

A Critical Analysis of Human Trafficking in South Africa *Remedies and Recommendations*

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I. Introduction

Human trafficking has become a global concern.¹ Trafficking in persons has entered the global political zeitgeist, and international bodies, namely the United Nations (“UN”), have made efforts to combat and quell this crisis. The United Nations Convention Against Transnational Organised Crime (“UNTOC”) defines human trafficking as:

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 purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.²

In 2000, the UN Convention added the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime* (“Protocol”).³ The Protocol seeks to provide preventative, protective, and prosecution-focused responses to human trafficking.⁴ Article 5 of the Protocol targets those who commit human trafficking

¹ Joshua Aransiola and Christina Zarowsky, *Human trafficking and human rights violations in South Africa: Stakeholders’ perceptions and the critical role of legislation*, *African Human Rights Law Journal* (2014) at 510.

² United Nations Office on Drug and Crime, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (2004).

³ Aransiola, *supra* note 1 at 511.

⁴ *Id* at 512.

violations, making it a crime to traffic in persons and requires States to pass legislation to criminalize human trafficking more broadly.⁵ Article 6 focuses on the victims of human trafficking, providing for a multi-pronged remedial approach. Addressing the more immediate needs of victims, Article 6 calls for the assistance and protection of victims by addressing their physical and psychological needs. Article 6 also seeks to address the more protracted needs of victims, providing for more comprehensive social recovery remedies including: medical care, housing, counseling, information, safety, employment, and educational and training opportunities.⁶

In general, two principle forces drive human trafficking: supply and demand markets. A market for prostitution and cheap labor largely precipitates demand, while poverty and poor education standards essentially drive supply. South Africa provides a ready-market for the in-flow and out-flow of human trafficking services.⁷ Human trafficking occurs on multiple fronts in South Africa, as victims are trafficked into, within, and out of the country.⁸

II. Domestic Legislation

The Protocol alone is not effective in curbing incidents of human trafficking.⁹ Rather, the onus is on individual states to enact legislation to combat internal trafficking, and to work with other countries to curb the in-flow and out-flow of human trafficking

⁵ *Id* at 511.

⁶ *Id* at 511.

⁷ Caroline Bacquet et al., *Human Trafficking in South Africa Root Causes and Recommendations UNESCO Policy Paper* (2007).

⁸ *Id.*

⁹ The Protocol is a binding international agreement, but lacks the requisite enforcement mechanisms to force states to comply.

victims.¹⁰ South Africa ratified the Protocol in 2004 and passed the *Prevention and Combating of Trafficking in Persons Bill* (“Trafficking Act”) in 2013. The purpose of the Act is to:

Give effect to the [Protocol]; to address the trafficking of persons within or across the border of the Republic; to prevent trafficking in persons; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for measures to protect and assist victims of trafficking in persons; and to provide for matters connected therewith.¹¹

The U.S. Department of State (“Department”) monitors international efforts at combating human trafficking, and scrutinizing the degree to which a country is complying with those standards. According to the Department, in order to cohere with minimum international standards, a country must be in compliance with the *Trafficking Victims Protection Reauthorization Act* (“TVPRA”).¹²

The TVPRA focuses on three key issues: prevention, protection, and prosecution. Regarding prevention, the TVPRA aims to create public awareness, and international economic development programs to assist future victims. The TVPRA also seeks to protect victims by making them eligible for witness protection programs, and other state and federal benefits that are afforded to refugees.¹³ Such benefits include: job training, social service programs, health care, and educational services. The TVPRA also grants qualified victims a T-Visa, which allows them to become temporary citizens.¹⁴ Finally, regarding prosecution, the TVPRA makes human trafficking a federal crime with strict

¹⁰ Laura Brooks Najemy, *South Africa's Approach to the Global Human Trafficking Crisis: An Analysis of the Proposed Legislation and the Prospects of Implementation*, 9 Wash. U. Global Stud. L. Rev. 171 (2010)

¹¹ Prevention and Combating of Trafficking in Persons Act (Act No. 7/2013) (S. Afr.).

¹² Trafficking Victims Protection Reauthorization Act H. R. 972 (2003).

¹³ *Id.*

¹⁴ *Id.*

penalties. It also mandates restitution for victims.¹⁵ The TVPRA acts as a floor in the Department's evaluation of other countries. If a country is deemed to be noncompliant with TVPRA standards, the Department will ask whether the country in question is making significant efforts to comply. Depending on these factors, the Department will grade a country on a 4-tier system ranging from full compliance to slight or no compliance.¹⁶ The grades are as follows: Tier 1 (full compliance); Tier 2; Tier 2 Watch List; and Tier 3.¹⁷ In 2005, South Africa was downgraded from Tier 2 to Tier 2 Watch List. The country, however, returned to Tier 2 in 2009. It is unknown what exactly precipitated this upgrade. Perhaps the impending enactment of the *Prevention and Combating of Trafficking in Persons Bill* ("Trafficking Act") signaled to the Department that South Africa was taking steps to comply with international standards.

The Trafficking Act is fairly comprehensive, and has been lauded as a major step forward in South Africa's efforts at combating human trafficking.¹⁸ In many respects, the Trafficking Act mirrors the Protocol, and it provides an exhaustive list of definitions regarding the elements of human trafficking. Indeed, the Trafficking Act's list of definitions even exceeds those found in the Protocol.¹⁹ With regards to trafficking in persons, the Trafficking Act reads in relevant part:

Any person who delivers, recruits, transports, transfers harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of – (a) threat of harm; (b) the threat or use of force or other forms of coercion; (c) the abuse of vulnerability; (d) fraud; (e) deception; (f) abduction; (g) kidnapping; (h) the abuse of power; (i) the direct or indirect giving or receiving payments or benefits to obtain the consent of a person having control or authority over another person; or (j)

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Najemy, *supra* note 10.

