

POVERTY

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

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Human Trafficking in South Africa:

ROOT CAUSES AND RECOMMENDATIONS



Human Trafficking in South Africa: Root Causes and Recommendations

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Foreword

UNESCO contributes to the global fight against human trafficking by encouraging more effective and culturally appropriate responses based on research and community participation.

The basis of this policy-paper is a combination of qualitative analysis of interviews with stakeholders in 2004-2005 completed with a critical review and analysis of available literature on human trafficking, especially of women and children in Sub-Saharan Africa.

A first version of the policy-paper was presented to a variety of stakeholders during a regional workshop on “Human Trafficking in Southern Africa (Lesotho, Mozambique and South Africa): Root Causes and Policy Recommendations” organized by UNESCO in Pretoria, South Africa on 22-23 November 2005. Based on the comments gathered during the workshop, the paper was further improved through complementary research and analysis in May 2006 - March 2007.

It is intended to serve as a tool for advocacy and awareness-raising to fight human trafficking in South Africa, with concrete recommendations to be implemented by a wide range of actors working to fight human trafficking in South Africa (including the government, international and local organizations).

ACRONYMS

ASI:	Anti-Slavery International
CATW:	Coalition Against Trafficking in Women
CIA:	Central Intelligence Agency
DRC:	Democratic Republic of Congo
ECPAT:	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
GDP:	Gross Domestic Product
ILO:	International Labour Organization
IOM:	International Organization for Migration
NCACA:	National Campaign Against Child Abuse
NGO:	Non Governmental Organization
NPA:	National Plan of Action (for children)
NPA:	National Prosecuting Authority
PRSP:	Poverty Reduction Strategy Paper
RAPCAN	Resources Aimed at the Prevention of Child Abuse and Neglect
SADC:	South African Development Community
SALRC	South African Law Reform Commission
SAMP:	South African Migration Project
SAPS:	South Africa Police Service
STI:	Sexually transmitted infection
SWEAT:	Sex Workers Education and Task Force
TECL:	Towards the Elimination of the Worst Forms of Child Labour
TVPA:	Trafficking Victims Protection Act
UK:	United Kingdom
UN:	United Nations
UNESCO:	United Nations Educational, Scientific and Cultural Organization
UNICEF:	United Nations Children's Fund
UNIFEM:	United Nations Development Fund for Women
US:	United States
USAID:	United States Agency for International Development
USDA:	United States Department of Agriculture
USDOL:	United States Department of Labor
WFP:	World Food Program
WHO:	World Health Organization
ZAR:	South African Rand

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Map of South Africa

1 Introduction

1.A. SUMMARY

Trafficking in human beings, especially women and girls, is not new. Historically, it has taken many forms, but in the context of globalization, has acquired shocking new dimensions. It is a complex, multi-faceted phenomenon involving multiple stakeholders at the institutional and commercial level. It is a demand-driven global business with a huge market for cheap labour and commercial sex confronting often insufficient or unexercised policy frameworks or trained personnel to prevent it. The primary driving force for the supply is poverty, with associated poor education standards and lack of employment opportunities that propel vulnerable people into the hands of traffickers. The trafficking industry, responding to growing demands for cheap, malleable labour and an expanding, globalized sex industry guarantees a ready supply to satisfy that demand.

South Africa provides a market for the services of trafficked persons from regional and extra-regional locations.¹ Armed conflict and associated dislocation, political and economic upheaval, food insecurity, lack of education and employment opportunities and the blight of the AIDS epidemic make South Africa a magnet that attracts migration from across the continent. Organized crime syndicates, local traffickers and refugee populations exploit this vulnerable population for the sex industry, agricultural and industrial labour and organ harvesting. South Africa is also a transit and source country for the international market in the trafficking of humans. As a transportation hub, South Africa offers direct flights and shipping to Europe and Asia. The scale of growth of the traffic in human beings from Africa to Europe and the Middle East suggests that South Africans, as with many other African nationalities, are already feeding this transnational business.² There is also evidence of internal trafficking.

The legacy of the apartheid regime has to be deconstructed and, most importantly, legislation and policy put in place to ensure the continued establishment of a system that

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1. Rossi, ed. (2003) *Trafficking in Human Beings, Especially Women and Children, in Africa*, UNICEF Innocenti Research Centre.
 2. Idem.

not only complies with international norms and standards but reinforces locally, culturally appropriate responses. South Africa participated in the First World Congress against Commercial Sexual Exploitation of Children (CSEC) held in Stockholm in August 1996. There was also participation in the Terres des Hommes International Campaign against Child Trafficking launched in 2001, under the patronage of Graça Machel and Archbishop Desmond Tutu. Following these events, a number of programmes were established in different areas such as awareness-building, protection, social reintegration, and rehabilitation. Despite the Government's participation, human trafficking remains a critical problem in South Africa. Prevention calls for an integrated and multi-sectoral approach that addresses migration and trafficking within the context of overall national and development policy. An integrated approach to combating trafficking through gender-sensitive and rights-based approaches to provide livelihoods for women needs to be explored.

1.B. KEY FACTS

Country Profile³

Total Population	47.2 million (2004 figures)
Urban population	58.8% (2004 estimate)
Ethnic groups	black African 79%, white 9.6%, coloured 8.9%, Indian/Asian 2.5% (2001 census)
Life expectancy at birth	Female: 48.2 years (2004 estimates) Male: 45.7 years
Infant mortality (<i>under 1 year</i>)	54 deaths/1000 live births
Adult literacy	Female: 80.9% Male: 84.1%
Population living on less than US\$1/day	10.7%
Combined gross enrolment ratio for primary, secondary and tertiary schools	77%
Children under height for age (<i>under 5 years</i>)	12%
Population with sustainable access to improved sanitation	65%
Population with sustainable access to improved water source	88%
Births attended by skilled health personnel	84%
Doctors	77 per 100,000
Maternal mortality	150 per 1000 live births
Refugees by country of asylum	30 000 (2005 figures)
Seats held by women in Parliament	32.8%
Women in government at ministerial level	41.4%
Ratio of female to male earned income	0.45%
Girls in education	89% primary: 68% secondary: 16% tertiary
Prevalence of HIV and AIDS in adult population (age 15-49)	18.8% (2005 estimates)
Human Index Rating	121/177

3. Information in this table is from the UNDP (2006) *Human Development Report and the CIA World Factbook*.

1.B.1. Human Trafficking: International

- Human trafficking data are often debated as the methodologies used to produce them are not always scientific. The UNESCO Office in Bangkok decided to trace the origin of these data to clarify the situation.⁴ It is thus possible that the following figures may not be correct.
- 2005 US State Department figures estimate that 600,000-800,000 people are trafficked annually across international borders. Approximately 80% are women and girls, of whom 50% are minors. The vast majority of those trafficked under 18 years of age are girls.⁵
- UNICEF estimates 1,200,000 children were trafficked globally in 2000.⁶
- People are trafficked for many purposes – sexual exploitation, begging, underpaid and exploited forced labour in the agriculture, manufacturing and construction industries, domestic service and organ harvesting.
- Transnational organized criminal syndicates and networks are responsible for the bulk of human trafficking, which is linked to a range of other trafficking – drugs, firearms and consumables – and other criminal activities - money laundering, smuggling and political bribery and corruption.
- Trafficking in humans is a lucrative business. Estimated profits are between US\$7-10 billion annually.⁷
- Trafficking operations range from tightly structured and controlled hierarchical groups involved in transnational trafficking of various commodities, to formations of ‘core’ groups, with a loose network of ‘associates’ seeking maximum profit opportunities, specializing in human trafficking.
- Weak state structures, resulting from the upheaval of transitional economies contribute to an environment favouring predatory criminal organizations. Parallel structures that substitute for state security dominate such economies and flourish through fear and intimidation.
- The widespread reach of these networks and perceptions of their ability to retaliate against ‘victims’⁸ and their families reinforces their clandestine nature, difficulty of investigation and lack of evidence.
- Armed conflicts destroy livelihoods, damage national economies and cause mass population movements. Through heightened insecurity, wars increase the vulnerability of women and children, promote dramatic survival strategies such as prostitution and often involve the abduction of women and children into armed groups/factions. Increased poverty for survivors, particularly widows and female headed-households, is an endemic feature of armed conflicts.

4. UNESCO Bangkok, Trafficking in Persons Project, <http://www.unescobkk.org/>

5. US Department of State (2005) *Trafficking in Persons Report, 2005*.

6. UNICEF (2006) *State of the World's Children: Excluded and Invisible* <http://unicef.org/sowc06/index.php>

7. US Department of State, *Ibid*. It is important to note this report uses a statistical method based on “plausible estimates”; the only reliable figures are those related to seizures and confiscation (which require the crime to be consumed, detected and tried through the legal system).

8. The word ‘victim’ is typically regarded as disempowering. The term ‘trafficked people/persons’ is the term of choice on this report and efforts have been made to use it as much as possible. However, in some circumstances the term ‘victim’ has been considered appropriate for use.

- Migration as a response to armed conflict and insecurity results in large refugee populations, exposing the most vulnerable to an array of dangers - sexual violence, recruitment into armed forces and trafficking.
- Stringent entry requirements have increased the regulation of population movements. When would-be migrants fail to meet these requirements, they may resort to illegal means, giving rise to people smuggling and trafficking.
- The increase in demand for cheap labour continues to attract people flows from poorer to more prosperous locations. As a result, with populations moving in search of employment, with the attendant opportunities for exploitation, there is often overlap between trafficking source, transit and destination sites.⁹
- The globalized commercial sex industry has greatly expanded and become integrated with other aspects of modernization. The demand factors dominating commercial sex work require a constant supply of women and children. The commercial sex industry is often inextricably linked with tourism, both domestic and foreign, and some countries are specifically promoted for “sex tourism”.¹⁰
- Widespread gender discrimination that denies women their rights, as well as attitudes that consider women and girls inferior and weak and thence objectify them, and tolerate violence against women support the existence of trafficking practices that deliver women and girls into appalling living and working conditions.
- Destitute families, unable to support their children, are vulnerable to persuasion to hire out or sell them, girls being most vulnerable to commercial exploitation.
- In spite of international conventions, there remains indifference and a lack of domestic commitments to protect those most at risk through legislation, awareness and information, and training of the authorities responsible to provide protection.

1.B.2. Human Trafficking: South Africa

- South Africa is the regional powerhouse, with a GDP (US\$159.9billion) four times greater than its southern African neighbours, and represents approximately 25% of the continent’s GDP.¹¹
- From September 1999 to June 2005, the average economic growth rate was 3.5%.¹² It also ranks 42/117 countries for global competitiveness.¹³
- South Africa is a source, transit, and destination country for men, women, and children trafficked for forced labour, sexual exploitation and organ harvesting.¹⁴

9. D’Cunha, Jean (2002) *Trafficking in Persons: a gender and rights perspective*, Expert meeting on trafficking in women and girls.

10. Corner, Lorraine (2002) *A Gender Perspective to Combat Trafficking*, Strategy Paper on an Integrated Approach to Livelihood Options for Women & Girls, Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, Bangkok.

11. World Economic Forum (2005) *Global Competitiveness Report*.

12. South Africa Government online: http://www.southafrica.info/doing_business/economy/creditratings-260805.htm

13. World Economic Forum (2005), *Ibid*.

14. US State Department (2006) *Trafficking in Persons Report*, Released by the Office to Monitor and Combat Trafficking in Persons.

- Estimates of 247,000 children working in exploitative labour, including prostitution, which makes children exposed and vulnerable to the deception and exploitation of traffickers.
- Estimates of 30,000 child prostitutes.¹⁵ Once involved in the criminal environment children can be emotionally intimidated, physically moved and trapped into trafficking.
- Traditional migration patterns of labour to South Africa from surrounding states, the practice of children being loaned/sent to better-situated family members to be raised; and casual border procedures contribute to acceptance and expectations of unregulated cross-border movement.
- Extensive and difficult land and sea state borders challenge the capacity of existing security forces.
- Retrenchment of thousands of migrant labourers to surrounding states from South Africa's mines and farms over the past decade has fuelled the regional unemployed labour force.
- Practical outcomes of armed conflict in neighbouring and extra-regional states include an influx of refugees (27,000 in 2004).¹⁶
- In spite of overall economic growth, poverty, both urban and rural, is the most visible cause of trafficking in humans, particularly women and children.
- Many children live in communities excluded from the free market economy. In some peri-urban areas more than half the adult population is unemployed, and those in employment earn below-subsistence wages.¹⁷ In such contexts people resort to risky survival strategies and become more vulnerable to human trafficking.
- Gender discrimination remains in spite of a progressive Constitution that guarantees human rights and gender equality.¹⁸
- Anti-trafficking legislation to align domestic law and penalties with international standards (Palermo Protocol) is being developed.
- Estimates of 1,200,000 AIDS orphans (2006 data).¹⁹
- Estimated national adult (15-49 years) HIV prevalence is 18.8%.²⁰
- Organized transnational criminal groups are well-established, trading in various commodities, including human beings.

15. Molo Songololo (2000) *The Trafficking of Children for Purposes of Sexual Exploitation*.

16. UNDP (2005) *Human Development Report*.

17. O'Connell Davidson and Sanchez Taylor (1995) *Child prostitution and sex tourism: South Africa*, ECPAT.

18. Constitution of South Africa: Chapter 2 Bill of Rights, sub-section Equality [1-5].

19. www.unaids.org/en

20. *Idem*.

2 Context and Issue

WHAT IS TRAFFICKING?

The first internationally agreed upon definition of trafficking is embodied in the *UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime (2000)*, as follows:

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.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The consent of a victim of trafficking in persons to the intended exploitation...shall be irrelevant where any of the...[fore-mentioned] means...have been used.

The recruitment, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons,' even if it does not involve ...[any of the above listed means].

"Child" shall mean any person under eighteen years of age (Art. 3).

Key Features of the Protocol:

- Defines trafficking as a crime against humanity, marked by the **intent to deceive and exploit**,²¹

21. See International Criminal Court, Rome Statute: Article 7: Crimes Against Humanity.

- Expands the range of **actions** considered part of the trafficking process – **recruitment, transportation, transfer, harbouring, and receipt** of persons in end-institutions;
- Addresses a wide range of means used, from blatant force to subtle inducements that capitalize on vulnerability, to achieve ‘consent’;
- Makes **consent to the intended exploitation irrelevant**, where any of the means outlined in the definition are used;
- Acknowledges **men** are also trafficked, though it emphasizes trafficking in **women and children**; (*Article 2*)
- Recognizes a **range of purposes** of trafficking, in addition to sexual exploitation;
- Contains **rights-based** and protective social, economic, political and legal **measures to prevent trafficking, protect, assist, return and reintegrate** trafficked persons, and to **penalize trafficking** and related conduct; (*Articles 6, 7, 8, and 9*)
- Calls for **international cooperation** to prevent and combat trafficking. (*Articles 9, 10, 11*)

While its human rights provisions could be expanded, enriched and made obligatory on States, the Protocol is nonetheless an important step towards locating trafficking within a rights framework.²²

Consent is deemed irrelevant where any of the ‘means’ of trafficking – namely threats, the use of force, coercion, deception, fraud or abuse of power – is used. In adopting this stance the Protocol acknowledges that a wide range of mechanisms may be used to ensure the cooperation of victims; from overt force and violence to more subtle inducements that capitalize on an individual’s vulnerability to achieve consent. While the trafficking of adults is distinguished by deception or coercion, all recruitment, transportation, transfer, harbouring or receipt of children under the age of eighteen for the purposes of exploitation is considered trafficking – even where coercion, deception or abuse of power are absent.

The ‘validity’ of adult – particularly female – consent remains highly contested, with much of the discourse on trafficking portraying women as helpless victims without agency. Responses to the debate regarding the degree of agency that trafficked women exercise has a significant effect on prevention and protection strategies.

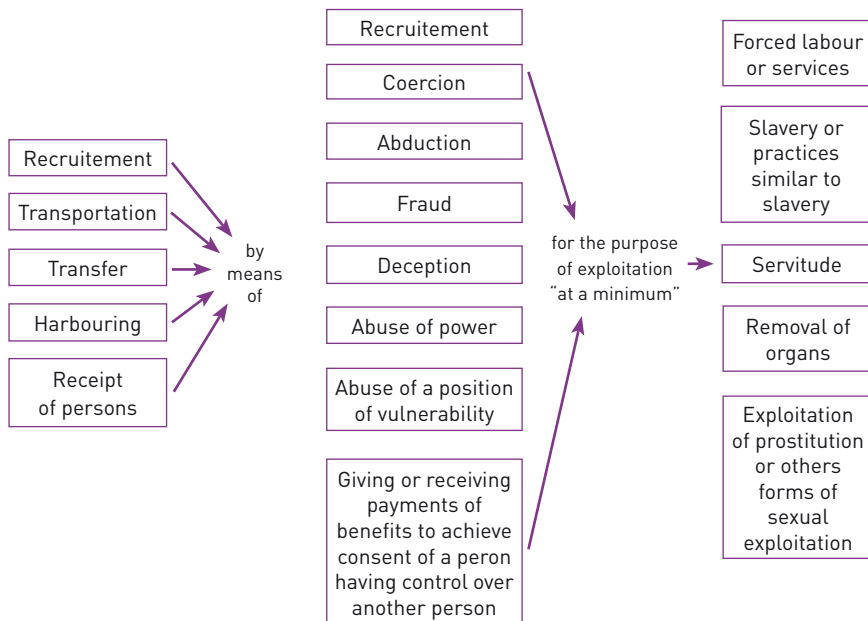
In adopting a broad view of the activities that might constitute trafficking, the Palermo Protocol is the first international instrument to extend the concept of human trafficking beyond prostitution.

