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Cautionary note: The terms 'child prostitution' and 'prostituted children' are used in this text to denote children that are sexually exploited and sexually trafficked. The connotative manner in which these definitions are perceived and analyzed may differ due to linguistic, cultural, and perceptual differences.

SOUTH AFRICA

	POPULATION 56,7 million		GDP PER CAPITA 6,160.7 USD
	POLITICAL SYSTEM Parliamentary Regime		HUMAN DEVELOPMENT INDEX 119 th rank among 187 countries
	GENDER INEQUALITY INDEX 90 th rank among 147 countries		CORRUPTION PERCEPTIONS INDEX 51 st rank among 180 countries

South Africa is a country of origin, transit and destination for victims of human trafficking for sexual exploitation purposes (US Department of State, June 2018). Prostitution and human trafficking for sexual exploitation purposes are regulated by three laws in South Africa. The Sexual Offences Act 23 of 1957 condemns all activities related to brothel-keeping, procuring and prostitution. The Criminal Procedure Act 51 of 1977 criminalized solicitation. Lastly, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 criminalized the purchase of sexual acts and human trafficking for sexual exploitation purposes. It also established specific sentences concerning the sexual exploitation of children (prostitution, procuring, brothels, pornography and sex tourism). In order to comply with South Africa's international commitments regarding the fight against human trafficking for sexual exploitation purposes, President Jacob Zuma signed the

Prevention and Combating of Trafficking in Persons Act (PACOTIP) in July 2013, which entered into force on August 9, 2015 (Regulation Gazettes, August 7, 2015).

In May 2017, the *South African Law Reform Commission (SALRC)* published Project 107 (Sexual Offences: Adult Prostitution) of June 2015. This report noted that the 2007 Law does not effectively address violence against women. The report also pointed out that there is no national policy on prostitution, nor is there any provision to assist those who wish to exit prostitution. In its recommendations, the commission recognizes that viewing prostitution as a matter of choice is an illusion that only serves the interests of sex buyers and procurers. The text is even more innovative in that it highlights the fact that prostitution, sexual abuse and harassment are synonymous. The Commission is in favour of the Nordic model, and even proposed a draft law criminalizing the exploitation of prostitution and the

purchase of sexual acts, and decriminalizing prostituted persons (*South African Law Reform Commission*, June 2015). In December 2017, the *African National Congress* (ANC) called for a national debate on prostitution in the final text of the ANC's 54th National Conference Report and Resolutions: "Calls for the decriminalization of 'sex work' should be subjected to debate and engagement (...) with the various stakeholders concerned (...). 'Sex workers' must be protected" (ANC, December 2017).

The vast majority of prostituted persons in South Africa are found on the streets and are at risk of violence from sex buyers and police officers. The HIV/AIDS epidemic strongly affects prostituted persons, as it is the country with the highest epidemic in the world (*UNAIDS*, 2016). Child prostitution is also a concern. It is partly due to the sex tourism industry and the vulnerability of children orphaned by the HIV/AIDS pandemic. High levels of poverty, unemployment and societal inequalities also contribute to the high rates of prostitution in children. Sex-tourists come from within South Africa, Nigeria, Europe and the USA. While South Africa is making progress in combating sex trafficking, much remains to be done in assisting victims of trafficking and prostitution.

Existing laws

The current law in South Africa criminalizes all aspects of prostitution. However, procurers and sex buyers are rarely prosecuted due to police tolerance and corruption, thus prostituted persons often bear the real burden. However, this situation may change following the publication of the SALRC report and the ANC's announcement. The report presents two legislative proposals in its conclusion, offering an alternative to change the

legislative framework regarding prostitution.

The first bill takes after the Nordic model, decriminalizing prostituted persons while criminalizing other actors (procurers and sex buyers). The second bill specifies total criminalization, i.e. maintaining the current legislation, but with the addition of providing assistance and rehabilitation services to all persons wishing to leave prostitution (*South African Law Reform Commission*, June 2015). Some groups, such as the *Sex Workers Education and Advocacy Taskforce* (SWEAT), denounced the report, as it does not propose the complete decriminalization of prostitution. Others, such as *Embrace Dignity*, praised the report for its conclusions in favour of greater abolitionism. The legal option in favour of the *Nordic Model* provides a more effective and humane solution insofar as it targets demand for prostitution by criminalizing the purchase of sexual acts, procuring and brothel management, while decriminalizing prostituted persons.

