



The Annual Mothers for the Future SolidariTea event, which is hosted annually to highlight the work done by M4F for mothers who o sex work.
Photo credit: Lesego Tlhwale

SOUTH AFRICA

Ntokozo Yingwana

From the establishment of the Cape Colony in the 1600s, to the 'gold rush' of the Witwatersrand in the 1880s, and today's self-identifying 'proud migrant sex worker(s)', the selling of sex in relation to mobility and migration has a long and nuanced history in South Africa. Therefore, in trying to understand sexual exploitation (and, more specifically, human trafficking) in the sex work industry requires a revisiting of these colonial and *apartheid* pasts, and the remnants of those eras that still permeate South African current laws and policies.

Although sex work is criminalised in the country it is still widely practised and tolerated by the general public; while most people deem it immoral for religious and/or cultural reasons, many still consider it a 'necessary evil'. Poverty is highly racialised and feminised in South Africa. The unemployment rate of approximately 27.7% (of a 55 million population) is most notable among black women, accounting for 49.1% of unemployed people. Therefore, for many poor black women with limited formal education, selling sex is a viable means of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal employment, such as domestic work.

In order to avoid being identified by family and friends, many choose to sell sex away from their immediate communities, thus making sex workers a highly mobile population. Although South Africa is a source, transit, and destination country for migration, only 2.8% of the population are non-citizens. This means that internal migration is far more prevalent than cross-border migration; with migration flows usually from rural to urban areas such as Johannesburg, Cape Town, and Durban.

Although (migrant/mobile) sex work is often conflated with human trafficking, numerous studies have revealed that in comparison to other forms of human right violations that occur in the sex industry human trafficking is not a significant issue. Working with a non-governmental organisation (NGO) that advocates for the human rights of adult consenting sex workers called the Sex Worker Education & Advocacy Taskforce (SWEAT) and Sisonke, the national sex worker movement, this country study documents how these groups deal with human trafficking in the sex industry through their advocacy and organising.

The scope of the fieldwork was limited to two cities—Johannesburg and Cape Town—because of their central roles in the country’s sex work, migration, and trafficking historical landscapes and debates. Two focus groups were held in each city with Sisonke members (21 participants in total), and two individual interviews with other sex workers. In addition, eleven interviews were conducted with staff representatives from SWEAT, Sisonke, the Asijiki Coalition, Women’s Legal Centre (WLC), Sonke Gender Justice, Sediba Hope Medical Centre, and the South African National Human Trafficking Resource Helpline.

Even though they were not aware of international protocols or national laws and policies, the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement. The focus group participants and interviewees agreed that even though trafficking does take place in sex work, it is not as prevalent as other forms of human right violations they experience in the industry. Consequently, the obsession that government officials, anti-trafficking NGOs and international organisations have with human trafficking in the sex industry actually detracts attention from these more widespread but less salacious abuses.

When dealing with suspected human trafficking cases SWEAT and Sisonke sometimes work with the Department of Social Development (DSD), the Hawks anti-trafficking unit, and the South African Human Trafficking Resource Line, run by the global anti-trafficking organisation A21, although they expressed some frustration over the lack of trust and partnership often displayed by government entities. This not only makes it difficult to effectively identify and deal with cases of trafficking in the sex industry, but it also results in tensions between sex worker rights activists and anti-trafficking activists.

Therefore, a more constructive model of understanding is needed; one that makes a clear distinction between human trafficking and sex work, and which also recognises sex workers and sex worker rights organisations as allies in the fight against human trafficking. However, for these partnerships to be effective sex work needs to be decriminalised in South Africa.

Introduction

Historical, Political, and Socio-Economic Overview

The sale of sex has a long history in South Africa, often involving complex forms of coercion and abuse of (specifically enslaved and subjugated black) women. Therefore, understanding sex work and its connections to sexual violence and exploitation requires a revisiting of that colonial and apartheid-era history of racism and its manifestation through sexual interactions and laws.

In 1652, Jan van Riebeeck of the Dutch East India Company (VOC) established the Cape Colony in South Africa as a re-supply and layover port for ships trading with Southeast Asia. The settlers subjugated the indigenous Cape (San) population and also imported slaves to work in the rapidly growing colony. Even though the VOC preached against sex between the sailors and slaves, it largely tolerated sex work at the ports, as it was generally thought that after months at sea away from their wives, the sailors needed to relieve their assumed pent-up sexual urges. While it is not clear to what degree—if at all—the indigenous Cape (San) women engaged in sex work, records do show that slave women shipped from other parts of Africa were routinely sold for sex to the sailors and soldiers in the colony.¹

Built in 1676, the Company Slave Lodge (today's Iziko Museum in Cape Town) also operated as a brothel. The extent to which the already enslaved women consented to selling sex has been debated. Some historians in the 1700s, argued that the women were forced by their male partners to have sex in exchange for money with the sailors/soldiers,² while others contend that some of the women sold sex out of their own free will.³ Sex work allowed some of the slave women to buy their freedom, and free men who wanted to marry a slave woman could buy her freedom for 150 florins (colonial Dutch coin/currency).⁴ Many of the women who obtained their freedom in this way were also able to buy the freedom of their mixed-race children.

Two centuries later, in the 1880s, the discovery of gold in what was to become Johannesburg ignited a global migration by prospectors and miners to the then Transvaal Province.⁵ Newly established mining shantytowns created ideal opportunities for sex work to flourish. Again, sex workers were often from

¹ EB Van Heyningen, 'The Social Evil in the Cape Colony 1868-1902: Prostitution and the Contagious Diseases Acts', *Journal of Southern African Studies*, vol. 10, 1984, pp. 170–197.

² As quoted in N Worden, *The Chains that Bind us. A history of slavery at the Cape*, Juta, Cape Town, 1996.

³ RCH Shell, *Slavery at the Cape of Good Hope, 1680 to 1731*, Yale University, 1986.

⁴ *Ibid.*, p. 2.

⁵ H Trotter, *Sugar Girls & Seamen: A journey into the world of dockside prostitution in South Africa*, Jacana Media, 2008.

marginalised racial groups, including indigenous women and the so-called 'continental women' (mainly poor European Jewish women)⁶ who had migrated to southern Africa. The South African War (1899-1902) saw an even greater influx of European women into the country for organised sex work. Johannesburg was dubbed the City of Gold; not only for its precious metal, but also for the promise of an improved livelihood. The city largely attracted young black men who migrated from rural areas and neighbouring countries to work in the gold mines. They lived in men-only mining hostels, while women were mostly left behind in the villages/homesteads to take care of their families. The men were granted leave only once a year. This contributed to the thriving of sex work in the mining towns, especially around the migrant miners' hostels.

Around 1948 the white minority Afrikaner National Party legitimised racial segregation through the *apartheid* system. Black people were compelled to carry an identity document called the *dompas* (especially when travelling outside the villages and townships). This law greatly restricted black people's mobility and limited their economic opportunities. So while black men were able to find employment in the gold mines, black women often ended up selling sex or alcohol to the mineworkers.⁷

After decades of white oppression, Nelson Rolihlahla Mandela of the African National Congress (ANC) became South Africa's first black and democratically elected president in 1994. During this time (1994-1997) the country's Bill of Rights was drafted and enshrined in the Constitution.⁸ At the time of writing of this report, the ANC is still the governing party under President Jacob Gedleyihlekisa Zuma.

Today South Africa has a population of approximately 55 million people, with just over 80% black Africans,⁹ nine provinces and 11 official languages. Mining remains the backbone of the country's economy, with both internal and international migrants still providing most of the manual labour. With a GDP of USD 294.8 billion (2016),¹⁰ South Africa is considered a middle-income country. However, the rampant corruption by the current government has led international markets to lose faith in the country's economy. Two leading global credit rating agencies

⁶ C Van Onselen, *New Babylon and New Nineveh: Studies in the social and economic history of the Witwatersrand, 1886-1914*, London and New York City, 1982, reprinted Johannesburg, 2001.

⁷ C Van Onselen, 'Who Killed Meyer Hasenus? Organized Crime, Policing and Informing on the Witwatersrand, 1902-8', *History Workshop Journal*, no. 67, 2009, pp. 1-22.

⁸ South African History Online, *A History of the South African Constitution 1910-1996*, <http://www.sahistory.org.za/article/drafting-and-acceptance-constitution>.

⁹ Statistics South Africa, *Community Survey 2016*, <http://cs2016.statssa.gov.za/>.

