

Combating human trafficking:

A call for the regulation of the recruitment industry

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CHAPTER I ***Introduction***

1. Introduction

The problem of human trafficking presents a contextual problem given its nature and the conditions prevalent in the respective countries. Although there are different situations that may give rise to the increase of human trafficking, the recruitment of people essentially occurs in three ways, being; coercion, force and deception. How people are recruited in a particular country may depend on the circumstances in that country. Research studies have however consistently pointed out that deceptive recruitment is one of the key strategies being adopted by criminals in luring innocent people into the trap of human trafficking. Article 3 of the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol)* provides for specific methods of recruitment in its definition of recruitment:

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or

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*services, slavery or practices similar to slavery, servitude
or the removal of organs
[emphasis added]*

This paper proposes an intervention that can be used by law enforcement agencies in combating human trafficking through deceptive recruitment. It considers the regulation of the recruitment industry as a key intervention to limit the boundaries within which people can deceptively be recruited. South Africa, having been identified as a source, transit and destination country for human trafficking, is considered, in this paper, as a prototype of how this intervention can be used effectively in the fight against human trafficking.

In Chapter II, we consider the factors contributing towards human trafficking and the statistics and patterns that have been identified, mainly through two research studies in South Africa. These studies have also listed a number of methods that are being used by recruiters in Southern Africa. In the second Chapter we also briefly consider existing and proposed laws in South Africa aimed at combating human trafficking. Chapter III reflects on the efforts that have been utilized to deal with money laundering and the lessons we can learn from that. Chapter IV takes a quick look at examples in other countries where the recruitment industries are being regulated. In Chapter V, we discuss the essential components, including some of the benefits and the limitations for the regulation of the recruitment industry.

CHAPTER II ***Human Trafficking In South Africa***

2. Information on South Africa

There are different views on the nature of the problem. Each of these different perspectives may suggest a different approach in dealing with the situation of human trafficking. The following are suggestions of the nature of the atrocity of human trafficking:

1. *A moral problem that leads to intervention for the abolition or prohibition of prostitution or commercial sex.*
2. *A problem of organised crime that leads to legislative reforms, policing and penalizing criminal networks.*
3. *A migration problem that leads to border controls (passport and identification papers).*
4. *A public order problem that leads to awareness campaigns, publicity about risks, and changing cultural practices.*

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5. *A labour problem that leads to intervention such as improving working conditions, abolishing child labour or labour monitoring systems.*
6. *A human rights problem, or a gender issue, that leads to intervention to address violence against women and children¹.*

There are no official statistics available on the magnitude of human trafficking either internally or in and out of South Africa². The country has become one of the central points for trafficking of women and children in Southern Africa³. Trafficking occurs within, into and outside of South Africa. It is estimated that there are about 500 organized crime groups operating in South Africa⁴. These include Nigerian gangs, Japanese Yakuza, Russian and Italian mafia⁵. It is not possible to identify the profits being generated through human trafficking in South Africa, but it is globally estimated as being US \$9 billion per year⁶. Southern Africa is, regrettably, fertile ground for human trafficking⁷. This has led to South Africa being used as a transit, source and destination country for human traffickers⁸. The conditions in Southern Africa are therefore directly relevant to the increase of human trafficking in South Africa. The situation in South Africa can only be considered by having regard to the challenges being faced by the Southern Africa region.

2.1 The Factors Contributing towards Human Trafficking in South Africa and Southern Africa

There are various factors that have been identified as contributing towards human trafficking in Africa. Trafficking normally occurs at three levels, being; internally, cross-border and inter-continental. *Molo Songololo*⁹, a child rights organization based in South Africa, identified a number of factors that contributes towards the sexual exploitation of

¹ Wijers, Marjan and Lin Lap-Chew (1997) *Trafficking in Women: Forced Labour and Slavery-like Practices in Marriage, Domestic Labour and Prostitution*, Foundation. Against Trafficking in Women and Global Alliance Against Traffic in Women, The Netherlands and Thailand.

² Trafficking In Persons, Issue Paper 25, Project 131, The South African Law Reform Commission, page 3.

³ Seduction, Sale & Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa, 3rd Edition, International Organization for Migration (IOM), Jonathan Martens, Maciej 'Mac' Pieczkowski, Bernadette van Vuuren-Smyth, May 2003. .

⁴ Main trends in the development of South Africa's organised crime. Peter Gastrow, *Institute for Security Studies*, Published in African Security Review Vol. 8 No 6, 1999, available at: <http://www.iss.co.za/pubs/ASR/8No6/MainTrends.html>

⁵ Id.

⁶ Cited in the United States of America, State Department's *Trafficking in Persons Report*, 2005, p.13 , available at: <http://www.state.gov/g/tip/rls/tiprpt/2005/>

⁷ Seduction, Sale & Slavery: Trafficking in Women & Children for Sexual Exploitation in Southern Africa, 3rd Edition, International Organization for Migration (IOM), Jonathan Martens, Maciej 'Mac' Pieczkowski, Bernadette van Vuuren-Smyth, May 2003, page 15.

