

THE ROLE OF THE MILITARY IN COMBATING HUMAN TRAFFICKING: A SOUTH AFRICAN PERSPECTIVE

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Abstract

Human trafficking is a complex and diverse crime affecting both individuals and countries across the world. As a significant facet of transnational organised crime and one of the most lucrative criminal enterprises globally, human trafficking was ranked as the second most profitable crime around the world in 2015, making it the fastest-growing source of revenue for organised criminal operations internationally. In 2015, South Africa implemented comprehensive anti-trafficking legislation. Before such legislation was enacted, the South African government also ratified several international and regional human rights instruments in terms of which specific duties are imposed upon the state to combat and punish the crime effectively, including the protection of the rights of victims. The focus of the study on which this article reports, is the desired role of the military in combating human trafficking in South Africa. In 2004, the North Atlantic Treaty Organisation (NATO) adopted a policy on combating trafficking in human beings. The policy sets out various strategies for ensuring regional co-operation in combating human trafficking. It is suggested that the South African National Defence Force (SANDF) take the initiative in formulating a similar policy in order to effect better co-operation amongst nation states in Africa, especially in the southern region of Africa, to combat human trafficking. In order to address the role of the SANDF in the fight against human trafficking meaningfully and to develop evidence-based strategies and policies, regional coordination in combating trafficking is paramount. The article examines current legislation, instruments and strategies as regards human trafficking in order to make recommendations for counter-trafficking policy standards and best practices for the SANDF.

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Introduction

Although not a novel phenomenon, the crime of human trafficking is complex, diverse, and constantly evolving as traffickers develop new tactics to trade in human beings. Human trafficking affects not only individuals, but also countries across the world. It has been estimated by various international organisations that millions of victims are trapped in trafficking.¹ Although both international entities and domestic jurisdictions have proposed various strategies to combat the rapidly growing problem of human trafficking, the combating of this criminal activity remains a challenge for all branches of law enforcement, including the military. The primary international instrument, the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime of 2000 (Trafficking Protocol) is already 17 years old; yet, regional and national efforts to combat trafficking have produced minimal positive results. South Africa is no exception in this regard. Since the end of apartheid, the jurisdiction has been experiencing an increase of illegal immigrants from all over Africa, as well as other foreign countries. It has further been acknowledged that since 1994, the trafficking of men, women, and children into various exploitative sectors, such as labour trafficking and involuntary sex work, amongst others, have also escalated in South Africa.²

This multi-dimensional illicit modern-day slavery industry must be fought at national, regional and international level with an integrated, multi-sectoral approach. In this respect, the SANDF also has a role to play, and can learn a great deal from NATO, amongst others, for guidelines and best practices. The Policy on Combating Trafficking in Human Beings of 2004 of this intergovernmental military alliance recognises that human trafficking feeds on corruption and organised crime, and has “the potential to destabilise fragile governments”.³ As no such policy currently exists in the SANDF, it is proposed that the Defence Force evaluate and develop policies, strategies and force design through the

¹ The guesstimated statistics for persons trafficked are 24,9 million victims, according to Human Rights First *Human Trafficking by the Numbers* (2017) at 1. The International Labour Organization (ILO), again, assesses that in 2016 an estimated 40,3 million people were victims of trafficking. See ILO *Global Estimates of Modern Slavery* (ILO Publications 2017) at 9.

² Frankel, P *Long Walk to Nowhere: Human Trafficking in Post-Mandela South Africa* (Transaction Publishers 2016) at 3.

³ See North Atlantic Treaty Organisation (NATO) *Policy on Combating Trafficking in Human Beings B-1110* (2004) art 1.

implementation of specific evidence-based codes of conduct or strategic plans to combat this offence.

Apart from the violation of the fundamental human rights of persons being trafficked, trafficking is a substantial source of revenue for criminal organisations⁴ whose activities may destabilise legitimate governments and undermine the mission of the military. The crime may become a security issue and undercut military operations. However, as known from previous experiences, military troops themselves can create or increase the demand for trafficked women.⁵

This article is structured as follows: it is first necessary to explain which conduct falls under human trafficking in South African and international law. Second, the measures government have taken to combat this crime in South Africa are considered. Next, the role of the military in South Africa in combating human trafficking is considered and compared with international and regional efforts. Recommendations are then finally made for steps to be taken by the military to play a more significant role in combating human trafficking.

Background to human trafficking in South Africa

Although people have heard of human trafficking, very few people really know what it entails and the role it plays in international organised crime. As a significant facet of transnational organised crime and one of the most lucrative criminal enterprises globally, human trafficking was ranked as the second most profitable crime around the world in 2015,⁶ making it the fastest-growing source of revenue for organised criminal operations internationally.

