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ABSTRACT

Very little is known about activism, as it relates to the issue of migration in South Africa. Yet, migration policy and migration governance are increasingly becoming important to states like South Africa, which, 22 years into democracy, finds itself being home to the second highest number of migrants in Africa. This paper fills this gap by exploring multi-level policies and advocacy experiences of activists working on migration in a post-colonial context of South Africa through the lens of key contestations around the trafficking discourse in South Africa from 2005 to 2018.

KEYWORDS

Migration; human trafficking; migrant rights; gender-related rights; labour rights; migrant women; sex work; policy

Introduction

In South Africa, misunderstandings, confusions, and sensitivities around migration and trafficking create difficult terrain for feminists working to support migrant women sex workers. Migration policy and migration governance are increasingly important issues here, 22 years into democracy. Official statistics say South Africa has the second highest
number of migrants in Africa (International Organization for Migration (IOM) 2013, 9). These are mostly refugees, asylum seekers, and labour migrants from neighbouring countries. Results from the analysis of 2011 South Africa Census data revealed that there were 2,173,409 international migrants (4.2 per cent of the 2011 total population) (Statistics South Africa 2015, 128). While there are no reliable estimates on how many of these migrants are women as gender-disaggregated migration data in South Africa is mostly unavailable, women are moving more than ever. Both the proportion of total migrants and actual numbers of migrant women have increased (Mbiyozo 2018), and migrant women constituted 44.4 per cent of total migrants in 2017 (ibid., 8). Data relating to sex work in South Africa is also inadequate, as no size estimations involving fieldwork have been done on a national scale. Sex Worker Education and Advocacy Task Force (SWEAT 2013, 4) estimates that there are 138,000 female, 7,000 male, and 6,000 transgender sex workers. However, in these sex worker estimates, the data do not disaggregate by nationality.

While migration is a politically sensitive issue, the issue of human trafficking is even more contentious. Human trafficking is widely associated with – and even conflated with – migration, in public discussion and media coverage. For many South Africans – including policymakers as well as the general public – migration and trafficking are one and the same thing. In their informative study focusing on the realities of life for migrant sex workers in South Africa, Rebecca Walker and Treasa Galvin (2018) observe that anti-trafficking measures have proliferated in South Africa’s legislation and policy, drawing on three factors: international pressure, local responses to trafficking, and growing global discourses of securitisation of cross-border migration. These measures threaten the rights of migrant women sex workers (ibid.).

Globally, concerns around trafficking have a long history. Human trafficking emerged as a key issue for international law enforcement in the 1990s, partly a result of the dissolution of the former Soviet Union and the subsequent migration of Eastern European women into sex work in Western Europe (Leggett 2004). The United Nations (UN) Palermo Protocol (2000) defines human trafficking as a practice that is characterised by the exploitation of victims through coercion, abuse of power, and deception. The Palermo Protocol requires states which ratify it to implement national trafficking legislation. South Africa ratified this protocol in 2004 (Palmary and de Gruchy 2016).

Similar political and moral concerns have informed debates about migration, in particular the migration of women. Perceptions that migration has become ‘feminised’ originated in the early 20th century (Phillips and James 2014), but really gained traction in the last decades of the century. There has certainly been a global rise in female migration: over the last 25 years, the number of migrant women in the world has risen from 75 million in 1990 to 117 million in 2015 (United Nations 2015, drawing on primary data tables 19–30). However, when examined, the slogan ‘feminisation’ hides a complex and context-specific set of dynamics (Kabeer 2003); and while sometimes it has been celebrated (Marchetti and Salih 2017), the idea of increasing female mobility has also been feared.

My aim in this article is to consider some of the key ways in which the public and policy conversation around trafficking, migration, and sex work in South Africa has been
contested, from 2005 to 2018, and the ways that migrant women sex workers are affected by current policies. I study research, and the ways in which it is taken up and used by policymakers (Vanyoro 2015). This article shares insights gained from recent research I have undertaken into several migration-related ‘unpopular’ and contentious causes in South Africa; a country where the maturity of the policy apparatus is low, public discussions about political issues are loud and energetic, and civil society activism is vibrant since democratisation two decades ago; yet political institutions are fragile, and defensive of existing political ideologies (Vanyoro 2018).

