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Labels, victims, and insecurity: an exploration of the lived realities of migrant women who sell sex in South Africa

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\textbf{ABSTRACT}

Based on research work among cross-border migrant women who sell sex in South Africa, this paper examines the ways in which the label ‘victim’ of human trafficking ignores the complex realities of human mobility. We argue here that as state legislative and policy measures, in relation to human trafficking, justify the securitisation of borders and the curtailment of migrant rights, an accompanying hegemonic discourse serves to deny the agency of migrant women sex workers. As a result, the linkages between human trafficking and migration are experienced by migrant women sex workers through new layers of vulnerability and insecurity.

\textbf{Introduction}

Human trafficking is all too often portrayed through a cause and effect relationship that characterises the practice as an inherent aspect of migration.\textsuperscript{1} Within the discourse on trafficking, the label ‘victim’ is used to classify individuals who are exposed to deception, abuse, and exploitation and to conflate specific categories of migrants into a homogenous group with common needs and characteristics. As states create categories and social labels are imposed, the rights of migrants are increasingly becoming a causality of the need to prevent human trafficking.\textsuperscript{2} This paper contributes to our understanding of state responses to human trafficking by considering the impact of trafficking discourses, legislation, and policy measures on migrant women sex workers.\textsuperscript{3,4}

Based on research work among cross-border migrant women who sell sex in Johannesburg (South Africa), this paper explores the ways in which the label ‘victim of human trafficking’ misrepresents complex lived realities and heightens the risks associated with migrant women’s livelihood activities. The paper examines the daily experiences of cross-border migrant women who sell sex as they encounter laws and policies designed to curb human trafficking. In particular, the paper considers the implications of a morally charged humanitarian discourse that portrays all migrant sex workers as victims of trafficking; and the manner in which a discursive emphasis on the ‘pure victim’ justifies the imposition of restrictive migration policies and border control measures.\textsuperscript{5} Finally, it is argued here that anti-trafficking
measures underpinned by humanitarianism give rise to an Agamben state of exception within which migrant rights are subordinated in defence of humanitarian governance. In this context Non-Governmental Organisations (NGOs) that focus on issues of human trafficking experience an enhanced relevance while migrant women, who sell sex but who are not victims of trafficking encounter new layers of insecurity and vulnerability.

At the outset, it is important to note that while there are overlaps between the practices of human smuggling and human trafficking these are two separate and distinct processes. The United Nations (UN) Palermo Protocol (2000) defines human trafficking as a practice characterised by the exploitation of victims through coercion, abuse of power, and deception. The UN Protocol (2000) further defines human smuggling as a process that facilitates, for material gain, the undocumented entry of individuals into a state of which they are non-nationals. Exploitation and coercion are the key traits that distinguish between human smuggling and trafficking. Throughout this paper, the term human trafficking refers to the forms of movement, coercion and exploitation that characterise the relationship between a trafficker and their victim. Human smuggling meanwhile is used here to describe the manner in which individuals engage in cross-border migration, without formal immigration clearance or documentation, through their own endeavours or through payment for the assistance rendered to them by one or more intermediaries.

The narrow focus, in current debates, on the trafficking of women and children for purposes of sexual exploitation can and does lead to the conflation of human trafficking with sex work. In this paper, sex work or selling sex refers to the ‘exchange of sexual services, performances, or products for material compensation’. Individuals under the age of 18 years are excluded from this definition. The participants in this research did not identify themselves as ‘sex workers’ but as ‘migrant women who sell sex’. While they faced the same risks and forms of violence as all sex workers, they viewed selling sex as a temporary measure to supplement other livelihood strategies that included vending and domestic work. The terms ‘sex work’ or ‘sex worker’ are used here to refer to the industry and to the impact of criminalisation and anti-trafficking measures on all those who sell sex irrespective of how they define themselves.