¹⁰ The World Bank, *South Africa GDP (current US\$)*, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=ZA>.

recently downgraded South Africa to 'junk status', citing 'poor governance' as one of the main deterrents for investors.¹¹ The high unemployment rate of about 27.7%¹² is most notable among black women, at approximately 49.1%.¹³ Therefore, poverty is still highly feminised in South Africa. In this climate, many black women turn to sex work as the only or best option of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal work, such as domestic work.¹⁴ On average female sex workers support around four dependents, while their male colleagues about two.¹⁵

Gender and sexuality

South Africa's progressive Constitution recognises gender as a social act of expression (as opposed to biological sex), and upholds the rights of gender non-conforming persons. However, the country's rates of sexual and gender-based violence (SGBV) are still among the highest in the world. A 2014 study found that 25.3% of women had suffered some form of sexual violence, while 37.4% of men admitted to having been violent.¹⁶ In a country where rates of violence against women are already high, the rates of violence against sex workers are extreme, with female transgender sex workers at an even higher risk of abuse, as they overtly flout heteronormative ideas about gender, sexuality, and sex.

The South Africa Demographic and Health Survey (SADHS) 2016 Key Indicator Report¹⁷ states that one in five (21%) of ever-partnered women aged 18 years and older reported having experienced domestic violence, while 8% reported having experienced it during the 12 months preceding the study. Moreover, about 6% of ever-partnered women reported they had experienced sexual violence by a partner, with 2% of them having experienced that sexual violence in the previous

¹¹ Huffington Post, 'Fitch Confirms SA's Junk Status, Says Poor Governance and Weak Economy Remain "Real Risks"', *Huffington Post*, 1 June 2017, http://www.huffingtonpost.co.za/2017/06/01/fitch-confirms-sas-junk-status-says-poor-governance-and-weak-e_a_22121106/.

¹² Statistics South Africa, *Quarterly Labour Force Survey – QLFS Q1: 2017*, <http://www.statssa.gov.za/?p=9960>.

¹³ A van Wyk, 'Are 37.5% of jobless young S. Africans black women, and 31.5% white men?', *Africa Check*, 19 November 2014, <https://africacheck.org/reports/do-black-women-make-up-37-5-of-unemployed-south-africans-aged-15-34/>.

¹⁴ C Gould C and N Fick, *Selling sex in Cape Town: Sex work and human trafficking in a South African city*, Institute for Security Studies, Pretoria/Tshwane, 2008.

¹⁵ M Richter *et al.*, 'Characteristics, Sexual Behaviour and Risk Factors of Female, Male and Transgender Sex Workers in South Africa', *South African Medical Journal*, vol. 103, no. 4, 2013, pp. 246–51.

¹⁶ L Vetten, *Rape and Other Forms of Sexual Violence in South Africa*, Institute for Security Studies, Policy Brief 7, 2014.

¹⁷ Statistics South Africa, *South Africa Demographic and Health Survey (SADHS) 2016 Key Indicator Report*, <http://www.statssa.gov.za/publications/Report%2003-00-09/Report%2003-00-092016.pdf>.

12 months. It is not known how many sex workers account for the above statistics on domestic violence in the country as a whole, but according to a 2017 study, 53.8% of sex workers in Soweto had experienced intimate partner violence in the previous 12 months, while 55.5% had experienced non-intimate partner violence.¹⁸ More research is needed on intimate partner violence among sex workers, in order to ascertain exactly how to best help support victims.

The SGBV meted out against sex workers is deeply rooted in patriarchy. This opens up sex workers to a lot of client abuse, with few avenues for legal recourse. In addition, when police, who are also predominately male, enforce criminalisation there is often a gender bias; they tend to detain the sex worker (or ask for sexual favours), while letting the client go on a warning (or bribe).¹⁹ A 2012 study by the Women's Legal Centre (WLC) revealed that 70% of sex workers reported having experienced some form of police brutality.²⁰ Consequently, when attempting to address SGBV in sex work, it is important to consider these gender and sexual dynamics, in relation to the criminalised status of the industry.

A quarter of the interviewed cross-border migrants sold sex before leaving their place of birth. This study, along with others, challenges the notion that foreign-born sex workers in South Africa enter sex work initially as victims of human trafficking and/or sexual exploitation.

Migration and xenophobia

South Africa is a source, transit, and destination country for migration. According to the country's Community Survey 2016 report only 2.8% of the population are non-citizens.²¹ Internal migration is far more prevalent than cross-border migration,²² with migration flows usually from rural to urban areas such as Johannesburg, Cape Town, and Durban.

¹⁸ J Coetzee *et al.*, 'Cross-Sectional Study of Female Sex Workers in Soweto, South Africa: Factors associated with HIV infection', *Public Library Of Science (PloS) ONE* 12(10), 2017, <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0184775>.

¹⁹ S Manoek, 'Stop Harassing Us! Tackle Real Crime!': *A report on human rights violations by police against sex workers in South Africa*, Women's Legal Centre, 2012, <http://wlce.co.za/wp-content/uploads/2017/02/210812-FINAL-WEB-version.pdf>.

²⁰ *Ibid.*, p. 18.

²¹ *Ibid.*, p. 10.

²² I Palmary, *Gender, Sexuality and Migration in South Africa Governing Morality*, Palgrave Macmillan, 2016.

The number of migrants in the sex industry is much higher. A 2010 cross-sectional survey revealed that of the 1,653 female sex worker respondents, 46.3% were cross-border migrants.²³ The concentration of migrant sex workers in the metropolitan areas often gives members of those communities (and local sex workers) the impression that migrant sex work is very prevalent. As a result, during a recent spate of xenophobic violence, residents of a Johannesburg suburb attacked brothels allegedly owned by foreign nationals.²⁴ These attacks and subsequent police raids were often justified as attempts to combat drugs, human trafficking and other perceived forms of criminality of migrants.

However, the abovementioned survey also found that a quarter of the interviewed cross-border migrants sold sex before leaving their place of birth. This study, along with others, including Oliveira, 2011²⁵ and Gould, 2011,²⁶ challenges the notion that foreign-born sex workers in South Africa enter sex work initially as victims of human trafficking and/or sexual exploitation.

Sex Work Landscape

Sex work socio-demographics and the law

According to a 2013 sex worker population size estimate study there are approximately 153,000 sex workers in South Africa: around 6,000 transgender females, 7,000 males and about 138,000 females (nearly 0,9% of the country's female population)²⁷ most of whom are black and around 70% street-based.²⁸ The average age of debut into sex work is 24 years²⁹, and the average length of time in the industry is 12 years.

Sex work in South Africa is fully criminalised under Section 20(1)(aA) of the Sexual Offences Act (SOA) of 1957, and its 2007 Amendment. This means that the sex

²³ M Richter *et al.*, 'Migration Status, Work Conditions and Health Utilization of Female Sex Workers in Three South African Cities', *Journal of Immigrant and Minority Health*, vol. 16, issue 1, 2014, pp. 7–17.

²⁴ 'UPDATE: Four "brothels" set alight in Rosettenville', *eNCA.com*, 12 February 2017, <http://www.enca.com/south-africa/four-brothels-set-alight-in-rosettenville>.

²⁵ E Oliveira, *Migrant Women Sex Workers: How urban space impacts self-(re)presentation in Hillbrow, Johannesburg*, MA thesis, Forced Migration Studies Programme, University of the Witwatersrand, 2011.

²⁶ C Gould, 'Trafficking? Exploring the relevance of the notion of human trafficking to describe the lived experience of sex workers in Cape Town, South Africa', *Crime, Law and Social Change*, vol. 56, issue 5, 2011, pp. 529–546.

²⁷ South African National AIDS Council, *Estimating the Size of the Sex Worker Population in South Africa*, 2013, <http://www.sweat.org.za/wp-content/uploads/2016/02/Sex-Workers-Size-Estimation-Study-2013.pdf>.

²⁸ *Ibid.* Twenty percent work in brothels, while the remaining 10% are self-managing (working from their own homes or online).