In order to combat the trade in human cargo, legal jurisdictions have adopted a range of international standards and obligations, of which the UN's

⁴ The projected profits generated by the crime are about \$150 billion per year. See Human Rights op cit 2.

⁵ See, for example, Vine, *D Base Nation: How US Military Bases Abroad Harm America and the World* (Metropolitan Books 2015) at 163–6. Vine recounts the problems associated with prostitute 'camptowns' operating around American military bases in South Korea. Many of these women are coerced into the sex trade, and physically kept captive or forced to stay, as their passports have been confiscated by their traffickers.

⁶ International Organization for Migration 'Counter-trafficking 2015 Regional Statistics' (2016), available at https://www.iom.int/sites/default/files/infographic/CT2015_10_June_2016.pdf. Similarly, in southern Africa human trafficking is only surpassed by the arms and drugs trade as the most profitable criminal enterprise in the region. The turnover from trafficking is also estimated to be US\$7 to US\$10 billion a year. See Gould, C & Fick, *N Selling Sex in Cape Town: Sex Work and Human Trafficking in a South African City* (Institute for Security Studies 2008) at 94.

Trafficking Protocol is the most significant.⁷ Following the prototype of the Trafficking Protocol, governments around the world have also committed themselves to enact national human trafficking legislation to address modern-day slavery. In Africa, where the scourge of trafficking is widespread, South Africa is one of the few nations that actively pursue the punishment of human trafficking.⁸ This is vital as South Africa with its viable and developing economy has become a magnet for illegal migrants and human traffickers, attracting people from the whole continent fleeing from political and economic upheaval, armed conflict,⁹ the HIV/AIDS pandemic,¹⁰ food insecurity and unemployment.¹¹ The resultant poverty

⁷ See Mollema, N *Combating Human Trafficking in South Africa: A Comparative Legal Study* (unpublished LLD thesis, Unisa 2013) at 2. Only 20 countries have not yet adopted the Trafficking Protocol in 2017. There are currently 171 states parties to the Protocol. See United States Department of State *Trafficking in Persons Report 2017* (US Government Printing Office 2017) at 13.

⁸ While 48 countries in the African region are states parties to the Trafficking Protocol, 32 do not have any legislation, or inadequate laws to combat the crime. See United States Department of State op cit 46.

⁹ Adepoju, A 'Issues and Recent Trends in International Migration in Sub-Saharan Africa' (2000) 52 (165) *International Social Science Journal* at 384 declares that "[s]ub-Saharan Africa has been a theatre of internecine warfare" for the past two decades, creating major refugee populations. For example, during 1969–1990, 17 of the world's recorded 43 civil wars were in Africa, including 'high-intensity' civil conflict in Angola, Liberia and Mozambique. This has resulted in more than 6 million people as refugees and another 17 million displaced within their countries.

¹⁰ The HIV/AIDS pandemic could be one of the reasons why South Africa is rated first in the world, with 5,6 million people living with HIV/AIDS as well as the world's most HIV/AIDS deaths with approximately 320,000 people. The HIV/AIDS adult prevalence rate in South Africa is 17,8%, which is the fourth highest in the world. HIV/AIDS-related orphan-headed households are estimated to consist of 1.2 million children out of an under-18 population of 18,417,000; this represents 15%. See Chichava, M & Kiremire, MK *A Situational Analysis of the Abuse and Trafficking of Children in Southern Africa*, unpublished research commissioned by the Southern African Network against Trafficking and Abuse of Children (2007) at 26. In addition, the prevalence and fear of HIV/AIDS and ignorance of its transmission have led to an increased demand for under-aged children based on the perception that they are disease-free. This practice is what Lomé terms the *marche du petit vagin*, literally, the market of the small vagina. See Allais, C 'An Overview of Human Trafficking in Sub-Saharan Africa', paper presented at the Joint Area Centres Annual Symposium: Criminal Trafficking and Slavery: The Dark Side of Global and Regional Migration, Champaign, IL (23–25 February 2006) at 8, 10. There is also a belief that men with HIV/AIDS who have sex with a child (a virgin) will be cured or cleansed. Traffickers are therefore targeting increasingly younger girls. See Bermudez, L "No Experience Necessary": *The Internal Trafficking of Persons in South Africa* (IOM Regional Office for Southern Africa 2008) at 15.

