

**TRAFFICKING IN PERSONS IN LESOTHO: AN ASSESSMENT OF THE
IMPLEMENTATION OF THE ANTI-TRAFFICKING IN PERSONS ACT 2011 IN
COMBATING HUMAN TRAFFICKING**



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BY

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DECLARATION

I, Tankiso Motipi, solemnly affirm that this mini dissertation has not been previously submitted for a degree at any other institution of higher learning. The contents of this dissertation represent my own original research, except where I have duly acknowledged the work or contributions of others.

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Date: 13 November 2023

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ABSTRACT

The passage of the Anti-Trafficking in Persons Act 2011 represented a significant milestone in Lesotho's endeavours to counteract Trafficking in Persons. In light of the prevalent issue of human trafficking within the country, exacerbated by the absence of a robust legal framework to address the problem, the introduction of legislation criminalising Trafficking in Persons, establishing institutions to combat the crime, and providing for the protection of trafficking survivors can be seen as a partial manifestation of Lesotho's commitment to combating this form of exploitation. However, the mere enactment of legislation marks only the initial phase, as the effectiveness of any legislation hinges upon its proper implementation.

This dissertation examines the implementation of the Act and assesses its efficacy in upholding the rights and welfare of trafficked survivors. Utilising an extensive literature review, qualitative interviews, comparative analysis with best practices from other nations, and legal scrutiny, this study evaluates the degree to which the Act has been put into practice and identifies the challenges encountered during its execution. The research probes into the Act's provisions concerning prevention, protection, prosecution, and collaborations among key stakeholders. Additionally, it scrutinizes the alignment of the Act with international standards and analyses the experiences of various stakeholders, including governmental bodies, Non-Governmental Organisations, and law enforcement agencies.

By illuminating both strengths and weaknesses, this study aims to facilitate policy discussions, steer future interventions, and advocate for a more efficient response to combat Trafficking in Persons in Lesotho, all while safeguarding the rights and dignity of trafficking survivors. The research findings contribute to the existing literature on anti-trafficking endeavours and propose recommendations to bolster the protection of human trafficking survivors. These recommendations encompass training programs for law enforcement and relevant authorities, the allocation of adequate resources for victim support services, and fostering cross-border cooperation and collaborations.

LIST OF ACRONYMS

ACHT	Advisory Council on Human Trafficking
AU	African Union
BDS	Beautiful Dream Society
ECOWAS	Economic Community of West African States
FBI	Federal Bureau of Investigation
JVTA	Justice for Victims of Trafficking Act
LMPS	Lesotho Mounted Police Services
MSC	Multi-Sectoral Committee
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
PALERMO PROTOCOL	The Protocol to Prevent, Suppress and Punish Trafficking Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime
SADC	Southern African Development Community
SOP	Standard Operating Procedures
TIP	Trafficking in Persons
TVPA	Trafficking Victims Protection Act 2000
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention Against Transnational Organised Crime
US	United States
VOT	Victim of Trafficking

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CHAPTER ONE: INTRODUCTION

1.1 Introduction

Human trafficking is a widespread and profoundly troubling issue that violates fundamental human rights and impacts societies worldwide.¹ Acknowledging the pressing need to tackle this contemporary form of slavery, the international community has established a comprehensive legal structure to combat human trafficking. Even in Lesotho, a small landlocked nation in Southern Africa, this scourge is present. Despite its size, factors such as the country's distinctive geography, socio-economic circumstances, and its adjacency to South Africa—acting as a magnet for impoverished and desperate migrants—render Lesotho susceptible to instances of human trafficking.

Lesotho serves as both a source and a transit point for women and children trafficked for domestic servitude. Children are often exploited in animal herding, while women are primarily subjected to sex trafficking.² Basotho women and girls migrate to South Africa seeking employment but face exploitation and imprisonment by traffickers. Additionally, Basotho men working in agriculture and mining fall victim to forced labour, with some employers resorting to reporting them for deportation to evade paying wages.³ Organized crime syndicates allegedly exploit and even kill Basotho men in derelict gold mines. Traffickers force Basotho who illegally migrated to South Africa into committing crimes, such as theft and drug trafficking, under threat of violence or through coercion.⁴ Similar to numerous other countries, Lesotho has enacted legislation to combat this appalling crime. The nation has taken substantial measures, including legal reforms, to address the issue. However, the effectiveness and actual outcomes of these reforms remain a cause for concern. This dissertation aims to scrutinize the extent to which Lesotho has implemented its legal framework regarding Trafficking in Persons.

¹ United Nations Office on Drugs and Crime (UNODC).

² US Department of State 2022 Trafficking in Persons Report: Lesotho < <https://www.state.gov/reports/2022-trafficking-in-persons-report/lesotho/>> accessed 10 July 2023.

³ Ibid.

⁴ Ibid.

This introductory chapter sets the stage for the study by exploring the historical context of Trafficking in Persons, examining the evolution of international, regional, and national laws aimed at combating this crime. Furthermore, it will elucidate the specific issue this study aims to address, delineating its objectives and the methodology employed. To finalise, the chapter will conclude by presenting an overview of the subsequent chapters within this research.

1.2 Background of the Study

Trafficking in Persons encompasses the recruitment, transportation, or receipt of individuals through coercive or deceitful methods for the aim of exploitation.⁵ Typically, perpetrators gain a financial advantage or reward from trafficking victims, while victims, in contrast, receive minimal or no benefit. The historical roots of Trafficking in Persons can be traced back to the 16th century, notably during the era of the Transatlantic Slave Trade.⁶ During this period, Portuguese merchants began travelling overseas to Africa to purchase or capture people, enslave them, and take them to Europe.⁷ Subsequently, other European nations such as France and Britain became involved in similar practices.

However, during the 18th and 19th centuries, international activism emerged, advocating for the complete abolition of slavery in all its manifestations. Officially, slavery was abolished on 01st January 1863.⁸ Yet, in practical terms, the cessation of slavery did not occur immediately. Notably, the final recorded transatlantic slave voyage arrived in America in 1866, despite the prior abolition of slavery in the country.⁹ These historical practices of slavery appear to have laid the groundwork for the emergence of Trafficking in Persons. While slavery predominantly revolved around

⁵ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, art 3.

⁶ Becky Giovagnoni and Amber Van Schooneveld, 'The History of Human Trafficking' (Human Trafficking Education, 25 January 2022) <https://theexodusroad.com/history-of-human-trafficking/> > accessed 12 December 2022.

⁷ Christopher Rodrigues, 'Portugal and African Slave Trade before Columbus' (African Diaspora Studies Cultural History, 07 October 2016) < <https://stmuscolars.org/portugal-and-african-slave-trade-before-columbus/> > accessed 24 January 2023.

⁸ Scott C Ideleman, 'The Emancipation Proclamation- Sesquicentennial Reflections' (Marquette University Law School Faculty Blog, 26 December 2012) <https://law.marquette.edu/facultyblog/2012/12/the-emancipation-proclamation-sesquicentennial-reflections/> >

⁹ Thomas Lewis, 'Trans Atlantic Slave Trade' (Encyclopedia Britannica, 20 December 2022) < <https://www.britannica.com/topic/transatlantic-slave-trade> > accessed 31 January 2023.

coerced labour, Trafficking in Persons encompasses the trafficking of individuals for various exploitative purposes, including but not limited to sexual exploitation, forced labour, servitude, and the extraction of organs for financial gain.¹⁰

Between 1850 and 1900, a substantial influx of Chinese immigrants arrived in the United States, enticed by promising job opportunities linked to the construction of the Central Pacific Railroad.¹¹ However, as their numbers grew, they faced escalating racial animosity and violence due to perceived economic threats posed by their presence.¹² Concurrently, the concept of "coolie" labour emerged.¹³ Following the conclusion of the Transatlantic Slave Trade, numerous countries across the Americas began employing "coolie" labour from China as a reservoir of low-wage workers.¹⁴ The term "coolie" encompassed individuals of Chinese, Malaysian, Korean, and Indian descent who arrived subsequent to the abolition of slavery. Some argue that this practice represented a new variant of slavery, marked by coercion, deceit, and violence in certain instances.¹⁵ Governments turned a blind eye to the mistreatment suffered by these "coolie workers" at the hands of large plantations and construction corporations that exploited them, primarily due to their status as immigrants and their vulnerability.¹⁶ Despite existing provisions aimed at safeguarding the labour force's interests, these were frequently disregarded, with governmental authorities overlooking the physical and other unlawful measures employed by plantation owners.

Coolie labourers frequently faced deceitful recruitment tactics, including false assurances regarding fair wages and working environments. They were frequently transported across borders, at times involuntarily, to toil for prominent construction or agricultural firms. A substantial number

¹⁰ Ibid.

¹¹ Library of Congress, 'Immigration to the United States: 1851-1900' (<<https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/rise-of-industrial-america-1876-1900/immigration-to-united-states-1851-1900/>> accessed 10 February 2023.

¹² Giovanni and Van Schooneveld (n 2) 3.

¹³ This refers to a low-wage labourer, typically of South Asian or East Asian descent, <https://immigrationhistory.org/item/act-to-prohibit-the-coolie-trade-2/>> accessed 10 July 2023.

¹⁴ Giovanni and Van Schooneveld (n 2) 3.

¹⁵ Rana P Behal, 'Coolie Drivers or Benevolent Paternalists? British Tea Planters in Assam and the Indenture Labour System' (Modern Asian Studies, 18 September 2009) <<https://www.cambridge.org/core/journals/modern-asian-studies/article/abs/coolie-drivers-or-benevolent-paternalists-british-tea-planters-in-assam-and-the-indenture-labour-system/4A625B2CDBF681768C580398827EAB3C>> accessed 25 January 2023.

¹⁶ Behal (n 7) 8.

were ensnared in debt bondage, caught in a relentless cycle of coerced labour, and unable to break free from these intolerable working conditions. Although the term "coolie" is obsolete, a similar practice appears to have resurfaced in contemporary times under the guise of Trafficking in Persons.

1.2.1 Trafficking in Persons Post World War I

In 1921, The League of Nations ratified the International Convention for the Suppression of Traffic in Women and Children. The primary goal was to safeguard women and children, who were believed to be the primary victims of Trafficking in Persons during that era, specifically from sexual exploitation and involvement in prostitution. At that time, sexual exploitation and prostitution were the sole manifestations of Trafficking in Persons.¹⁷ The Convention mandated states to guarantee the safeguarding of women employed overseas and to supervise recruitment agencies. With 46 states ratifying this convention, governments acknowledged the importance of shielding women and children from sexual exploitation. However, there existed no mechanism to protect both men and women from labour exploitation.¹⁸ States appreciated the significance of protecting women and children against sexual exploitation as 46 states¹⁹ ratified this convention. Nonetheless, there was no instrument protecting men and women against labour exploitation.

1.2.2 Trafficking in Persons post World War II

On December 2, 1949, the United Nations (UN) adopted the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. This Convention became effective on July 25, 1959, and received ratification from 82-member states. Its primary focus was to safeguard women and children from instances of sexual exploitation and coerced involvement in prostitution.²⁰ Over the next decades, other forms of Trafficking in Persons emerged, especially exploitative labour as the need for cheap labour and high production was

¹⁷ International Legal Search Engine: International Convention for the Suppression of the Traffic in Women of Full Age Preamble.

¹⁸ The 1921 Convention, art 6.

¹⁹ The United Nations Treaty Collection, <https://treaties.un.org/doc/Treaties/1921/09/19210930%2005-59%20AM/Ch_VII_3p.pdf> accessed 09 July 2023.

²⁰ The UN adopted *the Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others*, art1.

increasing.²¹ It also became evident that men were also victims of trafficking. The UN Convention Against Transnational Organised Crime (UNTOC) was adopted on the 15th of November 2000 and was aimed at promoting cooperation amongst states to prevent and combat transnational organised crimes more effectively.²² The Convention entered into force on the 29th of September 2003 and has so far been ratified by 190 states, including Lesotho on the 24th of September 2003.

The UNTOC is supplemented by three Protocols: The Protocol Against Smuggling of Migrants by Land, Air and Sea, the Protocol Against Illicit Manufacturing of and Trafficking in Firearms.²³ This study will focus mainly on the one addressing Trafficking in Persons. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime (The Palermo Protocol), was adopted on the 15th of November 2000 in Palermo, Italy. It entered into force on the 25th of December 2003 and was ratified by 180 states. The Palermo Protocol defines Trafficking in Persons as recruitment, transfer, receipt of persons or harbouring, using force, coercion or other exploitative means for the purpose of exploiting others.²⁴ The definition of Trafficking in Persons now includes sexual exploitation, exploitative labour, organs harvesting as well as slavery/servitude.²⁵ The objectives of the Palermo Protocol are to prevent and combat Trafficking in Persons, paying particular attention to women and children, to protect and assist the victims of such trafficking, with full respect for their human rights and to promote cooperation among States Parties in order to meet these objectives. The name of the protocol, however, suggests that women and children are still the main objects of protection of laws that seek to combat Trafficking in Persons.

²¹ M Malloch and P Rigby, *Human Trafficking: The Complexities of Exploitation* (1st edn, Edinburgh University Press 2017) 46.

²² United Nations Office on Drugs and Crime Website < <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html>> accessed 31 January 2023.

²³ United Nations Office on Drugs and Crime, 'United Nations Convention Against Trans National Organised Crime and the Protocols Thereto' < <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> > accessed 11 May 2023.

²⁴ The Palermo Protocol, art 3.

²⁵ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, art 3.

1.2.3 Trafficking in Persons in Lesotho

Lesotho, just like many other underdeveloped countries, faces the problem of Trafficking in Persons. Lesotho ratified the Palermo Protocol on the 24th of September 2003. The Protocol provides for psycho-social support for victims of Trafficking in Persons, and compensation for victims and their families.²⁶ In line with its international obligations of domesticating international conventions, Lesotho enacted the Anti-Trafficking in Persons Act of 2011, thereby domesticating the Palermo Protocol. The Act adopts a definition of Trafficking in Persons which is similar to the one contained in the Palermo Protocol.²⁷ The Act identifies forms of aggravated trafficking, which includes a commission of the offence by a syndicate²⁸ as well as law enforcement.²⁹ The legislation also contains a provision that requires the establishment of the Victims of Trafficking Trust Fund to support all Trafficking in Persons-related issues, including to support the victims/ survivors.³⁰ The proceeds from this Fund will assist in attending to vital functions of victims' protection under the Act such as victims' compensation, rehabilitation and psycho-social support to victims, capacity-building for service providers as well as building of shelters in all the ten districts of the country.

In 2015, Lesotho enacted the Anti-Trafficking in Persons Regulations of 2015, whose objective is to provide guidelines on the implementation of the Anti-Trafficking Act and establish the Multi-Sectoral Committee (MSC) on combating Trafficking in Persons.³¹ This committee's objectives are to promote the implementation of regional and international agreements and the Palermo Protocol as well as to facilitate cooperation amongst stakeholders nationally, regionally and internationally.³² The Regulations also give powers to the Ministry of Home Affairs as the coordinator of all the activities of the committee through its secretariat chaired by the Principal Secretary of Home Affairs. .

²⁶ The Palermo Protocol, art 6.

²⁷ Sec 2 of the Act.

²⁸ The Anti-Trafficking in Persons Act, s 7.

²⁹ The Anti-Trafficking in Persons Act, s 20.

³⁰ The Act, s 45.

³¹ Anti-Trafficking in Persons Regulations 2015, s 3.

³² Anti-TIP Regulations, s 5, s 6.

More, the Regulations lay down the implementation of the Anti-Trafficking in Persons Act. It also provides the procedure for the release of funds from the Victims of Trafficking Trust Fund. In 2021, the Anti-Trafficking in Persons Act was amended by the Anti-Trafficking in Persons (Amendment Act) 2021. It addressed some of the issues that remained unsolved in the main Act. For instance, the main Act provided for an option of a fine of M1 000 000 or twenty-five-years' imprisonment, this was a problem as most Trafficking in Persons perpetrators could afford the fine.³³ They would then pay the fine and move to their next victim. The amendment has removed all these; a conviction calls for a sentence of up-to-25 years imprisonment without an option of a fine.³⁴

This was also the case for child victims. The Act provided for a fine of M 2 000 000 or life imprisonment. The 2021 Amendment has, similarly addressed this critical issue and removed an option of a fine, thereby protecting the rights of children, who are also a vulnerable group in Trafficking in Persons.³⁵

1.3 Problem Statement

Lesotho confronts a significant challenge regarding Trafficking in Persons, encompassing forced labour and sexual exploitation. The country endeavoured to incorporate the Palermo Protocol by enacting the Anti-Trafficking in Persons Act of 2011. Despite these legislative advancements, minimal practical efforts have been made to enforce this law effectively. Notably, challenges have emerged in implementing the legislation. For instance, while the law outlines the prosecution of Trafficking in Persons perpetrators, in practice, there has been limited progress in ensuring the accountability of these offenders. To illustrate, only seven cases have been concluded out of a total of 14 pending court cases since the law's enactment in 2011.

