

Human Trafficking & Migration

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The Migration Issue Briefs are a resource for practitioners. They summarise state-of-the-art research and are intended to inform discussions and debates surrounding human mobility in Southern Africa.

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This fact sheet is a quick reference guide regarding South Africa's approach towards human trafficking. The note discusses the legal definitions of trafficking and the impact of the 2010 World Cup on the way practitioners and the public understand the concept of trafficking.

Key messages

- Human trafficking refers to the movement of people, against their will, for purposes of exploitation.
- Most statements on human trafficking in South and Southern Africa employ estimates and claims that are not based on empirical evidence or facts.
- There is no empirical evidence that large-scale sporting events lead to an increase in human trafficking.
- Human trafficking is a gross violation of human rights and needs to be combated. Yet, the scale of the problem in South Africa is often exaggerated.
- Sex work and human trafficking are two distinct phenomena requiring different responses. Human trafficking and sex work should not be conflated.

What is human trafficking?

Human trafficking usually relates to the movement of people, against their will, for purposes of exploitation. The exploitation is often of a sexual nature, but does not have to be. South Africa does not currently have an established legal definition of human trafficking, and the United Nations description is often employed.

United Nations definition of human trafficking

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".¹

¹ United Nations General Assembly "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime" Resolution A/RES/55/25.

What is the legal position on human trafficking in South Africa?

South Africa does not yet have a specific human trafficking law. The Prevention and Combating of Human Trafficking Bill was tabled in Parliament in March 2010 but has not yet been signed into law. This Bill employs a wider definition of trafficking than that used by the United Nations.

Prevention and Combating of Human Trafficking Bill (March 2010) definition of Human Trafficking

”includes the delivery, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, exchange, lease, disposal or receiving of a person, or the adoption of a child facilitated or secured through legal or illegal means, within or across the borders of the Republic, of a person trafficked or an immediate family member of the person trafficked, by means of—

- (a) a threat of harm;
- (b) the threat or use of force, intimidation or other forms of coercion;
- (c) the abuse of vulnerability;
- (d) fraud;
- (e) deception or false pretences;
- (f) debt bondage;
- (g) abduction;
- (h) kidnapping;
- (i) the abuse of power;
- (j) the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (k) the giving or receiving of payments, compensation, rewards, benefits or any other advantage, for the purpose of any form or manner of exploitation, sexual grooming or abuse of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing any sexual act with such person, whether committed in or outside the borders of the Republic;...

The Criminal Law (Sexual Offences and Related Matters) Amendment Act (32 of 2007) includes a number of human trafficking-specific offences that are currently operational. In addition, existing statutory and common law offences could be employed to prosecute persons suspected of human trafficking. The new Children’s Act (38 of 2005) specifically criminalises the trafficking and exploitation of children.

How prevalent is human trafficking in South Africa?

Currently there is no systematic research available that can provide comprehensive insight into the prevalence or patterns of trafficking into or out of South Africa or the Southern African region. The most methodologically sound research – which looked specifically at sex trafficking – was conducted in Cape Town in 2008, and found only eight possible cases of trafficking for sexual exploitation in the

City of Cape Town.² This was in contrast to prior claims that trafficking was a major problem in Cape Town. Other forms of exploitation that are often regarded as trafficking, such as forced labour, bonded labour, debt bondage, child soldiers and involuntary domestic servitude, have not received much research interest in South Africa.

The International Organization for Migration (IOM) has been assisting victims of trafficking since 1994 and has projects in 85 countries. In a 2010 report, the IOM noted that it had assisted 306 victims of trafficking in Southern Africa during the period January 2004 – January 2010.³ That is on average 51 cases per year for the whole of the Southern African region.

How will the 2010 Soccer World Cup impact trafficking volumes?

As part of the publicity around the 2010 Soccer World Cup, many organisations have claimed that trafficking is a particularly pressing problem in South Africa or that it will be greatly increased in advance of or during the Soccer World Cup.⁴ Media outlets often disseminate the claims about trafficking provided by various organisations without confirming the sources on which estimates or claims are based.⁵

As noted above, there is no evidence to support claims that trafficking is already a significant problem in the Southern African region. Furthermore, there is no evidence to support the expectation that a large sporting event such as the 2010 Soccer World Cup is likely to increase human trafficking levels. The claim that trafficking is linked to large-scale sporting events is based, implicitly or explicitly, on the belief that events which attract large numbers of tourists – especially male tourists – increase the demand for paid sex. This supposedly increased demand is then assumed to be filled through women (and children) trafficked for sex.

Germany's experiences during the 2006 Soccer World Cup contradict claims that trafficking volumes will rise during the 2010 event in South Africa. Before the 2006 Soccer World Cup, media reports and NGOs claimed that 40,000 women and children would be trafficked into Germany. Yet, in research conducted after the 2006 World Cup, researchers found evidence of only five cases of trafficking.⁶

² C. Gould and N. Fick. 2008. "Selling sex in Cape Town." Pretoria/Tshwane: Institute for Security Studies.