¹¹ Chichava & Kiremire op cit 40. Adepoju op cit 383 asserts: "At the current growth rate of 2,7% in the labour force, the region now requires 7,5 million new jobs merely to stabilise the employment situation. Beginning from the 1980s, Sub-Saharan Africa (SSA) countries experienced negative economic growth rates; GDP stagnated whilst

in especially South Africa's regional neighbours, still grappling with the after-effects of colonisation and failed statehood, has furthermore caused an exodus to South Africa for better life opportunities. Traffickers are said to service the demand of the very lucrative human smuggling industry, especially in conflict and post-conflict areas. In many illegal migration cases, displaced people make desperate decisions by relying on initially 'benevolent' smugglers who transform into ruthless traffickers, keeping the illegal migrants captive as human slaves.¹² Trafficking in the jurisdiction is additionally complex and diverse as it consists of culturally unique trafficking types such as *ukuthwala*.¹³ The country has been listed as a human trafficking source, transit, and destination country for men, women and children to, from and within South Africa for mainly labour and sex trafficking.¹⁴

South Africa has the highest number of asylum seekers in the world.¹⁵ Although South Africa supports large numbers of refugees and asylum seekers, the jurisdiction is also home to an estimated five million illegal immigrants, including some three million Zimbabweans.¹⁶ In response to the dynamics of supply and demand, migration (which has always been endemic in Africa)¹⁷ to South Africa is

population increased annually at 3% and average per capita income declined by one quarter. ... Today SSA is the world's poorest region, where people were poorer at the end of the eighties than they had been in the beginning of the decade".

¹² United States Agency for International Development (USAID) *Counter-trafficking in Persons Field Guide* (2013) at 25.

¹³ Originally, "a culturally legitimated mock abduction of a girl by a young man whereby the girl's family is forced to enter into negotiations for the conclusion of a customary marriage", the Nguni custom of *ukuthwala* (literally meaning 'to carry') has developed into a form of trafficking, where parents sell their under-aged, non-consenting daughters to unknown, much older men. See Mollema op cit 498.

¹⁴ United States Department of State op cit 364.

¹⁵ See Apleni, M *Speaking Notes for Home Affairs Director-General Mkuseli Apleni Following Briefing to Media* (RSA Home Affairs 2012) at 2. They are mainly from the DRC (33,000), Somalia (20,000), Burundi (6,500), Angola (6,000) and other states in Africa (26,000). See Central Intelligence Agency (CIA) 'Country Report: South Africa' (2017), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/sf.html>. According to the most recent statistics available, this population numbered approximately 256,000 in 2009. See United States Committee for Refugees and Immigrants *World Refugee Survey 2009* (2009) at 31.

¹⁶ Crush, J & Williams, W *Making Up the Numbers: Measuring "Illegal Immigration" to South Africa* (Southern African Migration Project Policy Brief No 3 2001) at 12. Solomon, H 'Turning Back the Tide: Illegal Immigration into South Africa' (2005) 16 (4) *Mediterranean Quarterly* 91 confirms these numbers, but cautions that accurate numbers are difficult to come by. No more recent, verifiable statistics are available.

¹⁷ As per Adepoju op cit 383, who declares, "Historical, economic, ethnic, and political links have fostered and reinforced intra-regional, inter-regional and international migration in Africa, as well as between it and the colonial metropolitan and other countries. By far the largest stream of migration in Africa consists of intra-regional migrant

aided by the porous nature of the country's borders and coast lines,¹⁸ as well as ineffective monitoring of land, rail and sea transportation modes. Trafficked people are indistinguishable amongst these flows.

In order to tackle the multi-dimensional crime of human trafficking in the country, South Africa became a signatory to the Trafficking Protocol in 2000, and ratified the instrument in 2004. As a result, the jurisdiction became subject to international obligations in terms of which specific duties were imposed upon the state to combat and punish the crime effectively and to protect the rights of victims. The need to enact domestic anti-trafficking legislation was prioritised, and on 29 July 2013, the Prevention and Combating of Trafficking in Persons Act 7 of 2013 (Trafficking Act) was signed into law but only became operational on 9 August 2015. The Act introduces a universally acceptable but still country-specific definition of human trafficking:

'Trafficking' includes the *delivery*, recruitment, *procurement*, *capture*, *removal*, transportation, transfer, harbouring, *sale*, *exchange*, *lease*, *disposal* or receiving of a person, or the *adoption of a child facilitated or secured through legal or illegal means*, within or across the borders of the Republic, of a person trafficked or *an immediate family member of the person trafficked*, by means of

–

- (a) a *threat of harm*;
- (b) the threat or use of force, intimidation or other forms of coercion;
- (c) the abuse of vulnerability;
- (d) fraud;
- (e) deception or *false pretences*;
- (f) *debt bondage*;
- (g) abduction;
- (h) *kidnapping*;
- (i) the abuse of power;
- (j) the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or

workers, undocumented migrants, nomads, frontier workers, refugees and, increasingly, highly skilled professionals”.