It is essential for legislators and the government to recognize the harmful consequences of prostitution and address the roots of the phenomenon, by, for example, working to keep girls in school. The government adopted a national development plan to eliminate poverty and reduce inequality by 2030 (*National Planning Commission*, August 15, 2012), which would, in turn, significantly reduce the causes of prostitution.

Current trafficking laws are sufficiently restrictive, with sentences of up to life imprisonment. Yet, corruption considerably limits their enforcement and significantly reduces the number of arrests and prosecutions of traffickers (*US Department of State*, June 2017).

The situation of prostituted persons

According to a 2015 study, there are between 131,000 and 182,000 prostituted persons in South Africa (*AIDS and Behavior*, January 13, 2015). Male and transgender individuals represent between 4% and 5% of the prostituted population (*Women's Legal Centre*, April 2016). The majority of the victims of prostitution are from South Africa, but some also originate from neighbouring African countries (Nigeria, Zimbabwe and Mozambique), who arrive with a migrant or refugee status. Women are more likely to be unemployed than men, which makes them more vulnerable to being exploited in prostitution (*Fondation Scelles*, 2016).

Based on the number of prostituted persons who requested legal assistance between 2011 and 2015, it can be assumed that the majority of prostitution activity takes place in the streets (*Women's Legal Center*, April 2016). Outdoor prostitution exposes them to harassment, violence and murder, whether by the police, sex buyers or the general population. In 2013, Zwelethu Mthethwa, a famous South African painter, murdered a prostituted person (*Daily Maverick*, March 16, 2017). In June 2017, Mthethwa was sentenced to 18 years in prison (*City Press*, June 7, 2017). This case illustrates the violence that prostituted people are subjected to. Due to the stigmatization of prostitution in South Africa, as well as the public's ignorance of the phenomenon, prostituted persons regularly suffer verbal abuse from passers-by. They also are at high risk of developing drug addictions, either because procurers force them to take drugs, or because these substances help them cope with their conditions of exploitation.

The issue of the human trafficking for sexual exploitation purposes of many Thai, Chinese, Brazilian and Eastern European victims exploited in large cities is also

arising (*US Department of State*, June 2018). Reports also show significant trafficking of children from other African countries, but also of girls as young as 14 years old sold to brothels or subjected to sex slavery (*Tanzania Daily News*, June 25, 2017).

Police Harassment

Prostituted persons report that one of the most difficult aspect of their lives is the harassment and abuse they suffer at the hands of the police (*Women's Legal Centre*, April 2016). Transgender people, as well as foreign prostituted persons, who are particularly stigmatized, are the most exposed.

Police will often pick up prostituted persons off of the streets and arrest or detain them at police stations. 70% of those who were picked up reported being deprived of their right to a phone call or a visit, and 50% of them reported not having access to food or water while in police custody (*Women's Legal Centre*, April 2016). Women also reported that they were forced to have sexual intercourse with police officers or had to pay bribes in order to be released from custody. There have been reports of women being raped and sexually assaulted by police officers. Even when women are not arrested, police confiscate condoms or antiretroviral treatment for HIV/AIDS, arguing that they are evidence of prostitution. Police often arrest prostituted persons and take them far from their original location, forcing them to walk home, exposing them to serious danger. As these practices are illegal, police officers will remove their badges so they cannot be reported to the authorities. The most common form of police harassment, however, is simply verbal abuse on the streets. As a result of the abuse suffered, women will often choose to leave their communities when they are

prostituted. They do not want to be despised, rejected and socially excluded by their neighbours, families or religious institutions. This problem is exacerbated by the fact that police officers illegally take pictures of the women during police custody, which they then share amongst themselves. Consequently, police officers who are members of the communities can identify prostituted persons and harass them in their daily lives (*Women's Legal Centre*, April 2016).

Prostituted people have no ways of filing complaints against the police for the abuses they suffer, nor the violence perpetrated by sex buyers. If they report being sexually or physically assaulted to the police, they will generally not be taken seriously. Police officers often tell the victims that the abuse they endure is just one of the many consequences that come with being involved in prostitution and those who have sought help from the police have reported their experience as traumatic.

