

The Trafficking of Women into the South African Sex Industry

2nd
Edition

A report by
Molo Songololo

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Cape Town
South Africa**



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About Molo Songololo

Molo Songololo is a child rights organisation based in Cape Town that was established in 1979, coinciding with the International Year of the child. Molo Songololo's primary functions are advocacy and lobbying for the rights of children, as well as providing education about these rights.

Molo Songololo has been involved in a number of national and international initiatives to advocate for, and to educate and inform about, the rights of children.

This research project is the result of Molo Songololo's investigation into the trafficking of children for the purpose of sexual exploitation.

About the funders

terre des hommes (Germany) has provided financial assistance for specific Molo Songololo projects over the past ten years. terre des hommes is an international funding agency for childrens organisations. It also runs programmes that promote the wellbeing of children in various countries. The organisation is at the forefront of advocacy against the trafficking of children for purposes of sexual exploitation, this being one of its particular areas of concern. terre des hommes is also lobbying for freedom from landmines which, like sexual exploitation, have caused children suffering the world over.

The Open Society Institute – New York (OSI-New York), is a privately operated funding foundation that promotes the development of open societies around the world by supporting educational, social, and legal reform, and by encouraging alternative approaches to complex and controversial issues.

The Institute also assists other organisations within the Soros foundation network by providing administrative, financial, and technical support. Programmes based at OSI-New York fall into three categories: network programmes, international initiatives, and programmes that focus on the United States.

Network programmes address specific issue areas on a regional or network-wide basis. Network programmes administered from New York include the Arts and Culture Programmes that support contemporary artistic culture in the countries of the network, and the Children and Youth Programmes which provide young people with a variety of opportunities and resources.

OSI-New York also makes funds available to a variety of cultural, educational and civic institutions and human rights groups.



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Zurayah Abass and Patric Solomons of Molo Songololo managed the research project. The research team was assisted and supported by the rest of Molo Songololo staff - Warda Essa, Khaya Yaphi, Moegamat Abass, Kobie Ferreira, Ronnie Ngalo and Charmaine Wagner.

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*This report is dedicated to the
memory of Tessa who shared her
story and bravely continued her life
until she could no more.*



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Executive summary

This report focuses on the trafficking and forced prostitution of women into the South African sex industry. South Africa's sex industry derives its trafficked labour from both cross-border and in-country trafficking operations. It would appear that South Africa is a destination country rather than a source for trafficked women, and that Namibia and Botswana are used as transit countries in the transport of women from other parts of Africa.

Sections 2, 3 and 4 of this investigation seek to provide answers to the following questions:

- who are the women being trafficked and
- what are their places of origin?
- who is doing the trafficking and
- what are their methods of operation?
- what are the working conditions of these women?

The demand for trafficked labour comes primarily from escort agencies and brothels in the major inland and coastal cities of Johannesburg, Pretoria, Cape Town, Durban and Port Elizabeth. The foreign women recruited tend to have a similar profile, namely they fall within the 18-25 year age group, have limited skills and job opportunities in their country of origin and are childless but with a dependant nuclear family. Women are procured (usually under false pretences), from:

- within South Africa
- elsewhere in Africa, notably Southern, Western and Eastern Africa
- Southeast Asia, particularly Thailand and the Republic of China (Taiwan)
- Eastern Europe
- The former Russia.

Trafficking operations take two forms, namely cross-border and in-country, with the modus operandi differing according to the origins of the women and the origins of the traffickers involved. Whilst traffickers may be solo operators – individual South Africans and citizens of neighbouring countries have been identified – it is more usual for them to operate in one of the four main syndicates detailed below:

1. Chinese Mafia from Southeast Asia and Swaziland
2. Bulgarian syndicates from Eastern Europe
3. Russian Mafia
4. African criminal groups from mainly Angola, Nigeria and the Democratic Republic of Congo, who appear to be the managers and owners of specific establishments within the sex industry.

A variety of methods are used to lure women to South Africa.

The working conditions of these women contravene South African labour law. No benefits are offered, the women may not choose their employer, they are required to work long hours, including when ill, and are kept under constant surveillance.



Whilst South Africa has no specific legislation prohibiting the trafficking of persons, provision is made for prosecution of offences related to trafficking and some of the exploitative and abusive practices in the sex industry. As a signatory to the UN Conventions detailed in Section 7 of this report, South Africa has accepted a responsibility to introduce appropriate legislation to counteract these violations against women. South Africa's existing and draft legislation is outlined in Section 7 (3) of this report.

This report seeks to highlight the circumstances of trafficked women as the first step in a lobby to stem the inhumane practice.



Box 1: Glossary of terms

Prostitution / Sex work – the exchange of sex for money.

Trafficker – a person or a group of people who specifically target women whom they transport from one place to another with the specific intention that the women being transported will work for others and give some if not all of their earnings to them.

Agent – a person who recruits women for the trafficker and acts as an intermediary between the trafficker and the trafficked women, as well as between the owner of a sex work establishment and the trafficked women.

Pimp – a person, who through coercion or other means, has one or more women working for him or her, as a sex worker.

Sexual exploitation – the recruitment of women into the sex industry through coercive and deceptive practices, such as debt-bondage, threats and violence, where the women are subjected to sexual, physical and emotional abuse, through forms of sexual violence, including rape and sexual battery.

Debt-bondage – the advance of money to a woman for the costs of travel, accommodation and food which she must repay through work prescribed by the person or organisation to whom she owes the money.

Transfer – the transportation of a woman with or without her consent to a destination where she will be expected to earn money for another party through bonded labour.

Sale of women – a transaction between two parties whereby a woman is exchanged for money, as a result of which the one party believes that he/she "owns" the woman and can therefore sell the woman to another party. This exchange can occur through negotiations between the seller and buyer or the woman may be sold at an auction.

Trafficking of women into the sex industry – See chapter 1.3. Defining “trafficking” on page 6.

These terms have been specifically defined for purposes of this research report.



Section 1

Research problem and methodology

*"At the end of the 20th century, trafficking in women for the purpose of sexual exploitation has mushroomed into a multi-billion dollar shadow market. Women are trafficked, to, from and through every region in the world using methods that have become new forms of slavery. The value of the global trade in women as commodities for sex industries is estimated to be between seven and twelve billion dollars annually. This trade in women is a highly profitable enterprise with relatively low risk compared to trades in drugs and arms. The money-makers are transnational networks of traffickers and pimps that prey on the dreams of women seeking employment and opportunities for the future. The activities of these networks threaten the wellbeing and status of women as well as the social, political and economic wellbeing and stability of nations where they operate."*¹

1.1. Introduction

The world over women, children and men are trafficked into a variety of exploitative situations, of which prostitution is but one. The trafficking industry is regarded by some human's rights bodies and police as one of the "fastest growing and most lucrative criminal enterprises in the world."² The trafficking industry's profits are enormous and is said to generate billions of dollars annually. Criminal syndicates and other criminal groupings are largely responsible for trafficking of people. These criminal networks usually also engage in other criminal and violent activities, such as money laundering and the trafficking of counterfeit consumables such as compact discs. The trafficking of consumables has led to the perception that these criminal networks view the people they traffic as just another commodity, to be trapped into exploitative and violently abusive situations and to be bought and sold. The trafficking industry's influence on economies and its ability to generate wealth has led some commentators to see it as a shadow economy in competition with but not entirely excluded from domestic economies or the global economy. Trafficking of persons is considered to be "the third largest source of profits for organised crime, behind only drugs and guns."³ South Africa has not escaped the attention of traffickers as a place to do business and is in fact the destination of choice for many traffickers.

The extent of traffickers' operations in South Africa is not known, and because of the illicit nature of these practices, information is limited. As far as is known, to date, no research on the trafficking of people in South Africa has been done. This report is an attempt to bring to light some of these operations in respect of the sex industry. Some of the organised sectors of this industry rely as much on trafficked labour as they do on voluntary labour.

This report provides a small window into the nature and extent of the industry surrounding the trafficking and sexual exploitation of women, and seeks to provide an insight into the modus operandi of traffickers as well as a profile of their victims. To achieve these objectives, fieldworkers had contact with 44 women who work in the sex industry. Of these

¹ D. M. Hughes. 'In the Shadows: Promoting Prosperity or Undermining Stability?' *Journal of International Affairs*, Spring 2000: p.1

² H. Koh: **Country Reports on Human Rights practices for 1999**. Testimony before the subcommittee on International Relations and Human Rights, U.S. House of Representatives, Washington, DC, 8 March 2000

³ Ibid



women 10 were foreign trafficked women from Thailand, Eastern Europe and the former Russia. The remaining 34 women were South African. Of these 4 women had been trafficked. Although the sample was small and the circumstances surrounding the interviews not ideal, it is felt that the information is reliable and a valid reflection of the trafficking scenario. Traffickers, agents and owners are reluctant to talk for fear of exposure, whilst access to the female victims is difficult, sometimes dangerous.

Interviews were also conducted with an agent and members of the South African Police Services. Fieldworkers also liaised with various interested organisations. In particular:

- The Sex Worker Advocacy Taskforce (SWEAT), Ons Plek, Women's Refugee Forum and email and telephonic communication with Straatwerk, The Moçambican Consulate, in Cape Town
- The Reproductive Health Research Unit based at Baragwanath Hospital and in Hillbrow, The Commission of Gender Equality, The Aids Law Project at the University of the Witwatersrand, in Johannesburg
- Lerato House, The Assets Forfeiture Unit, The Thai Embassy, in Pretoria
- Wings of Love and the School of Development Studies at the University of Natal, in Durban and
- Amnesty International in Port Elizabeth

1.2. Premise of the research

The premise of this report is that those who want to make money through the prostitution or sexual exploitation of women have traditionally relied on a steady supply of women in order to maximise their profits. Where a supply of women cannot be readily found, an involuntary labour force is coerced into becoming a part of the voiceless, marginalised and unorganised workforce that contributes to domestic and international economies.

To ensure this supply traffickers, either individually or as organised syndicates, employ practices reminiscent of the recruitment practices employed during the early days of the emergent South African mining industry. Since owners of escort agencies and brothels do not have the means to do their own recruiting, they rely heavily on agents, syndicates and other organised criminal groups to provide them with a supply of women. It is not clear from whence the demand for particular types of women in terms of place of origin, age, and any other attributes, emanates. Whether it is from the clients or if the nature of the supply is predetermined by demands made on recruiters by owners of establishments. Or whether, it is simply a case of owners taking what they can get. The nature of this supply is however particularly determined by interventions on the part of state agencies such as the police. For example, one South African agent reported that the supply of women to South Africa from Thailand has changed in favour of a supply from Eastern Europe and Russia as a result of two main factors:

1. Interpol has tightened security measures at various airports used as transit points for the transfer of Thai women, and
2. the Eastern European women have easier access to documents than Thai women.⁴

⁴ Charl, South African Agent of trafficked Thai women



This trafficking involves mainly women and is one method by which a non-capitalist mode of production has been artificially preserved.⁵ The methods of recruitment and the resultant system of labour exploitation which enables an employer to dispense a variety of forms of violence, is also reminiscent of the early days of emergent capitalism in South Africa as typified by the mining industry.

1.3. Defining "trafficking"

People are trafficked into a multitude of exploitative and abusive situations into gangs, the sex industry, as couriers of drugs, minerals or wild life and into forced marriages for the enrichment of others. Other sectors of the economy are also vulnerable to abuse, such as the hospitality industry, agricultural sector, domestic labour, the medical sector involved in the harvesting of body parts and adoption agencies. But for the purpose of this investigation, only the trafficking of women and their sexual exploitation is examined. The cross-border trafficking of persons is a multi-dimensional phenomenon and has been linked to poverty and lack of opportunities in the countries of origin and to exploitation of this situation by organised crime syndicates in both countries of origin and destination.

This report defines the trafficking of women for purposes of prostitution and sexual exploitation as follows:

The forced prostitution of and trafficking in women encompassing all acts involved in the recruitment of women for work in sex industries by whatever means including, amongst others,

- abduction
- transportation within and across borders
- purchase
- sale
- transfer or harbouring of a woman.

This definition includes acts against women that:

- a) involve the use of deception, violence and/coercion (including the use of threat of force or abuse of authority)
- b) are undertaken for the purpose of placing such a woman, whether for financial or other reward or not, in
 - (i) involuntary servitude
 - (ii) forced or bonded labour, or
 - (iii) slavery-like conditions
- c) relocates the woman to a place or community other than the one in which she lived at the time of the original deception, coercion or debt-bondage.

Within this definition, the trafficking of women into sex industries is not confined to cross-border trafficking but could also include the in-country trafficking of women.

⁵ J. O'Connell Davidson and J. Sanchez Taylor. Child Prostitution and Sex Tourism: South Africa. ECPAT International: p.19



1.4. Design and method of research

Data collection for this research consisted of primary interviews with trafficked women and personnel in the South African Police Services Aliens Investigation Unit (Pretoria), and Border Patrol Unit (Cape Town).