Historically the trafficking debate has focused on distinctions between a criminal or a human rights/protection-based approach. The Protocol confirms the need to recognize these as being essential rather than exclusive, and that both preventive and responsive activities need to be linked and integrated in order to combat trafficking.

The Protocol focuses on exploitation as a key element to define trafficking, although it proves impossible to define and explicitly determine at what point exploitation begins. This can create problems of precision in the determination of the responsibility of perpetrators if law enforcement personnel are poorly trained and lacking in awareness.

22. UNIFEM Asia (2002) *Trafficking in Persons: A gender and rights perspective*, Briefing Kit.

Elements of the Palermo Protocol's Definition of Trafficking



Source: Trafficking in Persons: An Analysis of Afghanistan, IOM Kabul, 2004

The Palermo Protocol definition can be applied to both internal and cross-border(s) trafficking and sets the legal framework for the prosecution of non-organized trafficking, in the sense of local, and spontaneous or opportunistic rather than as a part of large organized crime syndicates.

There are numerous other international instruments guiding governments on how to address trafficking in persons.

The following table provides additional detail on the rights violated in the context of human trafficking and the corresponding legal instruments.²³

23. This table is adapted from the *Human Rights Standards for the Treatment of Trafficked Persons* published by the Global Alliance Against Trafficking in Women (GAATW) and from *International Perspectives and Nigerian Laws on Human Trafficking*, Olaide Gbadamosi Esq, Network for Justice and Democracy.

Human Rights Usually Violated in the Context of Human Trafficking	Corresponding International Legal Instruments and Articles
Right to Health and Social Services	<ul style="list-style-type: none"> • Articles 22 and 25 (1) of the Universal Declaration of Human Rights (UDHR) • Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 24 of the Convention on the Rights of the Child (CRC) • Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Article 5 (e) (iv) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
Right to Education and Training	<ul style="list-style-type: none"> • Article 26 of the Universal Declaration of Human Rights (UDHR) • Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 18 of the International Covenant on Civil and Political Rights (ICCPR) • Articles 28, 29 of the Convention on the Rights of the Child (CRC) • Article 10 of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) • UNESCO Convention Against Discrimination in Education
Right to Liberty of Movement and Freedom to Choose one’s Residence	<ul style="list-style-type: none"> • Article 13 (1) of the Universal Declaration of Human Rights (UDHR) • Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR)
Right to a Decent Work	<ul style="list-style-type: none"> • Article 23 of the Universal Declaration of Human Rights (UDHR) • Article 8 (3) of the International Covenant on Civil and Political Rights (ICCPR) • ILO Convention 29 • Article 23 (1) of the Universal Declaration of Human Rights (UDHR) • Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) • Article 11 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
Right to Freedom from Slavery	<ul style="list-style-type: none"> • Article 4 of the Universal Declaration of Human Rights (UDHR) • Article 8 of the International Covenant on Civil and Political Rights (ICCPR) • United Nations Slavery Convention Supplementary Convention on the Abolition of Slavery, the Slave Trade and institutions and Practices Similar to Slavery
Right not to be Tortured and/or Submitted to Other Cruel, Inhuman or Degrading Treatment or Punishment	<ul style="list-style-type: none"> • Article 5 of the Universal Declaration of Human Rights (UDHR) • Article 7 of the International Covenant on Civil and Political Rights (ICCPR) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Right to Peace and Security	<ul style="list-style-type: none"> • Article 3 of the Universal Declaration of Human Rights (UDHR)
Right to Non-Discrimination	<ul style="list-style-type: none"> • Articles 1, 2 and 7 of the Universal Declaration of Human Rights (UDHR)
Right to Access to Justice	<ul style="list-style-type: none"> • Article 6 of the Universal Declaration of Human Rights (UDHR)
Right to Freedom of Expression and Participation	<ul style="list-style-type: none"> • Articles 19 and 21 of the Universal Declaration of Human Rights (UDHR)

2.A. WHAT IS THE CONTEXT OF HUMAN TRAFFICKING IN SOUTH AFRICA?

No analysis of the phenomenon of human trafficking in South Africa can be adequate without consideration of the following:

Liberalization of Social/Cultural Mores

Although the activities associated with prostitution (soliciting, procuring, brothel keeping, etc.) are still illegal in South Africa, the policing of prostitution has been dramatically relaxed in recent years and all the tiers of the sex industry's characteristic hierarchy can now be found alongside each other in major cities such as Cape Town and Durban.

O'Connell Davidson, J. & Sanchez Taylor, J. (1995) *Child Prostitution and Sex Tourism*, South Africa, ECPAT.

The repressive sexual ideology of the apartheid years, that sanctified heterosexual relationships within marriage, stigmatized prostitution and confined all sexual encounters within its rigid racist boundaries, has changed dramatically. Since 1994 the strict sexual mores and conservatism have relaxed under one of the world's most progressive Constitutions, that guarantees protection from discrimination on the basis of gender and of sexual orientation.²⁴

Homosexuality, taboo and criminalized under the apartheid dispensation, has crossed racial boundaries and is legally protected. Cape Town has emerged as a centre for cruising in bars, discos and saunas, with homosexual sex reputed to be available for the price of a mobile phone, food, cars and the chance of a better life.²⁵

Even the South Africa Police Service (SAPS) recognizes the phenomenon and gives online advice to men and boys, including "*Do it in the light, boys.*"²⁶

The 2003 documentary "*Four Rent Boys and a Sangoma*" features transactional sex among five men in Johannesburg. The producer, Catherine Muller, claims poverty as the leading reason for male prostitution, and comments: "*The phenomenon of the black township rent boys having sex for money is very new.*" [BBC News, 5 November 2003].

The change from clandestine, illegal encounters to a more permissive environment, increased publicity and inter-racial activity is also new. Increased homosexual activity exposes vulnerable, impoverished young black men and children to human rights abuses. The intricacies of racial dominance by more affluent and powerful clients also remain significant.

The relevance of these societal shifts in attitudes and behaviours, alongside relaxed policing, has the potential to escalate the supply side of 'victims' for the predatory human trafficking business.

24. Constitution of South Africa: Chapter 2, Bill of Rights, sub-section Equality (1-5).

25. See Mail and Guardian, May 28 1998, "*At play in the rent-boy trade*" discussing how "the male-to-male escort industry is booming, servicing clients who are typically middle-aged, affluent, white-and most often married," and the "rent-boy trade" or male-to-male massage industry. See also media accounts of 2004 shootings of nine men in gay massage parlour in Cape Town.

26. www.mambaonline.com

Perceptions of South Africa as a Trafficking 'Hub'

Traditional migration patterns from neighbouring states into South Africa as well as the more recent 'magnet' effect of South Africa readily contribute to perceptions of South Africa as a trafficking hub. What may previously have been tolerated as conditions of labour, the risks of migration or as acceptable chances to take in the search for opportunity and improved living standards are now, under the spotlight of 'human trafficking,' likely to be perceived very differently.

As Anderson and O'Connell Davidson explain, 'trafficking falls within a continuum of experience. This ranges from people who are transported at gunpoint, then forced into labour through the use of physical and sexual violence or death threats, to people who are not deceived or coerced in any way, are well paid and work in an environment that respects and upholds their human rights. Where in this continuum the abuses associated with trafficking become unacceptable varies according to one's political and moral values.'

Anderson, B. and O'Connell Davidson, J. (2002) *Trafficking – a demand led problem?: A Multi-Country Pilot Study, Save the Children.*

Poised at the foot of Africa, with a stable, democratic government and enlightened legislation; well developed and maintained national and international transportation systems; leading the continent in industrial development and technology; glittering with modern cities and amenities and their attended bustle and glamour, South Africa inevitably attracts migration from across the continent. In many cases it is a continent torn by years of war, loss and suffering, by the spectre of HIV and AIDS, collapsed social services, endemic disease, disrupted families and bleak prospects for survival.

Whatever the truth about conditions of relative wealth and poverty that lie behind South Africa's image, it is the image that counts. Along with the migrant populations come the attendant exploiters to capitalize on their vulnerability, ready to satisfy the demands of the diverse and complex 'rainbow' society – which may well be turning South Africa into the 'hub' of human trafficking.

The Scale of Research

However, the accuracy of this assertion is hard to prove with any certainty. Reliable data is sketchy. There are no official statistics on human trafficking in South Africa. Official police records, as in many countries, subsume human trafficking data into statistics on a range of crimes including abduction, kidnapping, rape, assault and immigration-related offences.²⁷

A small number of studies have examined the topic of human trafficking, mostly with a focus on trafficking for sexual exploitation. Even within this narrow exploration of the end results of human trafficking, the focus has been primarily on children.

Only recently have studies on trafficking for the purposes of labour exploitation been initiated. This highlights the paucity of information on the trafficking of boys and men, as

27. Pharaoh, Robyn (2006) *Getting to Grips with Trafficking: Reflections on Research in South Africa*, ISS.

it can reasonably be assumed they are a primary market for trafficked labour. At the same time, given the history of migration of women in the domestic labour market in South Africa, it is important for research to be conducted that separates and distinguishes as much as possible between exploitation for labour in the sex industry and in other segments of the labour market. It is understood that grey areas exist as what may be identified as domestic labour can readily evolve/deteriorate into sexual exploitation by employers within the private realm.

There are no official statistics of child prostitution, and therefore no gender breakdown, so it is impossible to know with any accuracy the scale of boy/girl prostitution. In 2000 Molo Songololo estimated the total figure at approximately 30,000.²⁸ While prostitution and human trafficking are not synonymous, there is an evident and crucial connection. Without specific and reliable gender disaggregated data there remains the risk of conflating the figures while failing to provide for appropriate preventive and responsive action.

There are no official figures or studies on trafficking for the purpose of organ harvesting. Media attention has been given to high visibility accounts of ‘muti’ killings and the consensual (but illegal) organ transplants which have both blurred the boundaries with trafficking.

The studies used as a basis of knowledge about trafficking in South Africa are:

- Study by the children’s support and advocacy organization, Molo Songololo, on the trafficking of women, 2000;
- Second study published by Molo Songololo in the same year on the trafficking of children under the age of 18;
- IOM study on the trafficking of women and children in Southern Africa, published in 2003.

All three examine the trafficking of women and children for the purposes of sexual exploitation.²⁹

In all cases the number of trafficked persons consulted for evidence is few, while additional information is included from discussion with service providers, law enforcement, parents, children, NGO and government representatives. Such studies provide useful preliminary data on trends and patterns and highlight the possibility of, and potential for, widespread human trafficking. However, given the slim statistical evidence, their primary use is to identify future areas for research.

Research on such intimate topics is, by definition, difficult in any society. The additional overlays of fear of further abuse and recrimination; fear of loss of employment and income; the clandestine and illegal nature of the business; taboos on revelation of cultural practices; conflicting priorities (for example: attention to the HIV and AIDS epidemic) and competition for resources hinder the conduct of thorough and methodologically sound research.

28. Molo Songololo (2000) *The Trafficking of Children for Purposes of Sexual Exploitation*.

29. Other sources of data include a 2003 review by UNICEF on the trafficking of women and children in Africa, and four provincial situational analyses on the commercial sexual exploitation and trafficking of children in South Africa conducted in 2005 on behalf of the ILO’s Towards the Elimination of the Worst Forms of Child Labour (TECL) programme – but the former, in particular, draws heavily on the preceding reports. Robyn Pharaoh (2006) *Getting to Grips with Trafficking: Reflections on Research in South Africa*.

2.A.1. Geographical Dynamics of Human Trafficking in South Africa

According to the 2003 IOM Report “*Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa*,” using data from informants in the sex industry and official migration statistics, nine distinct patterns of trafficking activity have emerged in Southern Africa:

1. Trafficking of women from refugee-producing countries to South Africa;
2. Trafficking of children from Lesotho to towns in the Eastern Free State of South Africa;
3. Trafficking of women and girls from Mozambique to Gauteng and Kwa-Zulu Natal;
4. Trafficking of women from Malawi to Northern Europe;
5. Trafficking of girl and boy children from Malawi to Northern Europe;
6. Trafficking of women and girls from Malawi to South Africa overland;
7. Trafficking of women from Thailand to South Africa;
8. Trafficking of women from China to South Africa;
9. Trafficking of Eastern European women to South Africa.

While profiles of both trafficked persons and traffickers varied considerably, the tactics used to recruit, deceive, transport and exploit the victims remained similar. They are tempted with plausible promises of employment, income, educational opportunities, or shelter and care within adoptive families.

Traffickers have been able to exploit the context of historical migration patterns in the region which is complemented by both the geographical situation of South Africa as well as income/opportunity disparities.

South Africa as a Destination Country: From SADC Countries

Lesotho: Conditions where 56% of the population live on US\$2/day or less,³⁰ HIV prevalence of 23.2% in adults,³¹ over 14,000 AIDS orphans, and declining household incomes and increased poverty since the retrenchment of migrant labour in the 1990s, provide both motive and opportunity for human trafficking. The capital, Maseru, historic locale for the sex industry, especially under the restrictions on inter-racial sex during apartheid, is 20km from the international border with South Africa and 157km from Bloemfontein in the Eastern Free State.

Unregistered children can be readily moved over a porous border, also alleged to be subject to corruption.³²

Women and girls, responding to a boom on the textile industry in Maseru and economic pressure following the return of migrant labour, moved to the border towns in search of work. Insufficient jobs, low educational standards and the decline in employment possibilities left them prey to traffickers. Abductions and employment inducements saw these women and children trapped over the border working in farms and private houses as forced labour or in the sex industry of major cities.

30. UNDP (2005) *Human Development Report*.

31. UNAIDS (2006) *Report on the Global AIDS Epidemic*.

32. IOM (2003) *Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa*.

Children are taken across the border in private cars to asparagus farms and border towns in eastern Free State.³³ There they are held captive in private homes, where they suffer a particularly “sadistic and macabre” sort of exploitation. The children are often locked in the house and left alone during the day; at night they are violently raped and verbally and sexually assaulted by groups of white men. They spend between one night and one week in such conditions,³⁴ after which they are returned to the streets of border towns in eastern Free State.³⁵

Mozambique: traffickers based in Maputo also actively target recruitment of both sex and non-sex-workers from among Mozambican young women working in the informal sector, in local markets and trading. A female accomplice, possibly known to the victim, may assist – typically offering employment as waitresses or domestic help in South Africa. Maputo sex workers are also specifically recruited for sale to brothels in Gauteng and KwaZulu-Natal.³⁶

In addition to Maputo and the southern provinces of Mozambique, Nampula province is another main site of recruitment of young women for the sex industry. Prostitution is common, largely as a result of the pre-independence occupation by the Portuguese army. Girls are also sexualized at an early age and prostitution, as elsewhere, becomes a survival strategy. Little is known of how they are recruited, or whether both established sex workers and those with no experience of sex work are included.

Mozambican victims include both girls and young women between the ages of 14 and 24. They are offered jobs as waitresses or sex workers in Johannesburg, and pay their traffickers ZAR 500 (US\$70) to smuggle them across the border in minibus taxis either at Komatipoort or Ponta do Ouro. They stay in transit houses along South Africa’s border with Mozambique and Swaziland for one night where they are sexually assaulted as an initiation for the sex work that awaits them.

IOM (2003) *Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa*.

Swaziland: Young girls have been lured to South Africa from Swaziland for forced prostitution.³⁷ Also Swaziland, along with Lesotho and Botswana, are suspected to be transit countries for the importation of trafficked Chinese women into South Africa.

Malawi: Trafficking victims, both children and adults, are lured into exploitative situations by offers of lucrative jobs within Malawi or in South Africa. Women in prostitution reportedly draw underage children into prostitution.

33. IOM (2003) *The Trafficking of Women and Children in the Southern African Region: Presentation of Research Findings*, Pretoria, South Africa.

34. Jonathan Martens, Maciej (2003) “Mae” Pieczkowski, and Bernadette van Vuuren-Smyth (2003) *Seduction, Sale, and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa* (Pretoria, South Africa: IOM, Regional Office for Southern Africa, May 2003).

35. IOM (2003) *The Trafficking of Women and Children in the Southern African Region: Presentation of Research Findings*, Pretoria, South Africa.

36. UNESCO (2006) *Human Trafficking Especially of Women and Children in Mozambique: Root Causes and Policy Recommendations*, Poverty Paper Policy Series.