The research

The research on which this paper is based is drawn from a study that explored the ways in which immigration, sex work, and trafficking discourses and policies influenced the lived experiences of migrants in Johannesburg (South Africa) and Amsterdam (the Netherlands). In this paper, we focus on the fieldwork undertaken in Johannesburg by the first author. The study explored the ‘double vulnerability’ of non-national women who sell sex through a discourse analysis of multi-level policies on migration, sex work, public health, and trafficking. Additionally, in-depth, semi-structured interviews were conducted with ten cross-border migrant women who regularly sold sex. Seven women were from the Democratic Republic of Congo (DRC), two were from Zimbabwe, and one was from Mozambique. The participants were undocumented migrants over the age of 18 years who had arrived in South Africa in the period between 2000 and 2013. All had chosen (albeit often against a very limited range of options) to sell sex in order to financially support their children. The majority (eight) had used the services of human smugglers in order to enter South Africa.
The participants in this research were recruited through a snowballing process. The initial interviews were conducted over a 24-month period from 2014 to 2016. Follow up interviews were conducted in 2017 as part of the Migration and Health Project Southern Africa (maHp) and “Life in the City” Project at the African Centre for Migration and Society (ACMS). The interviews took place in neutral spaces away from where the women lived and worked and focused on a range of issues such as the experience of travelling to South Africa, negotiating life in Johannesburg and their trajectories into selling sex. Participants were given the option to use pseudonyms and to opt out of the research at any time. Each participant was compensated for any potential loss of earnings through a food voucher or mobile phone airtime credit. All the women were proficient in English. As the participants were uncomfortable with the use of a tape recorder, notes were taken during the interviews.

The study’s timeframe and the limited number of participants made it possible to gain an in-depth understanding of their daily lived realities. However, challenges arose as the women occupied a marginal position in South African society and had low levels of social support. Throughout the research process issues of boundaries regularly arose when participants viewed the researcher as a source of financial assistance or expected help with issues such as employment or immigration documentation.

Finally, in order to explore the conceptualisation of migration and sex work and the types of data used to inform policy and practice, interviews were conducted with officials in NGOs and government agencies. All interviews were analysed using thematic analysis.

Ethical clearance for the research was provided by the University of Witwatersrand, and guidance on ethical issues were drawn from a body of research carried out with sex workers and migrants in Johannesburg at the ACMS.

Throughout the interviews, the key issues that shaped participants’ narratives were the process of migrating to South Africa and their trajectories into selling sex. These narratives provided an in-depth understanding of the complex reasons for migration and entry into the sex industry. The narratives further highlighted the ways in which a trafficking discourse subsumes the experiences of migrant women who sell sex, misrepresents their everyday realities, but also utilises those same realities to justify the implementation of anti-trafficking legislation and policies.

South Africa’s human trafficking legislation – external pressure, local responses

Immigration control is premised on the notion that human mobility is a restricted process through which nation-states determine who is allowed into their territory and under what conditions. Over the past decades, processes of globalisation, regional conflicts, and persistent inequalities between the Global North and South have given rise to increasing levels of human mobility that challenge the territorial integrity of nation-states. The history of current human mobility in Southern Africa lies in the entrenched labour patterns of the colonial and post-colonial eras. More recently, internal and regional migration flows have changed in response to factors such as the integration of South Africa into the Southern African Development Community (SADC) following the end of Apartheid in 1994, and the pursuit of livelihood opportunities and economic security in response to high levels of rural and urban poverty. Additionally, civil strife has given rise to internal displacement and cross-border movements as individuals seek safety and refuge. In relation to border control
measures, the recent ‘migration crisis’ in Europe and the history of migration into South Africa, Wilhelm-Solomon notes ‘the policing and securitisation of refugee and migration policy are creating new social divides and exclusions and exacerbating insecurity’.\(^\text{13}\) As a consequence, emerging social divisions can be identified through the ways in which moral lines are drawn between: ‘legal’ and ‘illegal’ migrants; productive workers and illicit traders; ‘pure victims’ and criminal migrants; traffickers and the trafficked.

