

Marcel van der Watt
Department of Police Practice
School of Criminal Justice
College of Law
Email: vdwadm1@unisa.ac.za

Mr. Bryan Mantyi
Parliament's Multi-Party Women's Caucus

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***Serious Concerns Regarding the Decriminalisation of Adult Prostitution
in South Africa***

1. Terms of Reference

This submission is in response to the call on Thursday 08 February 2018 by the Parliament's Multi-Party Women's Caucus (MPWC) for submissions on the South African Law Reform Commission's (SALRC's) Report 107 on adult prostitution.

2. Information Sources

Information sources that contributed to this submission include the author's law enforcement and investigative background with human trafficking between 2002 and 2011 which include human trafficking investigations at the Hawks (DPCI) and Family Violence, Child Protection and Sexual Offences (FCS) Unit; Ongoing human trafficking case management and investigative assistance for the National Freedom Network (NFN) since 2011; Local and international human trafficking task team and deliberation platforms; Consultations with prosecutors and victims of trafficking in criminal cases; Expert court testimony on human trafficking *modus operandi*, control methods and sentencing considerations; Academic literature; Publications by the author and; A micro-level Ph.D. research study between March 2012 and January 2018 where unstructured and in-depth interviews were conducted with 120 participants, which included amongst others, victims of trafficking, actors in the sex trade and convicted traffickers, who directly and indirectly either contributes to the perpetration of human trafficking in South Africa, or the combating thereof.



3. Introduction

“The entire evidence in this case unmasked the sordid and sleazy world of drug abuse, prostitution and exploitation.” These were the words of Magistrate Pravesh Singh in a 2017 human trafficking judgment where two victims, one as a minor, were bought and sold over a protracted period of time amongst a network of more than 20 Nigerian traffickers. The victims in the matter testified about numerous other victims who were kept in a drug induced and subjugated state whilst being bought and sold like commodities. The abuse was multi-layered and included incidents of rape and one of the victims being forced to witness the physical dismemberment and murder of other victims who were not as fortunate to escape. In his testimony before Magistrate Singh, the author underscored that the matter before the court is by no means an anomaly, but that numerous similar incidents continue unabated in South Africa's sex trade.

As highlighted by a participant in the author's research (Van der Watt, 2018):

“...far from the rosy picture that (lobby group) tries to paint of an industry with great economic empowerment opportunities for women with limited skills that's not at all what it is. It's an industry that chews up and spits out the women who get into the front and who, by the time they get spat out the back, are broken people. Not morally. I mean physically broken. Needle marks, bruises, physical injuries that they've accrued over time. So when you see them in year one, the first time you see them there, they're fresh-faced and energetic. When you see them three/four years later on they're now at the tail-end of a nasty substance abuse programme...”

(Municipal law enforcement manager, para. 78, 14 May 2015)

The narrative by pro-decriminalisation lobby groups over the past 10 years and concomitant efforts to diminish concerns about the scope, nature and extent of human trafficking for sexual exploitation in South Africa is by no means complete. Worth contemplating here is the wisdom of Hans-Georg Gadamer as he continues his discussion on *Wirkungsgeschichte*:

“It [history] determines in advance both what seems to us worth inquiring about and what will appear as an object of investigation, and we more or less forget half of what is really there – in fact, we miss the whole truth of the phenomenon – when we take its immediate appearance as the whole truth.” (Gadamer, 2013: 311)

It is the submission of the author that ideologically slanted, over simplistic and reductionist explanations of the who, what, when, where, why and how of human trafficking must be set aside. Rather, a more intricate understanding of human trafficking as a multi-layered and multifaceted phenomenon must be nurtured where the crime is understood as an emergent property of South Africa’s structural inequalities, ambition-driven social insentience, greed, power- and gender disparities. Furthermore, a consideration of the whole definition of ‘Trafficking in Persons’ and ‘abuse of vulnerability’ as defined in the PACOTIP Act is important if we are to imbue a truthful, realistic and functional grasp amongst all spheres of society as to how the crime manifest. Sensationalist representations, denialism and truncated explanations of the phenomenon must be rejected as it creates confusion and does precious little to promote an even-handed, evidence-based and informed response to the crime (see: Van der Watt, 2018: 401).