37. Victor Khupiso (9 March 2003) “Girls Lured into Prostitution,” *Sunday Times* (South Africa).

Women and girl children are recruited along major transportation routes in Malawi by long distance truckers who promise marriage, jobs, or educational opportunities in South Africa. Once in Johannesburg, the victim is held as the trafficker's sex slave in a flat in the Central Business District (CBD), and he will bring clients to the flat who will pay him to have sex with her. Malawian businesswomen also traffic women and girl children overland to brothels in Johannesburg.

IOM (2003) *Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa.*

South Africa as a Destination Country: From Extra-Regional Countries

There is evidence of women and children being trafficked from extra-regional countries both by organized trafficking syndicates/businesspeople (e.g. from western Africa) as well as by men established in South Africa as refugees, who exploit their family members on arrival. The size and organization of these operations vary.

By regional standards, South Africa hosts a relatively small number of refugees, but remains an attractive place of asylum because of its economic prosperity. Wars, civil unrest, natural disasters and economic collapse have provoked refugee movements from the Great Lakes region, the Horn of Africa as well as closer regional neighbours such as Angola and Mozambique.

Male refugees who arrive in South Africa typically experience isolation, employment difficulties and, ultimately, a struggle to survive. Some of them turn to their 'clan' group for protection and support. In addition to positive contributions, the clan system also facilitates commercial exploitation. The sexual exploitation of women, in order to earn an income is undertaken by some refugee men, using clan-based traffickers who help facilitate the female relative's journey to South Africa. On arrival, after often long and dangerous journeys, the women are forced into becoming sex workers to support their male relatives.

South Africa as a Destination Country: From Outside Africa

There is evidence of women and girls being trafficked from both Thailand and China to work in the South African commercial sex industry. The Western Cape province of South Africa is a key trafficking point for people brought from Asia and the Middle East bound for North America.

Asia: The scale and type of recruitment varies from small-time traffickers, to 'second wave' trafficked women acting as recruiters to large scale organized crime. Typically vulnerable women and children are recruited from poor families in Thailand with false promises of credible jobs in South Africa. On arrival they are forced to repay the 'debt' incurred to bring them to South Africa, are sold and rented out to brothels, bars and nightclubs.

Chinese women and girls likewise, are recruited from among poorly educated and unemployed village communities. Enticed with offers of working in upmarket hotels or to study English, they are trafficked into the sex industry in clubs and restaurants owned and operated by mafia type of organization, as well as into forced labour in farms, factories and sweatshops.

Recruited by Thai agents in Thailand, victims may be unwitting young women from rural Thailand, or ageing female sex workers from Bangkok. The former are promised restaurant jobs, while the latter are told of the money to be earned in sex work in South Africa. They travel by air, either directly from Bangkok, or through Hong Kong, Kuala Lumpur, and Singapore to Johannesburg International Airport (JIA), where they are met by a Thai or South African agent who sells them to brothels throughout the country.

IOM (2003) *Seduction, Sale and Slavery: Trafficking of Women and Children for Sexual Exploitation in Southern Africa.*

Europe: Russian and Bulgarian agents recruit women from Eastern Europe to work in upmarket clubs and brothels in South Africa.

South Africa as a Source Country: To Destinations Outside Africa

Trafficking is not all one-way. South African women have also been trafficked into the commercial sex industry overseas. The scale of this kind of operation is unclear, but from existing reports, it appears that it is linked to the Chinese international mafia.

Nicola, a 24-year old South African woman escaped her captors in Macau....reported encountering nine other black, white and coloured South African victims in Macau aged between 18 and 21, who were forcibly prostituted in Macau's saunas....the trafficking operation... is run by two South African nationals and two other associates who are connected to at least three Chinese nationals with links to local organized crime networks in Macau. They target for sale young women in their late teens and early twenties who have experience as strip dancers or sex workers in Johannesburg.

IOM Pretoria (May 2004) *EYE on Human Trafficking.*

Children from South Africa are also trafficked to European countries. For example, *The Observer* reported in February 2001 that under-age South African children are being used in brothels in London. These children had apparently been taken to London with the consent of their parents who received weekly or monthly payments from the pimps who forced their daughters into prostitution.

South Africa as a Source Country: Internal Trafficking

Much of the human trafficking in South Africa is from internal sources. Increasingly unsustainable livelihoods in the rural sector, limited job opportunities, the rising numbers of AIDS orphans, family breakdown, violence, and systemic gender discrimination that limits opportunity, information and participation for women and girls, all contribute to the creation of a ripe environment for human trafficking. The poverty and limited possibilities available create the supply while the burgeoning sex industry and need for all kinds of cheap labour nourish the demand.

“Susannah” was raped by her stepfather when she was 11 years old. The exploitation at home spurred her to run away. On the streets, she was recruited by a gang in Cape Town, South Africa, managed by Nigerian organized-crime syndicates. For girls, initiation into the gang includes being raped and prostituted by the boys in the gang. In the gang life, Susannah was introduced to drugs and repeatedly raped. By the time Susannah turned 12, she had already been betrayed by her family, raped at home and on the street, and was addicted to drugs.

Sojourners Magazine, September/Oct. 2005.

Internally, girl children are often recruited from impoverished areas of the country. Typically employment agencies use agents who operate in rural areas, recruiting both adults and children. They promise jobs as shop assistants, office workers or domestic workers. On arrival in the city the recruited persons discover the situation as being very different and that they are effectively in debt bondage to their employer, and must work, often for a minimum periods of two years, to repay expenses incurred for travel and other expenses.³⁸

South Africa as a Transit Country

The Western Cape province of South Africa is a key trafficking point for people brought from Asia and the Middle East bound for North America.

2.A.2. Routes and Transportation

A number of relatively small-scale trafficking networks operate using minivan taxis to smuggle both migrants and women across local borders. They are based at transit houses in the border region between Mozambique, Swaziland and South Africa and operate through a network of accomplices in Johannesburg, Maputo and in the Lebombo region who recruit, transport and accommodate and transfer young women.

African Routes into South Africa³⁹

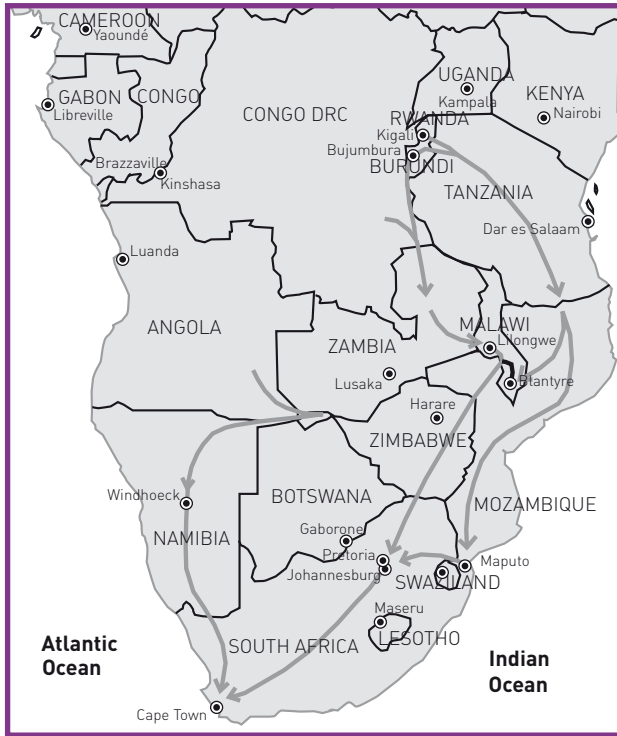
While these routes refer specifically to those used by refugee populations from central Africa, they also reflect some of the routes commonly used by regional and extra-regional trafficking operations.

I walked from Bukavu to Burundi. Then I took a boat for two days to Mbala in Zambia, then to Lusaka by taxi. In Lusaka I paid for a visa to Zimbabwe. After arriving in Harare by truck, I left for Messina where I took the train to Johannesburg and then to Cape Town. For the whole trip I paid US\$500.

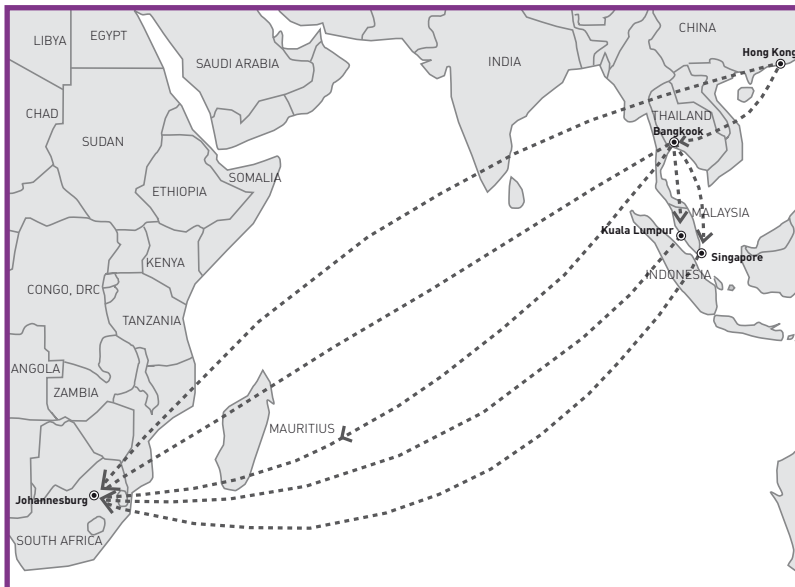
Interview with trafficking victim from Rwanda: December 2002

38. Koen, K and Van Vuuren, B. (2002) *Children in Domestic Service, the case of Western Cape*, Terre des hommes, Switzerland.

39. As recounted by thirteen victims from refugee-producing countries in interviews conducted between October 2002 and February 2003 in IOM (2003) *Seduction Sale and Slavery: Trafficking in Women and Children for sexual exploitation in Southern Africa*.



African Routes in South Africa



International Routes to South Africa

International Routes to South Africa⁴⁰

This is one example of direct air routes from Asia to South Africa. There are also routes from Asia via neighbouring states, direct air routes from Europe as well as sea routes from East Africa via Mozambique to South Africa and overland routes from elsewhere in Africa.

2.A.3. Main Agents of Human Trafficking

Traffickers

The trafficker is the link between supply and demand, on the one hand increasing supply through the recruitment, deception, transportation and exploitation process and on the other, boosting demand by providing easy access to ‘victims’. For both legal and practical purposes, this includes everyone involved in the human trafficking chain from the point of recruitment to the point of exploitation/use and re-use of labour or body parts. This includes recruiters – by whatever means and whatever scale - as well as transporters, receivers, pimps and brothel-keepers, corrupt border guards and producers of false documentation, all those benefiting as the trafficked persons pass through their hands. In some instances friends and family members of the victim of trafficking, or former trafficked persons play an active role in the trafficking of human beings.

Human trafficking is committed by males and females of varying ages and ethnic, social and economic backgrounds, operating within varying degrees of organization.

Whatever the scale and means of the operation, for traffickers, the process is a systematic, well-organized economic phenomenon, involving the displacement and movement of persons solely to profit (directly or indirectly) from the exploitation of the trafficked person’s labour or person. All are direct perpetrators of the crime of human trafficking. Traffickers play different roles over varying lengths of time, and may have an extensive or limited role in the trafficking process.

African traffickers face low risk of arrest, prosecution or other negative consequences. They have exploited the lack of rule of law, the non-implementation of existing anti-slavery laws, and corruption of judicial systems.⁴¹ These lapses allow perpetrators to go unpunished. Prosecutions are rare and fraught with difficulties.

Traffickers are trading in Swazi and Mozambican women in Nkomazi District, a collection of densely-populated rural settlements scattered south of Kruger National Park in South Africa, and within close proximity to the borders of Swaziland and Mozambique. The trafficking syndicates consist of Swazi and Mozambican men, known locally as ‘mareyane’, who are responsible for recruitment, and their South African bosses, who may own minivan taxis or have contacts among drivers. Although many have lived in Nkomazi for a considerable period of time, and know the South African side of the border well enough, they rely on their specific knowledge of certain parts of Mozambique and Swaziland, and their contacts along the border, to facilitate the trafficking of women and girls to South Africa.

IOM Pretoria (May 2004) *EYE on Human Trafficking*.

40. Idem.

41. Fitzgibbon, Kathleen (2003) “Modern Day Slavery? The Scope of Trafficking in Persons in Africa” *Africa Security Review*, Vol. 12 No 1.

These comparatively weak sanctions encourage many to continue with human trafficking. They are the ones who promise the parents and the children decent jobs in cities with good wages, but never fulfil such promises. Involved in the trafficking network, are often women acting like eventual employer or intermediary. They either travel from village to village where they know poor people are willing to leave for employment in town or to send their girls or boys. The terms of the contract are rarely clear between the trafficker and the parents of the victims in case of trafficking in children. Parents only know that their child is going to work and earn money to provide for the need of the remaining members of the family in the village without being informed on the living and working conditions of the child.

The methods used by the traffickers to recruit women and children can be abductions, clan-based recruitment, peer pressure or recruitment through newspaper ads.

Organized Crime - National

Current research on trafficking in South Africa indicates an array of national players, some of them opportunists who combine their trafficking activities with other legitimate employment, (e.g. long distance truck drivers), many who are known to the trafficked person and their family, family members themselves (refugees), law enforcement officials, and others who belong to cross-border networks that may or not feed into large-scale regional operations. Much is speculation in this area, and it is not difficult to imagine a scenario of fluid, individual or group arrangements that form, mutate and develop according to shifting circumstance.

Organized Crime - International

In the 1990s criminal groups were increasingly recognized as major factors in the increasing crime rate in South Africa. From the original trade in shark fins and abalone a number of Hong Kong based triads emerged in the harbour cities, Johannesburg and Pretoria. By 2001 there was a well-developed trafficking network in narcotics, money laundering and prostitution. Within these rigid structures, trafficking-based activities were divided between three groups – one of which concentrated on gambling and prostitution.⁴²

How the territory is shared, the trade in human beings organized between South Africa and its neighbours and extra-regional countries, and the scale of other international incursions and interests in the region remains unclear.

Organized crime - Transnational

Both the documented and alleged presence of transnational trafficking operations, linked to mafia and other organized criminal groups in Russia, Bulgaria, Brazil, Nigeria, China and Europe are a reason for serious concern. Trafficking in humans between Africa and Europe and the Middle East is significant and on the increase. The market for organs for transplant is extremely lucrative and difficult to detect.⁴³

The organized crime linkages are, by definition, difficult to trace and confirm. It is a dangerous area of investigation for obvious reasons, but the need for detailed research is vital to ensure relevant and timely prevention.

42. Gastrow, Peter (2004) *Trafficking in Persons*, South Africa Law Commission, Issue paper 25, Project 131.

43. Anecdotes of organs, in small ice-pack containers, transported in overhead luggage bins on airplanes

Extended global linkages between trafficking networks and sectors of the crime industry and business, conspire against successful pursuit and prosecution of traffickers while ensuring free rein for traffickers. If perceptions should develop of organised criminal network's infiltration of state or business structures, it would seriously damage public confidence and compound the difficulties of combating human trafficking.

More research into the "trafficker" is required in order to develop appropriate prevention strategies.

Trafficked Persons

These are the 'victims,'⁴⁴ all the women and children and men who are deceived, transported and delivered into the hands of those who exploit them for profit. The complexity of actors and dynamics of the human trafficking markets is also the key factor that make trafficking so difficult to detect and combat, and which makes victims so difficult to identify and assist. Victims of trafficking can be male or female, of varying age groups, coming from different backgrounds, and targeted for different purposes.

Trafficked victims are either coerced or deceived into a trafficking situation depending on the explanatory factors at play. Broadly, poverty,⁴⁵ war, lack of information, gender imbalances and a high level of demand for cheap labor and sexual services put a certain demographics at higher risks of being trafficked. Women and children happen to be the main component of this group.

The situation of children in domestic service has received some attention in South Africa, therefore more information is available on this group of trafficked persons. Children in domestic service often "work 12 hours a day, seven days a week. In addition to doing housework some of them were also expected to do other work such as work in the employer's shop, take care of an elderly person or disabled child or perform work for members of the extended families."⁴⁶ Anecdotal evidence suggests further that "some children are even held captive where they work, and some are reportedly subject to sexual violence."⁴⁷ In addition to these conditions, child domestic workers can also experience the following circumstances at their places of employment:⁴⁸

Accommodation

- They lack privacy.
- Most do not have appropriate and separate accommodation.
- Some have accommodation in sheds in the backyard, with no access to separate access to bathrooms or toilets.

Sleeping arrangements

- Some sleep in garages together with other children and adult employees.

44. In this 'victim' is judged an appropriate term to capture the conditions of life that expose a person to such extreme vulnerability.

45. Poverty is one of the main explanatory factors for human trafficking but this is not always the case as some trafficked persons can be kidnapped.

46. Department of Labour (2002) *Towards a National Child Labour Action Programme for South Africa*, Discussion Document, Pretoria., p.25.

47. Idem.

48. Koen, K. and Van Vuuren, B. (2002) *Children in Domestic Service the Case of the Western Cape*, Terre des hommes, Switzerland, p.34-35.