Additionally, the Anti-Trafficking in Persons Act stipulates the establishment of the Victims of Trafficking Trust Fund aimed at supporting all issues related to Trafficking in Persons for the

³³ The Anti-TIP Act, s 5 (1) (2).

³⁴ The Anti-Trafficking in Persons Amendment Act 2021, s 3 (1) (2).

³⁵ Anti-Trafficking in Persons Amendment Act 2021, s 3, s 4; see also <<https://lestimes.com/lesotho-makes-giant-stride-towards-meeting-agoa-mcc-criteria/>> accessed 14 October 2022.

protection and rehabilitation of victims. Regrettably, this fund has yet to materialize. Consequently, there are currently insufficient financial resources available to support programs dedicated to alleviating the plight of Trafficking in Persons victims.³⁶

The legislation also mandates mechanisms aimed at preventing Trafficking in Persons and safeguarding the victims and their families. Additionally, it entails a government obligation to establish shelters across districts for the protection of trafficking victims.³⁷ However, the government lacks its own victims' protection shelters that are regulated by the Ministry of Social Development as mandated by the law. The government's failure to establish these shelters signifies the absence of safe spaces for trafficking victims, a requirement outlined in the legislation. Consequently, this indicates minimal efforts in implementing the Anti-Trafficking in Persons legislation. Moreover, victims of Trafficking in Persons necessitate psycho-social and legal support, as well as compensation. The provision of such assistance can only be possible if the government fully enforces the Anti-Trafficking in Persons Act, which includes the establishment of the Victims of Trafficking Trust Fund—an initiative that, as previously mentioned, has not yet been realised.

As previously mentioned, Lesotho has both signed and ratified international legal frameworks aiming to address Trafficking in Persons. Additionally, it has enacted domestic legislation specifically targeting this issue. These international and domestic legal frameworks delineate Lesotho's legal stance concerning the combat against Trafficking in Persons. This study aims to explore the extent of Lesotho's compliance with its diverse obligations in countering Trafficking in Persons. It seeks to examine the repercussions of Lesotho's failure to fulfill these obligations on victims of Trafficking in Persons. Moreover, the study aims to propose potential measures that could bolster Lesotho's efforts in combating Trafficking in Persons. To achieve this, the study will focus on assessing the implementation of the Anti-Trafficking in Persons Act in Lesotho.

³⁶ The Anti-Trafficking in Persons Act, s 45.

³⁷ Anti-TIP Act, s 47 (e).

1.4. Research Questions

The study endeavours to answer the following questions:

1. What is the Legal framework in Protecting Victims of Trafficking in Persons in Lesotho?
2. How does Lesotho's policies and legislation align its international obligations in combating Trafficking in Persons?
3. To what extent had Lesotho succeeded in implementing the Anti-Trafficking in Persons Act?
4. What lessons can Lesotho learn from other Jurisdictions in protecting the victims of Trafficking in Persons?

1.5 Research Objectives

1. To examine Lesotho's legal framework on the protection of victims of trafficking in persons.
2. To examine the extent to which Lesotho's legislation on Trafficking in Persons is aligned with international laws.
3. To explore the barriers of Lesotho's legal system in handling Trafficking in Persons cases, including the number of prosecutions and convictions.
4. To propose measures that can be put in place to make the Lesotho legal system more effective in dealing with Trafficking in Persons, particularly, the protection of victims.

1.6. Significance of the Research Problem

Lesotho, as a developing nation, grapples with issues such as high unemployment rates and widespread poverty. Its proximity to economically prosperous South Africa has led to significant migration of Basotho individuals seeking opportunities in the neighbouring country. Simultaneously, Lesotho has observed an influx of individuals from various parts of the world in search of prospects within its borders. The movement of people both into and out of Lesotho presents an environment conducive to potential instances of Trafficking in Persons. However, the pertinent question arises: does the legal framework within Lesotho possess the necessary capabilities to effectively address this complex challenge? Lesotho has been previously identified as a country struggling to combat Trafficking in Persons, signalling potential inadequacies within

its legal system to handle this issue.³⁸ The research evaluates Lesotho's capacity to address the issue of Trafficking in Persons while aiming to propose effective implementation strategies that can bolster Lesotho's efforts in combating this problem. By comparing Lesotho's approach to Trafficking in Persons with more effective practices observed in other jurisdictions, the study identifies areas of weaknesses within Lesotho's strategies and suggests potential remedies. Through this comparative analysis, the research endeavours to emphasise key insights that Lesotho can glean from other jurisdictions to enhance its efforts in combating Trafficking in Persons.

1.7 Research Limitations

One significant issue confronting Lesotho in addressing Trafficking in Persons (TIP) is the dearth of available data on this subject within the country. The absence of up-to-date information stems from the fact that data collection related to TIP in Lesotho is predominantly manual. Furthermore, another challenge lies in the underreporting of incidents involving Trafficking in Persons, resulting in inadequate documentation of such cases. Moreover, the limited data that does exist is often considered privileged information, creating restricted access for researchers. Subsequently, the researcher encounters constraints due to the scarcity and restricted accessibility of available data on Trafficking in Persons within Lesotho.

1.8 Hypothesis

For an effective combat against Trafficking in Persons (TIP), the government of Lesotho needs to execute crucial provisions outlined in the Anti-Trafficking in Persons Act of 2011, which involves establishing the Victims of Trafficking Trust Fund. Presently, Lesotho lacks sufficient and efficient mechanisms to comprehensively tackle instances of Trafficking in Persons. This deficiency not only hampers the government's capability to address TIP but also contributes to underreporting of such crimes within the country.

³⁸ US Department of State Report 2022 <<https://www.state.gov/reports/2022-trafficking-in-persons-report/>> Accessed 15 November 2022.

1.9 Methodology

This research adopts a qualitative methodology, incorporating both primary and secondary sources. Primary sources encompass international legal instruments, including treaties and protocols, domestic legislation, and case law, enabling an exploration of the global and national legal framework pertaining to Trafficking in Persons (TIP). The examination of case law serves to illustrate how courts have handled TIP cases. Secondary sources, such as textbooks, journal articles, and online resources, supplement the literature review. Additionally, the study aims to augment this information through informal interviews with frontline individuals involved in combatting TIP.

To investigate deeper, the researcher plans to conduct interviews with a minimum of four (4) stakeholders within the district of Maseru. Key informants include the Department of Home Affairs, acting as the Chairperson of the Multi-Sectoral Committee in Combating Trafficking in Persons; the Anti-Trafficking in Persons and Migrant Control unit within the Lesotho Mounted Police Service; the Office of the Director of Public Prosecutions; and a Non-Governmental Organization actively engaged in combating Trafficking in Persons in Lesotho. However, to preserve confidentiality and professionalism, the identity of respondents will be kept confidential. Furthermore, the study intends to conduct a comparative analysis between Lesotho and the United States of America (USA) to evaluate the implementation of anti-Trafficking in Persons laws in different jurisdictions. This comparative approach aims to identify and recommend best practices from the USA and other relevant regions for potential adoption in Lesotho's efforts to combat TIP.

1.10 Dissertation outline

This research will be structured into five chapters. Chapter One serves as the introduction, encompassing the background of the research, problem statement, research questions, and study objectives. Additionally, it will delineate the research methodology and hypothesis. Chapter Two will undertake an extensive literature review focusing on Trafficking in Persons (TIP). The primary objective is to elucidate the international, regional, and national legal frameworks

pertaining to TIP. In Chapter Three, the research will examine TIP within the context of Lesotho. The goal is to delineate Lesotho's legal framework concerning Trafficking in Persons and evaluate its practical implementation. Moving on to Chapter Four, the research will conduct a comparative analysis between Lesotho and the United States concerning the implementation of the Trafficking Victims Protection Act (TVPA) 2000. This comparative study aims to assess how the US safeguards victims of Trafficking (VOTs) through its legal provisions. Finally, Chapter Five will present the conclusions drawn from the research findings and propose recommendations based on the study's outcomes.

CHAPTER TWO: THE LEGAL FRAMEWORK IN COMBATING TRAFFICKING IN PERSONS IN LESOTHO

2.1 Introduction

The preceding chapter offered a concise background on Trafficking in Persons, delving into the historical context of slavery and its evolution into contemporary Trafficking in Persons. It highlighted the evolution of international laws governing this crime, encompassing the pre and post-World War I and II eras, as well as regional instruments and Lesotho's national laws. Additionally, it identified the research's problem statement and critical inquiries that it aims to address.

This chapter embarks on an extensive examination of the crime of Trafficking in Persons. Initially, it provides an exploration of the concept's origins and historical background. Beginning with defining Trafficking in Persons, the chapter proceeds to scrutinize the international legal framework governing this crime, encompassing policies and other non-legislative strategies in combating Trafficking in Persons. Furthermore, it explores into the regional and sub-regional frameworks, many of which involve Lesotho as a participating party. This discussion is supplemented by secondary data from dissertations and research studies.

Subsequently, the chapter delves into a comprehensive discussion on Lesotho's legal framework for combating Trafficking in Persons. It introduces the tiered categorization of countries under the United States' anti-Trafficking in Persons legislation, which has garnered global recognition. The chapter concludes by analysing whether Lesotho's legal framework complies with international standards in addressing Trafficking in Persons and assesses its adequacy in safeguarding victims of trafficking within the context of Lesotho.

2.2 Definitions of Trafficking in Persons

Trafficking in Persons represents an organized transnational crime involving the recruitment, transportation, or receipt of individuals through deceitful or coercive means, aiming to exploit

them.³⁹ This form of exploitation manifests diversely, encompassing sexual exploitation, labour exploitation, debt bondage, and organ harvesting.⁴⁰ It commonly involves the movement of people from one location to another, whether inter-state or rural to urban areas, although in some cases, victims may be manipulated through the internet, particularly in instances of sexual exploitation.

Sex trafficking predominantly impacts women and children, coercing them into commercial sexual activities against their will.⁴¹ This includes the creation and dissemination of pornography and other sexual material online for profit without the consent of the victims.⁴² This modern-day form of exploitation capitalizes on the internet, where victims' nude images are sold and distributed across pornographic platforms without their consent. The 2022 Global Report on Trafficking in Persons has highlighted a 5% rise in sexual exploitation victims in Sub-Saharan countries from 2019 to 2020.⁴³ This shows the severity of the crime and the vulnerability it poses to African or Lesotho nationals.

Historically, Trafficking in Persons originated in the 16th Century and was officially deemed illegal in 1863, primarily targeting Africans subjected to bondage in Europe and the United States during the era of transatlantic slavery.⁴⁴ These patterns persist today in contemporary Trafficking in Persons trends. According to the 2022 Global Trafficking in Persons report, victims from Sub-Saharan countries are increasingly identified in various regions worldwide. The same dimensions are still seen even today in Trafficking in Persons trends and patterns. The 2022 Global Trafficking in Persons report goes further to reveal that victims from Sub-Saharan countries are detected in a growing number of countries outside the region. The increase was significant as 7% was recorded

³⁹ *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime*, art 3.

⁴⁰ Regent University, 'What is Human Trafficking?' (Centre for Global Justice, 06 January 2021) <<https://globaljustice.regent.edu/2021/01/what-is-human-trafficking/>> accessed 09 March 2021.

⁴¹ United Nations Office on Drugs and Crime <<https://www.unodc.org/unodc/en/human-trafficking/crime.html> > accessed 11 April 2023.

⁴² United Nations Office on Drugs and Crime <<https://www.unodc.org/unodc/en/human-trafficking/Webstories2021/the-role-of-technology-in-human-trafficking.html>> accessed May 2023.

⁴³ The 2022 Global Report on Trafficking in Persons <https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_chapter_1_Global_Overview_230123.pdf> p 21, accessed May 2023.

⁴⁴ SC Ideleman (n 5) 10.

in other regions in 2017.⁴⁵ The percentage increased to 11% in 2018, 21% in 2019 but dropped to 16% in 2020 during the pandemic, when most operations and movements were restricted. The general trend as indicated over the years is that Sub-Saharan African nationals are the most vulnerable to Trafficking in Persons. The most prevalent forms of trafficking globally remain sexual exploitation and exploitative labour.⁴⁶

2.3 International Legal Framework Governing Trafficking in Persons

In 1921, the League of Nations adopted the International Convention for the Suppression of Traffic in Women and Children. Ratified by 46 states,⁴⁷ this convention aimed primarily to tackle the trafficking of women and children, focusing on their exploitation for sexual purposes, especially within the context of prostitution. The Convention provided a definition of trafficking, encompassing actions such as procuring, enticing, or leading individuals away, and also highlighted the exploitation of individuals for purposes related to prostitution.⁴⁸ While acknowledging the Convention's efforts in combating Trafficking in Persons and its attention to the gender dynamics inherent in such trafficking, it is noteworthy that the convention did not address other forms of trafficking beyond the specified focus on women and children subjected to sexual exploitation.

Although other forms of trafficking might not have been as prevalent in 1921, the issue of labour exploitation has historically been significant, tracing back to the era of slavery. Slavery primarily involved exploitative labour, a practice that evolved into the concept of coolie labourers. However, the convention did not encompass these aspects and solely concentrated on the protection of women and children. As a result, victims of trafficking in other forms were not afforded protection under this Convention. Its primary focus was urging member states to establish laws and

⁴⁵ The 2022 Global Report on Trafficking in Persons < https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_2022_chapter_1_Global_Overview_230123.pdf > p 42, accessed May 2023.

⁴⁶ Ibid.

⁴⁷ Ibid (n 16) 12.

⁴⁸ *The Convention for the Suppression of Traffic in Women and Children, art 1.*

regulations that criminalised and suppressed the trafficking of women and children for immoral purposes.⁴⁹

The 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, commonly known as the 1949 UN Convention, was established by the United Nations in 1949. It stands out for its inclusive nature, being among the initial international instruments addressing these concerns that welcomed ratification by all states, including those in the developing world. This served as a pivotal advancement in the global initiative to confront issues linked to prostitution and exploitation while fostering international collaboration.

The Convention delineates sex trafficking as the act of procuring, enticing, or leading another individual, even with their consent, for the explicit purpose of engaging in prostitution.⁵⁰ Furthermore, the Convention explicitly prohibits the operation or financial support of brothels aimed at facilitating the prostitution of others. As per the Convention's mandate, states are obligated to take necessary measures to revoke any existing laws that condone prostitution.⁵¹ Additionally, the Convention emphasizes the extradition of offenders involved in the prostitution of others, requiring states to ensure that this offense is extraditable in their extradition agreements.⁵² This Convention stands as an early endeavour to establish international norms and standards concerning these matters, signifying a significant milestone in the history of international agreements regarding prostitution and associated offenses. It set a precedent for inclusive treaties and agreements addressing global social and legal issues, acknowledging the imperative of international cooperation in combatting such issues.⁵³ While its primary focus was on prostitution and its exploitation, this Convention laid the groundwork for subsequent international agreements that would comprehensively address modern human trafficking. Furthermore, it underscored the commitment of the global community to confront exploitation and uphold human rights.

⁴⁹ Ibid, art 3, 4, 5.

⁵⁰ *The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949, art 1.*

⁵¹ Ibid, art 6.

⁵² Ibid, art 8.

⁵³ Ibid.

In 1979, the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) with the primary objective of eradicating discrimination against women and ensuring gender equality.⁵⁴ Ratified by 189 states, this Convention imposes an obligation on all signatory states to implement necessary measures for safeguarding women against trafficking and sexual exploitation.⁵⁵ This underscores the UN's commitment to addressing Trafficking in Persons (TIP) and shielding women from sexual exploitation.

Subsequently, in December 2000, the Protocol to Suppress, Punish, and Combat Trafficking in Persons, Especially Women and Children (commonly referred to as The Palermo Protocol) was introduced.⁵⁶ Serving as the principal international instrument combating TIP at the global level, it provides guidance to states in formulating and enacting domestic laws targeting TIP. It is the first international legal instrument that addresses all aspects of Trafficking in Persons. Distinguished as the first comprehensive international legal instrument addressing all facets of TIP, its objectives revolve around safeguarding and supporting trafficking victims, particularly women and children, while respecting their human rights. It further aims to foster cooperation among member states to achieve these objectives.⁵⁷

The Protocol substantially broadened the definition of Trafficking in Persons, encompassing recruitment, transportation, harbouring, and receipt of individuals through force, fraud, or deception for the purpose of exploitation.⁵⁸ It advocates for international, regional, and bilateral collaboration among member states to combat this transnational crime.⁵⁹ Notably, the Protocol affords special protection to children by eliminating the need to validate the means employed to perpetrate the crime, emphasizing any act conducted with the intention of exploiting a child as unlawful.⁶⁰

⁵⁴ *Convention on the Elimination of All Forms of Discrimination Against Women Preamble* <<https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>> accessed 17 October 2023.

