

## **Status of Human Rights in South Africa for the 41<sup>st</sup> Session of the Universal Periodic Review**

### **Introduction**

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting and protecting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic and Social Council. The purpose of this report is to raise concerns regarding human rights violations in the Republic of South Africa (South Africa) for the 41<sup>st</sup> Session of the Universal Periodic Review (UPR).

### **Background**

2. South Africa is a country located on the southern tip of Africa and has an estimated population of 56.9 million people<sup>1</sup>. South Africa is predominately Christian, with 86% of the population identifying as Christian, 5% as Muslim, and 5% as having no religion<sup>2</sup>.

3. South Africa's previous review was held on 10 May 2017<sup>3</sup>. As a result of the review, South Africa received 243 recommendations, 187 of which were supported by South Africa<sup>4</sup>. One of the recommendations, which was supported by South Africa, was that the government “[c]ontinue the efforts aimed at combatting trafficking in persons, particularly women and children, in the framework of enforcing national legislation and the international conventions that South Africa has ratified”<sup>5</sup>. There were no recommendations made regarding freedom of religion.

### **Legislative Framework**

4. Under Article 13 of South Africa's Constitution, “No one may be subjected to slavery, servitude or forced labour”<sup>6</sup>. Furthermore, under Article 28 of the Constitution:

1. Every child has the right –

...

d. to be protected from maltreatment, neglect, abuse or degradation;

e. to be protected from exploitative labour practices;

f. not to be required or permitted to perform work or provide services that

i. are inappropriate for a person of that child's age; or

ii. place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;<sup>7</sup>

5. In 2013, South Africa enacted the Prevention and Combatting of Trafficking in Persons Act:

To give effect to the Republic's obligations concerning the trafficking of persons in terms of international agreements; to provide for an offence of trafficking in persons and other offences associated with trafficking in persons; to provide for penalties that may be imposed in respect of the offences; to provide for measures to protect and assist victims of trafficking in persons; to provide for the coordinated implementation, application and administration of this Act; to prevent and combat the trafficking in persons within or across the borders of the Republic; and to provide for matters therewith<sup>8</sup>.

6. Under Article 4 of this Act:

(1) Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of –

- (a) a threat of harm;
- (b) the threat or use of force or other forms of coercion;
- (c) the abuse of vulnerability;
- (d) fraud;
- (e) deception;
- (f) abduction;
- (g) kidnapping;
- (h) the abuse of power;
- (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage,

aimed at either person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons.

- (2) Any person who –

- (a) adopts a child, facilitated or secured through legal or illegal means; or
- (b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence<sup>9</sup>.

7. On 25 April 2019 the South African Department of Justice and Constitutional Development, with the support of the United Nations Office on Drugs and Crime (UNODC), launched its Prevention and Combatting of Trafficking in Persons National Policy Framework (NPF)<sup>10</sup>. The purpose of the NPF is to strengthen the Prevention and Combatting of Trafficking in Persons Act and accomplish the following objectives.

- To establish a coordinated and cooperative institutional anti-trafficking framework involving all relevant stakeholders;
- To establish an adequate legal and regulatory framework to protect victims and to counter human trafficking;
- To secure resources necessary to fully implement the NPF;
- To improve continuously anti-trafficking responses adjusting them as needed in time;
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- To reduce vulnerability to human trafficking and re-trafficking;
- To improve knowledge on human trafficking;
- To ensure the early identification of potential and presumed trafficked persons;
- To ensure that victims of trafficking have access to comprehensive assistance programmes<sup>11</sup>.

8. South Africa is also bound to the International Covenant on Civil and Political Rights (ICCPR). According to Article 8 of the ICCPR:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour.<sup>12</sup>

### **Human Trafficking in South Africa**

9. According to a 2020 report by A21, an organisation working to combat human trafficking in South Africa, the South African National Human Trafficking Hotline received 4,847 calls related to potential human trafficking, up 46.5% from 2019<sup>13</sup>. The COVID-19 pandemic has further contributed to the rise of human trafficking within the country<sup>14</sup>. As further stated in the report, “[a]s the pandemic forced both adults and children to resort to online formats for work, schooling, and entertainment activities, A21 South Africa observed an increase in the use of online platforms to recruit and further exploit victims”<sup>15</sup>. COVID 19 has also greatly hampered South Africa’s ability to combat human trafficking as law enforcement personnel became

responsible for enforcing mandatory lockdowns across the country, which, according to the A21 report, resulted in “shortages of law enforcement services in all other areas, including responding to human trafficking cases”<sup>16</sup>. Furthermore, victims reported instances of delayed assistance from law enforcement or in some cases, no response at all<sup>17</sup>.