- Reports of children who sleep in disused dog kennels.
- Several reports of children who sleep on the floor either in the kitchen or in the lounge.
- Some sleep under kitchen tables.
- Some sleep in storerooms or garages where merchandise for shop is stored.

Food Provision

- They eat alone and after family.
- They are given porridge as a staple diet.
- They do not eat the same food as the family.

Punitive Measures

- Some children experience physical and verbal abuse.
- They have money deducted from their wages for purchase of toiletries and clothes.
- They are accused of laziness or of having stolen clothes and have their wages withheld, as punishment.
- Some children are humiliated in public.
- Children are not allowed to leave the house alone, often accompanied by employer.
- Some are beaten.

Users

The users of trafficked victims are the people who arrive at the end of the trafficking chain. They can either be prostitute users, head of a farm or a shop who need access to cheap labour. Users may act as individuals or are networked through access to other illegal activities – prostitution and sexual abuse of children and forced labour. They may be unaware or unconcerned about trafficking or not perceive themselves as part of the trafficking network.⁴⁹

According to UNICEF, “very often they [the users] do not perceive themselves as part of the trafficking network, although they are, in fact an engine in the machinery of exploitation. All aspects of the role of users require further research”.⁵⁰ In South Africa, it is the sexual exploitation of children and its different actors that has received most attention in the research on human trafficking. As a result we know more about trafficking in children for sexual abuse than for other purposes.⁵¹

Users may act as individuals or are networked through access to other illegal activities – prostitution and sexual abuse of children and forced labour. They may be unaware or unconcerned about trafficking or not perceive themselves as part of the trafficking network.⁵²

49. Andrea Rossi, ed. (2003) *Ibid.*

50. UNICEF (2003) *Trafficking in Human Beings, Especially Women and Children in Africa*, p.9, Innocenti Research Center.

51. There is thus a need to undertake detailed studies on the trafficking in children for all exploitative purposes. See Annex 1 “Profile of Sexual Exploitation of Children”.

52. Andrea Rossi, ed. (2003) *Ibid.*

2.A.4. Purposes of Trafficking in Human Beings in South Africa

While it is clear that many women and children are trafficked specifically to work in forced prostitution, and others are recruited to work in the agriculture, manufacturing or service industries for little pay in appalling conditions, the distinctions between the two become blurred, especially in the case of girls and young women recruited to work as domestics who are also sexually abused by their employers. The sexual exploitation may be planned and organized for profit or may be occasional, unpredictable and without a commercial transaction. While the distinction in no way diminishes the suffering or the abuse, the significance of the difference arises in terms of the prosecutorial and conviction process.

Human Rights Watch⁵³ has documented gender-based violence of women working on South African farms, where there was widespread sexual harassment and sexual assault by owners, managers, co-workers, neighbours and family members. In this environment, with entrenched attitudes regarding the dominance of men, women are low in the farming community hierarchy and have few options open to them. To which extent the labour of women and girls in such a context is a result of 'trafficking', is open to interpretation, but the conditions of such labour are akin to forced servitude. The power imbalance in these circumstances and the opportunity for persistent abuse and exploitation further demonstrate the complexity of definition and investigation.

In 2003, the Children's Institute at University of Cape Town, claimed $\frac{3}{4}$ of South Africa's children live in poverty, and that "poverty, unemployment and inequality are increasing in South Africa." It also claimed that the trafficking of children for sexual exploitation occurs mainly within South Africa's borders, with 4-17 year olds as the predominant target group.⁵⁴

According to the ILO, with 80 million (41%) Africa has the highest percentage of child labourers in the world. Between five and 14 years old, the largest percentage is young girls engaged in domestic work. Many of these children are victims of trafficking for forced labour, put in exploitative situations by intermediaries and powerful agents known to their families. The practice, probably based on the traditional practice of 'placement' saw children being sent to live with relatives as a mutual survival strategy. The child might profit from living in a more secure family that could provide for shelter and education and training opportunities⁵⁵ – or the child might provide essential labour and support to elderly relatives. This practice is in many cases a 'grey zone,' readily abused by traffickers who can earn between \$50-\$1,000 for a child delivered to the 'employer,' with profits varying according to destination and use of the child.

Trafficked children may start out as runaways or street children and end up being enticed into sex work.⁵⁶

53. Human Rights Watch [2001] *Unequal Protection: The State Response to Violent Crime on South African Farms*.

54. Save the Children [2003] *The Situation of children in South Africa*, The Children's Institute, University of Cape Town.

55. Briefing note on the situation of human trafficking in West Africa, Joint Expert Meeting on Human Trafficking in West Africa, ECOWAS Plan of Action Follow-Up, Lomé, Togo, December, 2002.

56. O'Connell Davidson, J. and Sanchez Taylor, J. (1996) *Prostitution and Child Sex Tourism: South Africa*, ECPAT International.

"Though some may be kept as prisoners in such brothels, many are so damaged by the long-term, repeated physical and sexual abuse to which they have been subjected that they remain with their Madam 'voluntarily'". In Durban for example children are often prostituted from rooms in cheap hotels and tenement blocks and there may be several layers of third party involvement in their abuse. At its most simple, this type of child prostitution involves a Madam/pimp who works two or three children from a rented flat in a tenement block.

O'Connell Davidson, J. and Sanchez Taylor, J. (1996) *Prostitution and Child Sex Tourism: South Africa*, ECPAT International.

While trafficking in humans for sexual exploitation and for forced labour constitutes the vast majority of incidents, there is an increase in the trafficking of humans for body parts, or organ harvesting. There is an international trade in organs for transplant operations, as well as a local trade in specific body parts such as genitalia, heart, eyes and skull, for use in traditional medicine, 'muti'⁵⁷ where these organs are believed to cure ailments from impotence to HIV and AIDS to infertility as well as to increase influence and wealth.

The more lucrative international business involves organ harvesting for transplantation. In what is predominantly a south/north system, organs (typically kidneys) are kept in cold storage and airlifted to reception centres. Numerous countries are implicated in this complex supply and demand business, in Latin American countries, Europe, Asia and the Middle East.⁵⁸ The accommodation amenities in South African transplantation clinics at private hospitals are reputedly of very high quality. With dialysis and transplantation surgery increasingly in the domain of the private sector, negative consequences of social equity means those with the financial means to acquire transplant organs do so. The poor provide them for a few dollars.

Nancy Scheper-Hughes⁵⁹ describes a case in 2003 where a poor black woman from New York who needed a kidney transplant, and the donor, a male, single parent from the slums of Recife, Brazil were exploited by brokers who brought them to South Africa to undertake the transplant operation. The case highlights the global market in bodies, organs and tissues and the accompanying high risk of organ harvesting from poor and needy clients to satisfy both the wealthier client and the unscrupulous brokers and accompanying cast of surgeons and associates.⁶⁰

It has to be stressed that information on the scale of human trafficking for body parts in South Africa remains poorly documented.

57. Term commonly used to refer to traditional medicine.

58. Scheper Hughes, Nancy (27 June 2001) *The Global Traffic in Human Organs*, A Report Presented to the House Subcommittee on International Operations and Human Rights, United States Congress.

59. Scheper Hughes, Nancy (2006) "Kidney Kin," *Harvard International Review*.

60. In August 2005, four South African transplant surgeons and associates were charged under the Human Tissues Act. (Scheper Hughse, Nancy (2006) "Kidney Kin" *Harvard International Review*, winter 2006).

2. B. WHAT ARE THE ROOT CAUSES OF HUMAN TRAFFICKING IN SOUTH AFRICA?

The supply and demand equation is typically described in terms of “push” and “pull” factors. These factors have a global resonance, but vary in local emphasis and scale. While armed conflict distorts and magnifies conditions of hardship and insecurity and creates fertile conditions for trafficking in all commodities, it is ultimately poverty, high unemployment and lack of opportunity – the quest for a means of survival – that is the engine driving trafficking in humans. The push/pull factors - two sides of the same coin - that make women and girls particularly marginalized are rooted in systemic gender discrimination. It is important to remember that these explanatory factors can be mutually reinforcing and that some of the causes can also be the consequence of others. More research is required into the mechanics of these causes.

Women and girls are more susceptible to fall into trafficking because of:⁶¹

Factors Contributing to Demand (Pull Factors)

- women’s perceived suitability for work in labour-intensive production and the growing informal sector which is characterized by low wages, casual employment, hazardous work conditions and the absence of collective bargaining mechanisms;
- the increasing demand for foreign workers for domestic and care-giving roles, and lack of adequate regulatory frameworks to support this;
- the growth of the billion-dollar sex and entertainment industry, tolerated as a ‘necessary evil’ while women in prostitution are criminalized and discriminated against;
- the low risk-high profit nature of trafficking encouraged by a lack of will on the part of enforcement agencies to prosecute traffickers (which includes owners/managers of institutions into which persons are trafficked);
- the ease in controlling and manipulating vulnerable women;
- lack of access to legal redress or remedies, for victims of traffickers; and
- devaluation of women and children’s human rights

Factors Contributing to Supply (Push Factors)

- unequal access to education that limits women’s opportunities to increase their earnings in more skilled occupations;
- lack of legitimate and fulfilling employment opportunities particularly in rural communities;
- sex-selective migration policies and restrictive emigration policies/laws, instituted often as a “protective” measure, limit women’s legitimate migration. Most legal channels of migration offer opportunities in typically male-dominated sectors (construction and agriculture work);

61. UNIFEM Asia (2002) *Idem*.

- less access to information on migration/job opportunities, recruitment channels, and a greater lack of awareness of the risks of migration compared to men;
- disruption of support systems due to natural and human created catastrophes; and
- traditional community attitudes and practices, which tolerate violence against women.

Supply and Demand

The global reach and scale of trafficking in humans is the ‘underside of globalization.’⁶² Globalization has created powerful market demand for cheap, low-skilled labour in sectors such as agriculture, food processing, construction, domestic service, labour-intensive manufacturing, home health care, sex work, the service sector in general,⁶³ and the entertainment sector (circuses, begging, camel jockeying). Such demand exists in both industrialized and developing countries. The types of work where trafficked labour is used tend to be located in sectors where it is easier to maintain highly exploitative working conditions that are gross violations of human rights and labour standards, in locations and conditions that are difficult to monitor.

High Profits

Modern day slavery thrives because of its profitability. The US State Department estimates it generates \$7-\$10 billion annually,⁶⁴ the third largest profits behind arms dealing and narcotics. It is also easier to move human cargo across borders than drugs or weapons which are seized when found. Human beings can be constantly re-used and re-trafficked – not so for drugs. Trafficking is, by definition, a complex, clandestine, underground business, constantly changing and evolving both in response to demand and to remain sufficiently flexible to elude arrest and prosecution.

Low Risk

By its very nature trafficking is secret and dangerous, which helps explain the inadequacy of reliable information. Victims are afraid of retaliation from traffickers or recrimination within their families and villages - which have often provided funds for the journey they anticipate will take the woman to the job that will help support the family - and the stigma of prostitution. As a result few will bear witness against the traffickers. Fear and mistrust of police, the lack of documentation and fear of complicity also play a part in maintaining the victim’s silence. Most victims are poor, illiterate, from marginalized populations and are ignorant of their rights. Traffickers exploit not only bodies but the deepest anxieties and disadvantageous life conditions of the victims.

62. Stopping Forced Labour: Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 89th session 2001, ILO Geneva

63. Taran and Moreno-Fontes (2002) *Getting at the Roots. Stopping Exploitation of Migrant Workers by Organized Crime*, Paper presented at an international symposium on The UN Convention Against Transnational Organized Crime: Requirements for Effective Implementation, Turin, Italy, 22-23 February 2002, ILO.

64. It is important to note this report uses a statistical method based on “plausible estimates”; the only reliable figures are those related to seizures and confiscation (which require the crime to be consumed, detected and tried through the legal system).

Permeable Borders

A tradition of movement and migration to South Africa for trade and work as well as ignoring illegal activities such as smuggled goods, vital to survival in the war years,⁶⁵ contributes to acceptance and expectations of unregulated movement. Porous borders, combined with civil and political unrest and a lack of economic opportunity, have ensured a consistent southward flow of both legal and illegal migrants in southern Africa. Trafficking victims are difficult to distinguish amid these flows. Police/border officials are believed to be complicit with traffickers, accepting bribes for the passage of undocumented travellers. However, it is significant to note that the absence of domestic law, the lack of referrals and witnesses, and the high risk of acting against well-funded criminal structures causes hesitancy and limits the ability of law enforcement officials to act.

"The policeare South African or Mozambican soldiers who patrol the border region. The trafficker has a contact among them to whom he pays ZAR 150 to allow the whole group to pass, much cheaper than going through the border post itself. [The traffickers] laugh at passports. The soldiers often take any valuables and money being carried by the young women and migrants from which, according to one source, traffickers receive a share.

IOM (2003) *Seduction Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa*.

Feminization of Migration

Historically men from neighbouring states migrated to South Africa in search of employment. Women were marginalized and obliged to stay in the rural areas, concerned with reproductive and community labour with increased workload, thus entrenching patriarchal values. With increased population mobility, lack of opportunity at home and better livelihood opportunities elsewhere, women are increasingly likely to migrate. Migration can lead to women's empowerment. But because of migration policies more favourable to men and because of recruitment made in men-dominating sectors, it tends to increase their exposure and vulnerability to being trafficked.

2.B.1. Push Factors

Poverty

An increased demand for cash incomes reduced economic opportunities in rural areas, the reduction of subsidies and other protective means, loss of traditional livelihoods, especially in agriculture combine with more personal and subjective rationales. Young women with some education are aware of the gap between urban and rural life, reject the drudgery of enforced domestic work as daughters in the family and increasingly have access to information about the lack of opportunity and how others live their lives.

65. Chingono, M.F. (1996) *The State, Violence and development: the political economy of war in Mozambique, 1975-1992*.

The way these dimensions impact on one another is contextual, but they ultimately contribute to major migration of young women and girls – not just of men, as it used to be. Many of them are at a high risk of being trafficked. Disappointed by the lure of livelihoods, failing to find an acceptable means of survival, desperate, and innocent to the trafficker's tricks of duplicity and false promises, they become trapped in the spiral of modern slavery.

The positive impact of macro-economic stability has allowed for greater resources to be put into social welfare services, such as nine million more people having access to low-cost houses and 5.5 million having access to child care and old age grants, as well as far more people having access to formal education institutions and skills development opportunities. Yet widespread poverty, crippling backlogs in social services and unemployment remain problematic.

HIV and AIDS

Recently, the links between poverty, violence, and trafficking have been compounded by the effects of HIV and AIDS. Women and girls trafficked for prostitution are among the most vulnerable groups exposed to HIV infection. Insufficiently informed, seduced or forced to have unprotected sex, once infected with HIV, they are often left without care or support.⁶⁶

- Trafficked women and girls are more vulnerable to HIV infection.
- Trafficked persons, particularly children, are unlikely to be able to negotiate condom use.
- Trafficked persons may be forced to endure sexual practices, like anal sex, most associated with HIV transmission.
- Trafficked persons may be or often are forced to have sex with multiple partners.
- Violence in commercial sex is common, especially where women or children are forced to have sex against their will. Injuries sustained as a result of forced sex may increase vulnerability to HIV transmission.
- The physically immature bodies of young children are extremely vulnerable to injuries. Such injuries increase their risk of infection.
- Many trafficked persons have other sexually transmitted diseases. This heightens the risk of contracting HIV by up to a factor of 10.⁶⁷

The vulnerability of those trafficked to sexually transmitted diseases is compounded by their inability to receive medical testing, treatment, counselling or other health services. Their inability to understand or speak the language in a foreign land, their poverty and lack of freedom may also impede access to health care.⁶⁸ Thus they become an infection risk to future partners and any child they conceive. This is of particular significance when it is mothers and other female 'carers' who are sick.

Children are particularly impacted by the loss of the professional generation as well as by losing their parents. As infected parents become unable to provide for their children, and relatives shun them or are also unable to provide support, the children suffer emotional

66. Rossi, ed., (2003) *Idem*. UNICEF Innocenti Research Centre.

67. Burkhalter, Holly (2003) *Sex Trafficking and the HIV/AIDS Pandemic*, Physicians for Human Rights, before the House International Relations Committee www.phrusa.org/campaign/aids/news062403

68. *Idem*.

neglect before the parents die, in addition to having to care for them and assume responsibilities they are ill-equipped for. Children also suffer the distress of their parent's death and the need to adjust to a life of minimal support and possibly social stigmatization.

Family poverty is here compounded by the loss of labour, the high cost of medical care and funerals. Families eat less and sell their assets.

Possibly deprived of their inheritance, shunned by family, stigmatized and poorly educated with limited marketable skills, AIDS orphans become socially isolated and rejected. They have limited survival opportunities and are extremely vulnerable to abuse and exploitation. This is particularly true of girls who may have been forced to leave school early to fulfil their socially ascribed role of 'carer.' Uneducated and unskilled, they become prey to unscrupulous employers and thence to trafficking. Children are subsequently more exposed to traffickers and trafficking – and ultimately to HIV and may be infected and affected on a large scale.