In this article, through a focus on sex work, migration, and trafficking, I will argue that on close examination, recent laws and policies fail to protect and uphold the rights of migrant women sex workers in South Africa.

There has been a concerted effort by different coalitions of activists – including feminists – to urge policymakers to address the rights of migrant sex workers and to understand the distinctions between migration and trafficking. South African politics are highly contested in the current post-colonial and post-apartheid period (Vanyoro 2018), and civil society groups and organisations are an essential part of this reality. Part of this civil society action is to research the realities of migrant women sex workers and see whether there is a close ‘fit’ between their lives and the laws and policies that affect them and shape their experiences in South Africa.

South Africa has a range of laws and policies relevant to migrant women sex workers. These include the Prevention and Combating of Trafficking in Persons Act (2015), the Immigration Amendment Act (2014), Section 20(1) (a) of the Sexual Offences Act (SOA) of 1957, and its 2007 Amendment, which criminalises sex work, and the new White Paper on International Migration (2017). While these may appear to be gender-responsive policies that recognise the potential vulnerabilities faced by migrant women in South Africa, these policies fail to further the rights and meet the interests and needs of migrant women sex workers because of the widespread tendency to conflate trafficking and migration, and/or to see a cause and effect relationship between the two.

These laws and policies perpetuate and build on stereotypes of vulnerable women without agency or choices, and draw on ideas of sex work as an activity that should be prevented and criminalised. They are policies that apparently respond to gender issues, but do so in ways that fail to understand the complex realities that migrant women face. They draw on a view of migrant women as trafficked women, inherently vulnerable, and in need of rescue and protection. Outside the protection of the law and without the status of legitimate workers, migrant sex workers are exposed to exploitation, abuse, and violence, including gender-based violence (GBV). For example, they are presented with barriers to health care, specifically HIV and AIDS testing and treatment programmes. They are also unable to access the protection of the law if they are abused.

In the next section, I give a brief overview of approaches to sex work. I then offer a short account of trafficking and its evolution in South African policymaking discourse. This is followed by a section on methodology. Thereafter, the civil society coalitions and contestations over trafficking are presented followed by an analysis of what these contestations mean for migration activism. Finally, conclusions are offered.
Understanding sex work: structural inequality, women’s agency, and rights

Debates and discourses around sex work fall into distinct schools of thinking and analysis. The first sees all sex work as violence against women meted out by structural, patriarchal inequality, and has come to be associated with anti-trafficking responses to sex work. The anti-trafficking discourse frames women as victims (Gould 2010). It suggests a role for policymakers to rescue women from sex work. Reflecting this, and the ways in which gender, race, and class inequalities result in international elites focusing on ‘saving’ women in poverty in the global South, Walker and Galvin (2018, 281) draw on Teju Cole’s work to refer to the anti-trafficking response as the ‘white saviour complex’. They argue that this notion is not tied to one group only, but simply serves to illustrate how perceived moral actions are justified as humanitarian acts tailored to save victims of human trafficking through benevolent acts of rescue that are unidirectional and foreign. In contrast, the second approach emphasises that women have agency about how they make a livelihood, with sex work as a legitimate choice. This is a polarised, binary way of understanding the realities faced by women in sex work (Guha 2018).

In South Africa, there are two camps of organisations focusing on support of sex workers, which reflect these very different global views of sex work in relation to women’s rights and gender power relations. One camp comprises organisations that align themselves with views of the Coalition Against the Trafficking of Women (CATW). They reject the notion that prostitution can be work (Gould 2010). Research reports on human trafficking written by supporters of this point of view frequently present inflated figures for the trade in women and children (Gould 2010).

The other camp consists of groups and organisations that align themselves with views of the Global Network of Sex Work Projects (NSWP) and Global Alliance Against Trafficking in Women (GAATW) that represent the rights of sex workers (Gould 2010). They recognise that ‘women may choose to sell sex and argue that this is a legitimate choice and one that should not prevent the women who make this choice from being protected against exploitation and violence’ (ibid., 21). They believe that sex work is labour and that people working in this sector should be protected by decriminalisation, which would enable the realisation of their human rights and rights as workers.