The implementation of anti-human trafficking measures in South Africa reflects international pressure, local responses to the practice of trafficking and global discourses on the securitisation of cross-border migration. Prior to the enactment of The Prevention and Combating of Trafficking in Persons (TiP) Act (2013) South Africa had been placed on the tier two-watch list by the United States of America (USA), as a country that was perceived to have high levels of human trafficking and inadequate measures to deal with the practice during the period 2005–2008.\(^\text{14,15}\) The tier two designation of South Africa was imposed despite limited evidence of large scale human trafficking in the country, a dearth of substantive research on the issue and without reference to the impact of the discourse in South Africa.\(^\text{16}\) The TiP Bill (2013) was underpinned by data that was later found to be methodologically flawed, often failed to differentiate between people who were smuggled and those who were trafficked and drew on common myths around human trafficking.\(^\text{17}\) Gould and Fick’s seminal study, which set out to investigate and identify victims of trafficking, found very little evidence of trafficking for the purpose of sexual exploitation.\(^\text{18}\) However, their study highlighted the multiple realities and complexities of life for individuals who sell sex.

Despite the lack of evidence and reliable data, trafficking became part of the national discourse in South Africa among policy-makers, the media and civil society organisations. Vigneswaran discusses the central role played by concerns around trafficking in the epistemological dichotomy between the two groups sceptics and believers; the ‘believers’, tied together through ‘communities of faith’ hold steadfast to claims that despite a lack of evidence trafficking is an extensive problem in South Africa.\(^\text{19}\) In a discussion on the reliability of data and figures on human trafficking (during the course of this research) an employee of the Department of Social Development (DSD) noted ‘whatever the numbers and counts we know trafficking is happening and it’s getting worse’ (Sibongile, DSD 08–08-2014). In this way, the need for reliable evidence is framed as secondary to the fight against trafficking.\(^\text{20}\)

In the South African case, the closure of a space for scepticism created a fertile ground for the circulation of myths, which in turn, generated a moral panic. This was evident in the run up to the 2010 FIFA Football World Cup, hosted by South Africa, when large-scale anti-human trafficking campaigns alleged that mass trafficking of foreign women and children would take place to satisfy the demand for cheap sexual services. In addition, the claims by inter-governmental organisations and some local NGOs that though human trafficking was occurring in the country it largely went undetected, lent credence to the media campaigns. Bonthuys points out that though these claims, which were not unique to the 2010 FIFA World Cup, were not validated the result was the allocation of large sums of money to awareness-raising campaigns in the country.\(^\text{21}\)

While the TiP (2013) legislation contains stringent criteria for identifying a victim of human trafficking, it has been criticised internally on a number of grounds. In addition to the reliance on flawed data to suggest ‘evidence’ of widespread trafficking, the emphasis on immigration and the conflating of sex work with human trafficking ignores less sensational internal labour exploitation practices that are also an aspect of human trafficking.\(^\text{22}\)
The state as humanitarian agent - the emergence of exceptionalism

South Africa and the other SADC member states have experienced the global discourse on migration and human trafficking as the externalisation of borders into their territories. Over the past decade, 12 of the 15 SADC member states have implemented specific legislation to deal with human trafficking while the remaining three countries deal with the issue through their national legal frameworks. The efficiency and urgency with which anti-human trafficking legislation was enacted was influenced by external factors in particular the white saviour-driven campaigns, rather than by a major growth in the practice within the region. Though the available data on human trafficking within the SADC is methodologically problematic, policy-makers and governments rarely question it. Research and events on the ground do not suggest that human trafficking is a major facet of regional cross-border migration flows. When the practice does occur, it is often in the form of internal exploitative labour practices, rather than cross-border human trafficking for sexual exploitation. As is the case in other countries around the globe, the legislative measures adopted by the SADC countries are premised on two assumptions namely that: the victims of trafficking will be non-citizens of the state to which they are transported; and states as the recipients of victims will liaise and co-operate with their home countries.