¹⁹ Prevention and Combating of Trafficking in Persons Act, *supra* note 11.

the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.²⁰

The Trafficking Act defines exploitation as: “all forms of slavery or practices similar to slavery; sexual exploitation; servitude; forced labour; child labour; the removal of body parts; or the impregnation of a female person against her will for the purpose of selling her child when the child is born.”²¹ What makes this piece of legislation so important is that it allows the South Africa to specifically target human trafficking as a stand-alone crime – something that existing laws do not allow. The Trafficking Act seeks to eliminate human trafficking in three primary ways: through prosecution, protection, and prevention. Combating human trafficking in these three ways underpins a holistic strategy.

The Trafficking Act also provides for the protection of victims on multiple fronts. For example, a foreign victim may be eligible for a visitor’s visa. This would allow that victim to remain in South Africa for a period of 3-months for recovery and reflection. At the close of the 3-month window, the Director-General of Social Development will then determine if it is safe to repatriate that victim to her or his country of origin.²² The Trafficking Act also provides for health care services for foreign victims.²³

Sections 6-9(3) of the Trafficking Act addresses prevention issues by prohibiting any act that may directly or indirectly lead to trafficking. For instance, the Trafficking Act makes it a crime for any person to:

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

(a) intentionally lease or sublease any room, house, building or establishment for facilitating or promoting trafficking in persons or allows it to be used or ought reasonably to have known or suspected that it will be used to facilitate or promote trafficking in persons; (b) subsequent to the lease or sublease of any room, house, building or establishment, becomes aware or ought reasonably to have known or suspected that it is being used to facilitate or promote trafficking in persons and fails to report that knowledge to a police official; (c) intentionally advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of the internet or other information technology.²⁴

By criminalizing acts even tangentially related to instances of trafficking in persons, the Trafficking Act appears to be fully committed to preventing human trafficking more broadly. The Trafficking Act also seeks to deter future traffickers by providing for stringent punishment.

The Trafficking Act is a large step-forward in South Africa's drive to comply with international standards. The Trafficking Act, however, has still not taken full effect.²⁵ As such, South Africa is currently operating under a deeply flawed piece-meal statutory scheme. South Africa has two primary statutes relating to human trafficking: the Children's Act 38 of 2005 ("Children's Act") and Sections 70 and 71 of the Criminal Law (Sexual Offenses and Related Matters) Amendment Act 32 of 2007 ("Sex Act"). With regards to combating human trafficking, both statutes are deeply problematic. The Children's Act prohibits the trafficking of children. It does not apply to adult victims. The Sex Act applies to both children and adults, but it only deals with trafficking for the

²⁴ *Id.*

²⁵ The Trafficking Act was signed into law in 2013, but the President of South Africa has the power to implement the law at the time of his or her choosing. The current President has chosen not to implement the bill at this time. Partly to explain for this delay is that President Jacob Zuma has been under intense scrutiny for corruption allegations, and calls have been made regarding his resignation. Perhaps implementing the Trafficking Act is rather low on his priority list. There are no reports regarding the bill's dormancy, thus one can only speculate as to why it remains in limbo.

purpose of sexual exploitation.²⁶ That is, human trafficking under the Sex Act, alone, is not a crime. Rather, trafficking must result in a sex crime to be statutorily proscribed. As a result, many victims are left without legal recourse.²⁷

III. Difficulties for Prosecutors

Prosecutors face several challenges when litigating trafficking cases. These difficulties are further complicated in cases where children are trafficked. Child trafficking is a clandestine, multi-layered and organized criminal endeavor. As a result, it is extremely difficult to detect and prevent, mainly because of its cross-boarder, transnational nature.²⁸ One of the initial challenges for prosecutors is that child victims rarely identify as victims of human trafficking *per se*.²⁹ Perhaps one explanation for this occurrence is that child victims are often unaware that human trafficking is a crime. Another explanation may be that human trafficking is not always an overt criminal act. A simple car ride, for instance, may be a form of trafficking.³⁰ Children are also generally more susceptible to coercion, and perhaps are induced into thinking that they agreed to be trafficked. Proactively locating victims is critical for several reasons: primarily for the

²⁶ Valisha Dafeel, *The Prevention and Combating of Trafficking in Persons Act of 2013: A Critical Analysis of its Potential Impact on Child Trafficking Prosecutions in South Africa* (2014) at 17.

²⁷ Evidence is scarce as to the exact reasons why sex trafficking is proscribed in South Africa and not human trafficking more broadly. One possible explanation is that sex crimes generally tap into a country's moral consciousness. Elizabeth Nolan Brown articulates this point quite aptly. Anti-sex trafficking laws, she argues, were largely the result of a kind of anti-prostitution crusade by various interest groups, pushed along by the media and public officials who view these laws as "good politics." For lack of a better term, sex crimes are "sexier" and perhaps South African legislatures responded to this by passing the Sex Act. Other crimes related to human trafficking (e.g., forced labor) were never statutorily proscribed. The looming implementation of the Trafficking Act will ameliorate this fissure by making human trafficking a freestanding crime.

²⁸ Lorinda Norris, *Child Trafficking in the UK: An Examination of Contemporary Approaches*. *Internet Journal of Criminology* (2008).

²⁹ Valisha Dafeel, *supra* note 26 at 17.

³⁰ Trafficking Act, *supra* note 10 at 8.

sake and health of the victim, but also because victims play a key evidentiary role in the prosecution process.³¹

Prosecutions are further complicated by the fact that there are often many “bad actors” in a human trafficking case. Perpetrators regularly work in organized crime units. The United Nations Office on Drugs and Crime has defined organized crime units as generally consisting of 3-or-more people; existing for a period of time; acting in concert with the aim of committing a crime; in order to obtain, either or directly or indirectly, a financial or other material benefit.³² The line of perpetrators can stretch far and wide. A trafficker can include:

everyone involved in the human trafficking chain from the point of recruitment to the point of exploitation/use and re-use of labour or body parts. This includes recruiters – by whatever means and whatever scale – as well as transporters, receivers, pimps and brothel-keepers, corrupt border guards and producers of false documentation, all those benefiting as the trafficked persons pass through their hands.³³

Even legal employment organizations like erotic strip clubs and mail-order bride agencies can commit human trafficking violations.³⁴ In 2011, mass protests erupted in Cape Town after a multitude of area strip clubs were accused of human trafficking abuses and forced prostitution. Protestors alleged that women were lured into the country on false pretenses and subsequently forced into prostitution. Suspects, which included owners of erotic strip clubs, had fake passports and falsified visa stickers from South Africa.³⁵

³¹ Dafel, *supra* note 26 at 10.