Human trafficking as a concern for policymakers in South Africa

In South Africa, concern around human trafficking started in the early 2000s, in the wake of the Palermo Protocol and in response also to legislation passed in the USA in 2000. This legislation mandated the US Department of State to publish an annual Trafficking in Persons Report assessing responses from around the world to trafficking (Palmary and de Gruchy 2016). South Africa was placed on the ‘tier-two watch-list’, made up of countries whose governments were seen as not fully compliant with the Trafficking Victims Protection Act’s minimum standards but which were making significant efforts to bring themselves into compliance (US Department of State 2001). South Africa was listed as a country that was perceived to have high levels of trafficking, and inadequate measures to deal with
the practice during the period 2005–2008. South Africa became widely known as a source, transit, and destination country in trafficking and, under increasing pressure, began to work towards passing national anti-trafficking legislation (Palmary and de Gruchy 2016).

During this time, the issue of trafficking was gaining global momentum. Investigations were undertaken and publicised in documentaries claiming to show evidence of trafficking in diverse places, fuelling public perceptions of trafficking as a global phenomenon (Palmary and de Gruchy 2016). The marketing, abuse, and control of trafficked women by organised crime syndicates awakened the international community and the UN and donor organisations launched a campaign against it (Leggett 2004).

South Africa’s Trafficking in Persons Act was passed on 9 August 2015. In its Preamble, the 2015 Trafficking in Persons Act argues that the search for improved socio-economic conditions coupled with the demand for the service of victims of trafficking contribute to making persons vulnerable to becoming victims of trafficking. The 2015 Act provides for the prosecution of persons who commit offences of trafficking, the prevention of trafficking in persons, and the protection and assistance to victims of trafficking. A trafficker is defined in the Act as any person who delivers, recruits, transports, transfers, harbours, sells, exchanges, leases, or receives another person within or across the country’s borders by means of a threat of harm, fraud, deception, coercion, kidnapping, or the abuse of vulnerability. This broad definition often blurs the elusive lines between trafficking and smuggling, which the extant literature concurs are not so clear cut (Khosravi 2010). It was later found that the 2013 Bill that preceded the 2015 Act was informed by data that were later flawed, failing to differentiate between people who were smuggled and those who were trafficked, and drew on common myths around human trafficking (Walker and Galvin 2018).

The 2017 US Trafficking in Persons (TIP) Report continues to categorise South Africa as a ‘source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking’ and therefore ranked it as a tier-two country for the seventh consecutive year (Yingwana 2018, 12). However, there is little to no empirical evidence to support this claim.

In the rest of the article, I will consider the impact of these contested sets of ideas around migration, trafficking, sex work, and gender on South African policies on trafficking. I do this by characterising the two ‘camps’ discussed earlier as ‘skeptics’ and ‘believers’. These terms were first used by Darshan Vigneswaran (2012) to reflect the divisions in the literature on trafficking in South Africa. My discussion of encounters, debates, and contestations between these two groups draws on two forms of research. The first step was a literature review and an analysis of multi-level migration policy discourses. I focused in particular on published materials from policymakers to ascertain their position within the human trafficking contestations and policy processes in the period 2005–2018. The second step entailed interviewing eight activists from non-government organisations (NGOs) that lobby for different groups of migrants and kinds of migrant rights (e.g. gender-related rights, labour rights, refugee rights, sex worker rights, and detention rights). Also interviewed were three activists who worked specifically on anti-trafficking, four researchers from key migration think tanks, and two key informants.
In addition, in this research I also drew on personal experience gained through my own involvement in outreach activities surrounding domestic and international migration in South Africa from 2014 where I have worked since as a Research Communications Officer. As part of this role, I have been responsible for stakeholder engagement in South Africa and Zimbabwe, and have regularly been called upon to brief decision-makers in government and civil society.

Of ‘skeptics’ and ‘believers’

The debate on trafficking legislation, both in and outside of Parliament, saw great divisions amongst different stakeholders about the motivations for the Act, its focus, and intentions (Palmary and de Gruchy 2016). There was a whole debate on why there was need for specialised trafficking legislation if all of the abuses covered by the Act were punishable under existing law (Leggett 2004). But the polarisation of views among the ‘skeptics’ (rights-based coalition) and ‘believers’ (anti-trafficking coalition) between the period 2005–2018 emerged more from the idea of whether trafficking was happening on a large scale in South Africa or not. In spite of their different ideological perspectives, both coalitions of ‘skeptics’ and ‘believers’ agreed that trafficking, where it existed, should be eliminated. But they did not agree on what kind of evidence ought to inform such an intervention and the state’s presumption of the extent of trafficking within its territory.