Additional sources were obtained from newspaper reports and interviews with a South African agent and a Thai embassy official. In addition, a number of international websites dedicated to providing information on, and advocacy around, the issue of the trafficking of women into sex industries were accessed.⁶

Interviews with foreign trafficked women were held in Cape Town and Gauteng. Interviews with South African trafficked women were held in Cape Town. The Sex Worker Education and Advocacy Taskforce (SWEAT), assisted with access to women sex workers in escort agencies in Cape Town. Interviews were also conducted with street sex workers in Cape Town and Durban who had entered the industry voluntarily.

Semi-structured interviews were conducted with trafficked women. These interviews were conducted in English. Since foreign trafficked women generally do not have a good command of the English language, selection for interview was based on fluency. The fact that most trafficked women are kept under surveillance precluded the use of interpreters or follow-up visits. Accordingly, Eastern European and Thai women were interviewed in small groups to enable the women to assist each other with translation. Interviews with all the women were conducted on the understanding that anonymity and confidentiality would be guaranteed. Thus, the names of all the women and the South African agent interviewed have been changed. The names of the agents and traffickers mentioned by the women have also been changed.

The research team consisted of a senior researcher and two field researchers.

⁶ See for instance: www.captive.org, www.csun.edu/~hcch006/18.html, www.inet.co.th/org/gaatw, www.prostitutionresearch.com and www.uri.edu/artsci/hughes/catw/catw/htm



Section 2

Cross-border trafficking of women to South Africa

2.1. Introduction

Foreign trafficked women are usually debt-bonded to the agent and not to the owner of the establishment at which they work. As such, they are faced with the double burden of making a profit for both their trafficker and employer.

The picture that emerges⁷ is one of women from Eastern Europe and Southeast Asia who essentially fulfil 4 basic criteria, namely that:

1. they are generally recruited from within the 18 - 25 age group
2. they are usually single and childless, when first trafficked
3. they usually do not have educational qualifications that would allow access to sectors of the formal economy where they can make enough money to buy their own independence and
4. They generally have no or limited experience of formal wage employment.



2.2. Recruitment from Eastern Europe

Based on interviews with trafficked women, members of the South African Police Service and a South African agent, it is possible to establish the countries of origin of the women, identify the traffickers and establish what the intended destinations of trafficked women are.

2.2.1. The nature of the operation

These recruiters, traffickers and or agents are well organised in their countries of origin. They are usually part of a syndicate. Eastern European traffickers are nearly exclusively ex-military personnel of senior rank. These men are usually the main organisers of the trafficking operations. A syndicate operation would typically not be restricted to one country, but would span several countries within Eastern Europe. Traffickers operate in both South Africa and their country of origin, often migrating between the two. In addition to trafficking women into the sex industry, Eastern European syndicates also traffic drugs, cigarettes and compact discs, as well as launder counterfeit money.⁸

Countries of origin

Russia, Bulgaria, Romania, Latvia, Estonia, Czech Republic, Slovak Republic, Poland, Ukraine and Croatia.

Traffickers

Russian Mafia, Bulgarian syndicates, individual South African and Bulgarian agents.

Destinations

Brothels and escort agencies in major South African inland and coastal cities namely, Johannesburg, Pretoria, Port Elizabeth, Durban and Cape Town.

⁷ From interviews with trafficked women and police officers in the Aliens Investigation Unit and Border Patrol

⁸ Interview with Inspector Hopper of Border Patrol: Cape Town



2.2.1.1. The trafficking of women

It appears that the recruitment operation in Eastern Europe in particular rests on a relationship of trust between the agent and the trafficked woman, at least in the beginning.⁹ The agent is either known to the woman as a male friend or acquaintance, or is known to a friend of the woman. He usually offers her work in the hospitality industry in South Africa, and offers to pay her air ticket as well as ensure that she has the necessary documentation to travel to South Africa legally. She usually enters the country on a holiday visa or alternatively claims political asylum on religious grounds upon arrival.¹⁰ Typically, the woman travels alone, although in some instances she is accompanied by the agent or another trafficked woman. She usually arrives at Johannesburg International Airport, where the agent meets her. From here she is taken to the house where she will be living, either in Gauteng, the Eastern Cape, Western Cape or KwaZulu-Natal. Here she is informed that her real occupation will be sex work, her documents are confiscated and she is informed of the nature of her contract. In addition, she is or could be threatened with her own life or that of her family members in her country of origin if she does not comply. She may be told of instances where family members of women who have refused have been hurt.¹¹ She might also be threatened that her family will be told that she is a sex worker. The woman will typically also have little, if any command of English, on her arrival. The above factors will ensure her compliance. She is usually given a few days to adjust before she is taken to the brothel or escort agency from where she will work.

2.2.1.2. Life in South Africa

Women are also faced with the difficulty of isolation. They are also isolated from other women in the industry. Typically, they are housed with women from their country of origin or women from the same geographical region. The picture that emerges is one of women being kept apart according to their nationality. This could be because traffickers want to ensure that the women are unable to make contact with others who can assist them in escaping, or it could be that syndicates keep "their women" from the competition. It is likely that these two reasons combined ensure that trafficked women have limited contact with the outside world. In most cases, the agent/trafficker will ensure that the women are driven to and from their place of work. They are kept under constant surveillance. Usually, the debt is owed to the trafficker/agent rather than to the owner of the establishment where they work. In some instances it is not clear whether the owner is aware that a woman has been trafficked, and that in addition to making profits for him, she is also making profits for the syndicate in her country of origin. Some establishment owners however, will give traffickers/agents money in exchange for the woman. She is then debt-bonded to the owner. This may happen only once she has nearly paid off her original debt to the trafficker. By so doing, the owner reduces his costs in terms of providing her with accommodation and will release the trafficker from ensuring that she has the necessary documentation to be in the country. It also frees him to recruit new women. On the other hand, he may decide that she should be moved to another establishment, where her debt will start all over again, as the story below bears witness to.

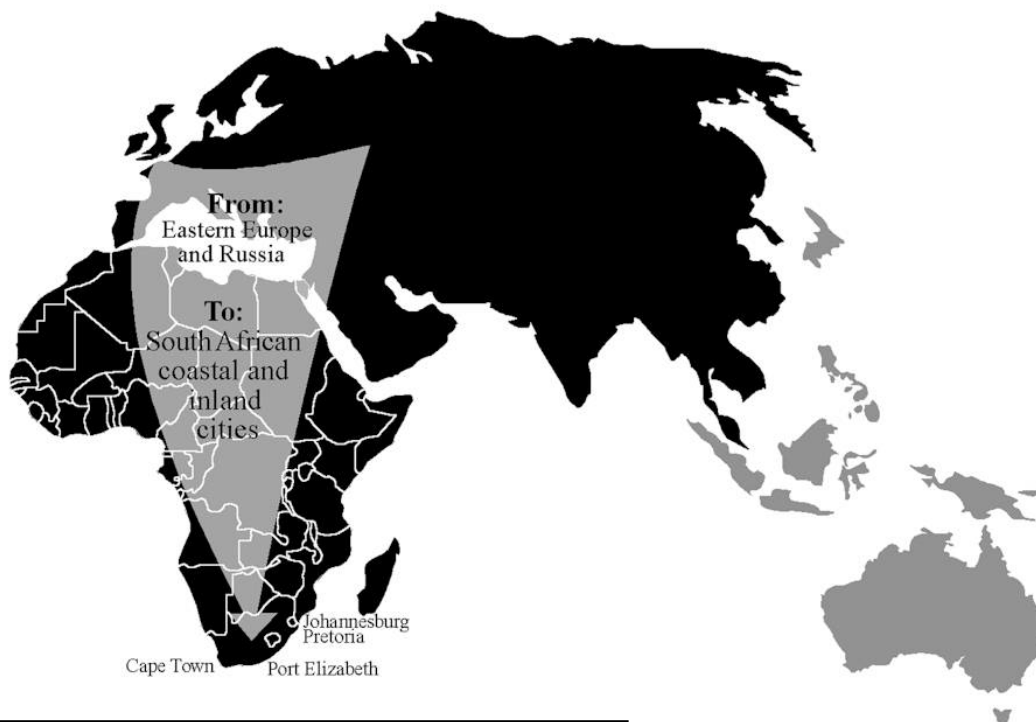
⁹ Interviews with trafficked women and Superintendent van der Westhuizen and Captain Swart of the Aliens Investigation Unit

¹⁰ Interviews with trafficked women

¹¹ Interview with member of the Aliens Investigation Unit, and see also Diva's testimony below



Map 1: Trafficking of women from Eastern Europe and Russia



Countries of origin	Syndicates
Russia (St Petersburg), Romania, Poland, Croatia	Russian Mafia
Ukraine, Bulgaria, Slovakia, Estonia, Latvia, Czech Rep.	Bulgarian syndicates
Bulgaria	ex-military personnel plus individual agents



2.2.2. One woman's story: Testimony of a woman trafficked from Tallinn in Estonia to Cape Town¹²

Diva

I am from Estonia. I am nineteen years old. I have an Estonian passport. I was recruited to work as an exotic dancer, in Southern Europe, in 1998. After a year I returned to Tallinn. I went to an agency in Tallinn and they told me that they had a job in South Africa for a dancer. They said the work was for 6 months and they will arrange for my airfare and a work visa.

When I got to South Africa I was told that I would have to pay the agent R10 000 and another R50 000 for the rest of my contract. They also told me that I would be making R2 500 a month (for herself, after her debt had been deducted), plus I would get tips. The amount I had to pay back was \$US 10 000.

A friend, Anna and me got to Johannesburg airport in June 1999. A man from Bulgaria met us at the airport. He took us to another Bulgarian. His name is Alex. They said that we must start work next week, first they take us to Cape Town. We go to work there. They told us that we have to work as prostitutes. I told Alex I was worried about the prostitution part. He told us that his friend had two Russian girls working for him and they ran away and he went to their father and cut his fingers off. I was scared when he told us this.

We start work at a agency in Cape Town. Before Alex take us to Cape Town he say my English name is now Sharon and Anna, Anna's name now Norma. Me and Anna work six days, every week from Monday to Saturday. Alex took us to The Waterfront, on Sunday. I did not enjoy it because I was sad and I was scared of Alex. He always told us stories that made us scared. He also told us if we do things that we shouldn't do then we will be fined R500. After some time two more girls from Tallinn come. I was sad because more girls from my country end up in this situation but also happy because it is difficult to talk to the women from Cape Town our language different and they don't like us. Three weeks after that me and Anna were moved to another club, in Cape Town. I was sad to leave the other two from Estonia. He told us that there are too much girls working at the club so we have to go to other club.

So we work here. It is worse than other place. The other girls are rude to us. They say we take their clients. Clients choose us more. So we make more money but we have to work more and you can't say no. I tried once and the manager fined me R1 000 so I get less money for myself because first I have to pay the agent and I can't put the money in a safe place. I spend the money and now I also started taking drugs and it takes more money. Drugs make it easier to work.

I don't have friends except for Anna. My English is better than when I came here. But I am not happy. I am sad I want to go home but I don't know how and I am scared of Alex. I owe him more money since he brought me here. I start paying from the beginning again.

2.3. Recruitment from Southeast Asia

The sources of information for this sub-section are interviews with 3 Thai women as well as members of SAPS Units: Aliens Investigation Unit and Border Patrol, and a Thai Embassy official.

2.3.1. Nature of the operation

While the primary method of procurement in Eastern Europe appears to be through male friends and acquaintances, it is mainly through employment agencies and female agents that women are recruited from Southeast Asia. Use is also made of advertisements in newspapers in the country of origin which

Countries of origin

Thailand, Mainland China, and Taiwan.

Traffickers

Chinese Triads, individual South African and Thai operators, ex-sex workers turned agents.

Destinations

Escort agencies and brothels in Pretoria, Durban, Johannesburg, Cape Town and Port Elizabeth.

¹² Interview with Diva



offer work in the hospitality and catering sectors, although teaching and work in service industries are also advertised.

An employment agency will have a woman looking for work on their books. This usually involves the women's photographs and other details being placed in a catalogue that is circulated amongst prospective buyers who are either agents or brothel/ escort agency owners. The women are then ordered and brought to South Africa once arrangements have been made for their travel. They either travel alone or are escorted to South Africa.

A minority of Thai women trafficked to South Africa are already sex workers in Thailand, but come to South Africa unaware that they will be debt-bonded once they arrive. They then have the same difficulty re-paying the debt as women who were lured with false promises.

According to a Thai embassy official, there are essentially two categories of Thai women who work in the South African sex industry. The first category is those who are already sex workers and are smuggled into South Africa with their full knowledge.

