluent (Fukuda-Parr, 2003: 171).

Human trafficking has been seen by states as mainly a problem of state security and therefore states try to securitize their borders through border enforcement to prevent irregular migration including the trafficking of persons. In the process of securitization if state security is prioritized above that of individuals their security is at stake (Uddin, 2014: 20). Uddin argues that destination countries treat human trafficking primarily as a security threat to their borders.

CHAPTER FIVE: HUMAN TRAFFICKING IN THE CONTEXT OF GLOBALIZATION

5.1 Introduction

Although human trafficking has a long history, the widening inequality at the global level which encourages millions of disadvantaged people to migrate and the advances of transportation technology have extended human trafficking to an unprecedented scale. In addition to factors such as poverty, gender inequality, conflicts and unemployment, globalization and its related end products such as technology, economic liberalization and privatization have aided in increasing and facilitating the growth of trafficking in persons. This research will look at the relationship between globalization and conditions of global labour. It will examine the linkage between conditions of global labour and human trafficking of women, children and men as extreme forms of commodification and exploitation of human labour including sexual labour.

5.1.1 Globalization and the illicit market for human trafficking

Globalization concerns the founding of a series of worldwide exchanges in labour, trade, technology and capital between countries. As the world shrinks and evolves towards becoming a sort of global community, the transfer of people both voluntary and coerced is becoming more prevalent (Peeperang et al, 2009: 124). The existence of illicit markets have shown that globalization is a double edged sword because while open markets may increase global efficiency they can also be a major driving force that empowers criminal syndicates. Scholars such as Trainor and Belser (2006: 7) argue that the degree of openness of a country experiences affects the extent to which its economy is integrated in the global economy and the extent to which its borders are permeable. It is in large part due to globalization that human trafficking has become such a lucrative and fast growing criminal activity (Brewer, 2011: 46). Human trafficking is perceived as one example that demonstrates the globalisation of crime. Social, cultural and technological conditions of globalization have resulted in the increase of global networks. The intensity of worldwide interconnectedness, the velocity of global flows of people and ideas has arguably created new and favourable contexts for crime (Lee, 2010: 23).

The emergence of globalization has spread practices, values, technology and several products all over the globe. The present perception holds that different forms of slavery and human

trafficking are not just outcomes of globalization; they are a component of the globalization process itself that involves a functional integration of disseminated economic activities (Brewer, 2011: 46). Globalization as a process is particularly pronounced and entrenched in the world economy and it has therefore enabled the trafficking of human beings to thrive. Polakoff (2007) states that globalization has resulted in a form of global apartheid and a subsequent emergence of a new 'fourth world' occupied by millions of homeless, incarcerated, impoverished and socially excluded populace (262). It is from this group of 'fourth world' that human trafficking victims are ever more drawn (ibid). From this point of view, globalization is seen as a catalyst with regards to the trafficking of vulnerable victims internationally (Wietbrock, 2011: 10).

As a result of globalization and regional integration, human trafficking has become the fastest growing and third most widespread criminal enterprise in the world after drugs and weapons trafficking (Nagle, 2008: 131). The rush to incorporate trading blocs and to compete in the international market place has led corrupt entrepreneurs and international criminal organizations to create a supply chain of men, women and children for exploitation (Rahman, 2011: 59). According to Silberberg (2010) the implementation of policies such as deregulation and privatization has been driving forces in the rise of illicit activities (391). Regional integration based on free trade agreements has weakened border control to the extent victims of trafficking can be easily smuggled across borders with little detection (Polakoff, 2007: 261). The comparative advantage in goods and cheap labour in developing states has played a significant role in objectifying and exploiting humans for economic ends. High demands for cheap labour by multinational corporations in developed countries have resulted in the trafficking and exploitation of desperate workers who are then subjected to slave like conditions. To the traffickers, people are highly profitable, low risk, expendable, reusable and resalable commodities (Liu, 2010: 5).

On one hand, globalization contributes to exacerbated conditions of poverty which leaves more people vulnerable to contemporary forms of slavery like forced labour and child labour. On the other hand, globalization contributes to more effective campaigns to raise awareness and to create better international legal mechanisms to combat contemporary slavery (Van Der Anker, 2004: 20). While it appears that globalization does affect new forms of slavery negatively, not all forms of contemporary slavery are affected in the same way as some

depend more on local practices and traditions than on the changing international economy (2004: 21).

In its present form and shape, globalization is the outcome of a political project aiming at universalizing global capitalism and neo-liberal principles. One factor that has had an effect on trafficking is the implementation of structural adjustment programmes by the International Monetary Fund and the World Bank in developing countries. Economic globalization in the form of a sudden change of development strategy that results in full incorporation into the world market does contribute to trafficking by increasing poverty and vulnerability for specific groups of people (Van Der Anker, 2004: 21). Components of globalization that have contributed to human trafficking are decreased border controls and cheaper international travel; increased information or misinformation about life in developing or developed countries being affluent that is through globalization of the media; an increased demand for the cheapest products and a lack of regulation so that flow of goods are determined by worldwide competition and labour is forced to be sold at the lowest price and under worsening conditions (Van Der Anker, 2004: 23).

A report by the ILO states that at least 12.3 million people globally are engaged in different forms slavery and that 2.5 million people were in forced labour as a result of cross-border trafficking, with 1.2 million of them in the sex trade (Khan, 2005: 2). Estimates by this report also show that profits from trafficked forced labour totalled \$32 billion a year, or \$13 000 per trafficked labourer (Khan, 2005: 2). Forced labour has shown that globalization is a double edged sword as it denies people their basic rights and dignity. The economic gap between rich and poor nations has a number of pull or push effects that breed streams of migration. Migrants who cross borders to take up employment, be it in the formal or informal sectors, do so as undocumented, or illicit migrants. For most illegal migrants, migration is nothing less than a survival plan (Jammal, 2011: 8). However, the price of migration is often subordination and exploitation by criminal syndicates.

Most of the times migrants are illegally present in a country, so this generally increases their vulnerability to trafficking. This illegality deters them from seeking legal protection in foreign countries because they are prone to be deported if they come to the attention of the national authorities (Jammal, 2011: 10). Fear by illegal migrants that any contact with the police, to report abusive working conditions or even taking part in civil formalities such as

property ownership, marriage or registration of the birth of a child could result in deportation also prohibits them from reporting abusive cases.

Globalization has perpetuated conditions of exploitation, especially for women where their lack of rights and freedoms is exacerbated by certain globalizing trends that have produced an environment conducive to trafficking (Jammal, 2011: 2). There has been various research that questions whether economic globalization improves women's economic rights in the form of employment and wages. Those who advocate for globalization argue that trade and foreign direct investment (FDI) positively affect women's employment opportunities in developing countries (Cho, 2013: 684). However, it is worth noting that the increase in female labour force does not always lead to economic empowerment as long as this demand for female labour is based on women accepting poor wages and exploitative working conditions. Furthermore, the shift to export oriented approaches, where the production of essential goods is targeted for external trade rather than countries' own internal markets, the entry of multinational corporations (MNCs) into developing countries, structural adjustment policies (SAPs) mandated by the IMF and the World Bank as a condition for loans, requiring governments to open their markets to further financial and trade flows and to undertake austerity measures also fall heavily on the poor, particularly women (Jammal, 2011: 30). These global restructuring trends can have harsh effects on women in developing countries by fostering exploitative conditions for women. Policies that require governments to cut programs and reduce expenditures on social services, cause women to take additional income-earning activities in order to maintain their families' standards of living, as government decrease benefits in housing, health care, education and food. In these circumstances women are pushed to work in unregulated, informal sectors such as prostitution rendering them more vulnerable to trafficking (Chuang, 2006: 143).

It is noteworthy that various aspects of people's rights have been affected by different dimensions of globalization. Economic globalization by enhancing trade and foreign direct investment is not quite adequate for the improvement of people's rights, in particular those of women and individuals that are underprivileged in societies.

5.2 Effects of human trafficking

The trafficking of persons is a phenomenon that affects men, women and children in more than 130 countries of the world (UNODC, 2008: 81). Trafficking is a crime committed against individuals, and the consequences are most directly felt by trafficked persons. Human

trafficking, no doubt can be quite devastating to the socio-economic development of any country where the ill-reputed scourge rages. Trafficking of persons is however more rampant in the poor nations of Africa where most of the victims emanate from (UNESCO, 2006: 33). It is noted that trafficking has broad economic, social and cultural consequences. Human trafficking is a criminal act, therefore it violates the rule of law and, threatens national jurisdictions and international law (UNODC, 2008: 103). Furthermore, human trafficking redirects the benefits of migration from migrants, their families, community and government or other possible authentic employers to human traffickers and their counterparts. Measuring the impact of trafficking accurately is quite difficult because of its clandestine nature and hidden economies in which trafficked people operate (Aronowitz, 2009: 15). Lack of legislation and inadequate national definitions of the phenomenon; lack of political will; inexperience in dealing with the issue; and corruption have made it difficult to determine the scale and impact of trafficking (Aronowitz, 2009: 20). Measuring the scope of human trafficking is quite difficult as it is with assessing the impacts of this menace is also problematic. The dynamics of trade in human beings are regularly developing and an array of national perspectives are in place. Because trafficking is a covert activity, the consequences that come with the crime are also concealed and suitable indicators have yet to be developed that will let the anti-trafficking community to effectively measure the impact of this crime. It is however clear that everywhere human trafficking occurs, the consequences are devastating for victims and the community at large. As society suffers, ideologies of democratic freedom, principles of democratic society, rule of law and human rights also suffer (Aronowitz, 2009: 25). This section detects some of the most prominent social, political and economic impacts of trafficking in persons.

5.2.1 Social impacts of human trafficking

Individuals that have experienced human trafficking are the ones that have to cope with the majority of the social impacts. As a result of the violence, abuse and torture associated with human trafficking, the health and well-being of the victims is often affected. The consequences of abuse strike particularly hard at the poor, those without power, the disabled and those that are socially secluded. The process of trafficking can also involve physical, sexual and psychological abuse; involuntary use of substances; manipulation; economic exploitation and abusive working and living conditions (UNODC, 2008: 9). According to reports by the National Human Rights Commission in 2003, of the 100 individuals trafficked, 39 died after 3 years of exploitation while those who returned home were extremely ill,

emotionally distressed and incapable of seeing, hearing or walking properly (UNODC, 2008: 82).

Most is known about the impact of trafficking upon women and children for purposes of sexual exploitation in terms of global documentation. A majority of women after being freed from the claws of trafficking experience physical symptoms like headaches, fatigue, weight loss, pelvic and vaginal pain as well as dental and eye, ear and skin problems. These women consistently report vaginal discharge and gynaecological infections which remained untreated (Danailova-Trainor & Lackzo, 2010: 13). About 42 million individuals globally are infected with HIV/AIDS and sex trafficking plays a huge role in increasing the epidemic (US State Department, 2008: 35). Women who prostitute themselves and those who have been trafficked for prostitution have a high incidence of HIV worldwide.

Increased possibility of HIV infection is frequently cited as a risk among women trafficked for the purposes of sexual exploitation, due to a lack of bargaining power regarding the use of condoms and other potentially dangerous sexual practices (US State Department, 2008: 34). Unlike those individuals that are free to exercise their rights, women who fall victim of trafficking are less likely to receive medical or educational services that are made available to non-trafficked women working in prostitution as they are always under surveillance and their movement is restricted. Prevailing popular misconceptions that engaging in sexual intercourse with a virgin will cure HIV/AIDS has also increased vulnerability of children to infection (Zimmerman et al, 2006: 15). Persistent anxiety, insecurity, fear, physical pain and injury will have considerable effects on the mental health and welfare of trafficked victims. The symptoms of psychological trauma reported by trafficked persons include post-traumatic stress disorder, anxiety, depression, alienation and disorientation. Victims of trafficking may suffer from suicidal thoughts; have cognitive impairment and memory loss (Oram et al, 2011: 7). Victims that are exposed to extreme forms of abuse have also been reported to experience difficulty concentrating and show aggression and anger.

The scale and extent of human trafficking also deals a particular blow to equality between genders and women's rights, presents a strain on law enforcement and disturbs security and health systems (M'Cormack, 2011: 12). People that are trafficked are not only sexually abused, they are also psychologically abused therefore, and the sex trade can lead to Post Traumatic Stress Disorder (Zimmerman et al, 2006: 16). It should thus be noted that not all wounds of human trafficking are visible to the eye.