Believers: the anti-trafficking coalition

‘Believers’ contended that the extent and severity of trafficking can never be adequately measured because of its clandestine nature so they relied heavily on anecdotal evidence that trafficking existed (Vigneswaran 2012). The anti-trafficking coalition comprised actors who believed trafficking to be an urgent and prevalent issue in South Africa (Palmary and de Gruchy 2016). It consisted in the main of local (South African) civil society organisations, with some support and influence from international organisations: the IOM, the UN Office on Drugs and Crime (UNODC), and the US State Department (Vigneswaran 2012). The NGOs that focused on trafficking experienced what Walker and Galvin (2018, 278) termed ‘an enhanced relevance’ and would ultimately ‘win’ the primary contestation within the sub-system, as the 2015 Act was passed and implemented.

Proponents of the legislation argued that it was essential to address the gendered exploitation that labour migrants to South Africa face and protect the ‘thousands of women’ who they argued would be trafficked into the country ahead of the 2010 FIFA Football World Cup (Gould and Fick 2008). However, it was later found by the Minister of Police that there was no noticeable increase in trafficking during this period compared to the normal number of incidents reported or investigated by the South African Police Services (SAPS) (Gould 2010).

This framing fitted the notion of women-as-victim that is central to the anti-trafficking discourse (Gould 2010). In this discourse, migrant women groups such as sex workers are portrayed as victims, which enables the prevailing gender norms to be maintained and
these women to be seen as tricked or coerced aberrations. Proponents of this position are convinced that women cannot voluntarily choose to migrate or engage in sex work; rather, they are ‘victims of abuse, at least, or trafficking, at most’ (Palmary and de Gruchy 2016, 33). Men are largely invisible in this discourse, despite working in the South African sex industry and often travelling from elsewhere to do so. But it is questionable whether people would so readily believe, or respond to, a narrative that blurs the issues by removing vulnerable female bodies from the centre of the focus, instead putting forward a more complex account which features male victimhood and sexual exploitation.

In the coalition of ‘believers’ are organisations such as the National Freedom Network, Abolishing Injustice in the 21st Century (A21), the Media Campaign Against Human Trafficking (MeCAHT), STOP: Stop Trafficking of People (which was particularly involved in the deliberations prior to the passage of the 2015 Trafficking Act), Molo Songololo, Activists Networking Against the Exploitation of Child Domestic Workers (ANEX-CDW), the IOM, and the US Embassy’s Human Rights Office (Palmary and de Gruchy 2016). It is important to note, though, that the anti-trafficking coalition is not monolithic, differing in its analysis of the issue and its view of the solutions. It also differs on issues of the problematic nature of the source of information for Trafficking in Persons reports and current ad hoc systems to respond to incidences of trafficking, which some argue are slow and inefficient (ibid.).

Media campaigns have been proactively deployed, particularly during the 2010 FIFA Football World Cup, to increase the visibility and legitimacy of anti-trafficking. The most prominent ones, which were called the ‘Red Card’ campaigns, used football terminology to ‘draw a parallel between the censure of a referee responding to dangerous or unfair play on the field, and the censure society should place on the practice of trafficking’ (Gould 2010, 34). The Department of Home Affairs produced popular posters with some titles alluding to football dramaturgy, such as Give Human Trafficking a Red Card and ‘modern-day slavery’, as seen in the title See the Truth: Human Trafficking is Slavery. At the time of writing in 2018, these posters are posted on the walls of local responders who are supposed to assist migrants, such as the City of Johannesburg’s Migrant Help Desk (personal observation, 11 June 2018).