In the SADC, national laws on human trafficking have largely followed the UN Protocol (2000) and ignored the regional context, country specific cultural practices or the complexity of regional migration patterns. Additionally, legislative provisions have failed to separate the practice of human smuggling, which is common (across many borders in the region) from that of human trafficking. As both processes involve the movement of people, either internally within states or across borders, they are perceived as closely linked to human migration. Simplistic reductionism of this nature establishes a cause and effect relationship but fails to account for sophisticated global human smuggling and trafficking operations. At another level, the assumed one-to-one causal relationship between migration and the practices of smuggling and trafficking relegates the individual migrant to the status of a powerlessness victim. As a consequence, almost no attention is paid to the complex dynamics of migration, individuals as active agents responsible for their own mobility and the role of those who act as facilitators. Koser’s research highlights refugees as active agents in their own mobility who utilised smuggling networks that involved complex, referral systems from within their own social milieu. In a similar vein, for participants in this research their entry into South Africa was facilitated through the use of social networks. Thoko had a friend in South Africa who helped her to arrange the border crossing from Zimbabwe through the use of a smuggler.

It was easy to plan as so many are doing it … but the journey that can be scary hey … you meet these guys and they take you to the point then you walk and walk. You walk so long and you see where you need to get across … Then they [the smugglers] meet you when you cross and you are in South Africa. (Thoko, Zimbabwe, 20-05-2015)

Since Koser’s study and with the exception of Nadig there has been a dearth of material on migrants as active agents in ‘their own smuggling’. Rather, unquestioning discourses have emerged in Government and public narratives, which focus almost exclusively on exploitation, victimhood, border security, and the protective and legislative role of the state. In this context, states justify restrictive migration regimes through what Cole refers to as the ‘white saviour complex’ that now underpins much of the trafficking discourse and in
particular anti-trafficking campaigns. This notion (which is not exclusively tied to any one group) justifies perceived moral actions as acts of humanitarianism designed to save victims of human trafficking through a unidirectional, foreign, benevolent act of rescue. The notion of rescue as a form of humanitarianism can be conceptualised through Fassin’s idea of ‘humanitarian government’. For Fassin, humanitarianism is not a particular form of intervention but a modality of government, a mode of approaching social problems and shaping political solutions. Within the discourse on human trafficking and social injustice, humanitarian logic powerfully injects ‘moral sentiment into the political sphere’. Humanitarianism is then constitutive of contemporary politics both in incorporating sentimentalism and sensationalism while reformulating ‘what is at stake in politics’.

When humanitarian logic governs political views on the perceived overlap between migration and human trafficking, states in their preventative role, return to the familiar discourse of migration control. Through what Fassin refers to as ‘humanitarian logic’, states justify the control of migration by emphasising the need to protect migrants from exploitation and abuse. Stricter migration controls are portrayed in a positive light, as the result of the state’s ethical and moral concerns about cross-border migrants and those categorised as ‘vulnerable’. State practices that can and do create the conditions necessary for the emergence of human smuggling and trafficking are not acknowledged. In this way, the state is absolved of responsibility for the consequences of restrictive immigration regimes. Tighter border security to discourage migration in order to combat human smuggling and trafficking is the latest in a long list of immigration control measures enacted by various states. This is exemplified in South Africa’s current White Paper on International Migration.

Agamben’s conceptualisation of a ‘state of exception’ is premised on the power of states to justify the denial of individual rights on the basis of perceived threats and exceptional circumstances. Human smuggling and trafficking, as perceived threats to state security, reaffirm the dangers posed by uncontrolled human migration and justify the need for enhanced migration control measures. At the same time the categories ‘victim’ and ‘criminal’ migrant rooted in the trafficking discourse delineate between the rights that can be withdrawn from or accorded to migrants in the name of humanitarianism. Among participants, categories, labels, and vulnerabilities were a salient aspect of their daily lives due to their undocumented status and their work in a criminalised industry that is associated with human trafficking for sexual exploitation.