Many Southern African economies are dependent on the extractive industries. These industries rely heavily on low-cost labour, often supplied by migrants. It has therefore been noted that in Southern Africa, the exploitation of minerals and of large reserves of oil and natural gas relies on unskilled or semi-skilled labour (Steele, 2013: 672). Many mine workers are African migrants from surrounding states. Substantial health problems and risks associated with working in and living around the extractive industries are certainly not newly observed (Steele, 2013: 673). The colonial heritage of mines, which often left black workers in substandard conditions due to asbestos and silica dust inhalation and tuberculosis exposure have not improved much. These health issues impacts still very much affect victims that are trafficked for labour in conditions that are hazardous to their health.

Trafficked persons suffer high levels of mental health problems as a result of the violent and inhumane treatment they experience. Beyond mental scars, survivors often suffer physically with bruising, cardiovascular or respiratory problems and even cancers. This is as a result of poorly regulated work environments, overcrowded facilities and living conditions expose trafficked workers to toxic substances (Zimmerman et al, 2006: 12). Because exploited and trafficked workers are often not afforded care and are sometimes treated as disposable, such infections and conditions are often left untreated or rather poorly treated.

In the globalizing world, trafficking in human beings, especially women and children has increased in both magnitude and in reach, becoming a major human rights concern. The impact of human trafficking falls excessively on women and children because of their subordinate position which makes them more vulnerable. This vulnerability exists because women and children are more likely illiterate and uninformed and they have been conditioned by gender relations in their cultures to submissively accept whatever conditions presented to them (Nadaswaran, 2011: 3). Women and girls may be pushed toward trafficking as an alternative to the labour, danger and exploitation inherent in the traditional lot of women in poor communities especially in rural areas (Heyzer, 2002: 5). Women are often drawn in the webs of human trafficking as they may literally be running away from the prospects of forced marriage, the labour associated with traditional roles expected of them or other kinds of low paid and unskilled jobs available locally (Heyzer, 2002: 5). This billion dollar industry is a continuous expression of uneven power relations that reinforce women's secondary position in communities (M'Cormack, 2011: 10).

To this day, the international human rights framework has not fully caught up with globalization. Therefore, while individuals are deemed to have an inherent human right to cross-border mobility as well as a basic human right to decent work or source of livelihood, they remain separated in space (Heyzer, 2002: 10). It goes without say that human trafficking strips the victims of their human rights. Victims of trafficking are subject to all sorts of human rights violations, not least of all the rights to life, liberty and freedom.

5.2.2 Political implications of trafficking

In addition to the tragic impact on individuals, human trafficking has now reached such a scale that it has begun to sway domestic and foreign policies of many of the countries where the problem has become mainly noted (USCCR, 2011: 5). One vital area of present debates is on migration policy because trafficking involves the movement of people across international borders. So, countries considered it their duty to implement migration policies that tighten borders and control movement of people. This research will thus outline major concerns in this area.

Deficiency in economic opportunities at home has motivated unprecedented numbers of people leave their homes and families every year. Most of these individuals migrate legally. The numbers of people willing to seek better opportunities elsewhere is so great and the restrictions on regular or legal migration usually so stringent, that many migrants become immersed into the illegal world of people smuggling (UNODC, 2008: 10). Many cases of ongoing exploitation have been due to the smuggling of persons. It is in this perspective that trafficking in persons has helped to form migration policies in countries of origin and destination.

When trafficking is defined in the framework of irregular migration, the crime control focal point becomes the illegal entrance or stay in a country. Such focus raises the danger that the human rights abuses and exploitation that are the features of trafficking may not be addressed. Even when government measures largely target the recruiters and exploiters, victims of trafficking are at risk of being considered accomplices in illegal migration rather than as victims of crime (UNODC, 2008: 10). Because of the ongoing exploitation of victims in human trafficking, this illegal activity is potentially more beneficial than smuggling, so states of destination may be unconsciously create a profitable market for traffickers. It has been observed that strict enforcement of immigration laws also breeds more sophisticated forms of criminality used in human trafficking to overcome the barriers that are needed to

make profit (USCCR, 2011: 3). This may henceforth enhance the violence and abuse related with the practice.

5.2.3 Economic impacts of human trafficking

The cost of crime is essentially a measure of the impact of that crime on society. The costs of trafficking consist of the value of all resources committed to its prevention, the treatment and support of victims and the apprehension and prosecution of offenders. For instance, as an element of organized crime, there are costs to the police, the services intended for prosecution, criminal courts and costs of the prison and probation services (US Department of State, 2011: 10). Ongoing care and support of victims, costs related with immigration and customs processes, repatriation, direct government funding or funding grants to non-governmental organizations to assist victims, along with other health, welfare housing and associated costs, will also have an impact. For some source countries especially, this is a significant economic burden.

Human trafficking represents lost opportunities domestically, therefore trafficking of persons has resulted in an irretrievable loss of human resources, future productivity and reductions in revenue (Wheaton et al, 2009: 125). Loss of human capital is followed by the loss in remittance as the victims generate the profit that is either transferred abroad or used by traffickers to fuel their criminal activities. Human trafficking produces no tax revenues and may even lead to a net revenue loss as a result of tax evasion and money laundering (Wheaton et al, 2009: 126). Accumulation of human capital will be lower and there will also be a lower rate of participation in the labour market. When victims are repatriated to their country of origin, the burden of assistance and rehabilitation is shifted to the source country, where resources are often already limited. In addition, the costs of coercion and exploitation cannot be measured but it is clear that the worst forms of child labour, for instance, represents a loss in productive capacity of a generation of individuals who would have otherwise gained from increased education (US State Department, 2011: 15). People lured into trafficking could be the possible future of the country. Their work, knowledge and experience could have been a contribution to a common good. Instead, after being trafficked, they live in a situation of exploitation enriching traffickers and other exploiters.

In 2005, ILO estimated that there were 12.3 million people in forced labour worldwide, of which about 2.4 million had been trafficked both internally and across borders (ILO, 2008: 10). The profits of human trafficking have been very significant because of the huge numbers

of people being trafficked across the globe. With human trafficking generating large profits, traffickers are determined to protect their profits at all costs. Unlike the human smuggling which produces a one-time profit, trafficking involves the long term exploitation of individuals, which translates into constant income. Recent ILO estimates propose that the global profits of trafficking in human beings are around \$31.6 billion annually (ILO, 2008: 12). Trafficking in persons has therefore assured criminal networks a secure and regular source of income with little risk, enabling them to form additional rings for other profitable and treacherous illegal activities. These profits have funded the growth of international, regional and local criminal groups, contributed to corruption and undermined the rule of law.

Possibly the most evident impact of the profits of organized crime related to human trafficking in destination countries is trafficking for sexual exploitation within the commercial sex industry. National organized criminal groups that are well established often engaged in the sex trade and cheap labour markets with foreign counterparts (UNODC, 2008: 70). Prostituted women are prominently used as drug smugglers and dealers. These crimes, together with the movements of illicit profits made by the sex industry, estimated to be between \$7 and \$12 billion annually, have a considerable impact on economic stability and security, human rights and law enforcement and crime control (MCHT, 2013: 16).

Efficient and fair application of the rule of law is crucial for sustaining a democratic society. Corruption and other secondary crimes related to trafficking activities undermine government, reduce liability and representation in policymaking, suspend the rule of law and result in uneven provision of services (Abdulkadir, 2009: 210). Human trafficking and the spread of other organized crimes, has become the most important mechanisms for unlawful redistribution of national wealth in Southern Africa. Organized crime has undermined law enforcement efforts, slowed economic growth, raised the cost of regional trade and disrupted the transition of economies. It has been argued that profits from organized crime, in some parts of the globe have been used as financial assistance for political parties and election campaigns (Abdulkadir, 2009: 213). This has a negative impact on the public's faith in democratic and market economy institutions and breeds disillusionment with reforms in general.

If combating human trafficking could be successful, funds presently used to fight the crime of trafficking may be directed towards different development initiatives.

5.3 Conclusion

As an intricate materialization of the global economy, organized crime and human rights violations, human trafficking causes severe hardship to millions of people globally who have become victims of human trafficking. In those countries where trafficking is allowed, there has been a great impact on financial markets, the economies and social structures. As a major part of organized crime with its huge financial power, trafficking in persons has a multifaceted and interlocking negative impact across human, social, political and economic arenas.

The destabilizing and dangerous costs range from readily recognized violence, direct economic loss and major migration concerns to the less easily quantified, equally serious, but more complex effects of risks and harms to environmental, social, health and safety and violations of human rights. Human trafficking directly challenges the improvement of stable, more flourishing societies and legal economies and works strongly against the reconciliation of political interests with humanitarian and human rights obligations. The range of trafficking related crimes and their broad and interrelated impacts have produced a growing threat to global peace, security and stability and have shaped political, social and economic responses at both national and international levels.

CHAPTER SIX: INTERNATIONAL AND REGIONAL LEGISLATIVE FRAMEWORKS USED TO MITIGATE HUMAN TRAFFICKING

6.1 Introduction

No single country in the world is immune from human trafficking as a cross-border phenomenon. Although slavery is illegal in all countries, certain cultures have condoned and normalized the trafficking of persons. In many countries, the government has also played a role in the support of human trafficking as it is very profitable (UNODC, 2011: 12). This chapter will provide an overview of the international and regional legislative instruments relating to the trafficking of persons that are applicable to Africa. The chapter will show that an internationally coordinated approach, through an effective international legal framework is required to address the catalysts, processes and consequences of trafficking in persons. As a distinctly transnational issue, international law plays a fundamental role in shaping conceptualisations of and responses to the trafficking in persons.

6.2 Trafficking and international law

As a modern manifestation of slavery, human trafficking is often regarded a slavery-like practice. Trafficking in persons has increasingly caught the world's attention over the past few years as a significant and growing human rights problem. Yet it has proved particularly difficult to develop the necessary international legal standards and definitions to draw generally accepted distinctions between trafficking, smuggling and migration and the accompanying coercive and voluntary elements of these concepts (Van Der Anker, 2004: 55). A lot of African countries do not possess explicit legislation on anti-trafficking in their national laws. However, as the global acknowledgment of trafficking increases, particularly in cases associated with women and children, international treaties have played a significant role in combating trafficking in Africa.

The International Agreement for the Suppression of the White Slave Traffic, was the very first statute ratified in 1904 in the wake of the moral panic surrounding the white slave trade (Bruckert, 2002: 21). This was followed by the adoption of three other international agreements consolidated under the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, adopted in 1949 by the UN.

At the beginning of the 20th century, concerns over white slave trade encouraged the adoption of a chain of international agreements. The International Agreement for Suppression of White Slave Traffic of 1904 was first among these laws, which was directed at addressing

the deceitful recruitment of women for prostitution in other countries (Holman, 2009: 105). The following reputable and recent instruments of international law have set course for how to define, prevent and prosecute human trafficking, these include the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000); the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) and the United Nations Convention against Transnational Organized Crime (2000). In support of enforcing these instruments, United Nations Office on Drugs and Crime (UNODC), established the United Nations Global Initiative to Fight Human Trafficking in March 2007 (UNODC, 2004: 6).

6.2.1 United Nations Convention against Transnational Organised Crime 2000

The UN Convention against Transnational Organised Crime (UNTOC) gives a global approach to the crisis of international organized crime. The Convention focuses on offences that assist with profit-making activities of structured criminal groups. The UNTOC applies to the prevention, investigation and prosecution of the four offences created in terms of the Convention itself. These are: partaking in an organised criminal group, laundering of crime proceeds, corruption and impediment of justice (UNODC, 2004: 7). The UNTOC also applies to other serious offences according to Article 2 and offences established in terms of the supplementary Protocols, which target organised criminal activity that are deemed to require specialized measures:

- Protocol against the Smuggling of Migrants by Land, Sea and Air,
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The UNTOC and the Trafficking Protocol establish minimum standards, State Parties are bound to adhere to this threshold but may adopt stricter measures.

6.2.1.1 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

The strong call for the espousal of an internationally accepted definition of human trafficking in the late 1990s sought to merge the diverse ways of understanding it. Ever since the acceptance of a definition of trafficking from the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention Against Transnational Organised Crime in 2000, the debate on human trafficking has been made easier, but it is still not without argument (Troung and

Angeles, 2005: 17). The purpose behind the definition on trafficking in persons is to assist convergence in national approaches with regard to the establishment of domestic criminal offences that would sustain efficient international cooperation in investigating and prosecuting cases of trafficking in persons (Troung and Angeles, 2005: 18).