‘Skeptics’: migrant sex work is about human rights and development, not morality

‘Skeptics’ believed that ‘believers’ had seriously exaggerated the problem of trafficking (Vigneswaran 2012). The ‘skeptics’ camp, which formed the rights-based coalition, was made up of organisations that were not focused on trafficking per se, but focused more broadly on human rights issues. These actors’ focus was on human rights issues (including gender-related rights, refugee rights, sex worker rights, detention rights). But it also included organisations that advocated specifically for the decriminalisation of sex work who were equally concerned that the Trafficking Act could increase the vulnerability of sex workers and migrants (Palmary and de Gruchy 2016). They typically provided a more critical response to trafficking (ibid.). These organisations included Lawyers for Human Rights (LHR), Legal Resource Centre (LRC), and the Commission
for Gender Equality (CGE), SWEAT, Sisonke Sex Worker Movement, and Sonke Gender Justice.

This focus on rights is in stark contrast to the moral focus of the ‘believers’. As in the USA, much of the anti-trafficking movement in South Africa is rooted in religious conviction, which creates an unusual alliance between the religious right, who believe sex work to be immoral, and some within the feminist movement who view all sex work as exploitative. It draws on moral panic, which is by nature ‘anti-intellectual, often characterised by a certain religious fervor, and historically most effectively used by the right’ (McRobbie and Thornton 1995, 567). According to one activist:

I think there was also a moral outrage to our work, there was a sense that ‘how could you possibly say that this problem [trafficking] is not as big as it is’ you know. ‘Prostitution is a terrible thing and women are being exploited and hurt and harmed and here you are coming along with your findings to suggest perhaps otherwise’. (Interview, Johannesburg, 17 October 2015)

The issue of trafficking is, of course, highly emotive. Language used around it can be charged. One activist who proactively challenged the statements from ‘believers’ about the actual scale of human trafficking in the country said, ‘There were outcries. Often from us. So much so that [an influential migration organisation] wrote about us as trafficking denialists in their trafficking report’ (interview, Johannesburg, 27 March 2016). South African NGOs in the anti-trafficking coalition have been able to build on the relevance, popularit, and moral high ground that came with international and national attention on trafficking as a major concern for South Africa.

In addition, sex work is not usually spoken of as an issue for international development; instead it is seen as an issue of morality. Feminist activism is challenging this. International development’s approaches to women and gender and development often focuses on expanding the agency of women as workers, but in conventional and socially acceptable forms of production. As argued earlier, the question of the extent to which women ‘choose’ to sell sex is highly contested. While the ‘believers’ deny agency exists, the ‘skeptics’ are often accused of over-emphasising the agency of women who sell sex (Guha 2018). However, I found in my research that the ‘skeptics’ in South Africa actually paint a picture of female sex workers’ agency that is less stark and more complex. They point out that it is structural norms and criminal and labour law which constrain women’s agency. ‘Skeptics’ support the view that although gender equality is an important aspect in the South African government’s rhetoric, there is a disjuncture between the gains of women in the public sphere and their daily lives, as can be seen from increasing levels of poverty, GBV, and HIV infection among women (Albertyn 2003).

Contesting human trafficking in South Africa

Both ‘skeptics’ and ‘believers’ strongly contested what should count as evidence in the policymaking process. This led to polarisation of civil society coalitions and interests. Those in the ‘skeptics’ coalition saw their activism as entirely marginalised from the policy process that led to the Trafficking in Persons Act. But they argued that the activism of
‘believers’, who they perceived as more closely aligned to the South African state’s framing of the issue and interests, which serve to maintain prevailing gender norms and uphold the status quo of border securitisation, was given more space in policy processes.

One ‘skeptic’ interviewed in my research, who works for Sonke Gender Justice as the head of the organisation’s Policy, Development and Advocacy Unit said:

I think trafficking is a good example where policymakers ignored the evidence and rather focused on the sensationalism and the severity of trafficking to extrapolate and make it as if it’s a big problem whereas it’s not … It’s clear from the type of workshops that the Department of Social Development would have with the National Prosecuting Authority, and the policy and law response that they have towards trafficking was based on the understanding that trafficking is a major problem. And a group of research, which ACMS [a migration research centre in South Africa] is a lead on, shows that trafficking is not a major problem. That was ignored. (Interview, Cape Town, 31 March 2015)

It does seem that it has suited the South African state to go with the ‘believers’. This enables it to meet anti-immigration policy objectives in the name of protecting migrant women from sexual exploitation. Ignoring the choices that many migrant women sex workers make to do this work and come to South Africa to work serves to justify the implementation of anti-trafficking legislation and policy, preventing further migration by securing borders and making this appear rational and humane. At the same time – as some have argued – the law against trafficking has symbolic value, showing that the South African government had taken cognisance of the issue and has expressed its intent to do something about it (Leggett 2004).

