

# **IAWJ CONFERENCE**

## **2008**

### **HUMAN TRAFFICKING: SOUTHERN AFRICAN PERSPECTIVE**

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## **HUMAN TRAFFICKING: A SOUTHERN AFRICAN PERSPECTIVE**

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The South African Chapter of the IAWJ had a very informative and successful Regional Conference on Human Trafficking in Africa in October 2007. There were presentations from our Chief Justice, Pius Langa, as well as leading researchers and practitioners in the field of human trafficking. Presenters were drawn from South Africa, the African region and the United States. The conference report is available to those who are interested.

During the conference, delegates heard a series of presentations that mapped out the scope of human trafficking in Africa, as well as the legislative and judicial responses thereto. Conventions impacting on trafficking and the obligations they placed on states were discussed. Emphasis was placed on the need for SADC member states to develop and implement joint agreements and co-operative measures to combat trafficking in persons. Human trafficking affects us all. Globally it is considered to be the third largest source of profits for organised crime, surpassed only by gun and drug trafficking. Our Chief Justice attributes trafficking in southern Africa to extreme poverty, unemployment, war, lack of food and traditional practices that commodify women.

As recent as 5 March 2008, it was reported in the *Lusaka Times* that 42 Congolese nationals, on a human trafficking mission to South Africa, have been intercepted and detained. An unknown group of traffickers is behind the scheme to move the Congolese nationals, mostly women and children, to South Africa.

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## RESEARCH

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Trafficking in the Southern African Region occurs on 3 levels, namely, internally, cross border and intercontinental. The main purpose of trafficking is for sexual and commercial exploitation.

### **USAID ANTI-TRAFFICKING IN PERSONS PROGRAMS IN AFRICA – A REVIEW APRIL 2007**

#### **Countries of Origin, Transit, Destination**

- ❖ West, Central, Southern, and East African countries are primarily countries of origin.
  
- ❖ West African countries, Egypt, and South Africa are the primary countries of destination in Africa, with South Africa as the “leader”. Many victims are also transported to Europe, the Middle East and the United States.
  
- ❖ Transit countries exist across Africa. South Africa is a well-known transit country where victims are transported from Asia to destinations in Africa and Europe. Although little research exists on North Africa, it is assumed that the North African states are transit countries for victims moving from Africa to Europe.
  
- ❖ Trafficking flows across the continent are fairly predictable. In Eastern and Southern Africa, the majority of trafficking is to South Africa. In West and Central Africa, the flow of trafficking victims is generally cyclical – all states serve as origin, transit, and destination states - though several countries are recognised as major countries of destination (namely, Cote d'Ivoire, Gabon, and Nigeria).
  
- ❖ Countries of origin show patterns of trafficking to multiple destinations. For example, women and children in Benin are trafficked to all neighbouring states, as well as Gabon.

#### **MOLO SONGOLOLO - 2000**

An in depth study on trafficking of children in Southern Africa, conducted by Molo Songololo (2000), revealed that children are being trafficked for sexual exploitation to South Africa from:

Angola, Botswana, Ethiopia, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Senegal, Swaziland, Tanzania and Zambia. Trafficking also occurs from Eastern Europe and South East Asia, including Thailand and Taiwan.

Main purpose of trafficking children

- ❖ Child Labour
- ❖ Sexual exploitation

### **TRAFFICKING IN HUMAN BEINGS, ESPECIALLY WOMEN AND CHILDREN, IN AFRICA – UNICEF (2003)**

- ❖ Trafficking (for any purpose) is a recognized problem in half of Africa
- ❖ 30% of Southern & East Africa vs. 70% in West & Central Africa
- ❖ Children are trafficked at twice the rate as women
- ❖ 60% of trafficking victims in Africa are children

### **Other types of trafficking**

Marriage (forced, illegal or age inappropriate)

- ❖ Organs (body parts)
- ❖ Adoption (illegal)
  - Abduction
  - Sale

### **INTERNATIONAL ORGANISATION FOR MIGRATION (IOM) SOUTHERN AFRICAN STUDY - 2003**

- ❖ Mostly women and children, for sexual exploitation
- ❖ Domestic and international trafficking
- ❖ Children sold by parents
- ❖ Organised crime
  - West African/Nigerian networks, Chinese Triad, Russian & Bulgarian mafia
  - Recruited primarily by lies
    - Employment
    - Marriage
    - Education