The Protocol provides a universally compulsory definition and targets at eliminating differences between national legal systems and to set standards for national law to address organised crime. This Protocol states that effective action to inhibit and combat trafficking in persons, particularly of women and children, entails a comprehensive international approach in the countries of origin, transit and destination. This embraces measures to avert such trafficking, to penalize the traffickers and to safeguard the victims of trafficking. This includes the protection of internationally recognized human rights (Brusca, 2011: 9).

Obligatory provisions in this protocol regarding victims are an added advantage. For instance, Article 9 addresses essential prevention measures, distinctively citing mass media information campaigns, close cooperation with non-governmental organizations (NGOs) and the construction of social and economic incentives (Hyland, 2001: 31). Under this protocol, State Parties are required to include provisions within their domestic legal frameworks about victim compensation and information on legal proceedings. State parties should also facilitate the repatriation of citizens or nationals with due regard for the safety of the victim (Hyland, 2001: 31).

There are however possible limitations to this protocol. Although there were discussions about creating mandatory protection and assistance provisions, concerns over the cost such obligatory requirements would impose were raised. A rational interpretation of the language places the burden on developed countries to give assistance measures, whilst developing countries are required to provide support to the extent feasible (Hyland, 2001: 31). In these instances victims in developing countries get little or no aid which therefore they are brought back into the trafficking cycle. There are various additional shortcomings that the protocol contains. The protocol fails to provide explicit protection from prosecution for the acts victims are forced to perform. So, a victim could be prosecuted for a crime they were forced into committing. This is as a result of lack of enquiry by authorities to clarify a victim's situation which can be proof of duress.

Furthermore, because of the discretion in victim assistance, those victims that stay in a country to be witnesses for the prosecution could be detained for months without services.

Therefore, a lot of victims may be reluctant to offer statements without these provisions which is a disadvantage for the prosecutor and also undermines the law enforcement objectives of the Protocol (Brusca, 2011: 15). It is not pointed out that re-integration or the provision of services upon repatriation will be given to victims as a means of ensuring that they are able to re-enter society. The Protocol only mentions cooperation between State Parties to ensure safe repatriation of victims to their countries of origin. So, victims are brought back into the same circumstances from which they were trafficked and are at risk of falling prey to criminal networks like before.

6.2.1.2 Protocol against the Smuggling of Migrants by Land, Sea and Air

The Protocol against the Smuggling of Migrants by Land, Sea and Air deals with the increasing problem of organized criminal syndicates who smuggle migrants, often at high risk for the migrants and at great profit for the offenders. This Protocol supplements the Organized Crime Convention. This piece of legislation provides a globally standard meaning of human smuggling which focuses on procuring the illegal entry of a foreign national into the territory of a State Party in exchange for financial or other material gain (UNODC, 2000: 3). Under this Protocol, the fabrication of fake travel or identity documents and the procuring, providing and possessing of such a document when done with the intention of enabling the smuggling of migrants is a criminal offence (UNHCR, 2008: 29). The Protocol declares that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach which includes cooperation, exchanging of information and other suitable measures, including socio-economic measures, at the national, regional and international levels (UNODC, 2004: 1). It is because of this that the Protocol requires State Parties to institute criminal liability for human smuggling and to adopt other cooperative and preventative measures to deter it.

The purpose of this Protocol is to thwart and combat the smuggling of migrants, as well as to advance cooperation among State Parties to that effect, while also protecting the rights of smuggled migrants and preventing those worst forms of exploitation which often characteristic of the smuggling procedure (UNHCR, 2008: 29). The victims of human smuggling, however are overtly excluded from criminal liability under the Protocol and are instead entitled to protection and assistance measures.

The weakness that this Protocol might have is that it does not have provisions for intrastate trafficking (trafficking within borders).

6.3.1 International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

Issues of migration such as irregular migration which involves undocumented entry and stay in a foreign country are often linked to human trafficking. In accordance with this, treaties pertaining to migration may be used to protect trafficked persons in applicable circumstances (Kruger, 2010:227). About 200 million persons live or work in a foreign country (APF, 2012: 30). Because they are outside the legal protection of their home countries, migrants are often particularly vulnerable to abuse and exploitation. In recognition of this, The United Nations drafted and adopted the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (2003). The Migrant Workers' Convention is the most comprehensive international treaty in the field of migration and human rights. The Convention opens a new chapter in the history of shaping the rights of migrant workers and ensuring that those rights are respected and protected. This convention is an important step towards the establishment of an international legal framework for the protection of the human rights of all migrant workers and their families, in particular those populations vulnerable to exploitation and the violation of their human rights (APF, 2012: 26). The Convention seeks to draw the attention of the international community to the dehumanization of migrant workers and members of their families, many of whom being deprived of their basic human rights.

The Convention has failed to generate new rights. Instead, it emphasizes that migrant workers are entitled to the basic protections of international human rights law, in spite of their location or immigration status. The Convention identifies that documented migrants have the legality to claim more rights than undocumented migrants, but it stresses that undocumented migrants; which would include victims of trafficking must see their basic rights respected (UNHCR, 2008: 63).

It is important to note that the Convention provides significant rights to victims of international trafficking under the rubric of rights given to undocumented migrant workers (Kruger, 2010: 226). These rights include the right not to be subjected to torture or degrading treatment or punishment, the right not to be held in slavery or servitude and the right not to be subjected to forced labour (Kruger, 2010: 228). Unfortunately, the Convention has inadequate influence in international law and even less authority in the domestic laws of most destination countries that have not signed this Convention.

State Parties are have an obligation to detect and eliminate irregular migration in their territories, through the fight against deceptive information that incites people to migrate

irregularly and through sanctions against traffickers and employers of undocumented migrants.

6.3.2 The United Nations Convention on the Rights of the Child (CRC)

The CRC is the world's most universally accepted human rights instrument and has been ratified by many countries. A variety of provisions encapsulated in this Convention are related to child trafficking. The Convention provides a comprehensive regime for protecting the rights of children equally between the public and private sphere. Apart from emphasizing the 'best-interests-of-the-child principle', the Convention also enshrines basic human rights often violated in the trafficking of children like the right to life, liberty, education and health care (Kruger, 2010: 224). Therefore, in all circumstances where rights set out in the Convention are implicated, either public or private, the Convention requires State Parties to ensure the child's best interests are a main consideration. With regards to the trafficking of persons, the Convention states that "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale or traffic in children for any purpose or in any form" (Kruger, 2010: 223). Article 22 of the Convention also requires State Parties to take suitable measures to ensure child refugees receive appropriate protection and humanitarian assistance in the enjoyment of rights set out in this piece of law (UNHCR, 2008: 69).

Furthermore, the CRC affords children with protection from all sorts of threats including armed conflict, discrimination, torture or cruel and inhuman or degrading treatment (Convention on the Rights of the Child, <http://www.ohchr.org>). When national governments ratify this instrument they show commitment to protect and ensure children's rights and hold themselves accountable to fulfilling this commitment before the scrutiny of the international community.

The CRC, whilst recognising that not all work amounts to exploitation and children can perform work, also sets out in Article 32 (1) the type of work not allowed and should be prohibited. This is, work which is hazardous, interferes with the child's education or is harmful to the child's health or physical, mental, spiritual, moral or social development (Convention on the Rights of the Child, <http://www.ohchr.org>). Articles 34 and 36 further develop these safeguards by providing clearly for the protection of children from exploitation. Article 34 directs State Parties to embark on protecting children from all forms of sexual abuse (Gallinetti, 2008: 17).

Of further importance is the wide-ranging obligation to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, violence, abuse or exploitation while in the care of parents or guardians. With regard to trafficking of a child for the purpose of illegal adoptions or forced military service, the Convention contains relevant provisions which safeguards adoption and also protective measures for children involved in armed conflicts (Kruger, 2010: 225).

6.3.2.1 Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

This piece of law aims at reinforcing Articles 1,11,21,32,33,34,35 and 36 of the CRC and it also extends the methods that State Parties should assume in order to guarantee the protection of the child from sale, prostitution and pornography. The United Nations Children's Fund (UNICEF) estimates that 1 million children per year are trafficked into prostitution in Southeast Asia only and another 1 million are trafficked globally (Revaz, 2001:13). The production of child pornography on the internet contributes to the increase in illicit trafficking, as low-cost internet advertising of the commercial sex trade is an attraction for sex tourists and paedophiles (Revaz, 2001: 15). Children have happen to ideal targets for this type of commercial sexual exploitation. Groups with low social status like minorities, refugees, street children, poor children from broken homes are constantly the most vulnerable (Revaz, 2001: 15). This Protocol aims to address this growing problem of sex trafficking of children. While the Protocol deals more particularly with the reduction of child sexual exploitation, it must be borne in mind that this phenomenon is one of the principal drivers of child trafficking (Revaz, 2001: 12). The Protocol prohibits the selling of children, prostitution of children and child pornography and requires that a state's criminal or penal law control certain prohibited acts; sets forth various bases for asserting jurisdiction and extradition and provides for prosecution of children victimized by the prohibited practices (Revaz, 2001:13).

By legislating for the prevention of sexual exploitation it stands to reason that one would see an instantaneous decrease in the trafficking of children for this purpose.

6.3.2.2 Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000)

The Coalition to Stop the use of Child Soldiers reports that about 300 000 children in over 40 countries worldwide are engaged in military conflict, while another 500 000 are recruited into paramilitary organizations, guerrilla groups and civil militias in more than 85 countries

(Revaz, 2001:15). The children that are most vulnerable to manipulation are living in conflict zones, poor, detached from their families, and exiled from their homes or with limited access to education. This Protocol addresses the practice of recruiting and using children as soldiers in armed conflicts. It bans the use of children under the age of 18 in armed conflicts, while permitting the voluntary recruitment of 16 and 17 year olds into armed forces (Revaz, 2001:13).

6.4 African Regional Instruments

Apart from the international instruments, a range of regional instruments relevant to human trafficking have been developed in the various regional human rights systems. Since the geographical focus of this study is human trafficking in Southern Africa, this section covers only African regional instruments on human trafficking.

Human trafficking is a crime that frequently crosses borders and jurisdictions therefore, bilateral and multilateral cooperation is key to combating and eliminating human trafficking and the crimes associated with it. There has been increased state cooperation and agreements at the regional and sub-regional levels with platforms such as the Economic Community of West African States (ECOWAS) Joint Plan of Action Trafficking in Persons, and Especially Women and Children in West and Central Africa. For this reason, regional human rights instruments have attained increased importance, especially where the foundational documents are complemented by instruments specially aimed at addressing human trafficking. From the viewpoint of victims seeking redress, the implementation mechanisms for these regional mechanisms may be more available than those operating at international level.

6.4.1 African Human Rights System

The expression 'African human rights system' refers to the regional system norms and institutions for enforcing human and people's rights in Africa (Odinkalu, 2001: 226). The African human rights system has its basis on a number of treaties: The African Charter on Human and People's Rights (1981), the African Charter on the Rights and Welfare of the Child (1990) and the Protocol on the African Charter on the Rights of Women in Africa (2005). For African states, the rhetoric of human rights had a special significance for several reasons. Firstly, post-colonial African states were born out of the anti-colonial human rights struggle, a fight for political and economic self-determination. Secondly, black-ruled African states deployed human rights arguments to demonize and delegitimize the colonial and minority white-ruled states of Mozambique, Namibia, Zimbabwe and apartheid South Africa

(Mutua, 1998: 2). Finally, the mayhem of some of the most violent dictatorships the African continent has ever known heightened the exigency for a regional human rights system.

6.4.1.1 African Charter on Human Rights and People's Rights (1981)

At present, the African regional human rights system is built on the African Charter on Human and Peoples' Rights and functions within the institutional structure of the African Union (AU). The Africa charter departs from other regional human rights instruments by taking into account problems unique to Africa while retaining Western conceptions of human rights as embodied in the Universal Declaration of Human Rights. Apart from reinforcement of universal human rights instruments, the African Charter is the primary treaty providing a normative framework for human rights in the Africa (Udombana, 2000: 47). The Charter reaffirms the solemn oath made by Member States of the OAU to harmonize their actions in order to eradicate all forms of colonialism from Africa so as to attain a better life for their people.

The African Charter on Human and People's Rights is the foundational document in the African human rights system. A number of rights set out in the Charter are important in the context of human trafficking. For example, Article 4 states that all persons are entitled to respect for their life and the integrity of their person (Udombana, 2000: 46). The Charter provides that every person has the right to human dignity and prohibits all forms of exploitation and humiliation of persons, mainly slavery; slave trading; torture; cruel, inhuman or degrading punishment and treatment (Kruger, 2010: 273). An individual's right to liberty and security is guaranteed in this Charter. In terms of Article 18 (3), States are required to ensure the elimination of discrimination against women and also to ensure the protection of the rights of women and children as set in international declarations and conventions.