10. South Africa primarily serves as a destination country for human trafficking, meaning that traffickers chiefly bring in foreign victims, but South African citizens are also exploited<sup>18</sup>. According to the Deputy Minister of Justice and Constitutional Affairs:

Trafficking in Persons is by no means a recent phenomenon. It is rooted in South Africa's historical landscape and is fundamentally enabled by the country's deep structural inequalities. A systemic response and culture shift is needed - one that radically restrains the demand for cheap labour and sex, and severs any hint of corruption and compromise<sup>19</sup>.

### **A. Labour Trafficking**

11. Between 28 March and 2 April 2021, INTERPOL conducted “Operation Weka” in an effort to crack down on human trafficking around the world<sup>20</sup>. As a result of this operation, agents raided a blanket factory in South Africa and rescued seventeen Malawian citizens who had been trafficked into South Africa and forced to work fifteen-hours a day without food or breaks<sup>21</sup>. Moreover, they were forced to sleep on the warehouse floor<sup>22</sup>.

12. In November of 2019, seven individuals were arrested for human trafficking and violation of labour laws when authorities raided a factory in Johannesburg, South Africa<sup>23</sup>. As a result of the raid, authorities rescued ninety-one Malawian nationals, thirty-seven of whom were children, who had been trafficked to South Africa in containers<sup>24</sup>.

### **B. Sex Trafficking**

13. In addition to forced labour, women and girls are especially at risk for sexual exploitation. According to eXpose HOPE, a non-profit in South Africa, that provides care for women trapped within the sex industry:

Our ladies are trafficked on a daily basis. It is from one brothel to the next. People often think that trafficking means that someone had to be gagged and put into a container and shipped overseas. Because that’s what they see in the movies. But in reality it is not. Women who are trafficked are seen as a commodity by brothel owners who move them from house to house<sup>25</sup>.

14. According to reports, on 31 December 2021, “members of the Directorate for Priority Crime Investigation’s (“Hawks”) Serious Organised Crime Investigation teams, assisted by the Tshwane K9 unit, arrested four alleged traffickers . . . in Sunnyside, Pretoria”, South Africa<sup>26</sup>. Authorities were able to arrest the traffickers after they received a tip about a seventeen-year-old victim on the Human Trafficking Hotline<sup>27</sup>. According to authorities, “She was allegedly recruited from Hammanskaal by one of the suspects, kept against her will, forced into a life of drugs, and subjected to acts of sexual exploitation”<sup>28</sup>.

15. In May of 2021, two high-ranking South African police officers in Gauteng province were arrested in connection with human trafficking. According to a Hawks spokesman:

between January and November 2020, the suspects aged 57, a brigadier and a captain, allegedly visited an identified illegal brothel in Vereeniging where one of the victims was allegedly reported missing and held hostage for the purpose of sexual exploitation. They allegedly forced themselves on the victim and raped her on numerous occasions and paid money to the brothel owner<sup>29</sup>.

16. That same month, the Hawks uncovered a human trafficking and prostitution syndicate in Sandton, South Africa<sup>30</sup>. After receiving a tip during the arrest of another suspected human trafficker, Hawks raided an apartment and were able to rescue three victims and arrest another suspected human trafficker<sup>31</sup>. According to the police:

[V]ictims were lured from Upington in the Northern Cape to Sandton and were used for prostitution. A search was conducted in an apartment at Sandton which is reported to be used as a brothel. During the search, three victims aged between 19 and 24 were rescued. Cellphones and an undisclosed amount of money was seized<sup>32</sup>.

17. In September of 2020, after a year-long investigation, Hawks raided three brothels in two different provinces<sup>33</sup>. The raid resulted in the arrests of five individuals and rescue of eleven victims<sup>34</sup>. All but two of the victims were citizens of foreign countries<sup>35</sup>. According to a Hawks spokesperson, “The women, aged between 20 and 39 years, were used as prostitutes on the premises after they were allegedly lured by the suspects with a promise of employment”<sup>36</sup>.

