# BACKGROUND INFORMATION

# BACKGROUND INFORMATION HUMANA TRAAFACKING

#### What is human trafficking?

The United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN General Assembly Resolution 55/25) defines human trafficking or trafficking in persons as:

"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 the consent of a person having control over another person, for the purpose of exploitation."

Simply put, human trafficking is the movement of people (within a country or across borders) against their will for the purposes of exploitation. Traffickers in human beings recruit, abduct, purchase, transport, transfer, sell, confine, and control people for the purposes of exploitation (without payment or reward). Victims may be exploited for:

- prostitution or other forms of sexual exploitation, including child marriage;
- forced labour on a farm, in a factory, in a mine, or on a construction site;
- involuntary domestic servitude;
- recruitment into armed forces (in particular as child soldiers);
- removal of their organs, which are then sold.

Human trafficking can happen within countries, as well as across borders. The Global Slavery Index (2016) estimates that 45.8 million people are subject to forms of modern slavery in 167 countries. One in four victims of modern slavery are children.

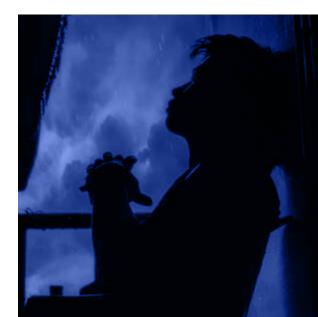
People are often deceived by promises of work. Once they arrive at their destination (often in a foreign country), they are told that they will be confined to a space until they have paid off the costs of their transport and accommodation. The cost keeps going up, as they need food, clothes and medication. They are not free to move on their own, continue to be confined against their will, and have no way to refuse any demand. Sometimes the person who is being trafficked is paying off a debt or that of their family (unrelated to their entrapment). This is known as debt bondage.

Sometimes traffickers pay the victim's family, literally buying the person.

Sometimes a person is contracted (often through force) to work without pay for a certain period. This is known as indentured servitude.

People don't always know that they have been trafficked or enslaved. There are, for example, third generation slaves working in mines in central Africa.

According to the United Nations Office on Drugs and Crime Global Report on Trafficking in Persons (2016), 64% of people trafficked in Sub-Saharan Africa are children.



Refugees, and refugee children in particular are at a high risk of human trafficking. Smugglers who offer to transport them across borders often sell them, against their will, into various forms of exploitation. Even when refugee children have reached their desired destination they remain vulnerable, because they are living in the margins of society, in secret, with no one looking out for them.

"Deprived, unprotected, and often alone, children on the move can become easy prey for traffickers and others who abuse and exploit them ...

Wherever families and children desperate to move encounter barriers, smuggling in human beings thrives. Smugglers range from people helping others in need for a fee to organized criminal networks that deliver children into hazardous and exploitative situations. Once children and families place their fates in the hands of smugglers, the transaction can readily take a turn towards abuse or exploitation – especially when children and families incur debts to pay smugglers' fees. Europol estimates that 20 per cent of suspected smuaalers on their radar have ties to human trafficking – they help children cross borders, only to sell them into exploitation, sometimes akin to contemporary forms of slavery. Some routes are particularly rife with risks. In a recent International



Organization for Migration survey, over three-quarters of 1,600 children aged 14-17 who arrived in Italy via the Central Mediterranean route reported experiences such as being held against their will or being forced to work without pay at some point during their journeys indications that they may have been trafficked or otherwise exploited. Traffickers and other exploiters thrive especially where state institutions are weak, where organized crime abounds, and also where migrants become stuck and desperate."