The Charter is intended to reflect the history, values, traditions and development of Africa. The African Charter combines African ideals with international norms by not only promoting internationally recognized individual rights, but also by proclaiming communal rights and individual duties (Kruger, 2010: 273). Although the Charter does not have a specific provision on human trafficking, it is aligned with international human rights instruments by underpinning the mandatory protection of human rights (Kruger, 2010: 273). Accordingly, the obligatory protection of human rights must also ground domestic anti-trafficking responses in Africa, primarily by serving trafficked victims, but also indirectly contributing to the successful prosecution of offenders.

The Charter distinguishes itself from its regional counterparts by enshrining individuals' duties to society in addition to their rights. These duties are owed to the family, society and the state and even to the international community. These include individual duties to respect others with no discrimination, to build up the family, to serve the nation and to uphold African Unity (Udombana, 2000: 61).

6.4.1.2 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

The Protocol to the Africa Charter on Human and People's Rights on the Rights of Women in Africa was adopted in 2003 to expand on the rights set out in the Charter, with particular reference to Article 18 (3). The Protocol attempts to invigorate the African Charter's commitment to women's equality, by adding rights that were omitted and clarifying government's obligations. Acknowledged as the core regional human rights treaty on the rights of women in Africa, the Protocol reflects many of the international gains made in the field of women's rights (Desire, 2010: 25). This Protocol provides for four extensive categories of rights: civil and political rights; economic, social and cultural rights; the rights to development and peace and reproductive and sexual rights. It protects the civil and political rights of women, their economic, social and cultural rights and also collective rights (Desire, 2010: 25).

The content of the Protocol is particularly unique as an African women's rights instrument because it makes specific mention of harmful cultural practices linked to marriage, sexuality and property that infringe on women's rights (Viljeon, 2009: 21). The Protocol thus clarifies that positive African cultural values are those built on the ideologies of equality, peace, freedom, dignity, justice, solidarity and democracy. The Protocol also recognises that the fulfilment of African women's rights requires a fundamental shift in cultural practices of the communities in which African women live.

The Protocol precisely deals with the trafficking of persons under Article 4, which gives assurance to individuals for the right to life and the integrity and security of the person. However, other certain provisions such as Article 3, which set out the right to dignity are also applicable. Attention is given to groups that have been rendered particularly vulnerable due to loss of a spouse, old age, disability and poverty (Viljoen, 2009: 23).

In the Protocol, States Parties are required to take a range of measures to address violence against women, including legislating and implementing laws to proscribe all forms of

violence against women. The Protocol expects states to prevent and denounce trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk (Desire, 2010: 23). Provision of adequate budgetary and other resources for the implementation and monitoring of actions aimed at preventing and eradicating violence against women as another measure that is required.

6.4.1.3 African Charter on the Rights and Welfare of the Child (1990)

The African Charter on the Rights and Welfare of the Child, sometimes known as the African Children's Charter (ACC) was adopted by the Organization for African Unity (OAU) in 1990 and entered into force on November 1999. The ACC is the first regional human rights instrument focusing on issues of particular importance to children in Africa. The ACC provides for rights encompassing civil and political rights, economic, social and cultural rights and specific rights for the protection of children in the African context (Desire, 2010: 22). The ACC was adopted against the background that the condition of most African children remained critical due to the unique factors of their socio-economic, cultural, traditional and developmental situations, natural disasters, armed conflicts, exploitation and hunger and also on account that the child's physical and mental immaturity necessitated special safeguard and care (Njungwe, 2009: 11). States Parties are required to take appropriate measures in terms of Article 29 (a) to prevent the abduction, sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child (Njungwe, 2009: 12).

This Charter sets out a range of state duties relevant to the protection of children from trafficking. Apart from reaffirming some general fundamental rights, the ACC includes specific obligations regarding child labour, a phenomenon that is often encountered in human trafficking (Kaime, 2009: 31). The Charter states that children need to be protected from all practises of economic exploitation and from doing any work that is probably harmful or that may affect their physical, mental, spiritual, moral or social development (Desire, 2010: 22). States are also obliged to take legislative, administrative, and social and education measures to protect children from all forms of torture, inhuman or degrading treatment, especially physical or mental injury or abuse, neglect or maltreatment (Kaime, 2009: 40). Most importantly, State Parties are required under Article 27 to protect children from all forms of sexual exploitation and to take measures to prevent:

- Inducement, coercion or encouragement of a child to engage in any sexual activity,

- The use of children in prostitution or other sexual practices, and
- The use of children in pornographic activities performances and material

In contrast to the Convention on the Rights of the Child, this treaty provides that the prohibition of the economic exploitation of children as pertains to both the formal and informal sectors of the economy (Kruger, 2010: 275). This is significant since children are often trafficked for forced labour into the informal, unregulated sector where they are easily exploited because they are not protected by labour laws.

As a result of the abuse that trafficked persons are exposed to, the Charter's obligations in this regard are important. State parties commit themselves to protect children from all forms of torture, inhuman or degrading treatment, abuse, neglect or maltreatment. Other relevant provisions prohibit child marriages and the direct participation of children in armed conflict, while appropriate measures must be taken to ensure that inter-country adoptions do not result in human trafficking.

6.5 Regional Initiatives

Southern Africa is yet to have a regional agreement precisely aimed at combating human trafficking, though other instruments such as the African Charter on Human and People's Rights, the African Charter on the Rights and Welfare of the Child, and the Charter of Fundamental Social Rights in SADC contain many relevant provisions

6.5.1 SADC Protocol on Gender and Development

Regionally, SADC adopted the Protocol on Gender and Development in 2008. This Protocol is significant in that it introduces sub-regional benchmarks for human trafficking linked to a time frame. The Protocol requires states parties to comply with certain obligations such as the adoption of anti-trafficking legislation by 2015.

The title of the Palermo Protocol explicitly mentions 'especially women and children' as, groups that have been identified as particularly vulnerable to trafficking (Ollus, 2004: 16). Despite this, states overwhelmingly fail to create an enabling environment that proactively includes gender-specific considerations and strategies. There have been a substantial number of documents generated by both SADC and AU which have either directly or indirectly provided for gender equality. Including a gender perspective would involve acknowledging the status and position of men and women as different, with women being placed at a

disadvantage in most societies (Manalula, 2011: 190). One generation on, very little substantive change has taken place in the lives of Southern African women. The influence of patriarchy has as yet not been effectively challenged by the various documents

The SADC Protocol on Gender and Development is founded on the rights based approach to development. The protocol looks into incorporation and main streaming of gender issues into the SADC Programme of Action and Community Building initiatives, which is imperative for SADC's sustainable development. Equality, liberty and dignity particularly, of women, are crucial for this protocol (Munalula, 2011: 189). The Protocol's objective is to provide for the empowerment of women, to abolish discrimination and achieve gender equality by encouraging and co-ordinating the development and application of gender responsive legislation, policies and programmes and projects.

It is also a tool used to set realistic, measurable targets, time frames and indicators for achieving gender equality and equity and monitor and evaluate the progress made by Member States thereof. In this respect, the Protocol clearly speaks to issues of constitutional and legal rights, governance, and education and training, productive resources and employment, gender based violence, HIV/AIDS and conflict resolution. By employing a gender as opposed to a women's rights perspective and the couching of the text in language that is accessible shows the extent to which the Protocol seeks to be a popular document.

6.5.2 Charter of the Fundamental Social Rights in SADC

The SADC charter on Fundamental Social Rights seeks to provide a framework for regional labour standards. This piece of legislation makes comprehensive provision for the establishment of harmonised social protection programmes throughout the region. The Charter obliges member states to create an enabling environment, consistent with ILO core conventions, to prioritise ILO core conventions and take the necessary action to ratify and implement these standards (Smit, 2013: 5). It further requires member states to create an enabling environment to ensure equal treatment for men and women and for the protection of children and young people.

The Social Charter extends the minimum social protection floor envisaged in international human rights treaties to the SADC region. Equality of treatment and of opportunities between men and women in the area of social protection is required, as well as the development of reasonable measures to enable men and women to reconcile their occupational and family obligations (Nyenti & Mpedi, 2012: 253). The protection of children and young people is

emphasised, while member states undertake to create an enabling environment to protect the elderly.

The current domestic and international law relating to immigration, in particular that favoured by countries that 'pull' large numbers of migrants, tend to favour law enforcement over the protection of human rights (Smit, 2013:). Many states have therefore focused on the control of movement across boundaries through measures such as enhanced penalties for trafficking and unlawful entry as well as increased funding for border controls. However, few resources are devoted to the promotion and defence of migrants' human rights.

6.5.3 The 10 year Southern African Development Community Strategic Plan of Action on Combating Trafficking in Persons, Especially Women and Children (2009-2019)

The SADC Strategic Plan is not a legally obligatory instrument. It is rather a programme that aims to accomplish SADC objectives including an obligation to the protection of women's and children's human rights. The Plan has been integrated into a broader regional strategic plan referred to as Regional Indicative Strategic Development Plan, a regional development plan to deal with development and poverty reduction.

The aim of the SADC Plan of Action is to promote cooperation and provide support to SADC member states in fighting trafficking within the SADC region. Over 10 years 2009-2019, several strategic priorities for action are charted to be implemented. Apart from including victim support and protection for witnesses, it is important to note that the SADC Plan of Action further expands protection to include those people who report cases of human trafficking (Chitupila, 2009: 57). This is an important addition, because it encourages those people brave enough to report human trafficking to do so knowing that their security is secured.

The Plan sets out an agenda for combating trafficking in persons and establishes principles to guide members states; these principles require a human rights approach to trafficking and the adoption of policies, programmes and strategies that incorporate gender sensitivity, child rights, inter-state cooperation, criminalisation of trafficking and participation of communities and victims (Chitupila, 2009: 57).

6.6 Conclusion

The trafficking of persons falls within the purview of a range of international and regional instruments. Exploration of the development of these instruments informs the understanding of present day human trafficking. These instruments enlighten on how human trafficking has

developed into its contemporary form whilst retaining some of the core elements of historical forms of slavery and servitude. Indeed, the targeting and controlling of vulnerable people for profitable exploitation have remained consistent throughout history. Apart from enhancing comprehension, these instruments form the international and African regional normative framework pertaining to human trafficking. From this framework, obligations are drawn to combat human trafficking more efficiently.

CHAPTER SEVEN: THE EXTENT OF THE PROBLEM OF TRAFFICKING IN PERSONS IN SADC AND COUNTER TRAFFICKING RESPONSE IN THE REGION

7.1 Introduction

Trafficking in persons is one of the utmost human rights challenges of our time. As pointed by the ILO human trafficking has also become the darkside of globalization (Fitzgibbon, 2003: 82). Human trafficking has continuously been on the increase worldwide. This is especially rampant in poor African countries that are destinations, transit zones or the point of origin of those citizens who are transported to distant lands and confined to forced labour or even commercial sexual exploitation (Gallinetti, 2008: 4). It is widely agreed that there is a lack of reliable information regarding the extent to which trafficking in persons occurs on the African continent. Its covert and transnational nature makes it exceptionally difficult to arrest or prosecute offenders or to verify information in terms of the scope and nature of the problem (Gallinetti, 2008: 3). However, in recent years some effort has been made to quantify the extent of trafficking. Southern Africa as a region is addressing human trafficking through SADC, a regional establishment principally based on economic support between member states. This chapter will examine 9 countries of the 14 countries in Southern Africa and also highlights their experiences of human trafficking. These countries are South Africa, Zimbabwe, Zambia, Botswana, Namibia, Malawi, Mozambique, Lesotho and Swaziland. These countries have selected as case studies because of the geographical location that influences easy transport of trafficked victims amongst them. These countries are also source, transit and destination countries for victims of trafficking.

As discussed above in this research, poverty and economic disparities are considered fundamental contributors to human trafficking. These problems are very grave in Southern Africa. A comprehensive evaluation of counter-trafficking responses in the SADC region is essential to composing effective responses to human trafficking in the region. This chapter will attempt to map the extent of the problem of trafficking in Southern Africa through an review of existing information on trafficking within and amongst countries in the SADC region. What follows is an attempt to demonstrate the extent of people trafficking in SADC based on reports by agencies, researchers and scholars that undertake investigations into the phenomenon.

7.2 National Legislative and Policy Frameworks in the SADC region

At the national level, the perception of human trafficking and the extent of the governments' efforts in combating trafficking depend on whether a country is a country of origin, transit or destination. Countries of origin tend to be more conscious of human trafficking, while countries of transit are more likely to see trafficking as a non-national issue. Countries of destination tend to show less interest towards the problem of trafficking (Fong, 2004: 4). However, the escalating attention of the media in the region and the work of some international NGOs have pushed the governments to react more responsibly to the problem of human trafficking.