4. The Use of Truncated Definitions and Explanations of Human Trafficking for Sexual Exploitation

With due consideration to the varied interpretations, societal knowledge vacuums, ideological tensions and micro-level understandings of what the crime of human trafficking constitutes in South Africa, it becomes crucially important to embrace the whole definition and criminal process as defined in the Act, whilst rejecting truncated descriptions of the crime. The offence of ‘Trafficking in Persons’ is defined by section 4 (1) in Chapter 2 of the Prevention and Combating of Trafficking in Persons (PACOTIP) Act 7 of 2013 as follows:



“Any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases or receives another person within or across the borders of the Republic, by means of –

- (a) a threat of harm;*
- (b) the threat or use of force or other forms of coercion;*
- (c) the abuse of vulnerability;*
- (d) fraud;*
- (e) deception;*
- (f) abduction;*
- (g) kidnapping;*
- (h) the abuse of power;*
- (i) the direct or indirect giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or*
- (j) the direct or indirect giving or receiving of payments, compensation, rewards, benefits or any other advantage, aimed at either the person or an immediate family member of that person or any other person in close relationship to that person, for the purpose of any form or manner of exploitation, is guilty of the offence of trafficking in persons;*

4 (2) Any person who—

- (a) adopts a child, facilitated or secured through legal or illegal means; or*
- (b) concludes a forced marriage with another person, within or across the borders of the Republic, for the purpose of the exploitation of that child or other person in any form or manner, is guilty of an offence.”*

Also important here is the definition of ‘abuse of vulnerability’ as deconstructed in section 1 of the PACOTIP Act as a means through which a person can be mobilised for subsequent exploitation. According to this definition, ‘abuse of vulnerability’ for purposes of section 4 (1) means

“any abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes but is not



limited to, taking advantage of the vulnerabilities of that person resulting from—

- a) the person having entered or remained in the Republic illegally or without proper documentation;*
- b) pregnancy;*
- c) any disability of the person;*
- d) addiction to the use of any dependence-producing substance;*
- e) being a child;*
- f) social circumstances; or*
- g) economic circumstances.”*

The aforementioned vulnerability considerations are reflective of the South African social context, and features prominently in numerous past and ongoing reports, investigations and prosecutions of human trafficking for sexual exploitation in the country. These vulnerability considerations are not only unique to cases of human trafficking for sexual exploitation, but also features prominently as predisposing factors and considerations for ‘participation’ in the sex trade, most prominently being social circumstances, economic circumstances, addiction to the use of any dependence-producing substance and being a child (the problem of demand and the ‘blesser’ phenomenon).

Notwithstanding the breadth of the definition, the range of associated trafficking crimes¹ defined in the PACOTIP Act, and the complex subtleties (i.e. ambivalence of ‘agency’) that present in most cases of human trafficking for sexual exploitation, researchers advocating for the decriminalisation of prostitution have consistently trimmed the definition of human trafficking, perhaps opportunistically so, to strengthen decriminalisation arguments. One sweeping claim positioned in

¹ Debt bondage (Section 5); Possession, destruction, confiscation, concealment of or tampering with documents (Section 6); Using services of victims of trafficking (Section 7); Conduct facilitating trafficking in persons (Section 8) which deals with a range of offences which include the leasing or subleasing of any room, house, building or establishment and the facilitation or promotion of trafficking in persons by advertising, publishing, printing, broadcasting, distributing or causing the advertisement, publication, printing, broadcast or distribution of information that facilitates or promotes trafficking in persons by any means, including the use of the internet or other information technology and; Liability of carriers (Section 9).



furtherance of the decriminalisation agenda was made in the paper entitled 'Sex Trafficking and Prostitution in South Africa' by Gould (2014: 200) who draws conclusions from two South African studies (Gould & Fick, 2008 and Richter & Delva, 2010) that reflect a gamut of working experiences for those involved in prostitution. She concludes with the assertion that:

“...it would appear that international pressure to comply with the Palermo Protocol as well as to improve South Africa’s status on the US State Department’s ranking list, contributed to the creation of sex trafficking as a social problem in South Africa.”