- taken from A child is a child: Protecting children on the move from violence, abuse and exploitation (2017). New York: United Nations Children's Fund (UNICEF). Viewed on 5 January: <u>https://www.</u> <u>unicef.org/publications/index 95956.html</u> There is not a lot of research available on human trafficking in, from or to South Africa. Other forms of exploitation by smugalers and criminal gangs, like sexual abuse, violence and theft, are more commonly reported. And while refugees in the country may not be victims of slavery, they are often exploited as labour for very little pay, especially in largely unregulated or unmonitored sectors such as domestic work, farm labour and forms of casual construction work. While this is not a form of human trafficking it is still exploitation and a violation of the human rights of those refugees. Some refugees feel that they have few options available to them and as a result choose to work as sex workers or become involved in criminal activities. This should not be confused with human trafficking.

As teachers we can help learners become aware of human trafficking as well as all the other ways that marginalised people are exploited.

"Trafficking and smuggling thrive when other routes to safety are closed to people fleeing war, persecution and destitution. The risks are particularly acute for children, many of whom have already suffered violence, abuse and exploitation before they reach their destination, only to be vulnerable to more when they get there. Ensuring that safe and legal routes are in place is a key step to achieving the SDG 10.7 target on 'facilitating orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies'."

- A new deal for every forcibly displaced child (2016) London: The Save the Children Fund.

Please bear in mind that statistics that are cited by the media (often for sensational purposes), advocacy organisations and government departments are not always based on verified research. It is extremely difficult to collect data on something that by its nature is hidden. When you do cite statistics please be clear about your source.

How trafficking is defined also changes what is being measured. Increasingly in the international community the concepts of modern slavery, human trafficking, forced labour and forced marriage are all seen as trafficking.

The Palermo Protocol, a UN treaty/convention, obliges governments to share information with governments' law enforcement, immigration bodies, and other relevant authorities so as to probe traffickers, and prosecute them.

According to A child is a child: Protecting children on the move from violence, abuse and exploitation (2017). New York: United Nations Children's Fund (UNICEF). Viewed on 5 January: <u>https://www.unicef.org/</u> <u>publications/index 95956.html</u>

Forced labour is work performed under coercion – for instance the threat of punishment or deprivation of liberty, and slavery – for instance practices like debt bondage in exchange for money or other benefits.

Slavery and slavery-like practices include the exercise of ownership over another person, debt bondage, serfdom, forced marriage and the delivery of a child for exploitation.

Trafficking encompasses the act of recruiting, transporting, transferring, harbouring or receiving people for the purpose of exploitation, by means such as coercion, deception, or abuse of vulnerability. For children, the means do not matter, as long as the purpose is exploitation. In addition to forced labour and slavery, trafficking encompasses other forms of exploitation, including for prostitution, child marriage and the removal of organs.

The country's legal position on human trafficking is set out in the Prevention and Combating of Trafficking in Persons Act 2013. Though the Act was signed into law in July 2013, it is not yet operational, as supporting regulations have yet to be passed. The Act employs a wider definition of trafficking than that of the UN. According to the Act, a person is guilty of trafficking if he or she delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic for the purposes of exploitation. This may be done through:

- The threat of harm;
- The threat or use of force or coercion;
- The abuse of vulnerability;
- Fraud;
- Deception;
- Abduction;
- Kidnapping;
- Abuse of power;
- Directly or indirectly giving or receiving payments or benefits to obtain the consent of a person who has control or authority over another; or
- Directly or indirectly giving or receiving payments, compensation, rewards, benefits or any other advantage.

These actions may be aimed at the trafficked person him- or herself, an immediate family member or any other person in a close relationship to the victim. The Act further stipulates that a person is guilty of human trafficking if he or she adopts a child or enters into a forced marriage with another person for the purpose of exploiting that child or other person "in any form or manner".