¹⁸ Delpont, E, Koen, K & MacKay, A *Human Trafficking in South Africa: Root Causes and Recommendations*, UNESCO Policy Paper Poverty Series No 14.5 E (2007) at 34. South Africa has a total perimeter of 4,862 km, with bordering countries consisting of Botswana (1,840 km), Lesotho (909 km), Mozambique (491 km), Namibia (967 km), Swaziland (430 km) and Zimbabwe (225 km). It also comprises 2,798 km of unprotected coastline. See CIA op cit. The land borders are particularly difficult to police due to their length and because local communities share cultural relations with people in adjacent countries.

(k) *the giving or receiving of payments, compensation, rewards, benefits or any other advantage,*

for the purpose of any form or manner of exploitation, *sexual grooming* or abuse of such person, including the commission of *any sexual offence* or *any offence of a sexual nature in any other law against such person* or *performing any sexual act with such person*, whether committed *in or outside the borders* of the Republic.¹⁹

In essence, this definition holds that persons are trafficked if they have been moved within a country or to another country, as a result of force, fraud or manipulation and are exploited or compelled to work under threat of violence for no pay, beyond subsistence. The definition is very broad, and except for the requirement that a person be removed, transported, or transferred from one place to another, other acts such as the mere harbouring of a person through a threat of intimidation with the intent to exploit the person are sufficient for the crime to be committed. With regard to the role of the military, the moving of a person from one country to another, or within the country, through deceptive or violent means for any type of exploitative purpose is of particular significance. The exploitative purposes may include forced labour, involuntary sex work, begging, stealing, drug running, forced marriage and the sale of body parts, amongst others.

Amongst other requirements, the Trafficking Protocol obliges member states to criminalise trafficking, and to investigate and prosecute traffickers.²⁰ The Trafficking Protocol also instructs that states must adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons that lead to trafficking.²¹ States are to determine which measures to take in accordance with the domestic legislation and policies of each state as well as in accordance with the financial and human resource capabilities of the state.

Another important condition that the Protocol stipulates for signatory states is to undertake border control measures. Border management is one of the roles the SANDF is expected to play in South Africa, along with other secondary functions such as peacekeeping and humanitarian support. However, very few joint efforts

¹⁹ Prevention and Combating of Trafficking in Persons Act 7 of 2013 art 4(1). This lengthy definition includes additional definitional information absent in the Trafficking Protocol art 3(a), which is indicated in the italicised words set out here. A trafficked person under the age of 18 cannot give consent to any exploitation, and is thus considered a victim. Thus, minors in prostitution cannot have consented to be prostitutes and are consequently trafficking victims. See Trafficking Protocol art 3(c), (d).

²⁰ Trafficking Protocol art 2.

²¹ Trafficking Protocol art 9(2), (4), (5).

have been made with neighbouring countries to deal multilaterally with border issues and crimes such as human trafficking and human smuggling. Co-operation between South Africa and its neighbours in this regard is usually not of a preventative nature, but only takes place after the occurrence of smuggling or trafficking has been discovered.

The role of the SANDF

The SANDF's core mandate is the protection of the country, its territorial integrity and its people, as established in section 200(2) of the Constitution: "The primary object of the defence force is to defend and protect the Republic, its territorial integrity and its people in accordance with the Constitution and the principles of international law regulating the use of force."

Certain defence force functions as set out in the Interim Constitution (1993)²² were also specifically included in Chapter 11 of the final Constitution²³ and the Defence Act 42 of 2002 (sections 18, 19 and 20), namely –

- Compliance with the international obligations of the Republic;
- The preservation of life, health or property;
- The provision or maintenance of essential services;
- Upholding of law and order in support of the Police Service; and
- Support of any department of state for the purpose of socio-economic development.

As Secretary for Defence, Dr Sam Gulube noted in 2014, "everyone wants to live in a safe, secure and prosperous environment but this does not just happen and requires a defence force supported by a strong industry to ensure security".²⁴ Such a defence force needs to be optimally postured and constructed to carry out its ordered tasks successfully in the 21st century. It is purported that –

[S]uccess will depend on how well the SANDF analyses the environment in which it will have to function, as well as how well it prioritises its objectives when making decisions about the most appropriate approach to

²² Interim Constitution of the Republic of South Africa Act 200 of 1993 Chapter 14 s 227.

²³ Constitution of the Republic of South Africa, 1996 ss 200–1.