7.2.1 South Africa

Like other parts of Southern Africa, South Africa has many conditions that traffickers use to exploit: endemic poverty, unemployment that creates a demand for better opportunities, and high rates of regular and irregular migration that disguise the movements of traffickers and their victims. South Africa is often referred to as the economic giant of Africa and is seen as a source, destination and transit country for human trafficking (Chitupila, 2009: 49). It is also usually regarded as the main country of destination within SADC region for human trafficking. Although South Africa is the regional powerhouse in Southern Africa, there is however an immense economic difference between many of the white minority and most of the black majority (Chitupila, 2009: 48). A lot of people living in impecunious situations are prepared to do anything for employment thus making them susceptible to human trafficking.

The country has an additional problem of permeable borders, which has made border control difficult. These porous borders are marked by a tradition of movement and migration to South Africa for trade and work as well as illegal smuggling of goods and people, so trafficked people is impossible to differentiate among these flows (Delpont et al, 2007: 34). South Africa shares borders with 6 countries and has 72 official ports of entry along with numerous unofficial ports of entry where people come in and out with no detection (O'Connor, 2013: 2). This has left the state open, as a ripe hunting ground for transnational criminal organisations as well as the small-scale local syndicates that recruit locals be they acquaintances, friends or family members. Organisations working with trafficked women say that more than 1000 Mozambican women are trafficked each year, mostly to South Africa (O'Connor, 2013: 2).

In July 2013 the president of South Africa, Jacob Zuma signed into law the Prevention and Combating of Trafficking in Persons Bill which has only just become an Act. South Africa

now for the first time, has one statute exhaustively addressing human trafficking enabling it to accomplish its international commitments to fight human trafficking. However, human trafficking is more than just an issue of law as countries have to effectively implement laws in place (Potgieter, 2013: 3). The South African legal position which relates to human trafficking is at present in a transitional phase, with comprehensive legislation aimed at addressing all aspects of trafficking pending introduction in parliament. At present, the government and civil society are mobilizing society and the legal system to strengthen prevention, protection and prosecution services as well as partnerships to respond to this crime (Lutya, 2012: 17). Several partnerships have been formed to widen and grant more publicity and information on human trafficking patterns and forms.

Signatories to the Palermo Protocol are expected by Article 9 of the Protocol to develop comprehensive policies and programmes, to conduct research, to employ media campaigns and socio-economic strategies, as well as to give information regarding human trafficking in order to discourage human traffickers from committing the crime (Lutya, 2012: 18). Since South Africa became a signatory to the Palermo Protocol, prevention services have been intensified to teach and inform the public about human trafficking. Awareness programmes, capacity building workshops and training of civil organizations as well as government officials in human trafficking are several prevention instruments designed to reduce human trafficking of young girls and women for sexual abuse (United Nations, 2014: 70). In South Africa, the IOM and its partners, the UNODC, the Department of Social Development (DSD), women's organisations, religious groups as well as sporting clubs like Kaiser Chiefs play an active role in raising awareness about human trafficking (Kreston, 2007: 37). Participants in these workshops are familiarized with the concept in all its manifestations and informed of the legal and social resources that can be used to act in response to the crime. However, such information may not be put to good use due to personal and socio-economic challenges faced by some South African citizens. It has been observed that the average South African will not turn down an opportunity presented to them if it were presented by a stranger (Kreston, 2007: 40). Such an approach is stimulated by the need to experience the world, earn more and access employment opportunities.

Although there is absence of a legislation to take legal action on human trafficking fully, South Africa has effectively prosecuted and is currently prosecuting suspects suspected to have committed the crime. Sections from existing legislation are used to prosecute human trafficking. The Prevention of Organised Crime Act, the Immigration Act and the Sexual

Offences Act are some of the Acts used to prosecute human trafficking activities. Moreover, the Children's Act and the Criminal Law (Sexual Offences and Related Matters) Amendment Act contains sections dedicated to combating the human trafficking of young women and girls for sexual exploitation (Lutya, 2012: 20).

However, these efforts have not been adequate to prosecute and receive a conviction for the crime. Few trafficking offences have been prosecuted using portions of existing Acts in the absence of a solid and specific trafficking legislation. The Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007) and the Sexual Offences Act (23 Of 1957) can only be used to prosecute sexual exploitation. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, which proscribes trafficking for sexual purposes, can at present be used against offenders.

7.2.1.1 Prevention and Combating of Trafficking in Persons Act, 2013

This Act gives to the Republic obligations relating to the trafficking of persons in terms of international relations: to present an offence of trafficking in persons and other offences linked with trafficking in persons, to provide for penalties that may be imposed in respect of the offences, to provide for measures to protect and assist victims of trafficking in persons and to prevent and combat the trafficking in persons within or across the borders of the Republic (HRSC, 2010: 44).

This piece of legislation criminalizes several acts that institute or relate to trafficking in persons and inflicts harsh penalties for violations. Among the offences reckoned in the legislation are: trafficking in persons, punishable by a maximum of life imprisonment; engaging in conduct that causes a person to enter into debt bondage, punishable by up to 15 years of imprisonment; carrying a victim of trafficking in and/or out of South Africa knowing that he/she does not have the proper documentation, punishable by a fine or five years of imprisonment; profiting from services of a trafficking victim, be it financially or otherwise, punishable by up to 15 years of imprisonment and enabling of trafficking in persons, punishable by up to ten years in prison (Dafel, 2014: 75).

Victims of human trafficking are awarded certain protections under this legislation, including foreigners. Under this Act, a victim of trafficking may not be charged for violating immigration law, for carrying forged documents, or for other crimes that he/she was forced to commit by his/her captors (HRSC, 2010: 45). It gives foreign victims of trafficking the same right of access to public health care services that are also available to citizens. The

Department of Home Affairs is required to grant foreign trafficking victims authorisation to stay in South Africa for a non-renewable 90-day term, as a recovery and reflection period (HRSC, 2010: 46).

South Africa is a centre for human trafficking for a range of state related factors. It is a source, transit and destination country for the trafficking of persons (Lutya, 2012: 4). Neighbouring countries believe that South Africa is economically sound and therefore may be seen as potentially offering opportunities to poor immigrants. Since South Africa opened its borders to foreign populations from neighbouring countries such as Zimbabwe, Lesotho and Mozambique, a huge amount of documented and undocumented immigrants have entered the country as refugees, asylum seekers and tourists (Lutya, 2012: 4).

South Africa can be given credit for making significant efforts to meet the standards of the US Trafficking Victims Protection Act (TVPA) after passing the human trafficking act in 2013. However, the act has yet to be put into effect. South Africa is then in state of flux, waiting for different government departments to develop the regulations before the Act can be used. While the Act is not in operation, no prosecution could have taken place under the new legislation. Prosecutors have to currently make use of fragmented legal frameworks such as the sexual offences and the Children's Act to combat trafficking in persons, however there are still gaps. Thelwell and Van Der Merwe (2014) point out that the gaps in the existing legislative frameworks mean that not all forms of trafficking are covered by existing laws, with criminals and victims alike slipping through the net.

7.2.1.2 The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

This Act addresses the outdated law on sexual offences that were in existence prior to this law coming into effect. Among other precarious things, it repeals the common law offence of rape and substitutes it with a new extended statutory offence of rape, relevant to all forms of sexual penetration without consent, regardless of gender (NIWD, 2012). It therefore recognises that nowadays a woman, a man or a child can be sexual assaulted by another woman or man. The Act has helped to strengthen South Africa's efforts to fight sexual crimes against all persons and especially sexual offences being committed against vulnerable groups, including women, children and people who are mentally challenged.

This Act has transitional provisions relating to trafficking in persons for sexual purposes. The Act requires that conduct that amounts to involvement in human trafficking should be

criminalised in order to bring to book all agents playing a part in the trafficking process (Kruger, 2010). The Palermo Protocol's obligation to criminalise the 'organising and directing' of others to commit human trafficking is complied within, the Sexual Offences Amendment Act. The Act not only includes the organising and directing of trafficking, but also casts the net wider to include the commanding supervising or controlling of the trafficking crime as well (Kruger and Oosthuizen, 2012: 313). In view of the fact that transporters often assist with the trafficking of persons by moving victims illicitly across national borders, the Act further forbids all commercial carriers from bringing a passenger into or removing a person from South Africa without such passenger having travel documents for the lawful entry into or departure from the Republic (Criminal Law Amendment Act 2007).

The subject of consent in the Sexual Offences Amendment Act is advanced differently from that in the Palermo Protocol. The latter provides that consent of the trafficked person is irrelevant where any of the forbidden means have been used or if the trafficked person is a child, who is defined as a person under the age of 18 (Aucamp et al, 2012: 5). On the other hand, the Sexual Offences Amendment Act says that it is an offence to traffic a person without the consent of the trafficked person.

This Act is also more comprehensive than the Protocol, which only criminalises participating as an accomplice, meaning that it criminalises the performance of any act which is aimed at committing, causing, bringing about, encouraging, promoting, contributing towards or participating in trafficking (Criminal Law Amendment Act 2007). A further aspect in respect of which the Act introduces the crime of involvement in trafficking of persons in order to bring to book all agents playing a part in the trafficking process. In this regard, the Act provides that any person who:

incites, instigates, commands, aids, advises, recruits, encourages or procures any other person to commit, cause, bring about, promote, perform, contribute towards or participate in trafficking, is guilty of an offence of involvement in trafficking in persons for sexual purposes.

7.2.1.3 The Children's Act 38 of 2005

Given that the Children's Act applies to children only, it does not fully comply with standard 1 of the Palermo Protocol, namely the definition of 'trafficking in persons'. The Act contains

a definition of trafficking in relation to a child only. Adoption secured through illegal means is also included in the action component of the definition of trafficking in children. Unlike the Palermo Protocol, the Children's Act requires trafficking to be committed by any means including the use of threat, force of other forms of coercion, abduction, fraud and deception for the purpose of exploitation (Kruger, 2010:250). The Children's Act requires criminalisation of human trafficking. The Act criminalises the trafficking of children by natural or juristic persons for an exploitative purpose. The Children's Act regards child trafficking as a serious offence, for which imprisonment of up to 20 years may be imposed (Children's Act 2005, <http://www.justice.gov.za>). The Act provides additional protection, in that it is no defence for a criminal that the child or the person having control over the child, has consented to the exploitation or illegal adoption or that the intended exploitation or adoption did not occur.

The Children's Act also provides for the return from foreign states to South Africa of trafficked children that are citizens or permanent residents of South Africa. This includes the provision of travel documents and adult escort is required, at state expense in certain circumstances for instance where the child is too young to travel alone (Chitupila, 2009: 52). Where a court has reason to believe that the parents, guardian or any person with parental responsibilities in respect of a child, has trafficked or allowed the traffic of the child, the court may suspend such person's parental responsibilities and rights and place the child in temporary care (Mashiya, 2010: 26).

In relation to international standards on the trafficking of persons, state parties are not only obliged to criminalise the main crime of human trafficking, but also any conduct constituting attempts to commit the crime, participation as accomplices and organising or directing others to commit human trafficking (Kruger, 2010: 140). The Children's Act does not include the criminalisation of attempts to commit human trafficking, because this is already covered in existing South African law. Apart from forbidding the crime of trafficking, the Act also proscribes certain behaviour enabling trafficking in children so as to cast the net wide enough so as to include the various role players that usually benefit from this crime (Kruger, 2010: 145). On conviction of this crime of facilitating trafficking in children, a maximum of ten years imprisonment may be imposed (Children's Act 2005, <http://www.justice.gov.za>). It is noted that counter trafficking provisions in the Children's Act make it possible to prosecute offenders for any type of trafficking where a child is the victim. However, full compliance

with the Palermo Protocol is lacking, because this Act applies to child victims only and thus offers no remedy for trafficked adults.