This information was taken from Africa Check:

https://africacheck.org/factsheets/ factsheet-understanding-human-trafficking/

#### **Resources:**

Global Slavery Index. (2017). South Africa -Global Slavery Index 2016. [online] Available at: https://www.globalslaveryindex.org/country/ south-africa/ [Accessed 27 Dec. 2017]. Trafficking in Persons Report – June 2017 (2017). [ebook] p.11-12. Available at: https://www. state.gov/j/tip/rls/tiprpt/2017/ [Accessed 27 Dec. 20171. Africa Check. (2017). FACTSHEET: Understanding human trafficking | Africa Check. [online] Available at: https:// africacheck.org/factsheets/factsheetunderstanding-human-trafficking/ [Accessed 26 Dec. 20171. llo.org. (2017). Forced labour, modern slavery and human trafficking (Forced labour, modern slavery and human trafficking). [online] Available at: http://www.ilo.org/global/topics/ forced-labour/lang--ja/index.htm [Accessed







# THE ORGANISING PRINCIPLES OF HUMAN RIGHTS

It is commonly understood that human rights are those things that guarantee all human beings certain freedoms and protections. Many countries have written these freedoms and protections into law.

Human rights protect your freedom to explore, discover, develop and express your potential – as long as you do not limit these freedoms for anyone else.

When someone prevents you from exploring, discovering, developing and expressing your potential, they are violating your human rights. In other words, they are putting obstacles in your way, preventing you from learning and growing and being who you want to be.

Human rights were designed to prevent people (primarily the government) from abusing power. The idea of human rights reminds us that people in power should not be allowed to create positions of privilege for some and oppress others on the basis of their gender; race; sexual orientation; age; disability; language; place of origin; religious, philosophical or political ideas; or their wealth. All human beings deserve access to equal opportunities in life.

#### The best way to protect your freedom is to protect the freedom of everyone else.

It is important to appreciate that the human rights that are now legally protected were never the product of a majority vote or populism, but of activism and struggle – even though they may have been entered into law by a vote. Those in power did not freely give them. They were fought for through protests, boycotts, strikes, civil disobedience, rational arguments in courts of law, new theories of what it means to be human, satire and protest art, metaphors and poetry, risking alternative aesthetic selfexpression, etc. Through this process new rights have been identified and justified. Think about women's rights, workers' rights, the right to a clean and safe environment and children's rights.

#### What rights can you imagine being added in the near future?

The concept of human rights offers a radical vision of inclusion. If we are open to it, it can change the way we think about the potential of ourselves and others, as well as whom we include and whom we exclude through our actions.

If human rights are the best principles we have for organising a society, their value should be able to stand up to investigation. Asking questions should increase our understanding. A learner may ask something like: "It seems like we are coming up with new human rights all the time. Are human rights real? I mean, am I actually born with them or are they an invention?"



We need to reinforce that they represent a fundamental insight into the nature of humanity and are not a socially constructed privilege that can be given or taken away. Think of it this way. Human rights are a kind of general knowledge about human wellbeing.

Human rights are a rational way of thinking about the basic requirements for individual and collective human wellbeing no matter what the context.

If we imagine a range of possible experiences a human being can have, we may recognise that some of these experiences increase well being and reduce unnecessary suffering. We cannot imagine every possible human experience, because the possibilities of human experience are constantly changing. What we can imagine is that the kind of personal change and social change that is most desirable is change that increases wellbeing. In this way we can create reasonable criteria for wellbeing that apply to any context - and prevent the abuse of power. These criteria can then be used to measure progress for any human community. The potential for wellbeing is greater in a community that does not keep slaves, or ensures that girl children can go to school, or gives members the means to protect themselves from deadly diseases, or protects the freedom of the press, or bans

torture, or makes a commitment to integrating refugees, etc. These criteria can be measured and be shown to significantly increase wellbeing. It is on the basis of criteria like these that the Sustainable Development Goals were created as a reasonable measure of progress in any community.

[Sustainable Development Goals: <u>http://</u> www.un.org/sustainabledevelopment/ sustainable-development-goals/]

Human rights activists tend to think about rights as universal and free of cultural context. This is because they imagine increasing the wellbeing and reducing the suffering of an individual, no matter what that individual's biological sex is, what their perceived gender or race is, what language they speak, or where they come from. Human rights are understood as universal because they transcend specific cultural values, beliefs and practices. This is the cornerstone of international human rights law. This principle, first emphasised in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights conventions, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

To think about universally applicable human rights we need to be able to step out of a particular cultural context and imagine what could increase wellbeing in any context. In South Africa all cultures, religions, traditions, philosophies and ideologies have to act according to the freedoms and constraints outlined in the Bill of Rights in our Constitution. This is the highest law in the land.