**Selling sex in South Africa – daily realities**

Though there is a growing recognition that migration can play a key role in global development, nation-states progressively seek to control levels of transnational human mobility. As a consequence, it is increasingly becoming difficult for migrants, especially those who engage in informal sector activities and low-skilled employment, to legally enter, reside and work in a country where they do not have residence rights. In the period since 2002, successive changes to South Africa’s immigration laws have further restricted entry into the country with the result that ‘by envisioning South Africa as being threatened by parasitical foreigners, the authorities are able to invoke notions of a state of siege’. The threat implicit in the notion of a state besieged reinforces the notion that a state of exception, in which migrant rights are curtailed and circumscribed, is the appropriate response to the cause of that siege. The many and varied consequences have a significant impact on the daily lives of migrants and
their livelihood strategies. Deportation has become a more common and acceptable state practice. Large numbers of undocumented migrants, who are excluded from the formal labour market, work in informal and often unregulated sectors of the economy including sex work. Employees at government agencies and the police feel empowered to ill-treat migrants, especially the undocumented, in the knowledge that they have no recourse to legal or other forms of redress.

The conflation of sex work and human trafficking provides a distorted picture of the levels of trafficking; relegates the complex and diverse experiences of those who cross borders into a one-dimensional discourse; justifies the call for tighter border security; and further criminalises migrants on the basis of misleading assumptions. Legislation and policies created from weak and unsubstantiated evidence are disconnected from the daily experiences of those on whom they impact, including the participants in this research.

Although sex work is an important livelihood strategy, in South Africa it is fully criminalised under Section 20(1) (aA) of the Sexual Offences Act (SOA) of 1957, and its 2007 Amendment. As a result, sex workers, their clients, and anyone living off the earnings of a sex worker are liable to prosecution. The criminalisation of their livelihood activity exposes sex workers to layers of vulnerabilities, including gender-based, inter-personal, and behavioural violence (attacks from clients, abuse by the police, or members of the public), structural violence (police and client harassment and brutality), and barriers to healthcare, specifically HIV and AIDS testing and treatment programmes. These experiences are reflective of the larger global picture of vulnerabilities and risks faced by women who sell sex. For migrant women in South Africa the risks are intensified by the xenophobic sentiments, found in state institutions and the wider society, which shape everyday life and give rise to periods of extreme violence.

When we go to the clinic they shout at us because we are foreigners … when the police come they shout at us for being sex workers … when we go to Home Affairs we stand there all day and then they don’t help us … They treat us like dogs. (Thoko, Zimbabwe, 20-07-2015)

Non-nationals who sell sex are exposed to additional layers of vulnerability through various forms of discrimination that create barriers to education (for their children) documentation for residence permits and legal support.

It is also hard because of the police. They wait and ask you for your papers …. sometimes you have to sleep with them. (Shalati, DRC, 20-07-2015)

Despite these vulnerabilities, selling sex is a viable livelihood strategy for migrant women for a number of reasons that include: flexible hours; better rates of pay than other informal work; and the lack of any requirement for documentation or formal qualifications. Gould and Fick found that most sex workers had entered the industry for reasons of financial opportunity and economic need. While selling sex was often not their preferred livelihood activity, the participants in this research did not consider themselves exploited or coerced as suggested by discourses on human trafficking. For the participants their trajectories into selling sex often began as a response to poor working conditions or their failure to find secure employment. They experienced the entanglements of agency and victim-hood, opportunities and limitations, and instances of exploitation that did not translate into being victims of human trafficking.