As they are not taken seriously and often verbally abused by police officers, prostituted people are deterred from reporting assaults they have suffered at the police station, even if they find themselves in serious danger (*Women's Legal Centre*, April 2016).

Similarly, victims of sex trafficking are afraid to file a complaint against their traffickers because they know that they will most likely be considered as a criminal and may be convicted. Police practices hinder efforts to combat trafficking, as well as efforts to provide support to prostituted persons. The National Commissioner of Police should provide the police with clear instructions on how to handle these cases, and what actions to take against police officials who abuse prostituted persons.

HIV/AIDS

South Africa has the highest rate of HIV/AIDS in the world, with 18.8% of those aged 15 to 49 infected with the virus (*UNAIDS*, 2017). The percentage of prostituted people with HIV/AIDS is estimated at 57.7% (*UNAIDS*, 2017). One study found that 71% of prostituted women in Johannesburg are carriers of the virus, 40% in Cape Town and 54% in Durban. People under the age of 25 have a higher rate of infection than older people, partly because they are less aware of the dangers or effective prevention methods (*SANAC*, 2016). *UNAIDS* estimates that 86% of prostituted persons use condoms, a number that is still too low in view of the HIV/AIDS epidemic (*UNAIDS*, 2017).

The biggest challenge for prostituted persons with HIV/AIDS in South Africa is access to care. When prostituted persons go to clinics to get treatment or testing, they are often denigrated, making it difficult for them to get the care they need. The stigma that prostituted persons face and the poor care they receive in hospitals discourage them from seeking treatment as often as they should. The *South African National AIDS Council (SANAC)* produced in 2016 the *South African National Sex Worker HIV Plan, 2016-2019* with President Cyril Ramaphosa (then MP) to ensure equitable access to legal and health services for prostituted persons (*UNAIDS*, 2016). The NGO *SWEAT* has opened a clinic that offers services and healthcare exclusively for prostituted persons. These actions are an important step in providing access to healthcare for the population that is the most vulnerable to the HIV/AIDS epidemic. However, many sex buyers refuse to use a condom or pay more for unprotected sex, resulting in a higher risk of infecting any future sexual partners of both sex buyers and prostituted persons with HIV/AIDS (*SANAC*, 2016).

In some parts of South Africa, there is still the belief that having sexual intercourse with a virgin will cure diseases, which has led to widespread child rapes and forced marriages of minors (*AIDS Foundation South Africa*, 2018). Awareness-raising actions must be carried out to denounce these aberrations and educate the public about the realities of HIV/AIDS.

The country has the largest treatment program in the world, with 61% of infected people on antiretroviral therapy and 23% of infected prostituted persons undergoing treatment (*UNAIDS*, 2017).

This treatment program puts a strain on the country's health budget, which is why it is so important for the country to focus on preventative actions.

Child prostitution

It is estimated that there are around 45,000 prostituted children in South Africa (*Daily Maverick*, March 16, 2017). 63% of South African children live below the poverty line, which puts them at a high risk for sexual exploitation (*UNICEF South Africa Media Centre*, November 22, 2016). Orphans and children from single-parent families are the most vulnerable. Sex tourism significantly affects South African children. Many sex tourists come from Europe and the United States, but the majority of child sex offenders are South African. Due to the high poverty rate, it is not uncommon for parents to sell their children to buyers who often turn out to be procurers or traffickers who force the children into prostitution. Some procurers give 2,000 to 3,000 rands (ZAR) (EUR 126-189) to a community to make it seem as though they are trying to help the children. Families in the community, hoping to save some children from their impoverished environment, will subsequently entrust some of them to these criminals. Police and customs officers are often complicit in these crimes, allowing children to cross the border illegally,

unaccompanied by a parent or guardian in exchange for a bribe, allowing brothels to continue their activities, or failing to respond to complaints.

Social networks have facilitated the sexual exploitation of minors. Online ads for modelling jobs or material goods trap minors in prostitution and sex tourism networks (*Fair-Trade Tourism, Defence for Children-ECPAT Netherlands*, May 2015). These social networks also allow sex buyers to access online services with more ease, making child prostitution an even more lucrative business than it was previously.