International human rights law lays down obligations of aovernments to act in certain ways or to refrain from certain acts, in order to promote and protect the universal human rights and fundamental freedoms of individuals or groups. Rights are not intended to be a homogenising force that makes us all the same, but a framework for emancipation. We expand on them as we learn new things about the nature and diversity of human experience. Changes in our understanding and application of human rights are not always straightforward or obvious, but it is possible to think rationally about whether the interpretation of an existing human right, or the creation of a new human right, increases wellbeing or not.

Think about rights given to people who do not experience sexual attraction in the same way as the heterosexual norm. Many societies have concluded that limiting the wellbeing

of LGBTI people (lesbian, gay, bisexual, transgendered, and intersex) by forcing them into relationships they cannot thrive in, or condemning them to life without meaningful intimacy, is a violation of their rights to dignity, freedom and equality. By giving LGBTI people the same rights to have relationships as heterosexual people, the wellbeing of a society as a whole increases. In this way our conception of human rights changes in the direction of increased wellbeing. Human rights are often described as inalienable. This means that no one can take them away. They are not debatable on a case-by-case basis. There are of course situations where people who have been found guilty of a crime by a court of law have their right to freedom of movement taken away in the form of imprisonment. This kind of decision should not be taken lightly, because when we start justifying the violation of people's rights (like allowing torture under certain conditions) we are on a slippery slope that threatens to accommodate justifications of all sorts of violations. Our courts are supposed to protect us from this slippery slope. In South Africa we reject the death penalty because it deprives an individual of his or her right to life, and we protect the other rights of prisoners on the grounds that those rights are inalienable. We also reject detention without trial, torture, and insist that anyone suspected of a crime is treated as innocent until proven guilty.

Human rights are all interrelated, interdependent and indivisible. This means all rights are interconnected, should work together to support each other and that each right cannot be understood or defended in isolation. Section 36 in the Bill of Rights ensures this, but it is often the most neglected clause in discussions about human rights. When we deal with any social or economic challenge we need to take care to show how it is connected to other challenges and the rights associated with them.

#### We are all duty bearers who should respect and protect the human rights of others.

"Some say that (the liberation of the oppressed and the oppressor) has now been achieved. But I know that that is not the case. The truth is that we are not yet free: we have merely achieved the freedom to be free, the right not to be oppressed. We have not taken the final step of our journey, but the first step on a longer and even more difficult road. For to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others."

#### Nelson Mandela Long Walk to Freedom (1994)

#### Dignity

Judges of our Constitutional Court have stated on numerous occasions that the core value of our Constitution is dignity. Section 1 of the Constitution makes it clear that the Republic of South Africa is founded on the values of: "Human dignity, the achievement of equality and the advancement of human rights and freedoms." Section 10 of the Constitution states that, "Everyone has inherent dignity and the right to have their dignity respected and protected." Dignity is often said to be the foundational concept of a culture of human rights. The Universal Declaration begins by recognising that "the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world".

It comes from the Latin noun dignitas, which is often translated as 'worth'. Dignity is primarily about recognising and respecting the 'worth' that is perceived as inherent in an individual human life. This worth is not something that is given to the individual as an act of generosity, or condescending paternalism, or in exchange for anything. Rather it is recognised as a potential that is already there, and, should be protected as a priority of social justice.

The southern African concept of ubuntu, batho, or hunhu recognises that the dianity of the individual is largely dependent on what is recognised and reflected back by other people, in the form of their attention, expectations, words and actions. Ubuntu teaches us that as our own sense of dignity and self-worth grows, we become more able to recognise and affirm the dignity of others. While dignity may be perceived as inherent in any individual, in reality it is the product of human beings in relationship, affirming each other.