³ IOM & NORAD. 2010. "Southern African Counter-Trafficking Programme (SACTAP): Review report." Oslo & Centurion.

⁴ For instance, see Madlala-Routledge, Nozizwe. 2010. "Don't let sex slavery turn South Africa into a pimp state." *Times Live*, 6 June 2010. [Online] available from: <http://www.timeslive.co.za/opinion/letters/article488710.ece/Dont-let-sex-slavery-turn-South-Africa-into-a-pimp-state> Madlala-Routledge, head of the Coalition against Trafficking in women, states: "... large sporting events are known to increase levels of sex trafficking. From research conducted with our partners, we believe this World Cup will be no different. [...] South Africa is a prime destination for trafficking."

⁵ See for examples Montsho, M. 2009. "2010 World Cup attracts human trafficking." *Citizen*, 7 September 2009. [Online] available from: <http://www.citizen.co.za/index/article.aspx?pDesc=99923,1,22>; and Skinner, E. B. 2010. "South Africa's New Slave Trade and the Campaign to Stop It" *Time*, 18 January 2010. [Online] Available from: <http://www.time.com/time/magazine/article/0,9171,1952335,00.html>

⁶ The German Delegation to Multidisciplinary Group on Organised Crime Article 36 Committee. 2007. *Experience Report on Human Trafficking for the Purpose of Sexual Exploitation and Forced Prostitution in Connection with the 2006 Football World Cup in Germany*. Brussels: Council of the European Union.

Risks of an undue emphasis on trafficking

Considering the limited evidence for trafficking into South Africa, the attention the issue has received in policy prioritisation and media reporting appears disproportionate. This undue emphasis diverts attention and resources from other issues and creates several blind spots:

- Other human rights abuses, which are well documented as being highly prevalent in South and Southern Africa, receive less attention and resources by welfare and advocacy organisations, the media, and government, due to the attention and resources dedicated to human trafficking prevention. Such abuses include rape and other forms of gender-based violence,⁷ and various forms of violence perpetrated by human smugglers and gangs upon undocumented migrants crossing South Africa's land borders.⁸
- Emphasis on trafficking for sexual exploitation diverts attention from less sensational aspects of labour exploitation, such as the exploitation of undocumented migrants and of vulnerable workers in largely unregulated or unmonitored sectors such as domestic work, farm labour and forms of casualised construction work.
- While human trafficking legislation is being fast-tracked, other areas of policy and law which affect more substantial numbers of people remain poorly addressed, if at all, despite many years of debate. These policy areas include the issues of cross-border migration⁹ and sex work.¹⁰

What is the difference between sex work and trafficking?

Sex work refers to the practice of engaging in sexual activities for reward. It involves the exchange of labour for an agreed upon amount of money, goods or services. Trafficking, on the other hand, refers to the movement of people, against their will, for purposes of exploitation, which may include sexual exploitation.

The difference between sex work and trafficking for the purpose of sexual exploitation is that sex work reflects an individual's decision to engage in a sexual transaction, while exploitation through trafficking occurs against the will of the victim. Difficult circumstances may impact on an individual's choice to engage in sex work, and in some cases sex work may be deemed an undesirable but necessary means to a living. Nevertheless, sex work reflects a conscious choice by the individual. In the case of trafficking, a third party effectively forces a man, woman or child into exploitative circumstances.

⁷ Mathews S, Abrahams N, Jewkes R, Martin LJ, Lombard C, Vetten L. 2008. "Intimate femicide-suicide in South Africa: a cross-sectional study." *Bull World Health Organ* 86(7): 552-58; Jewkes R, Dunkle K, Koss MP, Levin JB, Nduna M, Jama N, Sikweyiya Y. 2006. "Rape perpetration by young, rural South African men: Prevalence, patterns and risk factors." *Soc Sci Med*. 63(11): 2949-61; Human Rights Watch. 2001. *Scared at School: Sexual Violence against Girls in South African Schools*. New York: Human Rights Watch. [Online] available from: <http://www.hrw.org/reports/2001/safrica/>

⁸ Araia, T. 2009. *Report on Human Smuggling across the South Africa/Zimbabwe Border*. MRMP Occasional Report. Johannesburg: Forced Migration Studies Programme/University of the Witwatersrand.

⁹ Landau, L. B. and A. Wa Kabwe-Segatti. 2009. *Human Development Impacts of Migration: South Africa Case Study*. UNDP. [Online] Available from: http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_05.pdf

¹⁰ Richter, M. 2008. "Sex work, reform initiatives and HIV/AIDS in inner-city Johannesburg" *African Journal of AIDS Research* 7(3): 323-333; Fick, N. 2006. Enforcing Fear – Police abuse of sex workers when making arrests. *SA Crime Quarterly* 16: 27-33.

Are migrant sex workers victims of trafficking?