I was looking for work so I moved to Hillbrow. I found a job in a restaurant but because I didn’t have papers they treated me very badly. They didn’t pay me I just got tips. I worked there for one year and six months. Then they told me to leave so I started work in another place. I still didn’t
have papers so I lost that job. I then worked one month in a pizza place. They didn't pay me after one month. They said I couldn't do anything without papers. They didn't care. So that's when I started the prostitution job … [w]hen I did that work there was no one taking my money and no one telling me what to do. (Patricia, Zimbabwe, 20-10-2014)

I tried many things …. I did the washing, I looked after this lady's baby … but the money was little and she wanted me there long hours. It was easy to do [sex work] and the money was good. Me and my friend we stayed together and she took me there [to a brothel]. We rent the room and then we see the clients. There are those who like us … they say that we don't cheat and we can be trusted. That time I was doing well. (Helena, DRC, 7-6-2015)

Participants had not come to South Africa to sell sex and had not been trafficked into sexual exploitation. They spoke about trafficking in vague and abstract terms, recounted stories they had heard and dissociated themselves from 'those women'.

There are those who have been made to do this … they have minders and they are not allowed to do anything. The men take their passports and they keep them. (Helena, DRC, 07-06-2015)

Ana Marie had heard about women forced into sex work and recounted that:

[T]hey live in these buildings. They can't go out, they don't know the language. When you cross into … [South Africa] … you face many bad things. You don't know what will happen and you take that risk. But you have to do [it] because you are running away … they [referring to staff at a shelter where she initially stayed] say that you have been trafficked … lots of women say this … but not for me. (Ana-Marie, DRC, 11-6-2015)

Though the participants did not see themselves as victims of human trafficking, they were aware that, after the introduction of the TiP Act (2013), the practice was more frequently mentioned, particularly during their encounters with the police.

They used to just say you were a prostitute and all these bad words … things. Now sometimes they ask … have you been traffick (sic) … are they going to help me more if I am a trafficking person? … I was thinking I should say this but I'm still scared of them [the police]. (Patricia, Zimbabwe, 20-10-2014)

The extent of abuse and violence by the police toward sex workers in South Africa has been well documented. A recent report by the South African NGO, Sonke Gender Justice (2018), outlines experiences of torture, physical violence sometimes leading to long-term and permanent injuries, humiliation, and police harassment.

In a similar vain the participant notes:

They kept us for … long time … in the police van. When they take us we were standing waiting for clients … I have this one who come on Tuesdays so I was waiting for him. They police came and made us get in the van. After that they keep us long and were saying bad things about us and telling us we must pay them R300 each if we want to get out … some of the ladies were shouting … one officer he was saying that we make this trafficking thing happen. He said that the trafficking is worse because we [are] doing the [sex] work. (Ana-Marie, DRC, 11-6-2015)

In the context of discourses on human trafficking, the violence experienced by migrant sex workers as a consequence of the criminalisation of their work is replaced by a concern for victims of trafficking. This disjuncture marks the way in which the trafficking discourse ignores the complex and multi-layered lives of women who move across borders and choose to sell sex. The increasing preoccupation with human trafficking misrepresents the actual risks women face and also increases those risks. 'We are all victims … but they want only these trafficking ones' (Thoko, Zimbabwe, 20-07-2015). Angela described an incident where, along with two other women she was picked up by two men in a car and taken to a house ‘full of men'. She explained how she told the two women to run before she escaped herself by jumping out of the bathroom window:
Then I run really fast and I get to a petrol station and I ask those guys how to get a taxi back to Joburg … Then I got back. The next day I saw those girls and their feet were like this (pointed at her feet and drew lines to suggest cuts with her finger). They couldn’t walk and they were beaten. All bruised and cut. They had walked home all that way … and they didn’t get paid”.
(Angela, DRC, 20-11-2014)

Participants recognise the lack of police support and their own lack of access to basic rights when they face violence in contrast to the assistance they would receive if they were labelled as ‘victims of trafficking’.

No … never, never, never [make a police report]. Do you know what they do? They ask for papers, they say we are prostitutes and dirty …. You know if we were trafficking …. They help …. They would say it's not our fault and give help. But we don’t say this and instead they won’t do anything. We are beaten and our feets (sic) cut like this and they don’t care … (Angela, DRC, 20-11-2014)

The need for women to fit the victim label was evident in the manner in which the staff (who deal with human trafficking) at NGOs and a women’s shelter portrayed the women they work with and their circumstances.