²⁴ Martin, G 'An Effective Defence Industry is needed to Support a Changing SANDF' *defenceWeb* (17 September 2014), available at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=36295.

the development of a national security strategy, force planning and the role of the military as one of the components of national power.²⁵

It is however asserted that the focus on the primary tasks of the SANDF as detailed in two of its key policy documents, namely the South African White Paper on Defence of 1996 and the South African Defence Review of 1998, may be misaligned with governmental objectives and fail to address the current and future operational requirements of the SANDF adequately. The 2015 Defence Review acknowledges the relevant guiding principles established during the 1998 Defence Review process. These principles revolve around –

- Defence posture and doctrine, the primary function of the SANDF;
- The secondary functions and tasks of the SANDF;
- Force design options, force structure;
- The human resource vision as well as the part-time component vision of the Department;
- Land and environment policies;
- Acquisition management; and
- The revision of defence legislation.²⁶

However, the 2015 Defence Review emphasises, “current strategic circumstances call for a far greater defence contribution towards the continuance of South Africa’s national security, the deepening of democracy on the continent and meeting South Africa’s international responsibilities”.²⁷

Although it elaborates extensively on domestic and regional dimensions to national security, the Review does not discuss the threat of human trafficking, although the crime is briefly mentioned on page 6-3 as one of the problems in safeguarding air borders. It is curious that many of the pressing developmental challenges the state is facing as mentioned in the Review, such as “persistent regional and local conflicts; violent political, ethnic and religious extremism; acts of terror ... high levels of international crime; and cyber threats ... competition over scarce resources; poverty, under-development and poor human security; ... and endemic disease”²⁸ are also causes or factors contributing towards human trafficking; yet, no SANDF policy on human trafficking exists as yet.

²⁵ Olivier, L *Changing International Realities and the Configuration of the South African National Defence Force in the 21st Century* (unpublished PhD thesis, University of the Free State 2015) at iv.

²⁶ Defence Review Committee *South African Defence Review 1998* (1998) at 3–4.

²⁷ Defence Review Committee *South African Defence Review 2015* (2015) at iii.

²⁸ *Ibid* iv.

Responsibilities of the military: international and regional perspectives

The responsibilities of the military in other regional and international contexts may be of assistance to the SANDF in developing a human trafficking policy for the jurisdiction, which is based on the best practices of others, yet still specific in its design for this country. For instance, NATO's Policy on Combating Trafficking in Human Beings (2004) sets out various strategies for ensuring regional co-operation in combating human trafficking. The policy calls human trafficking "a transnational problem"²⁹ meriting universal condemnation and "requiring concerted multilateral action if it is to be defeated".³⁰ The document sets out undertakings in article 5a and 5b to combat the crime by adhering to the principles of the Trafficking Protocol. For example, the protocol provides for –

- Appropriate training of various branches of security services (including the military) to combat human trafficking (article 5d);
- The support of other jurisdictions in their anti-trafficking efforts (article 5e) and co-operation with such other jurisdictions; and
- The incorporation of contractual provisions that prohibit and penalise contractors from engaging in or facilitating trafficking in human beings (article 5f).

The policy makes it clear that it is aimed at securing standards of individual behaviour (article 5c). These initiatives have led to much positive progress in tackling the problem of trafficking within the region. The policy defines trafficking as in the Trafficking Protocol, and addresses all aspects of human trafficking, but it specifically recognises the effect that deployed troops could have on the demand for women trafficked for the sex trade. When deployed forces patronise prostitutes (or forced sex slaves), they are often purchasing services from organised criminal enterprises and are creating the 'demand' for trafficked women. These activities fill the coffers of organised criminals in countries where troops are deployed.

The role of deployed troops in the illegal sex trade has already been documented in 2002 by Rehn and Sirleaf in *Women, War and Peace: The Independent Experts' Assessment of the Impact of Armed Conflict on Women and Women's Role in Peace-Building*. This study substantiated UN peacekeepers' involvement in sexual offences, including human trafficking in Angola, Bosnia and Herzegovina, Cambodia, the Democratic Republic of Congo, East Timor, Kosovo, Liberia, Mozambique, Sierra Leone and Somalia. For example, from a survey conducted in 2002, it was established that "94 per cent of displaced households ...

²⁹ NATO op cit art 1.

