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2019 Trafficking in Persons Report: South Africa

SOUTH AFRICA: Tier 2 Watch List

The Government of South Africa does not fully meet the minimum standards for the elimination of trafficking but is making significant efforts to do so. These efforts included prosecuting more traffickers and, in coordination with international organizations, training front-line responders on trafficking. The government provided stipends to NGOs providing care; approved a National Policy Framework, which included a national action plan; and conducted numerous public awareness-raising activities throughout the country. However, the government did not demonstrate overall increasing efforts compared to the previous reporting period. The government investigated and convicted fewer traffickers. The government made little progress in prosecution of traffickers connected to international syndicates, which facilitated sex and labor trafficking with impunity throughout the country. The government did little to address reports of official complicity in trafficking crimes and efforts by officials to stymie law enforcement action as a result of corruption, which created a culture of impunity for offenders, raised concerns over victim protection, and inhibited the government's prosecution, protection, and prevention efforts. Poor understanding of trafficking and the lack of consistent training hindered the government's overall anti-trafficking efforts and sometimes resulted in arrests and detentions of trafficking victims. The government identified fewer victims, referred fewer than half of the identified victims to protective care, and sometimes denied foreign nationals protective services, especially if they chose not to participate in an investigation. The implementing regulations for the Prevention and Combating of Trafficking in Person's (PACOTIP) immigration provisions have not been promulgated since the enactment of the Trafficking in Persons act in 2013 and the government's insufficient funding of anti-trafficking efforts prevented front-line responders from fully implementing the anti-trafficking law. Therefore South Africa remained on Tier 2 Watch List for the second consecutive year.

PRIORITIZED RECOMMENDATIONS

Investigate and prosecute officials suspected of complicity in trafficking crimes. • Increase efforts to investigate, prosecute, and convict traffickers involved in organized crime syndicates that facilitate trafficking. • Promulgate the immigration provisions in Sections 15, 16, and 31(2)(b)(ii) of PACOTIP and cease efforts to deny trafficking victims access to immigration relief, including through the asylum process. • Fully implement PACOTIP and pass Department of Home Affairs implementing regulations. • Increase

resources and training to identify trafficking victims, including by screening for trafficking indicators among vulnerable populations, such as women in prostitution and migrants. • Amend the anti-trafficking law to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking crimes. • Increase efforts to investigate, prosecute, and convict traffickers, including employers who use forced labor. • Ensure victims are issued appropriate immigration identification documents in order to receive protective services. • Train law enforcement and social service providers to use a victim-centered approach when interacting with potential victims. • Provide translators to assist foreign trafficking victims in seeking justice. • Replicate the coordinated anti-trafficking law enforcement and victim referral mechanisms of KwaZulu-Natal (KZN) and Western Cape in all provinces. • Extend the availability of drug rehabilitation services to trafficking victims. • Accredited or establish additional trafficking-specific shelters for male and female victims. • Fully implement the Southern African Development Community (SADC) regional data collection tool. • Dedicate sufficient resources to the National Human Trafficking Resource Line, the official anti-trafficking hotline in South Africa.

PROSECUTION

The government maintained prosecution efforts. It did little to address reports of official complicity in trafficking crimes and efforts by officials to stymie law enforcement action as a result of corruption, which created a culture of impunity for offenders. PACOTIP criminalized sex trafficking and labor trafficking and prescribed penalties of up to life imprisonment, a fine of up to 100 million South African rand (\$6.97 million), or both. The penalties were sufficiently stringent; however, with regard to sex trafficking, by allowing for a fine in lieu of imprisonment, the prescribed punishment was not commensurate with those for other serious crimes, such as rape. The implementing regulations for PACOTIP's immigration provisions found in Sections 15, 16, and 31(2)(b) (ii) have not been promulgated, therefore critical sections of the act remained inactive. The Criminal Law (Sexual Offenses and related matters) Amendment Act of 2007 (CLAA) also criminalized the sex trafficking of children and adults and prescribed penalties of up to life in prison; these penalties were sufficiently stringent and, with respect to sex trafficking, commensurate with other serious crimes, such as rape. The Basic Conditions of Employment Act of 1997 (BCEA), amended in 2014, criminalized forced labor and prescribed maximum penalties of three to six years' imprisonment. In addition, the Children's Amendment Act of 2005 prescribed penalties of five years to life imprisonment or fines for the use, procurement, or offer of a child for slavery, commercial sexual exploitation, or to commit crimes. Where relevant, prosecutors sometimes relied on the Prevention of Organized Crime Act of 1998 in combination with CLAA, which added additional charges—such as money laundering, racketeering, or criminal gang activity—and increased penalties of convicted defendants.