²⁹ *Ibid.*, p. 16.

worker, client, and anyone living off the earnings of a sex worker is considered a criminal under this law. The Act is a remnant of the Immorality Act of 1927, which criminalised sexual interactions across racial lines, specifically prohibiting sex between white and black (African, Indian, and 'Coloured' or so-called *non-white*) people. In 2007 the Criminal Law Amendment Act adjusted the law to explicitly include the purchasing of sex.³⁰ This came as the result of the *Jordan v. State* Constitutional Court judgment of 2002.³¹ Following a conviction under the SOA, a massage parlour owner, Ellen Jordan, and two of her employees, appealed to the High Court for the constitutionality of that law. They argued that the Act was gender-biased as it penalises the sex worker (predominantly female) and not the client (usually male). Although the High Court ruled in favour of Jordan, the Constitutional Court overturned this verdict. Its judges upheld the constitutionality of criminalising unlawful sexual intercourse for reward, as well as the brothel-keeping provisions. The majority judgment also maintained that the Act did not discriminate against male and female sex workers, and was therefore gender neutral.³²

While sex work remains criminalised by law, it is difficult to prosecute someone for sex work unless caught in the act, which is why law enforcers tend to employ entrapment tactics. Police have been known to pose as clients, purchase sex workers' services, and use that as evidence to arrest.³³ Authorities also tend to rely on municipal by-laws, such as those against loitering and public nuisance, to prosecute sex workers.³⁴

In 1999, the South African Law Reform Commission (SALRC) was tasked with investigating and making recommendations regarding the legislative reform process of the country's legal system response to sex work, a process known as Sexual Offences Act 'Adult Prostitution' Law Reform Project (107).³⁵ Sex worker rights activists such as the Sex Worker Education and Advocacy Taskforce (SWEAT) and other civil society organisations submitted recommendations to the 'Adult

³⁰ Republic of South Africa, Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32, 2007. https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/sexual_offences_act_32_2007_eng.pdf.

³¹ R Krüger, 'Sex Work from a Feminist Perspective: A visit to the Jordan case', *South African Journal of Human Rights*, vol. 22, issue 1, 2004, pp. 138–150.

³² Constitution of South Africa, Southern African Legal Information Institute (SAFLII), *S v Jordan and Others (Sex Workers Education and Advocacy Task Force and Others as Amici Curiae (CCT31/01) [2002] ZACC 22; 2002 (6) SA 642; 2002 (11) BCLR 1117*: <http://www.saflii.org/za/cases/ZACC/2002/22.html>.

³³ Sonke Gender Justice, *Entrapment – Patra*, retrieved 15 August 2017, <http://www.genderjustice.org.za/digital-stories/entrapment-patra/>.

³⁴ *Ibid.*, p. 18.

³⁵ South African Law Reform Commission, *Project 107 Sexual Offences Discussion Paper 85, 1999*, <http://salawreform.justice.gov.za/dpapers/dp85.pdf>.

Prostitution' Discussion and Issue Papers, which outlined the implications of full criminalisation, regulation, legalisation, and decriminalisation of sex work.³⁶

Although finalised in 2015, the long awaited SALRC report on sex work was only released in May 2017.³⁷ The report rejected the decriminalisation of sex work, while recommending either the continuation of complete criminalisation of all aspects of sex work or the adoption of partial criminalisation (the so-called 'Swedish Model'). The report also includes recommendations for diversion and exit strategies, which are meant to 'lift people involved in prostitution out of coercive circumstances and to place them in rehabilitation, training and reintegration' programmes.³⁸ Now that the SALRC has released the Project 107 report, the Department of Justice and Constitutional Development (DoJ and CD) has to present its recommendations before members of parliament for deliberation. It is not yet known when this might take place. However, the DoJ and CD has indicated that while it will take the SALRC's report into consideration, it is still open to further public engagement on the matter.³⁹

Sex work and HIV policies

South Africa has the highest number of people living with HIV, at an estimated 7 million⁴⁰ (about one in five people living with HIV globally).⁴¹ This is equivalent to 13% of the entire population, and 19.2% of the age group 15 to 49.⁴² About 19.8% of all new HIV infections in South Africa are estimated to be sex work-related (which includes sex workers, their clients, and their clients' sexual partners).⁴³ The

³⁶ S Shackleton, *Sex Worker Education and Advocacy Taskforce (SWEAT) Submission to the Portfolio Committee on Justice and Constitutional Development Comments on the Criminal Law (Sexual Offences and Related Matters Amendment Bill)*, http://media.withtank.com/04b4265571/submission_sweat.pdf.

³⁷ Justice and Constitutional Development Republic of South Africa, *Media Briefing: Report On Sexual Offences: Adult Prostitution*, retrieved 1 June 2017, http://www.justice.gov.za/m_statements/2017/20170526-SALRC-Report.html.

³⁸ South African Law Reform Commission, *Report Project 107 Sexual Offences Adult Prostitution, June 2015* (released 26 May 2017), <http://www.justice.gov.za/salrc/reports/r-pr107-SXO-AdultProstitution-2017.pdf>.

³⁹ South African National AIDS Council (SANAC), *Decriminalising Sex Work: Highlights from the dialogue hosted by SANAC and Mail & Guardian*, 28 July 2017, <http://sanac.org.za/2017/07/28/decriminalising-sex-work/>.

⁴⁰ UNAIDS, *Prevention Gap Report*, 2016, http://www.unaids.org/sites/default/files/media_asset/2016-prevention-gap-report_en.pdf.

⁴¹ South African National AIDS Council (SANAC), *Let Our Actions Count: National Strategic Plan (NSP) for HIV, TB and STIs 2017-2022*, http://sanac.org.za/wp-content/uploads/2017/05/NSP_FullDocument_FINAL.pdf.

⁴² UNAIDS, *South Africa: HIV and AIDS estimates (2015)*, <http://www.unaids.org/en/regionscountries/countries/southafrica>.

⁴³ AVERT, *HIV and Aids in South Africa*, https://www.avert.org/professionals/hiv-around-world/sub-saharan-africa/south-africa#footnote15_h950g59.

national HIV prevalence rate among sex workers is approximately 59.6%.⁴⁴ The South African Health Monitoring Survey (2013-2014) estimates the prevalence of HIV among female sex workers in three metropolitan areas as ranging between 71.8% in Johannesburg, 53.5% in Durban and 39.7% in Cape Town.⁴⁵

Years of sustained engagement and collaboration between the South African National AIDS Council (SANAC), government and the sex work sector finally led to the development of the first ever SA Sex Worker HIV Plan. At its launch in March 2016, South Africa's deputy president Cyril Ramaphosa (who is also the SANAC chair) stopped just short of calling for decriminalisation of sex work, when he urged the country to recognise selling sex as a form of work, as aligned with the Constitution.⁴⁶ In a powerful symbolic gesture, Ramaphosa handed Kholi Buthelezi, the national coordinator of the sex worker movement Sisonke, a sunflower.⁴⁷ This paved the way for initial roll out of Pre-Exposure Prophylaxis (PrEP) and test-and-treat medication to sex workers.⁴⁸

In 2017, the latest National Strategic Plan for HIV, TB and STIs 2017-2022 was launched.⁴⁹ Even though many civil society organisations had made sustained submissions, and SANAC's own Sex Work Sector pushed for unequivocal language on the decriminalisation of sex work, these were barely covered in the final version.

So even though HIV/AIDS has enabled sex workers to make strategic inroads in their engagement with decision-makers, it has not been compelling enough to encourage the recognition of their full range of human rights (including sexuality and labour rights). Paradoxically, choosing only to recognise sex workers' right to access HIV/AIDS treatment also runs the risk of labelling sex workers as merely vectors of the virus, thus further exacerbating stigma against sex workers.

⁴⁴ S Baral *et al.*, 'Burden of HIV among Female Sex Workers in Low-income and Middle-income Countries: A systematic review and meta-analysis', *The Lancet Infectious Diseases*, vol. 12, no. 7, 2012, pp. 538-549.

⁴⁵ Department of Health Republic of South Africa (DoH) and South African National AIDS Council (SANAC), *South African Health Monitoring Survey (SAHMS): An Integrated Biological and Behavioural Survey among Female Sex Workers, South Africa 2013-2014 Final Report*, http://sanac.org.za/wp-content/uploads/2016/03/UCSF-South-African-Health-Monitoring-Survey_SAHMS_2016.pdf.

⁴⁶ SABC News, 'SA should consider legalising sex work: Ramaphosa', *SABC News*, 11 March 2016.

⁴⁷ Kagee, 'The Power of the Orange Sea', *Izwi Lethu: Our Voice*, 2016, p.2, https://issuu.com/move.methods.visual.explore/docs/izwi_lethu_issue_10_v.3_final__inte.

⁴⁸ N Bhavaraju and D Uribe (PrEP Watch), *Early Lessons from South Africa's Rollout of Oral PrEP to Sex Workers*, <http://www.prepwatch.org/early-lessons-south-africa-rollout/>.

⁴⁹ *Ibid.*, p. 41.