³² United Nations Office on Drugs and Crime, *Organized Crime* (2016).

³³ Bacquet et al., *supra* note 7 at 26.

³⁴ South African Law Reform Commission, *Report on Trafficking in Persons* (2006) at 68.

³⁵ News 24, *SA strip clubs accused of trafficking* <http://www.news24.com/SouthAfrica/News/SA-strip-clubs-accused-of-trafficking-20110922> (last visited 1 May 2016).

Prosecutors must be able to identify the inter-workings of organized crime units, and be able to locate the “bad actors” along a human trafficking supply chain. Currently, South Africa does not have specialized human trafficking units. This is problematic due to the complex nature of human trafficking cases, particularly at the investigatory stage. This is perhaps one reason why very few human trafficking cases reach South African courts, as data has uncovered that an alarming amount of human trafficking crimes go unreported each year.³⁶ Currently, investigators and prosecutors who deal with human trafficking cases are also tasked with undertaking other crimes as well. Indeed, heavy workloads where investigators and prosecutors have to deal with cases across the criminal spectrum, coupled with the complexities of litigating human trafficking cases, has made fruitful investigations and successful prosecutions scarce.

Human trafficking victims play a key evidentiary role in the prosecution process. At a minimum, domestic legislation must provide victims with necessary protections (*e.g.*, witness protection programs). A victim who is shielded from reprisal will be better equipped to effectively participate in the prosecution of her or his exploiter(s).³⁷ The Children’s Act and the Sex Act are silent on any type of victim protection program. Without the assurances of protection, victims may be “chilled” from coming forward and/or participating in the prosecution process. Additionally, neither the Children’s Act nor the Sex Act provides for the protection of a child’s identity or privacy during the litigation process. This further exacerbates the chilling effect that a general lack of

³⁶ Marcel van der Watt, *Human trafficking in South Africa: an elusive statistical nightmare* (2015)

³⁷ Dafel, *supra* note 26 at 84.

protection engenders, as victims may be hesitant to come forward out of fear of reprisal or public shaming.³⁸

An essential prerequisite to combating human trafficking is international cooperation, as a sizeable proportion of trafficking in persons cases are transnational.³⁹ A lack of communication and cooperation between states makes the prosecution of international organized crime units an onerous, and often impossible task. Active cooperation takes many forms, most notably: extradition agreements mutual legal assistance; transfer of criminal proceedings; transfer of sentenced persons; cooperation for the purpose of confiscation to deprive a trafficker's criminal assets; cooperation between law enforce including the exchanging of information and evidence; joint investigations; cooperation on using special investigative techniques.⁴⁰ The Children's Act requires South African officials to enter into anti-trafficking cooperative agreements with foreign states, but the Sex Act contains no such provision. Article 10 of the Children's Act provides: "Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law."⁴¹ Like the Children's Act, the soon-to-be-implemented Trafficking Act will provide measures for international cooperation.⁴² The Trafficking Act will require officials to cooperate with foreign states with regards to *inter alia* extradition, repatriation of trafficking victims, information sharing, mutual legal assistance, and training.

³⁸ *Id* at 84.

³⁹ United Nations Office on Drugs and Crime (UNODC), *Anti-human trafficking manual for criminal justice practitioners* (2009).

⁴⁰ *Id*.

⁴¹ Children's Amendment Act (Act No. 41/2007) (S. Afr.).

⁴² South African Law Reform Commission, *supra* note 26 at 85.

The inter-state sharing of evidence is invaluable for the effective prosecution of inter-state trafficking. The International Cooperation in Criminal Matters Act provides for such cooperation.⁴³ But, international cooperation agreements that go beyond the sharing of evidence only apply to child victims and not adults.⁴⁴ In practice, collecting evidence abroad can be an onerous task. Various factors can stifle international cooperation including: the diversity of legal systems; lack of trust; diversity in approaches and priorities; absence of adequate channels of communication for the exchange of basic information and criminal intelligence; and diversity of law enforcement structures.⁴⁵

IV. Remedies

The Trafficking Act coheres with the Protocol regarding the compensation of victims for damages suffered,⁴⁶ but has yet to be put into effect. Once implemented it will provide for an array of remedies including: compensation for both psychological and physical injuries; damage to property; and remedies for sexually transmitted diseases if necessary.⁴⁷ Prosecutors will also have the ability to force convicted perpetrators to provide for additional compensation to the State. Under this scenario, the perpetrator will be forced to pay into the Criminal Assets Recovery Account – a fund that provides

⁴³ International Cooperation in Criminal Matters Act (Act No. 75/1996) (S. Afr.).

⁴⁴ The Sex Act does not provide for international cooperation, so the extent of such cooperation in cases where adults are trafficked for the purposes of sex, prosecutors can only look to the International Cooperation in Criminal Matters Act, which primarily deals with the sharing of evidence.

⁴⁵ UNODC, *supra* note 30.

⁴⁶ Trafficking Act, *supra* note 9.