Progress and recommendations

Despite the efforts of the South African government against sex trafficking, the problem is getting worse and much remains to be done to better protect those most at risk of becoming victims, namely women and children.

The *National Human Trafficking Resource Line*, a hotline dedicated to assisting victims of human trafficking, was created in 2016 in collaboration with the NGO *A21 Campaign*. This hotline helps victims of sex trafficking by avoiding contact with the police (*US Department of State*, June 2017). The government prosecuted 23 alleged traffickers in 2017 (6 in 2016), and convicted 8 traffickers (11 in 2016) (*US Department of State*, June 2018). The failure of the government to allocate sufficient funds for the strengthening of the *PACOTIP* may be a contributing factor to the low number of prosecutions (*US Department of State*, June 2017). In addition, the government has done little to tackle the large international crime syndicates operating in the big cities (*US Department of State*, June 2017). 390 victims of trafficking were cared for in government centres in 2017 (compared to 220 in 2016 and 103 in 2015). The government also contributes to the financing

of 14 shelters and 17 secure housing units, all of which are managed by NGOs (*US Department of State*, June 2018).

Following the release of the SALRC report on prostitution, the government should take immediate action to implement the Nordic Model. The police should be better trained on how to interact with victims of prostitution or trafficking when they come to report acts of aggression or rape. Sanctions should be given for the unlawful detention or arrest of prostituted persons.

The number of prosecutions for cases involving the sexual exploitation of children is very low, partly because children involved fear reprisals if they were to speak out. The government should ensure protection for these children so their exploiters can be brought to justice (*Fair-Trade Tourism, Defence for Children-ECPAT Netherlands*, May 2015). While formal procedures to refer victims of trafficking to competent services have been implemented, these procedures are not applied uniformly across South Africa. Finally, prostituted persons should be referred to NGOs that can help them and provide them with appropriate care and support.

In conclusion, with the release of the SALRC report on adult prostitution, South Africa has an opportunity to take decisive action to provide effective protection to women and girls vulnerable to prostitution and sex trafficking. It all depends on the path the government chooses to pursue: either leave the laws as they are, ineffective and detrimental, or act and decriminalize prostituted persons while providing or referring them with support services. Of the two legislative options in the SALRC report, partial decriminalization is the only legal framework that has shown results in curbing prostitution and preventing new entries. As shown in

Sweden, where it was pioneered in 1999, decriminalization improves the lives of prostituted people. Three government surveys conducted in Sweden indicated that street prostitution has halved and there have been no violent incidents against prostituted persons since the law passed. The behaviour of the Swedish population towards prostituted persons has changed, thus shifting the negative stigma of prostitution from the prostituted person to those who buy sexual services.

South Africa would benefit from following the example set by Sweden and all the other countries that have adopted the *Nordic Model* (Norway, Iceland, Canada, Northern Ireland, France and the Republic of Ireland). However, if the South African economy does not improve and generate more jobs, people will continue to see prostitution as the only way to support themselves and their families.

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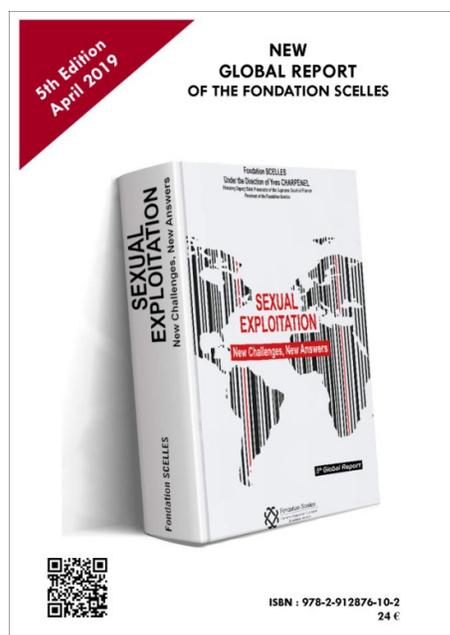
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The Global Report is produced by the International Observatory on Sexual Exploitation, in collaboration with internal and external experts (magistrates, lawyers, social workers, NGO leaders...), and the support of local NGO correspondents or international researchers.



The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** (Observatoire international de l'exploitation sexuelle) is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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