Gender and Age Imbalances

Since 1994, South Africa has made some progress towards the achievement of women's advancement and empowerment. Change has been more dramatic in some areas than in others. So for instance in 1998 a mere four years after the advent of democracy, women constituted 25% of legislators compared to 3% during apartheid and women in civil society have aimed to raise their profile at each general election since 1994. This is evidenced by the 50/50 campaign run by women's lobby organizations that seek to have equal representation of women in all levels of government. However, while there has been progress in this regard and there is pressure from civil society, there are still fewer women than men in positions of authority and influence in all spheres of South African society. Indeed some women's realities "continue to be characterized, among other things, by race, class and gender-based access to resources and opportunities defining the political, social and economic imbalances and inequalities in society that women are confronted with."⁶⁹ This is more a consequence of patriarchal norms and values still prevalent in society than of women's class positions. Women and also children in this matter are often perceived as inferior to men and consequently are often subjected to violence, exploitation and abuse.

There is thus an anomaly in South Africa that whilst the constitution guarantees equality and a number of laws have been enacted to enforce women's rights to equality with men, societal norms and values do not always encourage women to claim their right to equality. This is particularly so as "Gender relations are not something that can be changed by laws alone. Gender is about the relations between women and men, girls and boys. It is about how we are socially constructed by our experiences and the world we live in. Our opinions and attitudes, and those of our mothers, fathers, caregivers and educators, are primary determinants of how we relate to each other. Our culture and traditions, too, have a strong impact".⁷⁰

Addressing issues that are confronted by marginalized groups of women such as immigrant women, women victims of trafficking and women sex workers is also an important part of redressing the imbalances between men and women within South African society.

69. Kehler, J. (2002) *Rights and Realities: A Handbook of Women's Rights in South Africa*, NADEL: Cape Town, p.14.

70. Commission on Gender Equality (2001) *Gender Opinion Survey*, Johannesburg.

In South Africa, as we already mentioned not only are women thought to be inferior but children are too. An “important root cause, related also to the context which makes children vulnerable to abuse and neglect more generally is the deeply patriarchal ethos which pervades South African society. Rigid social constructions of masculinity and femininity and a profoundly conservative ethos relegates women and children to positions of being ‘owned’ (and therefore disposable at the whim of the ‘owner’) and there is limited recognition of even women, and still less of children, as human beings with rights in their own right. There is a sense of entitlement around sex and sexual activity - almost as though that’s what women and children are there for, and they shouldn’t complain about it.”⁷¹

Discriminatory Cultural Practices and Beliefs

The Constitution of South Africa protects against direct or indirect discrimination on the basis of sex, gender or sexual orientation and also provides against subjection to slavery, servitude or forced labour. However, traditional practices often remain valued while societal norms and values do not encourage women to claim their right to equality. Addressing the issues confronted by marginalized women (trafficked women, sex workers, immigrants and refugee women) is an important part of redressing the imbalances between men and women in South African society.

While the origins of traditional practices are rooted in belief systems and perceptions of morality and socially required behaviours that may be linked to survival needs. Their practice is often harmful, particularly to girls and women.

- Early marriage: When poverty is acute, a young girl may be regarded as an economic burden and her marriage to a much older man can be a family survival strategy. In some communities the bride’s family may extract lobola (brideprice) from the groom, or the groom’s family, for their daughter.

There is also a risk of trafficking linked with early marriage when men do not have the possibility to find young girls in their community. Child marriage can, itself, lead to destitute poverty of women through divorce, separation or abandonment. Very often, the only option for girls and women in situations of extreme marital stress is to run away.

- As young girls are perceived as more erotic than adult women, they are exposed to abuse by adult men. Virgins are also believed to be HIV-negative. Men dating young girls are often seen by society as rich, so such relationships gain social recognition for the men as well as the girls. Such inter-generational relationships are more acceptable than those established with prostitutes, and young girls place less demands on the men who abuse them. These relationships do not have the commitment and family obligations that would usually characterize relationships between adult men and women.

“At the local level, deep-rooted practices of gender discrimination lead to a cultural climate where the practice of trafficking is perceived as morally acceptable. When these

71. Thanh-Dam Truong (2006) *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, p. 114.

cultural attitudes and practices go hand in hand with poverty-stricken living conditions, trafficking in women and children is likely to flourish. Trafficking of girls and women, very often under conditions of violence and deprivation, can also be connected to the high prevalence of overall violence in public and private spheres against women.”

*Adapted from *Process and steps towards comprehensive legislation on trafficking in persons in South Africa*, paper presented by Louisa Stuurman, South African Law Reform Commission, at the Child Trafficking Expert Workshop held at the UNICEF Innocenti Research Centre, Florence, Italy 20–21 March 2003.*

Lack of Knowledge and Information

While there is increased international attention to the problem of trafficking and governments, including South Africa, together with an array of stakeholders are providing information, publicity campaigns and training, the level of awareness in the population remains low. The common belief that “it cannot happen to me” apparently remains strong despite local familiarity with cross-border and internal trafficking. The offers of employment for young women, the offers to locate young children in better circumstances are generally accepted at face value (see IOM 2003). Acquaintance with trafficking recruiters, who may well be neighbours or family, further reduces the acknowledgement of the trafficking risk.

Absence of Effective Laws

As it will be more discussed in part “3.1.2. National Legal Instruments”, South Africa does not have a specific law against human trafficking but different legal tools are available to address some aspects of human trafficking activities. However, these instruments remain incomplete as they mainly focus on sexual offences. South Africa ratified the Palermo Protocol in 2004 and is currently in the process of law reform to bring domestic laws in accordance with the Protocol. The government uses the Prevention of Organized Crime Act, the Basic Conditions of Employment Act, the Refugee Act, the Aliens Control Act, and provisions of criminal law to prosecute traffickers.⁷²

2.B.2. Pull Factors

Based on available research, the main explanatory pull factors of human trafficking at an international level appear to be:

- Need for low-skilled and cheap labor
- Cultural beliefs
- Sex tourism and industry
- Adoption trade
- Demand for organs and body-parts
- Need for children-soldiers in armed conflict

72. US Department of State (8 March 2006) *South Africa: Country Reports on Human Rights Practices - 2005*, Released by the Bureau of Democracy, Human Rights, and Labor.

Trafficking in women and children is often seen as a development problem from the supply side. It is argued that young women and children are forced or pressured into the sex and domestic service industries by poverty and lack of alternative employment and income-earning opportunities. However increasingly, trafficking in persons is also seen as a development issue from the demand side.

In South Africa, HIV and AIDS play a role in the increased demand for younger, presumably uninfected sex workers, often from rural areas.⁷³ Old traditions have resurfaced which demand young girls, above all, virgins, who are perceived as 'clean' and therefore able to cure or delay the infection.

The demand for cheaper labor and sexual services from women and children both within developing and developed countries is regarded as a function of economic development. Economic growth tends to result in increased demand for cheap migrant labor, as the domestic workforce is able to move from low-skilled and low-wage employment thanks to the increasing ease and frequency of international travel, together with the growing phenomenon of temporary migration for work.⁷⁴

Economic disparities between regions also lead to more general migration flows, as more affluent countries draw upon the potential workforce of poorer countries as a source of cheaper labor. Western Europe, for example, is estimated to need an injection of 75 million migrants by the year 2050 if it is to maintain current levels of economic prosperity, suggesting significant and sustained migration into Western Europe over the next 50 years. Irregular migration and trafficking generally accompany such large people movements.⁷⁵

Pull factors also include adoption trade, the use of organs or body parts for rituals and conflicts which generate a demand for soldiers and also domestic and sexual services.

With respect to sex industries, it has been argued that development projects in comparatively undeveloped countries often bring with them a rapid increase in the demand for commercial sex. This is due to the growing sex industry, especially in industrialized countries, and in the sharp increase in the numbers of unaccompanied male workers in areas where there are few outlets for recreation and entertainment. Patterns of development that depend heavily on temporary migrant workers, particularly male workers, are generally associated with a sharp increase in the demand for commercial sex. This is coupled with an unmet demand for cheap and malleable labor, demand for sexual services for example linked to tourism development or shifts in the supply of local women in the sex sector in places of destination.⁷⁶

The infrastructure and trends associated with a rapidly globalizing world – like increasingly open borders, better transport, and increased overall migration flows – complement the forces of supply and demand that underlie trafficking. Globalization has provided the impetus to both those who wish to migrate and those who traffic the unwilling. Women and children tend to be the most vulnerable to human trafficking as they very often carry the burden of poverty.

73. Altman, Dennis (2003) *Global Sex*, University of Chicago Press.

74. In 2000, the United Nations estimated that 13 million people, or 2 percent of the world population, are on the move at any given time in ILO- IPEC (2002) *Unbearable to the human heart: Child trafficking and action to eliminate it*, Geneva, p.22.

75. ILO- IPEC, *Ibid*, p.27

76. Kane, J. and Saghera, J. (2001) *Trafficking in Children for Sexual Purposes*, UNICEF, p.5.

3 Policies and Programmes

3.A. CURRENT LEGISLATIVE AND POLICY FRAMEWORK

3.A.1. International Instruments

The following international instruments can be used in some cases in order to prosecute some aspects of trafficking. The table gives an overview of the different texts ratified and/or signed by the Government of South Africa.

Relevant Legal Instruments with Regard to Human Trafficking	Signature	Ratification
ILO Convention No.182 on the Worst Forms of Child Labour (1999)		7 June 2000
UN Convention against Transnational Organized Crime (2000)	14 December 2000	20 February 2004
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) (2000), supplementing the United Nations Convention against Transnational Organized Crime	14 December 2000	20 February 2004
1989 UN Convention on the Rights of the Child (CRC)		16 July 1995
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)		30 July 2003 (Accession)
Rome Statute of the International Criminal Court (2002) Article 7-1 ⁷⁷	17 July 1998	27 November 2000
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)	No signature	No ratification
Hague Convention no.33 on Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)		21 August 2003

77. According to article 7.1 of the Rome Statute of the International Criminal Court, "For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...] (c)enslavement; [...] "Enslavement" means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children [...]."

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	No signature	No ratification
Convention on the Elimination of All Forms of Discrimination against Women (1979)	29 January 1993	14 January 1996
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)		18 October 2005
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	16 October 1950	10 October 1951

3.A.2. Regional Instruments

African Charter on the Rights and Welfare of the Child (1990)		7 January 2000
African Charter on Human and People’s Rights (1986)		9 July 1996
Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa (1998)	16 March 2004	17 December 2004

It is also important to underline that in 1998, SADC Member States including South Africa, signed an Addendum to the 1997 Declaration on Gender and Development by SADC Heads of State or Government which commits all signatory countries to take measures to prevent and deal with increasing levels of violence against women and children through legal, social, economic, cultural and political policies.

3.A.3. National Legislative Framework

The South African Law Reform Commission Investigation into Trafficking in Persons (Project 131)

The South African Law Reform Commission has developed a discussion paper⁷⁸ on trafficking in persons. The discussion paper was released for public comment in early 2006.⁷⁹ This sophisticated system of consultation with opinion at all levels of society is seen as “a critical dimension of the law reform process.”⁸⁰ This paper, which includes draft comprehensive legislation, sets out the Commission’s preliminary recommendations for law reform regarding trafficking in persons. The legislative proposals may be summarised as follows⁸¹: the proposed Bill criminalises the act of trafficking in persons as well as debt bondage; the destruction, confiscation, possession and concealment of documents; using the services of trafficked victims; and conduct facilitating trafficking in persons.

In an attempt to protect victims of trafficking, the proposed Bill lists several guiding principles which must be considered when deciding as to whether a person is a victim of trafficking. At present, trafficked victims may be faced with arrest and prosecution for offences

78. Discussion paper 111 (Project 131) Trafficking in Persons <http://www.doj.gov.za/salrc/dpapers.htm>

79. Details of the Discussion Paper can be found at: www.salrc.org.za

80. Adapted from “Process and steps towards comprehensive legislation on trafficking in persons in South Africa”, paper presented by Louisa Stuurman, South African Law Reform Commission, at the Child Trafficking Expert Workshop held at the UNICEF Innocenti Research Centre, Florence, Italy 20–21 March 2003.

81. South African Law Reform Commission Press Statement.

committed as a direct result of their situation. So, for instance, victims of trafficking may be prosecuted for prostitution, even though they were forced into prostitution by their traffickers. Victims of trafficking may also be prosecuted for illegal entry in terms of the Immigration Act.⁸² In an attempt to remedy this situation, the proposed Bill provides that the decision as to whether criminal proceedings should be instituted against a victim of trafficking for an offence committed as a direct result of his or her status should rest with the National Director of Public Prosecutions.

Foreign victims of trafficking are often deported because they are labelled as illegal immigrants. It is proposed that the summary deportation of victims of trafficking be prohibited prior to an investigation being done into their circumstances. Victims of trafficking should therefore be repatriated in terms of a process that takes cognisance of their safety not only during the repatriation process, but also in the countries to which they are to be returned. In the case of child victims of trafficking, due consideration should be given to the availability and suitability of care arrangements in the countries to which they are to be returned.

It is proposed that the Director-General of the Department of Home Affairs may provide foreign victims of trafficking with a non-renewable suspension of their deportation period. This will allow such victims to make informed decisions as to whether they want to assist in the investigation of and the prosecution of their traffickers. In the event of such victims assisting with the investigation of and prosecution of traffickers, they should be provided with a temporary residence permit.

Taking cognisance of the fact that some victims of trafficking may never be able to return to their countries of origin or the countries from where they have been trafficked, because they may be harmed, killed or trafficked again, the Commission proposes the following options:

- Section 3 of the Refugees Act should be amended to provide that a person qualifies for refugee status if that person is a victim of trafficking and proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked. Such victims would be able to apply for a permanent residence permit in terms of section 27(d) of the Immigration Act which states that the Director-General of the Department of Home Affairs may issue a permanent residence permit to a foreigner of good and sound character who is a refugee referred to in section 27(c) of the Refugees Act.⁸³
- Provided a victim of trafficking proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked, such victim should be entitled to apply for a permanent residence permit in terms of the Immigration Act, after five years continuous residence in the country from the date on which he or she was granted a temporary residence permit.
- The Director-General of the Department of Home Affairs may, on humanitarian grounds, extend a temporary residence permit granted to a victim of trafficking.

82. Act 13 of 2002.

83. Section 27 (c) of the Refugees Act provides that a refugee is entitled to apply for an immigration permit after five years continuous residence in the country from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely.

With regard to the provision of services to victims of trafficking, the following options are offered:

- The Department of Social Development should establish counselling and rehabilitation centres for adult victims of trafficking; or
- The Director-General of the Department of Social Development should accredit organisations to provide accommodation to adult victims of trafficking.

In respect of the provision of compensation to victims of trafficking, the proposed Bill provides that a court may, in addition to any punishment which it may impose in respect of any offence provided for in the Bill, order a person convicted of such offence to pay appropriate compensation to any victim of the offence.

In an attempt to prevent trafficking in persons, the proposed Bill provides that public awareness programmes or other measures should be established in order to:

- inform and educate persons at risk of becoming victims of trafficking;
- inform and educate victims of trafficking on their rights as victims and available services; and
- discourage the demand that fosters the exploitation of victims of trafficking, especially women and children.

Such public awareness programmes or other measures should include appropriate measures aimed at reaching rural communities and should be reviewed regularly.

Children's Rights

Laws, which extend the right to equality to children and specifically provides for their protection, have been enacted nationally. This is a reflection of the rights-based approach to democratization, which affords all equality before the law. This in turn finds expression text deleted in Section 28 of the Constitution⁸⁴ that guarantees children protection. According to this provision, every child has the right:

- (1b) to appropriate alternative care when removed from the family environment
- (1d) to be protected from maltreatment, neglect, abuse or degradation
- (1e) to be protected from exploitative labor practices
- (1f) not to be required or permitted to perform work or provide services that-
 - (i) are inappropriate for a person of that child's age
 - (ii) place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development.

The Constitution states further in Section 28(2) that 'a child's best interests are of paramount importance in every matter concerning the child'.

The Children's Act passed by the South African National Assembly in June 2005 also expands the child protection net to protect street children, children involved in child labor, trafficked children, refugee children and children in child-headed households by enforcing social work intervention and social work investigations into the circumstances of these children.

84. The Constitution of the Republic of South Africa, 1996.

Children however do not always benefit from these constitutional and legal provisions. The Network Against Child Labour estimated in 1998 that there were 400,000 children under the age of 18 years old working in South Africa.⁸⁵ According to the Human Rights Committee, these children were working in both the formal and informal sectors of the economy. Of the children working in the informal sector; there were 200,000 between the ages of 10 to 14 and 200,000 between the ages of 15 and 18. The report further stated that “child labour is everywhere, from taxi ranks to farms and coal yards. They are forced to work hours that adults are protected against simply because they have no voice in the labour market or recourse to law. Their average wage is R10 (approximately USD 1.80) a day.”⁸⁶

The Labour Department has also conducted a survey in which it concludes that most South African children are engaged in some form of work, although not all of the activities that children are engaged in can be classified as harmful or dangerous labour.⁸⁷ These activities include household chores and range from fetching water and collecting wood to work in classrooms. Activities and types of labour that are harmful and dangerous are prohibited within current South African legislation. Such activities are defined in the International Labour Organization’s Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour No. 182 of 1999 that South Africa ratified. These include also all forms of slavery or practices similar to slavery including trafficking and bonded labour. It is further also an offence to employ children under the age of 15 years.