⁴⁷ *Id.*

compensation for present and future victims.⁴⁸ Currently, victims must look to the Children's Act and the Sex Act for redress.⁴⁹

The Sex Act criminalizes, *inter alia*, compelled rape (any person who intentionally compels a third person to commit an act of sexual penetration without the consent of the victim), sexual assault (intentional sexual violation without victim's consent), compelled sexual assault, statutory rape, and the sexual exploitation of children (child prostitution). Additionally, the Sex Act criminalizes the trafficking in persons for sexual purposes. The Sex Act provides several definitions relating to human trafficking that ostensibly mirror the definitions found in the Protocol. The Act defines trafficking as:

the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of (i) a threat of harm;(ii) the threat or use of force, intimidation or other forms of coercion;(iii) abduction;(iv) fraud; (v) deception or false pretences [sic];(vi) the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or (vii) the giving or receiving of payments, compensation, rewards, benefits or any other advantage.⁵⁰

Where the Sex Act clearly departs from the Protocol is that it only proscribes human trafficking as it relates to acts that are sexual in nature. The Sex Act reads in pertinent part:

A person ("A") who trafficks any person ("B"), without the consent of B, is guilty of the offence of trafficking in persons for *sexual purposes*. A person who—(a) orders, commands, organises, supervises, controls or directs trafficking; (b) performs any act which is aimed at committing, causing, bringing about, encouraging, promoting, contributing towards or

⁴⁸ South African Law Reform Commission, *supra* note 26 at 80-81.

⁴⁹ As previously noted, a glaring problem with this regime is that adult victims of human trafficking in cases unrelated to sex cannot seek remedies for the stand-alone offense of human trafficking.

⁵⁰ Criminal Law (Sexual Offences and Related Matters) Amendment (Act No. 32/2007) (S. Afr.).

participating in trafficking; or (c) 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.⁵¹

The narrow focus of the Sex Act leaves many victims of human trafficking without redress. For instance, trafficking victims for the purposes of forced labor are not covered. Rather, these victims must seek redress through the Basic Conditions of Employment Act (“Employment Act”).⁵² But the Employment Act only proscribes forced and child labor, and not the attendant crime of human trafficking related to forced labor. This defect in South Africa’s criminal law as it relates to human trafficking will be ameliorated once the Trafficking Act takes effect.

The Sex Act provides for the protection of victims. The Act reads: “The objects of this Act are to afford complainants of sexual offences the maximum and least traumatizing [sic] protection that the law can provide.”⁵³ Specifically, the Sex Act requires efficient and effective criminal investigations, giving effect to the needs of victims through timely inquiries and prosecutions.

From a *de jure* perspective, the Sex Act is quite comprehensive. In practice, however, many victims are grossly under-compensated. It has been observed that females, the overwhelming majority of sex trafficking victims, rarely have their compensatory concerns adequately addressed.⁵⁴ This has been blamed, in part, on institutionalized gender biases within the judiciary and prosecuting agencies.⁵⁵

⁵¹ *Id.*

⁵² The Basic Conditions of Employment Act criminalizes, *inter alia*, the employment of minors (children under the age 15) and forced labor.

⁵³ *Id.*

⁵⁴ Bryant Greenbaum, *Compensation for victims of sexual violence in South Africa: A human rights approach to remedial criminal compensation provisions* (2013) at 16.

⁵⁵ *Id.* at 16.

Discriminatory compensation mechanisms are in direct contravention with international standards. The United Nations Office on Drugs and Crime (“UNODC”) asserts that “a fair, effective and representative criminal justice system is one that is... gender-responsive and works to identify and address gender biases.”⁵⁶

Two statutes deal with the sentencing of sex trafficking offenders in South Africa: the Criminal Procedure Act (“CPA”) and the Correctional Services Act (“CSA”). In relation to these statutes is the Prevention of Organized Crime Act (“POCA”) – which deals with civil forfeiture, and extra-judicial compensatory processes, particularly social grants and court stipends for undue hardship.⁵⁷ Responsive compensation regimes are crucial to the prosecution phase. Adequately compensated victims can attend to post-assault counseling and medical services, and thus are better equipped to cooperate with prosecutors. Furthermore, adequate compensation can also assist victims with other court related expenses like transportation expenses and childcare costs.⁵⁸ Even further, sufficient compensation can reduce repeat victimization, as victims can be removed from abusive environments. It can also incentivize future victims to come forward and actively participate in criminal proceedings.

Studies have shown that state attorneys, prosecutors, and judges systematically overlook the compensatory concerns of female victims for two discriminatory reasons: first, state officials ignore the specific vulnerabilities of female victims by failing to ensure that proactive measures are in place to address their unique needs. State officials regularly fail to apply available compensation avenues for victims – compensation that

⁵⁶ United Nations Office on Drugs and Crime (UNODC) (2010).

⁵⁷ Greenbaum, *supra* note 54 at 18.

⁵⁸ *Id* at 19-20.

would have addressed the gendered financial needs of female victims, including post assault medical care and security and relocation expenses.⁵⁹ It has been postulated that state officials overlooked these needs because of their latent gender biases. These officials assumed, the argument goes, that the gender specific expenses of female victims were vague and superfluous.⁶⁰

In order to uncover these biases several compensation mechanisms must be examined. Provisions in the CPA and CSA provide for compensation within sentencing proceedings by way of suspended sentences, with or without incarceration orders attached.⁶¹ This compensation mechanism is grounded in the idea that offenders should not find it easy to pay compensations due the punitive nature of the sentence. Through both statutes, compensation payments are mitigating factors in sentencing.⁶² Regarding CPA sentencing orders, a court can suspend a sentence, for a period not exceeding five years, on the condition that the convicted offender pays a specific sum to the victim.⁶³ Understanding the cost/benefit of such a trade off can be instructive. At one end, victims have the opportunity to obtain increased damages. From a purely monetary prospective, this is a resounding "win" for the victim. But, the lessening of an offender's sentence may have latent psychological costs paid by the victim. That is, a lowered sentence could be perceived, by both the victim and the community more broadly, as a signal from the government that the crime was not particularly severe. Furthermore, it may signal to the community that the offender is, in essence, buying off the victim. While laudatory in its

⁵⁹ *Id* at 22.