7.2.2 Mozambique

Mozambique is a country in the Southern Africa region for transit, origin and a lesser extent destination of trafficked people. Mozambicans have been trafficked to such countries as South Africa, Swaziland and Zambia. The main destination among these countries being South Africa (region powerhouse) where victims of trafficking are forced to work as domestic workers, labourers in mines and as prostitutes (UNESCO, 2006: 10). An IOM study shows that every year 1000 Mozambicans are trafficked to South Africa (UNESCO, 2006: 30). Additionally, there is a high prevalence of internal trafficking in Mozambique. The use of forced and bonded child labourers is a common practice in Mozambique's rural areas, frequently with the involvement of family members. Women and young girls are trafficked from the countryside to urban areas of Mozambique as well as to South Africa for domestic enslavement and commercial sexual exploitation in brothels, while young men and boys are trafficked to South Africa for farming and mining (Martens et al, 2003: 10). Apart from the root causes of trafficking aforementioned, the country's history of civil war between two political groups Mozambique Liberation Front (FRELIMO) and Mozambique National Resistance (RENAMO) and the subsequent dislocation of people, loss, reconstruction, political upheaval and deep social scars are also factors that have fuelled trafficking in this country (Chitupila, 2009: 38).

In the past, Mozambique was considered a source of labour for South Africa as South African mines and farms used to recruit labour officially from Mozambique and the belief still exists that work is abundant in South Africa (Gallinetti, 2008: 7). Internal trafficking of children in Mozambique has been related to the country's lengthy history of child migration. Some children when looking for work of any type and being willing to move to secure employment may voluntarily accept offers of work from strangers, quite unaware to the dangers associated with this (Gallinetti, 2008: 8). Statistics South Africa discovered that many of those Mozambican children who disappear have in fact travelled across the country's Southern, Central and Northern zones.

7.2.2.1 National law dealing with trafficking

The current constitution protects reckoned human rights and prohibits certain kinds of exploitation. Under article 18 of Mozambique's Constitution, it is provided that international laws ratified by Mozambique will have binding effect as of the legal norms established by Congress and the Executive, but do not take precedency over the Constitution (Mulu, 2009: 43). Mozambique ratified the Palermo Protocol on 20 September 2006.

At the national level, the National Assembly of Mozambique approved the comprehensive law on human trafficking in April 2008, which came into force in September after the president approved the law (Mulu, 2009: 43). Mozambique became the first SADC country to come up with a law dealing with trafficking and an example to be followed by other countries in the region. Before the introduction of this legislation, human trafficking cases were dealt based on laws on kidnapping, corruption of minors, child labour and immigration (Mulu, 2009: 44). The law on preventing and combatting the traffic in people prohibits recruiting or the facilitation of the exploitation of a person for the purposes of forced prostitution, forced labour, slavery, involuntary debt servitude, the removal of body parts. This law provides for penalties of 16 to 20 years imprisonment for these forms of exploitation and also 8 to 12 years for leasing and subleasing property for trafficking purposes (Chitupila, 2009: 40). Following the passage of the law, the Mozambican police formed a six-person anti-trafficking division to capture trafficking offenders, inspect cases and reintegrate victims.

The Act also criminalises advertising, publishing, printing or broadcasting information that promotes human trafficking whether by the use of information technology or the internet. Destruction, concealment or confiscation of travel documents or personal property of the trafficked victim is an offence (Chitupila, 2009: 41). It is also stipulated in the Act that the victims consent does not amount to a defence against the crime of trafficking. With regard to the protection of trafficked victims, the Act provides witness protection, stipulating that the identities of witnesses be protected during and after criminal proceedings. Furthermore, the Act assures special protection in certain circumstances, for instance, pregnancy, disability, victims who contracted HIV/AIDS or any sexually transmitted infection as a consequence of trafficking, minors, or witnesses who enter Mozambique illegally or without requisite documents (Chitupila, 2009: 40). The Act further stipulates that victims are not criminally responsible for any acts committed as a result of trafficking.

This trafficking Act provides measures for victims, stipulating that victims have a right to emergency accommodation, medical assistance, counselling, legal assistance, educational and

professional training. International cooperation to facilitate repatriation of Mozambican victims abroad as well as foreign victims in Mozambique and the establishment of centre for victims with access to medical assistance and adequate food as they await repatriation is encouraged by the Act (Chitupila, 2009: 41). Principally, the Act is criminal legislation along the lines of the Palermo protocol as it criminalises trafficking and provides penal sanctions. It also emphasizes the protection of the identities of victims and of witnesses to trafficking and attempts to ensure the rehabilitation and care of victims, thereby attempting to address the human rights violations suffered by victims during the process of trafficking.

The Act however, states that criminal investigations can only be instigated if the victim files a complaint or a third party accuses or reports the traffickers (Chitupila, 2009: 43). This can constitute a weakness of this law as it appears that competent authorities cannot proceed with criminal investigations unless and until a complaint has been filed by either the victim or a third party. This is problematic because as a result of trafficking, victims are often undocumented or illegal foreigners in a country, afraid of deportation or imprisonment as they possess no migration papers to prove their status or they may possess falsified papers which is an offence (Chitupila, 2009: 43). Moreover, this provision exposes victims to threats and intimidation by traffickers that deters them from reporting this crime. In addition, where traffickers are capable of corrupting officials, reporting of the trafficking of persons will not be made.

It should be noted that since the inception of the anti-trafficking law in Mozambique, there have been several successful prosecutions however combating human trafficking is still a problem in the country because the country lacks the resources and the plan to deal with this hazard.

7.2.3 Zimbabwe

Zimbabwe is a source, transit and destination country for men, women and children subjected to forced labour and sex trafficking. This is because of laxity on laws around the issue of trafficking of persons. Women and girls from Zimbabwean towns bordering South Africa, Mozambique and Zambia are subjected to prostitution in brothels that cater to long distance truck drivers on both sides of the borders. Zimbabwe therefore continues to be plagued by the scourge of human trafficking. The illegal transportation of human beings for exploitation has broken down family ties, eroded the states' human capital, eroded citizens' confidence in

immigration authorities and their effectiveness in preventing this menace, trampled on fundamental human rights and re-introduced an old age human story of slavery.

7.2.3.1 Trafficking in Persons Bill

Although Zimbabwe is a signatory to the United Nations Convention against Transnational Organised Crime, the government has made minimal anti-trafficking law enforcement efforts. The country however has a trafficking bill which seeks to domesticate the protocol to prevent, suppress and punish trafficking in persons, especially women and children. This piece of legislation tightens penalties for human trafficking and criminalises internet service providers hosting adverts linked to the scourge (Mbiba, 2014). The Trafficking in Persons Bill closes a loophole that allows many sex predators to walk free. The Bill imposed a punishment ranging from life imprisonment of not less than 10 years for human trafficking (The Herald Zimbabwe, 2014). The bill states that any person who advertises or assists in the advertising, printing, publication, broadcasting or distribution by any means, material that promotes the trafficking in persons shall be guilty of the crime of trafficking in persons. The bill also seeks to appoint a committee on trafficking in persons with a mandate to formulate and implement a national plan of action against trafficking in persons (The Herald Zimbabwe, 2014).

Penalties for the crime will vary in gravity depending on whether the accused person is the actual trafficker himself or herself, or simply an associate or assistant to the trafficker. Law enforcement agents such as the police, customs and immigration officers are given powers by the bill to question, search and detain persons entering or leaving Zimbabwe as well as to seize property of suspected persons where there exists a reasonable suspicion that the crime of trafficking in persons is being or is about to be committed (The Herald Zimbabwe, 2014).

7.2.3.2 The Criminal Law (Codification and Reform) Act

This Act prohibits procuring a person for unlawful sexual conduct, inside or outside of Zimbabwe, but prescribes less than stringent penalties of up to 2 years imprisonment (Government Gazette, 2005: 51). Pledging a female for forced marriage or to compensate for the death of a relative or any debt or obligation is punishable under the Act, with penalties of up to 2 years imprisonment (Government Gazette, 2005: 40). Zimbabwe is one amongst the countries surveyed by IOM which has laws that could be used to extent the procurement of women or children for cross-border prostitution or other forms of sexual exploitation. Various sexual offences in Zimbabwe could be used to prosecute trafficking, predominantly in cases involving children below the age of 16 (USAID, 2007: 28). These provisions, on the

sexual criminalities against young persons and procuring for prostitution or unlawful sexual behaviour have specific extra-territorial provisions assembled in that empower prosecutors to reach beyond Zimbabwe's borders, as well as to prosecute internal forms of sex trafficking. They carry a potentially high penalty of up to 10 years imprisonment (USAID, 2007: 28). The strength of these measures is that they are gender neutral, not limited to commercial forms of sexual exploitation or prostitution and address both internal and cross-border forms of trafficking for sexual purposes (USAID, 2007: 29).

7.2.3.3 Labour Relations Amendment Act

The Labour Relations Act, 2002 set the minimum age for employment at 15 years. However, children ages 13 to 15 may work as apprentice or perform work in school or technical or vocational institutions (Musandirire, 2010: 37). The Act prohibits employers from hiring a person younger than 18 to perform hazardous work, which is defined as any work likely to jeopardize that person's health, safety or morals. Hazardous work is also defined in the Children's Protection and Adoption Amendment Act of 2001 as any work that jeopardizes or interferes with the education of a child. This Act prohibits forced labour.

7.2.4 Botswana

Research by the ILO indicates that the traditional movement of children between segments of the family for purposes of care or education, which constitutes child nurturing within the framework of the extended family is widespread (Gallinetti, 2008: 5). The traditional practice of children being placed with grandparents, aunts, uncles and other close relatives in a bid to provide certain amenities, particularly access to education has seen children being taken advantage of by those members of the family involved in human trafficking (Gallinetti, 2008: 5). It is this traditional trust in the extended family that renders children vulnerable to trafficking. In Botswana the situation with regard to trafficking is not extreme as in other countries in the region, however it is still a problem. There have been several cases of internal trafficking which establishes itself in the proactive sale of children by parents who cannot sustain them, or the targeting of poor families by people who take their children away with the promise of food, clothes and education (Gallinetti, 2008: 5). These children often end up as domestic workers or farm labourers.

Botswana is considered a source and destination country for women and children subjected to forced labour and sex trafficking. Those susceptible to trafficking in Botswana are illegal

migrants from Zimbabwe, unemployed men and women, those living in poverty and also children that are orphans (US State Department, 2012). Botswana families who employ Zimbabwean women as domestic workers have been known for restricting or controlling these workers movements or threaten to have them deported to Zimbabwe as a means to maintain their labour (US State Department, 2012).

Botswana does not have comprehensive law prohibiting human trafficking as there are no specific provisions criminalising human trafficking. However, the Botswanan government has demonstrated progress in anti-trafficking law enforcement efforts over the last 2 years. Botswana made provision of data on potential trafficking prosecutions for the first time, which included evidence of its first conviction of a trafficking offender on a labour violation (US State Department, 2012). Although Botswana does possess a law precisely prohibiting trafficking in persons, provisions in the Penal Code of 1998, such as those in sections 155-158 (forced prostitution) and sections 260-262 (slavery and forced labour), forbid some forms of trafficking (US State Department, 2012). The adequately severe penalties arranged for offences under these sections range from 7 to 10 years' imprisonment. Sections 57 and 114 of the 2009 Children's Act prohibit child prostitution and child trafficking, respectively; section 57 prescribes penalties of 2 to 5 years' imprisonment for facilitation or coercion of children into prostitution while section 114 prescribes penalties of 5 to 15 years' imprisonment for child trafficking (US State Department).

In July 2014, the parliament of Botswana finally passed the long awaited human trafficking bill without any amendments. This piece of law will provide for prohibition, prevention and combating of human trafficking (Botswana Guardian, 2014).

7.2.5 Zambia

In Zambia, most cross-border trafficking seems to include trafficking in young women and children for sexual exploitation. Zambia is both a country of origin for trafficking as well as a transit point for trafficking from other parts of Africa. Trafficking mainly occurs through networks of relatives, business people, religious leaders, cross-border traders and also truck drivers (Chitupila, 2009: 43). Internal forms of trafficking also seem to be prevalent in Zambia. Although not widely recognized as trafficking, children and young women are regularly recruited from poor, rural areas to work in urban areas, often through promises of legitimate work, schooling or a better life (US Department of State, 2011). Many have been

exploited and abused in various forms of sexual exploitation of exploitative domestic labour, sometimes by acquaintances or members of their own extended family.

7.2.5.1 Legislative response in Zambia

Prior to 2008, there was no anti-human trafficking legislation in Zambia. The Constitution of Zambia identifies a number of essential rights and freedoms pertinent to human trafficking. These are: the right to life, liberty, security and the protection of the law; the right of young persons to protection from exploitation, unlawful child labour, trafficking, ill-treatment and cruelty; the right not to be held in slavery or servitude; the right to be protected against forced labour; the right not to be subjected to torture, inhuman or degrading treatment and the right to compensation for unlawful detention (USAID, 2007: 34).