The Directorate of Priority Crime Investigation (the Hawks) reported that it investigated 36 potential trafficking cases, including both sex and labor trafficking cases, compared to 82 potential cases during the previous reporting period, and it collaborated closely with the National Prosecuting Authority (NPA) to compile evidence and build cases. The government initiated prosecutions of 27 cases, involving 77 alleged traffickers, compared to 23 cases in the previous year. The government convicted nine traffickers in

seven cases, compared to eight traffickers convicted in 2017. The government sentenced five traffickers to life imprisonment; two traffickers to 12 and 18 years, respectively; and one trafficker, in one case, awaited sentencing at the close of the reporting period. In one case, the government received 45,000 rand (\$3,140) restitution for the victim through a plea deal, although the deal resulted in no jail time for the trafficker. NGOs reported that the South Africa Police Service (SAPS) officers were sometimes slow to respond to requests for investigations of potential trafficking cases if they responded at all and that they sometimes failed to identify victims. In some cases, disregard toward foreign nationals from other parts of Africa may have impacted police willingness to investigate potential trafficking cases. Observers reported that the Hawks also often ignored cases referred by NGOs or directly refused to assign an investigator to a potential trafficking case. The government did not comprehensively monitor or investigate forced child labor or the labor trafficking of adults in the agricultural, mining, construction, and fishing sectors. Department of Labor (DOL) inspectors continued to use administrative provisions within the BCEA as their primary enforcement mechanism and rarely referred cases for criminal investigation. One NGO criticized the NPA’s common approach to prosecute trafficking cases as domestic violence or rape cases and, in another instance, a prosecutor dismissed a case of forced labor due to the victim being an irregular migrant with fraudulent documents. The government made little progress in prosecution of traffickers connected to international syndicates that dominated the commercial sex industry in several South African cities and operated with impunity. NGOs reported that police and border control officers received bribes from these syndicates; some police did not pursue traffickers out of fear of reprisals.

Despite serious concerns, the government did not prosecute or convict any complicit officials or address efforts by officials to stymie law enforcement action. For the second consecutive year, the government did not sufficiently fund agencies responsible for implementing the PACOTIP, leading to uneven enforcement of the law, including insufficient investigations into reports of official complicity. NGOs alleged widespread official complicity, including but not limited to officials requesting sex acts or bribes in exchange for visas or residence permits, in order to not prosecute sex trafficking crimes, and to facilitate deportation of migrants so farm or factory managers would not have to pay their workers. When NGOs lodged complaints of alleged complicity, the government did little to investigate and sometimes transferred the suspected official to another position. This increased the risks for whistleblowers to report alleged complicity, as the government afforded them little protection and took no substantive action to address the concerns. One NGO reported transfers of trusted law enforcement stakeholders away from the anti-trafficking portfolio after investigating potential trafficking cases too thoroughly. In one case involving a sex trafficking victim identified during a brothel raid, the victim reported that police called the trafficker shortly before the raid to alert him so he could escape.

The government did not have a systematic mechanism for training front-line officials across all agencies, which hindered the government’s anti-trafficking efforts as a whole and sometimes resulted in unlawful arrests and detentions of trafficking victims. Nonetheless, the government conducted many trainings during the reporting period. In collaboration with an international organization, the government trained labor inspectors, Department of Home Affairs (DHA) officials, social workers, and traditional

leaders on trafficking. In coordination with international organizations and NGOs, the government trained prosecutors and a range of front-line officials like nurses, doctors, social workers—including those with substance abuse expertise, and community leaders. The training topics included push and pull factors for trafficking in persons, identification and protection of victims, victim-centered interview techniques, investigation of trafficking cases, and legislation. The government also trained immigration officers, border officials staffing at least two border posts, and law enforcement officers, and held a joint training of border officials from Zimbabwe and South Africa. An international organization partnered with the government to train task teams in several provinces.