In a comprehensive and meticulous investigation into the methodology, interpretation of human trafficking and the conclusions made by Gould (2014) and Gould & Fick (2008), a number of shortfalls are identified by Dempsey (2017). Dempsey points out that Gould (2014) has *“radically truncated the scope of the definition”* of human trafficking and has even gone so far as to *“exclude cases involving the use of force”* (Dempsey, 2017: 73-74). Furthermore, in the study by Gould and Fick (2008), three case studies ('Sarah', 'Chantal' & 'Xing Xing') were documented as cases not fitting the description of trafficking. In response, Dempsey, in applying the same set of facts to the definition of human trafficking in the Palermo Protocol, meticulously argues that Gould and Fick (2008) incorrectly coded the cases as not being trafficking and, thus, *“undercounted the prevalence of trafficking for the purpose of sexual exploitation”* (Dempsey, 2017: 75-77).

Unfortunately, truncated descriptions and explanations of human trafficking that are incongruent with the PACOTIP Act continues. In her attempts to deconstruct South Africa’s ‘preoccupation’ with trafficking, Palmary (2016: 55), similar to Gould (2014), radically truncates the definition of trafficking and fails to explicate the comprehensive definition as set out in section 4 of the PACOTIP Act. Instead, Palmary refers to three criteria:

- That there is some movement or harbouring of a person;
- That a level of coercion and deceit is required; and
- That this must be for the purpose of exploiting the victim.

Also, no mention is made by Palmary of the ‘abuse of vulnerability’ as comprehensively deconstructed in section 1 of the Act. Palmary asserts that South Africa’s legislation “*does not take much account for [sic] issues like internal trafficking or labour trafficking*” (Palmary, 2016: 58), despite specific reference in the Act to forced labour and “*any form or manner of exploitation*” (South Africa, 2013). This flawed interpretation of South Africa’s PACOTIP Act leads to the assertion by Palmary that “*women are not deceived and coerced, but know perfectly well that their work will be exploitative*”. She states that women are in fact exploited, but concludes that this exploitation “*falls short of trafficking*” (Palmary, 2016: 73). This again is contrary to section 11(1)(b) of the PACOTIP Act, which clearly states that it is “*no defence*” to a trafficking-related offence if “*an adult person who is a victim of trafficking has consented to the intended exploitation*” (South Africa, 2013). The irrelevance of initial consent is also highlighted by the U.S. Department of State (2017: 17). In her final analysis, Palmary’s disregard for the multi-layered complexities of human trafficking trickle through her assertion that South Africa’s PACOTIP law is based on “*mythology*” (Palmary, 2016: 77), qualified earlier in her text as “*common sense cultural belief*” (Palmary 2016: 64).

More recently, Yingwana (2018: 197) in arguments for the decriminalisation of sex work in South Africa refers to “*numerous studies*” in South Africa which indicate that human trafficking in the sex industry “*is not a significant issue*” compared to other human right violations. Here reliance is again placed on the ‘Selling Sex in Cape Town’ study by Gould and Fick’s (2008) where the prevalence of trafficking for the purpose of sexual exploitation was undercounted and the definition truncated. In Yingwana’s (2018: 208) explanation of the PACOTIP Act, the definition of human trafficking is not comprehensively discussed whilst ‘the abuse of vulnerability’ is not defined and omitted as a means to effect trafficking.

The aforementioned assertions and arguments put forward by pro-decriminalisation advocates are far removed and in stark contrast to the day-to-day realities of police investigators, prosecutors, social workers and victims of trafficking with some describing it as ‘bizarre’ and ‘mindboggling’. As pointed out by a municipal law enforcement manager in the author’s research:

“So when (lobby group) makes sweeping statements about the situation around prostitution I often challenge them quite loudly because what they say so vastly differs from the reality that we see on the street and that the staff report to me and that I have seen myself and that I’ve heard from prostitutes. So I don’t understand an organisation which, like (lobby group), would make such statements claiming to have the insight they have because if they’re making some of the statements they are clearly either...being dishonest or they are grotesquely out of touch with what’s actually happening on the street...it’s something I will oppose [decriminalisation], not from a moral dimension but from a practical, legal, criminal dimension and an organised crime perspective.” (para. 2, 14 May 2015)

Not to be conflated with prostitution where an adult person voluntarily engages in prostitution without any third party actors, control and manipulation, the crime of human trafficking for sexual exploitation in the sex trade is rife and systemic with countless persons in prostitution experiencing abuse that leads them to believe that they have no reasonable alternative but to submit to exploitation. The crime must be defined accurately in order to educate effectively. Sweeping statements suggesting that human trafficking for sexual exploitation was either ‘created’ as a social problem in the country or ‘invented’ as a preoccupation are not helpful. As highlighted by Van der Watt (2018: 401):

“Biased assertions and obscured- and politicised agendas only fuel harm and must be unconcealed. They detract from an even-handed understanding of a complex problem, enable the subversive nature of a crime and perpetuate ignorance and the exploitation of people.”