³⁰ Ibid.

in Sierra Leone had experienced sexual assaults, including rape, torture and sexual slavery ... that at least 250,000 – perhaps as many as 500,000 – women were raped during the 1994 genocide in Rwanda”.³¹ It became evident that war zones and also the subsequent conflict management by troops, increased the number of trafficked women and children to become forced labourers and forced sex workers.³² Rehn and Sirleaf assert, “women are kidnapped and used as sexual slaves to service troops, as well as to cook for them and carry their loads from camp to camp”.³³

It was reports such as the above that prompted NATO to institute a policy against human trafficking in order to regulate the conduct of NATO forces and staff while located in their own as well as in foreign countries. There are many additional models from which to source information, and to amass and validate counter-trafficking policy standards and best practices. For example, the United States Agency for International Development (USAID) has developed a regional anti-trafficking best practices guide and training manual³⁴ while the United Nations Office on Drugs and Crime (UNODC) compiled a compendium³⁵ containing best practices by law enforcement agencies which includes an overview of

- Trafficking methodology;
- Practical suggestions for regional and international co-operation;
- Specialist investigative techniques; and
- Tactics for disrupting trafficking, which can be adapted throughout the world.

Yet, in Southern Africa, very few countries – and no military organisation at all – have any policy related to trafficking in persons.³⁶ Although there are many sub-regional bilateral and multilateral co-operation agreements between the sub-Saharan neighbours,³⁷ there is at present no sub-regional instrument in Southern

³¹ Rehn, E & Sirleaf, EJ *Women, War and Peace: The Independent Experts' Assessment of the Impact of Armed Conflict on Women and Women's Role in Peace-Building* (UNIFEM 2002) at 9.

³² Ibid.

³³ Ibid 10.

³⁴ USAID op cit.

³⁵ United Nations Office on Drugs and Crime *Compendium on Best Practices on Anti-Human Trafficking by Law Enforcement Agencies* (US Government Printing Office 2007).

³⁶ Only South Africa, Mozambique and Botswana have specific anti-trafficking legislation in the South. However, many neighbouring countries including Mozambique also lack capacity to respond adequately to the crime. The African Union's (AU) Ouagadougou Plan of Action on Trafficking in Human Beings, Especially Women and Children (Adopted by the Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006) provides guidance on the combating the crime on the continent.

³⁷ See in this regard, for example, the Treaty of the Southern African Development Community (SADC) of 1993, which South Africa acceded to on 29 August 1994. See Adepoju op cit 389. Human trafficking is a multi-faceted social phenomenon; consequently, many

Africa that contains specific reference to, or has concrete directives for the combating of trafficking in persons in the region. South Africa recognises itself as an integral part of Africa and therefore its national interests are considered intrinsically linked to the stability, unity and prosperity of the African continent, and to that of Southern Africa, in particular.³⁸ It is thus necessary for this jurisdiction to take the lead in establishing an effective defence policy designed to combat trafficking in Southern Africa. This is essential, as many neighbouring states have inadequate legislative frameworks, poor law enforcement and scant administrative capacities to address the problem; yet, they are source, transit and/or destination points of human trafficking in this particular area.

In order to address the role of the Defence Force in the fight against human trafficking meaningfully, evidence-based strategies and policies should be developed, which focus on ways to achieve regional coordination in combating trafficking. This specific counter-trafficking multilateral co-operation agreement or policy must not only deal with fighting human trafficking, but should also explore solutions to its causes within the Southern African region. The Southern African Development Community (SADC) structure should be considered the first point of departure and platform for promoting an SANDF anti-trafficking policy, given its sub-regional constituency and the recent launch of the Regional Indicative Strategic Development Plan (RISDP), its fifteen-year strategic plan. This sub-regional economic union establishes to some extent homogeneity amongst the Southern African neighbours. The SADC protocols further “provide a legal and institutional framework for deepening regional integration in the social, economic and political sphere”.³⁹ One noteworthy initiative that encourages and supports co-operation in the sub-regional defence is the SADC Protocol on Politics, Defence and Security Co-operation of 1996, its Organ on Politics, Defence and Security Co-

co-operation agreements between the southern African countries such as those concerning refugees (e.g. the Tripartite Agreement of 15 October 1993 between the government of South Africa, the government of the Mozambique and the UNHCR for the voluntary repatriation of Mozambican refugees from the RSA), health (the Protocol on Health in the SADC of 18 August 1999), gender (the SADC Protocol on Gender and Development 2008, which has identified trafficking along with HIV/AIDS as a key factor hampering regional development), education (the Protocol on Education and Training in the SADC of 8 September 1997), extradition (the SADC Protocol on Extradition of 3 October 2002), legal assistance (the SADC Protocol on Mutual Legal Assistance in Criminal Matters of 3 October 2002), etc. could inform and support an SANDF trafficking policy. These efforts should be coordinated for an integrated response to human trafficking that leverages resources.

³⁸ Department of International Relations and Cooperation *DIRCO Strategic Plan 2011–2014* (2011) at 12.