# BACKGROUND INFORMATION REFUGEES AND THE LAW

#### "INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE."

Martin Luther King Jr.

# The International Refugee Regime

There is an international framework for the protection of migrants – consisting of international agreements and agencies created by these agreements. It is known as the international refugee regime.

The main instrument of international law relating to refugees is the 1951 Convention Relating to the Status of **Refugees.** According to the Introductory Note to the Convention: "A refugee, according to the Convention, is someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion." The Convention grants refugees legal protection.

A fundamental principle throughout the Convention is that of non-refoulement, which means that a refugee must never be expelled from a receiving country to a territory where he/she fears a threat to his/her life or freedom. The Convention also lays down certain rights for refugees. As stated in the Introductory Note:

"the Convention lays down basic minimum standards for the treatment of refugees, without prejudice to States granting more favourable treatment. Such rights include access to the courts, to primary education, to work, and the provision for documentation, including a refugee travel document in passport form."

There are three internationally accepted methods of dealing with refugees: voluntary repatriation (this is regarded as the best method by the UN), resettlement (i.e., the refugee is relocated from the original receiving country to another country in which to be given refugee status), and integration into the receiving country. The Convention originally only applied to refugees displaced within Europe prior to 1951, in response to the aftermath of World War II. In 1967 the provisions were extended to apply to all refugees through the Protocol Relating to the Status of Refugees.



The Convention and the Protocol set standards that apply to children in the same way as to adults:

- a child who has a "well-founded fear of being persecuted" for one of the stated reasons is a "refugee"
- a child who holds refugee status cannot be forced to return to the country of origin
- no distinction is made between children and adults in social welfare and legal rights.

The Convention on the Rights of the Child establishes legal obligations for States to ensure the best interests of the child be a "primary consideration" and addresses the rights of all children falling within the jurisdiction of a state, regardless of their nationality or immigration status.



# NEW YORK DECLARATION FOR REFUGEES ANDMICRATION

On 19 September 2016, at the UN Summit for Refugees and Migrants, the United Nations General Assembly adopted a set of commitments to strengthen and enhance mechanisms to protect people on the move. South Africa was one of the member states that supported the commitments, now known as the New York Declaration for Refugees and Migrants.

The New York Declaration (http:// www.unhcr.org/57e39d987) paves the way for the adoption of two new global compacts in 2018: a global compact on refugees and a global compact for safe, orderly and regular migration.



- "In adopting the New York Declaration, Member States:
- expressed profound solidarity with those who are forced to flee;
- reaffirmed their obligations to fully respect the human rights of refugees and migrants;

- agreed that protecting refugees and the countries that shelter them are shared international responsibilities and must be borne more equitably and predictably;
- pledged robust support to those countries affected by large movements of refugees and migrants;
- agreed upon the core elements of a Comprehensive Refugee Response Framework; and
- agreed to work towards the adoption of a global compact on refugees and a global compact for safe, orderly and regular migration."

http://www.unhcr.org/new-yorkdeclaration-for-refugees-andmigrants.html

At the summit, Secretary-General Ban Ki-moon launched the TOGETHER – Respect, Safety and Dignity for All campaign (<u>https://</u> together.un.org/), saying, "We must change the way we talk about refugees and migrants. And we must talk with them. Our words and dialogue matter." Among the aims of the TOGETHER campaign are two that all educators can embrace:

- Create a strong persuasive narrative of solidarity that will showcase the shared benefits of migration to economies and nations, while also acknowledging legitimate concerns of host communities.
- Build empathy and humanise the debate. It will provide a platform for stories of and by migrants and refugees and of host communities that have benefitted from the inclusion of refugees and migrants. It will tell stories of children on the move.

The New York Declaration calls for a "comprehensive response" and "responsibility-sharing", both locally and internationally.

"This new approach calls for a whole of society approach by host countries to refugees – where not only the national governments but also local authorities, civil society groups, faith communities and the private sector pool their forces to respond to refugees."

