



Ukuthwala, Human Trafficking & The Media

By Melanie Hamman

Human Trafficking is a very real problem, globally and locally, and is a multi-faceted issue. The crime of human trafficking manifests itself with varying degrees of both subtle and obvious differences, depending on the context in which it occurs. Different nationalities, regions, cultures and cultural practices, religious practices or beliefs, languages, socio-economic structures, political systems, and local laws are all factors which create individual climates for the crime to occur and operate in.

What it looks like in other parts of the world is not what it looks like here in South Africa. How human trafficking is enabled and operates is context and circumstance dependent. It is easier to defragment its numerous facets and approach it in a more comprehensive way, when the issue is looked at in a local context. In addition, human trafficking, and specifically how it relates to children and the issue of child protection, is also tied to the vulnerability of children within any given context or society.

As it relates to South Africa, human trafficking is not a foreign or imported phenomenon. It did not arrive with the World Cup. It did not even only arrive 2 or 3 years ago. It can be said that it has been around, here in South Africa and the region, taking place since even before the era of colonialism and the Trans Atlantic slave trade. Slavery is as old as this continent and history itself, existing in Africa, the middle east, Asia, Europe and the America's throughout history – where people have been forced to work as slaves.

Human trafficking is not a new phenomenon. It is merely a new way of defining an issue that never really died after the slave trade was abolished but merely changed its format – it had to, as once being something that was legal, to then becoming something illegal. And now it is on the global agenda, not because it is new, but because people began to see it for what it was and talk about it.

Today, the trade in human beings or slave trade is prohibited under Article 4 of the Universal Declaration of Human Rights. "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."¹

¹ www.un.org/en/documents/udhr/index.shtml

When we look at the definition we realize it is not a simple matter to deal with. The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children – otherwise known as the Palermo protocol defines the crime as:

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve consent of a person having control over another person, for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”²

Digesting this definition is not easily accomplished, especially for the average man on the street. What does it mean? It is in understanding what it means when we know what human trafficking is.

In order to more easily communicate what human trafficking is to a broader audience, MMA has compiled its definition of human trafficking as:

- **Human Trafficking** is a form of modern slavery.
- **A person has been trafficked** if he or she has been moved within a country or to another country, as a result of force, fraud, or manipulation and is **exploited** or **made to work as a slave**.
- **A slave** is forced to work or is exploited under threat of violence for no pay, beyond subsistence (the least possible amount of food or money that a person needs to survive)
- Forms of **work** or ways in which victims of human trafficking may be **exploited** include forced labour, begging, stealing, drug running, sex work, forced marriage and the sale of body parts.

Human Trafficking is a crime perpetrated by those who wish to profit off of, or benefit in some other way from the exploitation of another person. But even the word exploitation doesn't seem to hold the serious weight in our culture as it ought to. South African's are familiar with the phrase and the concept of exploitation. Our history lies embedded in the gross exploitation of people. Exploitation implies using power over another person in order to benefit from their work, their knowledge or their physical bodies - to their detriment.

Human Trafficking however is not solely exploitation, exploitation is the final purpose or ultimate outcome, but human trafficking is a crime which is committed through a process elements. *A victim is obtained, then moved and then exploited.* Along the way they can be moved from one location to another, numerous times or only just the once. Through various methods victims are ultimately made to do something which they would never have originally chosen to do in freedom; even if ultimately they willingly do because of fraud, force, manipulation etc. This is the process. Additionally anyone else involved in the process that allows the ultimate exploitation and entrapment of the victim is complicit to the crime.

Like other criminal activity, trafficking is a clandestine and underground criminal activity that cannot be measured by traditional collection methods. Its nature makes it difficult to quantify.

² “United Nations Convention on Against Transnational Organized Crime and the Protocols Thereto” 2004, pg 42

“Difficulties surrounding the collection of data on trafficking in persons are extensively documented” (UNODC 2006).³

In South Africa we do not have accurate data on human trafficking, primarily because it is only in the last few years that human trafficking has received any real attention, as well as the fact that it remains vastly misunderstood throughout the country by those who even themselves work with the issue.

Additionally statistics and data are not known because of the lack of comprehensive legislation and therefore concrete structures to record the crime or assist victims who manage to get out or escape. It remains a crime where victims themselves are unlikely to go and lay a charge of trafficking against perpetrators because they do not know that they are in fact victims of human trafficking.

Present statistics do not accurately reflect the real incidence of trafficking in persons, as victims are often unwilling or unable to report their experiences to the authorities.”⁴

But it is a vastly nuanced crime in South Africa, with its roots deep within the broader socio-economic challenges and issues that South African’s face on a daily basis. Its many interconnected root causes and consequences are what make it such a minefield to navigate and fully understand.