IOM has identified nine patterns of trafficking in Southern Africa in its research study:

- (a) Male refugees recruit female refugees from their countries of origin
- (b) Children from Lesotho are trafficked by South African men
- (c) Women and girls from Mozambique are recruited to work as waitresses and sex workers
- (d) Women from Malawi are trafficked under false pretences to work and study in Europe
- (e) Women from Thailand, China, Russia and other Eastern European countries are lured to South Africa under false promises and are debt bonded and sold into prostitution

## **SOUTH AFRICA – OVERVIEW**

South Africa has been identified as a source, transit and destination country for men, women and children trafficked for forced labour and sexual exploitation.

### **Contributing factors**

High levels of poverty, school dropouts, insufficient safety and protection services for children, domestic violence, cultural attitudes and practices, high demand for sex with children, instability created by war, political instability, lack of effective law enforcement strategies, demand for cheap labour, social pressures, natural disasters.

South Africa ratified the Palermo Convention and Protocols 20 February 2004.

### **Southern African Region - Ratifications**

Botswana, Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia.

Exceptions: Angola, Swaziland, Zimbabwe (ratification in progress)

### **Trafficking in Children within SA**

Molo Songololo in "Trafficking of Women for Sexual Exploitation – South Africa" and "Trafficking of Children for Sexual Exploitation – South Africa", 2000.

In-country trafficking in children occurs mainly from

- ❖ Town to city
- ❖ Residential area to residential area
- ❖ Residential to business area
- ❖ Rural to urban areas
- ❖ Province to province
- ❖ Less wealthier to wealthier areas
- ❖ Western Cape, Gauteng and KwaZulu-Natal has been identified as major centres where trafficking in children occurs

### **Trafficking in General**

- ❖ South Africa is one of the central points for trafficking of women and children in Southern Africa. (IOM 2003).
- ❖ South Africans are trafficked to Hong Kong and Macau (China)
- ❖ Johannesburg is used as a transit point for Swaziland, Lesotho and Mozambique
- ❖ Women from other African countries are trafficked to South Africa onward to Europe
- ❖ Men and boys are trafficked from neighbouring countries for forced agricultural labour
- ❖ Thai, Chinese, Eastern European women are trafficked to South Africa for debt bonded sexual exploitation
- ❖ Estimated 500 organised crime groups operating in South Africa (Japanese Yakuza, Russian, Italian, Bulgarian Mafia, Nigerian gangs)
- ❖ Victims recruited by deception, coercion and force

### **South Africa – Tier 2 Watch List – TIP Report 2006**

1. Official statistics on magnitude unknown
2. Making efforts to comply with minimum standards to human trafficking combat
3. Research on nature and extent of trafficking is ongoing
4. Developing procedures for victim protection
5. Progress toward passage of comprehensive anti-trafficking legislation
  - ❖ New Sexual Offences Bill which prohibits sex trafficking in progress
  - ❖ Combating TIP Bill

### **Most countries in Africa – Tier 2 watch list**

Exceptions: Malawi and Morocco

### **Currently no TIP legislation in force**

#### ❖ **Common law :** Options

Abduction, kidnapping, rape, indecent assault, fraud

#### ❖ **Current legislation**

Child Care Act (not in force), Children's Act, Prevention of Organised Crime Act, Films and Publications Act, Basic Conditions of Employment Act, Immigration Act, Intimidations Act

## MAIN PROPOSED LEGISLATION

### 1. **Sexual Offences Bill & Related Matters**

- ❖ Still undergoing parliamentary processes
- ❖ The aim of the Bill is to comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences in a single legislation, by making interim provisions relating to the trafficking in persons for sexual purposes
- ❖ Part 5, Section 65 deals with Transitional Provisions relating to trafficking in persons for sexual purposes pending the adoption of legislation in compliance with UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Trans-National Organised Crime (signed on 14-12-2000) and the repeal are provided for in partial compliance of our international obligations and to deal with this rapidly growing phenomena globally

### 2. **Combating of Trafficking in Persons (TIP) Bill**

- ❖ South African Law Commission recommended Bill to address TIP
- ❖ Focus not only on trafficking for purposes of sexual exploitation, but has full trafficking scope
- ❖ Bill contains specific TIP law in fulfilment of international obligations – Palermo Protocol
- ❖ SALC Discussion Paper – 2004  
Paper open for public comment – Hearings June 2006
- ❖ Submissions currently being considered to be integrated into Bill to be tabled and adopted soon

## **TIP BILL - Trafficking defined**

### **Action**

Recruitment, sale, supply, procurement, capture, removal, transportation, transfer, harbouring or receipt of persons within or across the borders of the Republic.  
(Definition Protocol: The recruitment, transportation, transfer, harbouring or receipt of persons.)