5. The Scope, Nature and Extent of Human Trafficking for Sexual Exploitation in the Sex Trade

One of the most pressing questions that continues to plague practitioners, researchers and policy-makers is ‘How big is the problem?’ As a hidden and subversive crime, human trafficking does not lend itself to be quantified and therefore the quest for reliable statistics will remain “*an elusive statistical nightmare*” (Van der Watt, 2015) for the foreseeable future. A centralised database and aggregated data on the scope, nature and extent of human trafficking in the country is also non-existent whilst non-reporting by government on pending prosecutions and the number of cases investigated are but some of the shortfalls raised in the U.S TIP reports. The crime is, however, widespread, systemic and interwoven with the drug trade and organised crime. Countless cases are either not identified or documented, whilst others are subsumed under cases such as kidnapping, abduction, domestic violence, assault, labour and civil disputes to name but a few. Ongoing investigations, evidence led in ongoing trials, successful prosecutions and judgments in cases provides valuable qualitative insights into the scope, nature and extent of human trafficking for sexual exploitation in South Africa. The sexual exploitation of children in the sex trade, albeit bizarrely denied by some, emerge strongly in these cases and features prominently in the author’s own investigations and research over the past 15 years.

From the outset of South Africa’s ratification of the Palermo Protocol in 2004, the country has been identified as a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking in all the U.S. TIP Reports for the period 2004 to 2017. Consistent mention is also made to the impunity with which international syndicates involving Nigerian, Thai, Chinese, Russian, or Bulgarian traffickers continue to operate in South Africa. Nigerian syndicates, implicated in local and transnational human trafficking, features prominently in the reports and are said to:

“dominate the commercial sex trade within the country”

(2011, 2012)

“dominate the commercial sex trade in Hillbrow and other areas”

(2013, 2014)

“dominate the commercial sex trade in several provinces”

(2015, 2016, 2017)

Official complicity in trafficking crimes as a ‘serious concern’, shortfalls in the identification of trafficking victims, the lack of investigations in instances where information of criminal activity is available, and non-reporting by government on pending prosecutions and the number of cases investigated are some of the issues raised in the U.S TIP reports. The responsibility of government and its concomitant lack of efforts to promote demand reduction for commercial sex or forced labour was also highlighted in the most recent TIP report (US Department of State, 2017: 362).

The following qualitative insights into the scope, nature and extent of human trafficking in the sex trade are but some of the manifold lived experiences of 120 participants in the study by Van der Watt (2018)²:

Undocumented cases:

Similar to numerous participants who were in possession of detailed information concerning trafficking cases that had been reported to authorities, Participant INT 3 angrily expressed:

“I’ve got addresses, I’ve got names, I’ve got everything which I sent to Colonel [name] and nothing happened. Nothing happened...I must say there’re so many cases...” (para. 28)

She expounded:

“If we had to see somebody put down in front of us in writing all the cases that was sent to the police I think it would...touch hundred if not

² Quoted verbatim from Van der Watt (2018)



more, and what has been done, the response, would be absolutely zero.” (para. 76)

The number of children younger than 16 years of age in the sex trade is “*staggering*” (para. 62) claimed Participant CS 6, who had made numerous attempts to facilitate police interventions in his area but with no success. He explained:

“...ons praat van ten minste dertig wat jonger as sestien is en ons kan hulle uitwys. Ons kan sê dis die huis waar hulle bly. Dis die ou wat in beheer is. Dis hoe dit binne lyk. Ons kan al hierdie goeters sê.”