⁶⁰ *Id* at 22.

⁶¹ *Id* at 26.

⁶² *Id* at 26-27.

⁶³ Criminal Procedure Act (Act No. 32/2007) (S. Afr.).

efforts to recoup more money for the victim, the latent consequences of such a program may outweigh the benefits.

Discrimination was uncovered in the administration of the CPA sentencing mechanism as well, as female victims were regularly denied compensation for certain injuries, because the sentencing court incorrectly believed those injuries to be unquantifiable.⁶⁴ Bryant Grenbaum performed extensive interviews with victims and uncovered these biases:

Interviews and victim surveys confirmed that prosecutors rarely informed sexual violence victims of available state compensation sources (namely the Social Relief of Distress Grant (SRDG) and Court Witness Stipends (CWS)), when offenders did not provide compensation, despite University of Cape Town 24 prosecutors' awareness that many complainants/witnesses had burdensome economic losses that directly related to their gender, such as childcare, pregnancy and security costs. Biases were partly responsible for this omission as interviews with magistrates and judges confirmed that state role-players incorrectly assumed that government benefits would be abused by sexual violence victims by way of false claims and that victims of sexual violence did not have urgent post-assault economic losses, in relation to their court attendances and health and security concerns, that required government interventions.⁶⁵

Gender-specific injuries include medical counseling, childcare, and pregnancy-related issues. The Department of Justice and Constitutional Development (“DOJCD”) – the institutional overseers of the court – displayed a similar lack of understanding of these gender-specific needs.⁶⁶ The DOJDC asserts that victims of sexual violence can only seek compensation for losses or damages to property in sentencing proceedings.⁶⁷ This

⁶⁴ Greenbaum, *supra* note 54 at 152.

⁶⁵ *Id* at 23-4.

⁶⁶ *Id* at 153.

⁶⁷ Department of Justice and Constitutional Development (DOJCD), *Service Charter for Victims of Crimes in South Africa: The Consolidation of the Present Legal Framework Relating to the Rights of and Services Provided to Victims of Crime* (2004).

conflicts with significant case law and legislation listing the pecuniary and non-pecuniary losses of victims.⁶⁸

Another compensatory mechanism includes various provisions in the Prevention of Organized Crime Act (“POCA”). Under POCA, victims can claim an interest in the instrumentalities of the underlying crime forfeited by the perpetrator. These instrumentalities include: cars, houses, or other real property that the offender used while committing the offense. Through POCA, courts can compensate victims from the proceeds procured from the properties in question.⁶⁹ By reducing the economic incentives of sex trafficking through government seizures, POCA schemes serve as a potent deterrent. Under POCA regimes, victims obtain a priority status, ahead of the government, in relation to the proceeds of the forfeiture.⁷⁰ Reported gender biases occurred under this compensatory mechanism as well.⁷¹

Finally, gender-biases were uncovered with the disbursement of government grants and stipends.⁷² Under these mechanisms, victims can request certain government benefits like court witness stipends (“CWS”), and a Social Relief of Distress Grant (“SRDG”). These benefits allow impoverished victims to satisfy their basic needs while participating in the investigation and prosecution of their perpetrators. These benefits can even extend beyond the prosecution period and after trial, particularly if the convicted offender is unable to provide compensation.⁷³ Even further, these benefits serve an important function for prosecutors, as victims are more willing to cooperate in the

⁶⁸ Greenbaum, *supra* note 54 at 153.

⁶⁹ Prevention of Organized Crime Act (Act No. 121/1998) (S. Afr.)

⁷⁰ Greenbaum, *supra* note 54 at 162.

⁷¹ *Id* at 162.

⁷² *Id* at 163.

⁷³ *Id* at 163.

criminal proceedings if such grants or stipends are provided.⁷⁴ Regrettably, data indicates that approximately 10 victims per year obtain grants through the SRDG mechanism.⁷⁵ By comparison, there were 43,195 reported instances of sexual violence between 2014 and 2015 in South Africa.⁷⁶ Thus, many victims are clearly not benefiting from SRDGs.⁷⁷ Research also uncovered that predominately female victims were routinely unapprised of these grant or stipend mechanisms.⁷⁸

One common thread is woven into all these compensatory mechanisms: state officials exhibited latent gender biases towards female victims of sex trafficking and related crimes.⁷⁹ Routinely, state officials improperly presumed that the gender-specific injuries that females suffered (*e.g.*, medical care) were not quantifiable and thus were not worthy of compensation. These officials were also weary of opening up more avenues to compensation beyond damages out of fear that alleged victims will bring false claims. Bryant Greenbaum notes: “State role-players incorrectly assumed that government benefits would be abused by sexual violence victims by way of false claims.”⁸⁰ This line of reasoning is extremely problematic for three reasons: One, instances of false reports are relatively miniscule when compared to genuine allegations.⁸¹ Second, the extreme injuries that actual victims suffer, coupled with their pressing needs greatly outweigh any benefit the state may derive from avoiding the compensation of false, dishonest victims. Finally, effective compensatory mechanisms are vital in combating and quelling human

⁷⁴ *Id.* at 28-29.

⁷⁵ *Id.* at 172.

⁷⁶ Institute of Security Services, *Factsheet: South Africa’s 2014/15 Assault and Sexual Crime Statistics* (2015).

⁷⁷ Greenbaum, *supra* note 54 at 172.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

trafficking more broadly.⁸² Through effective and non-discriminatory compensation schemes, witnesses – who are often the only witnesses in a human trafficking case – will be more likely to participate in the investigation and prosecution. Higher compensatory damages not only help the victim, but also provide an offender with his or her just deserts. It also acts as a strong deterrent for future offenders.