### **Means ... any**

By any means including the use of threat, force, intimidate, 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 over another person, or abusing vulnerability.

### **Purpose**

For the purposes of exploitation, sexual, servitude, slavery, forced marriages, forced labour, child labour and body parts. Includes the adoption of a child facilitated or secured through illegal means.

### **EXTRA TERRITORIAL JURISDICTION – S 43**

- ❖ Commit outside SA, but would be offence in SA
- ❖ Regardless whether Act constitutes offence of place of commission and
- ❖ Person to be charged –
  - = citizen / ordinarily
  - Was arrested in Republic
  - Is a juristic person registered in Republic

### **INTERNATIONAL CO-OPERATION – S 42**

- Extradition & mutual assistance
- Regional harmonization (laws and penalties)

## CONCLUSION

SALC recommended legislation for criminalising trafficking, provision and services to victims of trafficking and prevention of trafficking. South Africa is currently in the process of finalising comprehensive trafficking legislation in fulfilment of its international obligations in terms of the Palermo Protocol. There is a great awareness of this global problem in South Africa. Our Chief Justice explained the predominance of trafficking when he said:

*“Traffickers can make profits on drugs only once; they can sell the same person again and again and profit infinitely.”*

The conference concluded with delegates proposing resolutions for implementation by member associations in their countries. The delegates present at the conference unanimously adopted the following resolutions – Resolutions of the members of the IAWJ African Region present at the African Regional Conference – Human Trafficking in Africa: A Regional and Domestic Response, held in Johannesburg South Africa, 18-21 October 2007.

We, the members of the IAWJ African Region present at this conference note that:

- ❖ Human trafficking is a global phenomenon
- ❖ While all human beings are vulnerable to trafficking, we recognise that perpetrators tend to prey on persons, particularly women and children, who find themselves in desperate socio-economic conditions.
- ❖ Trafficking results in the exploitation of persons and strips them of their dignity, humanity, and freedom.
- ❖ It amounts to modern day slavery and cannot be tolerated in a civilised society.
- ❖ Trafficking in persons (TIP) is the third largest income earner for criminal syndicates.
- ❖ There is a lack of comprehensive legislation to combat TIP
- ❖ There is a lack of awareness and understanding of TIP
- ❖ There is a lack of government policies and programmes to assist victims of trafficking.

**This conference meeting therefore resolves that:**

1. Its member associations call upon their respective governments that have not ratified the international conventions and protocols on human trafficking to do so immediately.
2. Its member associations call upon their respective governments to enact comprehensive TIP legislation as a matter of urgency and, that where legislation is in place, it be implemented as a priority.
3. Its member associations call upon their respective governments to commit themselves to developing policies and programmes that will facilitate the implementation of the Palermo Protocol.
4. Its member associations collaborate with NGO's working in the area of human trafficking with a view to lobbying their respective governments to make financial resources available for victim assistance and training of functionaries engaged in combating TIP.

5. The delegates at this conference work together with academics and other entities in developing and conducting training programmes for judicial officers to raise awareness on the need to combat TIP.
  6. The delegates at this conference work together with other organisations to create community awareness of the need to combat TIP.
  7. The member associations promote on-going awareness programmes in their respective countries.
  8. This meeting commits itself to promote regional cooperation with members and non-members in combating TIP.
  9. The member associations urge that implementation of programmes and policies to counteract TIP should always be in accordance with regional and international human rights standards.
  10. The delegates at this conference urge the prosecution authorities, law enforcement agencies and relevant government departments, as well as NGO's in their countries to establish a data base of relevant information and a helpline to combat TIP in their countries.
  11. We as judicial officers commit ourselves to being more vigilant in identifying human trafficking elements in matters that come before courts.
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