[...we’re talking of at least thirty that are younger than sixteen and we can point them out. We can say this is the house where they stay. This is the guy that’s in control. This is what it looks like inside. We can say all these things.] (para. 62)

A prosecutor (Participant NPA 2) stated that some “*human trafficking stories sounds like a movie, and I’m sorry to say this, but people will listen to this and they think, no, this could never be happening*” (para. 38). The sentiment was echoed by Participant CS 1 in describing some stories as “*so incredible*” (para. 143) that one becomes “*incredulous*” (para. 143). The police response to some of these reports was described by Participant NPA 2:

“So they stand there and it sounds so unbelievable that they immediately make a judgement call and say this person’s lying to them...” (para. 40)

Child trafficking and the sex trade:

What you do not see from the streets and that only become visible upon entering these houses, according to Participant CS 6, are “*minderjariges*” [*minors*] (para. 48) and “*n paar seuns*” [*a few boys*] (para. 48) that state “*we don’t wanna be here*” (para. 48). Participant STP 6, an ex-drug user and biker gang member, similarly referred to cases not being identified,



where girls are becoming addicted to drugs and subsequently “gemartel” [tortured] (para. 212) with drug withdrawals. He stated:

“Ek weet van meisies...kinders...tussen die ouderdomme van 14-18 jaar wat nie op die strate werk nie, maar werk van die pimp se huis af. Ek weet van omtrent 10-15 van hierdie meisies wat in een woonstel bly.”

[I know of girls...children...between the ages of 14-18 years that do not work on the streets, but work from the pimp’s home. I know of about 10-15 of these girls that stay in one flat.] (para. 212)

The lack of cases, and implicitly victims being identified, was also echoed by victims of trafficking interviewed. One such example was offered by Participant VOT 4, who was trafficked as a child, and referred to “teenagers” (para. 79) as being among the girls that she knew of who were trafficked:

“...you realise that there was no one that was from [city]. We were all [various cities], all over, the far places, and everyone always tell you, no...the Nigerian guy send this person to bring me or they kidnap them themselves, put them in the car, and then bring them here. Everyone was brought by someone.” (para. 81)

She explained that some of these accounts emerged during conversations after being arrested:

“...because when we get arrested we talk. They put us in one cell then we start talking. Where you from and how did you ended up here? Then we talk.” (para. 83)

The prominence of boys in the local sex trade was also extensively elaborated upon by Participant STP 1, an ex-brothel owner, who provided detailed personal experiences and information of child trafficking both locally and transnationally. Detailed handwritten notes given to the author by



Participant STP 1 during the interview also provided some insights into the demand for boys in the South African sex trade:

“When I had the brothel in [city name], I had from time to time clients who preferred young boys aged between 10 – 16 years for sexual partners at my price of R1000.00 per hour. I then went to [residential area] in [street name] where it was never difficult to pick up a youngster (of race specified by the client). I then took the youngster to a hotel of preference by the client, or my own premises where the client and the boy were busy in a flat next to my main property...afterwards I paid the youngster R400.00, and kept R600.00 for myself. I usually had +- (approx.) twenty (20) clients per month for boys, of which [a prominent business man] was one. [The prominent business man] usually took a boy for 2-3 hours at a time. I had a few regular boys available full time and who I could reach 24/7 if needed. As proof of this I can demonstrate this by going to [residential area] and to do pick-ups for you now. In 2014 my [city] contacts, pimps, said the ‘trade’ is booming, with not enough boys, and the customers might be in for a ‘price-hike’ soon, depending on services required. Present prices: Handjob (R350.00); Blowjob (R600.00) and Full House (R1600.00). Customers with money usually preferred boys from an agency like myself or [name of brothel], than do pick-ups from the streets of dirty unhygienic youngsters/ young thieves and robbers.”

A Hawks investigator (Participant SAPS 3) made reference to a “market” (para. 8) increasingly “saturated with adult prostitution” (para. 8) where traffickers were beginning to explore “more lucrative” (para. 8) options. He explained:

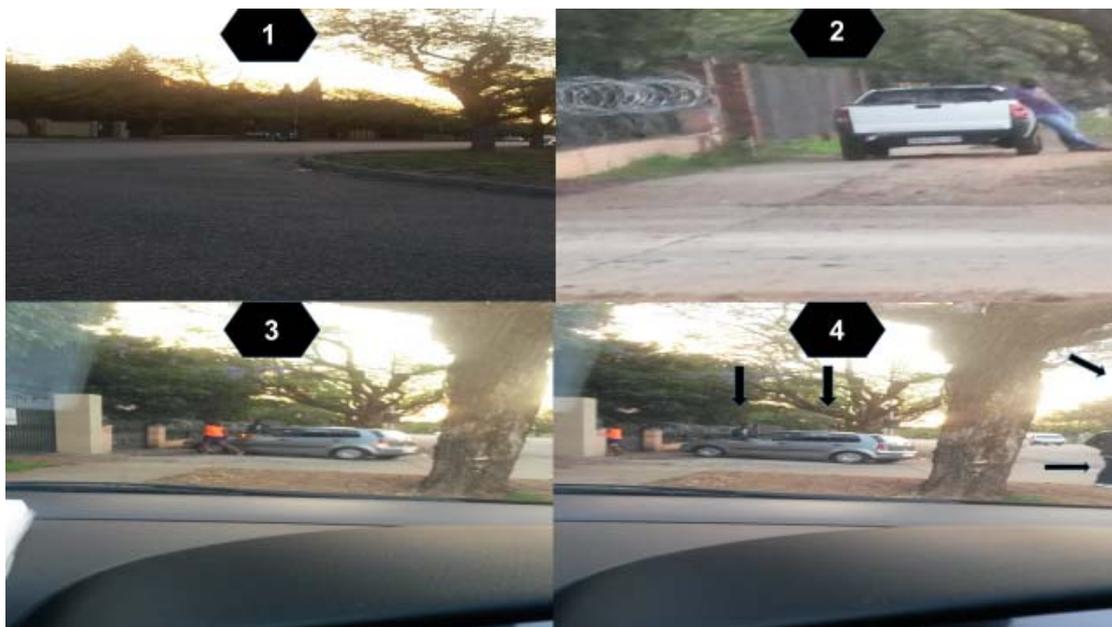
“...you’ll find that traffickers actually resorting on to children, to bring the children into the market, and you’ve got this paedophiles and the child porn industry and something like that that these guys are actually into it now.” (para. 8)

In harmony with Participant SAPS 3, it was observed by another trafficking victim (Participant VOT 3) that it is “happening worse now since people are



literally looking for younger girls when they call in at escort agencies” (para. 75). She explained that *“escort agencies now are feeling the pressure of business wise to get younger girls”* (para. 75) and stated that *“to get younger girls the girls need to be trafficked or influenced”* (para. 75), which includes exposure to *“drugs”* (para. 75).

Figure 1: Surveillance photographs taken by the author showing a child trafficking syndicate in operation in an affluent Pretoria neighbourhood in full view of community members and passing traffic who are oblivious of what is transpiring. The perpetrators in this case employed sophisticated counter-surveillance methods to circumvent detection. Police officials were known accomplices and implicated in the exploitation of women and children at the premises.



The ambivalence of ‘agency’:

Cognitive processes in victims of trafficking were also evident in a prosecutor’s (Participant NPA 6) conversation with a *“trafficking victim who worked on the streets”* (para. 12) who told her that *“we have a shelf life”* (para. 12). Knowing that girls can only be rotated so many times *“before the clients have slept or used all of them”* (para. 12), the victim told Participant NPA 6 that this is the stage at which they bring in *“fresh meat”* (para. 12). Considering the *“many residents”* (para. 4) at her shelter who



started out with prostitution for survival and which subsequently morphed into trafficking after “*someone bought them or tricked them*” (para. 4), Participant SHT 5 refers to the “*lifestyle and the addiction of the lifestyle*” (para. 4) which “*isn’t easy*” (para. 4) to “*break*” (para. 4). She makes reference to “*so many dynamic[s] and factors that isn’t easy for someone to stop doing what they doing*” (para. 4).

A trafficking victim, who was abducted into the sex trade at the age of 16 years, responded to the author’s question of whether there were in fact “*times when you were really able to run away?*” (para. 161) She answers:

“Yes, but the fear and fear to change. It was not only the fear of Nigerians, it was the fear of me changing that life that I’ve already living...’cause I was scared that if I run away what’s gonna happen to me? What am I gonna do? I started drugs when I was sixteen, I’m not qualified for anything. Will I ever get a job? A lot of things come into your mind...Then you rather let me stick to this life that I know that I’m used to even if I die. So I realised that most of us we scared to change into that life because of the fear, a fear of change...because I’m so comfortable into me getting up five o’clock, taking my bath, the Nigerian say there’s your wake-up then I smoke it and stand in the street and I know I will make money the whole night. Daytime I sleep. So used to that. Now what’s gonna happen to me? How am I gonna live? And the other thing you get it into your brains that once you hooked on drugs you’ll never stop and that thing also haunts you. How am I gonna survive with this thing? Because if you don’t smoke for two days your whole body you can feel it. You get sore, you get cramps, it’s a very hard thing to fight. So all those things they come into your mind. They built in then you realise, me, I’d rather stay...” (para. 162)