"These women are greedy. They know they can work in Thailand and make a certain amount of money, but if they come to South Africa they can triple their money. They have friends who invite them over here. The person has been here before, goes back home and tells her friends to come to South Africa because they can make more money here. They come and work under these women who act as agents, but they get along and understand each other." ¹³

The second category, says the official, consists exclusively of

"ignorant people, they come from the countryside, they don't watch TV, they don't know what's going on, they are country people. The girls work in a bar. The agents go into the countryside and recruit these people. They go into villages and say 'we got work for you, in South Africa.' It can be domestic, in a factory or even a Thai restaurant. They can earn R3 000 to R5 000 a month. Those girls only earn R500 back home." ¹⁴

From the interviews, it seems that there are essentially three categories of women who are involved in the trafficking, namely:

1. Women who are in the sex industry and who willingly travel to South Africa on a holiday visa to work in the sex industry in the hope of making more money. They are aware that they will be debt-bonded
2. Women who are unaware that they will be debt-bonded or that they will have to work in the sex industry
3. Women who were sex workers but have now become agents and traffickers themselves.

Limited or no English often compounds the isolation of women from Southeast Asia. Often the agent(s) holding the women are the only people with whom they can communicate. Agents operate either as part of a syndicate, and women are then passed between clubs managed or owned by members of the syndicate, or operate as an individual agent who has links with a number of clubs. Money is often exchanged for trafficked women between the owner of a club and an agent. Once a

The following coercive practices are employed to ensure the women's compliance: threats, verbal and physical abuse, their travel documents are taken away, they are reminded of the debt they owe for their travel to South Africa and for the accommodation they now have. This debt ranges from between R24 000 to R60 000.

¹³ Thai Embassy official

¹⁴ Interview with Thai Embassy official



woman has been moved from one club to another, her debt bondage starts all over again. In addition, trafficked women are indebted to syndicates in their countries of origin for the cost of their travel to South Africa. This means that even if she is able to escape, she will not be able to return home, as she would have been threatened with her life and the lives of her family.¹⁵ Some trafficked women have children from clients in South Africa, and this often increases their debt with the agent.¹⁶ Reports also indicate that some women's families have been physically abused and injured in the country of origin if the woman in South Africa tried to escape or had managed to escape.¹⁷

The trafficking of women from Southeast Asia is a well-organised operation. A syndicate operates from both the women's countries of origin and South Africa. Women are gathered in their countries of origin and photographs are taken and distributed to escort agencies in South Africa, where a mail-order operation takes place. Women are actually purchased in this manner and then transported to South Africa. It costs an agent R8 000 to bring a woman to South Africa. Her repayment, however will usually be R60 000.¹⁸ This amount must be paid through sex work before the woman is given any freedom in South Africa.

2.4. Working conditions for women

It would seem that the sex industry subjects all trafficked women to the same working conditions. These include the following:¹⁹

- that the women live in a house where only sex workers are housed
- that the women are under 24 hour surveillance
- that most of the women are housed in places according to their country or region of origin
- that they are driven to and from work by their agent
- that they have no money or travel documents
- that the woman has to repay the agent for bringing her to South Africa.

These conditions are largely the result of two factors. Firstly, agents have to ensure compliance on the part of the women to get a return on their financial investments. Secondly, the owner has to make a profit in his business. This places the women in a position where they experience direct violence and coercion from the agent. The owner on the other hand, employs less direct methods of violence. These methods are employed to ensure production and an increase in profits. The owner can maximise his profits because he usually does not buy the women and is therefore not responsible for them for life, as is the case in slavery. This system might theoretically be the most perfect system of exploitation currently in operation in South Africa. Work conditions include:²⁰

- working up to 18 hours a day
- working double shifts, working on weekends, being forced to work when ill
- being compelled to work longer hours to pay off their respective debts
- being fined for being late

¹⁵ Interview with An

¹⁶ Interview with Revathi

¹⁷ Ibid and SAPS officers

¹⁸ Interview with South African agent for trafficked Thai women

¹⁹ From interviews with women, especially Suan, Elena and Sofie

²⁰ Interviews with An, Suan and Revathi



- not being entitled to sick leave or holiday pay
- separation from fellow sex workers by language
- in some instances, working in quasi-military settings with rigid rules and fines for breaking such rules
- not being allowed to communicate in any way with fellow workers during work hours.

The work environment is also often structured in such a way that rivalry between women from different countries is encouraged.²¹ Employers are faced with the difficulty of ensuring a constant supply of labour to ensure the success of their business. Herein lies the rub for employers in the industry, as neither wages nor working conditions are sufficiently attractive to produce labour in the required numbers. Hence, the industry needs to rely on recruitment by outsiders who use deception and violence as part of their recruitment methods, and to ensure women's continued compliance through even more unscrupulous methods.

Two elements central to this system are labour migration and high labour turnover. Whilst this can be regarded as contradictory to employers' need to decrease labour turnover, what it in effect means is that in combination, these two conditions ensure that employers have access to a constant, cheap, unorganised labour force that has no rights. This is borne out by testimony from women who have worked or continue to work in the industry. A member of the Aliens Investigation Unit estimates that the cross-border trafficking of women alone averages a thousand a month. This figure includes both new recruits and women who were arrested and deported and then re-trafficked.²² It is not clear what the in-country trafficking of foreign women amounts to in terms of numbers.

2.5. Involvement of South African government officials

Many employers ignore basic conditions of employment and are in many cases complicit in the international and national trafficking of women in the sex industry. It is not clear how or even if, international and national trafficking are related, but it is clear that officials in various government departments are complicit, especially those in Home Affairs. Department of Home Affairs officials have been implicated in the issuing of illegal passports and other travel documents to trafficked people in transit to other countries.²³ However, corruption by Home Affairs officials is not necessary in order for women to enter South Africa or obtain their first renewal of a holiday visa or Section 41 1(b) permit granting temporary asylum.²⁴

It is only after an initial six-month period that a Home Affairs official in the pay of a syndicate would be needed in order to produce a false document in the case of a holiday visa. The Section 41(b)²⁵ permit can be renewed for a period of three months and allows the person to work. The applicant is entitled to appeal in the event of the renewal being refused.

²¹ From Interviews with trafficked women

²² Interview with officer in The Aliens Investigation Unit, who did not want to be named

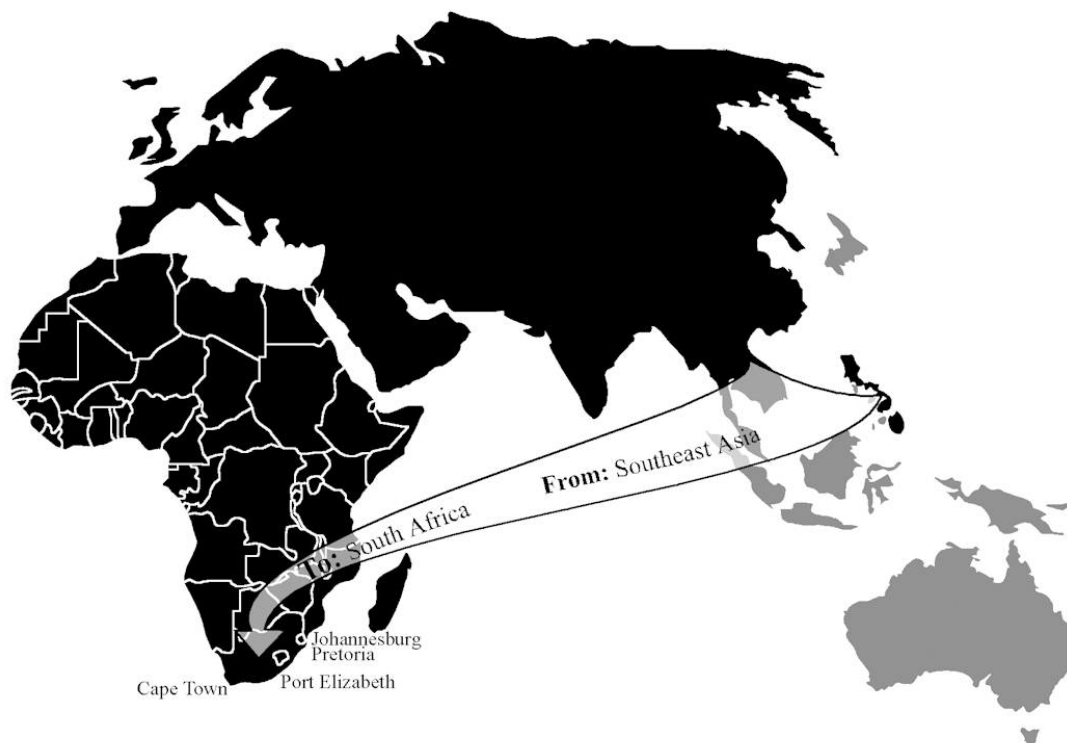
²³ G. Gifford, 'Slave-trading syndicates target SA'. *The Star* 22/10/98 and F. Peete, 'SA seen as child prostitute transit point'. *Pretoria News* 8/8/98

²⁴ Interview with Captain G. Swart of the Aliens Investigation Unit, Pretoria

²⁵ Section 41 of the Aliens Control Act 96/91 as amended makes provision for the issuing of Section 41(b) permits



Map 2: Trafficking from Southeast Asia to South Africa



Countries of origin

Syndicates

Thailand	Thai agents and syndicates
Taiwan	Triads and individual agents
China	Triads

2.6. A club owner's perspective

Whilst it appears that most owners do not buy the women themselves, and some are not even aware that the women have been trafficked, some are all too aware as the interview reproduced below demonstrates.

Saturday Argus reporter Willem Steenkamp conducted an interview with Stephanus, the owner of "The Cave", a strip club and escort agency in Cape Town after the newspaper was "tipped off that so-called porn merchants were importing foreign women into the Mother City where they were being used as virtual sex slaves." ²⁶

Included in Steenkamp's article entitled *'Fleshpot dictator and his 'girls'*, is Stephanus' account of how he acquires the women who work for him and his attitudes towards them.

On why he is operating "The Cave" he is quoted as saying:

"Hey this is my constitutional right. This is a business like any other and I have a right to make a living. There is a market out there and we satisfy that market."

On the demand for foreign women

"Ja sure," says Stephanus. "There is a huge demand for foreign girls. When we have them on our premises, business rockets. The guys all want something different."



On method of procurement

"I deal with a guy in Johannesburg who imports these girls from places like Russia, Romania, Bosnia and other east bloc countries."

"He brings them in as refugees and routes them through Botswana into South Africa. He does all the paperwork and we buy the girls from him at about R20 000 each."

"Once we have paid that amount, we own the woman; she works for us on a 60-40 split, meaning she gets 60% and we take 40% until we have recovered our money and made our profit."

"After that, the girl can decide what she wants to do. These are not stupid women. Many are graduates but they have no hope and no future in their own countries."

"They enter this business with both eyes wide open. Many of them hope to marry South Africans so they can stay here."

On how much money the women make

"And make no mistake, they make good money - between R20 000 and R28 000 a month. In their country that is a fortune."

On Sexually Transmitted Diseases

"Man, that is serious shit. I don't allow my girls to have unprotected sex. If I find out that happens I give them a **moerse klap***. Our clients have to wear condoms."

* *A hard smack.*

All emphases appear in the original text

26. W. Steenkamp: 'Fleishpot dictator and his 'girls'. *Saturday Argus* 5/6/June 1999

2.7. In their own words: Testimonies from the women

Below are extracts from the testimonies of some of the women, and of a Thai embassy official. They have been organised under specific topic headings.

Women on "How did you come to South Africa?"**Revathi (from Thailand)**

"I worked in restaurant in Thailand and then speak to somebody and then come here. And somebody go take me at airport, take me to the house, to go work in."

"In Thailand I worked in a restaurant. Then I did not work in prostitution. Do not have work permit."

An (from Thailand)

"First in my country I worked in bar, then someone asked me do you want to go outside your country? So I said which country. He said many countries. We looked in the book, so many countries, we have so many countries, the price is different. After that we go to the office of the lady, we decide which country you want to go. You have to say which country you want to go and the price."

Zora (from Russia)

"I meet the agent through a friend called Petrov. Petrov say this man can get me job in South Africa. I didn't work. Money is very good. The agent say he pay for my air ticket I pay him back. He sort all my papers. Agent came to South Africa with me. From airport he take me to the house. Then he tell me the house is for prostitution. I must work as prostitute. He take my passport and say I must pay him for passport and ticket. He say I must do work. I don't know anybody and I say yes because he tell me he hit me if I make trouble for him."

Sofie (from Bulgaria)

"I meet Nico through my friend Havl. I was unemployed then, but I worked in bar before, in Varna, where I stay, with my parents. Nico say he get me work in South Africa. I work as prostitute and make a lot of money".



On repayment of debt

Diva (from Estonia)

"He say first I pay R10 000 and then R2 500, every week for a year."

Elena (from Russia)

"I pay R2 500 a week."

Sofie (from Bulgaria)

"Bulgarian syndicates expect the women to pay back R120 000, when she is here, only then will she be free from her contract. They expect R2000 per week from us."