⁵⁵ *Ibid*, art 6.

⁵⁶ United Nations Office on Drugs and Crime, <https://www.unodc.org/res/human-trafficking/2021the-protocol-tip_html/TIP.pdf> accessed 10 May 2023.

⁵⁷ The Palermo Protocol, art 2.

⁵⁸ The Palermo Protocol, art 3 (a).

⁵⁹ The Palermo Protocol, art 2.

⁶⁰ The Palermo Protocol, art 3 (c).

Moreover, the Protocol mandates member states to adopt legislative measures and preventive strategies to criminalize any attempts or acts of Trafficking in Persons within their jurisdictions. The Protocol explicitly mandates member states to adopt legislative and other preventative territories. Member states are obliged to define TIP in their national laws, articulate offenses and forms of trafficking, and stipulate appropriate penalties.⁶¹ In doing so, member states are mandated to define what Trafficking in Persons is, in their national laws, define offenses and forms of trafficking and prescribe appropriate penalties.⁶²

Receiving states bear an obligation to prioritise the human rights and safety of trafficking victims, particularly women and children.⁶³ It is incumbent upon them to furnish victims with essential protection, assistance, and access to medical and psychological healthcare, legal aid, and secure accommodations. Victims must not be treated as offenders, and receiving states should contemplate offering temporary or permanent residency to victims fearing reprisal in their home countries. The protocol emphasises the importance of ensuring the safe and voluntary repatriation of victims, taking into consideration their rights and safety, while implementing measures to prevent re-trafficking during repatriation. Notably, the Protocol imposes a mandate on states to ensure comprehensive protection for victims of Trafficking in Persons (VOTs).⁶⁴ It advocates for the provision of psycho-social support to VOTs, encompassing housing counselling, educational opportunities, and vocational training.

It becomes the state's responsibility to ensure that VOTs within their territory, as well as their citizens trafficked in other states, receive adequate protection to address these requirements.⁶⁵ Thus, states are required to incorporate these provisions outlined by the Palermo Protocol into their domestic legislation.⁶⁶ Additionally, states are mandated to ensure that their domestic laws include provisions for compensating VOTs for the damages and losses suffered as a result of being trafficked. The severe emotional impact of trafficking often leaves enduring scars on victims; for instance, in cases of labour trafficking, victims may have worked under exploitative conditions

⁶¹ The Palermo Protocol, art 5.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ The Palermo Protocol, art 8.

⁶⁵ The Palermo Protocol, art 6.

⁶⁶ Ibid, art 6 (5).

with minimal or no remuneration, necessitating compensation for the compelled work they endured for the perpetrator.⁶⁷

Lastly, states are to ensure that domestic laws provide for compensation for VOTs for the damage and loss suffered for being trafficked ⁶⁸ The severe emotional impact of trafficking often leaves enduring scars on victims; for instance, in cases of labour trafficking, victims may have worked under exploitative conditions with minimal or no remuneration, necessitating compensation for the compelled work they endured for the perpetrator.

Nevertheless, victims or survivors of trafficking continue to encounter numerous challenges, especially in certain states, including Lesotho, where those responsible for identifying and assisting victims lack the necessary skills to handle such cases adequately. This deficiency extends to healthcare institutions, often frequented by most victims, where the personnel are ill-equipped to address trafficking-related cases. Castellucci⁶⁹ highlights the prevailing uncertainty regarding the actual prevalence of Trafficking in Persons. In her dissertation, she underscores that 63% of recognized victims disclosed seeking emergency medical services at health centres but remained unrecognized as victims by healthcare professionals.⁷⁰ Her dissertation further reveals that 63% of identified victims indicated that they had sought emergency medical services at a health centre but were not identified as victims by health workers. Additionally, victims expressed dissatisfaction with the environment at these centres, stating it was not conducive for seeking help. They suggested that a brief interview to identify trafficking victims could have made them more comfortable and encouraged them to seek assistance.

⁶⁷ Ibid.

⁶⁸ The Palermo Protocol, art 6 (6).

⁶⁹ Jami Leigh Castellucci, 'Identification of Human Trafficking Victims in the Healthcare Setting: An Integrative Review' (2020) Doctoral Dissertations and Projects: 2631 09, p15
<<https://digitalcommons.liberty.edu/doctoral/2631/>> accessed 03 May 2023.

⁷⁰ Ibid.

2.4 Non-Legislative Plans and Policies

On the 30th July 2010, the United Nations adopted the Global Plan of Action to Combat Trafficking in Persons.⁷¹ In its preamble, the 2010 Action Plan reminded member states that despite the adoption of the Palermo Protocol, Trafficking in Persons is still prevalent. It also emphasised the need to deal with factors that cause Trafficking in Persons such as high unemployment, lack of socio-economic opportunities, discrimination as well as gender-based violence.⁷² The Action Plan is a commitment by the United Nations that mandates member states to have a clear, robust implementation plan to ensure that the provisions of the Palermo Protocol are realised following ratification. Member states committed to fostering cooperation and collaborative endeavours to denounce Trafficking in Persons as a violation of human rights. They recognized its adverse impacts on peace, security, and economic growth, acknowledging the need for concerted action to address this issue.⁷³

The Action Plan assigns special Rapporteurs the task of providing states with comprehensive technical assistance and other necessary support in their collaborative efforts to tackle Trafficking in Persons and the underlying factors contributing to it. Simultaneously, states are urged to exchange information with these designated officials concerning contemporary forms of slavery, the roots and repercussions thereof, and matters pertaining to violence against women, as well as instances of discrimination and marginalization prevalent within their respective societies.⁷⁴ The Plan of Action recognises the regional and sub-regional initiatives and strategies aimed at combating Trafficking in Persons. However, it underscores the necessity for a comprehensive global plan of action, emphasising that Trafficking in Persons is a worldwide issue demanding unified collaborative efforts from all member states.

The Plan of Action defines forms of Trafficking in Persons and states that they include sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.⁷⁵ It also provides for and reiterates the need for capacity-building of member

⁷¹ UN Resolution 64/293.

⁷² *United Nations Global Plan of Action to Combat Trafficking in Persons, 2010.*

⁷³ *The United Nations Global Plan of Action to Combat Trafficking in Persons 2010*, art 1.

⁷⁴ The 2010 Plan of Action, art 8.

⁷⁵ *Ibid*, art 2.

states and those in the forefront to combat Trafficking in Persons to effectively respond to combating Trafficking in Persons and protection of VOTs.⁷⁶ This means that states are individually encouraged by their international obligations to train their personnel who are entrusted with handling Trafficking in Persons cases to ensure compliance with the law. A state is also required to mainstream the issue of Trafficking in Persons into the broader policies and programs of the United Nations aimed at addressing economic and social development, human rights, the rule of law and good governance.⁷⁷

It is a non-binding framework developed to assist member states in their efforts to combat human trafficking. The plan serves as a set of guidelines and recommendations for countries to strengthen their anti-trafficking measures, promote international cooperation, and protect the rights of trafficking victims. Member states are encouraged to adopt and implement the principles and actions outlined in the Global Plan of Action, but they are not legally obligated to do so. While it doesn't create new legal obligations, the plan complements existing Convention and Protocol.

2.4.1 The United Nations Voluntary Trust Fund for Victims of Trafficking in Persons

The Plan of Action also highlights the UN pledge to establish the United Nations Voluntary Trust Fund for Victims of Trafficking in Persons, Especially Women and Children, to provide humanitarian, legal and financial aid to victims of Trafficking in Persons through established channels of assistance, such as governmental, intergovernmental and non-governmental organizations. The Trust shall therefore operate as a subsidiary fund of the United Nations Crime Prevention and Criminal Justice Fund managed by the United Nations Office on Drugs and Crime, and shall be administered in accordance with the Financial Regulations and Rules of the United Nations.⁷⁸

The establishment of a Victims of Trafficking Trust Fund is provided for in the 2010 Plan of Action for the UN to provide support to VOTs. This then indicates that states are also encouraged and expected to provide for such a fund in their domestic laws to ensure that VOTs get the required support at the domestic level. The action plan also gives a clear roadmap of how the Fund will be

⁷⁶ Art 5, art 23, art 29.

⁷⁷ Art 8.

⁷⁸ Art 38.

established. For example, it provides for the establishment of relevant offices that are responsible for the establishment and monitoring of such funds as well as outlining their roles.⁷⁹ One can therefore conclude that domestic laws that provide for the establishment of such a Fund must be enacted.

2.5 Regional and Sub-Regional Plan of Action

Apart from the international legal instruments that deal with TIP, there are also some regional and sub -regional legal instruments that deal with this problem. Lesotho is a member of the African Union (AU) which is the regional body and the Southern African Development Community (SADC) which is a sub-regional body. This means that it is bound by the AU and SADC legal instruments, if it has signed and ratified them. The discussion below will examine the AU and SADC legal position in relation to TIP.

2.5.1 African Union

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children, commonly referred to as the Ouagadougou Action Plan, was adopted in 2006, in Tripoli, Libya. The Plan is intended to establish cooperation between African States and the European Union in combating Trafficking in Persons⁸⁰. Its aims are to protect African women who are more vulnerable to being victims of Trafficking in Persons and are then trafficked abroad.⁸¹The vulnerabilities stem from some harmful cultural practices against women and children as well as gender-based violence.⁸²

The Plan provides that states should provide education and training, counselling and awareness raising as preventative measures in combating Trafficking in Persons.⁸³ The awareness-raising

⁷⁹ Ibid.

⁸⁰ *The Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children 2006* preamble.

⁸¹ Ibid.

⁸² Ibid.

⁸³ The Ouagadougou Action Plan, Part 1.

platforms should include mass media and information platforms.⁸⁴ States are required to empower women and girls to address their vulnerability to being easily lured by traffickers. This includes taking appropriate measures to improve the living conditions of families and extended families. Such improvements include taking measures to improve birth registration and provision of identity documents, which are relevant for accessing social security services and prove of nationality.⁸⁵

Part II of the Action Plan covers victims' protection and assistance. States should base their laws and policies for victims' protection and assistance on international human rights instruments, especially those that protect women and children from exploitation.⁸⁶ Identification of victims of trafficking should be a top priority, so that they are provided with assistance and protection, taking into account their special needs and vulnerabilities.⁸⁷ In doing so, states need to consider adopting appropriate measures that allow the victims of trafficking to remain in their territory temporarily or permanently, taking into account the safety of such a victim if they were to return to their home country.⁸⁸

States are also expected to establish rehabilitation centres to support victims of human trafficking, especially women and children and ensure the protection of victims of trafficking and facilitate their recovery and social reintegration, while taking measures to reduce the demand for services involving the exploitation of victims of Trafficking in Persons.⁸⁹ This plan of action also provides that states must make legislative provisions for confiscation of instruments and proceeds of trafficking and related offenses and consider legal measures which would provide victims of trafficking the possibility of obtaining compensation for damage suffered.⁹⁰ Coordination and integration amongst states is also key, and states are encouraged to ensure integration at the national, regional and international level, because combating Trafficking in Persons requires a

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid, Part II.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ The Ouagadougou Action Plan, Part I, p 3.

⁹⁰ Ibid, part III, p 5.

multi-disciplinary approach.⁹¹ Since this Plan is not legally binding in member states, it is not possible to ensure compliance by member states. Furthermore, the Plan is not legally enforceable.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, herein referred to as the Maputo Protocol, has been referred to as a regional legal instrument in combating Trafficking in Persons. Adopted in 2003⁹², the Protocol addresses general protection to women in Africa, but gives a specific provision that state parties must take appropriate measures to 'prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.'⁹³ States are to take appropriate action to prevent Trafficking in Persons, protect women and girls and adopt measures that will address their vulnerability as well as ensure prosecution for perpetrators of trafficking. From this discussion, it is therefore clear that the AU protects women against Trafficking in Persons, even though it does not have a comprehensive and legal instrument that deals with TIP, the crime is mentioned in just one article under Gender Based Violence. The implications of such lack of a continental legal framework would need to be explored in a separate study.

2.5.2 The Southern African Development Community- SADC

The Southern African Development Community (SADC) comprises fifteen-member states and functions as a regional economic community in Southern Africa. Its primary aim is to foster economic and political integration among the participating nations within the region.⁹⁴ Initially, SADC had no specific instrument to combat Trafficking in Persons within its territory. SADC adopted the 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, Especially Women and Children (2009-2019) in 2009.⁹⁵ The Plan of Action highlights eight

⁹¹ Ibid.

⁹² *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, art 4 (2) (g). *ECOWAS Declaration on the Fight against Trafficking in Persons 2001* < <https://au.int/en/newsevents/20201117/maputo-protocol-womens-rights-https://au.int/en/newsevents/20201117/maputo-protocol-womens-rights-africa>> accessed 10 January 2023.

⁹³ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, art 4 (2) (g).

⁹⁴ Southern African Development Community Website < <https://www.sadc.int/faqs/what-sadc>> accessed 24 February 2023.

⁹⁵ Trafficking in Persons in the SADC Region: A Statistical Report (2014-16) < https://www.unodc.org/documents/southernafrica//Publications/CriminalJusticeIntegrity/TraffickinginPersons/EN_-_TIP_Statistical_Report.pdf> accessed 19 February 2023.

priority areas that are paramount in combating Trafficking in Persons.⁹⁶ The first priority area is legislation and policy measures, which requires states to adopt international, regional and national policies to combat Trafficking in Persons. The second priority area is training for skills enhancement and capacity-building which requires the development of child-friendly and gender sensitive curriculum on Trafficking in Persons.⁹⁷ The third priority area is prevention and public awareness raising. The plan acknowledges that awareness on TIP was still limited, hence the need to disseminate information across all spheres. Victim support is also highlighted where SADC member states are required to provide physical, psychological and social support to victims and protection of witnesses and people who report Trafficking in Persons cases.⁹⁸ Coordination and regional cooperation, research and information sharing, monitoring and evaluation as well as resource mobilisation are these key priority areas identified by the plan.

The region has made strides in implementing parts of this plan in response to the key priority areas. To date, 14 of the 15 member states have enacted laws and set up anti-trafficking structures to support victims of trafficking, only DRC is still lagging behind.⁹⁹ The member states have also developed national action plans and referral mechanisms, which responds to coordination and cooperation.¹⁰⁰ To strengthen cooperation and information sharing amongst member states, the SADC Ministerial Committee of the Organ on Politics, Defence and Security Cooperation held a meeting in July 2017 in Dar es Salaam, Tanzania.¹⁰¹ The take way from this meeting was a call to develop a SADC Protocol that will address Trafficking in Persons.

The challenge that the SADC region faces in combating Trafficking in Persons, is the lack of data. In her dissertation, Gavhera discusses the dynamics of the trends and patterns of Trafficking in Persons within the SADC Region.¹⁰² She argues that there is no reliable information on Trafficking

⁹⁶ Ibid, p 5.

⁹⁷ 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, especially Women and Children (2009-2019), p.11-15 <https://evaw-global-database.unwomen.org/en/countries/africa/ united-republic-of-tanzania/2018/national-anti-trafficking-in-person-action-plan-2018-2021> > accessed 26 February 2023.

⁹⁸ Ibid.

⁹⁹Nyarai Kampilipili, 'SADC Developing Protocol on Trafficking in Persons' (Southern African Research and Documentation Centre, 14 August 2020), < <https://www.sardc.net/en/southern-african-news-features/sadc-developing-protocol-on-trafficking-in-persons/>> accessed 10 November 2023.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² Vimbai Evelyn Gavhera, 'Slavery in the 21st Century: An Analysis of Human Trafficking in Southern Africa' (2014) University of Kwazulu Natal Research

in Persons globally, as the topic is examined from different perspectives and countries' contexts.¹⁰³ She states that availability of credible data and combating Trafficking in Persons then become even more challenging within the SADC region as member states do not have adequate resources and capacity to tackle this complex global issue. However, the author states that it is vital to discuss and approach the problem of Trafficking in Persons from the context of 'human rights, migration, human security and globalisation'¹⁰⁴ to effectively address the root causes.

The 2022 Global Trafficking in Persons Report, which is the most comprehensive report on Trafficking in Persons has provided a clear picture of the prevalence of Trafficking in Persons in the SADC region. The majority of cases were for sexual exploitation, which accounted for 48% of the cases, followed by forced labour at 43% and other forms at 7%. Sex trafficking and forced labour are the most prevalent forms of Trafficking in Persons.

On the 17th August 2022, the SADC Region adopted its first ever instrument addressing Trafficking in Persons. As of the present date, the Protocol Against Trafficking in Persons has been signed by four-member states: Angola, Lesotho, Malawi, and Tanzania.¹⁰⁵ The Protocol is therefore not yet into force, as it requires the signature of at least two-thirds of the member states for it to be enforced.¹⁰⁶ Nonetheless, this is a step in the right direction for the region to address Trafficking in Persons. The Protocol was adopted as part of recognition of the revised Strategic Plan, which highlighted the need for the region to conclude a Protocol that will enhance its efforts in combating Trafficking in Persons through coordination efforts and cooperation amongst member states.¹⁰⁷ The Protocol addresses key issues in combating Trafficking in Persons such as definitions, law enforcement, victims' protection and cooperation amongst member states, which will be elaborated.