One type of non-monetary compensatory mechanism is what Carina Patrilli calls “restorative justice.”⁸³ This mechanism “seeks to involve the victim, offender, victim’s families and communities by providing ‘opportunities for those most affected by the crime to be directly involved in the process of responding to the harm caused.’”⁸⁴ In South Africa, restorative justice methods are generally used in either non-violent criminal matters or with youth offenders. And while restorative justice serves an important function in the criminal justice sphere, it may not be appropriate for crimes related to sexual violence and human trafficking. One reason for its inapplicability is that victims of sexual violence are often traumatized by the event, and coming face-to-face with their abusers may only serve to compound that trauma. Even further, a victim may be “chilled” from working with prosecutors out of fear of coming into direct contact with their abusers. Restorative justice is a relatively new and innovative method, and without more research into its effectiveness with regards to victims of sexual violence, its implementation cannot be recommended.

South African courts have been hesitant to implement restorative justice in cases dealing with sexual violence. In *Director of Public Prosecutions v Thabethe* 2011 (2)

⁸² Dafel, *supra* note 26.

⁸³ Carina Patrilli, Note, *Restoring Human Trafficking Victims through Victim-Offender Dialogue*, 12 *Cardozo J. of Conflict Resol.* 217 (2010).

⁸⁴ *Id.* at 288.

SACR 567 (SCA) a 15 year old girl was raped by a man who was also the victim's surrogate father.⁸⁵ The Supreme Court of Appeal expressed skepticism of restorative justice as a method in cases of such magnitude. One of the judges opined:

I feel obliged to caution seriously against the use of restorative justice as a sentence for serious offences which evoke profound feelings of outrage and revulsion amongst law-abiding and right-thinking members of society [and] an ill-considered application of restorative justice to an inappropriate case is likely to debase it and make it lose its credibility as a viable sentencing option.⁸⁶

Unfortunately, data on restorative justice as a viable remedy for violent crimes in South Africa is scarce. But, at least from one judge's perspective, there appears to be skepticism towards restorative justice as a viable compensatory mechanism with violent crimes like rape.

V. Case Law

South African case law can be instructive in not only illuminating the harms that trafficking victims suffer but also uncovering the trail of actual and potential perpetrators in a given human trafficking case. Case law can also underscore the evidentiary burdens that South African prosecutors often face when litigating human trafficking cases.

S vs Emmanuel Uche Odii and Others provides a glimpse into the convoluted web of perpetrators that often appear in a human trafficking case.⁸⁷ In *Emmanuel*, four males were accused (accused 1, 2, 3, and 4) of several charges relating to human trafficking: Trafficking in Persons for sexual purposes, sexual assault, rape, kidnapping, assault with intent to cause grievous bodily harm, and keeping a brothel. Of the four accused

⁸⁵ Greenbaum, *supra* note 54 at 49.

⁸⁶ *Director of Public Prosecutions v Thabethe* [2011] SACR 567 (SCA).

⁸⁷ United Nations Office on Drugs and Crime (UNODC), Case Law Data Base, *S vs Emmanuel Uche Odii and Others* (2015).

individuals three were charged. Accused 1 ran a brothel and paid accused 2 a sum of R1000 for each female that he recruited. The two victims were aged 18 and 19.⁸⁸

Accused 1 was convicted of eight counts: two counts of trafficking in persons, one count of sexual assault, one count of rape, two counts of kidnapping, one count of assault, and one count of keeping a brothel. He was sentenced to 30 years imprisonment.⁸⁹ Accused 2 was convicted of two counts of trafficking in persons and sentenced to 5 years imprisonment for each count. Accused 3, who facilitated the victim's initial meeting with Accused 2 was convicted of one count of kidnapping and received a sentence of 2 years imprisonment.⁹⁰

Another case, *Ntonga and Others v. State* (Case No. CA 159/2012) underscores the evidentiary burdens that many prosecutors of human trafficking cases often face. In *Ntonga*, a 45-year-old male named Lionel Bell and a female named Nokuzola Ntonga were charged with multiple offenses relating to human trafficking under the Sex Act. There were two principal victims: V, aged 11, and N.M., aged 15. Both Bell and Ntonga were acquitted of all charges relating to N.M. because the victim refused to testify. She was the only witness to the crimes. The perpetrators were convicted on several counts relating to V, in part because V fully cooperated at trial. The defendants appealed the case arguing that V had falsely implicated them. They asserted that V and Mr Raath – a defense witness for Bell, gave conflicting accounts. They also pointed to the fact that V admitted that she had been untruthful in certain respects in her police statement. The relevant facts of the case are: Bell saw V standing on the side of a road. He abducted and

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

allegedly raped her. He then forced her into a shower and locked her in his bedroom when his friend and witness Raath arrived. Raath testified that he remembered seeing a “black child” in Bell’s bedroom with a door ajar “on a chair in front of the television.”⁹¹ V told investigators that Mr. Raath never saw her, and that the bedroom door was closed. Council for the defendants pointed to these conflicting accounts in an effort to undermine V’s testimony. The defendant also pointed out that V had been, in certain respects, untruthful in her initial police statement and that the attending officers had pressured her into giving a false account.

The appellate court examined the conflicting testimonies, and reasoned that it did not warrant the conclusion that V’s testimony was false. V’s failure to recall having watched television, or that the bedroom door was ajar did not warrant the conclusion that she had been untruthful.⁹² The court referenced the trauma that V suffered as a result of being raped, and how that trauma, coupled with her age, would likely cloud V’s memory of the event. The defense pointed to another inconsistency in V’s testimony. On her police report V stated that she reported the rape to Andiswa (V’s relative). But during trial V admitted that that statement was false. The defendants argued that that V’s failure to report the rape to her relative demonstrated that she had in fact not been raped. The court concluded that V’s reluctance to speak was likely due to trauma, her age, and perhaps other psychological factors.

The court looked at the “entire body of evidence” and concluded that the defendants were guilty of crimes related to human trafficking under the Sex Act. Ball was sentenced to 15 years imprisonment while Ntonga was sentenced for 10 years. This case

⁹¹ *Ntonga and Others v S* (CA 159/2012) [2013] ZAECGHC 77.