In a similar vein, Participant STP 10 shared an experience she had had whilst working as a receptionist at a high-end brothel that was investigated for human trafficking at the time of the author’s research. Participant STP 10 recollected how during one of her shifts she had gone to the bathroom where she had found one of the girls crying. This girl asked Participant



STP 10 whether she could see if *“iets fout is met haar”* [something is wrong with her] (para. 92). Participant STP 10 then noticed that there was *“bloed op haar broek”* [blood on her pants] (para. 92). This had resulted from a buyer that was so violent with the girl that she was in fact *“heeltemal oopgeskeur”* [entirely torn open] (para. 92). The girl told Participant STP 10 that she had to attend to the *“volgende afspraak”* [next appointment] (para. 100) but that she *“wil nie”* [does not want to] (para. 100). In a similar response to that of an ex-brothel owner (Participant STP 8), who referred to escorts who may not say ‘no’, Participant STP 10 concluded:

“... hulle het nie ’n keuse nie, hulle moet dit doen. Soos as jy geboek is, is jy geboek. Dit maak nie saak wat nie, jy moet gaan.”

[...they don’t have a choice, they have to do it. If you are booked, you are booked. It doesn’t matter what, you have to go.] (para. 100)

The complex nature of ‘agency’ in the sex trade was also articulated by Participant NGO 9, who pointed to those positioning a counter-narrative, such as pro-prostitution lobby groups and preservationists, that suggests that human trafficking is not really a problem in South Africa. She stated that they were *“misinformed not because they don’t see the numbers but because they misunderstand what we’re actually saying the issue is”* (para. 114). She explained that this misunderstanding was present even among people that worked in the field of human trafficking:

“...they think that because a woman is knowingly coming for prostitution that she can’t be a trafficking victim and that is a big problem. They see trafficking is only trafficking if someone is brutally kidnapped against their will, tied to a bed, and raped. That is their idea of trafficking but what we’re seeing it’s someone who’s consensually working in prostitution who’s being controlled and profited off by someone else...There’s partial deception is their means. They took away their documentation, issued a debt bond over them...the counter-countertrafficking narrative are advocating that it’s a not a crime, that they’re kind of speaking on behalf of women in the sex industry...what



I've been seeing is, whether it's forced labour or sexual exploitation, it's seeing how can the most possible value be extracted out of poor people and how can we take that value for ourselves? A woman in poverty, the only way that she can make a considerable amount of money is through prostitution, at this point, unless she really exceeds the odds. And so, because she's poor and she's vulnerable, someone's extracting that value from her and that's the crime we targeting. It's not kidnapping, taking them across the world, and forcing them into the sex trade. That does happen but that's not the issue in its entirety and, as soon as you kind of draw out the focus a bit, you start to see the entire issue a lot more clearly and the numbers seem to skyrocket."

(para. 114)

With reference to prostitution and pointing to *"organised crime people"* (para. 6) who have now *"exploited the situation"* (para. 18), Participant SAPS 3 stated that women are controlled either by *"substance abuse or by physical abuse or mental abuse, emotional abuse and stuff of that nature"* (para. 18). These are all *"mechanisms"* (para. 18) that *"organised crime syndicates are using and they know it and they can manipulate it"* (para. 18).

6. Final Analysis and Concluding Remarks

A momentous decision currently finds itself on South Africa's proverbial doorstep after the ANC resolved to decriminalise sex work in the country. This resolution was made despite extensive research and consultation by the South African Law Reform Commission who concluded that changing the legislative framework could *"create an extremely dangerous cultural shift"* where women *"would be considered even more expendable than at present"* (South African Law Reform Commission, 2017: 4). Context matters and South Africa will be writing its own examination paper. Copying and pasting from other prostitution models is disingenuous and dangerous. South Africa's labyrinth of structural impediments should be considered with a concomitant socioeconomic assessment on the eventuating impact of 'sex work' decriminalisation on society. The best

interests of the child should remain of paramount importance whilst efforts focus on transforming the lives and opportunities of the poorest South Africans ‘in a sustainable manner’.