It is such a good thing [the TiP Act] because it makes it better to catch these ones [the traffickers] and stop these ladies being forced … sometimes they [the women] don’t know this is trafficking … These women get fooled. They are young and told they can come to Johannesburg for work. When they get here there is prostitution and they have no other choices. (…) it is our job to get them away and help them see there is something else. It is not good that they do this. (Thuli, St Mary’s Women’s Shelter, 10-08-2014)

While the shelter emphasised the need to assist victims of trafficking, at the time of the interviews (2014–2015) they had not dealt with any cases of that nature. Thuli’s statement echoed the sentiments expressed by many organisations working with ‘vulnerable women’ and reflected an anti-trafficking discourse, which draws on a normative sexual conservatism combined with the stigma that is attached to sex work in South Africa. The Salvation Army in Johannesburg who claim to have a specific focus on human trafficking and who run a shelter for victims of the practice noted that: ‘This trafficking is about prostitution … about young girls being made to sell their bodies…’ (Salvation Army Major DW, 17-09-2014). In an email response to a request for a follow up interview Major DW further noted:

Prostitution exposes people to an environment rife with high levels of abuse and violence. It takes advantage of their vulnerabilities and disregards their worth as human beings …. The Salvation Army encounters typically have not chosen to get involved in prostitution and cannot be considered entrepreneurs. (their emphasis)

Major DW also highlighted the importance of the TiP Act (2013) which helped them to strengthen their response to trafficking. ‘There are so many, many of the women and children being trafficked … we have to stop this thing’. When asked for figures on the number of trafficking victims in their shelter as well as a more in-depth understanding of the kind of experiences the victims had faced the Salvation Army stopped responding to requests for further information.

As a result of the portrayal of women who sell sex as victims, deviants, or both, organisations that work with ‘vulnerable’ women adopt the paternalistic role of the ‘rescuer’. The ideological debate about women’s bodies and in particular the bodies of non-national migrant women are set in the context of discourses on human trafficking. From this perspective, the selling of sex is always a form of exploitation and abuse of women and sex
workers are victims or deviants. An employee from an NGO that claims to ‘rescue’ women who are in sex work explained:

Even if they say they want to do this … you need to look behind them – see who is pushing … who is taking the money … this is not something you want to do. (Jean, 23-08-2014)

The complex realities of vulnerability and violence that are not associated with human trafficking are silenced in the quest to ‘simplify reality’ and legitimise common myths about trafficking.51

New layers of insecurity

Cross-border migrant sex workers experience state policies and practices as the imposition of labels and categories to which they do not relate, that do not acknowledge their everyday reality but which create new layers of vulnerability. In this context, and in addition to the twin state roles of duty and responsibility, a moral dimension emerges that is equally applicable to the trafficker who exploits the victim and the non-victim whose livelihood is judged as immoral, contaminating, threatening, and culturally unacceptable. Morality, state security, sovereignty, and the boundaries of belonging merge to create practices which require migration to be treated in Agamben’s notion of a state of exception; within which individual rights are not merely withdrawn or circumscribed but made subservient to the power of the state to define those rights.52 The process Agamben describes can be seen in the South African government’s recent decision to reject a call by sex worker rights activists and other civil society organisations for the decriminalisation of sex work. In 1999, the South African Law Reform Commission (SALRC) began an investigation into the need for legislative reform of the country’s legal framework around sex work.53 The long-awaited SALRC report, which was released in May 2017, recommended either the continuation of complete criminalisation of all aspects of sex work or the adoption of partial criminalisation (the ‘Swedish Model’). The report also included recommendations for diversion and exit strategies, to ‘lift people involved in prostitution out of coercive circumstances and to place them in rehabilitation, training, and reintegration’ programmes.54 The report’s language implied that sex workers were victims in need of rescue. The approach taken by the SALRC reinforced the general polarisations evident in the discourses on sex work and trafficking and justified the lack of sex worker rights through the lens of morality, security, and state control. The SALRC report reiterated the state’s role as saviour but ignored the ways in which existing criminal laws contribute to the levels of violence experienced by sex workers.