One area in which children have increasingly become vulnerable is that of trafficking in persons and the abuse and exploitation that accompanies it. South Africa, as a country in transition and as a part of the globalized world, has experienced an increase in the trafficking of children. There are several causal factors that have contributed to this increase and it has periodically resulted in public moral outrage, however despite this much needs to be done by civil society and government to address the issue. As a result South Africa is still some way from reducing the number of children at risk of and vulnerable to neglect, violence and maltreatment.

In 2005 the National Assembly and the National Council of Provinces passed the **Children’s Act**.⁸⁸ Chapter 18 of this Act aims to give effect to the UN Protocol to Prevent Trafficking in Persons and generally to combat trafficking in children.⁸⁹ So, for instance, it expands the child protection net to protect street children, children involved in child labour, trafficked children, refugee children and children in child-headed households by enforcing social work intervention and social work investigations into the circumstances of these children.

The Children’s Act defines trafficking in relation to a child as:

“(a) the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic

(i) by any means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or

85. Bhengu, C. [17 March 1998] ‘Children Forced into Prostitution’, *Sowetan*. This figure has been contested by child rights organizations, active in the field of child labour as a conservative estimate.

86. Human Rights Committee [1999] *Quarterly Review: Children’s Rights and Personal Rights*.

87. Department of Labour [2002] *Towards a National Child Labour Action Programme for South Africa: Discussion Document*, Pretoria.

88. Act 38 of 2005.

89. Article 281.

- (ii) due to a position of vulnerability, for the purpose of exploitation; and
- (b) includes the adoption of a child facilitated or secured through illegal means.⁹⁰

With regard to international co-operation, the President may enter into an agreement with a foreign State in respect of any matter pertaining to trafficking in children for the purpose of supplementing the provisions of the Protocol or to facilitate the application of the principles contained therein.⁹¹

Trafficking in children is prohibited and no person, natural or juristic, may traffic a child or allow a child to be trafficked. It is no defence to a charge of trafficking to claim that a child who is a victim of trafficking or a person having control over that child has consented to the intended exploitation; or that the adoption of the child facilitated or secured through illegal means.⁹²

The Act prohibits behaviour facilitating trafficking in children. Such behaviour includes leasing or allowing premises to be used for the purpose of harbouring a child who is a victim of trafficking. Advertising, publishing or distributing information that alludes to trafficking is also prohibited. Every internet service provider operating in the Republic is compelled to report to the South African Police Service any site on its server that contains information in contravention of the above-mentioned provision.⁹³

In terms of the Act, assistance must be provided to a child who is a victim of trafficking with due regard to the safety of that child and without delay. The Director General of Foreign Affairs is obliged to facilitate the return to the Republic of a child who is a citizen or a permanent resident of the Republic and who is a victim of trafficking. The Director General of Home Affairs is obliged to issue such travel documents or other authorizations as may be necessary to enable such a child to travel to and enter the Republic and refer the child to a designated social worker upon his or her entry into the Republic. If it is in the best interests of the child, an adult must be authorized at state expense to escort the child from the place where the child was found to the place from which the child was trafficked.⁹⁴

If a court has reason to believe that the parent or guardian of a child has trafficked that child or allowed the child to be trafficked, it may suspend all parental responsibilities and rights of that parent or guardian and may place that child in temporary safe care, pending an inquiry by the children's court.⁹⁵

Immigration officials, police officials, social workers, social service professionals, medical practitioners or registered nurses who come into contact with a child who is the victim of trafficking in the Republic, must refer that child to a designated social worker for investigation.⁹⁶

When a child victim of trafficking is found in the Republic, that child must be referred to a designated social worker for investigation and may be placed in a place of safety. If an

90. Article 1.

91. Article 283.

92. Article 284.

93. Article 285.

94. Article 286.

95. Article 287.

96. Article 288.

illegal foreign child is brought before the children's court, the court may order that the child be assisted in applying for asylum in terms of the Refugees Act 130 of 1998.⁹⁷

A child who is the victim of trafficking may not be returned to his or her country of origin or the country from where the child has been trafficked without giving due consideration to the availability of care arrangements as well as the safety of the child in the country to which the child is to be returned. Consideration should also be given to the possibility that the child might be trafficked again, harmed or killed.⁹⁸

The **Child Care Act**⁹⁹ deals with child sexual exploitation in Section 50 (A) and defines the commercial sexual exploitation of children as: "The procurement of a child to perform a sexual act for a financial or other reward payable to the child, the parents or guardian of the child, the procurer or any other person."

The Act further states that "Any person who participates or is involved in the commercial sexual exploitation of a child shall be guilty of an offence."¹⁰⁰

In Section 50(A) 2 the Act also states that "Any person who is an owner, lesser, manager, tenant or occupier of a property on which commercial sexual exploitation of a child occurs and who, within a reasonable time of gaining information of such occurrence, fails to report such occurrence at a police station, shall be guilty of an offence."

The Act criminalizes the actions of those directly involved in child sexual exploitation as well as any person legally linked to a property where such exploitation takes place. It however does not criminalize third party involvement such as that of those who facilitate child sexual exploitation through coercion and force such as pimps and family members who benefit from children's sexual exploitation. It also does not criminalize those involved in other aspects of the sex industry who facilitate children's sexual exploitation as well as benefit from it such as those in pornography.

Other Relevant Legislation

The **Sexual Offences Act**¹⁰¹ does provide such criminal sanction as it deals directly with the issues of brothels and 'unlawful carnal intercourse', which is limited to sexual intercourse between a male and female person. In terms of Section 3 any person who is directly or indirectly involved in the running of brothel is guilty of an offence. The Act provides sanctions against the actions of any parent or guardian¹⁰² of a child less than eighteen years of age, whom:

- (a) permits, procures or attempts to procure such child to have unlawful carnal intercourse, or to commit any immoral or indecent act, with any person other than the procurer; or to reside in or to frequent a brothel, or
- (b) orders, permits, or in any way assists in bringing about, or receives any consideration for, seduction, or prostitution of such a child.

97. Article 289.

98. Article 290.

99. Child Care Act, 74 of 1983 as amended in 1999.

100. Ibid. Section 50 (A)1

101. Sexual Offences Act, 23 of 1957, as amended in 1988.

102. Ibid. Section 9 (1).

The **Criminal Law (Sexual Offences) Amendment Bill** also contains a specific provision on the trafficking of persons in the context of sexual offences. Chapter 5 of the Bill defines trafficking as:

- the supply, recruitment, procurement, capture, removal, transportation, transfer,
- harboring, sale, disposal or receiving of a person;
- within or across the borders of South Africa;
- for use in sexual acts, including sexual exploitation or pornography of the person.

The offence of trafficking would therefore consist of a situation in which 'A' traffics 'B' without the consent, or free agreement, of B. B does not freely agree if there is:

- use of force;
- threat of harm;
- abuse of power or authority; and
- lack of criminal capacity, which would automatically apply to a child.¹⁰³

Chapter 5 of the Criminal Law Amendment Bill, which revises the Sexual Offences Act, is dedicated to criminalizing trafficking in persons for sexual purposes and is a step in the right direction to enforce the United Nations standards.¹⁰⁴

The Constitution states that every child has a right to access basic education. The **South African Schools Act** of 1996 makes school compulsory for children ages 7 to 15 and prohibits public schools from refusing admission to any child on the grounds of language, learning difficulty, or race.¹⁰⁵

The Constitution provides for the rights of the child to be protected from exploitative labour practices or work inappropriate to their age or which puts a child's well-being at risk.

The Constitution and the **Basic Conditions of Employment Act** (1997) prohibit all forms of forced labour. In particular, Section 43 prohibits employment of a child under the age of 15 years. Article 44 provides that the Minister of Labour may make regulations to deal with the employment of children who have reached 15 years of age and are no longer subject to compulsory schooling.

The **Sexual Offences Act** (1957, amended 1988) established prostitution as a criminal offence.

3.B. CURRENT PROGRAMMES AND PROJECTS

In 2003, a **Trafficking in Persons Task Team** was established, located within the National Prosecuting Authority (NPA) and chaired by Sexual Offences and Community Affairs (SOCA). Membership includes the departments of labour, home affairs, justice and social development as well as the SAPS Organized Crime Unit and Port of Entry policing, NPA, IOM, UNODC and NGOs.

103. Bronwyn, Pithey (September 2004) "Do New Crimes Need New Laws? Legal provisions available for prosecuting human trafficking", *SA Crime Quarterly*, No. 9.

104. Leggett, Ted (September 2004) "Hidden Agendas: The risks of human trafficking legislation", in *SA Crime Quarterly*, No. 9.

105. US Department of Labor, Bureau of International Labor Affairs, 2003.

The two-tier structure allowed for a team selected to deal with routine issues, and a consultative forum meeting quarterly, consisting of all the original 2003 partners to mandate issues of concern and direct the smaller, pro-active team.

Subsequently the European Community has delegated significant funding to the government of South Africa, via the NPA Task Team, for a Programme of Assistance to prevent and respond to human trafficking. The NPA Task Team has developed a work plan for allocation of funds.

In 1995 the South African Government ratified the United Nations Convention on the **Rights of the Child** (UNCRC). In doing so, it committed South Africa to implement the principle of a “first call for children” whereby the needs of children are considered paramount throughout the government’s programmes, services and development strategies. This principle was adopted by the Reconstruction and Development Programme (RDP)¹⁰⁶ and is the basis of South Africa’s commitments to children.

The **National Programme of Action** is the instrument by which these commitments to children are carried out. It is a mechanism for identifying all plans for children developed by governmental departments, non-governmental organizations and other child-related structures, and for ensuring that all these plans converge in the framework provided by the UNCRC, the goals of the 1990 World Summit for Children¹⁰⁷ and the Reconstruction and Development Programme.

This framework is not a separate plan for children but an integration of all the policies and plans developed by governmental departments and non-governmental organizations to promote the well-being of children. One of these policies concerns “Child Protection Measures”. The main goals¹⁰⁸ of these measures are:

- To ensure that the best interests of the child are protected within the criminal and civil justice system
- To ensure that the child has the right
 - to security and the relevant social services
 - not to be subject to neglect or abuse
 - not to be subject to exploitative labour practices nor to be required or permitted to do work which is hazardous or harmful to the child’s education or well-being
 - in criminal matters, to be treated in a way that takes account of his or her age
- Within the framework of 1 and 2 above, to
 - establish a separate juvenile criminal justice system
 - address the problems related to children who are involved in all forms of abuse, including sexual abuse
 - protect children from using and trafficking in narcotic drugs

106. South Africa’s Reconstruction and Development Programme is designed to ensure an integrated, coherent, socio-economic policy framework seeking to mobilize people and resources to eradicate the remnants of apartheid and build a democratic, non-racial; and non-sexist future.

107. The 1990 World Summit for Children, (popularly known as the Children’s Summit) attended by 159 governments, produced the World Declaration on the survival, protection and development of children and a plan of action on child-related human development goals for 2000.

108. South Africa government website on the National Programme of Action for Children <http://www.info.gov.za/otherdocs/1996/chilprog.htm#head9>

- address problems relating to children of divorcing, divorced or separated parents and to children of single parents
- eliminate any form of racial, gender or geographic discrimination or imbalances still existing in the criminal and civil justice system in respect of children
- promote justice that is sensitive to children, with an emphasis on the training of personnel who work with children in the justice system
- In the attainment of the above, to promote and strengthen the partnerships within state departments and between state departments and organizations in civil society which are involved in the administration of justice
- To link the entire question of children in the civil and criminal justice system to broader developmental issues and to promote the Convention on the Rights of the Child within a broader framework of a human rights culture and to make the public and people in the justice system aware.

The **Child Labour Inter-Sectoral Group** coordinates services provided by the government and NGOs, and raises awareness about child labour and the enforcement of child labour laws. The Department of Welfare is a member of the Child Labour Inter-Sectoral Group and administers social safety net programmes that help prevent children from entering the workforce.

RAPCAN (Resources Aimed at the Prevention of Child Abuse and Neglect) recognizes that trafficking happens because it stems from a culture of child abuse and exploitation. The organization holds the belief that ending child abuse will help stop child trafficking. It seeks to prevent and address different patterns of child abuse by targeting groups such as children, youth, community, parents, associations of truck drivers and government ministries.

RAPCAN's key activities include training programmes, legislative changes, curriculum changes and direct support for child witnesses. Training programmes on the prevention of sexual abuse, reproductive health, and human rights are organized for adults and children. The organization disseminates informative materials related to HIV and AIDS, lobbies and conducts advocacy campaigns among policy makers as part of its work towards changes in legislation and society's treatment of children. A child witness programme is organized to help children who have decided to give testimony, providing counselling and support as the child goes through the court procedures. Work with the Ministry of Education seeks to influence curriculum changes to include issues of child abuse. RAPCAN runs a well-maintained resource centre with materials on child abuse and regularly produces resource materials for educational purposes.

RAPCAN's strength is its focus on legislative change, based on the recognition that such change will challenge current patterns of child abuse and will lead to societal changes. Trafficking is treated as both cause and result of child abuse.¹⁰⁹

In 2000, **Molo Songololo**,¹¹⁰ a leading Child Rights NGO in South Africa, published one of the first reports on the topic of human trafficking in South Africa entitled, "*The Trafficking of Children for purposes of Sexual Exploitation: South Africa.*" The NGO briefed the South

109. Thanh-Dam Truong (2006) *Poverty, Gender and Human Trafficking in Sub-Saharan Africa: Rethinking Best Practices in Migration Management*, UNESCO, p. 106.

110. Molo Songololo's website <http://www.icon.co.za/~crisp/songololo.html>

African Parliamentary Committee on child trafficking and invited it to become a partner in advocating and lobbying for the rights of children in this area. The government then established the National Programme of Action, a tool intended to monitor the implementation of children's rights in the country. The NPA formed the Data Collection and Monitoring Task Group (MTG) with the aim of monitoring the implementation of the UN Convention on the Rights of the Child (CRC) and the African Children's Charter.¹¹¹

In January 2004, **IOM Pretoria** launched a US\$1.9 million two-year programme to prevent human trafficking, to protect victims and to provide them with rehabilitative assistance and/or return and reintegration options. The programme is aimed at assisting trafficked persons with care and support for a three-month period, including the option to return to their homes. This includes a toll-free helpline in English which also prompts a number of foreign languages. There is also a counsellor available to offer trauma counselling and referrals. IOM has opened shelters for victims in South Africa Gauteng (9), Western Cape (2), KwaZulu-Natal (2) provinces.¹¹²

Working with a network of governmental and non-governmental partners, IOM also identifies victims of trafficking directly, provides them with some rehabilitation options, and helps them to return to their countries of origin on a voluntary basis by providing them with reintegration assistance.

In August 2005, **UNODC** launched a project in the Western Cape to curb child trafficking through awareness-raising initiatives targeting government authorities, non-governmental organizations (NGOs) and children-at-risk. UNODC also focused on extending assistance to victims.

The **Southern African Counter-Trafficking Assistance Programme** (SACTAP), funded by the US Bureau for Population, Refugees and Migration (PRM) and the Government of Norway (NORAD), covers South Africa, Angola, Botswana, Lesotho, Madagascar, Malawi, Mozambique, Swaziland, Tanzania, Zambia and Zimbabwe.

The initiative focuses on research and the dissemination of counter-trafficking information throughout the region, as well as building the capacity of law enforcement agencies and NGO service providers to enable them to identify, and assist potential victims:

- *“Sale, Seduction and Slavery: The Trafficking of Women and Children for Sexual Exploitation in Southern Africa”* research report conducted in 2002-2003. All subsequent research has been published in SACTAP's quarterly bulletin “EYE on Human Trafficking”. Both 2003 report and all “EYES” are available at www.iom.org.za
- Training of law enforcement (South African Police Service, Directorate of Special Operations, known as the DSO or “Scorpions”), immigration officials (National Immigration Branch, Department of Home Affairs DHA), NGOs, state social workers employed by provincial departments of social welfare. Immigration officials do not always screen undocumented foreigners for signs of victimization before deportation. For example, in December 2005, South African authorities deported 940 Mozambican illegal immigrants without first screening them to identify potential trafficking victims.¹¹³

111. <http://www.pmg.org.za/viewminute.php?id=1544>

112. Reliefweb, IOM press briefing notes 27 January 2004, Southern Africa - Counter-Trafficking Programme. <http://www.reliefweb.int/rw/RWB.NSF/db900SID/ACOS-64CAN9?OpenDocument>

113. US State Department (June 2006) *Trafficking in Persons Report*, Released by the Office to Monitor and Combat Trafficking in Persons.