### **Conclusion:**

18. We are encouraged by the recent steps South Africa has taken to combat human trafficking, such as the creation of the NPF. We have recently seen the impact this plan is having through the arrest of traffickers and rescuing of victims and we urge South Africa to continue to vigorously implement this plan, so that all cases of human trafficking are investigated and prosecuted. We further request that South Africa prioritize resources and training for border patrol agents to help them better identify and stop human trafficking at the border. Additionally, severe consequences need to be enforced for those authorities who engage in human trafficking or are bribed to turn a blind eye. Furthermore, resources must be allocated to help rehabilitate victims of human trafficking and enable foreign victims to return to their home countries.

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<sup>1</sup> *South Africa*, THE WORLD FACTBOOK (20 Jul. 2021), available at <https://www.cia.gov/the-world-factbook/countries/south-africa/>.

<sup>2</sup> *Id.*

<sup>3</sup> Universal Periodic Review – South Africa, UNHRC, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/ZAIndex.aspx>.

<sup>4</sup> UPR of South Africa -Thematic List of Recommendations, UNHRC, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/ZA/MatriceRecommendationsSouthAfrica.docx>.

<sup>5</sup> *Id.* at A/HRC/36/16/Add.1.

<sup>6</sup> Constitution of South Africa art. 13, <https://www.gov.za/sites/default/files/images/a108-96.pdf>.

<sup>7</sup> *Id.* at art. 28.

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<sup>8</sup> Act No. 7 of 2013: Prevention and Combatting of Trafficking in Persons Act, 2013, [https://www.gov.za/sites/default/files/gcis\\_document/201409/36715gon544.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/36715gon544.pdf).

<sup>9</sup> *Id.* at art. 4.

<sup>10</sup> *South Africa Launches Prevention and Combatting of Trafficking in Persons National Policy Framework*, UNODC (2 May 2019), <https://www.unodc.org/unodc/en/human-trafficking/glo-act/south-africa-launches-prevention-and-combating-of-trafficking-in-persons-national-policy-framework.html>.

<sup>11</sup> *Id.*

<sup>12</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 8.

<sup>13</sup> *Impact Report South Africa*, A21, [https://neutrinodata.s3.amazonaws.com/a21/userimages/A21\\_Impact\\_Report-SA.pdf](https://neutrinodata.s3.amazonaws.com/a21/userimages/A21_Impact_Report-SA.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *South Africa Launches Prevention*, *supra* note 10.

<sup>20</sup> *Operation Weka, Mobilized 24 Source Transit and Destination Countries*, INTERPOL (9 Apr. 2021), <https://www.interpol.int/en/News-and-Events/News/2021/Operation-Weka-mobilized-24-source-transit-and-destination-countries>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Seven Chinese Nationals Arrested for Alleged Human Trafficking and Violation of Labour Laws Denied Bail*, DEP'T OF EMPLOYMENT & LABOUR (20 MAR. 2020), <https://www.labour.gov.za/About-Us/Ministry>.

<sup>24</sup> *Id.*

<sup>25</sup> *SA Human Trafficking Rings Exploiting Girls as Young as 10, US State Dept Report Says*, IOL (8 Sep. 2021), <https://www.iol.co.za/news/south-africa/kwazulu-natal/sa-human-trafficking-rings-exploiting-girls-as-young-as-10-us-state-dept-report-says-c5657120-df94-42f3-a9bb-85391aaae681>.

<sup>26</sup> *Hawks Arrest Four Alleged Human Traffickers, Rescue Two Victims from Brothel in Pretoria*, IOL (1 Jan. 2022), <https://www.iol.co.za/news/south-africa/gauteng/hawks-arrest-four-alleged-human-traffickers-rescue-two-victims-from-brothel-in-pretoria-e87c27bb-1b47-4d55-85a0-0180af62dac3>.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Nomahlubi Sonjica, *Two High-Ranking Gauteng Police Officers Arrested for Human Trafficking*, TIMES LIVE (14 May 2021), available at <https://www.timeslive.co.za/news/south-africa/2021-05-14-two-high-ranking-gauteng-police-officers-arrested-for-human-trafficking/>.

<sup>30</sup> Naledi Shange, *Human Trafficking and Prostitution Ring Bust in Sandton*, TIMES LIVE (30 May 2021), <https://www.timeslive.co.za/news/south-africa/2021-05-30-human-trafficking-and-prostitution-ring-bust-in-sandton/>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Alex Mitchley, *5 Suspects Arrested, 11 Alleged Human Trafficking Victims Rescued After Hawks Raid Brothels*, NEWS24 (27 Sep. 2020), <https://www.news24.com/news24/southafrica/news/5-suspects-arrested-11-alleged-human-trafficking-victims-rescued-after-hawks-raid-brothels-20200927>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*