Thai embassy official (wants to remain anonymous due to fear of reprisal)

"The agent will provide everything, they will give you food, clothes and buy your air ticket, provide you with a house, you stay with them. But you must work, but work is different from agent to agent. Some agents say you must sleep with 300 hundred clients then you are free. Other agents will take all their money and give them subsistence money for food or money for toiletries. Sometimes they only get two meals a day."

On clients

Suan (from Thailand)

"Thai, Black people, South Africans (whites), Chinese." (Own parenthesis)

Zora (from Russia)

"All kind of men. Some say they police, some doctors."

Sofie (from Bulgaria)

"International visitors, men in government and farmers."

Neva (from Bulgaria)

"People from government and rich men from Johannesburg."

Martina (from Bulgaria)

"Only business people."

On who had worked with them in the brothels

Olena (from Russia)

"South African (meaning white South African), Thai, Russian, from Bulgaria, from Africa (meaning Africans other than South African), Romania." (Own parentheses).

An (from Thailand)

"Only Thai. Too much Thai woman."

On working conditions

Martina (from Bulgaria)

"First place I worked at, I pay R450 fine when I am late."

Suan (from Thailand)

"I cannot go anywhere, stay in the house."

Revathi on Suan (Both from Thailand)

"She was auctioned."

Whilst the following diagrammatic representation of the women interviewed may go some way towards providing an indication of who the women are and how they are kept in the industry, it is too small a sample to be representative.



Table 1: Profile of women interviewed

Name	Age	Country of origin	Occupation in country of origin	Recruited by	Length of stay in months	No of clubs worked in	Debt	Documents
Olena	26	Russia (St Petersburg)	Shop assistant	Male acquaintance	6 months	One (Pretoria)	R25 000	Holiday visa - extended
Elena	23	Russia (St Petersburg)	Caterer	Male friend	14 months	Two (Pretoria)	R32 000	Business visa
Zora	20	Russia (St Petersburg)	Waitress (unemployed when she was approached by an agent)	Male friend	8 months	Three (Pretoria and Midrand)	R25 000	Holiday visa – extended
Diva	19	Estonia (Tallinn)	Exotic dancer in Southern Europe	Employment agency in Tallinn	11 months	Two (Cape Town)	R60 000	Holiday visa – extended
Sofie	22	Bulgaria (Varna)	Bar-server	Male friend	11 months	Two (Midrand and Pretoria)	R120 000	Refugee status
Neva	26	Bulgaria (Ruse)	Waitress	Agent met through a male friend	14 months	Two (Sandton)	R120 000	Refugee Status
Martina	24	Bulgaria (Sofiya)	Teacher	Male acquaintance	18 months	Three – two in Gauteng and one in Cape Town	R60 000 paid off continues to work	Holiday visa – extended
An	25	Thailand (Bangkok)	Sex worker	Female agent. An, approached the agent herself, after seeing a catalogue of countries and repayment amounts	14 months	Three (Pretoria and Sandton)	R60 000 (paid off)	Holiday visa-expired: hoping to get permanent residence in SA through marriage to a South African
Suan	24	Thailand (Bangkok)	Bar worker	Employment agency	18 months	Three	R60 000 (paid off)	Holiday visa-expired: living in South Africa with no work and no documents
Revathi	21	Thailand (Bangkok)	Worked in a restaurant	Male acquaintance	2 years	Four (Sandton, Cape Town and Midrand)	R60 000 (paid off)	Holiday visa - expired: living in South Africa with no work and no documents



Section 3

Trafficking of women from the rest of Africa

3.1. Introduction

Information in this section is based exclusively on interviews with SAPS personnel and on newspaper reports. Nothing is known about the women themselves, other than that they are African and debt-bonded by primarily West African syndicates. These interviews and newspaper accounts do however, allow for a partial sketch of traffickers, their operations and the routes they use.

3.2. Countries of origin

With regard to the trafficking of women from the rest of Africa, South Africa is a country of destination. Women are trafficked primarily from the rest of southern Africa, excluding Botswana and Namibia which appear to be used as transit countries. This would mean that Namibia and Botswana are neither countries of origin nor countries of destination. Women are trafficked from neighbouring countries such as Angola, Zimbabwe, Lesotho and Swaziland, as well as from countries further north such as Zambia, Cameroon, Malawi and Rwanda.

3.3. The traffickers

Traffickers are mostly organised criminal groupings run by Nigerian, Angolan and Congolese networks.²⁶ The Chinese Mafia is also implicated in the trafficking of Taiwanese and Chinese women from Swaziland, which is experiencing an increase in expatriate Chinese and Taiwanese.²⁷ South Africans are also implicated in regional trafficking.

In 1998, City Press reported that a farmer from the North West Province was responsible for the trafficking of women from Lesotho.²⁸ A captain in the Wintersveld Police related to researchers how one Moçambican man was responsible for the trafficking of women and female children from Moçambique to the Wintersveld area.²⁹

The SAPS distinguish between two types of transnational criminal groups, namely, syndicates and target groups. Target groups are transnational criminal groups which the SAPS classify as being organised crime groups that are under investigation, but whose structure and activities have not been fully identified.³⁰ Syndicates are national and transnational criminal organisations with a clearly defined structure and method of operation.

It is primarily these target groups that are responsible for the trafficking of women to South Africa.³¹ According to Captain Potgieter of the Cape Town Border Patrol Unit, it is primarily

²⁶ Interviews with Captain Potgieter and Inspector Hopper

²⁷ Interview with Captain Potgieter

²⁸ M. Komane.' Job offer turns out to be brothel work'. *City Press* 1/11/98

²⁹ Interview with Captain at Wintersveld Police Station

³⁰ SAIRR: South Africa Survey 1997-1998. Johannesburg, 1998: p.39

³¹ Interview with Captain Potgieter



women from Angola who are trafficked by Nigerian target groups.³² West Africans pimp women on the streets rather than in clubs and escort agencies, unlike the Eastern European syndicates.³³

3.4. The routes

Travel from countries of origin appears to be by road. The routes are varied so as to avoid detection by border control officials. The women are brought for instance via the following routes: from Zambia, through Angola and to Namibia and from there to South Africa, or alternatively from Swaziland and/or Mozambique to South Africa en route to either Johannesburg or to Cape Town.³⁴ Women are usually brought across the South African border by minibus taxi.

3.5. Procurement technique

There appears to be only one technique used to procure the women brought into the country to be either sexually and financially exploited, or to traffic drugs.³⁵ They are brought to South Africa believing that they will be working in the hospitality industry, particularly in restaurants.³⁶ It is not clear how they are approached in their country of origin.³⁷ It is also not known how they travel to South Africa, but interviews with the Refugee Forum in Cape Town and the Women's Refugee Forum in Phillipi, Cape Town indicate that they do not come via the traditional refugee routes.³⁸

The methods of debt-bondage and coercion appear to be similar to that employed by Eastern European and Southeast Asian syndicates. Upon arrival, the women are taken to Refugee Forum offices and Home Affairs offices to apply for refugee status and Section 41(b)³⁹ permits which allow them to stay and work in South Africa for 3 months. Section 41(b) permits are renewable at regional Home Affairs offices and can be renewed several times.

Organised target groups provide women with accommodation and then place them to work in specific areas. These women are indebted to the organisation that brought them to South Africa.⁴⁰ This debt is usually for the cost of their accommodation. Some women have a debt of R25 000, which must be paid before she is released.⁴¹

³² Ibid

³³ Ibid

³⁴ Ibid

³⁵ Interviews with Inspector Hopper and Captain Potgieter of the Border Patrol Unit: Cape Town

³⁶ Ibid

³⁷ Ibid

³⁸ Interviews with member of the Cape Town Refugee Forum and member of Bon Esperanz (Women's Refugee Forum)

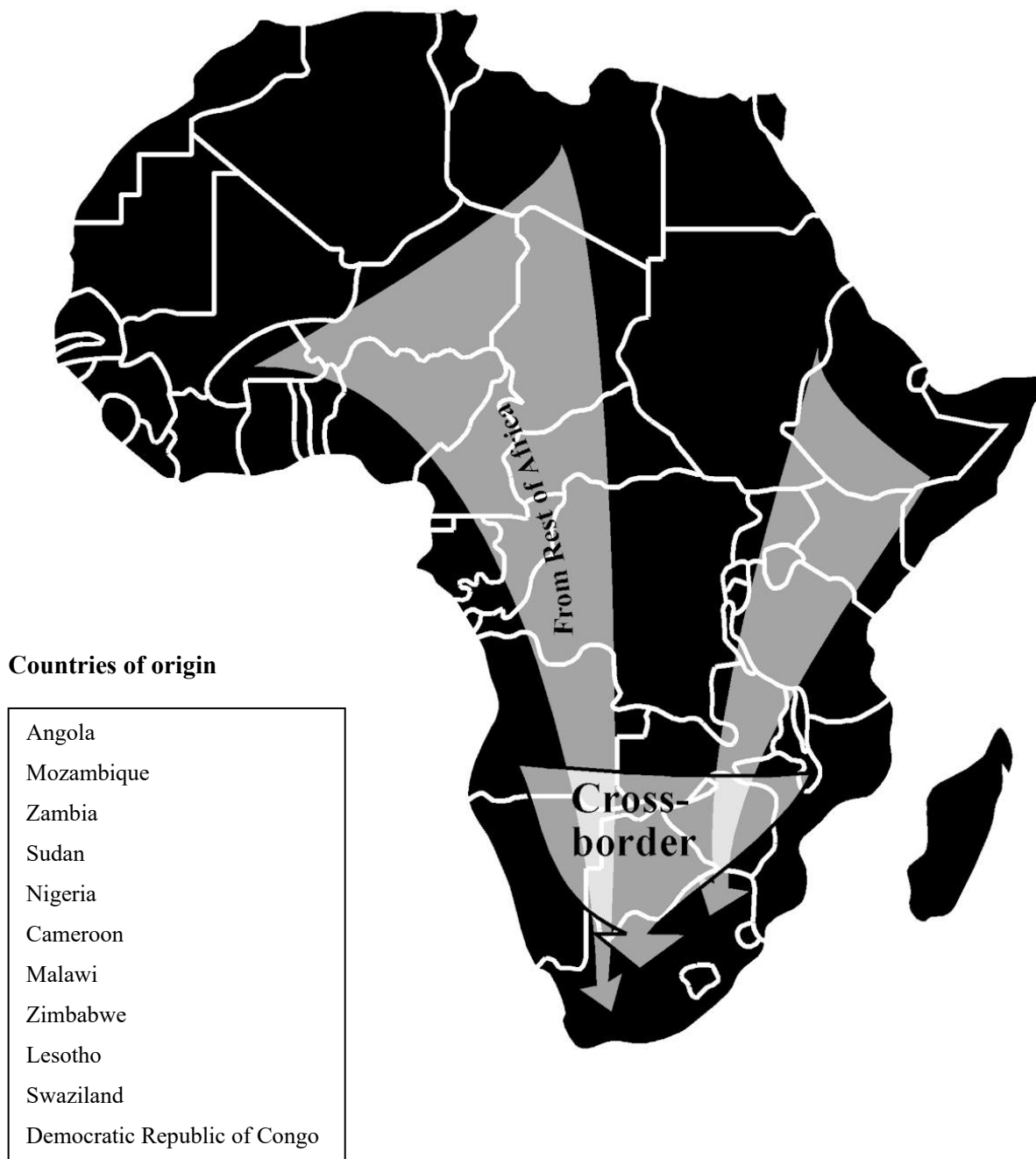
³⁹ Provided for in Section 21 of the Aliens Control Act 96/91

⁴⁰ Interview with Captain Potgieter

⁴¹ Interview with Inspector Hopper



Map 3: Cross-border trafficking of women from the rest of Africa to South Africa



Section 4

Summary of cross-border trafficking

Prostitution is criminalised in South Africa and as such it is an offence to solicit for clients or to run a brothel. Legislation which pertains to prostitution is contained in the Sexual Offences Act 23 of 1957 which criminalises prostitution in respect of women and girl children. The Act does not provide for men or boys as sex workers. The South African sex industry however is characterised by diversity. Those who work in the industry come from a variety of backgrounds and comprise men, women and children. Some of them have chosen to earn their livelihood through sex work, others have not. The industry caters mainly for those who want to buy and sell sex. This is done in a variety of settings and encompasses a number of business ventures. The table below is an attempt to capture the various sectors of the industry and to indicate the sectors into which women and children are trafficked. As indicated not all sectors rely on trafficked labour and not all sectors are criminalised in terms of South African legislation.