Allowing confusion to develop and exist around trafficking and migration enables political leaders to question the presence of all migrant women in South Africa, and negates the need to consider them as legitimate workers, with interests and needs. While South Africa is frequently listed as one of the most developed countries on the continent, it also has one of the highest inequality gaps (based on its GINI coefficient) in the world. Within this context, the foreigner has become a political scapegoat (Vanyoro and Ncube 2018), blamed for ‘stealing’ jobs and social services such as housing and health care from locals and bringing crime into the country. Xenophobia and intolerance are a constant reality in South African politics (Thakur 2010).

One of the key organisations in the anti-trafficking coalition is Molo Songololo, mentioned earlier. In 2005, Molo Songololo provided recommendations to the Department of Social Development, Department of Home Affairs, and SAPS, which argued that human trafficking was increasing in South Africa, with 30,000 persons trafficked in a year (Vanyoro 2015). Molo Songololo argued that one of the root causes of the supposed increase in human trafficking was that border controls had been relaxed. These recommendations were presented to the Improvement of Quality of Life and Status of Women Joint Monitoring Committee meeting on Human Trafficking in 2005.

The literature review I undertook revealed that these discourses drew on data collected with questionable methodological rigour, and generalised about the situation from anecdotal incidences. For example, it was never established in these minutes where the figure of 30,000 people trafficked per year came from. Five years later, the South African Human
Science Research Council (HSRC) produced the Tsireledzani Report (HSRC 2010), which was condemned by an activist spoken to by the author, as ‘a shocking piece of work’ (interview, Pretoria, 25 April 2015). The study was commissioned by the NPA. At the time, the NPA ‘needed a mandate from government to punish child trafficking. This could only be achieved by passing legislation that dealt specifically with child trafficking’ (Parliamentary Monitoring Group (PMG) 2005).

Most activists spoken to in my research felt the report was a culmination of this need, sharing controversial findings based on flawed methodologies and over-generalisations. A section of this report that has been widely taken up and quoted in the media states that:

Respondents believe that victims are either recruited by cult members or purchased by criminal syndicates that specialize in human trafficking: these are said to be mostly Nigerian. Alternatively, satanic cults will kidnap victims often from rural areas. Other targets are street children and prostitutes … If the ritualistic killing requires a man, gay men in bars are targeted and sedated to overcome physical resistance. (HSRC 2010, 17)

Other kinds of untested evidence have been adopted and found their way into policy processes. Information from other parts of the world, which are very different from the South African context, was retested as South African evidence, through claims in reports that were by-and-large unreferenced (Palmary and de Gruchy 2016).

**The situation in 2018**

In 2018, three years after the passing of the Trafficking in Persons Act 2015, little seems to have changed. The scale of trafficking is still highly contested. I spoke to one activist from an organisation called the National Freedom Network, which is a national network of role players across South Africa who are working against human trafficking. The National Freedom Network was more formally structured and registered in 2014/15, after the policy processes and consultations that led up to the Trafficking in Persons Act being passed in 2015. Currently, its work informs local and national responses to the issue. They describe themselves as

a point of connection, for those interested in the issue and the work of combating human trafficking; a channel of communication between the role players (or Network partners), between the provinces and between Government and Civil Society; and a network of collaboration, as this is certainly not an issue that only one person or organisation can work against on their own. (Interview, Johannesburg, 27 June 2018)