Coming to terms with what it is and how it works and functions in different parts of the world; and how to combat it on a global as well as local level; is fraught with challenges and obstacles. Simply put, it’s a mammoth job to get to grips with. Ultimately focusing on what traps the victims and how to prevent them from arriving in those situation, or remove them and give them freedom should be the place to start.

In South Africa some of the enabling and feeding factors involved in human trafficking that have been identified include:

- poverty,
- unemployment,
- porous borders,
- regional conflict,
- poor law enforcement,
- poor development,
- cultural misconceptions and/or abuse,
- and HIV/Aids (orphans/child headed households)

For many South African children, these enabling factors and “underlying root causes” of human trafficking such as poverty and a lack of access to services are part and parcel of their daily lives. This reality places the 11.6 million (63.6%)⁵ children in South Africa who live in poverty or below the poverty line at a high risk of exploitation and trafficking. Where vulnerability lies, their lurks the risk of trafficking

³ “Tsireledzani: Understanding the dimensions of human trafficking in Southern Africa”, pg 155

⁴ Ibid

⁵ “ASEAN and Trafficking of Persons: Using Data as a Tool to Combat Trafficking in Persons”, pg 2

Where children have little protection, they are the most vulnerable, and if we don't take their situations and their plight in relation to their vulnerability to human trafficking seriously, we are misunderstanding the issue and failing these children.

The United Nations Convention on the Rights of the Child (CRC) adopted in 1989 by all UN member States (of which South Africa is one) incorporates the full range of human rights for all children. The CRC outlines its stance on the trafficking of children in Article 35: "Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."⁶

South Africa has these measures. We have the laws, but perhaps that's where we've run out of steam in a many cases. Our Children's Rights are enshrined in Section 28 of the Bill of Rights of the South African Constitution (1996). Notably I will reiterate one of these being that children are:

A child "is not to be required or permitted to perform work or provide services that – are inappropriate for a person of the child's age; or – place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development;"⁷

This ensures that a child's wellbeing is protected by right – they should be allowed to develop, go to school, to be healthy in mind body and spirit. The South African Children's Act, which without comprehensive anti-trafficking legislation is the only piece of law South Africa has to protect its children from trafficking; clearly defines children rights in law. It criminalizes the "Trafficking of children for any purpose" - as well as the "Behaviour that facilitates the trafficking of children". In defining trafficking, it specifies that exploitation includes forced marriage and sexual exploitation. Sexual exploitation defined, includes "the procurement of a child to perform sexual activities" and "trafficking of children for use in sexual activities".

So what about Ukuthwala? In its most basic description it is the practice of kidnapping girls for marriage. It is a traditional cultural practice which involves a man and his friends or peers, setting out to 'compel' a girl or young women's family to endorse marriage negotiations. It is practised by mainly Khosa speakers in some of the country's most rural poor areas in KwaZulu-Natal and the Eastern Cape.

Incidents have been increasingly reported where girls are abducted while walking down the road by a man, taken somewhere else, they are then raped, which forces the hand of the family to accept the marriage of their daughters, as they don't have other option.

MMA recently came across numerous articles published in The New Age since January which brought this issue to the light. The most recent published on the 11th of April entitled "Girls live in fear of being abducted and 'married'" states that:

"...girls as young as 12 years old being grabbed kicking and screaming from the streets and taken away to the homestead of their "admirers". The abducted girls are apparently given potions of muthi to "soften" them up, and then forced to sleep with the abductor.

⁶ <http://www2.ohchr.org/english/law/crc.htm>

⁷ <http://www.info.gov.za/documents/constitution/1996/96cons2.htm#28>

“A day or two later the abductor sends a delegation to the abducted girls home to offer “compensation” to the victims family. Some families accept the compensation as the start of a process of lobola to marry their daughter off to the older man. But many are fighting back by refusing to accept the compensation, and laying charges of abduction and rape against the perpetrators.”

The article also states that ukuthwala is an illegal practice, but in a school in rural KZN “31 girls have been abducted for ukuthwala and turned into sex slaves”

What it communicated was a practice which has its roots in cultural tradition, but which no longer functions within the parameters of its original intended purpose. Rather it is being used to legitimize acts which are at their very core abuses of these children’s rights.

According to Nomagugu Ngobese, head of the Nomkhulwane Culture and Youth Development Organisation explained that the practice “...goes back to the days when girls whose parents did not approve of their boyfriends arranged to be abducted so that the families would be forced to allow their marriage. ‘This was to ensure that parents would be forced to accept the relationship and accept lobola from the unwanted boyfriend, and the girl would then marry the man of her dreams’.” Additionally “It was never done without the girls consent”.