Table 2: Sectors of the South African sex industry

Sector	Description
Independent entrepreneurs	Two categories: women and men
Street work	Independent men and women, pimped women, trafficked women, trafficked children
Escort agencies	“Voluntary” and trafficked adults and children
Brothels	“Voluntary” and trafficked women and children
Hotel brothels	Independent and pimped, “voluntary” adults and trafficked children and trafficked women
Massage parlours *	“Voluntary” and trafficked adults and children
Telephone sex	Adult women and men
Clubs *	Adults and children: “voluntary” and trafficked
Residentially based (home of exploiter/trafficker)	Usually children: “voluntary” and trafficked
Trucking routes	“Voluntary” women, men and children
Harbours	Independent adults, pimped adults and trafficked children

** Massage parlours and clubs constitute the legal sectors of the industry.*

Women and children who originate from outside South Africa are trafficked into brothels, escort agencies and into street prostitution. Table 3 below summarises who the foreign women are who are trafficked to South and how they are trafficked.



Table 3: The cross-border trafficking of women into the South African sex industry⁴²

Regions of origin	Age	Countries of origin	Traffickers	Method	Routes	Destination City	Industry type	Documents
Eastern European	18–26	Ukraine Bulgaria, Russia, Czech Republic, Slovakia, Estonia, Latvia, Poland, Croatia, Romania	Russian Mafia, Bulgarian syndicates, ex-military personnel, individual agents	Adverts, catalogues, recruitment by agents	Via Western Europe to Jhb and Ctn international airports	Jhb, Ctn Dbn Midrand, Pta	Brothels, clubs, escort agencies	Holiday visa, Business passport, Section 41(b) permit
Southeast Asian	15–30	Thailand	Syndicates and individual agents and traffickers	Adverts, women in industry, recruitment by agents	Via Singapore to Jhb and Ctn International airports	Ctn, Jhb, Pta, PE	Brothels, clubs, escort agencies	Holiday Visa
Chinese	17–30	Taiwan, China, Swaziland	Triads, individual agents, women in the industry	Adverts, agents, recruitment by people known to the women	Jhb, PE, Ctn airports. Land travel from Swaziland – Gauteng and Cape Town	Jhb, Pta, Midrand, Ctn, PE	Brothels, clubs, escort agencies	Holiday Visa
African	Un-known	Angola, Lesotho, Swaziland, Zambia, Sudan, Moçambique, DRC, Malawi, Nigeria, Cameroon	Nigerian, Congolese, and Angolan Criminal groups, South African farmers, Chinese triads	Unknown	Swaziland – Gauteng, Swaziland-Maputo- Jhb – Ctn / Zambia-Angola-Namibia-South Africa	Jhb, Ctn, Pta, PE, Dbn	Clubs owned by Nigerians and Angolans and street prostitution. Escort agencies connected to Chinese triads	Section 41 (b) permit

Key to abbreviations:

Ctn – Cape Town
Jhb – Johannesburg
PE - Port Elizabeth
Pta - Pretoria

⁴² From interviews with women and SAPS officers



Section 5

In-country trafficking of South African women

4.1. Introduction

The number of South African women trafficked into the sex industry is unknown. The in-country trafficking of women appears to be another method used by the owners of escort agencies and brothels to ensure a steady supply of labour. The involvement of organised crime in this type of trafficking appears to be non-existent. Women trafficked into the industry experience similar working conditions to those of their foreign counterparts, namely long working hours, limited time off and limited access to health care. Violence, threats of violence and threats of exposure as a sex worker are coercive measures used to keep these women working for a particular establishment. In addition, the women are debt-bonded, albeit to a considerably smaller extent than their foreign counterparts. However, South African-trafficked women tend to develop a drug dependency, which becomes increasingly expensive to maintain. These circumstances combined with coercion, tend to keep the women in the industry for as long as owners of particular establishments require them.

The in-country trafficking of women into the sex industry takes two forms:

- Foreign-trafficked women are re-trafficked from one agency or brothel to another. This typically involves being trafficked from one province to another
- South African women are trafficked from city to city and from rural areas to urban areas.

Contact was made with 34 South African sex workers, 10 of whom were in Durban and 24 in Cape Town.

In the Cape Town sample, 4 of the women working in an escort agency had been trafficked from Port Elizabeth. From interviews and discussions with these 34 women it appears that the trafficking of local women occurs primarily from Kwa-Zulu Natal and the Eastern Cape with Cape Town, Johannesburg and Pretoria being the destinations.

Table 4: Breakdown of sample of South African women

Sector	Escort Agencies and Brothels	Street workers	Independent Entrepreneurs	Total
Number	16	17	1	34
Total	16	17	1	34

All 34 women (both trafficked and non-trafficked), indicated that their entry into sex work was the result of economic conditions and limited access to work opportunities.

5.2. Method of trafficking

The inter-provincial trafficking of women from city to city occurs primarily through advertisements placed in the employment columns of newspapers. These advertisements



typically advertise for women in the hospitality industry or as masseuse in therapeutic massage parlours. Upon answering these advertisements, the women will discover that the work is in another province and that the agency interviewing them is prepared to pay their travel expenses to the new city as well as provide them with accommodation. It is only once they arrive at the place of employment that they discover they are required to do sex work and are now debt-bonded to the owner of the agency or brothel.

Interviews with women trafficked from Port Elizabeth to a Cape Town agency revealed a method similar to that reported with regard to the trafficking of women from KwaZulu-Natal to Cape Town.⁴³ Four women interviewed in the Cape Town escort agency indicated that they had ended up in sex work as a result of responding to advertisements in the *PE Herald* which promised work for aromatherapy masseuse. The women were told that the work was in Cape Town and that they would be provided with their bus fare to and accommodation in Cape Town until such time they had secured their own accommodation. Upon arrival in Cape Town, the women were informed that their work involved sex work and that they were now debt-bonded to the agency for the costs of their travel, accommodation and food. Once this had been worked off, they were moved to another escort agency, which belonged to the same owner, and their debt started all over again. By then, they were addicted to drugs and were working to support families in Port Elizabeth as well as to finance their drug dependency.

5.3. Work conditions

Women in escort agencies indicated that in general, their work conditions are similar to those experienced by foreign-trafficked women. Their conditions of work include:

- long working hours
- limited time off – usually a Sunday afternoon
- limited access to health services
- the women working with active pelvic and vaginal infections
- subjection to violence and threats of violence from clients and management.

These conditions are in contravention of the stipulations of South Africa's Basic Conditions of Employment and Occupational Health and Safety Acts.

Case Study of a South African woman trafficked from Port Elizabeth to Cape Town

Angela is a 26-year-old woman from the Eastern Cape. She is divorced with two children who are weekly borders at a school in Port Elizabeth. Angela's children spend the weekends with their maternal grandparents who think that their daughter is working in a health club in Cape Town.

Angela was married at the age of 15 years to a man who was emotionally and physically abusive towards her. While five months pregnant with her third baby, her husband assaulted and kicked her in the stomach and she lost the child. Angela had a nervous breakdown and was finally divorced by her husband during this period. She lost custody of her children because of her nervous breakdown but the husband returned the children to her after marrying for the second time.

Although trained as a chef, she had gained no work experience. This left her in a precarious position as well

⁴³ 'Court grants interdict to protect sex slaves'. *Sunday Tribune* 25/4/99



as emotionally and financially dependent upon her family. For months she battled to find permanent work, but was unsuccessful and managed to find only temporary work as an assistant in café's and supermarkets.

Angela saw an advertisement in the *PE Herald* looking for young, attractive women for an upmarket health club in Cape Town. Training was offered in addition to other perks. Her telephonic interview was very pleasant and she was asked about her age, her weight and her experience. She was complimented on her voice and personality and was immediately offered a job. Her interviewers were sympathetic to her financial situation and offered to purchase her a bus ticket to Cape Town.

During the interview Angela recalled how excited she was at the opportunity to start a new life as well as how much the compliments had meant to her. She felt confident and excited as she prepared to leave for Cape Town. She had plans to bring her children to join her once she had saved some money and found her own accommodation.

Upon her arrival in Cape Town, she was met by a man called Jason who said he was the owner of the club where she would be working. He drove her to a house in a Cape Town suburb where she was introduced to other women working at the club. She was introduced to the manager of the club. The manager was a woman who seemed hard and aggressive and after some time Angela was called in to her office.

The manager informed her that she owed the club R1000. When she explained that she was informed this could be paid back from her salary at the club the manager laughed. The manager made it clear that this money had to be paid back as soon as possible and that she did not want to wait too long. She also informed Angela that she would not be allowed to leave until the debt had been repaid. It was at this point that she was told that in addition to giving massages, sex work was also part of the job. According to Angela she was terrified and wanted to leave but was reminded that she could not go anywhere until the money owed had been repaid.

After two days, she gave in to the constant threats and agreed to have sex with clients until she had earned the R1000. She recalled thinking that the sooner she earned the R1000 the sooner she could get out and phone her family. However, her debt had already increased because of her food and accommodation in the two days it took her to comply with the manager's demands. She related how she cried throughout her first experience of having sex with a client. Later that morning the manager told her that she was now "a whore" and would never be anything else. The manager informed her: "I own you, you are my property and if you ever try to leave I will phone your family and tell them what a whore you are". According to her this was the point at which she when knew that she was trapped. She was certain that if her family heard that she was a prostitute she would lose her children, and face rejection from her family.

Her life became unbearable as she was forced to have sex with as many clients as possible a day. At times she was taken out of her bed in her pyjamas and given to clients who were drunk or in a drugged state. She was often beaten or raped by clients with no response from the manager to her screams for help. An 18-hour workday was considered normal by the management. Time off was granted only by request and then only under escort.

The manager of the club subjected the women to verbal abuse on a daily basis and called them "whores" and other derogatory names. Verbal abuse and threats became a part of her daily life. Fines were also imposed for being late, for not wanting to work, or for talking back to the manager, which ensured that she and the other women's take-home earnings were reduced. This in turn led to a cycle of debt because of insufficient earnings to cover the initial debt or the accommodation and food costs.

Fourteen months after Angela was trafficked, her demeanour in the workplace is that of a willing sex worker who enjoys her work, attracts clients and makes a lot of money to live off. However, the woman behind this façade speaks of suicide, self-hatred, a hatred of men and sex, and sees no exit from the life of prostitution. While Angela may be living this existence under protest, the degradation and violence that she has experienced has convinced her that she is worth nothing more. During the interview, she indicated that she had a pelvic infection which was not being treated.

Neither Angela nor the other six women at this particular escort agency had been involved in prostitution prior to their "employment". The women described their upbringing as conservative. Their families and friends are not aware of what they are doing, and would probably reject them if they did.

All seven women expressed the desire to leave the agency and prostitution. They were however, fearful of the consequences if they managed to escape.

The women also said that depression was common amongst them. Four of the seven women indicated that they had attempted suicide since they were trafficked and forced into prostitution.



5.4 In summary

Women with limited work skills appear to be the most vulnerable to being trafficked into the sex industry. The primary method of recruiting women appears to be through newspaper advertisements offering work in the hospitality industry. Women are then debt-bonded to brothel and escort agency owners, and it is this debt-bondage and accompanying coercion that ensures that they stay in prostitution. Crime syndicates and gangs do not appear to be part of this operation. The women do have links with drug dealers though, which may result in their being debt-bonded to both the brothel owners and drug dealers.

KwaZulu-Natal and the Eastern Cape appear to be provinces of origin, while the Western Cape and Gauteng appear to be provinces of destination.

Map 4: In-country trafficking of South African women



KwaZulu-Natal <ul style="list-style-type: none"> • Durban • Pietermaritzburg 	Gauteng <ul style="list-style-type: none"> • Johannesburg • Pretoria
Eastern Cape <ul style="list-style-type: none"> • East London • Port Elizabeth 	Western Cape <ul style="list-style-type: none"> • Cape Town

Section 6

International scenario



6.1. Introduction

The international dimensions of the trafficking of women for purposes of prostitution are difficult to gauge. Indications are that women are trafficked primarily from developing nations and the new independent states in Eastern Europe and Russia. The trafficking is done by syndicates which operate internationally, with many countries involved. These syndicates appear to originate in the region where the trafficking takes place. So for instance Bulgarian syndicates and the Russian Mafia operate from their own territories. The Yakuza in Japan appears to operate in Asia only. However as indicated earlier in this report, the Chinese Triads operate not only from Mainland China and Taiwan but also from Swaziland. Similarly there have been reports that Nigerian syndicates operate from European countries such as the Netherlands and Italy.

Reports from anti-trafficking organisations tend to focus on the violence and degradation experienced by women and children trafficked into various sex industries. The rest of this section looks at some of these reports.

The Coalition against the Traffic in Women (CATW) reported that "as late as 1991, ... kidnapped women at the Pakistan-Afghan border (were) being sold in the marketplace for R600 per kilogram". According to the CATW, in Pakistan, auctions of girls are arranged for essentially three kinds of buyers: ⁴⁴

- rich visiting Arabs; these include sheikhs, businessmen, visitors, and state-financed medical and university students
- the rich local gentry, and
- rural farmers of modest means who cannot afford the exorbitant bride-price for a wife from their own social circle and who are looking for a wife-farmhand at affordable prices.