Zambia enacted the Anti-Human Trafficking (Act No.11 of 2008) in September 2008, the first law that comprehensively addresses human trafficking in the country. The Act provides for the prohibition, prevention and prosecution of human trafficking. The Act specifically prohibits all forms of human trafficking, prescribing no less than 20 years in prison for trafficking an adult and a 25-year minimum sentence for child trafficking (IOM Zambia, 2011: 15). The Anti-trafficking Act of 2008 criminalizes some forms of human trafficking, however it requires use of threat, force, intimidation or other forms of coercion for a child to be considered a sex trafficking victim (IOM Zambia, 2011: 15). The Act clearly defines human trafficking, outlines and criminalizes the specific elements of the offence and its resultant crimes.

Zambia's current law makes it a criminal offence 'to sell or traffic a child or other persons for any purpose or in any form' with a minimum penalty of not less than 20 years imprisonment (USAID, 2007: 35). Clients or those who use the services of victims of trafficking and anyone benefiting from the services of a victim commit an offence and are liable to imprisonment with the prison term slightly higher where the victim was sexually exploited (Chitupila, 2009: 43). The anti-trafficking Act states that internet service providers are required to report to the police any sites that advertise information that alludes to trafficking, failure to do so amounts to an offence that carries the penalty of a fine or imprisonment (Chitupila, 2009: 45). Though this law is an anti-trafficking Act it criminalises smuggling of persons. So, consenting to being smuggled is an offence with a penalty of imprisonment of up to 15 years (Citupila, 2009: 46). The Act does not take into consideration cases in which a person's situation maybe so desperate due to human rights violations, conflict or

environmental disasters that they engage the services of smugglers to enable them to leave their country of origin.

7.2.5.2 Penal Code

Until very recently, Zambia did not have an offence of human trafficking in its Penal Code. It is in May 2005, when a Congolese woman was caught traveling with 14 children to South Africa that the Zambian government prosecuted a trafficker. However, the Zambian laws were insufficient for prosecution and the woman was only charged 2 million Kwacha for passport fraud and was later released (Thompson, 2007: 1). Those in government openly recognised the need to reinforce Zambia's criminal laws to address the problem of trafficking and pushed for the insertion of a specific trafficking offence in the Penal Code (Amendment) Bill of 2005 (Thompson, 2007: 34).

Zambia's Penal Code also contains a number of provisions that could be used against traffickers in some trafficking cases. These include: procurement for prostitution, detention with intent in premises or brothels, living on earnings of prostitution, child pornography, kidnapping or abduction, slavery, forced labour, abduction for sexual purposes as well as numerous prostitution related offences (USAID, 2007: 40). This Penal Code also comprises of some provisions relating to slavery and other offences against liberty. There is possibility of these provisions being used in some cases to prosecute human trafficking. For instance, sections 267 of the Penal Code makes it an offence to import, remove, buy, sell or dispose of any person as a slave or to accept, receive or detain against his will any person as a slave (USAID, 2007: 35). Importation, exportation, removal, buying, selling, trafficking or dealing in slaves is also a felony punishable by up to 10 years imprisonment. It is therefore, possible to charge human traffickers under these existing provisions, particularly where there is evidence of sexual servitude, sexual deviance, other forms of sexual exploitation, forced labour or severe forms of labour exploitation, unlawful confinement, debt bondage or sale.

It should be noted that the current Penal Code has limitations with regard to prosecuting trafficking. Zambia's Penal Code is over 60 years old and based on the English law developed for use in the British colonies (Thompson, 2007: 36). A lot of emerging issues like human trafficking; domestic violence, child prostitution and organized crime are not necessarily criminal offences in the current code. In the current code, there is no single provision that 'establishes as offences' all forms of conduct defined in the UN Protocol. The new trafficking offence is broadly worded, but the absence of a definition makes it difficult to

enforce. Furthermore, Zambia's Penal Code addresses some forms of exploitation common in trafficking situations, it does not provide adequate protection against other forms of exploitation required by the protocol such as adult forced labour, debt bondage, removal of organs or all forms of sexual exploitation of children 16 and older (Thompson, 2007: 38).

7.2.5.3 Employment of Young Persons and Children's Act

Potentially suitable provisions for prosecuting the trafficking of children are enclosed in sections 4 and 17 of Zambia's Amended Employment of Children and Young Persons Act (2004). It is prohibited by the Act to employ a child (a person under age 15). However, this piece of legislation permits children aged 13 to 15 to engage in 'light work' that is not likely to be harmful to the child's health or development and not prejudicial to the child's education or vocational training (Thompson, 2007: 40). The consequence for infringement of this section is a fine up to 200 000 penalty units, imprisonment of up to 3 years or both. Considerably higher penalties exist if a child or young person (15-18 years old) is employed in any type of employment or work which by its nature or the circumstances in which it is carried out constitutes a worst form of child labour.

The government however, has failed to dedicate attention to internal trafficking cases.

7.2.6 Swaziland

The government of Swaziland strengthened its enforcement mechanism and policy framework through the establishment of the Human Trafficking Task Force and the Strategy and Action Program on the Elimination of Child Labour. However, gaps still exist in the country's child labour laws and the integration of child labour into its existing social programs is limited.

7.2.6.1 The Trafficking and People Smuggling Act

The Act criminalizes trafficking, covering both internal and international forms of trafficking and providing penalties for violators including up to 25 years imprisonment for the trafficking of children for any purpose. The Act also prescribes a fine to compensate the victim for losses, under section 12 for the trafficking of adults

7.2.7 Lesotho

Lesotho is a country of origin for the trafficking of women and children mainly to South Africa. To a lesser extent, Lesotho serves as a transit and destination country. Male and female children are trafficked out of the country by long distance truck drivers for purposes

of sexual exploitation (UNESCO, 2007: 26). As sex slaves, these children end up in countries such as Malawi, Zambia and Zimbabwe.

In order to address the issue of trafficking in Lesotho, the government has several international instruments that can be used to prosecute some aspects of a trafficking situation. The following are the instruments adopted: ILO Convention No.182 on the Worst Forms of Child Labour (1999), UN Convention against Transnational Organized Crime (2000), UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), Optional Protocol to the Convention on the Rights of the Child on the Sale of Children and Child Prostitution and Child Pornography (2000). With regards to regional instruments, Lesotho has ratified the African Charter on the Rights and Welfare of the Child (1990) and the African Charter on Human and People's Rights (1986). It is noteworthy that Lesotho with other SADC member states signed an Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State and Government which commits all signatory countries to take measures to prevent and deal with increasing levels of violence against women and children through legal, social, economic, cultural and political policies (UNESCO, 2007: 40). Although these international and regional instruments have been ratified, they have not yet been translated into national laws.

No particular national law in Lesotho addresses trafficking. Either statutory or common law directly addresses the problem. However, there are certain laws that secondarily and to some extent provide for the accountability of the perpetrators of human trafficking and for the protection of trafficked persons (Gumbo, 2008: 17). Under common law, the crimes of kidnapping and abduction would fit in the comprehensive definition of trafficking and would be punishable under Lesotho's criminal law. However, there are hardly any prosecutions on kidnapping or abduction. This could be as a result of little knowledge of trafficking by law enforcement authorities and also challenges involved in investigating and arresting traffickers (Farrell et al, 2008: 15).

7.2.7.1 Constitution of 1993

Under Lesotho's statutory law, trafficking is a violation of the human rights of trafficked persons through the exploitation they encounter. A number of fundamental rights are enshrined within Chapter 2 of the Constitution of Lesotho and those relevant to trafficking in persons are: right to life, right to personal liberty, freedom of movement and residence, freedom from inhuman treatment and freedom from slavery and forced labour (UNESCO,

2007: 42). Section 22 of the constitution provides for the justiciability of these rights and any person whose rights have been violated, has a remedy before the courts of law (UNESCO, 2007: 42).

7.2.7.2 Children's Protection Act No.6 of 1980

The Children's Protection Act No.6 of 1980 deals with the protection of children in cases of abduction, assault, sexual offences and any offence involving bodily injury to a child. This Act bestows power to police officials to confiscate a child from any place to a place of safety if there are reasonable grounds for believing that any of the offences mentioned above has been or is being committed upon or in connection with that child (UNESCO, 2007: 42). Although this Act does not necessarily address the problem of child trafficking, it does provide some measure of protection to vulnerable children. However, the Act is now out-of-date as it is more than 25 years old and its execution is often hindered by lack of resources and personnel.

7.2.7.3 Sexual Offences Act No.29 of 2003

The Act specifies a number of basic sexual offences and recommends specific minimum sentences to be levied upon those who commit the specified offences. It is an offence according to this Act for a person to participate in a sexual act with another person through the use of force or threat, other forms of compulsion or coercion, enticement by false make-believe or by fraudulent means or by administering a substance for the purpose of committing the sexual act (UNESCO, 2007: 43). Minimum sentences for those who commit the foregoing offences range from 18 years imprisonment to a death sentence. The Act is broad enough to capture any trafficking act that is carried out for the purposes of any form of sexual exploitation. Where a citizen of Lesotho commits a sexual offence outside Lesotho, section 35 of the Act provides for extra-territorial jurisdiction therefore, the Lesotho criminal justice system shall have power to bring the person to court.

7.2.8 Malawi

Malawi's formal legal system is entrenched in its British colonial past. Although Malawi attained its independence in 1964, the Penal Code dates back to 1930, with several adjustments made during the colonial period (UNODC, 2005: 24). The government of Malawi has made alterations in the Penal Code however, the legislation and regulations are a reflection of the basic logic of British jurisprudence and much of the current Penal Code remains rooted in British law.

Common forms of human trafficking consist of forced labour in agriculture on farms or estates and forced prostitution. The TIP report categorizes Malawi as a source country for men, women and children to South Africa (Gallinetti, 2008: 6). Many victims are unwillingly transported far from their homes. Others leave home willingly, lured by false promises that a good job or educational opportunity is awaiting them. Reports indicate that children are primarily trafficked internally for agricultural work, cattle herding, domestic servitude and commercial sexual exploitation (Gallinetti, 2008: 6). In terms of external trafficking, children and young people are often targeted in border towns (Gallinetti, 2008: 6). Traffickers lure their victims with promises of marriage, employment and education across the border. However, upon arrival in South Africa female Malawian victims are sold to brothels in Johannesburg.

Malawi ratified the Palermo protocols-UN Convention against Transnational organised Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and UN Convention on the protection of the child. The constitution of Malawi prohibits slavery, servitude and forced labour; protects children from exploitation; protects women from sexual abuse, harassment and violence (District General, 2012: 31). Section 23 provides that children under the age of 16 are entitled to be protected from economic exploitation or any treatment, work or punishment that is likely to be hazardous, interfere with their education or be harmful to their health or physical, mental or spiritual or social development (UNODC, 2005: 26). All forms of trafficking are prohibited through various laws such as the Immigration Act, Labour Relations Act and Employment Act.

7.2.8.1 Employment Act

This Act criminalizes forced labour and forced prostitution, although it does not define child sex trafficking in accordance with international law. Penalties prescribed under this Act varies from small fines to 14 years imprisonment, these punishments are adequately stringent and correspond with punishments set for other serious crimes like rape (US State Department, 2014). The Employment Act forbids child labouring and work that is for young persons. Section 21 provides that ‘no person under the age of 14 shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking’, except if the work is done in a vocational school or other approved training institution or programme (African Child Policy Forum, 2014).

There has been lack of enabling legislation to enforce international conventions, lack of requisite action by police, lack of prevention policies, and weak networking with other countries

7.2.9 Namibia

Namibia is a country of origin, transit and destination for women, children and possibly men subjected to forced labour and sex trafficking. Victims lured by promises of legitimate work for adequate wages may instead be forced to work long hours and carry out hazardous tasks in urban centres and on commercial farms. Traffickers in Namibia exploit Namibian children, as well as children from Zambia and Zimbabwe through forced labour in agriculture, cattle herding, domestic service as well as prostitution (US State Department, 2012). It has been noted that girls as young as 13 and 14 had been trafficked internally (US State Department, 2012).

7.2.9.1 Prevention of Organized Crime Act (POCA)

Human trafficking and the smuggling of persons has now been criminalised in Namibia's POCA. This Act does not address human trafficking and the smuggling of persons broadly in line with the international Conventions and Protocol, however a huge part of the Act is dedicated to offences relating to money laundering and criminal gangs. A fine not exceeding of N\$1,000,000 is the penalty for human trafficking under POCA or imprisonment for a period not exceeding 50 years or both while the penalty for smuggling in persons is a fine not exceeding N\$500,000 or imprisonment for a period not exceeding 25 years or both (Conteh, 2009: 382).