In the absence of accurate statistics, participants in these debates continue to resort to sensational press coverage. When asked about the scale of trafficking in South Africa, the activist responded, ‘Because we do not have a central database where all cases are registered there are not accurate statistics. I am aware of at least seven different sources of statistics’ (interview, Johannesburg, 27 June 2018). She provided a summary of information that had appeared in the media and journalism from November 2017 to February 2018 detailed as follows:
ten men and women rescued from slave trade, labour, and sex in Free State; one woman rescued from sex slave in Fourways; two women rescued from sexual exploitation in Cape Town; two rescued in Sunnyside brothel, Marcel testified, his success case; Nigerian pastor Eastern Cape case; teen rescued in Rustenburg; Mavuso case – one woman from Swaziland rescued in Mpumalanga; nine girls, two boys rescued from a brothel in Sandton, two arrests; 15 men rescued from labour trafficking Limpopo. (Interview, Johannesburg, 27 June 2018)

I was told in an interview with a ‘skeptic’ working for an organisation that enhances human security by providing authoritative research, expert policy advice, and capacity building that two organisations, Molo Songololo and HSRC, had provided estimates of trafficked children which had little foundation, and were at odds with the respondent’s own experience:

The research [by Molo Songololo and HSRC] was based on somewhat anecdotal research and it followed the pattern of interviewing NGOs that had been working with victims of trafficking in one way or another and trying to determine the extent of trafficking from that, which seemed to be a major methodological flaw. We interviewed brothel owners. We interviewed sex workers both on the street and working indoors and, you know, in all different parts of the sector, and then we also did a survey of sex workers in indoors and outdoors, and we made a distinction between those two areas. And what we found was that there was very much less evidence of human trafficking than had been suggested by previous reports. (Interview, Pretoria, 25 April 2015)

The actual commitment of the South African state to ‘rescue’ victims of trafficking is questionable; it needs comparing to the Department of Home Affairs’ concerns, on the record, that migrant women, who otherwise were not entitled to documentation or social services, could potentially take advantage of the Trafficking Act. Such concerns were echoed in the PMG Meeting Report (PMG 2005) where a Department of Home Affairs official mentioned that the Department was committed to ensuring that the presence of ‘victims’ who were in the country illegally was only temporarily legalised for the duration of the investigation. This response is contradictory, as it by and large suggests that migrant women in sex work are not victims but possess the agency to work out how to manoeuvre and ‘play the system’, even while the discourse of trafficking denies that women have any agency.

The impact of the anti-trafficking frame on migrant sex workers

Obviously, the impact of framing all sex work and all migration in terms of coercion and trafficking is very significant for the sex workers themselves. Rights-based coalition organisations like SWEAT, Sonke Gender Justice, the Congress of South African Trade Unions (COSATU), Women’s Legal Centre (WLC), and Sisonke Sex Worker Movement continued to argue that ‘sex work is work’. For many poor black women in South Africa – both citizens and migrants – with limited formal education, selling sex is a viable means of making a living. Sex workers with a primary school education are able to earn nearly six times more than the typical income from formal employment, such as domestic work (Yingwana 2018). Migrants’ rights organisations and researchers thus claim with good reason that some migrant women in South Africa are actually choosing sex work (Palmary and de Gruchy 2016).
Many voices are calling for the decriminalisation of sex work in South Africa. While the anti-trafficking discourse expediently allows the state to maintain the controversial legislation that criminalises sex work by framing migrant sex workers as sex slaves forced to work against their will (Brennan 2008), according to one activist, the potential benefits of decriminalising sex work to migrant women were often lost. For example,

... with something like decriminalisation and sex work where really people within government and elsewhere would have strong moral views against sex work, the evidence shows clearly that if you want to deal with HIV in a pragmatic and serious way you have to remove the criminal law. There is three decades worth of AIDS research showing that. (Interview, Cape Town, 31 March 2015)

In addition to decriminalisation, sex workers – both migrant and South African citizens – need a range of resources and services in line with their human rights. These include protection from GBV, access to health care, specifically HIV and AIDS testing and treatment programmes, creation of a safe working environment, access to justice, the protection of labour law, and greater working options.