The best interest of the community must be prioritised. Communities across South Africa are becoming increasingly frustrated with the prevalence and intersection of drugs, prostitution, human trafficking and a variety of criminal activities. Examples include community protests in Morningside³ (Durban) and incidents of public violence in Rosettenville⁴, Mamelodi⁵, Rustenburg⁶ and, more recently, Krugersdorp⁷. Children also fall victims to associated crimes, or are in fact usurped into the larger crime whirlpool. Recent reports received by the author in his capacity of Case Manager for the NFN include that of sex workers targeting minors outside schools for pocket- and lunch money in exchange for sex, and the peddling of drugs in schools.

The similar methods that traffickers and pimps use suggest that the sex trafficking and prostitution industries are not as disparate as some believe (Van der Watt, 2018: 199; Elrod, 2015: 978). Prostitution and human trafficking fundamentally and seamlessly interweave with organised crime and phenomena such as child sex tourism, forced marriage and harmful cultural practices, child pornography, the ‘blesser’ phenomenon, arms trafficking, drugs and drug trafficking. On the front of transnational human trafficking into the South African sex trade, the explosion of the Asian brothel system and massage parlours and its intersection with human trafficking is worth noting. In one of numerous examples, Love Justice⁸, an international counter-trafficking NGO working at a prominent South African port of entry, has aided in the interception of 249 potential victims of trafficking since April 2016. 31% of those potential victims were Thai nationals - the majority of which were recruited through full deception and

³ <https://www.iol.co.za/ios/news/watch-red-light-for-prostitutes-in-durban-suburb-13454538>

⁴ <http://ewn.co.za/2017/02/11/community-meeting-in-rosettenville-turns-violent>

⁵ <https://mg.co.za/article/2017-02-17-00-we-dont-burn-we-clean-brothels>

⁶ <http://ewn.co.za/2018/01/11/rustenburg-residents-vent-anger-over-drugs-and-prostitution>

⁷ <http://www.politicsweb.co.za/news-and-analysis/kidnapping-triggers-antidrug-riots-in-krugersdorp>

⁸ <http://lovejusticesa.ngo/>



others through partial deception. A number of the identified hosts in South Africa, who were part of the recruitment process, had clear links to known trafficking syndicates operating in Johannesburg and are notorious for imposing debt bondages on victims upon arrival in South Africa. Reports elsewhere, such as the Dutch situation must be critically reflected upon. A recent report based on interviews with 400 detectives suggest that the Netherlands *“fulfils many characteristics of a narco-state”*. Critics of the legal status of prostitution in the country, claim the Netherlands *“has been inadvertently promoted as a major hub for the trafficking of drugs and people”* (Boffey, 2018). Ignoring these significant warnings from those that have gone before us will be foolish.

It is the author’s submission that the demand for commercial sex serves as a fundamental fuelling factor of human trafficking in South Africa. Demand reduction for commercial sex and forced labour should be considered as a critical role by education systems, the Department of the Government Communication and Information System (GCIS) and the media. Official complicity in trafficking crimes, including crimes committed against persons in prostitution, must be dealt with decisively. Exit programmes for persons in prostitution, drug rehabilitation centres and shelters for trafficking victims, both men and women, must be properly funded and capacitated. Consultation with practitioners (prosecutors, police investigators, social workers) dealing with the intersection of prostitution and human trafficking must be prioritised as a means to attain an even-handed and informed response to policy around adult prostitution in South Africa. The lived experiences of trafficking victims must also be included in the co-creation of outcomes. Asset forfeiture and the Criminal Assets Recovery Account (CARA) must be explored as a source of funding whilst great care is taken not to create or alter legislation that will be incongruent with the PACOTIP Act. Finally, in contemplating this momentous decision, policy-makers are reminded that it is not only a profoundly moral decision that rests on the shoulders of men and women tasked with a Constitutional duty to secure the well-being of the country’s people, but, in fact, an intensely ethical one.

“A luta continua... .. A vitória é certa”



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⁹ Reports on South Africa for the period 2004 to 2017 can be found at <https://www.state.gov/j/tip/rls/tiprpt/>