Human Trafficking and Sex Work

Human trafficking policies

The 2017 US *Trafficking in Persons* (TIP) Report notes South Africa as a 'source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking' and therefore ranks it as a Tier 2 country for the seventh consecutive year.⁵⁰ However, there is little to no empirical evidence to support this, and measuring trafficking in the country remains an 'elusive statistical nightmare'.⁵¹

Claims made by some anti-trafficking organisations that 30,000 children are annually trafficked into South Africa for sexual exploitation⁵² have been exposed as 'exaggerated and unsubstantiated'.⁵³ Although discredited, the same statistic was used by the Department of Home Affairs (DoHA) to justify the introduction of discriminatory immigration policies and stringent visa laws for child travel,⁵⁴ that following uproar from the tourism industry these were later amended.⁵⁵

In August 2015, South Africa's *Prevention and Combating of Trafficking in Persons (PACOTIP)* Act was promulgated. This was the country's first comprehensive legislation on human trafficking, which actively sought to uphold its international treaty obligations under the United Nations (UN) *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UN Trafficking Protocol).

While the majority of human trafficking is in other labour sectors (namely agriculture, mining, construction and fishing), the government failed to prosecute or convict any traffickers in these industries in 2016. Indeed, the government's focus appears to be on the sex industry.

⁵⁰ US Department of State, *Trafficking in Persons (TIP) Report*, 2017, <https://www.state.gov/documents/organization/271339.pdf>.

⁵¹ M van der Watt, 'Human Trafficking in South Africa: An elusive statistical nightmare', *The Conversation*, 16 July 2015, <https://theconversation.com/human-trafficking-in-south-africa-an-elusive-statistical-nightmare-43949>.

⁵² T Monama, '30 000 kids prostituted in SA annually', *IOL News*, 7 October 2013, <http://www.iol.co.za/news/crime-courts/30-000-kids-prostituted-in-sa-annually-1588062>.

⁵³ K Wilkinson and S Chiumia, 'Are 30,000 Children Really "Trafficked" in South Africa Every Year? The claim exaggerates the problem', *Africa Check*, 18 October 2013, <http://africacheck.org/reports/are-30000-kids-trafficked-into-south-africas-sex-trade-every-year-the-claim-exaggerates-the-problem/>.

⁵⁴ This visa law required that all minors under the age of 18 years produce, in addition to their passport, an Unabridged Birth Certificate (showing the particulars of both parents) when exiting and entering South African ports of entry.

⁵⁵ L Lombard, 'UPDATE: SA to introduce new passport measures for minors', *Traveller24*, 5 February 2016, <http://www.traveller24.com/TravelPlanning/VisaInfo/dha-scrap-unaabridged-birth-certificate-rule-for-updated-passports-for-minors-20160205>.

Similar to the Protocol, the *PACOTIP* Act (section 4.1) describes a human trafficker as '[a]ny person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders' of South Africa through force, coercion and deception, with the victim being trafficked for exploitation purposes.⁵⁶ According to the TIP report, the *PACOTIP* Act resulted in increased law enforcement and convictions of human trafficking cases.⁵⁷ However, the report does criticise that while the majority of human trafficking is in other labour sectors (namely agriculture, mining, construction and fishing), the government failed to prosecute or convict any traffickers in these industries in 2016. Indeed, the government's focus appears to be on the sex industry. The fixation and conflation of sex work with human trafficking have often pervaded the drafting of laws, policies and interventions geared towards combating trafficking in South Africa.

Sex Work and Human Trafficking Debates in South Africa

Although sex work is criminalised, it is still widely practised and tolerated in South Africa; and while most people deem it immoral for religious and/or cultural reasons, many still consider it a 'necessary evil'.⁵⁸ In relation to human trafficking, as in the rest of the world, in South Africa there are essentially two opposing positions: those who argue that sex work is intrinsically linked to trafficking, and those who assert that even though human trafficking does occur in sex work, it is not necessarily inherent to it. However, Joanna Busza cautions against the dangers of oversimplifying the anti-trafficking discourse in sex work to these binaries:

[S]ex workers' experiences fall along a continuum, with women who have undergone widely varying degrees of choice or coercion... [A]dditionally, individual sex workers may go through different phases; for example, a woman who was originally tricked into selling sex might independently choose to continue doing so. Initial pathways into sex work, therefore, do not necessarily define sex workers' current perceptions, motivations, or priorities...⁵⁹

⁵⁶ *Trafficking in Persons (TIP) Report*, p 57.

⁵⁷ *Ibid.*

⁵⁸ J Gardner, 'Criminalising the Act of Sex: Attitudes to adult commercial sex work in South Africa', in M Steyn and M van Zyl (ed.), *The Prize and the Price: Shaping sexualities in South Africa*, Human Sciences Research Council Press, 2009, 329–340.

⁵⁹ J Busza, 'Sex Work and Migration: The Dangers of Oversimplification – A Case Study of Vietnamese Women in Cambodia', *Health and Human Rights*, vol. 7, no. 2, Sexuality, Human Rights, and Health, 2004, p.231–249.

This is a point I return to later in this report when one of the respondents relays how she had initially been trafficked into sex work, but now self-identifies as a 'proud migrant sex worker'.

In addition, the Gould and Fick study revealed that trafficking is not a significant feature of the sex work industry in Cape Town. Only eight female sex workers out of the 164 respondents had experienced some form of trafficking as defined by the UN Trafficking Protocol. Moreover, these had taken place in the past, and the trafficked sex workers had managed to escape those conditions by themselves. The study also found five children selling sex, although they had not been trafficked. Reports of coercion and exploitation, especially by brothel-owners/managers, which did not meet the criteria of trafficking, were however commonplace.⁶⁰

⁶⁰ C Gould and N Fick, p. 16.

Research Methodology

As the South African partners in this study, SWEAT and Sisonke assisted in the review of the guiding research questions, organising focus groups and interviews, and identifying integral stakeholders/participants to involve. The scope of the fieldwork was limited to two cities—Johannesburg and Cape Town—because of their central roles in the country’s sex work, migration and trafficking historical landscapes and debates. Therefore, in each city, a focus group was facilitated with SWEAT service users, who were predominantly Sisonke members (either current or former sex workers).

There were 21 focus group participants in total, fourteen in Johannesburg, and seven in Cape Town, and two individual interviews with sex workers (also based in Cape Town). The participants in this study were mostly black women, including two transgender women, and two migrant sex workers from Zimbabwe. The Johannesburg respondents were largely brothel-based, while Cape Town respondents were mainly street-based. All were over 18 years of age, as Sisonke only deals with adult consenting sex workers.

In addition, eleven individual interviews were conducted. Six initial interviews were with SWEAT or Sisonke staff members: two Sisonke peer educators in Johannesburg and four SWEAT staff members in Cape Town: the Director, the Helpline Coordinator, the Human Rights and Lobbying Officer, and the Asijiki Coalition⁶¹ coordinator. Four interviews were with representatives of partner/allied organisations: the Women’s Legal Centre (WLC),⁶² Sonke Gender Justice, Sediba Hope Medical Centre, and the South African National Human Trafficking Resource Helpline. The initial findings of this country study were first shared with SWEAT and Sisonke for validation, and to ensure there was no misrepresentation. During this review process the National Coordinator of Sisonke gave additional insights, which are also used in this report.

Although the research interview guidelines and consent forms were in English, when discussing them with participants I would also translate some of the questions/clauses into either *isiZulu* or *isiXhosa* (local languages) for better understanding. Respondents were encouraged to engage in the language they are most comfortable with, so we often toggled between the three. This greatly improved our communication, but made it slightly difficult when transcribing. In focus groups participants also assisted each other with translations where needed.

⁶¹ Asijiki is a coalition of over seventy civil society organisations that are supporting SWEAT and Sisonke in advocating for the decriminalisation of sex work in South Africa, see: <https://asijiki.org.za>.

⁶² The lawyer and a paralegal working on the Sex Worker Programme were interviewed at the WLC office in Johannesburg.

Participant observation was also employed when I joined SWEAT, WLC, and Sonke Gender Justice in investigating and documenting a suspected human trafficking attempt at the Sediba Hope Medical Centre (Pretoria, February 2017). Details of the Sediba Hope Medical Centre case study are described in a later section of this report.

A Wits University research ethics clearance certificate was obtained for this study, and consent forms were discussed and signed for all focus groups and interviews. Most of the sex worker respondents opted to remain anonymous and provided pseudonyms instead. In this report I indicate the pseudonyms in italics. Organisational respondents whose real names are included in this report have given explicit consent.