The Protocol defines Trafficking in Persons as the 'transportation, harbouring and receipt of persons by means of threat, abuse of power, position of vulnerability, force, fraud or deception, to achieve the consent of a person having control over another person, for purpose of, amongst other

Space<https://researchspace.ukzn.ac.za/bitstream/handle/10413/15669/Gavhera_Vimbai_E_2014.pdf?sequence=1&isAllowed=y> accessed 25 May 2023.

¹⁰³ Ibid, p 91.

¹⁰⁴ Ibid.

¹⁰⁵ *The SADC Protocol Against Trafficking in Persons 2022*, p 21.

¹⁰⁶ Ibid, art 23.

¹⁰⁷ *The SADC Protocol Against Trafficking in Persons 2022*, p 03.

things, sexual and financial exploitation.¹⁰⁸ Although the definition is almost similar to the one contained in the Palermo Protocol, it leaves out removal of organs as a form of exploitation in its definition, which is explicitly defined by the Palermo Protocol. It is argued that SADC Protocol should expressly define organs harvesting as it is an emerging form of trafficking. As stated by the UNODC Assessment of Trafficking in Persons for the Purpose of Organ Removal,¹⁰⁹ states and regions should develop a legal framework that is consistent with international instruments and standards and does not jeopardise organ transplantation and donation. This is a gap on the definition of trafficking noted even before the Protocol enters into force.

The Protocol covers, inter alia, cooperation amongst member states on issues related to prevention of Trafficking in Persons, law enforcement and prosecution, protection and domestication of the Protocol. The protocol includes provisions for information sharing and cooperation concerning extradition and the protection of witnesses. Additionally, it emphasises the necessity of safeguarding witnesses and victims of trafficking by offering psychological and legal support, while also addressing the fundamental causes of Trafficking in Persons among member states.¹¹⁰ The Protocol appears to address crucial regional concerns, including the issue of accountability among member states. It mandates member states to submit annual reports on the implementation of the Protocol to the SADC Secretariat, thereby addressing the lack of accountability within the region.

2.6 Legal Framework in Combating Trafficking in Persons in Lesotho

Gavhera explains that, one of the root causes of TIP in Lesotho is that, Lesotho is a source country and most Basotho are trafficked into South Africa by long distance truck drivers.¹¹¹ However, Gavhera's research has not discussed the Anti-Trafficking in Persons Act 2011, which is the main law in addressing Trafficking in Persons in Lesotho. This dissertation will discuss the Anti-Trafficking in Persons Act, its implementation in combating Trafficking in Persons and the

¹⁰⁸ Ibid, art 1.

¹⁰⁹ United Nations Office on Drugs and Crime < https://www.unodc.org/documents/human-trafficking/2015/UNODC_Assessment_Toolkit_TIP_for_the_Purpose_of_Organ_Removal.pdf > pg 48, accessed 10 August 2023.

¹¹⁰ The SADC Protocol on TIP, art 6, 7, 9.

¹¹¹ Ghavera (n 99) 30.

challenges. This law, together with other laws, policies and regulations in Lesotho, that form the legal framework in combating Trafficking in Persons will be discussed below.

Lesotho enacted the Anti- Trafficking in Persons Act in 2011. Its objectives are to prevent Trafficking in Persons, protect victims, prosecute perpetrators as well as provide support to victims of trafficking. The Act defines Trafficking in Persons as recruitment, transportation, harbouring etc by means of threat, force or coercion for purposes of exploiting another person.¹¹² There is no special mention of children as victims/ potential victims of trafficking under this definition. It is however crucial that children have specific protection under the law and Trafficking in Persons related matters, as they are easily manipulated and therefore more vulnerable to trafficking. Although the Act was a domestication of the international instruments that Lesotho is party to, such as the UNTOC and the Palermo Protocol, it was not fully complying with the international standards on victims' protection and child trafficking, as the prosecutor still needed to prove the means of the trafficking act on child victims, even though the Palermo Protocol specifies that the means are irrelevant when a child has been trafficked.

The Act also provides for compensation to the VOTs when adjudicating on cases of Trafficking in Persons.¹¹³ The Act provides that the perpetrator shall pay the victims a compensation on top of whatever punishment he or she gets.¹¹⁴ The compensation is a mandatory requirement of law in Lesotho's context as the Act does not place it as an option but courts must order such in terms of the law. Most international instruments have made it an optional requirement of law, but the law of Lesotho has made it a mandatory sanction, which is an improvement to the already existing international instruments.

The Act further provides that there shall be a Victims of Trafficking Trust Fund whose overall objective is geared towards the material needs of victims.¹¹⁵ One of the aims of this Fund is towards the psycho-social support for victims, one of the vital components in victims of trafficking protection.¹¹⁶ The Fund will also contribute towards the construction of more rehabilitation centres

¹¹² The Anti-Trafficking in Persons Act 2011, s 2 (d).

¹¹³ The Anti-TIP Act 2011, s 3.

¹¹⁴ Ibid.

¹¹⁵ The 2011 Act, s 45.

¹¹⁶ The 2011 Act, s 46.

at the district and community level.¹¹⁷ To date, there have never been any shelters constructed in the districts, including the main city Maseru, which relies on a non-governmental organisation to house female victims.¹¹⁸

Enhancing the capabilities of frontline individuals involved in safeguarding trafficking victims constitutes an integral component of victim protection. Additionally, the Fund aims to facilitate capacity building and training for personnel engaged in rescue operations, reintegration, and rehabilitation of trafficking victims.¹¹⁹ Essential service providers such as law enforcement officers, social workers, immigration officials, and members of civil society require comprehensive training to effectively handle Trafficking in Persons cases without causing further trauma to victims. Without continuous training initiatives, the handling of Trafficking in Persons cases may not adequately address the specific needs of trafficking victims.

Furthermore, the Act outlines punitive measures for individuals convicted of Trafficking in Persons.¹²⁰ It prescribes a 25-year prison sentence or a fine of M 1,000,000 for those engaged in activities constituting trafficking under the Act's definitions. In aggravated circumstances specified by the Act—such as when the victim is prostituted to military personnel, when the offender is a public figure, or when the crime is committed by a syndicate—the sentencing entails a fine of M 2,000,000 or a life sentence. Similarly, if the victim is a child, the Act stipulates a life sentence or a fine of M 2,000,000. While the Act doesn't specifically mention child protection in its definitions, it strongly emphasises severe penalties for crimes involving child victims.

These sentences and other factors were not providing adequate retributive sanctions for perpetrators, considering the seriousness of the crime of Trafficking in Persons. On the 14th of January 2021, the Government of Lesotho enacted the Anti-Trafficking in Persons Amendment Act of 2021, which re-defined the definition of Trafficking in Persons. The main Act requires three elements for the crime of Trafficking in Persons to have happened and still had no special protection for children on the definition. The Palermo Protocol defines that the recruitment, harbouring or receipt of a child for purposes of exploitation shall be considered Trafficking in

¹¹⁷ Sec 37 (d).

¹¹⁸ BDS only accommodates women.

¹¹⁹ The 2011 Act, s 47 (f).

¹²⁰ Ibid, s 7.

Persons even if it does not involve the means set forth in the Protocol: use of force, fraud, deception etc. The Main Anti-TIP Act in Lesotho still required the three elements of trafficking in its definition, even where the victim is a child. The Amendment Act has, however, addressed this gap and stated that there is no need to prove the means in a child trafficking case, thereby complying with the international standards set out by the Palermo Protocol,¹²¹ only two elements are now proven, the act and the purpose. The means which may include coercion, deception or use of force are not required for a conviction where a victim is a child. This special protection of children is also provided for by the Palermo Protocol; Lesotho has thus domesticated the Protocol in this particular Amendment.

It was also necessary to have regulations that will inform those responsible in combating Trafficking in Persons on how to implement the Anti Trafficking in Persons Act of 2011. The Anti-Trafficking in Persons Regulations 2015 were enacted on the 6th November 2015. The regulations outline different roles played by different stakeholders in combating Trafficking in Persons for protection of victims of trafficking. The Multi-Sectoral Committee (MSC), which is a national body of relevant stakeholders who are mandated to promote the implementation of regional and international laws in combating Trafficking in Persons has been established under the regulations.¹²² It is composed of relevant government Ministries and officials as well as civil society representatives, who all have to report monthly to the committee for effective coordination of Trafficking in Persons issues.¹²³ Collaborations, cooperation, exchange of information and partnerships aimed at combating Trafficking in Persons nationally, regionally and internationally is one of the key objectives of this committee.¹²⁴ These are necessary as Trafficking in Persons is a form of trans-national organised crime that involves linkages amongst a number of individuals, groups and cartels, who may even be within different states. Interventions aimed at combating this crime should also be an inter-state cooperation and coordination.

Lesotho launched its National Strategic Framework and Action Plan to Combat Trafficking in Persons 2021-26. Its primary mission is to support a more effective multi-sectoral response to Trafficking in Persons. This would be through proper identification, referral, and protection of

¹²¹ Anti-Trafficking in Persons Amendment Act 2021, s 3.

¹²² The Anti-TIP Regulations, s 5 (a).

¹²³ Ibid, 6 (2).

¹²⁴ Ibid, s 5 (c).

Victims of Trafficking, the successful investigation and prosecution of offenders, and a comprehensive set of prevention activities. A baseline of Trafficking in Persons cases/ statistics was also established through the support of the Federation of Women Lawyers-FIDA Lesotho such that when the Government initiated its action plan, there was available baseline data as to where Lesotho is as a country in order to assess progress, which indicated about 14 cases pending before courts.¹²⁵ In September 2021, the Government of Lesotho launched the National Referral Mechanism (NRM) and its supporting guidelines for service providers that guide referral protocols to assist front liners in better handling Trafficking in Persons cases.

The United States of America, which has been playing a leading role in combating Trafficking in Persons has raised a concern with the implementation of the international and domestic laws of other states globally. As part of its assessment mechanism, the USA established a tier system which it uses to assess states' performance in combating Trafficking in Persons. The results of this assessment are published in the annual Trafficking in Persons Report published by the US Department of State. The information obtained in the assessment is then used in determining whether states can receive financial aid from the US¹²⁶. The annual reports and ranking seem to have gained international recognition as states and therefore offers a credible way of assessing states' performance in combating Trafficking in Persons.

The 2022 State Report¹²⁷ has ranked Lesotho under Tier 2. This means that there are issues that Lesotho still needs to address to fully respond to Trafficking in Persons cases and protect victims of trafficking. The issues raised by the report included failure to secure any Trafficking in Persons convictions in the year of 2022, failure to establish any rehabilitation centres as well as failing to prosecute Trafficking in Persons cases where suspects are prominent Government officials. The efforts by different stakeholders in combating Trafficking in Persons throughout the next year after announcement of the report are mostly aligned with what the report had highlighted as challenges.

¹²⁵ 'The study on Establishing the Modern Trends and Patterns of TIP in Lesotho' (unpublished-December 2021) conducted by the Federation of Women Lawyers- FIDA Lesotho.

¹²⁶ Ibid.

¹²⁷ US Department of State, 2022 Trafficking in Persons Report <https://www.state.gov/reports/2022-trafficking-in-persons-report/>> accessed 10 August 2023.

2.7 Conclusion

This chapter explored various primary and secondary data on Trafficking in Persons to give a broader and deeper understanding of the laws, from an international, regional, sub regional and local context of Lesotho. The chapter explored the legal framework, encompassing Conventions, Protocols, policies, and action plans, revealing a global commitment among member states to combat Trafficking in Persons through collaborative integration. Lesotho has embraced this global initiative by incorporating these international instruments into its legal system through the enactment of anti-trafficking legislation. Despite Lesotho's adoption of laws and policies seemingly aligned with international standards in combating human trafficking, it remains intriguingly placed on tier 2, as per the US Global TIP Report. The subsequent chapter will delve into an analysis of Lesotho's implementation of the Anti-Trafficking in Persons Act.

CHAPTER THREE: THE IMPLEMENTATION OF THE ANTI-TRAFFICKING IN PERSONS LAW IN LESOTHO: HIGHLIGHTS AND CHALLENGES

3.1 Introduction

The preceding chapter conducted an extensive examination of Trafficking in Persons, encompassing the international, regional, and national legal frameworks governing this issue. It concluded that Lesotho's laws are in accordance with these standards, having integrated the Palermo Protocol and adopted policies and action plans within its anti-trafficking framework.

The current chapter aims to scrutinise the implementation of the Anti-Trafficking in Persons Act of 2011, including its subsequent amendment, regulations, and supplementary policies that complement the Act, along with strategies for protecting trafficking victims in Lesotho. Commencing with the delineation of offenses constituting trafficking and the prevalence of Trafficking in Persons as indicated by statistical data, it proceeds to identify various stakeholders engaged in combating Trafficking in Persons within Lesotho and delineates their distinct roles in prevention, protection, and prosecution. This examination aims to underscore any deficiencies in the implementation of the Anti-Trafficking in Persons Act and its alignment with international standards. The chapter concludes by summarising the findings pertaining to the efficacy of anti-trafficking laws in Lesotho.

3.2 Law Enforcement

The Anti-Trafficking in Persons Act 2011 establishes offences that constitute trafficking. It states that acts of trafficking include: recruitment, transportation or transfer for the purposes of sexual, exploitation, pornography of exploitative labour.¹²⁸ The Act also addresses forced marriage as an offence, where one gets profit or financial gain for arranging such a marriage on behalf of another person,¹²⁹ as well as prohibiting acts that promote Trafficking in Persons. Such acts include knowingly transporting a victim of trafficking, publishing or advertising content that promotes Trafficking in Persons and knowingly subletting premises used for Trafficking in Persons.¹³⁰ A

¹²⁸ The Anti-Trafficking in Persons Act 2011, s 5 (3).

¹²⁹ Ibid, s 5 (3) (c) (d).

¹³⁰ Ibid, s 6.

person who commits such is equally liable, on conviction, with a direct trafficker who exploited the victim of trafficking. The Act also protects Victims of Trafficking in that a victim shall not be liable for crimes committed in connection with his own trafficking.¹³¹

The Act also establishes aggravated forms of trafficking. These are acts of trafficking that carry grave weight and leave deep scars to the victim. These include acts of adoption carried out for the sole purpose of forcing the adopted child into sexual, labour or other forms of Trafficking in Persons as defined. If the act is committed by a syndicate, a member of the military or the victim dies, suffers mental or physical disability as a result of the act of trafficking, the Act provides for grave penalties to perpetrators in such instances. The Act also stipulates how the law should be enforced, identification and care of victims of trafficking.¹³² It gives the powers to police officers, immigration officers and private persons to effect an arrest where there is a reasonable suspicion of a commission of a crime of trafficking.¹³³ In doing so, it also sets out indicators of Trafficking in Persons, to identify whether one is a suspected victim of trafficking. These are crucial in protecting Victims of Trafficking and enforcing the law to guarantee protection to such victims and punishing traffickers.

One of the most crucial steps in combating Trafficking in Persons as well as assisting and supporting victims of trafficking is bringing perpetrators to justice. The Anti- Trafficking in Persons Act 2011 provides for up to a life sentence for those convicted of a crime of Trafficking in Persons.¹³⁴ There have been only sixteen identified cases, since the enactment of the Act in 2011,¹³⁵ seven were completed while the remaining eleven were awaiting prosecution. In a 12-year period, this is a very small number. As of 2016, there were twenty-five identified victims of trafficking: twelve were female while thirteen were male.¹³⁶ The majority of the victims were Basotho (20), and a few from Pakistan, China and Nigeria. There were more identified male victims of trafficking (VOTs) in Lesotho as opposed to the general assertion that women are more

¹³¹ Ibid, s 5 (6).

¹³² Ibid, Part III and IV.

¹³³ Ibid.

¹³⁴ Anti-Trafficking in Persons Act 2011, s 5.

¹³⁵ United Nations Office on Drugs and Crime, Trafficking in Persons in the SADC Region: A Statistical Report (SADCTIPNet, 2014-2016) p 26.

¹³⁶ Ibid.

trafficked than men.¹³⁷ The report on National Trafficking in Persons Hub notes that the forms of trafficking include sex trafficking and exploitative labour, forced marriages and domestic service.¹³⁸

Even though the Act provides for adequate punishment for Trafficking in Persons perpetrators, the conviction rate is lower than the cases brought before the court. One would suppose that this would have been otherwise since the amendment to the Act has rectified the problem that was attendant to the large fines imposed, which the courts of first instance could not deal with. The report highlights that at least eleven suspects were facing prosecution before the courts of law in Lesotho. There were only two completed cases reported then: a conviction and an acquittal.¹³⁹ As stated by the police, the investigation of some cases has dragged on for more than ten (10) years without any prosecutions until the investigations were suspended.¹⁴⁰ For these low statistics to change, each stakeholder must have a role to play in ensuring that they implement the Anti-Trafficking in Persons Act.