Any kind of activism on issues such as trafficking needs to be engaged with the lived realities of migrant women if it presumes to represent their interests. While sex work continues to be conflated with trafficking, and criminalised, sex workers will continue to be exposed to vulnerabilities such as GBV, and barriers to health care, specifically HIV and AIDS testing and treatment programmes (Walker and Galvin 2018). One activist summed this up succinctly:

We are finding cases of sexual exploitation, we are finding police harassment of sex workers, we are finding that the criminalisation of the industry undermines sex worker rights and access to services and makes sex workers very vulnerable both to clients and to police harassment. This is why we were arguing that it would be far more useful and productive to think about human trafficking in terms of labour exploitation. (Interview, Pretoria, 25 April 2015)

However, a migrant rights-based framework is challenging in South Africa: this is after all a country where black South Africans have been oppressed, discriminated against, and disempowered. Any migrant rights-based activism elicits the question ‘and what about the local rights of locals who are historically marginalised?’ This challenge resonates with Kihato and Landau’s (2016, 409) argument that international and national obligations to protect refugees in contexts where local populations are themselves vulnerable and poor only breed resentment and hostilities from local populations, and political backlash from leaders with local voting constituencies. Therefore, most activists in South Africa migrant advocacy forums today agree that this framing has only served to reinforce structural and violent xenophobia.

One way forward is for activists to adopt strategies that promote rights indirectly to avoid political ire and political backlash (Kihato and Landau 2016). Through this kind of stealth, activists may avoid complex and contentious public battles over rights, instead building solidarities with ‘local’ constituencies facing similar marginalisation (ibid.). In other words, they may bring the concerns of different constituencies together with those of migrants. In this sense, it is probably more beneficial and productive to talk of
anti-trafficking in activism as a labour rights issue than it is to reduce it to a gender-related rights or migrant rights issue. This may attract more local and institutional buy-in into an issue that society, government, and labour rights groups scarcely see or portray as a labour rights concern. Additionally, should sex work be decriminalised and labour laws apply, then the industry itself can also assist the government to combat actual trafficking. Those in the industry can report such cases without fear of retaliation or incrimination.

**Conclusion**

Migration in South Africa is highly unpopular and contested. Policymakers and the anti-trafficking coalition have succeeded in bringing the two issues together and conflating trafficking with sex work and the need for border securitisation. The rights-based coalition has lost the contest. It has not succeeded in challenging the flawed use of ‘evidence’ to justify anti-trafficking policies in South Africa. Part of the reason for this is that the policies are informed by an ‘implicit gender bias’ by which migrant women are read through a lens of vulnerability, particularly sexual vulnerability. This is a strategic reading, because when sex workers are out working on the streets law enforcement agencies fail to treat them as vulnerable.

Potentially, the battle to re-ascertain the agency of migrant women in South Africa will be won through moving beyond gender-related and migrant rights-based activism to a focus on labour rights. Activists need to demonstrate convincingly to policymakers and society at large that the prevailing trafficking narratives have negative gendered labour ramifications on migrant women. This back-route requires a shift in both approach and language by activists. This may attract more local and institutional buy-in into an issue that society, government, and labour rights groups scarcely see or portray as a labour rights concern. It will also create incentives for the industry itself to assist the government to combat actual trafficking.

A rights-based approach to migrant women in South Africa should start from acknowledging the structural inequalities that have to be challenged so agency and choices can be made more freely. It is important to emphasise that because trafficking removes women’s agency and choice, taking a rights-based approach to sex work will go together with a strong condemnation of trafficking since this removes any meaningful choice or agency from women.

**Notes**

1. The IOM data aim to capture both legal and illegal migration. However, statistics do not capture the whole extent of migration since much of this goes uncounted, below the radar of official data collection. The quality of the IOM migration data collection process also varies from country to country. IOM statistical migration data are either dispersed among different institutions within the state and/or not comparable with statistics of other states. A major reason for this is that governments often lack the resources and trained personnel to develop an effective data management system.

2. By gender responsive, I refer to policies where gender norms, roles, and inequalities have been considered, and measures have been taken to actively address them (World Health Organization 2009).

4. Critics of the decision to designate South Africa as a tier-two watch-list country point out that this drew on limited evidence of large-scale trafficking in the country, a dearth of substantive research on the issue, and no reference to the impact that this would have on public attitudes and discussions about migration and trafficking in South Africa (Walker and Galvin 2018).

5. The IOM has had trafficking as its focus since the mid-1990s, and sits on Trafficking Task Teams in South African provinces where they exist.

6. See Vanyoro and Ncube (2018) for more about this type of tension when popular discourse and historical facts come into conflict with evidence to prevent certain kinds of policy debates.

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References