PROTECTION

The government decreased the number of victims it identified, but it continued to provide protective services to victims. The government and non-government entities identified 260 victims, compared to 399 victims in 2017. Of the 260 victims identified, 201 were men, 21 were women, 34 were boys, three were girls, and one was of an unknown gender; this included 244 foreign nationals, including children from the Democratic Republic of Congo, Zimbabwe, and Mozambique and adults from Nigeria, Uganda, Rwanda, Ghana, and Thailand; 14 South Africans; and two victims of unknown nationalities. Traffickers exploited 238 victims in forced labor, 20 in sex trafficking, and two in an unknown type of trafficking. The government referred 118 victims to shelters across seven provinces; 17 victims voluntarily returned to their countries or communities; an international organization assisted in repatriating victims. Thirty-two victims absconded from care facilities, at times because the government failed to take law enforcement action against their traffickers.

SAPS, the Department of Social Development (DSD), NPA, and the Department of Justice (DOJ) had shared formal procedures to identify and refer trafficking victims to care, in accordance with PACOTIP. Implementation of these procedures varied by department and province; not all officials were aware of referral procedures, particularly with vulnerable groups, including trafficking victims. Some officials had difficulty identifying labor trafficking victims and differentiating between trafficking and smuggling crimes. NGOs criticized SAPS for not identifying victims; some SAPS officers failed to follow referral guidelines. Furthermore, the government sometimes denied undocumented foreign nationals protective services, especially if they chose not to participate in investigations. The DHA had no formal, written procedures to guide the handling of trafficking cases. Although a range of government and non-government entities identified victims, DSD was responsible for designating and certifying trafficking victim status and authorizing the provision of protective services. In addition, DSD was responsible for monitoring the provision of protective services, preparing victim-witnesses for court, and accompanying them through trial and repatriation, if applicable. NGOs reported that front-line officials responsible for receiving referrals were often unreachable and that DSD and SAPS were sometimes not informed of their responsibilities to certify and refer victims, a necessary step before victims could receive care of any kind. NGOs reported that SAPS sometimes left victims at shelters without first contacting DSD, left limited contact details for the case officers, or failed to follow-

up on cases. Observers reported there was an insufficient number of shelters; some DSD shelters occasionally refused to accept trafficking victims due to security, drug addiction, or cultural concerns. Police indicated they often struggled to find interpreters to acquire victim-witness statements within the two-day window during which charges had to be filed, even if interpreters existed in the province.

The government continued oversight and partial funding of 14 accredited NGO-run multipurpose shelters and continued to oversee 17 NGO-run safe houses designed to temporarily shelter victims before transfer to an accredited shelter, in which trafficking victims were provided care during the reporting period. The government provided a stipend on a per-person, per-night basis to the safe houses. However, NGOs reported they could not always access available funds with the urgency required after identifying victims. Only one shelter provided care exclusively for trafficking victims. Only one shelter provided care for male trafficking victims; no shelters provided care exclusively for male victims. Shelters accessible to persons with disabilities provided limited services; however, it is unclear if any victims received these services during the reporting period. Traffickers were reportedly able to occasionally locate and collect victims from some shelters. The overall quality of victim care varied dramatically by province, gender, and circumstance. Gauteng, KZN, and Western Cape provinces generally offered adequate standards of care in urban areas; trafficking victims in these provinces, even if identified in a rural area, were generally able to access care. Victim care in other provinces was sometimes inadequate. DSD ran a nine-week rehabilitation program to address the psycho-social well-being of victims; however, the government did not report how many victims participated in the rehabilitation program during the reporting period. DSD paid for victims to receive residential treatment at drug rehabilitation centers to overcome addiction, though not all provinces had such centers. The government operated a network of 55 Thuthuzela Care Centers (TCCs)—full service crisis centers to assist victims of rape and sexual violence, including potential trafficking victims; it is unknown if TCCs assisted any victims of trafficking during the reporting period. Not all TCCs screened patients for trafficking indicators. Per DSD policy, staff generally prevented both adults and children from leaving shelters unaccompanied. NGOs reported that government shelter staff sometimes failed to keep victims informed about their case status, or provide dependency counseling and adequate security. Victims could not seek employment while receiving initial assistance, but South African citizens, South African residents, and registered refugees could seek employment while a court case was pending; other foreign victims could not seek employment, even if they cooperated with law enforcement and their trials extended several years.