Capacity-building of key personnel in law enforcement is one of the key challenges that have contributed to the lowest number of cases prosecuted. Most of the prosecutors, investigation officers and magistrates alike are not familiar with the crime of trafficking, identifying it and ensuring victims' protection throughout the whole prosecution. The result of this is that some victims of trafficking end up re-traumatised and withdraw their consent to testify and support the whole legal process, as their safety is no longer guaranteed and experiencing post-traumatic stress.

3.2.1 The Anti-Trafficking in Persons and Migrant Control Unit

The capacity of the personnel entrusted with ensuring that justice is served for victims of trafficking requires attention. The investigation of Trafficking in Persons cases in Lesotho lies with the Anti-Trafficking in Persons and Migrant Control Unit which is part of the Lesotho Mounted

¹³⁷ United Nations on Drugs and Crime, 'Global Report on Trafficking in Persons,' (UNODC, 2016) <https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf> accessed 10 April 2023.

¹³⁸ United Nations Office on Drugs and Crime, 'Global Report on Trafficking in Persons,' (UNODC, 2016) <https://www.unodc.org/documents/data-and-analysis/glotip/2016_Global_Report_on_Trafficking_in_Persons.pdf> accessed 10 April 2023.

¹³⁹ Ibid, (n) 2.

¹⁴⁰ The Anti-TIP and Migrant Control Reports within the Multi-Sectoral Committee.

Police Service (LMPS). The initial contact with a victim of trafficking is usually made by the investigation officer. An investigation officer has to be sensitive enough when investigating cases of Trafficking in Persons. These skills do not come automatically for a law enforcement officer as it requires intensive training to enable investigators to handle such sensitive cases.

The Anti-Trafficking in Persons Unit is a relatively new Department within the Lesotho Mounted Police Service and had, since its establishment, been only operating within the Headquarters in Maseru. In 2021, a decision was made to decentralise the Unit to the districts of Botha Bothe, Leribe, Mafeteng and Mohale's Hoek. Although members of the Unit were trained in handling Trafficking in Persons cases, including in giving trauma-informed care,¹⁴¹ the said training is not sustainable. Following the training, there are no monitoring systems to ensure trauma-informed care is administered to the required standards, which poses challenges as will be discussed below.

As part of assessing the capacity of the Anti-Trafficking and Migrant Control Unit to investigate Trafficking in Persons cases, an inspection of the Unit's offices was also done during the research. The researcher observed the unfavourable working environment which characterise the Unit's offices. The furniture is dilapidated. This, in turn, may demoralise the officers, thus, creating the possibility of affecting their ability to remain professional in handling sensitive cases that require some high level of professionalism.

Law enforcement and victims' protection will be effective where the Victims of Trafficking Trust Fund is in place, as they are all inter-related; law enforcement officers need capacity-building to effectively handle Trafficking in Persons cases, such resources for capacity-building will come from a Trust Fund which will be paid into from time to time upon convictions. Assistance from donor-funding alone cannot sustain the continuous capacity-building programme for such officers.

Although the Anti-Trafficking in Persons Act provided for the establishment of the Fund, this has not happened. Personnel in the Unit who were interviewed noted that the Victims of Trafficking Trust Fund would be the ultimate solution to Trafficking in Persons law enforcement in Lesotho as it would help in financing the operations of the Unit. For instance, it was noted that while joint border patrols, screening at border controls and random checks are supposed to be frequently

¹⁴¹ Different trainings have been supported by stakeholders such as IOM, Beautiful Dream Society, World Vision International Lesotho and FIDA Lesotho.

conducted with other members of the Multi-Sectoral Committee, there are no such funds to support such operations. It was highlighted that this Fund would be a solution in completing most Trafficking in Persons investigations still pending before courts of law. Most of the challenges are brought by lack of funds, such as obtaining witnesses' statements or boarding and lodging fees for witnesses when they come to court to testify.

Another factor that may affect the manner in which the Unit operates is the lack of confidentiality in handling Trafficking in Persons cases. There are no special interview rooms designed specifically for victims of trafficking at LMPS offices, essential to ensure confidentiality when dealing with victims. This may result in victims being uncomfortable to share their experiences. This unit is also entrusted with keeping investigation records of Trafficking in Persons statistics as all are kept in this office. An official who was interviewed by the researcher disclosed that between 2011 when the Anti-Trafficking in Persons Act was enacted, and 2023, only six cases of Trafficking in Persons were prosecuted to completion throughout the country. Of these, three convictions were secured while three were acquittals. These cases include those in other districts of the country. The said cases are discussed below.

3.2.2 Lesotho's Court Judgments on Trafficking in Persons

There are very few cases of Trafficking in Persons convictions in Lesotho. Despite Lesotho being one of the first countries to enact counter-Trafficking in Persons legislation in the SADC Region,¹⁴² and the prevalence of Trafficking in Persons cases in the country, Lesotho has recorded very limited convictions. This is one of the indicators that there are challenges in addressing Trafficking in Persons cases in Lesotho. In *R v Madumera*,¹⁴³ a case in Quthing district in which a Nigerian man had brought his fellow countryman into Lesotho without any legal documentation to stay and work in Lesotho. He 'hired' him to sell brooms and mops for him in the promise that he would pay him a lump sum figure by the end of the year. He however failed to do so, instead forcing him to continue working for him without pay. The matter was brought before the Magistrate's Court of Quthing district. The accused person was convicted and sentenced to 10

¹⁴² SADC TIP Policy Brief, 'Trafficking in Persons in the SADC Region,' (SADC Secretariat, 2016) [file:///D:/N%20Application/SADC TIP Policy Brief - English FINAL.pdf](file:///D:/N%20Application/SADC_TIP_Policy_Brief_-_English_FINAL.pdf) > accessed 10th November 2022.

¹⁴³ [2016] CR 0032.

years imprisonment, however, his sentence was wholly suspended under the condition that he leaves the country, which he did not, as reported by the Multi-Sectoral Committee.¹⁴⁴ This highlights the huge gap within the judiciary in enforcing the law and its retributive sanctions, failure for the Courts to sentence accused persons as per the sanctions provided for in the law does discourage the prosecution, who would have put so much effort in ensuring that all the perpetrators are brought to justice.

While the anti-trafficking legislation in Lesotho enforces severe penalties for trafficking offenses, the judiciary appears hesitant to impose punitive measures on traffickers. The case mentioned earlier marked one of the initial convictions under the Act, generating widespread anticipation among service providers and community members for the judgment's specifics. Notably, the Anti-Trafficking in Persons Act of 2011 does not permit the imposition of fines as part of the sentencing for convicted traffickers.¹⁴⁵ However, Magistrates retain the discretion to suspend sentences, as there exists no prohibition against such actions. Despite this, Magistrates often opt for suspended sentences, indicating a lack of understanding as to why fines are not an available option in trafficking cases. Considering the profound emotional impact of Trafficking in Persons, the law's inclination towards retributive justice, rather than restorative justice, is comprehensible.

Apart from allowing the perpetrator to escape justice, the Court did not make any order that would respond to the psychological needs of the victim, nor any normalisation of his stay in Lesotho. Even though the law provides for normalisation for trafficking victims,¹⁴⁶ this was not the case in the few cases that have been concluded. During an interview with a prosecution official, it was revealed that attempts to engage relevant authorities for assistance in deporting the accused were futile, as no obligation was imposed on any office to ensure the departure of the accused. The official also indicated that the Immigration Department officials claimed their inability to deport the accused due to a lack of resources, specifically citing transportation constraints for deporting convicted individuals. Conversely, in this case, the victim of trafficking has not received any form of assistance, normalization of their stay in Lesotho, or special protection against the perpetrator. Consequently, feeling desperate, the trafficking victim sought

¹⁴⁴ National Multi-Sectoral Committee Meeting reports.

¹⁴⁵ Anti-Trafficking in Persons Amendment Act 2021, s 3.

¹⁴⁶ The Anti-TIP Act, s 30.

refuge by initiating a relationship with a Mosotho girlfriend, moved in with her family, and now works as a herd boy without receiving any remuneration. It appears that non-Basotho migrants easily traffic their counterparts into Lesotho, while migrant workers in Lesotho receive little attention, making them susceptible to trafficking. As seen in the case of Madumera discussed earlier, the victim of trafficking was an immigrant, vulnerable due to illegal status in Lesotho and facing potential risks from the trafficker post-sentencing. Despite the state's legal obligation to protect trafficking victims, no action was taken to safeguard this individual. Consequently, the victim resorted to securing some sense of safety in a foreign land by forming a relationship with a Mosotho girlfriend who provided shelter. However, this has perpetuated a cycle of exploitation, with the victim working as an unpaid herd boy on her family's homestead.

This case, one of the few completed with a conviction in Lesotho, highlights numerous issues. The judgment failed to impose a stringent enough penalty to deter the perpetrator. The entirely suspended sentence, contingent on the accused leaving the country, implies that the court didn't view the crime seriously, disregarding the deep emotional scars inflicted on the victim, forcing them into a life of servitude. Unfortunately, such instances demonstrate that despite the victim-centric nature of Trafficking in Persons cases, the legal process in Lesotho often neglects victim protection.

Despite the court's order for the convicted individual to leave the country, the trafficker remains in the country, conducting business openly. Authorities responsible for ensuring deportation cited a lack of resources, specifically transportation, hindering execution of the judgement. Remarkably, the judgement did not mandate any authority to enforce deportation. Furthermore, the absence of a compensation order for victims in Madumera's case is a crucial oversight. Including such provisions in the legal process facilitates property attachment and confiscation from traffickers for victim compensation, but this was not addressed in this particular case.

*R v. Yoseph Girmay Testagaber, Adanech Beru Woldegioregis*¹⁴⁷ is one of the cases that reflect the serious challenges and sectoral capacity-building gaps in protecting victims of trafficking. In this case, the victim was a domestic worker to the accused, who are an Ethiopian couple operating

¹⁴⁷ [2012] CR 12, unreported.

businesses and staying in Lesotho. They allegedly lured the victim, another Ethiopian woman, into Lesotho on the promise of a better paying domestic job in their house. However, they failed to do so, alleging that the money was repaying her flight, food and accommodation, and seized her passport.¹⁴⁸ The Court however acquitted the accused, claiming that the accused persons were taking good care of the complainant, were giving her proper food and sending some of the money to her sister back home, even though the victim denied any knowledge of such money being sent back home and never had that agreement with her employers/ traffickers.¹⁴⁹

The Court's failure to protect the trafficking victim in this case, despite evident indicators of trafficking, is concerning. While one might anticipate the court to attribute the failure to the prosecution's case, the acquittal verdict, wherein the court deemed the accused's acts of trafficking as acts of mercy and proper care for the complainant, is troubling. This interpretation reflects the court's ignorance towards the crime of trafficking and its associated indicators.¹⁵⁰ This failure can be attributed to a lack of training for the judicial officers involved.

A success story was finally recorded when a conviction was secured in 2022 in the case of *R v Thukulula Smite*.¹⁵¹ The accused person had opened what he called a Pentecostal church in Berea and convinced his congregants to allow their daughters to go with him in South Africa for lucrative 'employment.'¹⁵² He then introduced the children into forced sex work while sending gifts like microwaves and fridges to their destitute families. The accused was found guilty and sentenced to 25 years imprisonment without an option of a fine.¹⁵³ However, the convicted pastor's property that was confiscated by law enforcement is still kept at the police station as there was no order regarding the compensation of victims and execution of this property: there is no Trust Fund to pay such proceeds into if they were to be sold. The investigation officer disclosed that the convict's car that was confiscated is still parked at Berea's police station and losing its value. Even though

¹⁴⁸UNODC Case Law Database, Case Summary https://sherloc.unodc.org/cld/en/case-law-doc/traffickingpersonscrimetype/Iso/2012/rex_v.yoseph_girmay_tesfagaber_adanech_beru_woldegioregis.html> accessed 10 March 2023.

¹⁴⁹ Ibid.

¹⁵⁰ United Nations Office on Drugs and Crime, 'Indicators of Trafficking in Persons <https://www.unodc.org/e4j/en/tip-and-som/module-6/key-issues/indicators-of-trafficking-in-persons.html> > accessed 15 September 2023.

¹⁵¹ [2018] CR 0346.

¹⁵² This information is in the accused's docket shared with the researcher. It is not published anywhere and there is no case summary provided yet.

¹⁵³ Ibid (n 126) 40.

the Court has complied with the law and ordered for confiscation of the accused's property for compensation, it is not possible for the police to comply with the order and sell this property as there is no Trust Fund opened to keep such proceeds of crime in terms of the law.¹⁵⁴

There are a number of challenges identified in adjudicating cases of TIP in Lesotho. The Magistrate Court is the Court of first instance for all Trafficking in Persons cases. This on its own is one of the key challenges faced by law enforcement officers and Victims of Trafficking alike. Most of the penalties in the Anti-Trafficking in Persons Act can only be imposed by the High Court of Lesotho. Subordinate courts have monetary and jurisdictional ceilings as provided for in the Subordinate Court Rules.¹⁵⁵ Second Class up to Senior Resident Magistrates cannot sentence an accused person in a Trafficking in Persons matter to maximum sentences as provided for in the law. The Chief Magistrates are the only ones with power to sentence an accused person up to twenty-five years.¹⁵⁶ In this instance, any sentencing that is above 25 years must be referred to the High Court for such sentencing as it will be above the Magistrate Court's powers.¹⁵⁷

There are only three Chief Magistrates in the country within the three regions, namely in the northern region, the southern region and the central region. Apart from presiding over matters, Chief Magistrates, also have administrative functions of running the courts. This means that all Trafficking in Persons cases have to wait to be squeezed within the Chief Magistrate's busy schedule. This creates a backlog of Trafficking in Persons cases, which in some instances, drag before Courts for more than a decade until the parties lose interest as was seen in *Tsoana's* case.¹⁵⁸ The accused, a woman who was a school teacher, had recruited young girls to sex work in South Africa while promising them well paying domestic jobs in South Africa. There were many technicalities including a transfer of a magistrate who was handling the case. The accused was charged with four (4) counts of Trafficking in Persons and the case was pending for more than a decade until the accused eventually died¹⁵⁹ in 2022 before justice was served.

¹⁵⁴ The Anti-Trafficking in Persons Act 2011, s 45.

¹⁵⁵ Subordinate Court (Amendment) Act 1998, s 4.

¹⁵⁶ Subordinate Courts Act, s 5.

¹⁵⁷ The Criminal Procedure and Evidence Act 1981, s 297.

¹⁵⁸ *Rex v Joalane Tsoana* CRI 372/12 (Unreported).

¹⁵⁹ Multi-Sectoral Committee Meeting Minutes, February 2023.

3.2.3 Prosecution

The Director of Public Prosecutions (DPP) oversees nearly all prosecutions in Lesotho. Collaborating closely with the investigative office, this office ensures the accumulation of sufficient evidence to establish a *prima facie* case in court. The prosecutor holds a pivotal role in guiding the prosecution process, determining the case's elements, and choosing the appropriate charge.

In the Maseru district, there are designated officers exclusively handling Trafficking in Persons cases. These prosecutors receive specialized training whenever possible, both within Lesotho and abroad. However, outside the Maseru district, prosecutors lack similar training opportunities. Consequently, they exhibit unfamiliarity with prosecuting trafficking cases, leading to difficulties in securing convictions. At times, these prosecutors refrain from charging suspects under trafficking laws and instead opt for familiar charges such as sexual offenses or forced labour.

The lack of capacity to prosecute Trafficking in Persons cases is not a problem exclusively inherent to Lesotho. The UN Report¹⁶⁰ stipulates that since laws on Trafficking in Persons in member states are still new; prosecutions are done under laws conversant to investigators and prosecutors such as child protection laws, labour matters, and sexual offences.¹⁶¹ Given that the Anti Trafficking in Persons Act is uncommon in Lesotho (despite being enacted in 2011) and there has been limited capacity building of the law enforcement agency, Lesotho could be experiencing what the UN report asserts. This could mean that prosecutors are not very familiar with the guidelines that relate to Trafficking in Persons prosecution. This is the reality for cases of Trafficking in Persons in the nine districts of Lesotho where cases of Trafficking in Persons are reported as sexual offences, resulting in perpetrators getting minimal sentences than what would be the sentencing had they been charged under the Anti-Trafficking in Persons Act. It is therefore crucial to provide adequate training to affected personnel to allow smooth transition from the old law, practices and systems to the new legislation with its new implementation package.

¹⁶⁰ United Nations Office on Drugs and Crime (UNODC).