⁴⁴ [http://www.uri.edu/artsci/hughes/catw/catw/ htm](http://www.uri.edu/artsci/hughes/catw/catw/htm)



The report further states that in Hong Kong, men prefer local Chinese women as they believe that AIDS is brought in by foreign women. Thereafter, they favour Malaysians, Thai women and Filipinos.⁴⁵

Changes in demand and supply are reflected in the change from country of origin to country of destination. Twenty years ago, Thailand was exclusively a country of origin. Today, Thailand is a destination country for women from Yugoslavia, Russia, Poland, the Czech and Slovak republics and African countries. According to the CATW, this is due to increasing poverty and the lack of opportunities for women in Eastern Europe.⁴⁶ However this might be the result of interventions on the part of government agencies in Thailand. The Thai embassy official interviewed by researchers noted that the Thai government has taken active measures such as stricter control at airports in an attempt to stop women from being trafficked out of Thailand. And as noted earlier in this report the South African agent believes that intervention on the part of Interpol is responsible for fewer women being trafficked out of Thailand.

6.2. The world at a glance

1. Filipino, Thai and Taiwanese women are sold to the Yakuza in Japan for between US\$2 400 and US\$18 000. Agents re-sell a woman to other sex business owners at double the price
2. Sometimes women are rented at a monthly charge of between US\$1 600 and US\$6 400 in Japan
3. The Russian Mafia traffic women to South Africa, Macao and Japan, and also traffic Russian and Ukrainian women to the Philippines
4. Women from Southeast Asia who are trafficked to Australia are saddled with a debt of US\$15 000 to US\$18 000 at the onset. This is only paid off once they have had at least 400 clients at \$45 each. Only thereafter can they start earning for themselves
5. In Thailand and South Africa, traffickers and agents sell a woman to another establishment just before her debt is paid off. At the new establishment she starts paying her debt off all over again
6. In India, Nepalese and Bangladeshi women work longer hours and have more clients than the local sex workers in order to pay off their debt. They often work without condoms and undercut prices to attract more clients
7. Thai women smuggled or trafficked into South Africa are put on auction
8. The Sydney Sexual Health Centre claims that many women work whilst in pain and suffering from active infections, pelvic inflammatory diseases, acute herpes and traumatic pelvic syndrome. In South Africa, field researchers on this project encountered

⁴⁵ Ibid

⁴⁶ Ibid



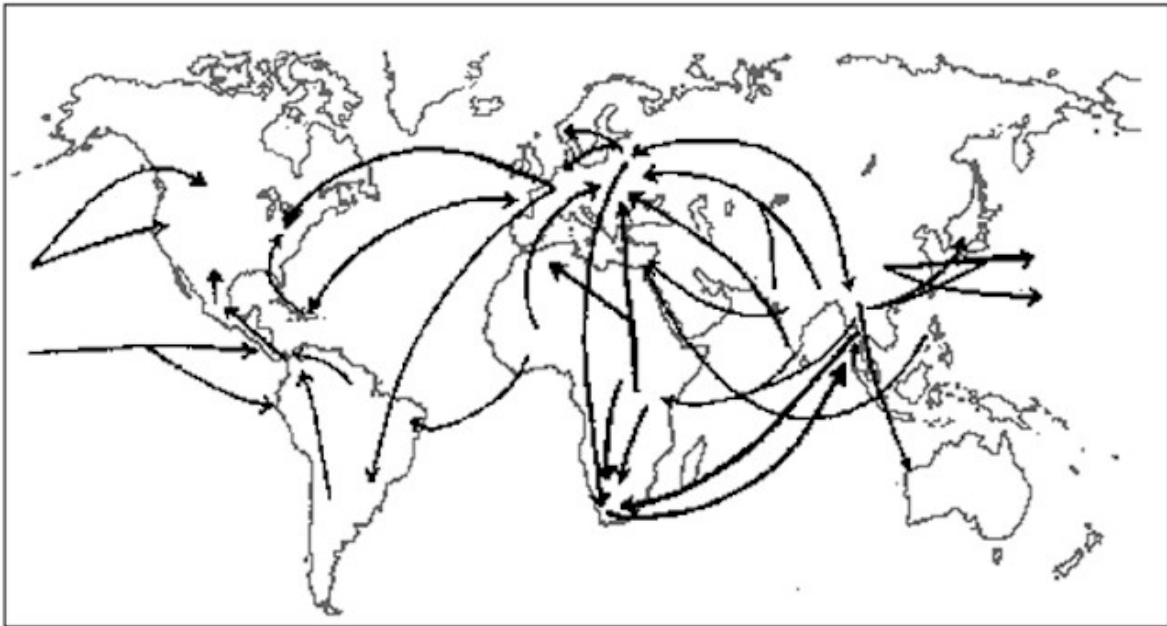
in-country trafficked women who work whilst suffering from similar health problems

9. Women from Bangladesh and Nepal who migrate to Indian and Pakistani cities find themselves locked up in brothels there
10. Thai women who are lured to Canada with promises of work as salespersons and waitresses are forced to do sex work
11. Philippine nationals go abroad believing that they will work as housemaids and entertainers and find themselves in the sex industry
12. Vietnamese women go to other countries as tourists looking for work, only to be sucked into the sex industry of that country by the travel agency that organised the job-seeking tour
13. Sri Lankan women have been lured to Japan and Korea by training officers, ostensibly to undergo job training, and have then found themselves in the sex industry
14. Thai agents operating in South Africa expect, on average, R60 000 in debt repayment from smuggled or trafficked women whereas Bulgarian syndicates expect R120 000
15. For Japan as destination country the contract can be as high as 1 000 000 Baht (R200 000) for Thai women
16. Between 1994 and the first half of 1995 investigation into the cases of trafficking of women into the Austrian sex industry resulted in the identification of 752 women trafficked from 35 countries
17. Ireland had about 600 sex workers in 1996 and no reported cases of trafficking into the sex industry. Women were however trafficked into domestic service and as brides.

Compiled from various websites and interviews with trafficked women and a South African agent of trafficked women.



Map 5: World trafficking routes



Major trafficking flows around the world. Sources: *New York Times*, International Labour Organisation, Cambodian Women's Development Center, *Los Angeles Times*, United Nations Human Rights Commission, Global Alliance Against Trafficking in Women, Foundation for Women, International Human Rights Law Group, Women in Law Project, International Organisation for Migration and Molo Songololo.



Section 7

Trafficking of women for sexual purposes and the law: A review of current and proposed South African legislation and selected International Women's Rights Instruments

7.1. Introduction

South Africa does not have legislation that specifically prohibits the trafficking of persons. There are however, legal measures that can be applied to prosecute alleged offenders for offences related to the trafficking of women for purposes of sexual exploitation and forced entry into the South African sex industry.

The following is a review of current and proposed South African legislation pertaining to the commercial exploitation of women, discrimination against women, and the trafficking of women for sexual purposes.

The underlying principles of this review are that women should enjoy the right to respect and protection of their human dignity, as well as non-discrimination. These rights are reflected in the South African Constitution as well as in International Instruments such as those outlined below.

7.2. International Women's Rights Instruments

- **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979**

The recommendations of this Convention were ratified by South Africa on 15 December 1995.

CEDAW is based on the understanding *'that discrimination against women violates the principles of equality of rights and respect for human dignity'* and highlights the need for all State parties to introduce measures that combat discrimination against women in all spheres of society.

The Convention defines 'discrimination against women' as *"having the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, ... of human rights and fundamental freedoms"*.

This broad definition of discrimination against women would therefore also be applicable to gender-based violence, including trafficking of women for sexual purposes.

The Convention states in Article 6 *that 'State Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women'*.



By ratifying this Convention, South Africa accepted the obligation to introduce trafficking legislation to successfully protect women from all forms of discrimination, violence and/or abuse, including trafficking of women and women's commercial sexual exploitation.

The General Recommendation No 19 to CEDAW deals with violence against women. It states in relation to Article 6 (Prostitution) of the Convention *that 'poverty and unemployment increase the opportunities for trafficking in women'* (Section 14) and Article 15 reads:

Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalise them. They need the equal protection of laws against rape and other forms of violence.

In June 1998, the CEDAW Committee reviewed South Africa's report on progress made in implementing anti-trafficking laws, and concluded (in Section 125), *'that insufficient attention was being devoted to the problem of trafficking in women'*. It recommended (in Section 126), *'that both the legal situation and the reality with regard to trafficking in women be addressed'*. These recommendations place an additional obligation on South Africa to address the issue of trafficking of women for sexual purposes and institute appropriate legal counter measures to the trafficking, and sexual exploitation of women.

- **United Nations Declaration on the Elimination of Discrimination against Women (1967)**
The United Nations' (UN) Declaration on the Elimination of Discrimination against Women (1967) considers discrimination against women as *'incompatible with human dignity'* and states in Article 8 that *'all appropriate measures, including legislation, shall be taken to combat all forms of traffic in women and exploitation of prostitution of women'*.

The Declaration emphasises the importance of combating discrimination against women in all spheres of society as well as the need to introduce legislative measures to protect women's dignity and human rights by prohibiting the trafficking of women for sexual purposes and their forced entry into the sex industry.

- **United Nations Declaration on the Elimination of Violence against Women (1993)**
This Declaration recognises the *'urgent need for the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings'*.

The Declaration defines *'violence against women'* as

Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

Article 4 of the Declaration places an obligation on States to condemn all forms of violence against women and to

work to ensure ... that women subjected to violence, and where appropriate their children have specialised assistance, such as rehabilitation, ... , treatment, counselling, and health and social services facilities and programmes as well as support structures, and should take all appropriate measures to promote their safety and physical and psychological rehabilitation. (Section G).

Trafficking of women for sexual purposes as one form of gender-based violence needs to be addressed as part of the struggle to combat violence against women. This Declaration places an obligation on State Parties to take all appropriate measures against gender-based violence. In terms of this Declaration, State Parties also have the responsibility to provide rehabilitative measures for survivors of gender-based violence. With regard to trafficked women, this would also include places of safety as well as counselling and treatment facilities.

- **UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)**

South Africa ratified the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) on 10 October 1951.

The underlying principle of the Convention is *that 'prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person'.*

Article 1 of the Convention places an obligation on State Parties *'to punish any person who, to gratify the passions of another:*

- 1) *procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person*
- 2) *exploits the prostitution of another person, even with the consent of that person.*

Articles 17, 18 and 19 require State Parties to adopt appropriate measures for the protection of trafficked women. Article 17 states that the following particular measures have to be adopted:

- 1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route
- 2) To arrange for appropriate publicity warning the public of the dangers of the aforesaid traffic
- 3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route, and of other public places, in order to prevent international traffic in persons for the purpose of prostitution
- 4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be principals and accomplices in or victims of such traffic.

Article 18 places an obligation on State Parties *'to have declarations taken from aliens who are prostitutes, in order to establish their identity and civil status and to discover who has caused them to leave their State'.* The information gathered is for use in the repatriation of trafficked women as well as for the prosecution of traffickers.



Article 19 provides for the treatment of trafficked women prior to their repatriation. The Article states that *'without prejudice to prosecution or other action for violations thereunder and so far as possible:*

Pending the completion of arrangements for the repatriation of destitute victims of international traffic in persons for the purpose of prostitution, to make suitable provisions for their temporary care and maintenance.

By signing and ratifying this Convention South Africa accepted the responsibility to prosecute any person involved in the trafficking of women, as well as the obligation to protect trafficked women and provide care for women trafficked.

- **UN Slavery Convention (1926)**

South Africa ratified the UN Slavery Convention (1926) on 18 June 1927.

The Convention defines *'slavery'* as *'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'*. It further defines *'slave trade'* as

All acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.

Article 5 of the Convention places an obligation on State Parties *'to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery'*.

The trafficking of women who then become debt-bonded and forced to work in the sex industry to pay off their debts, constitutes a form of *'forced labour'*. Clearly, the living conditions of trafficked women - characterised by isolation, constant surveillance and being subjected to abuse and threats - are *'conditions analogous to slavery'*. Furthermore, the *'trade'* of women as profitable assets in the sex industry is covered under this Convention. It is therefore South Africa's responsibility and obligation to take comprehensive and appropriate measures to combat all forms of forced labour and the slave-like conditions under which trafficked women work and live.

- **Protocol to the Convention against Transnational Organised Crime**

This Protocol is currently being developed by the UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organised Crime, and is scheduled for completion in October 2000. South Africa is represented on the Ad Hoc Committee.

Since this Protocol is still in the drafting stage, only the main points of concern will be mentioned here.

The focus of the Protocol is to prohibit the *'trafficking in persons'* for any exploitative purposes. Special emphasis is given to the prevention, suppression and punishment of trafficking of women and children for purposes of sexual exploitation and forced entry into the sex industry.