The government did not regularly screen foreign men, leaving male labor trafficking victims largely unidentified and resulting in their detention, deportation, or penalization. The government acknowledged that police sometimes arrested trafficking victims during raids along with perpetrators, due to a lack of training on victim identification. SAPS did not always screen women and LGBTI persons in prostitution for trafficking indicators; officials sometimes charged them with prostitution and other violations. LGBTI persons, particularly transgender persons, were especially vulnerable to trafficking due to social stigmatization; there was one shelter dedicated solely for victims from the LGBTI community, in the Western Cape.

Officials encouraged victims to participate in the investigation and prosecution of traffickers; during the reporting period, 108 victims assisted law enforcement officials in ongoing investigations of 19 trafficking cases; however, fear of reprisal from traffickers and lengthy cases served as a disincentive for victims to testify. One victim received witness protection during the reporting period. However, some hurdles inhibited progress in providing justice and protection for victims. A lack of language interpretation continued to impede the investigation of trafficking cases, prosecution of suspected offenders, and screening of victims. PACOTIP allowed for trafficking victims to receive relief from deportation; however, regulations to implement this provision were not promulgated. As a result, if undocumented foreign national victims did not participate in law enforcement investigations, the government sometimes deported them. DHA required foreign nationals to renew their immigration paperwork every two weeks, which placed an unnecessary financial and logistical burden on them and the NGOs providing their care. NGOs reported that in some cases DHA doubted trafficking victimization or provided a rationale of preventing trafficking as justification to deny access to immigration documentation and the asylum process. In instances in which DHA denied such access, DHA did not always coordinate with the appropriate front-line responders to identify potential trafficking victims. During the reporting period, the DHA issued standard operating procedures (SOPs) for Section 3(c) of the Refugees Act regarding procedures for petitioning for family members to join in refugee and asylum cases that further created barriers to issuing dependents, including children, asylum status with their parents. Although the SOPs addressed some gaps in the 3(c) family joining process, it limited the government's ability to address trafficking, as it left dependents applying to join a family member's refugee file without documentation. Furthermore, the SOPs did not require officials to provide any rationale to those who were not able to have their dependents join. In cases of children who were denied status, the SOPs did not outline further action and resulted in children who were forcibly undocumented and increased their vulnerability to trafficking.

PREVENTION

The government increased efforts to prevent trafficking. The government approved its National Policy Framework, a strategic plan including a national action plan intended to improve capacity and coordination to combat trafficking among government agencies. The NPA and DOJ oversaw the National Intersectoral Committee on Trafficking in Persons (NICTIP) and six provincial task teams, which met quarterly to coordinate counter-trafficking efforts and worked to address challenges. Both the NICTIP and the provincial task teams often exhibited poor coordination and communication. Some of the provincial task teams ceased meeting or functioning. There was no accountability to require these groups to function; officials in positions of authority with the ability to facilitate change rarely attended meetings. The government continued to work towards implementation of the SADC regional data collection tool. The DOJ included, for the first time, an indicator on trafficking in its annual performance plan, the department's strategic plan through which Parliament held it accountable.