¹⁶¹ Ibid (n 35) 16.

Furthermore, there have been complaints that the retributive justice system in its very nature is perpetrator-centred as most of the perpetrator's rights are taken into consideration while the victim is not provided with any assistance, including psycho-social support.¹⁶² During an interview with a representative from the office of the Director of Public Prosecutions, it was highlighted that Trafficking in Persons cases, according to international standards, are inherently victim-centric. In this context, the requirement to establish the case beyond a reasonable doubt may pose challenges for prosecutors in securing convictions, particularly due to the unreliability of witnesses or victims. To ensure justice for victims, it could be beneficial to approach each case individually, considering its unique circumstances, and consider engaging an intermediary to alleviate the burdens faced by the already traumatized victims of trafficking.

3.3 Roles and Responsibilities of Stakeholders

Other stakeholders actively engage in combatting Trafficking in Persons and protecting its victims. Recognising that the safeguarding of trafficking victims extends beyond the capacity of governmental entities alone, collaboration and partnerships among various key stakeholders are imperative. This collaboration is essential for preventing Trafficking in Persons, safeguarding survivors, and prosecuting perpetrators. Notable stakeholders encompass government ministries, Non-Governmental Organizations (NGOs), development partners, and the private sector.

NGOs dedicated to addressing Trafficking in Persons primarily focus on preventive measures, including initiatives such as awareness campaigns and community education. However, these organizations have also reported instances where victims of trafficking approached their offices seeking assistance. Regrettably, some other sectors may not accord the reports the seriousness they deserve, perceiving the civil society's role as solely preventive in nature.¹⁶³

¹⁶² John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press 1989) 153.

¹⁶³ Multi-Sectoral Committee 2023 meetings Minutes.

3.3.1 Protection Shelter

The shelter for Trafficking in Persons survivors, managed by a non-governmental organisation in Lesotho, offers psycho-social support specifically designed for female survivors of Trafficking in Persons. Situated in a confidential location undisclosed to the public, this shelter prioritises security and protection for its residents. It ensures that victims of Trafficking receive comprehensive legal and psychological aid essential for their reintegration into society. As part of their preparation for court proceedings, victims are provided guidance by legal experts to familiarise themselves with the legal procedures and to be better equipped for courtroom testimony. However, entry into this shelter is contingent upon a referral from the Department of Social Development. Unfortunately, individuals identified as suspected Victims of Trafficking (VOTs) after 4:30 pm or during weekends will not be admitted, as no referral process operates during these times.¹⁶⁴ This is a huge gap as centres should be accessible all day, a potential victim may be identified anytime of the day.

The shelter is the sole facility in Lesotho offering psycho-social assistance to victims of trafficking. It serves as a sanctuary for trafficking victims from various regions across the country, offering both protection and psychological support. However, one of the notable challenges faced by this shelter is the insufficient nature of the psychological support rendered to victims. During interviews with shelter staff, it was disclosed that some victims, upon placement, have expressed feelings akin to being re-trafficked. Such individuals often express a desire to return home and subsequently withdraw from receiving support. According to the law, there should be sufficient shelters available at the district level to offer necessary psycho-social support to victims dealing with the traumatic aftermath of trafficking. The absence of such shelters could result in a scenario where numerous victims might not be accounted for, as some may be reluctant to come forward and report their harrowing experiences. This hesitancy could stem from the requirement to travel to a different district and reside in a shelter far from their home environment. Given Lesotho's situation, with just one undisclosed shelter located in Maseru, there is a likelihood that some

¹⁶⁴ Stated in an interview with one of the officers at the shelter.

trafficking victims remain unaccounted for in official statistics and are not receiving the requisite psycho-social support.¹⁶⁵

Due to financial constraints, the shelter can only accommodate female victims of trafficking and children. While male victims receive some form of psycho-social support while remaining at home, the shelter lacks the capacity to provide protection for them. This assistance for male victims is available solely to those within Maseru. Staff members mentioned that limited funding presents a significant challenge for the shelter. Additionally, the delayed establishment of the Victims of Trafficking Trust Fund creates an impediment in addressing the immediate and long-term needs of victims, leading to an absence of a clear response mechanism for such cases. Some of the challenges faced by the shelter have political origins. There appears to be a dispute between two government Ministries vying for control over the Fund. The Ministry of Social Development argues for control, claiming responsibility for supporting trafficking victims, while the Ministry of Home Affairs asserts its authority as the coordinator of all interventions related to Trafficking in Persons. However, despite these contentions among stakeholders, there seems to be a lack of familiarity with the law among the involved parties.

The Act provided that that the Fund should be with the Department Home Affairs.¹⁶⁶ The Department of Home Affairs will then disburse the Funds to the Department Social Development, who will be in charge of government-owned shelters. Nonetheless, this has not happened as there is only one shelter, established and run by a non-governmental organisation. This therefore indicates that victims of trafficking are not provided with adequate psycho-social support as one shelter is not enough to cater for the entire country.

3.4 Coordination Mechanism

The National Referral Mechanism (NRM) was established in September 2021 to delineate the specific responsibilities of each stakeholder involved. It outlines a structured process consisting of five steps aimed at safeguarding victims of trafficking: Initial case contact, case determination,

¹⁶⁵ The Anti-Trafficking in Persons Act, s 47 (e).

¹⁶⁶ The Anti-TIP Act, s 48, s 2 (d).

identification of short-term needs, identification of long-term needs, and ultimately, the return and reintegration of the trafficking victim.

This framework identifies the primary actors involved and defines the role played by each stakeholder. According to this protocol, once a Trafficking in Persons case is initially identified, it is promptly referred to the law enforcement agency for case determination. Subsequently, the Department of Social Development steps in to identify and address the immediate and long-term needs of the victims. To address these needs comprehensively, the case may be referred to other stakeholders such as Non-Governmental Organizations. Eventually, victims are reintegrated into their communities, a process that involves consultations with various community stakeholders and an affirmation from the community expressing their willingness to accept the individuals back.¹⁶⁷ The document is still relatively new, and therefore most of the service providers within the country are not yet familiar with its protocols. There is a need for robust training and awareness-raising amongst stakeholders on popularising the National Referral Mechanism. While the mechanism establishes the referral protocol, there are no referral tools yet developed, each stakeholder is therefore at liberty to decide how they want to refer a case or a victim of trafficking, which is quite problematic as there is no accountability or follow-ups.

The Multi-Sectoral Committee is a national coordinating body established to coordinate all Trafficking in Persons programming at the national and international level. Established under the Anti-Trafficking in Persons Regulations,¹⁶⁸ it is composed of key stakeholders vital in combating Trafficking in Persons and protection of Victims of Trafficking. It is composed of Ministries within the public sector, UN Agencies such as the International Organisation for Migration and Civil Society Organisations. In terms of the law, the committee must convene quarterly to share any relevant information for effective coordination of Trafficking in Persons programming and Victims of Trafficking.¹⁶⁹ The roles played by different stakeholders in implementing the Anti-Trafficking in Persons Act 2011 are stipulated in the regulations.¹⁷⁰

¹⁶⁷ Lesotho National Referral Mechanism 2021.

¹⁶⁸ Anti-Trafficking in Persons Regulations 2015, s 3.

¹⁶⁹ Anti-Trafficking in Persons Regulations, s 22 (1).

¹⁷⁰ The Anti-TIP Act Regulations, PART III.

Even though the composition of this committee is provided for in the law,¹⁷¹ the *de facto* committee is a completely different picture. For instance, the Ministry of Education and Training, is one of the key stakeholders that the law requires their presence with the Committee. However, in an interview with some of the members of the MSC, they confirmed that currently, the Ministry of Education is not a member of the said Committee.

The Anti-Trafficking in Persons Regulations also provides that there shall be five representatives from Non-Governmental Organisations (NGOs) within the Multi-Sectoral Committee.¹⁷² In an interview with an anonymous member of the Multi-Sectoral Committee (MSC), it was revealed that approximately three Non-Governmental Organisations (NGOs) are persistently engaged in the committee despite encountering obstacles. The source further indicated that government Ministries tend to dominate the committee, actively showcasing the Ministries' initiatives to participants during collaborative engagements. Typically, NGOs appear to serve as observers in many of the activities conducted by the Multi-Sectoral Committee. Moreover, recent observations suggest that scheduled meetings and planned activities are specifically designed for selected committee members, notably excluding representatives from NGOs.

The new operation documents, however, indicate a new compliance problem. The National Referral Mechanism comes a package that includes the Law Enforcement Standard Operating Procedures for Responding to Trafficking in Persons. In this document, the composition of the MSC is defined: five government Ministries and IOM.¹⁷³ The development of this document has not considered what is on the Regulations, the SOPs cannot replace a provision of the law.

Some of the officers who are members of the MSC are not responsible for key decision making at their respective Ministries or offices. This was evident in another government Ministry where officers who are now members of the MSC are not familiar/ do not know who made the referral of the case study discussed here of a Mosotho lady who was returned to Lesotho and placed at a shelter. The high -level agreements that are concluded seem to be amongst personnel who are not members of the MSC and the members are sometimes clueless of what was happening, they are therefore unable to give proper reports within the MSC mandate. All the above indicate that there

¹⁷¹ The Anti-TIP Act Regulations, s 4.

¹⁷² Ibid, s 4 (1) (n).

¹⁷³ Law Enforcement Standard Operating Procedures: for Responding to Trafficking in Persons, S 3.2.

is no proper coordination of anti-TIP efforts aimed at combating Trafficking in Persons in the country. While the objectives of setting up this committee and the efforts to keep it functional are appreciated, coordination amongst different stakeholders seems to be marred with office politics and power struggles, consequently resulting in working in silos amongst stakeholders. Different interventions are therefore not indicating proper implementation of the law in terms of coordination and information sharing.

3.5 Allocation of Resources for Anti-Trafficking in Persons Intervention for Victims Protection

Since the enactment of the Anti-Trafficking in Persons Act, the Government of Lesotho had not budgeted for the Trust Fund in its annual financial budget. This changed in 2022 when M150 000 was earmarked for funding the shelter providing psycho-social support to Trafficking in Persons victims.¹⁷⁴ It was disbursed through a bank account, not a trust fund in terms of the law. In the 2023 financial year, M2 000 000 was allegedly disbursed in the same bank account to support anti-Trafficking in Persons interventions.¹⁷⁵ There definitely would be more resources to support victims of trafficking had there been a Fund in place, third parties would be able to donate into the Fund whenever they felt like it. Donors would also direct some of their funds into this Trust, especially because a Fund would definitely come with its package of accountability in terms of the law.¹⁷⁶ Law enforcement would also contribute to this as the law provides for compensation by perpetrators ordered to pay back the proceeds of crime.¹⁷⁷

There are, therefore, no adequate resources allocated for anti-trafficking interventions in the country. The Victims of Trafficking Trust Fund, is the main source of funding to combat trafficking in persons in terms of the law, such funding mainly from government. However, there is no such a Fund as already discussed, leaving the victims of trafficking vulnerable. Donors and other third parties cannot give any funding towards victims' support, there is no account that can

¹⁷⁴ UN Department of State TIP Report (2023) < <https://www.state.gov/reports/2023-trafficking-in-persons-report/lesotho/#:~:text=The%20government%20increased%20allocated%20funding%20for%20anti-trafficking%20efforts%2C,disbursed%20by%20the%20end%20of%20the%20reporting%20period> > accessed 24 June 2023.

¹⁷⁵ Ibid.

¹⁷⁶ The Anti-TIP Act, s 50.

¹⁷⁷ The Anti-TIP Act, s 13.

keep this type of donation. A number of challenges evolve around this shortcoming within the Lesotho framework in combating trafficking in persons.

3.6 Conclusion

The discourse presented in this chapter reveals that while Lesotho has established legislation and policies to combat Trafficking in Persons (TIP) and vowed to protect victims, there are noticeable deficiencies in the application of these laws. A substantial discrepancy exists in coordinating and uniting different entities involved in tackling TIP, undermining the efficacy of a multi-sectoral approach. Internal conflicts seem to dominate the agenda of the Multi-Sectoral Committee, diverting focus from its primary objectives. Despite the Department of Home Affairs overseeing the committee at the national level, effective coordination among pivotal stakeholders becomes a challenge, especially in districts and local communities due to inadequate funding. Notably, victims of Trafficking reside within communities, not solely within the centralized Maseru headquarters.

The government's reliance on a single NGO-operated shelter underscores a critical challenge in protecting victims of TIP, particularly in the absence of a shelter designated for male victims. The absence of a dedicated Victims of Trafficking Trust Fund exacerbates these challenges, primarily stemming from resource constraints. The comprehensive involvement of all key stakeholders is further hindered by government Ministries' failure to engage civil society, despite lacking the capability to enforce the law independently. Consequently, survivors of trafficking experience unmet psychological and legal needs, enduring emotional trauma.

Despite enacting laws and policies poised to address human trafficking effectively, Lesotho grapples with implementing the Anti-Trafficking in Persons Act of 2011. This collective inability leads to the deduction that Lesotho does not fully meet international standards in combatting TIP.

CHAPTER 4: VICTIMS OF TRAFFICKING PROTECTION IN THE UNITED STATES: A COMPARATIVE ANALYSIS

4.1 Introduction

The preceding chapter meticulously scrutinised the implementation of Lesotho's Anti-Trafficking in Persons Act of 2011, delineating the impediments faced by various stakeholders involved in its execution. These hurdles encompass inadequate coordination among diverse stakeholders in law enforcement and awareness-raising attempts, alongside a dearth of comprehensive capacity-building initiatives for frontline workers engaged in the fight against Trafficking in Persons. Such shortcomings have significantly hampered Lesotho's desires to combat Trafficking in Persons, leading to a conclusion that its efforts in this domain are fraught with numerous challenges.

This chapter aims to conduct a comparative analysis between Lesotho's efforts in combating Trafficking in Persons and those of the United States of America (US). The discussion commences by scrutinizing the legal framework deployed by the US to counter Trafficking in Persons, specifically focusing on the Victims of Trafficking and Violence Protection Act. Subsequently, it delves into an exploration of the diverse actors involved in combating Trafficking in Persons within the United States, elucidating their respective roles in prevention, protection, and prosecution. This analytical approach intends to illuminate commendable practices and strategies employed by the US in implementing anti-trafficking laws and policies while ensuring compliance with international standards. The chapter culminates in a comprehensive overview of the efficacy in implementing anti-trafficking laws in the United States.

The selection of the US as a comparative model stems from its status as a paradigm of best practices in global efforts against Trafficking in Persons. This status is exemplified by the consistent Tier 1 ranking bestowed upon the US in the Global TIP Report since its inception, symbolizing its exemplary standing in combating Trafficking in Persons on a global scale. The 2020 report

particularly underscored the US's 20-year journey in combatting TIP, emphasizing its position as a global exemplar in this realm.¹⁷⁸

4.1 The Victims of Trafficking and Violence Protection Act 2000

The Victims of Trafficking and Violence Protection Act 2000 (TVPA) was enacted by the US government on 28th October 2000.¹⁷⁹ Its primary purpose is to prevent Trafficking in Persons, protect victims of trafficking (VOTs), prosecute Trafficking in Persons cases while ensuring cooperation between key partners (the four Ps of trafficking) to combat Trafficking in Persons. The Act seeks to combat all forms of trafficking, locally and globally as it authorises the US government to support foreign governments with enforcing anti-Trafficking in Persons laws as well as building their capacity to deal with Trafficking in Persons. It also authorises the US Government to assist governments financially to combat Trafficking in Persons.¹⁸⁰ The TVPA has had numerous amendments through what is called reauthorization. The amount of funding is specified in the law, hence the need to reauthorize whenever there is need, such as inflation.

The TVPA defines Trafficking in Persons as the recruitment, harbouring, transportation, provision, or obtaining of a person for labour services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.¹⁸¹ This definition is almost the same as the one contained in Lesotho's Anti-Trafficking in Persons Act except that the latter defines harvesting of body parts as a form of exploitation,¹⁸² which is not explicitly mentioned in the TVPA. Thus, Lesotho's definition is wider and more advanced. The TVPA sets out minimum standards for all actors in eliminating Trafficking in Persons. It states that governments of countries must prohibit severe forms of Trafficking in Persons and punish such acts when they occur.¹⁸³ The government should also prescribe severe punishment for such acts in ensuring that justice is served for the victims.¹⁸⁴

¹⁷⁸ US Department of State 2020 Trafficking in Persons Report, < <https://www.state.gov/reports/2020-trafficking-in-persons-report/>> accessed 05 February 2023.

¹⁷⁹ The Trafficking Victims Protection Act 2000, s 101.

¹⁸⁰ The TVPA, s 110.

¹⁸¹ The TVPA, s 103 (8) (B).

¹⁸² The Anti-Trafficking in Persons (Amendment) Act 2021, s 2.

¹⁸³ The TVPA, s 108.