Findings

The Organisational Story

SWEAT was founded in Cape Town in 1994 as a safe sex education project, by a male sex worker, Shane Petzer, and clinical psychologist, Ilse Pauw, because they noticed a gap in sexual health services available to sex workers. SWEAT was later registered as an NGO in 1996. The organisation views selling sex as a form of work and advocates for the human rights of adult consenting sex workers, and the decriminalisation of sex work in South Africa. SWEAT's human rights approach to sex work is person-centred: it is the needs of the client/beneficiary that guide their responses. The NGO also works to support sex workers' empowerment and leadership. SWEAT offers services to sex workers in South Africa under three main programme areas: Sex Worker Empowerment and Enabling Environment (SWEEEP), Advocacy and Law Reform (ALRP), and the national sex worker movement Sisonke (which recently registered as an independent organisation, but is still hosted and administratively supported by SWEAT).

The services that SWEAT offers include human rights defence workshops; safe space workshops (called 'Creative Space'), support groups and outreaches, facilitated by peer educators;⁶³ a legal clinic; a health clinic staffed with trained nurses;⁶⁴ psychosocial counselling; and a 24-hour toll-free help line. With Cape Town still the main head office, SWEAT also has provincial offices in Gauteng (Johannesburg) and the Eastern Cape (East London).⁶⁵

In 2003, SWEAT helped found Sisonke (which means 'we are together' in *isiZulu*)—the national movement of sex workers. South African sex workers felt it was time for their own voices to be heard in discussions that affected them and their work, hence the movement's slogan 'Nothing about us, without us'. Sisonke mobilises and organises sex workers across the country to stand up and fight for their human rights. According to Sisonke's national coordinator Kholi Buthelezi, the movement currently has just over 1100 members across all nine provinces. Sisonke also helps sex workers in combating stigma and abuse from the general public, clients, pimps/brothel-managers, and law enforcement. The movement is part of the continental African Sex Worker Alliance (ASWA), which SWEAT helped establish at

⁶³ Peer educators and paralegals are either current or former sex workers. Their experience in the industry makes for the effectiveness of these programmes.

⁶⁴ SWEAT recently (June 2017) launched the Cym Van Dyke clinic, see F Collins, 'Cape Town sex workers get their own clinic in a South African first', *TimesLIVE*, 13 June 2017, <https://www.timeslive.co.za/news/south-africa/2017-06-13-cape-town-sex-workers-get-their-own-clinic-in-a-south-african-first/>.

⁶⁵ SWEAT also has presence in Limpopo (Polokwane) and the North West (Klerksdorp).

the first ever African Sex Work Conference in 2009 (and hosted until 2015), and the Global Network of Sex Work Projects (NSWP).

The Benefits (and Challenges) of Organising

Sisonke's National Coordinator Kholi Buthelezi describes the movement as the mediator between sex workers on the ground and policymakers and programme implementers—'[t]he more the movement grows, the more we get consulted on programmes relating to sex workers, so we can be the guides'. To illustrate this, Buthelezi relayed how having Sisonke sit on the SANAC Civil Society Forum since 2011 resulted in the formation of the SANAC Sex Work Sector, and allowed the movement to give inputs for the drafting of the South African National Sex Worker HIV Plan.⁶⁶

'The more the movement grows, the more we get consulted on programmes relating to sex workers, so we can be the guides'.

During the interviews, Sisonke peer educators stressed the importance of coming together to organise as a movement, as this enables them to advocate for their rights and call for decriminalisation in a unified voice. Johannesburg Sisonke peer educator Doris Nyongwana also described how being part of Sisonke has helped them in addressing public stigma, and also in negotiating for their labour rights with brothel-owners:

It helps in that the stigma we have as sex workers is no longer the same as it was in the beginning. [...] With Sisonke we now go to different places [outreach] and the women would say that the brothel-owner used to be rude, but now it's not the same as before, because Sisonke had gone to talk to the brothel-owner face-to-face. [...] Even the community now respects sex workers.

However, the solidarity that comes with organising as a movement is at times not extended to migrant sex workers. This was illustrated during the Johannesburg focus group when tensions arose between some South African sex workers and migrant sex workers. Addressing one of the migrant sex workers in the group, *Thembisa Mnguni* (a local sex worker) said:

⁶⁶ South African National AIDS Council (SANAC), South African National Sex Worker HIV Plan, retrieved 25 September 2017, <http://sanac.org.za/2016/03/29/south-african-national-sex-worker-hiv-plan-2016-2019/>.

You know what my friend, it's not that we don't want you here in South Africa. The problem is we are suffering. We need money, but you also need the jobs. [...] But what is worse, most of the foreigners they don't have papers, and that thing has an impact on us. [...] So if ever government could be sure that if ever you've got a working permit you can stay. [...] We understand that you came here in South Africa because you guys need a job, but the thing is you come with the other mentality of corrupting South Africa, like the Nigerians. They sell drugs. You see Jo'burg now - the way it is? And they use our children.

The concentration of migrant sex workers in metropolitan areas, like inner-city Johannesburg, results in fierce competition with local sex workers. This also leads to some South African sex workers drawing from government and media rhetoric about foreigners (specifically Nigerians) bringing corruption and crime to the country, as a means to justify their (at times violent) frustration. Helpline Coordinator, Nomsa Remba, also affirmed that this tension between migrant and local sex workers does exist, but that it has also led to an even stronger solidarity among migrant sex workers themselves, especially in Limpopo Province, where there is a high concentration of migrant sex workers from the neighbouring countries Botswana, Zimbabwe, and Mozambique:

What is amazing about Limpopo sex workers is that they do support each other more than anything else. You know it's the only province that I have seen, when a sex worker has a problem they will donate for her upkeep. That's the only province I've seen. Without any hassles or anything they coordinate themselves.

When asked how Sisonke deals with this tension between local and migrant sex workers Buthelezi explained that in order to strengthen solidarity the movement runs sensitisation workshops whereby they teach the members to 'love each other since [they] are a marginalised community'. In addition, Sisonke makes a concerted effort to diversify its membership, staffing and leadership across race, gender and nationality. Currently Sisonke has several foreign national staff members, which include the Assistant National Coordinator Pamela Chakvinga who is Zimbabwean.

Challenges for Sex Workers in the Country

A 2011 report compiled by ASWA found that sex workers in South Africa experience varied human right violations ranging from police brutality, discrimination by healthcare providers, abuse by pimps and brothel managers, violence from clients, and stigma from community members.⁶⁷ These violations were largely attributed to the criminalisation of sex work. The participants in this study echoed the same challenges, as explained by SWEAT's human rights and lobbying officer Nosipho Vidima:

The most human right violations that we come across are police brutality, police bribes, the use of by-laws to arrest sex workers... The by-laws themselves don't really work, so we sit with women being kept overnight or over weekends, only for them to not even appear in court. The other [challenge] would be client abuse towards sex workers, where sex workers are raped, not paid, sometimes being left in areas that are isolated and in the dark.

Members of the Johannesburg focus group reiterated the abovementioned police and client abuse, but also raised challenges they face when working in brothels, such as high rentals and inadequate security. One of the participants explained:

As sex workers we also wish we could get brothels with tight security, because sometimes you might find that you're fighting with a client, they overpower you, and then some of the security side with him, while others can't even help. (Translated from isiZulu.)

Sex worker respondents also identified the stigma and abuse that filter down onto their children because of their sex work and intimate partner violence as two other main challenges that they face.

In addition to these human rights violations, the sex worker respondents also identified the stigma and abuse that filter down onto their children because of their sex work and intimate partner violence as two other main challenges that they face. These have been less well documented in previous studies. During the Cape Town focus group one of the participants broke down in tears describing the physical and emotional abuse she was experiencing from her live-in boyfriend:

⁶⁷ F Scorgie et al., 'I Expect to be Abused and I Have Fear': Sex workers' experiences of human rights violations and barriers to accessing healthcare in four African countries, ASWA, 2011, http://www.plri.org/sites/plri.org/files/ASWA_Report_HR_Violations_and_Healthcare_Barriers_14_April_2011.pdf.

I want to ask a question... My problem is that... What should a person do if you are a sex worker, and as a sex worker you met this person, but the rest of the time you tried to hide it from him. So now he finds that out. Then he has a problem and loses his job. He sees you helping him out. He just takes whatever you buy—doing this and that. Then he beats you up. What are you supposed to do? (Translated from isiXhosa.)

She went on to explain that she had tried to leave her violent partner before, but that he always managed to find her, and drag her back home. Her peers in the group were visibly angered by her situation and quick to offer comfort and support. They advised her to leave the abusive relationship, and also inform the SWEAT Helpline counsellors, so they can help her in reporting the case to the police. Arrangements were also made to contact her best friend, who could offer her an alternative place to stay.

How does Trafficking Fit into These Challenges?