- Joint 1-day workshops for SAPS/DHA were conducted for border officials at Lebombo border post (SA-Moz), Beit Bridge (SA-Zim), Maseru Bridge and Ficksburg (SA-Lesotho), Cape Town Harbour.
- Joint 2-day investigator workshops have been conducted for SAPS investigators and DHA's National Immigration Branch (Inspectorate) at Durban International Airport, Durban City, East London, Port Elizabeth, Cape Town DSO, Pretoria Office DSO.
- Total number of law enforcement officials trained between December 2004 and December 2005 in South Africa is 488.
- First phase of SACTAP Programme (2003-2005) was limited to assisting women and children trafficked for purposes of sexual exploitation only. SACTAP Phase II (2006-2009) is aimed at providing assistance to all categories of victims, including men, women and children, trafficked for all purposes. A recurring problem is that very few existing shelters in South Africa cater for men over 18.
- 169 women and children assisted since Mid-2004.

An independent evaluation of this project has stated that: "Overall we are impressed by the achievements of SACTAP I, especially taking into account the newness of the issue in the region. Without SACTAP, there would by 2006 have been less knowledge of the issue of trafficking in persons (TIP), less government and law enforcement action, and a weaker base for action against trafficking in the future".¹¹⁴

All of IOM SACTAP programme activities have included women, and services are equally available to both women and children through partner shelters. The overwhelming profile of victims assisted by SACTAP have been women. Moreover, far more is known about the trafficking of women to South Africa than children, and more research is needed on children.

The **Sexual Offences and Community Affairs (SOCA)** supports eight "Thuthuzela" reception centres to assist victims of sexual violence with medical and psychological care, as well as legal and social assistance; it is unknown whether trafficking victims utilized these centres during the reporting period.

In 2005 the **South Africa Police Service (SAPS)**, NPA, and the Department of Home Affairs enrolled more than 800 staff in anti-trafficking training programs that enabled some law enforcement officials to identify and properly question trafficking victims, particularly at the international airport. South Africa's border police has established a special Trafficking Unit at the Johannesburg airport.

The **Network Against Child Labour**, a group of organizations and concerned individuals, was established in 1991 and focuses on ending the economic labour exploitation of children through awareness raising, advocacy, policymaking, research, networking, and legal and inter-sectoral interventions. Several NGOs work with police child protection units to provide street children with a safe, non-exploitative environment.¹¹⁵

The **South African Department of Labour** has included modules on child labour as part of its training initiatives for labour inspectors. The Government of South Africa created a task force and training courses for the police and judiciary on the commercial sexual exploitation of children.

114. Review of SACTAP commissioned by the Embassy of Norway, Pretoria, Final Report, January 2006.

115. US Department of Labor, Bureau of International Labor Affairs, 2003.

In May 2005, the **NPA** signed a memorandum of understanding with IOM to share information about trafficking crimes.

Trafficking in women and children was a subject for discussion at the **Women's Parliament** in August 2006, where the theme was "*Protecting the rights of women and the girl child: Combating the trafficking of women and girl children.*"¹¹⁶

The wide-ranging Southern African Counter Trafficking Assistance Program was set up following the IOM report on trafficking in women and children, with information campaigns, hotlines, documentaries and capacity-building of government, training of law enforcement officials

In 2003, **ECPAT International** started a project for child victims of commercial sexual exploitation, based on the active involvement of young people and intends to increase their participation in the fight against commercial sexual exploitation of children (CSEC), to strengthen their skills, to improve the quality of recovery and reintegration programmes for victims, and to reduce victims' sense of isolation. The project prioritizes the support of lobby and advocacy activities – including awareness-raising campaigns – and the creation of a knowledge base on commercial sexual exploitation. It will be realized, with the support of ECPAT International, by the following leading national organizations in South Africa, Mozambique and Malawi:

- *Sithabile Center* in South Africa
- *Rede da Criança* in Mozambique
- *Eye of the Child* in Malawi.

Apart from targeting potential victims of CSE, the project also aims at enhancing perceptions and knowledge about CSEC in the police sector and in judiciary systems. ECPAT finally endorses the view that both an active role by local communities and greater awareness about CSEC in the society at large are indispensable pillars for successful actions against child trafficking. Building on young people's active participation, the project embarks on two main strategies of peer counselling and awareness-raising.

There are various structures that provide support to women and children in crisis. They do not have a specific focus on trafficking or child sexual exploitation or child labour issues.

116. Press Release issued by Parliament of the Republic of South Africa, 3 August 2006.

4

Recommendations

There is a significant lack of comprehensive, methodologically sound, critical research into the complexities of the broad range of human trafficking in South Africa. The parameters of the problem require distinction from other related issues as well as a critical analysis to form the foundation of sustainable preventive strategies. However, the lack of reliable data cannot be used as an excuse for inaction. Trafficking interventions hitherto have variously addressed prevention, protection and direct assistance, and some inroads into the problem have been made.

Trafficking has a complex socio-economic and political basis linked to larger, global processes. It is not simply a social or moral problem to be treated with casual initiatives, or a rounding-up of trafficked people to be sent home, as this does not address poverty or related issues of vulnerability and discrimination in strategic or sustainable ways. There need to be far better linkages between trafficking prevention strategies and broader education, empowerment and poverty alleviation aimed at vulnerable populations.

Trafficking is a development concern, which requires a balanced, layered and integrated approach, built on a foundation of rights-based principles and standards. It requires a complementary range of criminal and non-criminal sanctions that respond to both the global and local realities.

While there are clear indicators of trafficking activity, involving both women and children, the data is patchy and incomplete. Yet, given the extreme levels of poverty in sub-Saharan Africa, the allure of South Africa for refugees and migrants from across the continent, and the vulnerability to trafficking to which this exposes women and children, the potential for the growth of trafficking and the infiltration of criminal groups to exploit it is very high.

It is primarily this potential that is addressed in these recommendations. Therefore the focus of the recommendations in this paper is on prevention.

“One of the main problems in prevention has been the invisibility of the phenomenon of trafficking. Invisibility means both the invisibility of exploitation, which often takes place at the margins of the law, and the invisibility of trafficked persons. Forced labour and trafficking most often take place in the informal economy or at the boundary between formal and informal, where legislation cannot protect the vulnerable or where they are not granted

any protection, given that they are not legitimate entrants into the national labour market. Victims of trafficking only become visible when they encounter the law, whether as illegal migrants, prostitutes or petty criminals.”¹¹⁷

A significant element of the prevention challenge is in making the phenomenon visible.

Prevention requires long-term thinking and interventions on three levels – primary (stopping things before they happen), secondary (limiting the number of cases that occur) and tertiary (limiting the extent of the cases and their damaging impact.) These interventions need to focus on both **supply** and **demand** while **targeting criminals** and **providing protection for victims**.

The following recommendations are proposed in compliance with these requirements:

1. Legislative Reform¹¹⁸

National legislation on trafficking in persons should, at a minimum:¹¹⁹

- Define precisely the crime of trafficking in accordance with international standards, and include expressly all exploitative practices covered by the international definition of trafficking such as debt bondage, forced labour, and forced prostitution;
- Prioritize the fight against human trafficking as an issue to be incorporated in the Millennium Development Goals (MDG);
- Ensure that definitions of trafficking reflect the need for special safeguards and care for children, including appropriate legal protection;
- Ensure that trafficked persons are not punished for any offences or activities related to their having been trafficked, such as prostitution and immigration violations;
- Ensure that victims of trafficking are protected from summary deportation, or return where there are reasonable grounds to suspect that such return would present a significant security risk to the trafficked person or to his/her family;
- Consider temporary or permanent residency in countries of transit or destination (reflection delay) for trafficking victims in exchange for testimony against alleged traffickers, or on humanitarian and compassionate grounds;
- Ensure that victims of trafficking are offered the possibility of obtaining compensation for damages suffered;
- Provide for proportional criminal penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials; and
- Proceeds of trafficking, and related offences, to be used for the benefit of trafficked persons.

2. Policy Reform

- **Fight against poverty:** Prioritize the fight against trafficking in women and children as a political issue that must be part of the governance agenda, given the specificities

117. Danish Red Cross (2005) *Good Practices in Response to Trafficking in Human Beings: Cooperation between civil society and law enforcement in Europe*.

118. IOM (May 2003) *Seduction Sale and Slavery: Trafficking in Women and Children for sexual exploitation in southern Africa*.

119. Idem.

it entails. This implies the inclusion of the trafficking issue in the fight against poverty according to the Millennium Development goals.

- **Migration policy:** Efforts to combat trafficking in persons can also be used to prevent legal migration. This has been identified as an unintended consequence of anti-trafficking measures by researchers.¹²⁰ As a result, clarification of the migration policy would strengthen the status of migrants in South Africa and would reduce their vulnerability to find a trafficker on their way.

South Africa has not yet ratified the Convention on the Rights of Migrant Workers and their Families. The inclusion of provisions in the Convention in immigration and anti-trafficking legislation would go some way towards providing the regulatory framework and ensuring access to complaint mechanisms for migrants. Ensuring protection for migrants would also mean that it would be necessary to develop measures and strategies that include work with communities where migrants settle to increase acceptance of migrants.

Labour migration has been an integral feature of the South Africa economy for over a century and yet there are not clear policies on cross-border migration for work. South Africa therefore needs to give serious consideration to a migration policy that will accommodate both the needs of the South African economy as well as that of other SADC countries. Consideration should be given in such a policy to the rights of temporary labor migrants and other human rights. Such a policy should also have a specific focus on the situation and position of women migrants and children that might accompany them. Such policy should also give consideration to the micro-economic impact that a gendered migration policy can have on household opportunities and welfare outside of South Africa.

- **Institutionalizing gender mainstreaming:** Gender mainstreaming requires changes at different levels within institutions and organizations, paying attention to equality between women and men in agenda setting, policy making, planning, budgeting, implementation, evaluation and thus in all decision making procedures. Mainstreaming requires that a gender analysis is carried out before the important decisions on goals, strategies and resource allocations are made. In formulating strategies therefore it is important that we include migrant women's concerns from the outset. Migrant women and children should therefore be integral partners of any policy or implementation strategy. This is especially important as "choices for women, especially poor women cannot be enlarged without a change in relations between men and women, as well as the ideologies and institutions that preserve and reproduce gender inequality."¹²¹
- **Draw on one another's strengths:** Tackling human trafficking requires responses that cut across national borders. Governments, national and international NGOs,

120. Researchers in the British Medical Journal have argued that efforts to prevent trafficking in persons are making conditions worse for voluntary migrants. Their concerns are based on studies conducted between 2000 and 2002 among child migrants in Mali and Vietnamese sex workers in Cambodia. In both Mali and Cambodia, intermediaries often assist safe migration, yet anti-trafficking policies do not distinguish between a trafficker with intent to exploit and an intermediary who facilitates a young migrant's journey and search for work. According to the report policy measures that do not distinguish between voluntary migration and trafficking in persons force migrants to rely on corrupt officials and use of clandestine routes, increasing their risk of harm and exploitation at <http://www.medicalnewstoday.com/medicalnews.php?newsid=9097>

121. UNIFEM (2000) *Progress of the World's Women: Empowerment and Economics*, United Nations, Geneva, p.21.

United Nations agencies, regional organizations and the private sector must collaborate and draw on one another's strengths if there is any progress to be made. This is recognized in the Palermo Protocol as an important element in combating trafficking in persons (Article 9 (3)).

3. National Leadership

- Identify a high-profile national spokesperson who will articulate South Africa's trafficking concerns, challenges and successes and participate in national and international fora;
- Identify a national government official as the trafficking focal point, who will lead the Trafficking in Persons Task Team. This official will be granted authority and autonomy to act both nationally and internationally. Ideally this position will respond to the highest offices of government;
- The Trafficking Task Team will continue to bring together relevant ministries, agencies, intergovernmental organizations, NGOs, and representatives of civil society to develop and implement policy to combat trafficking, thus institutionalizing cooperation between these bodies;
- This group will enact and publicize the National Programme of Action;¹²² advise on legislation and develop standard operating procedures and guidelines for the various implementing partners;
- The National Programme of Action will incorporate all forms of activity to combat trafficking in persons: prevention, protection, prosecution and direct-assistance.

4. Direct Prevention Activities

Direct prevention includes education and effective law-enforcement but also involves addressing root causes. By definition it demands the empowerment of people at the most basic levels of social organization; it requires their active involvement and fosters decision-making by communities about how to maintain the safety and well-being of its members. Direct prevention requires the adaptation of 'best practices' to local circumstance, effective partnerships between government, law enforcement and civil society institutions and the clear intent of improving the quality of life of the target groups, whether through economic empowerment, secure communities, humanitarian assistance or other locally determined yardsticks.

- NGOs, local government institutions and law enforcement personnel work with community leaders through development committees or other existing structures (men and women) to form partnerships to combat trafficking as a manifestation of insecurity;
- Economic empowerment of women and girls which enhance their access to productive resources and markets and ensure sustainable economic mobility;
- Interventions that include visiting high-risk groups: such as young women in rural areas, migrating women, refugee women, uneducated women;
- Enlisting the support of the media to document the means, actions and outcomes of human trafficking;

122. In accord with the African Union Solemn Declaration on Gender and Women's Issues in Africa, July 2004.

- Consistent and persistent support to staff engaged in active border monitoring and investigation to ensure their ready access to information and other resources;
- Working with former ‘victims’ as peer counsellors and spokespersons with community organizations to support prevention activities;
- Interventions that target businesses involved in facilitating the trade, such as transport companies, long-distance truck drivers, taxi drivers, travel agencies, hotel managers, bus companies, job agencies and recruitment offices; consular personnel responsible for visas;
- Attending to basic needs through provision of short-term humanitarian assistance to families at risk to avert exploitative fostering or sale of children.¹²³

Civil society organizations are encouraged to:

- Establish community education programmes for the prevention of child abuse and trafficking, with children as the main actors of the program. The initiative will consist of awareness-building in schools and other places through drama, songs, dance, sports, speeches and debates on harmful cultural practices that discriminate against women;
- Train community leaders and families on gender issues in order to transform attitudes to gender roles and women’s right; to recognize and support women’s paid and unpaid economic contribution and reduce the domestic work burden; address the perceptions of the role of women and men in association with the phenomenon of trafficking. Such a strategy may secure the support of community leaders in the fight against trafficking.

5. Education, Training, Awareness-Raising

Large-scale, expensive information campaigns are of questionable value if not targeted to specific, identifiable audiences, if no action is demanded and if the campaign results are not evaluated. When resources and the scale of the challenge are disproportionately balanced, it is vital to set priorities and clear goals. It is likely that sustained, concerted campaigns aimed at specific high risk groups and readily identifiable social and professional groups will be most effective. By the same token, thorough, regular, practical training of all elements of the police/judicial system, government officials and border guards will strengthen their capacity to deal effectively with human trafficking.

- Expand opportunities and improve access to formal education for women, girls and boys at all levels and in non-conventional streams;
- Ensure a match between better education and available job opportunities;
- Incorporate gender and human rights concerns like trafficking into school curricula;
- Incorporate awareness and information into informal education activities, clubs/sports/religious or other groups of children and youth;
- Better skills training and education for girls linked to viable, sustainable income generating activities;

123. Dottridge M. (2004) “Kids as Commodities? Child Trafficking and What to do about it” Terre des hommes (See diagram 6 for differing factors at work in child trafficking and different opportunities to intervene).

- Promote legal literacy in vulnerable communities and improve access to affordable legal assistance;
- Legal update courses for law enforcement to include gender and rights training and relevant trafficking legislation information;
- Conduct information campaigns that are targeted to high risk communities about safe forms of migration;
- Strengthen training for law enforcement personnel, immigration and customs officials, prosecutors and judges, labour inspectors, diplomats and teachers and other relevant officials on trafficking prevention;
- Introduce effective evaluation and monitoring of all training programmes in order to measure success and replicate, record lessons learned and modify training accordingly;
- Develop 'Training of Trainers' courses for local NGOs, civil authorities and other community actors in order to extend outreach of awareness and information activities.

6. Research and Data-collection

Prevention strategies which are not linked to routine coordinated data/research collection and analysis are likely to be 'shots in the dark.'

- Government capacities need to be strengthened to standardize the collection of statistical information and baseline data and to conduct policy-oriented research. Researchers need to develop methodologies appropriate to the range of causes and effects of trafficking for women, men, girls and boys;
- Ensure the dis-aggregation of migration data on the basis of age, gender, nationality, date and place of entry and departure, place of visa renewal, overstay and deportation;
- Little is known of trafficking of adult males. Further research is needed to distinguish between legal migration, smuggling and trafficking – and for what purposes;
- Establish channels of communication and share and disseminate information on trafficking in persons on a regional basis to support the development of appropriate prevention strategies;
- Inter-disciplinary, pro-active research needs to be carried out into the structures, networks, trade commodities and conduct of organized crime in the region, in order to forestall their incursions and thereby prevent human trafficking;
- Research is required into the resurgence and conduct of discriminatory cultural practices and beliefs. While these appear to be harmful primarily to girl children, a more complete understanding is needed of their cause, purpose and the possibility for beneficial as well as harmful effects.

All these activities should be linked to and informed by the growing body of information on International Best Practices.