⁹² *Id.*

underscores the evidentiary burdens associated with prosecuting human trafficking cases. Witnesses are scarce. Victims suffer unimaginable hardship and are often traumatized by the event. This could either “chill” the victim from aiding in the prosecution, as in the case with N.M., or lead to, as in the case of V, conflicting accounts of the event. It should be noted that the victims in this case were black and the perpetrators white. In relevant cases, latent racial biases in a post-apartheid milieu must also be accounted for as another burden to prosecution.

VI. Recommendations

With the forthcoming implementation of the Trafficking Act, several of the issues regarding South Africa’s piecemeal approach to combating Human Trafficking will be addressed. However, even with the eventual enactment of the Trafficking Act, several recommendations are in order.

Prosecutors must possess certain skills to effectively litigate a human trafficking case, particularly if the victim is a child. At the most basic level, a prosecutor must be able to sort out those who are actual victims from those who are not. Regarding foreign victims, prosecutors must also have the communicative skills to deal with children who are often traumatized, speak different languages, and who are likely unapprised of or intimidated by the South African legal system.⁹³

Given the deep physical and psychological struggles that human trafficking victims often endure, it is essential that prosecutors establish a sense of trust with victims – particularly child victims. Building trust is particularly important because human trafficking victims are often essential evidentiary sources during litigation. As such,

⁹³ Dafel, *supra* note 26 at 34.

prosecutors and investigators should be appropriately trained to deal with the physical and psychological needs of victims. Such training should include tutorials and courses on issues like Post-Traumatic Stress Disorder (“PTSD”).⁹⁴

Prosecutors may encounter victims who are reluctant to cooperate, either due to fear of retaliation from their traffickers or because of their general distrust of law enforcement. Witness protection programs staffed by people who are equipped to deal with issues like PTSD is crucial, as are drug rehabilitation treatment centers and medical services. The South African government must also provide informational campaigns apprising potential victims of their rights, remedies, and provide assurances that they will be granted immunity for any criminal acts they commit during their time as trafficked victims.

Human trafficking occurs both domestically and internationally. Regarding international efforts to combat human trafficking, it is essential for South Africa to create sophisticated information sharing legal regimes with countries that are known for having trafficking “relationships” with South Africa, *e.g.*, Thailand. If victims are trafficked into South Africa from Thailand, for instance, vital information is likely to exist in that country, and a streamlined information sharing relationship between the two countries would lead to an increase in prosecutions and a decrease in the duration of cases.

A compensatory framework should be devised where victims are temporarily “employed” by prosecuting agencies. For victims that are reluctant to testify or to partake in the investigation, prosecutors must work tirelessly to ingratiate themselves with these victims. Assurances must be made that should these choose to participate, they will not

⁹⁴ Dafel, *supra* note 26 at 10.

only remain anonymous, but will also be duly compensated for their efforts, and provided with adequate security measures. In order to engender active and robust participation from victims who may fear retraumatization, prosecutors must effectively communicate to victims that they will be protected. Prosecutors must also ensure that victims receive immediate psychological care. Victims provide invaluable assistance to prosecutors in several ways. They are key witnesses, serve as vital sources of evidence, and can help investigators locate larger human trafficking syndicates. By providing this information, victims are often re-victimized, as they are forced to relive their traumatic experiences. As such, victims should be compensated, over and above the amount they receive in damages related to the underlying offense. Factors to be considered in the determining proper compensation are: lost earnings as a result of being trafficked (this can be measured against the reasonable income that a person can make during the length of the crime), wages for participating in the investigation and prosecution of the offense (measured against the wages of current employees in the prosecuting office), current and future medical costs reasonably related to the underlying offense, etc.

VII. Conclusion

With regards to human trafficking, South Africa has made great strides to comply with international standards. The pending enforcement of the Trafficking Act will be South Africa's largest step forward. Presently, however, large swaths of victims are left without a legal remedy for the stand-alone offense of human trafficking. Prosecutors may only bring charges on behalf of children and victims of sexual violence. In making human trafficking a stand-alone crime, South Africa is bringing it into greater focus. No longer will the crime be marginalized, couched in a patchwork of statutes primarily

designed to combat other related offenses. Human trafficking will no longer be an ancillary crime. In *Two Cheers for the Trafficking Protocol*, Anne Gallagher contemplated a future, animated by the enactment of the Protocol, where states would pass legislation proscribing human trafficking.⁹⁵ Today is that future in South Africa.

⁹⁵ Anne T. Gallagher, *Two Cheers for the Trafficking Protocol*, 4 *Anti-Trafficking Review* 14 (2015).

<p>OHCHR Principles</p>	<p>South Africa’s Prevention and Combating of Trafficking in Persons Act (“Trafficking Act”) & current legal regimes: “Children’s Act” and “Sex Act”</p> <p>By: Robert Cave</p>
<p>I. Identification of trafficked persons and traffickers</p>	<ol style="list-style-type: none"> 1. The Trafficking Act provides an exhaustive list of definitions regarding the elements of human trafficking. Indeed, the Trafficking Act’s list of definitions even exceeds those found in the Protocol. The Trafficking Act reads: “Any person who delivers, recruits, transports, transfers harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of – (a) threat of harm; (b) the threat or use of force or other forms of coercion; (c) the abuse of vulnerability; (d) fraud; (e) deception; (f) abduction; (g) kidnapping; (h) the abuse of power; (i) the direct or indirect giving or receiving payments or benefits to obtain the consent of a person having control or authority over another person; or (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship tot hat person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.” (Prevention and Combating of Trafficking in Persons Act (Act No. 7/2013) (S. Afr.). 2. The Trafficking Act defines exploitation as: “all forms of slavery or practices similar to slavery; sexual exploitation; servitude; forced labour; child labour; the removal of body parts; or the impregnation of a female person against her will for the purpose of selling her child when the child is born.” The Trafficking Act allows the South Africa to specifically target human trafficking as a stand-alone crime – something that existing laws do not allow. 3. The Sex Act provides several definitions relating to human trafficking that basically mirror the definitions found in the Protocol. The Sex Act defines trafficking as: the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of (i) a threat of harm;(ii) the threat or use of force, intimidation or other forms of coercion;(iii) abduction;(iv) fraud; (v) deception or false pretences [sic];(vi) the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or (vii) the giving or receiving of payments, compensation, rewards, benefits or any other advantage. 4. Where the Sex Act departs from the Protocol is that it only proscribes human trafficking as it relates to acts that are sexual in nature. The Sex Act reads in relevant part: A person (“A”) who trafficks any person (“B”), without the consent of B, is guilty of the offence of trafficking in persons for sexual purposes. A person who—(a) orders, commands,