- **Volker Türk**, Assistant High Commissioner for Protection, UNHCR Geneva

#### We all have a role to play.





# SOUTH AFRICAN REFUGEE LAW

In 1996 South Africa signed the Convention and Protocol Relating to the Status of Refugees. In 1998 the Refugees Act was passed. The Act defines a refugee as a person who has fled their "place of habitual residence" owing to a well-founded fear of persecution for reasons of race, tribe, religion, nationality, political opinion, or membership in a particular social group. This includes people who are forced to flee their country of origin as a result of "external aggression, occupation, foreign domination" or events that "seriously" disrupt public order.

An asylum seeker is a person who is seeking recognition as a refugee and whose status has yet to be determined . <u>http://www.lhr.org.za/</u> <u>news/2013/sa-largest-recipient-</u> <u>asylum-seekers-worldwide-</u> <u>numbers-don%E2%80%99t-add</u>

This Act contains a policy of non-encampment. Instead of being confined to refugee camps, refugees are supposed to be integrated into urban environments. South Africa is the only African country with such an approach to refugee integration. The Act also ensures that asylum seekers (people whose application for refugee status is under consideration) have the right to work and study in South Africa. On arrival at a port of entry, an asylum seeker is granted with a Section 23 permit allowing them to stay legally for 14 days within the country as someone seeking to lodge an asylum application. Within these 14 days the asylum seeker must report to a Refugee Reception Office (RRO). In 2014, three RROs were closed and there are only three remaining – in Musina, Durban and Pretoria.



Once the person has made their application at a RRO they are granted a six-month renewable Section 22 asylum seeker permit. This currently gives them the right to work and study.

If their application is accepted, the person will receive a Section 24 refugee permit. This is valid for two years and renewable. An appeal may be made at the Refugee Appeal Board if the application is denied.



At the moment, a refugee who has lived continuously for five years in South Africa can apply for indefinite refugee status and a permanent residence permit. The permanent residence permit qualifies a refugee to apply for South African citizenship.



#### "The Department of Education's A Public School Policy Guide states that 'every child has the right to be admitted to school and to participate in all school activities'. This policy stipulates that a school governing body (SGB) may determine the admission policy of a school. However, the admission policy must be based on the guidelines determined by the head of the provincial education department.

If a learner is refused admission, the head of the provincial department (through the principal of the school) must inform the parent of the refusal, and the reasons for the refusal. If a child is refused admission to a school, the school principal must give a written explanation of why the child was not admitted."

- Veriava F, Thom A & Hodgson TF (2016) Basic Education Rights Handbook – Education Rights in South Africa. Section27

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According to the Refugees Act, dependents of asylum seekers and refugees are granted the same rights as their guardians. The Act defines a dependent as an unmarried, biological child who is younger than 18 or a child legally adopted in the refugee's country of origin. However, in the case of Mubake vs. Department of Home Affairs it was decided that separated children (those under the protection of an adult who is not their biological parent or legal adopter) should be regarded as dependants of their guardian.

Asylum seekers and refugees have the right to basic education. All they need in order to apply for admission to a school is a document from Home Affairs showing that they have applied to legalise their stay in South Africa. If asylum seeker or refugee children are denied admission to a school they may appeal and must be given a written explanation of the reasons why they have been rejected. A migrant child may not be denied school admission based on his or her inability to speak the language of instruction. Migrant children are entitled to fee exemptions just the same as South African nationals. These rights are enshrined in the South African Schools Act and the Admission Policy for Ordinary Schools.









#### According to the African Charter on the Rights and Welfare of the Child, Article 11 on education reads:

1. Every child shall have the right to an education.

2. The education of the child shall be directed to:

(a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and conventions;

(d) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples, ethnic, tribal and religious groups;

(f) the promotion and achievements of African Unity and Solidarity

### **'THE PROMOTION AND ACHIEVEMENTS OF AFRICAN UNITY AND SOLIDARITY'**

## CREDITS

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