Without a girls consent it is forced marriage. Forced marriage is illegal. Forced marriage also falls under the purpose of exploitation in the definition of human trafficking. By international law, and in accordance with the parameters for human trafficking set out by the UN; like forced marriage in other parts of the world, such as the Middle East, Central Asia and Eastern Europe, the practice of ukuthwala as it is being used to today to perpetrate these crimes today in South Africa is most certainly classifiable as human trafficking.

As a cultural practice, like all cultural practices ukuthwala was created by the people who practiced it, for a reason and out of need. Culture was never a predefined part of this wonderful world before people arrived. People created and defined their culture based on that society’s needs: Where they lived, their needs to understand the world, define their society, ensure their survival, prosperity and progress. However ‘culture’ is not a static part of any given society, it is an ever changing and evolving facet depending on the changing needs of that society. Culture is valuable and helps to maintain values, structure and unity within a society, but culture can never supersede the law or a person’s humanity and individual autonomy. Culture can never and should never be used as an excuse to violate a person’s inalienable human rights. If any given cultural practice has evolved into something harmful, there needs to be serious dialogue to begin to understand the changing functioning of that particular practice and the needs of that society in relation to that society’s culture. This is necessary to protect those who are vulnerable and being harmed through that practice.

Cultural practices are an important aspect of any given society, and should be valued, understood, and passed on. But **when children are being abused, violated, forced into marriage and trafficked, in the name of culture and under the guise of culture**, society does need to re-evaluate its values in relation to these practices and importantly the language it uses to define and communicate its culture.

What is encouraging to know is that some parents are seeing the crimes being perpetrated against their daughters as the crimes they are. Though while some parents, as reported in The New Age

article, may be laying charges of statutory rape and kidnapping against the perpetrators, these children have also been victims of trafficking. If parents and authorities were aware of this, perpetrators could additionally be charged with the additional offense of trafficking of children.

These articles we have mentioned raise the matter of ukuthwala and clearly communicate what is happening and it's the roots of the practice, which is beneficial to help people understand the misguided practice of it. However what these articles fail to do - is call a spade a spade. None of them refer to what is happening to these girls as human trafficking. Why? Well, because the journalists, nor their editors know that it is. Why not? Because it is not generally known to be so.

Since January MMA has found numerous other articles in the print media which clearly report cases of human trafficking but completely failed to identify it as such. The language in these stories was often vague and most frequently referred to prostitution. One story in Saturday Star on the 8th of January entitled: "Visit to Cape Town turns into sex worker nightmare" was a lengthy, well written piece which went to the extent of laying out that the victim was transported from her home, lured with a promise of work, trapped into a false debt, told to prostitute herself to pay for it, and even sold on to another pimp, yet, at no stage were these terminologies then brought together to communicate and identify the crime of human trafficking.

Why should we call trafficking - trafficking? We demand accuracy from our media, our judicial system, our government. The basic tenant of getting things right, is to clearly identify something for what it is. If a media outlet were to report an incident of rape as assault, it is not only inaccurate but undermines the severity of what has happened to the victim and indeed lets the perpetrator 'off the hook' for the actual crime committed. Without acknowledging trafficking when it occurs, we are further limiting our own knowledge and awareness of the prevalence of the issue. Additionally, if trafficking is not called trafficking but rather something else referring to some of it's part, whether illegal immigration, prostitution, bonded labour, child labour, sexual exploitation, etc, we will continue to miss opportunities to understand it in order to find solutions, and the media will continue to misreport it.

Globally the concept of human trafficking is met with horror and a desire to combat it, and rightly so. If we fail to identify trafficking and behavior that is tantamount to trafficking - as trafficking, we are doing the victims a disservice and perpetuating a misunderstanding of the crime as it exists. Those who have a role in communicating - from media to NGO or government communication officers, to journalists and editors, need to be educated about the full extent of human trafficking in South Africa. This concept forms the premise of MMA's project: "Child protection & Trafficking : Is the media telling the right(s) story?"

But there is a long way to go. Expertise on this issue especially with its nuances in our South African context is slim on the ground. It is not a cut and dried issue we're dealing with here. And in our case, with the example of ukuthwala, it sometimes requires challenging entrenched cultural practices, which have evolved from something which benefitted the society it originated from, to something that harms it. This is what makes discussions like this so important and what necessitates the sharing of information. These are the steps we must take if we're to fully understand and tackle all facets of human trafficking in South Africa.