	<p>organises, supervises, controls or directs trafficking; (b) performs any act which is aimed at committing, causing, bringing about, encouraging, promoting, contributing towards or participating in trafficking; or (c) 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.</p> <ol style="list-style-type: none"> 5. The Trafficking Act gives the National Prosecuting Authority broad powers to prosecute traffickers, and even attaches criminal penalties on those who knowingly contribute, either directly or indirectly, to human trafficking. 6. The Trafficking Act provides that prosecutors must give due consideration as to whether the underlying offense was committed as a result of that person's position as a victim of trafficking in persons. 7. Sections 6-9(3) of the Trafficking Act addresses prevention issues by prohibiting any act that may directly or indirectly lead to trafficking. For instance, the Trafficking Act makes it a crime for any person to: (a) intentionally lease or sublease any room, house, building or establishment for facilitating or promoting trafficking in persons or allows it to be used or ought reasonably to have known or suspected that it will be used to facilitate or promote trafficking in persons; (b) subsequent to the lease or sublease of any room, house, building or establishment, becomes aware or ought reasonably to have known or suspected that it is being used to facilitate or promote trafficking in persons and fails to report that knowledge to a police official; (c) intentionally advertises, publishes, prints, broadcasts, distributes or causes the advertisement, publication, printing, broadcast or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of the internet or other information technology. 8. Children's Act: The Children's Act prohibits the trafficking of children. It does not apply to adult victims. 9. The Sex Act applies to both children and adults, but it only deals with trafficking for the purpose of sexual exploitation. 10. The Trafficking Act will provide for international cooperation in combating human trafficking. The Trafficking Act will allow officials to cooperate with foreign states with regards to inter alia extradition, repatriation of trafficking victims, information sharing, mutual legal assistance, and training. 11. The Children's Act allows South African officials to enter into anti-trafficking cooperative agreements with foreign states, but the Sex Act contains no such provision. Article 10 of the Children's Act provides: "Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law."
<p>II. Access to the right to a remedy</p>	<ol style="list-style-type: none"> 12. Access to remedies: <ol style="list-style-type: none"> a) The Trafficking Act will provide for a comprehensive witness protection program.

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| | <ul style="list-style-type: none">b) The Children's Act and the Sex Act are silent on any type of victim protection program.c) The Trafficking Act will protect the identities of child victims during the litigation process.d) Neither the Children's Act nor the Sex Act provides for the protection of a child's identity or privacy during the litigation process.e) Trafficking Act will provide myriad remedies including: compensation for both psychological and physical injuries; damage to property; and remedies for sexually transmitted diseases if necessary. Prosecutors will also have the ability to force convicted perpetrators to provide for additional compensation to the State. Under this scenario, the perpetrator will be forced to pay into the Criminal Assets Recovery Account – a fund that provides compensation for present and future victims.f) <u>Under the Sex Act, female victims are often grossly undercompensated, which is direct contravention with the Principles.</u>g) Under the current legal regimes of the Children's Act and the Sex Act, victims may receive compensation through civil damages (compensatory/punitive), liquidated assets of the perpetrator, court-ordered stipends and grants, and increased victim's compensation from reduced perpetrator sentences.h) If a trafficking victim is from a foreign country, the Trafficking Act will provide for T-Visa type programs that will allow victims to stay in the country for a period of 3-months. |
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Protocol	Trafficking Act	Children’s Act	Sex Act
<p>Definition</p> <p>Defines “human trafficking” as: "Trafficking in persons" shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>Defines “human trafficking as: "Trafficking in persons" shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;</p>	<p>No specific definition for human trafficking as a stand-alone crime.</p>	<p>No specific definition for human trafficking as a stand-alone crime.</p>
<p>Criminalization</p> <p>Each State Party shall adopt such legislative</p>	<p>Criminalizes human trafficking as stand-</p>		<p>Criminalizes HT but only as it relates</p>

<p>and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.</p>	<p>alone crime in accordance with Protocol.</p>	<p>Criminalizes HT but only as it relates to child trafficking.</p>	<p>sexual exploitation crimes.</p>
<p>Protection of victims of trafficking in persons</p> <p>In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.</p>	<p>Provides for the protection of the identities of victims.</p>	<p>No prescribed identity protections</p>	<p>No prescribed identity protections</p>
<p>Assistance</p> <p>Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the</p>	<p>Mirrors the Protocol and provides for the medical assistance, housing, social recovery programs, counseling services, psychological services, and info on legal recourse for victims.</p>	<p>No such assistance measures.</p>	<p>No such assistance measures.</p>

<p>provision of: (a) Appropriate housing; (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; (c) Medical, psychological and material assistance; and (d) Employment, educational and training opportunities....Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.</p>			
<p>Status</p> <p>Each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.</p>	<p>Allows for a 30-day recovery and reflection period for victims to remain in the country.</p>	<p>No such provisions.</p>	<p>No such provisions.</p>
<p>Repatriation of victims of trafficking in persons</p> <p>The State Party of which a victim of trafficking in persons</p>	<p>Directors-General will call for repatriation of the</p>	<p>Reparation is available for child victims.</p>	<p>No such provision.</p>