Even though they were not aware of international protocols or national laws and policies, the majority of the sex worker respondents hold the understanding that human trafficking is some form of exploitation linked to movement, as explained by one of the Johannesburg focus group participants, *Nonhle Zulu* who simply stated, '[f]or me human trafficking is when someone takes me where I do not want to go'. However, the sex worker respondents also tended to speak of human trafficking interchangeably with labour exploitation by their brothel owners/managers in the form of overwork, little or no pay, restricted movement, and extortion through hefty fines. The participants and interviewees agreed that even though trafficking does take place in sex work it is not as prevalent as other forms of human rights' violations they experience in the industry. Consequently, the obsession with trafficking by government officials, NGOs and international organisations detracts attention from these more widespread but less salacious abuses.

When sex workers listed their main challenges—as outlined in the previous section—human trafficking was not initially mentioned. However, when we started discussing trafficking in general, some began recalling trafficking cases they had heard of in the course of their work. A few even started sharing how they now suspected that they too might actually have been initially trafficked into sex

The participants and interviewees agreed that even though trafficking does take place in sex work it is not as prevalent as other forms of human rights' violations they experience in the industry. Consequently, the obsession with trafficking by government officials, NGOs and international organisations detracts attention from these more widespread but less salacious abuses.

work. One of the focus group participants, *Chidhawazo Vhembe*, a Zimbabwean migrant sex worker, described how she started selling sex in 2007:

To my experience when I started I didn't want to be a sex worker, but for me to get into this business I was taken by a friend all the way from Zimbabwe to Botswana, saying we're going to do some 'piece jobs'—to do the washing and cleaning the yards, and whatsoever—so she provided me with money for transport, for bus fare. When we arrived in Botswana there was a truck-stop.

At the stop her friend took her to one of the trucks, and started to privately discuss something with the driver. She then went into the shop and left *Chidhawazo* inside the truck with him:

Then the truck-driver started to ask me to have sex work with me. I was refusing and I was not interested, but I was not having any option. Then I just have sex with that man, and he didn't give me the money. He gave the money [to] the lady who came with me because she was saying she want her money back for transport first.

Chidhawazo has since gone on to travel across Namibia, the Democratic Republic of Congo, and South Africa as a self-identified 'proud migrant sex worker'. However, she does acknowledge that she had been initially tricked into sex work, and that the experience had been 'painful'. At least two other South African sex workers in this same group relayed similar stories of how they had been enticed, misled or coerced into sex work by either a friend or family member. However, they explained that once they found themselves earning enough to provide for their children and families they opted to continue with selling sex. These respondents evoke Busza's earlier mentioned continuum of varying degrees of choice or coercion that sex workers may experience when entering sex work, but which should not be used to deny them of their current agency and bodily autonomy in deciding to continue selling sex.⁶⁸

South African sex workers relayed similar stories of how they had been enticed, misled or coerced into sex work by either a friend or family member. However, they explained that once they found themselves earning enough to provide for their children and families they opted to continue with selling sex.

⁶⁸ Busza, p. 59.

The Impact of the Anti-Trafficking Discourse: 'I think they don't trust us enough'

SWEAT sometimes works with the Department of Social Development (DSD), the Hawks anti-trafficking unit, and more recently the South African Human Trafficking Resource Line, run by the global anti-trafficking organisation A21. However, the national helpline coordinator Nomsa Remba expressed some frustration over the lack of partnership often displayed by government entities. Once SWEAT has referred a case to the Hawks there is often no report back on its progress; 'I think they don't trust us enough', she said.

SWEAT staff respondents also repeatedly lamented the negative impact that the anti-trafficking discourse has had on their ability to engage with anti-trafficking organisations. Around 2010 SWEAT joined the Western Cape Counter-Trafficking Coalition, in order to strategically partner with anti-trafficking organisations that have the resources and mandate to effectively deal with trafficking. The ideological differences pertaining to sex work, which existed among the Coalition member organisations, at times manifested in blatant hostility against SWEAT. As SWEAT director Sally-Jean Shackleton explains:

One of the organisations, in fact, was publishing information on their website that was inflammatory about SWEAT. It was saying that we were funded by pimps and traffickers, so it just got untenable. We couldn't be in that situation and be genuine.

This general lumping of sex worker rights' activists with pimps and traffickers further demonstrates the conflation of sex work with human trafficking, which is so common in the anti-trafficking discourse. According to Shackleton, anti-trafficking coalitions tend to take on the 'rescue approach' instead of being person-centred, and they are often premised from an anti-sex work ideological standpoint. As a result, SWEAT, WLC and Activists Networking against the Exploitation of Children (ANEX) decided to come together to draft a *Counter Sexual Exploitation in Sex Work Protocol*,⁶⁹ which would guide them in coordinating interventions/responses. As a person-centred and rights-based response tool, the draft protocol aims to address exploitation in the sex industry including, but not limited to, human trafficking.

As part of this study, I worked with SWEAT, WLC, and Sonke Gender Justice in the reviewing of the draft counter sexual exploitation protocol, with the aim of developing a similar one for the Gauteng province. The protocol had initially been

⁶⁹ This was the outcome of a joint project between ANEX, SWEAT, and WLC in 2012. Even though it was never finalised, some parts of it have been adopted in certain interventions.

drafted as a response to conventional anti-trafficking interventions, which are often insensitive to sex workers' unique challenges and needs. As Shackleton explained, the protocol was drafted with consideration of a sex worker who is either:

[t]oo young, high or drunk, and trafficked or a combination of those three things [or] all of the three. So the protocol was a result of our initial thinking around these three circumstances. Also, because a lot of anti-trafficking initiatives don't operate after hours, [and] don't really offer any practical assistance in the immediate term.

Hence, this draft protocol proposes that the initial assessment take on a two-pronged approach—individual and situational—which takes into consideration the presumed trafficking victim's immediate safety and health status in relation to their socio-economic environment, so as to arrive at a person-centred response. In reviewing the draft protocol it was agreed that a shorter, more accessible, version would be more helpful: a basic manual or leaflet with emergency contacts and a simple breakdown of what steps to take when one suspects a case of human trafficking.

Strategies to Respond to the Challenges that Sex Workers Face

Every Sex Worker is a Human Right Defender

In 2009 WLC, in partnership with SWEAT and Sisonke, initiated the Sex Worker Programme (also referred to as the *Every Sex Worker is a Human Right Defender* Programme), which is geared towards educating sex workers about their rights, providing legal advice and representation in court, and documenting human right violations for strategic litigation in cases of police abuse. Mosima Kekana⁷⁰ is the WLC attorney managing this programme. She is assisted by trained paralegals that are either current or former sex workers. Kekana and the paralegals accompany SWEAT and Sisonke peer educators on outreaches to areas where sex workers operate, and also attend 'Creative Space' workshops⁷¹ to offer legal services. Kekana explained:

⁷⁰ Kekana is now an attorney with the Legal Resources Centre (LRC).

⁷¹ Creative Spaces are support groups for sex workers that are organised by SWEAT and Sisonke. In these spaces sex workers collectively discuss their challenges and means of overcoming them, and are trained on how to access their health and legal rights.

We have these safe spaces, which we call Creative Space [...], [w]here sex workers talk about their issues, which includes their daily experiences, and they understand that this is a safe space for them to express themselves. So one picks up a lot in those spaces; that there is a lot of trafficking that happens, but because sex work is criminalised and sex workers are seen as criminals, they are afraid to interact with the police and report such cases of trafficking.

So although the WLC team does try to assist sex workers in reporting suspected trafficking to the police, these informants often fail to follow through with the process because they fear being arrested for sex work. This illustrates the extent to which criminalisation deters sex workers from reporting cases of human trafficking. Consequently, Kekana was unable to give an indication of the number of suspected trafficking cases they have come across in this way.

'...Cases that would give you goosebumps...'

The SWEAT 24/7 toll-free helpline was established in 2010 to support sex workers with legal, health and psychosocial advice and referrals. According to Nomsa Remba, the national helpline coordinator, they receive an average of 150 calls per month, and up to 400 when there is an international event in the country involving sex workers, such as the International AIDS Conference in 2016.

The helpline receives a lot of calls reporting sex workers' human right violations, ranging from by the general public, to discrimination from health-care providers, and abuse by law enforcers.⁷² Remba highlighted the intense level of brutality of most Limpopo cases:

The cases that they get there are just genuinely hectic cases. Those cases that would make you have goosebumps for the rest of the week... There, if someone has been beaten, they will need some CT scan to be done on them. They'll need to be stitched. Some die.