The Draft Protocol defines *'trafficking in persons'* as

The recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force, by abduction, fraud, deception, coercion, or the abuse of power or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of slavery, forced labour or servitude, including through sexual exploitation (Option 2)



It further defines trafficking in the context of children as

Recruitment, transportation, transfer, harbouring or receipt of any child, or giving of payments or benefits to achieve the consent of a person having control of a child, for the purpose of slavery, forced labour or servitude or for the purpose of using, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances.

Chapter 2 of the Draft Protocol deals with the protection of trafficked persons and places an obligation on States to assist and protect victims of trafficking. It focuses on issues surrounding the repatriation of trafficked persons and also highlights the importance of rehabilitation. In addition, the responsibility of States to take *all 'necessary and appropriate measures to allow the seizure and confiscation of gains'* from any trafficking-related activities is emphasised.

The proposed Protocol states in Chapter 3, that there is a need to strengthen legislative measures dealing with immigration and emigration, and also points out the need for transnational co-operation to successfully combat trafficking of persons for any form of exploitation, and protect victims and survivors of these trafficking operations. It also identifies the need to protect women who are survivors of trafficking for sexual purposes from re-victimisation.

7.3. The South African Legal Framework

7.3.1. Introduction

The South African Constitution (1996) provides in Section 10 for the right to human dignity and states that *'everyone has inherent dignity and the right to have their dignity respected and protected'*. Section 12 guarantees the constitutional right of everyone to freedom and security. This includes the *right 'to be free of all forms of violence from either public or private sources'* (Section 12(1)(c)) and *'not to be treated or punished in a cruel, inhuman or degrading way'* (Section 12 (1)(e)). The right not to *'be subjected to slavery, servitude or forced labour'* is guaranteed in Section 13 of the Constitution.

The constitutional rights defined in the Bill of Rights are applicable to *'everyone'*, which includes trafficked women forced into the sex industry.

The following analysis will focus on legislative measures aimed at the protection of women trafficked for sexual purposes as well as forced entry into the sex industry. Included in this review, are criminal law provisions aimed at the prosecution of anyone who is directly or indirectly involved and participates in trafficking of women for purposes of sexual exploitation, and those who facilitate and enable in any way the trafficking of women for the purpose of such exploitation. Legislation related to foreign nationals, such as immigrants and refugees is also reviewed.

7.3.2. South African Legislation

The following laws are reviewed:

- Basic Conditions of Employment Act, No 57 of 1997
- Occupational Health and Safety Act, No 85 of 1993
- Domestic Violence Act, No 116 of 1998
- Sexual Offences Act, No 23 of 1957, as amended 1988



- Proposed Draft Sexual Offences Bill, 1999
- Prevention of Organised Crime Act, No 121 of 1998, as amended 1999
- Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000
- Aliens Control Act, No 96 of 1991, as amended 1995
- Immigration Bill, 2000
- Refugees Act, No 130 of 1998

The review of the above legislation is limited to offences that are directly related to activities surrounding the trafficking of women for sexual purposes and the forced entry of women into the sex industry.

- **Basic Conditions of Employment Act, No 57 of 1997**

Chapter 2 of the Basic Conditions of Employment Act (1997) regulates hours of work and states that working hours must be regulated *'in accordance with the provisions of any Act governing occupational health and safety'* as well as *'with due regard to the health and safety'*.

The Act defines *'employee'* as any person *'who works for another person ... and who receives, or is entitled to receive any remuneration'*. It further defines *'remuneration'* as *'any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person'*.

This means that a woman trafficked for sexual purposes and forced to work in the sex industry in exchange for money would be regarded as an employee and her working conditions would be subject to the regulations of this Act.

Section 9 regulates the hours of work by stipulating that an *'employer may not require or permit an employee to work more than --*

(a) 45 hours in any week; and

(b) nine hours in any day if the employee works for five days or fewer in a week;

or

(c) eight hours in any day if the employee works on more than five days in a week.

Section 10 pertains to overtime and stipulates that *'an employer may not require or permit an employee ... to work more than three hours overtime a day or ten hours overtime a week'*.

Section 15 of this Act regulates daily and weekly rest periods of *'at least twelve consecutive hours'* a day between *'ending and commencing work'* as well as *'at least 36 consecutive hours'* in a week that must include a Sunday.

The working conditions of women trafficked into the sex industry clearly constitute a violation of this Act. Women are forced to work up to 18 hours a day, have limited time off and continue to work while sick.

Chapter 6 of the Act prohibits forced labour. In terms of Section 48, *'no person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour'*.



Women forced by traffickers (i.e. an 'employer') into circumstances and conditions of work that are hazardous to their health (i.e. 'work in the sex industry'), are protected by the basic conditions of employment as outlined in this Act. In addition, any form or method of trafficking of women for sexual purposes should automatically be regarded as 'forced labour' and therefore be prosecutable under this provision.

- **Occupational Health and Safety Act**

The Occupational Health and Safety Act (1993) provides for the health and safety of persons at work as well as the protection of persons *'against hazards to health and safety arising out of or in connection with the activities of persons at work'*.

The Act defines *'hazard'* as *'a source of or exposure to danger,'* and *'healthy'* as *'free from illness or injury attributable to occupational causes'*.

Section 8 places an obligation on the employer to ensure that *the 'working environment is safe and without risk to the health'*. Section 8(2)(b) outlines *'employer's duties'* as *'taking such steps as may be reasonably practicable to eliminate or mitigate any hazard or potential hazard to the safety or health of employees'*.

Section 9 of the Act outlines the duties of employers to persons other than their employees and Section 9(1) reads:

Every employer shall conduct his [or her] undertaking in such a manner as to ensure, as far as is reasonably practicable, that persons other than those in his [or her] employment who may be directly affected by his [or her] activities are not thereby exposed to hazards to their health or safety.

Section 14 deals with the duties of employees at work and states that *Every employee shall at work - take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions.*

This means that as employees, trafficked women have a duty to protect themselves from hazards and risks to their health, in the same way that their employer (i.e. agent or owner), is obliged to protect his employees (i.e. women in the sex industry) from health and safety risks. Women forced by agents and owners to work in the sex industry are continuously put at occupational risk and are coerced to work under circumstances that endanger their safety and health. In addition, forcing women with active pelvic and vaginal infections to work constitutes a violation of this Act.

- **Sexual Offences Act, No 23 of 1957, as amended 1988**

This Act deals mainly with brothels and *'unlawful carnal intercourse'*. It does not make adequate provision for the prosecution of offences related to trafficking of women for sexual purposes and the consequent forced entry of women into the sex industry. More effective measures in this regard are contained in the proposed Sexual Offences Bill (1999).

The Sexual Offences Act however, is the law most applicable for the protection of victims of sexual offences and the prosecution of offenders.



This Act defines:

'brothel' as 'any house or place kept or used for purposes of prostitution or for persons to visit for the purpose of having unlawful carnal intercourse or any other lewd or indecent purpose'.

'Unlawful carnal intercourse' is defined as carnal intercourse otherwise than between husband and wife'.

Section 2 of this Act makes it an offence to keep a *'brothel'* and defines in Sections 3 persons who are *'deemed to keep a brothel'* as any person

- a) residing in
- b) managing or assisting in the management of
- c) knowingly receives money taken in
- d) being the tenant or occupier of any house or place and knowingly permits the same to be used as; and
- e) being the owner of any property and lets the same, or allows the same to be let, or continues to be let with the knowledge of it being a *'brothel'*.

Even though persons who are directly and indirectly involved with the property used as a *'brothel'* are committing an offence and can be prosecuted, the limitation of this and any other Section of this Act lies in the narrow definition of a *'brothel'* and *'unlawful carnal intercourse'*. Only a narrow understanding of sexual intercourse is included and not any other form of sexual activity. In addition, this Act is limited by the underlying notion that only women can be victims of sexual offences and therefore excludes any provisions for the prosecution of sexual offences committed against men.

Section 10 deals with procurement and states, that:

Any person who-

- a) *procures or attempts to procure any female to have unlawful carnal intercourse with any person other than the procurer or in any way assists in bringing about such intercourse; or*
- b) *inveigles or entices any female to a brothel for the purpose of unlawful carnal intercourse or prostitution or conceals in any such house or place any female so inveigled or enticed; or*
- c) *procures or attempts to procure any female to become a common prostitute; or*
- d) *procures or attempts to procure any female to become an inmate of a brothel; or applies, administers to or causes to be taken by any female any drug, intoxicating liquor, matter or things with intent to stupefy or overpower her so as thereby to enable any person other than the procurer to have unlawful carnal intercourse with such female, shall be guilty of an offence.*

This Section is inclusive of acts such as coercion and the use of drugs for the purpose of sexual exploitation. However, due to the narrow common law understanding of *'carnal intercourse'* (i.e. a man having sex with a woman), this Section does not explicitly provide for the prosecution of female offenders committing *'unlawful sexual activities'* with other females.

Section 11 makes conspiracy an offence only in the case of a female being induced by false pretence or fraudulent means to allow a male to have *'unlawful carnal intercourse'* with her. Therefore, conspiracy in this context, is not an offence in the case of a male submitting another male to sexual exploitation, or a female submitting another female to sexual exploitation.

Section 18 of the Act prohibits any use of drugs, etc. for purposes of defilement of females who have been drugged. This provision allows for the protection of women who have been drugged so that the trafficker/pimp can sell her.

Section 19 deals with enticement to the commission of immoral acts and states in Section 19(a)



that any person who *'entices, solicits, or importunes in any public place for immoral purposes'* shall be guilty of an offence.

Section 20 of the Act makes it an offence for any person to live off the earnings of prostitution and related activities. According to Section 20(1) any person is guilty of an offence who:

- a) *knowingly lives wholly or in part on the earnings of prostitution; or*
- b) *has unlawful carnal intercourse, or commits an act of indecency, with any person for reward;*
or
- c) *in public commits any act of indecency with another person; or*
- d) *in public or in private in any way assists in bringing about, or receives any consideration for, the commission by any person of any act of indecency with another person.*

This Section allows for the prosecution of any person who directly or indirectly gains from any *'act of indecency'* as well as from the facilitation of such acts. This provision however, also makes the trafficked woman guilty of an offence. In so doing, the Act allows for the prosecution of women working in the sex industry, regardless of whether they do so voluntarily or not. This Section then fails to address situations of trafficking for sexual purposes and the coercion of women to work in the sex industry.

- **Proposed Draft Sexual Offences Bill, 1999**

The preamble of the proposed Draft Sexual Offences Bill (1999) highlights the high incidence of sexual offences *'which have a particularly disadvantageous impact on the equal participation of the victims of such offences in society'*, and accuses current legislation of failing to deal effectively and in a non-discriminatory manner with activities associated with sexual offences, thereby failing to provide adequate protection against sexual exploitation to the victims of such activities

Chapter 2 deals with general sexual offences such as rape and compelled sexual acts and as such is the Chapter most relevant to the issues under discussion.

To provide for more substantive protection for victims of sexual offences, the Bill applies a broad meaning to *'coercive circumstances'* and *'sexual penetration'*, such that an act of *'sexual penetration'* under coercive circumstances constitutes rape. The broader definition of *'sexual penetration'* overcomes the problems of narrow definition created by the term *'carnal intercourse'* used in Sexual Offences Act.

The Bill defines *'coercive circumstances'* as circumstances where

- a) *there is any application of force, whether explicit or implicit, direct or indirect, physical or psychological against any person or animal*
- b) *there is any threat, whether verbal or through conduct, direct or indirect, to cause any form of harm to any person or animal*
- d) *there is an abuse of power or authority, whether explicit or implicit, direct or indirect, to the extent that one person is inhibited from indicating his or her resistance to an act of sexual penetration, or his or her willingness to participate in such an act*
- e) *a person's mental capacity is affected by ... any drug, intoxicating liquor or other substances.*

Chapter 2 further provides for the prosecution of those who commit rape, compelled sexual acts, the inducement to allow sexual acts, and the administering of substances in order to commit sexual acts.

Section 2 of this Act makes rape a sexual offence and states in Section 2(1) that



Any person who intentionally and unlawfully commits an act of sexual penetration with another person, or who intentionally and unlawfully causes another person to commit such an act is guilty of an offence.

It further states in Section 2(2) that *'an act of sexual penetration is prima facie unlawful if it takes place in any coercive circumstances'*.

Since the definition of *'coercive circumstances'* encompasses threats to cause harm as well as indirect or implicit force, sexual penetration may be construed as rape, a prosecutable offence. This implies that agents or owners are guilty of committing a sexual offence and/or rape by coercing trafficked women to work in the sex industry and commit sexual acts with *'clients'*.

Section 3 makes it an offence for any person to intentionally compel another person to engage in a sexual act with that person or any other person. In the context of trafficking of women for sexual purposes this makes a pimp or any other person who coerces a woman to submit to a sexual act guilty of an offence under this section.