7.2.9.2 Combating of Immoral Practices Amendment Act

Article 5 of the Combating of Immoral Practices Act prohibits procuring a woman for the purpose of illegal carnal intercourse, enticing a woman to a brothel for the purpose of prostitution, procuring a woman to make her become a prostitute or causing any drug or intoxicating liquor to be taken by a woman with the intent to stupefy or overpower her so as to enable any person to have unlawful carnal intercourse with her (Conteh, 2009: 383). It is illegal to keep or maintain a place for the purpose of prostitution under Article 9 of the Act, whilst Article 10 declares it illegal to live wholly or in part on the earnings of prostitution.

7.3 Challenges hampering the mitigation of human trafficking in Southern African

Human trafficking is a complex vice that requires collaboration between governments, it has therefore been noted that collaboration is weak. When issues like poverty are not addressed,

combatting human trafficking in persons will be difficult as the vice is motivated by people wanting to provide for themselves. However, sometimes it is not just about poverty, the human criminal mind is also a problem. The sex trade has moved from off the streets to the internet, where for instance young girls and boys under their teens are bought and sold online.

Looking at the structural factors that have created a system of inequality in which the vulnerable have to fight against multiple risk factors in order maintain the most basic level of human dignity. There is almost a total lack of police enforcement with regards to addressing human trafficking. Trafficking victims are treated as criminals other than victims, therefore much focus is put on prosecuting the victim rather than the trafficker. This has thus prevented effective law enforcement.

7.3.1 Weaknesses of domestic legal responses

A common thread running through government responses to trafficking is the prevalence of inappropriate or inadequate laws and policies. Governments either provide protection to some victims or no protection at all (US State Department, 2001: 7). Four primary reasons for inappropriate or inadequate responses to trafficking by government have been given.

Firstly, many governments are unwilling to acknowledge the existence of trafficking or rather recognise only the trafficking of women into forced prostitution. Furthermore, victims are often objectified where governments fail to consider their rights. This is to say that governments consistently fail to consider the crime from the perspective of the trafficked person and are particularly inept at understanding the problem from the perspective of trafficked women (Masika, 2002: 29). Governments view trafficking as a problem of organised crime, migration or prostitution rather than human rights abuse. Governments also consistently conflate trafficking with undocumented migration. The arguments provided by governments is that undocumented migrants and trafficked persons should be treated in the same way in order to discourage future undocumented migration (Wang, 2005: 5). Governments have therefore adopted a two-tiered approach to human rights whereby citizens only have rights, despite the fact that international human rights law does not predicate the majority of rights upon citizenship. Such an approach allows governments to treat trafficked persons and undocumented migrants in the same manner. As a result, traffickers are often not prosecuted, instead victims of human trafficking may be prosecuted for immigration and labour violations (GAATW, 2013: 25).

There also has been improper definition of the crime of human trafficking where governments only address the trafficking of women and children into forced prostitution, where other forms of trafficking are ignored completely. This approach has privileged one gender-specific group of victims. It therefore ensures that women, men and children who are trafficked into other forms of forced labour, slavery and young men trafficked for forced prostitution are not protected thus their traffickers are not prosecuted (CLGS, 2006: 12). Studies show that current legal responses are discriminatory and violate the rights of some or all trafficked persons (Masika, 2002: 31). These laws also fail to increase prosecutions or reduce the flow of undocumented immigrants as they fail to observe the rights of trafficked persons or treat them with dignity and respect.

Some of the laws in place have failed to distinguish victims from criminals. Trafficked people are in a difficult position to be recognised as victims, in most cases they have no official documents and are therefore seen as illegal migrants by the authorities. For victims, it means that they can be deported to countries of origin without any help or follow-up of their circumstances, making them even more vulnerable than before (LCPC, 2003: 10). It should be noted that failure to distinguish between victims of human trafficking and criminals that perpetrate the crime may lead to victims being held liable for the offences they may have been forced to commit as a direct result of being trafficked.

7.3.2 Conflating prostitution and trafficking

Domestic and international human trafficking frequently focuses on the rights of women and children. This has been the case because of their social and political marginalization and lack of access to economic resources in many parts of the world which makes them vulnerable to human trafficking (Chacon, 2006: 3027). However, the focus on women and children should not be equated with an exclusive focus on sex work as women and children are trafficked for several reasons. There has been demand for child labour in agricultural and service sectors in many economies and in some places children may also be trafficked as soldiers (Chacon, 2006: 3027). So, focus on trafficking for the purposes of sexual slavery only pays insufficient attention to those who are forced into other forms of labour.

7.3.3 Lack of capacity

Southern African countries are faced with different challenges in preventing and combating trafficking in persons, not only because the extent and nature of the problem varies but also due to capacities across the countries and the region. Countries in Southern Africa are facing

difficulties in criminal justice responses which includes sufficient legislation and the conviction of traffickers (UNODC, 2012: 90).

7.4 Conclusion

This chapter set out to explore the measures taken within the SADC region to address human trafficking. This was done in view of the increased reports of human trafficking in the region and in view of the absence of human trafficking legislation in many Southern African countries.

CHAPTER EIGHT: RECOMMENDATIONS AND CONCLUSION

8.1 Recommendations

The experience of African states establishes the extent to which effective counter trafficking measures need to be comprehensive, integrated and targeted at multiple levels within society. Addressing the trafficking of persons in Southern Africa requires anti-trafficking interventions that address prevention, protection, prosecution and also assistance of victims' return and resettlement. This chapter will therefore suggest possible strategies that can be implemented towards combating human trafficking. In light of the information reflected in this study, this chapter sets out a few recommendations to help SADC and various institutions to mitigate the problem of human trafficking. Several recommendations are made for the development of a comprehensive approach that can inform effective action to prevent, protect victims of trafficking and also prosecute traffickers. These recommendations are however not an exhaustive list of responses.

8.1.1 Community engagement

There is a lack of understanding of how to identify victims of human trafficking not just by the public, government officials and law enforcers but also by victims who may not believe or understand that they are the victim of a crime. Community led activities are an important prevention tool.

8.1.2 Awareness of trafficking at grassroots levels

Generally, people are not well informed of the nature of human trafficking and have insufficient or no knowledge with regard to issues of human rights, gender equality and the damage caused to the society by the spread of human trafficking (Tallin, 2006: 17). There is thus need for campaigns extended beyond borders of countries, particularly to those major nations of origin in the region. Communities involved in cultural practices such as child labour and forced marriages which lead to human trafficking also need directed awareness campaigns. This will show communities how certain cultural practices relate to vulnerability of individuals (HSRC, 2010: 174). Any person who does not know how to seek a job abroad in a safe manner or how to legally enter into an employment contract may easily become a member of the 'at risk group'. Ministries of education in member states must include in their curriculums information pertaining to the trafficking of persons, its causes, forms, processes, consequences and also solutions. Such a curriculum should be adapted in primary, secondary,

tertiary, college and university institutions (Chitupila, 2009: 71). This would extend awareness of trafficking and also empower educators and learners to react properly to risk situations and enable them to access relevant services (HRSC, 2010: 169).

Awareness of the nature and extent of human trafficking should also be incorporated into informal education activities such as sports, clubs and religious activities aimed at reaching children and the youth (UNESCO, 2006: 59).

8.1.3 Addressing root causes of trafficking

In different communities, different factors increase the risk of being trafficked. Amongst the integrated measures that must be undertaken to deal with human trafficking are interventions to curb socio-economic vulnerability especially in rural areas. For instance, poverty and the lack of social and economic security are seen to be primary factors that leave individuals and communities vulnerable to human trafficking in Southern Africa (HRSC, 2010: 168). Research shows that where there is the highest rate of human trafficking is where poverty is. Therefore, families that fall through the cracks of the social safety net in society are often extremely vulnerable. Alleviating these problems should be a national and regional priority. Southern African countries should thus promote social, political and economic stability so as to reduce migration and other supply factors of trafficking.

8.1.4 Economic empowerment of women and girls

Experience with anti-trafficking interventions has proven that women and children isolated from socioeconomic activities at the local level run a higher risk of being trafficked as they represent the world's poorest population (Cheston and Kuhn, 2002: 8). Reports by the World Bank on gender statistics shows that women have a higher unemployment rate than men in virtually every country (Cheston and Kuhn, 2002: 8). Generally, women make up the majority of the lower paid, unorganized informal sector of most economies. It is in this regard that the foundations of anti-trafficking programs in place make special emphasis on assisting women living in poor and extremely harsh conditions. Society reveals that there is marginalization of women economically, thus interventions for women's economic empowerment must address unequal gender relations (GADN, 2013: 9). Empowerment programs should aim to improve women's status and their position in their families and the community by improving their confidence and self-determination through economic empowerment activities. This will give women the ability to participate more actively in decision making in families and also communities.

In the SADC region, member states should adopt a Protocol that criminalises human trafficking. The Protocol should incorporate human rights, migration, human development and criminal approaches. Furthermore, member states should enact and enforce national legislation based on regional legislation.

8.1.5 Putting in place and enforcement of adequate legal frameworks

Southern countries are lacking specific and adequate legislation and this has been one of the major obstacles in the fight against human trafficking. There is an urgent need to develop appropriate legislative frameworks that are consistent with relevant international instruments and standards. States should be able to investigate, prosecute and adjudicate trafficking, including its component acts and related conduct whether committed by governmental or non-state actors (UN, 2002: 8). Southern African states should consider amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national legal instruments. National laws should also provide detailed guidelines of various punishable elements of trafficking (UN, 2002: 8). This will play a vital role in preventing the trafficking of persons and also related exploitation.

8.1.6 Adequate law enforcement response

Although there is evidence to suggest that trafficking in persons is increasing in the Southern African region, few traffickers have been apprehended. Absence of effective law enforcement has created an incentive for traffickers and therefore increased the demand for trafficking (UN, 2002: 9). Adequate law enforcement response to trafficking depends on cooperation of the victims of trafficking and also witnesses to the crime. More often individuals are reluctant to report cases of trafficking because of the absence of effective protection mechanisms (UN, 2002: 9). So, law enforcement officials should be more involved in the fight against trafficking. Moreover, strong measures need to be taken to ensure that human trafficking crimes are investigated, prosecuted and punished.

8.2 Summary

This research discussed the phenomenon of human trafficking, tracing its history, defining it and establishing the numerous human rights violations encountered by victims. To develop a deeper understanding of the phenomenon of human trafficking, various exploitative purposes of trafficking were examined. It was observed that human trafficking is for the purposes of sexual exploitation, forced labour and organ removal.

The study further discussed some significant causes of human trafficking and analysed international, national and regional legislative frameworks, setting out the strengths and weaknesses of the legislation. This study was undertaken in view of the increased reports of human trafficking in individual countries and the region, in view of the absence of human trafficking legislation in many Southern African countries. This study tried to extend the study on human trafficking by not only focusing on the trafficking of women for sexual exploitation. This research looked at human trafficking in non-sexual contexts by focusing on trafficking for organ removal and forced labour.

Human trafficking is both a global and regional issue that requires appropriate responses at all levels. Southern Africa has very few cases where traffickers have been prosecuted to date. In cases where traffickers are caught and prosecuted, they are usually charged with kidnapping, abduction, immigration or sexual offences. This research has shown that countries like Zambia and Zimbabwe are countries of origin and destination, while Mozambique and Malawi appear to be primarily origin countries. South Africa is mainly a trafficking destination for victims from countries within the region.

8.3 Conclusion

When human trafficking is examined on an international and a regional scale, it would appear that much is still lacking with regards to correct and reliable information about the problem of trafficking. While trafficking can be examined from a number of different perspectives, it is important to examine trafficking of persons in relation to issues of human rights, migration, human security and globalization. These perspectives must be taken into account when designing effective measures to combat human trafficking.

Human trafficking represents a serious threat to people's lives and must be addressed through adequate legislative responses. The development of appropriate national frameworks that address human trafficking, which are consistent with relevant international instruments and standards, plays a vital role in the prosecution of human trafficking and related offences, protection of victims and prevention of this crime. In this light, international and regional collaboration is very important to mitigate human trafficking and guarantee human security. Taking legal measures and action to prevent human trafficking and raising awareness of the human trafficking phenomenon, mainly that of the most vulnerable population in society like women is very important. Due to the clandestine nature, estimating the true extent of the

problem of human trafficking is difficult. Literature indicates that human trafficking is one of the largest profit sources for organised crime worldwide. Victims are mostly drawn from the most vulnerable populations of the world, where factors like poverty, gender inequality, natural disasters unemployment and globalization push victims into the control of traffickers and organised crime groups who exploit these vulnerabilities.

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