Although the WLC team does try to assist sex workers in reporting suspected trafficking to the police, these informants often fail to follow through because they fear being arrested for sex work. This illustrates the extent to which criminalisation deters sex workers from reporting cases of human trafficking.

⁷² In addition to the police, law enforcers also include private security guards.

Between January and April 2017, the SWEAT helpline had registered four serious cases of vicious beatings and two deaths in that province. According to Remba, the helpline receives a few human trafficking related cases, but that these are about one or two every three months. The definition of human trafficking that SWEAT works with is derived from the PACOTIP Act. According to the helpline coordinator a trafficking victim/survivor is '... someone who has been taken away from where they were staying without really knowing where they were going, and without consenting to be taken to that place', for exploitation purposes.

Sex Workers Responding to Human Trafficking

The 2015 Asijiki Coalition fact sheet on Sex Work, Human Trafficking & the Harm of Conflating the Two, points out that:

Sex workers are more likely than social workers or the police to become aware of trafficking, adults or children being forced into selling sex [and] other coercive practices, have a strong interest in preventing these practices, and are often highly effective in doing so.⁷³

This was illustrated through SWEAT and Sisonke's own responses to human trafficking. Despite their active exclusion from formal anti-trafficking structures, as described in the previous section, SWEAT staff members stressed that they are able and willing to identify and assist in cases of trafficking, if only they are afforded sufficient resources, referral networks and training. The cases that follow exemplify this point.

Case studies

Durban trafficking case

Thulisile Khoza, one of the former Sisonke peer educators in KwaZulu-Natal (KZN) described a case that started in 2012 when she and her colleagues helped police in identifying 38 young women (some as young as 12-years old) who had been trafficked and forced into selling sex at a Durban brothel. Khoza explained that the women had also been forced to take drugs until addicted, so that the traffickers could keep them under their control. Throughout its investigation and trial this case enjoyed a lot of media coverage, and much was made of the fact that the

⁷³ Asijiki Coalition, *Sex Work, Human Trafficking & the Harm of Conflating the Two*, 2015, <http://www.sweat.org.za/wp-content/uploads/2016/02/Sex-work-and-Human-trafficking-Asijiki-1.pdf>.

owner of the lodge where the women had been kept was a doctor, but nothing in the news ever mentioned how Sisonke sex worker peer educators had been integral in unearthing the case.⁷⁴

Khoza described how Sisonke came across the trafficked women:

We were doing outreach in KZN, it was at night, around the beach area—Point beach area. So we could see these young girls around the streets, and then when we were trying to talk to them they were shaky, and you could see they are scared to talk. And they kept on looking around to see if the people who are actually looking after them could see them. Then afterwards when we saw that they were scared we said, ‘Okay fine, we’re only going to give you the condoms. Then we’ll take our pamphlets and write the numbers on the pamphlet, and then we’ll take the pamphlet and throw it in the dustbin’. When we did that apparently the girl—because she really wanted to be helped—whilst her pimps were not looking, she went to the dustbin and took out the pamphlet with the numbers and then she actually called Cape Town. And then when she called Cape Town, the Sisonke helpline, that’s when the case was actually brought forward to us. Then after that we took up the case, called the police and the police actually did the investigation; where they actually went to the place where the pimps were keeping the young women.

The sex worker respondents also reported sometimes coming across girls that they believe are under the age of 18 in the industry, but mostly feeling helpless to do much about it.

The doctor and his wife were acquitted, but three of their employees were found guilty on charges of human trafficking for sexual purposes, sexual exploitation of minors, racketeering, running a brothel (for 10 years), living off the earnings of sex work, and dealing in cocaine. In November 2016 the three men were sentenced; the main accused received a sentence of 35 years in prison, while his two accomplices each received 25.⁷⁵

⁷⁴ African News Agency, ‘Life Sentence Call for Men who Trafficked Girls as Young as 12’, *South Africa Today*, 27 October 2016, <https://southafricatoday.net/south-africa-news/kwazulu-natal/life-sentence-call-for-men-who-trafficked-girls-as-young-as-12/>.

⁷⁵ N Nxele, ‘Three men found guilty of human trafficking, running Durban brothel’, *SABC News*, 21 November 2016, <http://www.sabc.co.za/news/a/fba637004f0d25119b269f7f40da976a/Three-men-found-guilty-of-human-trafficking,-running-Durban-brothel----20161121>.

The sex worker respondents also reported sometimes coming across girls that they believe are under the age of 18 in the industry, but mostly feeling helpless to do much about it. The young people often maintain that they are selling sex by choice, and they taunt the older sex workers, accusing them of being jealous because they cannot attract as many clients as when they were younger. If the older sex workers try to raise this concern with their brothel-owners/managers/pimps, they are simply told that the industry needs the girls for business, and are threatened with eviction if they pursue the matter further. Not wanting to risk their livelihoods (through an eviction or police raid) they are forced into silence. This further illustrates the extent to which criminalisation creates helplessness and unwillingness amongst concerned sex workers to report such cases.

Touws River Case

Asijiki Coalition coordinator Constance Mathe related a few cases in which sex workers' clients had reported suspected trafficking to them. She also recalled a case in 2015, whereby a known gang leader in a place called Touws River (in the Western Cape Province) helped them rescue sex workers' children from traffickers. This was after the mothers had initially tried to report the kidnapped children to the police. However, the police had simply arrested them for being sex workers.

SWEAT/Sisonke peer educators and WLC paralegals managed to get the two women released on bail. They then went on to report the kidnapping to the 'ringleader' of a feared local gang, who has good relations with sex workers in the area. When they reached the house where the children were being kept they found the two children, aged 13 and 15, and another girl, also aged 15. The girls were visibly drowsy from being forced to take drugs, and before releasing them the traffickers threatened Mathe and her colleagues with guns:

Ayi, I almost died that day. They locked us inside the house, because we went there as like, 'No we just came here in peace; we just want to provide the safer sex material' [...] They said they can kill us immediately. Do we know what we're doing or what we're trying to do and stuff and everything. And then luckily they didn't know that we came with the ringleader of the gangsters, who was still outside answering the phone. Then he came inside; that's when we got released. So sometimes, as I said, it's not that all the gangsters or pimps are bad. There are good pimps who protect the girls, because the police failed; they didn't go into that area.

All the SWEAT and Sisonke respondents agreed that criminalisation hindered sex workers' ability to report cases of human trafficking in the industry, and to effectively respond to these cases. However, as this case shows, when it comes to helping their peers, sex workers come up with creative ways to address injustices, such as teaming up with local gangsters.

Sediba Hope Case

In February 2017 the Sediba Hope Medical Centre in Pretoria reached out to NGOs that work with sex workers when they suspected that their health facility was being used to screen potential human trafficking victims. The medical centre provides primary healthcare services to both privately paying patients as well as donor-funded at-risk populations, such as sex workers.

All the SWEAT and Sisonke respondents agreed that criminalisation hindered sex workers' ability to report cases of human trafficking in the industry, and to effectively respond to these cases.

The Centre's company executive officer Vanessa Hechter recounts how it all began:

On 27 February, we were approached by a man and a woman with a list of names of young girls, who said to us—at our community clinic that's located on the ground floor—and [they] said that [they were] bringing us a list of names of girls who were going to come the following week to get an HIV test done, as well as a pregnancy test, as an employment requirement. And we were then to do those tests and give the girls their results in a closed envelope, and then the girls would return back to him. So immediately then my staff realised there could be a problem here because we don't get such requests. People who come to our clinic come on a voluntary basis for an HIV test or any primary healthcare services, so already there was a red flag.

When the women started arriving they were always accompanied by a female chaperone. The women explained that they had received a WhatsApp message telling them to come for the tests as part of a job application process for positions as long-distance bus hostesses. The only criteria were that they had to be between the ages of 19 and 25, light in complexion, with a slim body, and have an HIV and pregnancy test done.⁷⁶ Even though the job advert mentioned regional/cross-border travelling, no passport or identity document was required. Once they had

⁷⁶ The women had been asked to purchase their own pregnancy test kits.

their test results, the women were to email them together with two colour photographs of themselves. They had also been given different addresses for the follow-up interviews. The women reported having been recruited at a local church by a Congolese woman, on behalf of a Ghanaian pastor.

Suspecting that this could be a human trafficking case the medical centre approached the Wits Reproductive Health Institute (WRHI), a partner NGO that operates from the centre. WRHI then referred the case to Sonke Gender Justice and SWEAT. Donna Evans from Sonke described what then transpired as follows:

So Vanessa contacted me indicating that she believed that they might have had an issue that needed some further investigation. She was after some support on how to progress those inquiries. I then put out a summary of the situation to a number of sources and requested help in identifying options; Sally Shackleton at SWEAT, to Marlise Richter of Sonke Gender Justice, to Women's Legal Centre, etc. So at that point we sort of escalated it out and Sally in fact made an enormous effort to try and track down options on how to proceed.