¹⁸⁴ Ibid.

The TVPA provides training to law enforcement personnel within the Federal, State and local law enforcement personnel.¹⁸⁵ Capacity-building of officers is an integral part of victims' protection as those in the forefront will sensitively handle trafficking in person cases. In the year 2022, the US Government made initiatives to train survivor leaders and other relevant agencies, so as to combat Trafficking in Persons.¹⁸⁶ Training mechanisms were developed under the Departments of Justice, Health and Human Service.¹⁸⁷ In the same year, a Human Trafficking Leadership Academy was also established, which offered leadership development opportunities to Trafficking in Persons survivor leaders. This type of programme indicates the government's commitment to ensuring the protection of victims of trafficking through capacity- building.

The TVPA requires the Secretary of State to compile an annual report which is submitted to the Congress Committee detailing states' compliance with the minimum requirements set out in the TVPA¹⁸⁸. These minimum standards are that a country must take significant efforts to ensure that it combats aggravated forms of Trafficking in Persons within its territory, afford protection to victims of trafficking, cooperation with other countries in combating Trafficking in Persons and whether the country investigates and prosecutes traffickers, including government officials implicated in trafficking.¹⁸⁹ This is where the general three categories of grading countries' efforts to combat Trafficking in Persons were established. The first category is tier 1 which is made up of countries that fully comply with the minimum standards. The second category is tier 2 which is made up of r countries which, even though they are making significant effort to enforce anti-trafficking laws, they are having challenges in meeting the minimum standards. The third category is tier 3 and this is for countries that are not complying with the minimum standards and taking no efforts to do so.¹⁹⁰

¹⁸⁵ The TVPA, s 107.

¹⁸⁶ US Department of State Trafficking in Persons Report 2022 < <https://www.state.gov/reports/2022-trafficking-in-persons-report/>> accessed 14 August 2023.

¹⁸⁷ Ibid.

¹⁸⁸ The TVPA Act, s 110 (b) (1).

¹⁸⁹ Ibid s 108.

¹⁹⁰ US Department of State 2020 Human Trafficking Report (2020) < <https://www.state.gov/reports/2020-trafficking-in-persons-report/#:~:text=2010%20%E2%80%93%20To%20ensure%20it%20held,efforts%20to%20combat%20trafficking%20in%20persons.&text=2010%20%E2%80%93%20To%20ensure,combat%20trafficking%20in%20persons.&text=To%20ensure%20it%20held,efforts%20to%20combat%20trafficking>> accessed 19 July 2023.

The Act is a comprehensive legislation to protect victims of trafficking not only in the United States, but globally. Assistance from the US government to other countries in the form of aid is usually dependant on the efforts which those countries are making in combating Trafficking in Persons within their territories.¹⁹¹ The Act provides that the US government shall provide assistance to foreign governments to meet prescribed minimum standards in protecting victims of trafficking.¹⁹² The said assistance is in the form of projects/ funding through multilateral organisations, international and local Non-Governmental Organisations as well as governments. The government is so committed to this funding to a point that a country that does not meet any of the minimum standards seizes to receive any funding or support from the US government.¹⁹³

The US Department of State Report has since become a recognized international report where each country's assessment is unveiled every June. The international community, regional, sub-regional as well as national frameworks and NGOs now rely on this data to ascertain how much is done in each jurisdiction to combat Trafficking in Persons. Some countries will then tailor-make their programming in such a way that the programs respond to some of the challenges raised by this report, as has been the case in Lesotho, based on the improvement on tier rankings it has had since 2020¹⁹⁴ to 2023.¹⁹⁵

4.2 TIP Prevalence in the US

The Federal Bureau of Investigations – FBI has reported 1862 incidents of Trafficking in Persons in 2022 in the US.¹⁹⁶ It is easy to track these cases when there is a legitimate source of data that shows the status of law enforcement in each case. The authenticity of data is key as an indicator of law enforcement efforts a state makes, efforts which are documented. Unlike in Lesotho where one has to rely on the Unit that still uses manual data to inform law enforcement for data on Trafficking in Persons cases, the US uses the National Incident- Based Reporting System, which

¹⁹¹ The TVPA Act, s 110.

¹⁹² The TVPA Act, s 109.

¹⁹³ The TVPA Act, s 109.

¹⁹⁴ US Department of State Human Trafficking Report: Lesotho (2020) < <https://www.state.gov/reports/2020-trafficking-in-persons-report/lesotho/>> accessed 21 July 2023.

¹⁹⁵ US Department of State Human Trafficking Report: Lesotho (2023) < <https://www.state.gov/reports/2023-trafficking-in-persons-report/lesotho/>> accessed 23 July 2023.

¹⁹⁶ FBI Crime Data Explorer, < <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>> accessed 27 August 2023.

is a reliable data system used by the FBI. The ability to obtain and record the data means that the US is able to document cases of TIP as well as to measure its success in tackling the crime. Consequently, Lesotho needs to upgrade its data gathering mechanisms in order for it to obtain reliable information on human trafficking.

4.3 Implementation of the TVPA in the US

4.3.1 Law Enforcement

In 2021, 2021 incidents of Trafficking in Persons were reported, and at least 1672 suspects of Trafficking in Persons were prosecuted before the US Courts of law.¹⁹⁷ This means that 82 % of reported cases were successfully investigated and prosecuted before Courts of Law. Of these, 809 suspects were convicted for human trafficking.¹⁹⁸ This information is an indicator of the effectiveness of the prosecution division in the US. The US government is implementing its anti-trafficking laws by bringing perpetrators to justice and implementing the TVPA through law enforcement. The completion of investigation and prosecution of cases requires hard work and dedication, such as capacity-building, as already indicated by the US Department of State Report, on the efforts made by the US in combating Trafficking in Persons. These statistics, therefore show the hard work and dedication of different actors combating Trafficking in Persons.

Although there is effective implementation of the TVPA in investigation and prosecution of TIP cases, it was not plain sailing at inception stage. There were some challenges when the TVPA was enacted due to the law enforcement personnel not being familiar with the new legislation as well as the inability to handle sensitive cases,¹⁹⁹ Nonetheless, these challenges were addressed as there was commitment to train personnel on the new law. As a result of this, most cases identified were solved and had a conviction within the first year of enacting the anti- Trafficking in Persons law.²⁰⁰

¹⁹⁷ US Department of Justice, < <https://bjs.ojp.gov/document/htdca23.pdf>> accessed 23 October 2023.

¹⁹⁸ Ibid.

¹⁹⁹ Heather Clawson and others, 'Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices' (ICF International, 30 June 2008) <<https://www.ojp.gov/pdffiles1/nij/grants/223972.pdf>> accessed 23 July 2023.

²⁰⁰ US Department of State, 'Overview of the Administration's Implementation of the Trafficking Victims Protection Act of 2000', (Office to Monitor and Combat TIP, May 2002) < <https://2001-2009.state.gov/g/tip/rls/rpt/10531.htm>> accessed 11 August 2023.

4.3.2 The Office to Monitor and Combat Trafficking in Persons

The state established the Office to Monitor and Combat Trafficking in Persons in October 2001²⁰¹ and it established a Task Force to Monitor and Combat Trafficking in Persons (Task Force).²⁰² Through the interventions of the Office and the Task Force, a plan was carried out, identifying expertise from different divisions across the US to train prosecutors, judges and police on the dynamics of prosecution of trafficking cases for effective implementation of the TVPA.²⁰³ In ensuring protection to the victims of trafficking, T-VISA regulations were introduced to protect non-American victims who are violated within the US and are not feeling safe to return to their home countries. Thus, unlike Lesotho which has no mechanism in place to normalise a victim of trafficking's stay in the country, the US has a mechanism to protect victims of trafficking through regularising their stay.

4.3.3 Allocation of Resources to Combat TIP

The government also allocated \$10 Million for prevention and victims' protection initiatives to different NGOs between 2001-2002.²⁰⁴ Thus, the government support efforts of NGOs involved in combating TIP through financial assistance. This is unlike in Lesotho where to date, the Lesotho government has not made a call for grants to different NGOs implementing TIP in the country in its annual budget for such interventions dedicated at, inter alia, prevention, law enforcement or protection of victims. Lesotho allocated a sum of M150 000 for amenities to the shelter, not for prevention or law enforcement initiatives. While it is acknowledged that Lesotho is a developing country whose budget is minimal compared to the US, there has to be some political will to assist the civil society involved in fighting the crime of TIP.

²⁰¹ US Department of State, 'Overview of the Administration's Implementation of the Trafficking Victims Protection Act of 2000', (Office to Monitor and Combat TIP, May 2002) < <https://2001-2009.state.gov/g/tip/rls/rpt/10531.htm>> accessed 11 August 2023.

²⁰² Ibid.

²⁰³ Ibid.

²⁰⁴ Ibid.

4.3.4 The Trafficking Victims Fund (TVF)

Victims support under the Act is very comprehensive. The Trafficking Victims Fund was established by the TVPA to provide support to victims of trafficking, and whose source of funding shall include proceeds from civil or criminal forfeiture under law.²⁰⁵ The Fund covers, inter alia, child protection, healthcare support, legal assistance as well as psycho-social support. These are essential needs for support of victims of trafficking, which can only be met where there is a Fund specifically dedicated to providing such. Implementation of the law that provides for the establishment of the Fund is therefore essential.

In 2015, the US government enacted the Justice for Victims of Trafficking Act 2015, which amended the US anti-trafficking laws and imposed harsher penalties for traffickers.²⁰⁶ Under this Act, the Domestic Trafficking Victims' Fund was established. Proceeds of Trafficking in Persons crimes would be deposited into this fund to assist victims and support anti-Trafficking in Persons programming.²⁰⁷ The Domestic Trafficking Victims' Fund, in Lesotho's context, is the Victims of Trafficking Trust Fund. The law has not been specific in what amounts to be allocated for which specific special category of victims, hence the government's failure to establish this Fund nor allocate any adequate resources for it.

The TVPA provides financial support for the evaluation of standards of training for health professionals conducting high level forensic examinations to potential victims/ victims of Trafficking in Persons.²⁰⁸ Upon its enactment, the law had allocated \$200 000 in that fiscal year towards prioritising health support for Trafficking in Persons victims. The objective of this support goes as far as trainings for healthcare students who are to be trained on familiarization of injuries identifiable with sexual abuse and aggressive rape.²⁰⁹

²⁰⁵ The TVPA, s 1337.

²⁰⁶ The US Congress Government Bills <<https://www.congress.gov/bill/114th-congress/house-bill/296> > accessed 10 May 2023.

²⁰⁷ Ibid.

²⁰⁸ The TVPA Act, s 1405.

²⁰⁹ The TVPA, s 1405 (2).

4.3.4 US Court Judgments on Trafficking in Persons

Law enforcement entails prosecution and ultimately, adjudication of cases before courts of law. In *United States v Kil Soo Lee*²¹⁰, a case involving Trafficking in Persons for exploitative labour, the perpetrator was taking advantage of non-American immigrants in his factory. The immigrants had been recruited from Asian countries and promised lucrative payments. Upon arrival into the United States, Lee, the perpetrator confiscated their passports and their movements were restricted as they all lived in a highly secured compound and not allowed to go out.²¹¹ Instead of getting paid, they were told that they owed the employer an undisclosed amount of money for travel expenses into the US and their living expenses. The employees were ensnared in a system of debt bondage and were unable to terminate their employment contracts. Reports surfaced detailing instances of physical, verbal, and emotional abuse, particularly towards those who lodged complaints or expressed exhaustion from extensive hours of arduous labour. Despite the intricate nature of Trafficking in Persons cases, which often conceal evidence, this situation unequivocally constituted such a case.

Following an investigation, Lee was ultimately apprehended, charged under the TVPA 2000, and sentenced to ten (10) years' incarceration for committing Trafficking in Persons. Notably, he was mandated to compensate the victims for the entire sum owed to them. The victims were subsequently accommodated in protection shelters operated by various NGOs, as prescribed by law, to receive psycho-social support. Many of these victims were found to be in violation of US immigration regulations, having had their passports and other identification confiscated upon arrival in the US by Lee and his associates. However, their status in the US was regularized, and they were provided visas as victims of severe forms of Trafficking in Persons.

In this case, all law enforcement and psycho-social support personnel complied meticulously with legal provisions to safeguard the victims. Unlike the situation in Lesotho, where laws often remain on paper without adequate protection and support for victims, the US demonstrated effective enforcement of its laws to ensure the well-being of victims.

²¹⁰ [2006] 552 F.3d 05-10478 (9th Cir).

²¹¹ Ibid p 19969.

In Lesotho's case, no judgement has addressed compensation to the victims by the perpetrator, nor any normalisation of the non-Basotho victims in Lesotho, victims have, thus, remain vulnerable.

In *United States v Ranieri*,²¹² the case exposed a sex trafficking ring that exploited women by a group called NXIVM. The leader of this group, Keith Ranieri lured women into sex trafficking, and even went to an extent of tattooing these women with his initials as a way of marking them, an act very common in most sex trafficking cases.²¹³ The case also involved details of pornographic content where women would send their nude pictures which would later be used to manipulate them into performing sexual acts for the financial gain of Ranieri and his associates.²¹⁴ The case also involved cases of child pornography.²¹⁵ The accused were eventually convicted with sex trafficking and other offences. Ranieri was sentenced to one hundred and twenty (120) years in prison for trafficking women and girls.

In *United States v Djoumessi*,²¹⁶ the accused were a married couple from Cameroon, accused of harbouring a 14-year-old girl from their country, promising to take her to school. However, they never took her to school but forced her to do all their domestic work without pay, while subjecting her to unbearable living conditions.²¹⁷ The accused persons were convicted by the court for violating Section 103 of the Trafficking Victims Protection Act, and sentenced to 204 months imprisonment. They were also ordered to pay \$100 000 in compensation to the victim of trafficking.

²¹² [2019] USDC NYED, 18-cr-204 (NGG) (SIL).

²¹³ Ibid.

²¹⁴ R v Ranieri Case Summary, < <https://casetext.com/case/united-states-v-ranieri-15>> accessed 08 August 2023.

²¹⁵ Ibid, p 5730.

²¹⁶ [2008] 07- 1740 (6th Cir).

²¹⁷ United States v Djoumessi Case Summary <<https://caselaw.findlaw.com/court/us-6th-circuit/1126386.html>>accessed 23 July 2023.

4.4 Stakeholders' Roles and Responsibilities

4.4.1 Protection Shelters

The TVPA provides for financial support to initiatives that support victims of trafficking through provision of psycho-social support and assistance.²¹⁸ The financial assistance is provided to US governments who offer support to institutions supporting victims of trafficking. These institutions include civil society organisations, local shelters and other programs that protect victims and survivors of trafficking.²¹⁹ There are several shelters run by Non-Governmental Organisations across the states of US, mostly funded by the government in terms of the law.²²⁰ In Lesotho, however, there is only one shelter and does not get adequate support from the government of Lesotho.

4.5 Stakeholders' Capacity-Building

The Act also mandates the state to establish a referral mechanism that would guide professionals, not only on the identification of signs of sexual violence, but on how to sensitively handle such cases and refer them without doing any further harm to the victim as per the developed national protocol.²²¹ This includes health professionals, who are key as health professionals are on the forefront in identifying Trafficking in Persons –Trafficking in Persons cases as well as responding to the trauma that a victim of trafficking is going through. In an instance where such a health worker has failed to provide adequate care to the victim, there are steps to be taken against such an officer as there are clear and established protocols in place.

The same, however, cannot be said about Lesotho. While there is a National Referral Mechanism and Standard Operating Procedures (SOPs) adopted in 2021, the documents are yet to be popularised amongst service providers who are supposedly guided by them. Even though victims do not pay any fees when accessing services at government/ public health centres, they are still

²¹⁸ Trafficking Victims Protection Act 2000, s 109 (a).

²¹⁹ The Victims of Trafficking and Violence Protection Act 2000, s 1301 (a) (3).

²²⁰ TVPA (n 11) 3.

²²¹ Ibid, s 1405 (3).

treated like ordinary patients.²²² This results in them being further re-traumatised as some have disclosed that they were subjected to discriminatory questioning, health ‘professionals’ demanding them to explain why they are presenting multiple sexually transmitted illnesses while also observing injuries in their genitals.

4.6 Legal Assistance

Victims of Trafficking require special protection and the law must guarantee legal support to the victims/ survivors of Trafficking in Persons, including legal representation. The US Victims Fund provides legal support to victims of trafficking regardless of whether they are US citizens or non-citizens.²²³ Special protection and harmonisation of immigration status of a victim of trafficking is essential where an illegal immigrant is a victim of a severe form of Trafficking²²⁴ Lesotho has similar provisions in its anti- Trafficking in Persons law.²²⁵ Non-Basotho victims of trafficking need special protection from the law, including legalising their legal stay in the country. All these are catered for in the Trust Fund.²²⁶ Nonetheless, there is no enforcement of these provisions in the Lesotho anti-trafficking laws, as there is no allocation of funds to support victims of trafficking. In addition, there are no efforts directed towards normalisation of the stay of non-Basotho victims.