The government conducted national awareness-raising activities during the reporting period. The NPA, DOJ, SAPS, and the Department of Education conducted six awareness-raising activities for students throughout the country. The DSD hosted an awareness-raising talk on best practices in responding to child trafficking, which was attended by 200 delegates from across the country and supported by NPA and several provincial task teams. The NPA, Department of Health, local government, NGOs, the fire department, and religious leaders raised awareness of community members and distributed leaflets and brochures on the role of TCCs as related to trafficking. The government spoke about trafficking on live radio broadcasts. The Western Cape Department of Education partnered with an NGO to incorporate content from the NGO's curriculum called “Bodies Are Not Commodities” into the province's life orientation classes in grades nine and 10. The Western Cape provincial government also developed an outreach program taking social services from NGOs and government agencies to rural communities and vulnerable groups. At a transport hub in Johannesburg, various government departments partnered with a national anti-trafficking network to raise awareness amongst commuters.

The Labor Relations Act provided protection to all workers in South Africa, without regard to citizenship, immigration status, or the possession of a valid work visa. The act limited temporary employment to three months, after which employees were considered permanent and entitled to full labor protections and benefits. This provision was intended to protect vulnerable temporary workers, but many of the most vulnerable workers were in the informal sector, which falls beyond protections under the Labor Relations Act. In July 2018, South Africa's Constitutional Court clarified the act, holding that temporary workers were deemed to be employees of the clients of the labor brokers and entitled to working conditions no less favorable than those under which regular employees of the company worked. NGOs raised concerns about draft amendments to the birth registration process DHA proposed during the reporting period. DHA operated a hotline that could receive reports of potential trafficking cases; however, it is unknown how many calls the hotline received or whether any victims were identified as a result of calls to the hotline. An NGO operated a National Human Trafficking Resource Line, which received 2,543 calls that led to the identification of 22 victims from South Africa, Eswatini, Ghana, and Malawi. The hotline often received calls from community members who were unable to get help from police stations on trafficking cases, as front-line officials did not know how to assist. Moreover, the hotline received calls from victims who were turned away from police stations when asking for assistance. The government did not make efforts to reduce demand for commercial sex or forced labor. The government did not provide anti-trafficking training to its peacekeepers prior to their deployment abroad on international peacekeeping missions. In coordination with an international organization, the government provided anti-trafficking training for its diplomatic personnel.

TRAFFICKING PROFILE

As reported over the past five years, human traffickers exploit domestic and foreign victims in South Africa, and traffickers exploit victims from South Africa abroad. Traffickers recruit victims from poor countries and poor and/or rural areas within South

Africa to urban centers, such as Johannesburg, Cape Town, Durban, and Bloemfontein, where traffickers force victims into sex trafficking, domestic servitude, criminal activities, and agriculture. Syndicates—often dominated by Nigerians—facilitate trafficking in the commercial sex industry. To a lesser extent, syndicates recruit South African women to Europe and Asia, where traffickers force some into prostitution, domestic servitude, or drug smuggling. Traffickers sometimes employ forced drug use to coerce sex trafficking victims. Traffickers increasingly hail from Nigeria, the Democratic Republic of the Congo, and Cameroon. Mozambican crime syndicates facilitate trafficking from the eastern border of the Kruger National Park, using the same route to facilitate other illicit crimes.

Traffickers increasingly force women from Lesotho into sex trafficking in South Africa. Traffickers coerce victims through traditional spiritual practices. Traffickers force foreign and South African LGBTI persons to engage in sex. Traffickers exploit foreign male victims aboard fishing vessels in South Africa’s territorial waters; NGOs estimated 10 to 15 victims of labor trafficking disembark each month in Cape Town. Traffickers exploit young men from neighboring countries who migrate to South Africa for farm work; some were subsequently arrested and deported as illegal immigrants. Forced labor is reportedly used in some fruit and vegetable farms across South Africa. Traffickers subject Pakistanis and Bangladeshis to bonded labor in businesses owned by their co-nationals. Official complicity—especially by police—in trafficking crimes remains a serious concern. Some well-known brothels previously identified as locations of sex trafficking continue to operate with officials’ tacit approval.

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Austrian Red Cross

Austrian Centre for Country of Origin and Asylum Research
and Documentation (ACCORD)

Wiedner Hauptstraße 32, 1041 Wien

T (Telefon) +43 1 589 00 583

F (Fax) +43 1 589 00 589

info@ecoi.net

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