Simplistic and conflated ideas about human trafficking, sex work, and women who ‘get fooled’ rather than make choices, are useful tools for the trafficking agenda of both NGOs and government agencies. The anti-trafficking discourse that dominates discussions on sex work and migration fails to acknowledge the complex realities and daily experiences of many who sell sex including the participants.

Processes of social exclusion and marginalisation are shaped and reinforced through myths and stereotypes, which serve to create anti-foreigner sentiments that can lead to the type of xenophobic violence witnessed in South Africa in recent years.55 In response to the perceived threat posed by human migration, the past decade has witnessed a growth in practices designed to re-assert state control over human transnational mobility. Enhanced visa restrictions, low acceptance rates for refugee status, the externalisation of borders, the internal policing of borders by citizens, airline carrier sanctions and the deportation of
migrants are among the long list of increasingly acceptable restrictive state practices. In the face of enhanced border control measures, migrants are called upon to refine their strategies for mobility and to engage in practices that are, in themselves, a response to ever more restrictive immigration regimes. Undocumented migrations and the use of human smugglers are two such strategies that involve co-operation and financial assistance from family and kin group members and the use of intermediaries to facilitate mobility.

Conclusion

In Southern Africa, as in other parts of the globe, the practice of human trafficking is closely linked to issues of human mobility and to the preventative and protective roles of the state. Within the SADC region, state and civil society discourses prioritise the need to curb cross-border migration in order to protect the state, society at large, and migrants from the threat posed by human trafficking. In the South African context, a powerful and morally charged humanitarian discourse portrays all migrant sex workers as victims of trafficking and justifies restrictive border controls to protect the state and cross-border migrants from trafficking and migration itself. As the notion of ‘the threat’ to state and society gains momentum, human migration and its potential consequences begin to represent a state of exception, in which migrant rights are subordinated in defence of humanitarian governance. This process of subordination precludes a focus on the protection of migrant communities, in particular those who face multiple vulnerabilities; and the need to acknowledge the state’s responsibility to ensure safer patterns of migration and protection for those who cross borders. In failing to acknowledge women’s complex and differential experiences and needs we argue here that, in the South African context, the trafficking discourse creates new and additional vulnerabilities for cross-border migrant women who sell sex. The risks of working in a criminalised context are heightened when the discourse on human trafficking assumes linkages between migration, crime, and victimhood; and when a discourse on sexual exploitation conceals the need to decriminalise sex work and to protect the rights of sex workers. The agency, experiences, and rights of cross-border migrants and in particular migrant women who sell sex, cannot be understood through a humanitarian discourse around trafficking or the abrogation of rights by the state. For cross-border migrant women who sell sex, the label ‘victim of trafficking’ does not, in all cases, reflect their daily lives but the increasing layers of insecurity and vulnerability they are forced to negotiate on a daily basis.

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Notes

12.  Castles and Davidson, “Citizenship and Belonging.”
15.  Bonthuys, “The 2010 World Cup.”
20.  Ibid.
21.  See note 17 above.
22.  Africa Check, “Factsheet.”
27. See note 6.
32. Fassin, “Heart of Humaneness.”
33. Ibid., 265.
34. Ibid., 274.
37. See note 8 above.
38. See note 10 above.
39. Walker and Huncke, “Sex work.”
40. UNAIDS, “UNAIDS Guidance Note.”
41. Richter and Vearey, “Migration and Sex Work”; Walker and Oliveira, “Contested Spaces.”
43. See note 55 below.
44. Walker and Oliveira, “Contested Spaces.”
45. Ibid.
47. A densely-populated area of inner-city Johannesburg known for its migrant communities.
49. Palmary, “Sex, Choice and Exploitation.”
50. Ibid.
52. See note 6 above.
54. Ibid.
55. Landau, “Exorcising the Demons.”
56. Tshabalala, “Brokerage Economies.”

References