³⁹ Mhlanga, P ‘Success of SADC Gender Protocol lies in Evaluation’ *Cape Times* (23 July 2007) at 9.

operation (OPDSC) of 1996, and its successor, the SADC Strategic Indicative Plan for the Organ on Politics, Defence and Security (SIPO) of 2012, which emphasises joint action on regional priorities such as cross-border crime, which may include terrorism, countering organised crime, etc. Under the SIPO, the SADC Mutual Defence Pact was established, the SADC Standby Force (SSF) launched, the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO) integrated into the Inter-State Defence and Security Committee (ISDSC), and the Regional Early Strategic Review for Southern Africa created.⁴⁰ The SIPO is considered an appropriate constitutional framework whereby member states could co-ordinate policies in the area of defence and security. Article 2(c) of the Protocol encourages state parties to “develop common foreign policy approaches on issues of mutual concern and advance such policy collectively in international fora”, while article 2(d) seeks to “promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanisms to this end”. A regional counter-trafficking policy seems to fit these objectives well.

Inter-state co-operation amongst the Southern African member states could strengthen the anti-trafficking endeavours of regional as well as domestic agencies, and aid in combating the crime in the military and in general. Regional states could assist with coordinating and sharing efforts to ensure a more consistent approach to combating trafficking. Coordinated efforts at especially border patrol, for example joint investigations, information exchange, the identification of individual traffickers or trafficking syndicates, trafficking routes, potential victims and trafficked victims would further assist in this regard.⁴¹

Final recommendations

It is suggested that the SANDF (in collaboration with neighbouring states) take the initiative in formulating a policy in order to effect better co-operation amongst nation states in Africa, especially in the southern region of Africa, to combat human trafficking. Such a policy should also include a strategy to prevent troops from engaging in activities that facilitate or support human trafficking. This policy should follow the prevention, protection, prosecution and partnership paradigm as set forth in the principles of the Trafficking Protocol and the Prevention and Combating of Trafficking in Persons Act 7 of 2013.

⁴⁰ Van Nieuwkerk, A ‘SIPO II: Too Little, Too Late?’ (2014) 35(1) *Strategic Review for Southern Africa* at 146–7.

⁴¹ See Delport et al op cit 51. Border patrol includes maritime perambulation as well.

A counter-trafficking regional policy should first encourage member states to observe and implement the UN Trafficking Protocol together with the African Union (AU) Ouagadougou Plan of Action on Trafficking in Human Beings,⁴² as well as other international conventions and policies on the combating of human trafficking domestically and universally.

Specifically tailored border control measures should be included in such a document. Despite border management successes such as Operation Corona⁴³ and Operation Vavasati⁴⁴ (where vehicle checkpoints were monitored focusing on hotspots and a number of illegal activities along the Mozambican border, which included human trafficking), it is submitted that the return of the SANDF to border security in 2010 has had very little impact or made little difference to the illegal transits of trafficked persons. This is mainly because of limited resources, such as under-supplied vehicles to patrol the 4,500 kilometres of land borders, poor communications systems and inferior armaments. Most of the 4,000 kilometres of air and maritime space is also unmonitored. SANDF spokesperson Brigadier General Xolani Mabanga declared in 2016 that measures are to be put in place to cover borderline areas to fight trafficking of people into the country.⁴⁵ It was suggested that more personnel be deployed in areas with an increase of illicit movement of humans, and new technology be implemented to monitor the border. The role of new technologies (including smartphones, the Internet, social networking and online classified sites) is exploited by traffickers to recruit, manipulate and sell victims and to market their criminal activities. As such, innovative technology and new media should also be important considerations to include in any counter-trafficking policy. These border measures will fulfil the prevention, protection and partnership prescriptions of the Trafficking Protocol.

As a fundamental part of prevention, training of SANDF members is of utmost importance. Some personnel have already been trained during human trafficking workshops hosted by government in collaboration with international organisations. The SANDF's Peace Mission Training Centre also provides anti-trafficking training to South African troops prior to their deployment abroad on international peacekeeping missions.⁴⁶ However, more specialised anti-trafficking

⁴² AU op cit.

⁴³ Tlhaole, L 'First City Regiment Prides itself with the Performance and Successes of Operation CORONA' (2017) 24 (2) *South African Soldier* at 32–3.

⁴⁴ Tlhaole, L 'Joint Tactical Headquarters Mpumalanga Honours Women on Deployment' (2016), available at <http://www.dod.mil.za/news/2016/08/women%20.htm>.

⁴⁵ SABC News 'Hiding in Plain Sights' (2015), available at <https://social.shorthand.com/SABCNewsOnline/n2G96PvfVf/hiding-in-plain-sight>.