SWEAT then liaised with Sonke Gender Justice and WLC on the case. Attempts were initially made to contact the International Organisation for Migration (IOM), but they were told that IOM only deals with foreign nationals. Shackleton explained:

The people trying to traffic the women were foreign nationals but the women were South African, so they couldn't get involved. A21 and IOM also can't. [...] And the Department of Social Development, who I called, who are members of the Anti-Trafficking Provincial Task Team—can't get involved directly. The police have to deal with it and then they are brought in afterwards.

It was actually A21's SA National Human Trafficking Resource Line that provided SWEAT with the relevant contacts at DSD. DSD then forwarded the case to DPCI's (the Hawks) anti-trafficking task team. SWEAT stressed that the police should not target sex workers attending the clinic, and that the investigating officers should not come in uniform, as this could scare sex workers away from the health facility. This was adhered to: two plain clothed female Hawks came to take the women's statements.

This demonstrates the level of sensitivity and caution that collaborating with sex worker rights' groups brings to such cases, which is required when investigating possible human trafficking. However, when Shackleton (and I) tried to follow-up with the case, or get in contact with the Hawks' investigating police officers, we were informed by DSD and the Human Trafficking Resource Line that because the case was still under investigation they could not discuss its progress with us.⁷⁷ Although the need to maintain sensitivity when investigating a possible human trafficking case is understandable, this lack of reciprocity in information sharing is frustrating and makes it difficult for sex worker groups to trust anti-trafficking government units or NGOs.

With that said, Remba and Shackleton reported a positive working relationship with the National Human Trafficking Resource Line. Although the Resource Line's call specialist was also not allowed to discuss this case, they were permitted to speak more generally about human trafficking in the country based on their call trends. They confirmed that false job prospects in the city were often used to entice and coerce vulnerable people into trafficking, in some cases by friends:

Vulnerability is one of the main aspects victims have in common to being trafficked. The main pattern that we have identified is false job opportunities. For example, a potential victim would live in Johannesburg, become friends or acquainted with a person—we call a recruiter—who has identified him/her. The recruiter would build a relationship with the potential victim, and through that relationship they would offer a false job opportunity by saying; 'come to Cape Town we've got a job for you.'

The call specialist also pointed out lack of education as one of the main contributing factors to being vulnerable to trafficking, and noted that drugs were often used to subdue and maintain control over the victim. When asked if the Resource Line often receives calls, which relate to human trafficking for sexual exploitation purposes, they replied:

Yes, we have come across a lot of cases where victims are forced into prostitution. This form of trafficking we call sex trafficking, where the victims would have no choice working in the industry.

⁷⁷ April and May 2017 email correspondence with DSD and A21's resource helpline.

According to the same respondent, during the period of January to April 2017, nearly 40% of their calls were potential cases of 'sex trafficking', about 5% accounted for 'labour exploitation', 18% for 'child trafficking', 1% 'organ trafficking', and the remaining 36% where 'other/not specified' forms of trafficking.⁷⁸ Approximately 92% of their cases involved women, and 17% minors, which they referred to DSD as the Resource Line does not work directly with children.

⁷⁸ These statistics were confirmed by A21's South African National Human Trafficking Resource Line January – April 2017 quarterly report, which the respondent made available after the interview.

Conclusions and Recommendations

The conflation of sex work with human trafficking creates challenges when trying to address trafficking in the sex industry. It not only makes it difficult to effectively identify and deal with cases of trafficking in the industry, but also alienates sex worker rights and anti-trafficking activists. The notion that supporting sex workers' access to human rights automatically makes you pro-trafficking, or that fighting human trafficking means you are anti-sex work, is fundamentally flawed. Naturally, sex worker rights activists are also against human trafficking, as it violates sex workers' human rights. Therefore, a more constructive model of understanding is needed; a model that makes a clear distinction between human trafficking and sex work, and also recognises sex workers and sex worker rights organisations as allies in the fight against human trafficking.

SWEAT and Sisonke's collaboration with A21's Human Trafficking Resource Line on the Sediba Hope Medical Centre's suspected human trafficking case illustrates how even though in the public domain there has been a conflation of trafficking and sex work, and this has created ideological differences between sex worker rights advocates and anti-trafficking organisations, when it comes to their daily operations these organisations have a shared commitment to rooting out trafficking, and have been able to work together. Furthermore, as demonstrated by the Durban trafficking case, sex workers (specifically peer educators) are best positioned to notice signs of human trafficking. Such insights coupled with their desire to rid the sex industry of all forms of violence, coercion and exploitation, makes sex workers essential allies in fighting human trafficking, which means they have to be given far greater roles in anti-trafficking efforts.

Although human trafficking does take place in South Africa's sex work industry, other forms of human right violations, such as police abuse and labour exploitation, are far more prevalent. In addition, some of these violations might have elements of trafficking, such as coercion or deception, but do not fit neatly into the legal definition of human trafficking. This does not mean that human trafficking in sex work should be ignored, but rather that policies and interventions should take into consideration sex workers' rights and well-being in an all-inclusive manner. This would also help identify and address more common, even if less sensationalistic human right violations, such as long working hours, non-payment of wages, and violence from clients or intimate partners.

However, criminalisation makes such strategic partnerships and holistic approaches to exploitation in the sex industry difficult. This legal model has also proven unhelpful in combating trafficking or child sexual exploitation in the sex industry. Instead, it makes it dangerous for sex workers to report such cases, as

they fear workplace raids, and/or being arrested by police themselves for selling sex.

To remedy this, sex worker rights organisations should be recognised as important stakeholders in combating human trafficking in the sex industry. SWEAT, Sisonke, and their partner organisations are willing to play this role if provided with sufficient resources and appropriate training. They suggested that a single point of reporting was needed to capture trafficking cases, and the National Human Trafficking Resource Line was often cited as a suitable platform. The Resource Line's call specialist also agreed to this. The draft *Counter Sexual Exploitation in Sex Work Protocol* can be used as a starting point in developing a more comprehensive referral system.

Thus in collaboration with the participants in this study, this report makes the following recommendations:

To the South African government:

1. Decriminalise all aspects of consensual adult sex work, while retaining the existing provisions against human trafficking, kidnapping, rape, child sexual exploitation, and related crimes;
2. Recognise sex work as work and regulate it through existing health and labour laws, so that sex workers have access to labour rights and measures to seek redress for any rights violations;
3. Train law enforcement and other relevant agencies on the distinctions between human trafficking and sex work, and sensitise them in respectfully dealing with sex workers;
4. Devise and implement socio-economic programmes that provide opportunities to those who wish to leave the sex industry and, more broadly, better economic opportunities for marginalised people.

To anti-trafficking organisations:

1. Stop the conflation on sex work and human trafficking and the use of sensationalistic images, unsubstantiated claims, and inflated numbers to promote an anti-sex work agenda;
2. Recognise sex worker rights organisations as essential partners in identifying and addressing human trafficking in the sex industry;
3. Establish/improve cooperation with sex workers rights organisations to help in identifying and addressing human trafficking in the sex industry.

To international organisations and donors:

1. Recognise the transformative and empowering effect that organising has on the rights and well-being of sex workers;

2. Support, through funding, advocacy and other resources, the organising among sex workers as a way of enabling sex workers to take control of their lives;
3. Ensure that the supported anti-trafficking initiatives do not have negative impact on the lives of marginalised groups, such as migrants and sex workers.

To sex worker rights organisations:

1. Review and rework the draft *Counter Sexual Exploitation in Sex Work Protocol* into a basic manual or leaflet with a simple breakdown of what steps to take when one comes across a suspected case of human trafficking, and the contact details of emergency referral systems;
2. Work with A21's South African National Human Trafficking Resource Line in establishing an emergency referral system/network with anti-trafficking NGOs and government units;
3. Collaborate with the National Human Trafficking Resource Line in training peer educators in safely identifying, documenting and referring cases of suspected human trafficking.

Ntokozo Yingwana is a Researcher and PhD Candidate with the African Centre for Migration & Society (ACMS) at the University of Witwatersrand, South Africa. Her main passion lies in gender, sexuality, and sex worker rights' activism in Africa. She has worked for the Sex Worker Education and Advocacy Taskforce (SWEAT) and currently serves on its board. She occasionally consults for the African Sex Worker Alliance (ASWA), and the Global Network of Sex Work Projects (NSWP).