Section 4 makes any person guilty of an offence *'who intentionally induces another person by false pretence or fraudulent means to allow him or her to commit a sexual act with that person'*. This would also apply to the trafficker who under false pretences (i.e. offer of employment in the hospitality industry) induces foreign nationals to come to this country and submit them to debt-bondage to work in the sex industry after their arrival. In addition it would apply to any person who induces citizens or residents of this country to go to another country for sexual purposes.

Section 5 prohibits the administering of substances for purposes of committing sexual acts and states that:

Any person who administers or applies to, or causes to be taken by another person any substance with the intent –

- a) to overpower that other person in order to commit a sexual act with that person, or*
- b) to induce that other person to allow him or her to commit a sexual act with that person, is guilty of an offence.*

The above would be applicable to the pimp or owner who supplies substances such as liquor to the trafficked women to make them *'willing'* to work in the sex industry. It would also apply to the owner who creates drug dependency in trafficked women to increase debt-bondage ensuring the further dependency of trafficked women to work in the sex industry. This Section is a reformulation of Section 18 of the Sexual Offences Act (1957).

Chapter 6, Section 15 of this proposed Bill highlights that the conspiracy with and incitement of any person to commit sexual offences is an offence. This means that any person directly or indirectly involved in activities of trafficking with the purpose of coercing women to engage in sexual acts is guilty of an offence.

- **Domestic Violence Act, No 116 of 1998**

This Act is another legislative measure that can be used for the protection of women trafficked for sexual purposes.

Its broad definition of the *'domestic relationship'* in which violence can occur *encompasses 'an actual or perceived romantic, intimate or sexual relationship of any duration'*, as well as a relationship between persons *'sharing the same residence'*. The definition of *'domestic violence'* allows for the inclusion of a variety of forms of abuse (e.g. physical, sexual, emotional, psychological and economic), intimidation (i.e. uttering or conveying a threat, which induces fear), harassment (i.e. pattern of conduct that induces fear of harm), as well as *'any other*



controlling behaviour'.

In terms of the provisions of this Act, anyone who coerces someone to commit a sexual act through harassment and intimidation is guilty of an offence. In the same way, coercion to submit to sexual abuse (i.e. *'conduct that abuses, humiliates, degrades or otherwise violates the sexual integrity'*) of any kind through intimidation (i.e. threat of harm to family members) constitutes an offence. Thus, acts relating to the trafficking of women for sexual purposes fall within the scope of this legislation.

Further, according to this Act, it constitutes abuse when trafficked women are kept in isolation from one another and deprived of freedom of movement, have no access to money or their documents, and are kept under 24 hour surveillance. In addition, coercive practices such as threats, verbal and physical abuse, employed by agents and/or owners of establishments where women are *'kept'* and/or coerced to commit sexual acts, could be prosecutable in terms of the provisions of this Act. This would apply if a *'domestic relationship'* based on shared residence and/or *'actual or perceived sexual relationship'* can be established. This Act therefore allows for the protection of trafficked women who are permanently subjected to violence and/or abuse from clients, owners, and agents as well as subjected to threats of violence and/or abuse.

- **Prevention of Organised Crime Act, No 121 of 1998, as amended 1999**

This Act constitutes the most comprehensive criminal law provision to date that deals with offences related to the trafficking of women for sexual purposes. It is aimed at the prohibition and criminalisation of certain activities related to criminal gang behaviour and racketeering. In addition, this Act provides for the recovery of the proceeds of unlawful activities as well as the civil forfeiture of criminal assets that have either been used to commit an offence or are the proceeds of such an offence.

The Act deals with sexual violations committed against another person, where the alleged offender by means of coercion, ensures and facilitates access to a woman for the purposes of sex. In this regard it is important to note that the following, amongst others, are declared criminal offences in terms of Schedule 1 of this Act.

2. *rape*

3. *kidnapping*

8. *indecent assault*

11. *contravention of section 20(1) of the Sexual Offences Act, 1957*

22. *any offence referred to in section 13 of the Drugs and Drug Trafficking Act, 1992*

34. *any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.*

Further, this Act defines in Section 1

'property' as money or any other movable, immovable, corporal or incorporeal thing and includes any rights, privileges, claims and securities and any interest therein and all proceeds thereof;

'proceeds of unlawful activities' as any property or part thereof or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in connection with or as a result of any unlawful activity; and

'enterprise' as any individual, partnership, corporation, association... and any group of individuals associated in fact.

Chapter 2 of this Act provides for offences relating to racketeering activities (i.e. planned, ongoing, continuous or repeated participation or involvement in any offence). These offences include receiving, retaining, using or investing any property that is directly or indirectly derived from racketeering activities. It also covers the activities of enterprises, such as the managing of, the employment by, or association with such enterprises through racketeering. Finally, any



person *'who knows or ought to have reasonably known'* of those offences while engaging in any of the above activities commits a crime.

This suggests that any person who directly or indirectly gains (financially and/or non-financially) from trafficking activities could be prosecuted under this section. The pimp who knowingly and repeatedly receives and retains the *'property'* (through the transfer and harbouring of women), as well as uses and invests the *'property'* (through sexual exploitation and offering women to others for the purpose of sex in exchange for money) is committing a criminal offence. So too is the driver who repeatedly transports trafficked women from their places of residence to venues belonging to the sex industry, since he or she *'knows or ought to have reasonably known'* of criminal offences being committed, and therefore participates, directly or indirectly, in the conduct of the trafficking enterprise's activities.

Chapter 3 deals with offences related to the proceeds of unlawful activities and makes money laundering, assisting another to benefit from, as well as the acquisition, possession or use of proceeds of unlawful activities an offence (Sections 4 to 6). It also allows for the prosecution of any person who fails to report a suspicion regarding the proceeds of unlawful activities (Section 7).

In terms of the provisions of this Act all persons involved in the trafficking of women, from the trafficker to the driver of a car are guilty of a criminal offence as all of them benefit directly or indirectly from acquiring, possessing or using the proceeds (financially and/or non-financially) derived from the operation. The agent who sells a woman is guilty of obtaining proceeds from unlawful activities as much as the pimp who acquires, possesses and uses the *'proceeds'* (the woman obtained as *'property'*) of unlawful activities, as does the sex exploiter who benefits from such *'proceeds'*.

Chapter 4 of this Act covers offences related to criminal gang activities. Any person who actively participates in criminal gang-related offences or is a member of a criminal gang and who-

9(1)(a) willfully aids and abets any criminal activity committed for the benefit of, at the direction of, or in association with any criminal gang;

9(1)(b) threatens to commit, bring about or perform any act of violence or any criminal activity by a criminal gang or with the assistance of a criminal gang;

or

9(1)(c) threatens any specific person or persons in general, with retaliation in any manner or by any means whatsoever, in any act or alleged act of violence.

This section would therefore allow for the prosecution of gangs and individual gang members who traffic women for purposes of sexual exploitation. It also provides for the prosecution of agents as part of international syndicates as well as those who threaten to harm family members if trafficked women should try to escape.

- **Promotion of Equality and Prevention of Unfair Discrimination Act, No 4 of 2000**

Section 2 of this Act aims *'to give effect to the letter and spirit of the Constitution'*, in particular-

(i) the equal enjoyment of all rights and freedoms by every person

(ii) the promotion of equality

(iii) the values of non-racialism and non-sexism contained in section 1 of the Constitution

(iv) the prevention of unfair discrimination and protection of human dignity as contemplated in sections 9 and 10 of the Constitution.

This Act further promotes the prohibition of unfair discrimination on the ground of gender in Section 8, by including gender-based violence (Section 8(a)) and any practice *which 'impairs the*



dignity of women' (Section 8(d)) in its definitions of unfair discriminatory practices.

Chapter 3 of this Act deals with the burden of proof and the determination of fairness or unfairness. According to Section 13(1), the burden of proof in a case of discrimination on the ground of gender (i.e. gender-based violence and impairing the dignity of women), lies with the respondent (i.e. trafficker, who is accused of discrimination under this Act), and not with the complainant (i.e. women trafficked for sexual purposes).

- **Aliens Control Act, No 96 of 1991, as amended 1995**

The Aliens Control Act, together with the Immigration Bill and Refugees Act, are of importance in relation to cross-border, regional and international trafficking of women for sexual purposes, as well their forced entry into the sex industry. In terms of this legislation, application can be made for foreign criminal offenders to be expelled permanently from South Africa, which means the Act could be regarded as a protective measure for sexually exploited and trafficked women, were it not for the fact that the same measures can be and are applied to them. This means that the foreign women trafficked into South Africa for the purpose of sexual exploitation are prosecuted under the same provisions as the trafficker, and are repatriated to their country of origin.

Chapter 5 of the Aliens Control Act deals with prohibited persons and defines in Section 39 such person as:

(2)(c) any person who lives or has lived on the earnings of prostitution or receives or has received any part of such earnings or procures or has procured persons for immoral purposes

(2)(d) any person who has ... been convicted in any country of a contravention of a law relating to exchange control or an offence mentioned in Schedule 1 ... and is deemed by the Minister to be an undesirable inhabitant or visitor to the Republic.

Section 39(2)(c) provides for the '*removal*' of foreign nationals who are directly or indirectly involved in the trafficking of women for sexual purposes. However, it applies in the same way to foreign women coerced through trafficking into prostitution and fails to consider the circumstances under which a woman of foreign nationality is 'picked up' by police and declared a '*prostitute*'.

Chapter 6 provides for the '*removal of persons*' and states in Section 44 that *any 'prohibited person'* shall be removed from South Africa.

Section 45 allows for the '*removal of persons from the Republic because of certain offences*'. Committing an offence under the provisions of the Sexual Offences Act is included in the meaning of '*certain offences*'.

It also allows in Section 46 for the '*removal*' of a foreign national who has committed any offence within three years of entering the country and by so doing, *is 'deemed an undesirable inhabitant of or visitor to' South Africa.*

Section 28 of this Act allows for the issue of a residence permit if the '*Minister*' '*is satisfied that there are special circumstances which justify his or her decision*'. This exemption clause relating to immigration procedure could be applied in the case of trafficked women from outside the country.

- **Immigration Bill, 2000**

The Immigration Bill (2000) includes the same provisions as the Aliens Control Act, which it is intended to replace. It does not provide for the protection of women trafficked for sexual purposes.



Due to the fact that this Bill has gone back to the White Paper stage, which requires renewed discussions and the drafting of a new Bill surrounding the issues of immigration and foreign nationals, it will not be discussed here. However, it is important to note that this revision provides fresh opportunities to campaign for issues of cross-border trafficking and the protection of victims who are foreign nationals, to be included in such legislation.

- **Refugees Act, No 130 of 1998**

The Refugees Act (1998) is aimed at the provision of principles and standards relating to refugees.

Section 3 of the Act defines the circumstances under which a person qualifies for refugee status. It states in Section 3(a) that a person is eligible to apply who--

Owing to a well-founded fear of being persecuted by reason of his or her race, tribe, religion, nationality, political opinion or membership of a particular social group, is outside the country of his or her nationality and is unable or unwilling to avail himself or herself of the protection of that country, or, not having a nationality and being outside the country of his or her former habitual residence is unable, owing to such fear, unwilling to return to it.

It could be argued that women, as survivors of trafficking for sexual purposes, belong to a '*social group*' and '*owing to a well-founded fear*' (i.e. to be submitted to sexual exploitation again), are '*unwilling to return*' to their country of origin.

7.4. Recommendations

Section 7 outlined the legal situations that pertain to sex work and those who work in the industry. It noted that South Africa does not have legislation which expressly prohibits the trafficking of people. This report has provided details on the nature of trafficking operations with regard to sex work and has also provided information about the conditions experienced by women who are forced into the industry. Based on the findings this report makes the following recommendations.

1. That the South Law Commission is tasked with investigating the feasibility of legislation which prohibits the trafficking of persons.
2. That a workshop or seminar be held by stakeholders to discuss and plan a strategy to provide support to women who are trafficked.
3. Such a seminar or workshop should include those in government departments who might have contact with trafficked women, such as the South African Police Services, the Department of Home Affairs and the Department of Justice. Such a seminar process could assist these departments to develop guidelines for the treatment and safety of such persons.



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Legal Instruments

International Women's Rights Instruments

UN Convention on the Elimination of all Forms of Discrimination against Women (1979)
UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949)
UN Slavery Convention (1926)
UN Declaration on the Elimination of Discrimination against Women (1967)
UN Declaration on the Elimination of Violence against Women (1993)
UN Protocol to the Convention against Transnational Organised Crime (in process)

South African Legislation

The Constitution of the Republic of South Africa (1996)
Aliens Control Act, No 96 of 1991, as amended 1995
Basic Conditions of Employment Act, No 57 of 1997
Domestic Violence Act, No 116 of 1998
Immigration Bill, 2000



Occupational Health and Safety Act, No 85 of 1993
Prevention of Organised Crime Act, No 121 of 1998 as amended 1999
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Refugees Act, No 130 of 1998
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