⁴⁶ Helfrich, K 'SANDF's Peace Mission Training Centre enhancing African Peacekeeping' *defenceWeb* (2013), available at

training still needs to be undertaken. Soldiers need to be educated on the trafficking of vulnerable populations, conditions that allow trafficking to flourish, the dangers and signs of trafficking, the identification of potential trafficking victims, and first responder treatment of victims, amongst others.⁴⁷ Soldiers patrolling South African borders on land and in territorial waters must further be able to distinguish between smuggled migrants and human trafficking victims in order to deal with the offences accordingly.⁴⁸ Furthermore, all personnel taking part in military operations must be trained in order to increase awareness of the crime. Institutional accountability of the SANDF will only be achieved if all staff recognise and respond to the crime, realise the implications of human trafficking for the organisation and the country, and as such personally commit to the implementation and fulfilment of the policy.

As part of its strategy to prevent troops from engaging in activities that facilitate or support human trafficking, the United States has implemented a new article in its military code which became effective on 15 November 2005 and which prohibits members of its armed forces from patronising prostitutes.⁴⁹ The stipulation will allow military commanders to punish soldiers who pay for sexual services, thus also accomplishing the prosecution requirement set out in the Trafficking Protocol. Similarly, US forces in South Korea have a far-reaching zero-tolerance programme to prevent American soldiers deployed there from patronising establishments where trafficked women may be kept.⁵⁰ Such prohibitions on the

http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=31061:sandfs-peace-mission-training-centre-enhancing-african-peacekeeping&catid=111:sa-defence&Itemid=242.

- ⁴⁷ See in this regard USAID op cit, where the USAID and Romania have collaborated on a regional anti-trafficking 'best practices' training manual for law enforcement officers.
- ⁴⁸ This is especially necessary with the interdiction of suspected human smugglers at sea by the navy. Clear policy guidelines are required as to the identification of the specific offence being dealt with, and how the persons interdicted or rescued should be managed. The naval first responders should also be able to debrief migrants and preserve evidence for further investigation of these cases.
- ⁴⁹ United States Uniform Code of Military Justice art 138-34 'Pandering and Prostitution'.
- ⁵⁰ United States Department of Defence (DoD) *Assessment of DoD Efforts to Combat Trafficking in Persons, Phase I-Korea* (US Government Printing Office 2003); see also DoD *Expanded Summaries DoD-IG Release 2441-2840* (US Government Printing Office 2005). The anti-trafficking efforts in South Korea "have taken a number of directions, but fall generally into efforts to increase pre-deployment education and training, raising the bar of personal conduct, and facilitating the discipline of offenders", see Allred, KJ 'Human Trafficking & Peacekeepers' in Friesendorf C (ed) *Strategies Against Human Trafficking: The Role of the Security Sector* (National Defence Academy Austria 2009) at 311. The military also started monitoring bars and night clubs in the sex zones, and created 'off-limits' lists for military personnel of those establishments they believed to be involved in trafficking. See Vine op cit 168.

procurement of commercial sex by troops, and available disciplinary measures for violations of the proscriptions should also form part of the SANDF's policy document.

Contractual provisions that prohibit contractors from engaging in or facilitating human trafficking must be enforced; and if such contractors or sub-contractors engage in prohibited conduct, it must be clear that the SANDF has the right to terminate these contracts immediately. Contractor performance information must be recorded for use in any future selection evaluations. Compliance with the specified counter-trafficking requirements by contractors will be reflected in these records and could serve as incentive to contractors to provide superior and ethical services and supplies.

Finally, there must be a commitment to evaluate implementation of all efforts as part of ongoing reviews carried out by competent authorities. Monitoring mechanisms should be built in to ascertain the effectiveness of the policy and to accommodate the discovery of new trends and/or obstacles. Measuring the effect and progress of the policy is important as the collection of relevant trafficking data will allow for any adjustment or redesigning of the policy for optimal success.

Conclusion

For the SANDF to be an effective and relevant force, as outlined in the 2015 Defence Review, it needs to reassess its current frameworks to become more commensurate with an increasingly complex and unstable modern society, which brings along increased risks to both international and domestic security. Growing regional responsibilities mandate the SANDF to position itself as a catalyst to drive the implementation of this initiative by consolidating the management of conflict and crime in the sub-region in "a future-orientated, concept-driven, effects-based defence policy and strategy".⁵¹ More specifically, the SANDF should focus on strategies to effect regional and international co-operation to combat the crime of human trafficking. This can firstly be achieved by developing counter-trafficking institutional policies specifically for military personnel, as outlined in this chapter. The role of the military in combating human trafficking could be a significant step in addressing cross-border trafficking, which is certainly a priority for stability in South Africa.

⁵¹ Defence Review Committee op cit 2015 0-6.