5

Conclusion

Populations vulnerable to trafficking are growing in Africa, which increases the supply of potential victims for traffickers and the damaging effects on all segments of African society. Trafficking can be seen as a problem of migration, of organised crime, labour, human rights, of morality and as a development issue. These all have an impact of varying degrees on the very fabric of society. In practical terms some of the outcomes are likely to be:¹²⁴

Irretrievable depletion of human capital

- Negative effect on labour market
- Denial of access to education necessary to break cycle of poverty and illiteracy that creates trafficking conditions
- National labour force ill-equipped to compete in global economy where success is based on skilled workers
- Fewer people left to care for elderly and sick
- Social demographic imbalances
- Loss of human resources elsewhere, to other countries

Undermining public health

- HIV and AIDS costs to public health system
- Exposure to HIV, STDs, violence, dangerous working conditions, poor nutrition, and addictions
- Psycho trauma from experiences
- Life of crime addiction and sexual violence

124. See Fitzgibbon, Kathleen (2003) "Modern Day Slavery" *African Security Review* Vol. 12 No. 1.

Community breakdown

- Loss of family support network makes trafficking easier, undermines relationships, weakens ties of family affection and influence, interrupts passage of cultural values and knowledge, from one generation to the next, thus weakening the core of African society,
- Victims increasingly will have nowhere to go

Crime

- Links to other criminal networks, drugs, weapons
- Profits funnelled into other criminal activities, car theft rings, drugs, terrorist groups

Undermining government authority

- Thwarts government attempts to exercise authority, undermines public safety
- The failure of government in fundamental responsibility, undermines its ability to combat corruption in law enforcement and judiciary

Human rights violations

- Perpetuates social inequality and injustice

Whatever strategies are developed to combat the trafficking phenomenon, women's rights need to be at the core of every strategy in all sectors and areas of activity. Unless women are equally situated and valued in terms of their social roles they will remain vulnerable to trafficking and abuse and the struggle to eliminate trafficking in human beings will prove endless. Awareness-raising and information, strong judicial systems and law enforcement as well as victim protection and reintegration are crucial, complementary elements in the struggle, but remain insufficient without a strong human rights foundation.

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ANNEX 1

Profile of Children Users for Sexual Intercourse¹²⁵

There is no typical profile of those who sexually exploit children and they “cannot be distinguished by any specific inner quality, personality trait or even sexual proclivity.”¹²⁶ Their only distinguishing feature is that they sexually exploit children. This they do “in a range of social settings contexts, for a variety of reasons.”¹²⁷ The people who have sex with children vary from those who choose to engage in this activity, to those who do not care, to those who do not realize that their sexual partner is a child. It “is (therefore) impossible to speak of the sex exploiter in the sense of a single type of person who possesses some particular or unique set of characteristics.”¹²⁸ (Emphasis in the original)

It is however possible to distinguish certain distinct categories of sex exploiters within this amorphous group. These categories are: pedophiles, preferential sex exploiters and situational sex exploiters.

First and most easily distinguishable - but in the minority – are pedophiles. These are men who have a marked preference for sex with prepubescent children. Secondly, there are people who do not care whether their sexual partner is a child or not and have sex with children without questioning the age of the partner. Most noticeable in this group are those generally referred to as “sex tourists”. Whilst there are some among this group who travel specifically to have sex with children most however would, in “normal” circumstances not choose to have sex with a child but for a variety of reasons do. These reasons include: the freedom of a holiday in a foreign “exotic” location, being drunk or affected by drugs, ignorance or lack of care in recognising the likelihood that an offered partner is under-age. This group is referred to as situational sex exploiters. They engage in sex with children because they are usually morally and/or sexually indiscriminate and wish to ‘experiment’ with child sexual partners, or they have entered into situations in which children who match their ideals of physical attraction are sexually accessible to them, or certain disinhibiting factors are present which allow them to either delude themselves about the child’s true age or about the nature of the child’s consent.

However the globalized flow of money has increased demand for commercial sex, and many exploiters are local men, often regular-users of commercial sex workers, who do not distinguish on the basis of age. In the South African context they have been described as “men of all ages, colours, creeds and religions.”¹²⁹ Thirdly, there are those whose demand for sex with children is based on a belief that children are less likely to have had multiple partners, and so are less likely to transmit infection. This group falls into the category of those regarded as preferential sex exploiters. Although some children are sexually exploited

125. Excerpt from the UNESCO research study (2005) *Human Trafficking, especially of Women and Children in Southern Africa (South Africa, Lesotho and Mozambique)*, coordinated by Elize Delpont, Mhlava Consulting Services, South Africa.

126. O’Connell Davidson, J. (2001) *The Sex Exploiter*, NGO Group for the Convention on the Rights of the Child, p. 7.

127. Idem

128. Moela, S. (19 September 1999) “Not all Girls have the Luxury of a Real Childhood, in *City Press*.

129. Idem.

by and/or specifically for pedophiles and preferential exploiters, the majority of men who sexually exploit children, already in the sex industry are first and foremost situational sex exploiters who are regular prostitute users. They become child sexual exploiters through their prostitute use, rather than the other way around. Unlike preferential sex exploiters and pedophiles, then, situational exploiters do not consistently or consciously seek out children as sexual partners, and it is often a matter of indifference to them whether their sexual partners are 14 or 24, providing they are 'fit' and 'attractive'. This type of offender cannot necessarily be described as sexually "perverse"¹³⁰ (in the sense of deviating from culturally prescribed sexual norms). The physical characteristics that he or she is attracted to often conform to cultural ideals of 'youthful' feminine or masculine beauty, and not to cultural ideals of child-like innocence. Children mature physically at very different rates, so that a 14 or 15 year old girl, for example, can combine the physical characteristics associated with adult woman with attributes of youth that are much admired. It has been observed in this regard that: "It is also worth noting here that many models used in the production of pornography aimed at 'normal', and not pedophile, men are actually under the age of 18, and an adult who is sexually aroused by the sight of someone who is legally and chronologically a child, but physically 'mature' and/or close to cultural ideals of sexual beauty, cannot necessarily be understood as sexually or psychologically 'aberrant'."¹³¹

Generally child sex exploiters are drawn primarily from the following groups: local prostitute users; the military; seamen and truckers; migrant workers; traveling businessmen; tourists; expatriates; aid workers; and employers of domestic workers.¹³² In South Africa they are also usually identified by their occupation and they have been identified as: taxi drivers, migrant workers, lawyers, doctors, farmers, local and foreign tourists, men who frequent bars and shebeens and employers of domestic workers.¹³³ Despite this identification we still do not know much about those who sexually exploit children.

130. Kelly, L. (November 2001) "From Aspirations to Intervention: Trends, Issues, Priorities and Lessons Learned", Keynote to the COE Conference *Protection of Children Against Sexual Exploitation*, European Preparatory Conference for Yokohama, Budapest.

131. See for instance Molo Songololo (2000) *The trafficking of children for the purposes of sexual exploitation: South Africa*, Cape Town, Koen, K. and Van Vuuren, B. (2002) *Children in Domestic Service the Case of the Western Cape*, Terre des hommes, Switzerland

132. O'Connell, J. and Sanchez Taylor, J. (1996) *Prostitution and Child Sex Tourism: South Africa* (ECPAT International).

133. See for instance Molo Songololo (2000) *Ibid.* p. 37. Koen, J. and Van Vuuren, B. (2002) *Children in Domestic Service the Case of the Western Cape*, Terre des hommes, Switzerland.

ANNEX 2

The First World Congress Against Commercial Sexual Exploitation of Children

The First World Congress Against Commercial Sexual Exploitation of Children held in Stockholm, Sweden, 28 August 1996, recommended ten tasks for all 122 Governments represented in the meeting. As follows:

- **Accord** high priority to action against the commercial sexual exploitation of children and allocate adequate resources for this purpose;
- **Promote** stronger cooperation between States and all sectors of society to prevent children from entering the sex trade and to strengthen the role of families in protecting children against commercial sexual exploitation;
- **Criminalise** the commercial sexual exploitation of children, as well as other forms of sexual exploitation of children, and condemn and penalise all those offenders involved, whether local or foreign, while ensuring that the child victims of this practice are not penalised;
- **Review** and **Revise**, where appropriate, laws, policies, programmes and practices to eliminate the commercial sexual exploitation of children;
- **Enforce** laws, policies and programmes to protect children from commercial sexual exploitation and strengthen communication and cooperation between law enforcement authorities;
- **Promote** adoption, implementation and dissemination of laws, policies, and programmes supported by relevant regional, national and local mechanisms against the commercial sexual exploitation of children;
- **Develop** and **Implement** comprehensive gender-sensitive plans and programmes to prevent the commercial sexual exploitation of children, to protect and assist the child victims and to facilitate their recovery and reintegration into society;
- **Create** a climate through education, social mobilisation, and development activities to ensure that parents and others legally responsible for children are able to fulfil their rights, duties and responsibilities to protect children from commercial sexual exploitation;
- **Mobilise** political and other partners, national and international communities, including intergovernmental organisations and nongovernmental organisations, to assist countries in eliminating the commercial sexual exploitation of children; and
- **Enhance** the role of popular participation, including that of children, in preventing and eliminating the commercial sexual exploitation of children.

ANNEX 3

Human Rights Guidelines on Trafficking (OHCHR)

The *Recommended Principles and Guidelines on Human Rights and Human Trafficking* have been developed in order to provide practical rights-based policy guidance on the prevention of trafficking and the protection of the rights of trafficking victims. The aim of these Guidelines is to promote the mainstreaming of human rights into national, regional and international anti-trafficking laws, policies and interventions. The Principles and Guidelines are used as the main framework and reference point for the work of the Office of the UN High Commissioner of Human Rights. These Guidelines were presented by the High Commissioner for Human Rights to the UN Economic and Social Council in 2002.

Guideline 1: Promotion and protection of human rights mainstreamed in all activities to prevent and end trafficking in human beings.

Guideline 2: Identification of trafficked persons and traffickers, distinguishing between victims of trafficking and migrant smuggling and identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.

Guideline 3: Research, analysis, evaluation and dissemination, for the elaboration of effective anti-trafficking strategies on the basis of accurate and current information, experience and analysis.

Guideline 4: Ensuring an adequate legal framework in accordance with international standards and instruments.

Guideline 5: Ensuring an adequate law enforcement response against trafficking, with the cooperation of trafficked persons and other witnesses.

Guideline 6: Protection and support for trafficked persons without discrimination, paying due attention to the needs of the victims

Guideline 7: Preventing trafficking in human beings, taking into account the trafficking demand as a root cause, and factors that increase trafficking vulnerability, such as inequality, poverty and all forms of discrimination and prejudice.

Guideline 8: Special measures for the protection and support of child victims of trafficking taking into account the best interest of the child and paying particular attention to the views of the child as well as to his or her rights and dignity in any action undertaken on his or her behalf.

Guideline 9: Access to adequate and appropriate remedies making trafficked persons more aware about their right to remedies.

Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation.

Guideline 11: Cooperation at the international, multilateral and bilateral level and coordination between States and regions, in particular between those involved in different stages of the trafficking chain.

ANNEX 4

Suggestions for Further Research¹³⁴

Resources need to be made immediately available for the conduct of specific research to enable practitioners in all sectors to better understand the scale, causes, methods, linkages, variations and effects of trafficking in South Africa.

The trafficking of South Africans abroad:

The data provides preliminary information on South Africa's role as a destination and transit country, but it says very little about the trafficking of South Africans to other countries. Cases of South Africans trafficked overseas have come to the attention of assistance and support organisations such as the IOM and law enforcement, but this is an issue that has yet to be researched properly.

The trafficking of men and boys:

The emphasis on women and girls in sexual exploitation means that our current understanding is biased towards the experiences of a very specific group of people and tells us little or nothing about male victims of sexual exploitation, or the men, women and children who may be trafficked into other sectors. Researchers need to capture the diversity of causes and effects of trafficking.

The structural factors creating an environment conducive to trafficking:

In much of the international literature, the focus is on studying the factors that contribute to trafficking, the profile of victims and mapping the routes and relationships between countries of origin, transit and destination. We still know very little about the structural factors that create an environment conducive to trafficking. The triggers to migration include widespread impoverishment and severe levels of debt and structural adjustment exercises, but the precise effects and how to mitigate are not always well understood.

While studies highlight a broad range of 'push' and 'pull' factors, none have examined in any detail what role law enforcement personnel play in trafficking, or how factors such as corruption, societal attitudes and demand may create a market for trafficked individuals in South Africa.

What makes some more vulnerable than others:

There has also been no analysis of why some people are more vulnerable to being trafficked than others. For example:

- i) What do rural/urban families expect will be the outcome of children/young women being sent to families elsewhere or going to promised jobs?
- ii) What knowledge do communities have of the trafficking business? Are they suspicious?
- iii) What are implications for women and children who return home/repatriated after THB experience?

134. Much of this section directly reflects the work of Robyn Pharaoh in "Getting to Grips with Trafficking: Reflections on Human Trafficking Research in South Africa," ISS 2006.

iv) Who holds power, has influence and makes decisions in community structures (formal and informal)?

v) Are women encouraged in any way to take offers of jobs outside/in another country to send money to community and/or family? To what extent is their external labour viewed in public arena as a resource?

Understanding what makes some people susceptible and what differentiates those who do and do not become victims of trafficking, should be the first step in designing meaningful prevention activities.

Traffickers and trafficking networks:

The research suggests several different types of traffickers, as well as a range of trafficking arrangements and levels of organisation. Beyond broad references to profit motives or economic need, the literature tells us little about what motivates traffickers and where trafficking networks are involved, how these are structured or how they work. The lower level, opportunistic trafficker working within an informal, shifting structure may select such activity as a survival strategy, poverty and lack of opportunity playing a double hand. What is known about how the marginalized impoverished young male gets coerced into becoming a junior trafficker? What compels women to act as recruiters? How do they get involved? Why?

Understanding the distinctions between traffickers and the trafficking networks is crucial given the Palermo definition's association of trafficking with organised crime.

Support infrastructure and needs:

While the TECL reports provide insight into the services available to trafficked children, no research has examined what resources are available for adults or what is needed to expand and improve the facilities available to victims. South Africa's trafficking legislation will include provisions for victim support and protection, and data is urgently required on what needs to be put in place to fulfil these requirements. There is thus an urgent need for more and better data on trafficking for the purposes of sexual exploitation, as well as information on trafficking in other areas.

Better assessments need to be done on the concrete protection needs of victims. For example:

i) Are shelters a realistic option in this context? How great is the need for shelters/alternative and short/long-term accommodation for women victims of violence/trafficked women? How would they be perceived? How could they be funded? What services would need to be provided? What about the needs of girls/under-18 with child?

ii) What is known about the re-cycling, re-trafficking of repatriated women and children?

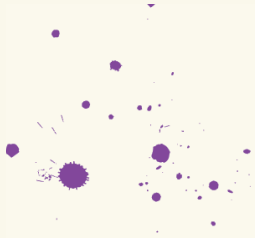
To design comprehensive responses to the problem, there is a need for information not only on the environment within which trafficking occurs but also the knowledge and attitudes of potential victims and the communities into which actual victims must reintegrate.

Cultural beliefs and practices:

What is the impact of persistent/resurgent cultural practices, both harmful and beneficial on human trafficking?

Training and Education:

Reference is frequently made to the need for more and better training for LE, judiciary, border authorities and government officials, and NGO/civil society actors, but training cannot be seen as a panacea to solve all omissions, failures and misunderstandings. Research is needed into what training works and why; how it is best delivered and by whom; where, and in what circumstances. Training materials abound in other locations, particularly Europe. How can this be used/modified/contextualised to make it locally relevant?



In South Africa, women and children make up the vast majority of the human trafficking chain whether for sexual exploitation or other forms of forced labour. This is a result of push factors that are rooted in poverty, inequality, discrimination and a lack of economic opportunity that provoke survival strategies exposing the most vulnerable to exploitation and abuse. Pull factors include the huge economic differentials that make South Africa an alluring destination. Changing attitudes to labour migration has resulted in much human population movement becoming irregular, with migrants increasingly vulnerable to human rights abuses. Human trafficking has increased as a proportion of total migration, which, given traditional labour migration patterns in the region, exposes South Africa as a country of destination, origin and transit for human trafficking activities, both internal and transnational. Changes in both the supply and demand for female labour, partly due to changes in gender roles in industrialized and developing countries, have also increased the proportion of women and children in migration streams, and therefore of women and adolescent girls being trafficked.

Prevention calls for an integrated and multi-sectoral approach that addresses migration and trafficking within the context of overall national and development policy. An integrated approach to combating trafficking through gender-sensitive and rights-based approaches to provide livelihoods for women needs to be explored. In South Africa, a lack of effective legislative and policy frameworks has hindered the development of a comprehensive approach to diverse but related demands of prevention, protection and prosecution. The advent of proposed domestic legislation on human trafficking will make a significant change. Various campaigns against child trafficking have been launched since 1996. However, many challenges remain. The AIDS epidemic, the persistence of harmful cultural practices, the growth of the reach and influence of organized crime and the persistent loss of women, children and men to sexual and forced labour exploitation require concerted and constant attention.