Despite several media reports to the contrary, foreign migrant sex workers are not automatically victims of trafficking. Many women, men and children independently leave their country of origin to migrate – either temporarily or permanently – to South Africa. On arrival, they may have limited opportunities to generate an income. Research in Southern Africa has established that a number of migrant women choose to engage in sex work as a practical solution to periods of intense economic strain.¹¹ Although some may make this choice reluctantly, they are not victims of trafficking. Therefore, they should not be treated as victims to be ‘rescued’ and returned to their countries of origin. The idea that migrant sex workers need to be ‘rescued’ and ‘rehabilitated’ is harmful rather than helpful, as it overlooks the agency and rights of those who engage in sex work.¹²

What policy options could assist in addressing human trafficking?

Attention to South Africa’s cross-border migration management policy and sex work legislation could assist in addressing human trafficking.

Facilitate Legal Immigration

It can be complicated and expensive for migrants to enter South Africa legally. This leads to undocumented migration across South Africa’s borders. Migrants clandestinely crossing the border into South Africa are at risk of rape or sexual assault by criminal gangs and smugglers operating in the border area.¹³ Because illegal immigration is an offence, clandestine border crossers are less likely to report the crimes against them or seek appropriate assistance. Lack of documentation also exposes migrants to a greater risk of labour exploitation during their stay in South Africa, because employers know that undocumented employees are unlikely to report abuses.¹⁴ The establishment of a broad range of simple, inexpensive and well-publicised legal channels for immigration into South Africa would narrow the opportunities for traffickers to mislead potential migrants and to profit from exploitation, and would encourage migrants to use formal immigration channels where their rights and safety would be better protected.

Decriminalise Sex Work

Sex work is currently a criminal offence in South Africa. As a result, the state and police authorities are sources of fear and distrust for sex workers. If sex work were decriminalised through appropriate amendments to the law, the sex industry would become more open to regulation and the role of the

¹¹ Kiwanuka, M. & Monson, T. 2009. Zimbabwean Migration into Southern Africa: Trends and Responses. Johannesburg: Forced Migration Studies Programme/ University of the Witwatersrand.

¹² Butcher, K. 2003. “Confusion between prostitution and sex trafficking” *The Lancet* Vol 361: 1983; Busza, J. 2004. “Sex work and migration: the dangers of oversimplification - a case study of Vietnamese women in Cambodia” *Health & Human Rights* 7(2): 231-249.

¹³ Araia, T. 2009. Report on Human Smuggling across the South Africa/Zimbabwe Border. MRMP Occasional Report. Johannesburg: Forced Migration Studies Programme/University of the Witwatersrand.

¹⁴ Polzer, T. 2009. Migration Policy Brief: Migration Policy Brief: Regularising Zimbabwean Migration to South Africa. Johannesburg: forced Migration Studies Programme. [Online] Available from: http://www.migration.org.za/sites/default/files/policy_documents/2010/FMSP_Migration_Issue_Brief_1_Zim_Special_Per_mits_May_09.pdf

police could change from persecutor to protector of sex workers.¹⁵ In addition to broader arguments for the decriminalisation of sex work (such as the positive impact on public health through improved sex worker access to health care services and HIV prevention¹⁶), decriminalised sex workers could assist police in identifying people who have been trafficked or otherwise forced into sex work against their will. Facilitating a cooperative relationship between sex workers and authorities, such as the police and social services, could therefore assist in detecting the perpetrators and victims of trafficking.

Selected FMSP Publications on Human Trafficking

- Marlise L Richter, Matthew F Chersich, Fiona Scorgie, Stanley Luchters, Marleen Temmerman & Richard Steen. 2010. "Sex work and the 2010 FIFA World Cup: time for public health imperatives to prevail." *Globalization and Health* 6(1).
- Chandre Gould & Marlise Richter. 2010. "The Need for Evidence to Assess Concerns About Human Trafficking During the 2010 World Cup." *ISS today* 23 March 2010. [Online] Available from: http://www.iss.co.za/iss_today.php?ID=917
- Marlise Richter & Dianne Massawe. 2010. "Serious soccer, sex (work) and HIV – will South Africa be too hot to handle during the 2010 World Cup?" *South African Medical Journal* 100(4): 222-223.

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Other FMSP Issue Briefs

- Fact Sheet: Population Movement in and to South Africa
- Issue Brief 1: Regularising Zimbabwean Migration to South Africa
- Issue Brief 2: Violence, Labour and the Displacement of Zimbabweans in De Doorns, Western Cape
- Issue Brief 3: 'Xenophobia': Violence against Foreign Nationals and other 'Outsiders' in Contemporary South Africa

¹⁵ Prostitution Law Reform Committee. 2008. Report of the Prostitution Law Reform Committee on the operation of the Prostitution Reform Act of 2003, Wellington; May 2008

¹⁶ Marlise L Richter, Matthew F Chersich, Fiona Scorgie, Stanley Luchters, Marleen Temmerman, Richard Steen. 2010. "Sex work and the 2010 FIFA World Cup: time for public health imperatives to prevail" *Globalization and Health*, 6:1 (11 February 2010)