4.7 The Trafficking Victims Protection and Prevention Reauthorization Act

In ensuring the effectiveness of the Trust Fund, the United States government enacted the Trafficking Victims Prevention and Protection Reauthorization Act. Reauthorization Acts are amendments and are supplementary documents to the TVPA for compliance. The reauthorisation comes in different segments whenever there is need for such re-enactment or reauthorization. Since the enactment of the TVPA in 2000, the Act has been reauthorized five (5) times.²²⁷ The 2003

²²² Interview with Beautiful Dream Society.

²²³ The TVPA, s 107.

²²⁴ one where the victim is trafficked for sex trafficking, exploitative labour through coercive means or the victim is a child.

²²⁵ The Anti-Trafficking in Persons Act 2011, s 31.

²²⁶ The Anti-TIP Act, s 47 (c).

²²⁷ These were in 2003, 2005, 2008, 2013 and 2018. Hope for Justice, ‘ Trafficking Victims Protection Reauthorization Act (TVPRA)’ (2021),

<https://hopeforjustice.org/typra/#:~:text=Trafficking%20Victims%20Prevention%20and%20Protection%20Reauth>

Reauthorization was to increase the Victims' Fund from \$10 Million to \$15 Million per annum to ensure that there was sufficient funding for the support of Trafficking in Persons (TIP) victims and survivors.²²⁸ This is yet another demonstration of the US's commitment to financing the Victim's Fund.

Furthermore, the 2003 Reauthorization added a requirement for foreign governments to provide the Department of State with data on trafficking investigations, prosecutions, convictions, and sentences in order to fully meet the TVPA's minimum standards for the elimination of trafficking. Foreign governments are also required to provide the US Department of State with information and data on anti-Trafficking in Persons interventions, including investigations, prosecution, convictions and sentences. This data is important in categorising countries into tiers.²²⁹

The Reauthorisation Acts have specifically indicated the amount allocated for anti-trafficking interventions each year. In Lesotho's laws, however, there is no indication on the specific amount that will be allocated to combating TIP. It is therefore up to the Parliament to determine how much they are willing to allocate for Trafficking in Persons survivors that year. This means that there is no guarantee that sufficient funds will be allocated to TIP, thus making the funding unreliable.

Trafficking in Persons trends and patterns change. In addressing this crime, frequent research is necessary to effectively respond to the changing trends and patterns. The Reauthorisation Act 2005 provides grants for research to study Trafficking in Persons patterns, especially in areas affected by disasters.²³⁰ In Lesotho, however, there is no such funding dedicated for research. Therefore, the law enforcement is slow to prepare and adapt to the emerging trends in human trafficking.

4.8 Accountability

Accountability is also key in the Reauthorisation Act. Upon providing grants to different entities like NGOs and government agencies, the Secretary of State must, within the period of 180 days after such allocation of grants, provide a report to the Senate that indeed the studies were conducted

[orization%20Act%20%28TVPRA%29,and%20those%20who%20facilitate%20trafficking%20are%20held%20accountable](#)> accessed 12 May 2023.

²²⁸ Trafficking Victims Protection Reauthorizations Act 2003, s 7 (3) (B).

²²⁹ US Department of State, '2023 Trafficking in Persons Report' (June 2023) < <https://www.state.gov/reports/2023-trafficking-in-persons-report>> accessed 11 July 2023.

²³⁰ Trafficking Victims Protection Reauthorization Act 2005, s 101 (1).

and share such studies' findings.²³¹ Upon one year of providing grants to different entities on Trafficking in Persons programming for victims of trafficking's assistance, the Secretary of State still needs to account to the Senate so that there is transparency and publicity of Trafficking The Department of Justice, for instance, compiles an annual report on its interventions in combating Trafficking in Persons- Trafficking in Persons when funds have been allocated to the Ministry.²³² Different state agencies and entities are required to do so, funds are not just allocated and there is no accountability.

This is a completely different picture in Lesotho. Although funds were allegedly disbursed to support some of the Trafficking in Persons interventions to a local NGO by opening an account in the name of the 'Trust Fund'²³³ in the fiscal year 2022, there are no financial reports on this spending. The then Ministry of Home Affairs²³⁴ had alleged that there was M500 000 disbursed to support Victims of Trafficking, but an official from the shelter denied this, stating that they were provided assistance on necessities worth M150 000.²³⁵ Access to this data (on disbursement) remains privileged information. This means that there is no public accountability for funds disbursed, thus leaving room for corruption. Lesotho anti-Trafficking in Persons law provides for accountability, where the Minister of Home Affairs is to provide a report on use of funds for the Fund.²³⁶ Nonetheless, this is only in the law and never practised there are no reports for public consumption. If there are any reports, they have not been made public.

²³¹ The TVPA Reauthorization Act 2004, s 101 (2).

²³² US Department of Justice, ' Attorney General's Annual Report to Congress on US Government Activities to Combat Trafficking in Persons' (2020).

<<https://search.justice.gov/search?utf8=%E2%9C%93&affiliate=justice&query=report+on+use+of+funds+for+Trafficking+in+Persons>> accessed 11 May 2023.

²³³ US Department of State Report, 2022< <https://www.state.gov/reports/2022-trafficking-in-persons-report/> > accessed 11 May 2023.

²³⁴ Now Department of Home Affairs under the new Ministry of Local Government, Police and Home Affairs.

²³⁵ This was disclosed in an interview with the Researcher.

²³⁶ The Anti- Trafficking in Persons Act 2011, s 52.

4.9 Coordination Mechanism

4.9.1 The US Advisory Council on Human Trafficking

The US Advisory Council on Human Trafficking (ACHT) is a governmental body established to provide direction and advice to federal agencies regarding policies and programmes aimed at combating Trafficking in Persons. The establishment of the ACHT is provided for in the Justice for Victims of Trafficking Act (JVTA) 2015.²³⁷ Its primary role is to provide direction and expertise in order to improve the Government's efforts to combat Trafficking in Persons. It compiles annual reports on its programming and recommendations on prevention, protection, prosecution and partnerships.²³⁸

Eligible members are appointed by the President and serve a two-year term. The composition of the Council includes Trafficking in Persons survivors, experts from various fields such as public policy, law enforcement and social services. This reflects the US government's commitment in including survivor voices in anti-Trafficking in Persons efforts. Survivors' voices are some of the usually missing efforts in addressing the problem of Trafficking in Persons as these are important people who can guide law enforcement and other survivors to effectively adopt necessary strategies in combating Trafficking in Persons.

This is a body with similar functions as the Lesotho Multi-Sectoral Committee. Lesotho can learn a few lessons from the US in appointing members of this crucial body combating Trafficking in Persons, to ensure the effectiveness of the committee by appointing the best that can be found in the country. With the Lesotho Multi-Sectoral Committee, some government officials make appointments of who can be Multi-Sectoral Committee members, with powers of excluding such members from any further meetings if they feel such a member is no longer welcome in the committee. Nonetheless, caution must also be taken into account as Presidential (Prime Minister in Lesotho's case) appointment can be politically motivated.

²³⁷ Sec 626.

²³⁸ Office to Monitor and Combat Trafficking in Persons, 'United States Advisory Council on Human Trafficking Annual Report 2022' (US Department of State, September 2022) < <https://www.state.gov/united-states-advisory-council-on-human-trafficking-annual-report-2022/> > accessed 19 July 2023.

4.10 Conclusion

The objective of this analysis was to explore the United States' approach to addressing trafficking, aiming to extract insights applicable to Lesotho. The annual US Department of State Human Trafficking Report serves as a testament to the US government's commitment toward combating Trafficking in Persons and protecting its citizens from this form of exploitation. It is evident that the Trafficking Victims Protection Act (TVPA) has become a cornerstone of international law jurisprudence, given the widespread compliance among states with its provisions and their efforts to adhere to the recommendations outlined in the annual report.

Lesotho stands to learn valuable lessons from the United States, particularly concerning resource allocation for combating Trafficking in Persons. The prevailing challenges, such as inadequate capacity building for frontline personnel, insufficient coordination, and gaps in law enforcement, are largely linked to limited financial resources available for addressing these issues. By prioritizing the establishment of a Trust Fund and directing resources toward it, Lesotho could effectively address many of the obstacles hindering the implementation of the Anti-Trafficking in Persons Act of 2011.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

Chapter 4 of the study involved a comparative analysis between Lesotho and the United States of America (US) concerning the implementation of anti-trafficking legislation and its impact on the protection of victims of Trafficking in Persons. This comparison revealed that the US has robust and effective mechanisms in place to address Trafficking in Persons. Several strengths were identified within the US system, which could potentially serve as models for Lesotho to reinforce its efforts in combating Trafficking in Persons.

The upcoming chapter serves as the conclusion to this study. It commences by reiterating the study's aims and objectives before summarizing the research findings. Through this, the chapter aims to demonstrate the answers to the research questions and the fulfillment of the study's objectives. Following this, recommendations will be proposed, leading to final concluding remarks.

5.2 Purpose of the Study

This research sought to evaluate the protection and support provided to trafficking victims in Lesotho, examining the country's compliance with international standards in safeguarding survivors of trafficking. It aimed to determine whether Lesotho effectively implemented the Anti-Trafficking in Persons Act of 2011 and its adequacy in protecting these survivors.

5.3 Research Findings

The primary research objective was to assess if Lesotho's legal framework aligned with international standards concerning legal and psycho-social support for victims of Trafficking in Persons (VOTs). This was accomplished through an examination of Lesotho's legal framework, encompassing international, regional, sub-regional, and domestic laws. The study revealed the following:

Chapter 2 scrutinized literature on trafficking in persons and related legal frameworks, particularly in Lesotho. It was established that while Lesotho has foundational laws like the Anti-Trafficking in Persons Act and is a party to pertinent international instruments, improvements are required in related laws governing law enforcement, victim protection, case law, and immigration.

Chapter 3 evaluated the implementation of legislation and policies on trafficking in persons in Lesotho, focusing on the Anti-Trafficking in Persons Act. Challenges were identified in law enforcement, with capacity deficiencies among key stakeholders like prosecution, investigation, and the judiciary. Additionally, inadequate resources, absence of the Victims of Trafficking Trust Fund, and lack of shelters for victims of trafficking were noted.

Chapter 4 conducted a comparative study between Lesotho and the US. The analysis highlighted the US's effective implementation of the Trafficking Victims Protection Act 2000, emphasizing capacity-building programs across government and non-governmental institutions, multiple shelters providing psycho-social support funded by the government, and assessments of states' compliance with international standards.

5.4 Recommendations

The findings point to various steps necessary for Lesotho to effectively combat Trafficking in Persons. The study offers the following recommendations:

- ❖ Capacity-building initiatives for law enforcement officers, healthcare workers, and other stakeholders involved in handling Trafficking in Persons cases, enhancing their skills and expertise in dealing with such sensitive situations.
- ❖ Establishment of the Victims of Trafficking Trust Fund to provide financial support to victims, ensuring autonomy in operation and implementing accountability measures to prevent misuse of funds.
- ❖ Enhanced cooperation among key stakeholders involved in combating Trafficking in Persons, fostering a unified approach to address the complexities of this crime.

- ❖ Implementation of an Anti-Trafficking Task Force as an oversight body to regulate and oversee the activities of the Multi-Sectoral Committee, ensuring efficient implementation of laws and policies.

5.5 Concluding Remarks

Trafficking in Persons remains a complex organized crime, challenging for states to tackle comprehensively while safeguarding victims. Lesotho, as a developing country, faces additional difficulties in addressing this issue due to limited opportunities for its citizens. However, with commitment, effective coordination, and political will to implement anti-trafficking laws and policies, Lesotho can make significant strides in combating Trafficking in Persons.

BIBLIOGRAPHY

ARTICLES

Behal PB, Coolie Drivers or Benevolent Paternalists? British Tea Planters in Assam and the Indenture Labour System (Modern Asian Studies, 2009).

Bello PO and Olutola A, Effective Response to Human Trafficking in South Africa: Law as a Toothless Bulldog 12(1) (Sage Journals, 2022).

Clawson H, Prosecuting Human Trafficking Cases: Lessons Learned and Promising Practices (ICF International, 2008).

Gavhera EV, Slavery in the 21st Century: An Analysis of Human Trafficking in Southern Africa (University of KwaZulu Natal Research Space, 2014).

Giovagnoni B and Van Schooneveld A, 'The History of Human Trafficking (Human Trafficking Education, 2022).

Hardwick L, Creolizing the Caribbean 'Coolie': A Bio political Reading of Indian Indentured Labourers and the Ethnaclass Hierarchy (2014) (17) International Journal of Francophone Studies

Kampilipili N, 'SADC Developing Protocol on Trafficking in Persons' (Southern African Research and Documentation Centre, 14 August 2020).

Lewis T, Trans-Atlantic Slave Trade (Encyclopedia Britannica, 2022).

Rodrigues C, Portugal and African Slave Trade before Columbus (African Diaspora Studies Cultural History, 2016).

Rotondi JP, The Anti-Immigration Law Targeted at Asian Women (Asian American and Pacific Islander History, 2021).

Sumner K, Slavery still Exists Today (Regent University Center for Global Justice, 2021).

Yesufu S, Human Trafficking: A South African Perspective, (Journal of Social Sciences and Humanities, 2020).

BOOKS

Ekama K and Hellman L, *Slavery and Bondage in Asia, 1550-1850: Towards a Global History of Coerced Labour* (De Gruyter, 3rd edn, 2022).

Braithwaite J, *Crime, Shame and Reintegration* (Cambridge University Press 1989).

Malloch M and Rigby P, *Human Trafficking: The Complexities of Exploitation* (1st edn, Edinburgh University Press 2017).

CASES

R v Madumera [2020] CR 19.

R v Tukulula Smite [2018] CR 0346.

Rex v Joalane Tsoana [2012] CR 372.

R v. Yoseph Girmay Testagaber, Adanech Beru Woldegioregis [2012] CR 12.

United States v Djoumessi [2008] 07- 1740 (6th Cir).

United States v Kil Soo Lee [2006] 552 F.3d 05-10478 (9th Cir).

United States v Raniere [2019] USDC NYED, 18-cr-204 (NGG) (SIL).

INTERNATIONAL TREATIES

International Agreement for the Suppression of the "White Slave Traffic" 1904.

International Convention for the Suppression of the Traffic in Women of Full Age.

Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially Women and Children 2006.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime 2000.

United Nations Convention against Transnational Organised Crime 2000.

ONLINE SOURCES

Province of British Columbia, Element 3: The Purpose of Exploitation or Why it is Done (British Columbia, 2014) <<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of->

[crime/human-trafficking/human-trafficking-training/module-1/element-3-purpose](#) > accessed 29 January 2023.

United Nations Office on Drugs and Crime Website < <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> > accessed 31 January 2023.

UNODC Case Law Database < <https://sherloc.unodc.org/cld/en/v3/sherloc/cldb/index.html> > accessed 10 February 2023.

US Congress Government Bills < <https://www.congress.gov/bill/114th-congress/house-bill/296> > accessed 10 May 2023.

REPORTS

ADC Trafficking in Persons in the SADC Region: A baseline Study.

Global Report on Trafficking in Persons (2020).

Office to Monitor and Combat Trafficking in Persons, United States Advisory Council on Human Trafficking Annual Report 2022 (US Department of State, 2022).

UNODC, Typical Issues in Trafficking in Persons Cases: Southern Africa (UNODC 2021).

United Nations Office on Drugs and Crime, Trafficking in Persons in the SADC Region: A Statistical Report (SADCTrafficking in PersonsNet, 2014-2016).

US Department of State 2023 Trafficking in Persons Report.

US Department of State 2022 Trafficking in Persons Report.

US Department of State 2021 Trafficking in Persons Report.

US Department of State 2020 Trafficking in Persons Report.

STATUTES

Anti-Trafficking in Persons Act 2011.

Anti-Trafficking in Persons Amendment Act 2021.

Anti-Trafficking in Persons Regulations 2015.

Criminal Procedure and Evidence Act 1981.

Lesotho Constitution 1993.

Page Act 1875.

Subordinate Courts (Amendment) Act 1998.

Trafficking Victims Protection Reauthorization Act 2005.

Trafficking Victims Protection Reauthorization Act 2004.

Victims of Trafficking and Violence Protection Act of 2000.

THESES

Castellucci LJ, Identification of Human Trafficking Victims in the Healthcare Setting: An Integrative Review, (Phd Thesis, Liberty University 2020).

Kruger BH, Combating Human Trafficking: A South African Legal Perspective (Phd Thesis, University of Free State 2010).

Ranjana D, Human Trafficking: A Study Exploring its Causes, Current Efforts and Challenges (Masters Thesis, National Institute of Technology 2015).