⁸ Id.

⁹ Molo Songololo, "*Trafficking of Women for Sexual Exploitation – South Africa*" and "*Trafficking of Children for Sexual Exploitation – South Africa*", 2000.

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children in South Africa. These factors include; high levels of poverty¹⁰ and school dropouts¹¹, insufficient safety and protection services for children, cultural attitudes and practices the high demand for sex with children, high levels of domestic violence and the need for efficient welfare support.

Traffickers have also been known to take advantage of situations created by war¹², low levels of education, high rates of unemployment¹³, political instability¹⁴, lack of effective laws and enforcement strategies¹⁵. The HIV/AIDS¹⁶ pandemic has further escalated the vulnerable position of many people resulting in many widows and child-headed households. Other reasons in Africa include, natural disasters, family pressures, social pressures, corrupt governments the demand for cheap and vulnerable labor. It has been suggested that problem of trafficking of women and children in Africa is directly linked to HIV/AIDS infections¹⁷. Customers in the sex industry who fear infections have increased the demand for the recruitment of younger women and children under the perception that they have not been infected with the virus¹⁸. The position in South Africa has been described as follows by the South African Law Reform Commission¹⁹:

South Africa is considered mainly as a country of destination for victims of trafficking. It is also a transit point for trafficking operations between developing countries and Europe, the United States and

¹⁰ Approximately 57% of individuals in South Africa were living below the poverty income line in 2001 according to the Human Science Research Council in South Africa.

¹¹ School dropout results in children being forced to contribute towards household income or for their own survival – Page 27.

¹² The situation in Angola is reported by the *Coalition to stop the use of Child Soldiers* in their *Global Report 2004 - Angola* on as follow: "In March 2003 the Angola government estimated that under-18s had composed 10 per cent of the armed forces at the end of the war. This approximated to 10,000 children, based on a 1999 estimate of a troop strength of 100,000". Available at <http://www.child-soldiers.org>. The actual figures are presumed to be much higher.

¹³ Research Study - International Organization for Migration

¹⁴ The United Nations High Commissioner for Refugees (UNHCR), reports that Africa has over 4.2-million refugees and about 13 million internally displaced persons in Africa as a result of armed conflict, insecurity and human rights violations, The UN Refugee Agency, Africa Newsletter, September/October 2005. The International Organization for Migration comments in its research report (*see footnote 2 above*) that: "Mobile populations are always more vulnerable to exploitation than stable populations."

¹⁵ Peter Gastrow, from the Institute for Security Studies commented during 2001 that human trafficking was not identified as one of the five *serious transnational organised crime* priorities during 2001. The categories identified at that time were; "theft of motor vehicles, drug-related offences, fraud, motor vehicle-hijacking, and offences relating to illegal weapons and ammunition. - Triad Societies and Chinese Organised Crime in South Africa, Peter Gastrow, Organised Crime and Corruption Programme, Institute for Security Studies (2001)

¹⁶ UNAIDS estimates that at the end of 2003 there were 5.3 million people in South Africa living with HIV - 21.5% of the country's population. This means that about 13% of all the people in the world living with HIV can be found in South Africa. The problem is also further escalated with some men believing in the myth that HIV/AIDS is cured by having sex with a virgin.

¹⁷ *Trafficking in Women and Children: The U.S. and International Response*, Updated March 26, 2004, Francis T. Miko, Specialist in International Relations, Foreign Affairs, Defense, and Trade Division.

¹⁸ Id.

¹⁹ IOM research study, page 11.

Canada²⁰ because it has direct flight and shipping routes to most countries in the developed world. Compounded with this is the fact that South Africa is regarded as one of the countries in the developing world whose citizens do not attempt to enter other countries illegally in significant numbers.

2.2 Patterns of human trafficking in Southern Africa

The *International Organisation for Migration* has identified nine patterns of trafficking in Southern Africa in its research study²¹. These include trafficking of women from refugee-producing countries, Lesotho, Malawi (*women and girls*) and Mozambique to South Africa, women and children from Malawi to Northern Europe, and women from Thailand, China and Eastern Europe to South Africa²². The report highlights the following patterns in Southern Africa:

- a. South African-based male refugees recruiting female relatives from their countries of origin under the false pretences that they can find employment in South Africa. Upon their arrival, the relatives would be required to do sex work and in the event of resistance, would be sexually assaulted or raped. The recruiter would take the proceeds from the sex work²³.
- b. Children from Lesotho²⁴ who move to the country's capital city because of domestic violence and the effects of HIV/AIDS are lured or kidnapped by white South African men and are confined in private houses whilst being sexually assaulted. They are either returned to the border or left on the streets in South Africa²⁵.
- c. Women and girls from Mozambique are recruited to South Africa to work as waitresses and sex workers. Recruiters are paid to smuggle them across the border and often sexually assaulted whilst waiting in transit houses close to the border. The women and children will be sold to brothel owners, mine workers as wives or as slaves. The report estimates about 1000 women and children being recruited and exploited in this manner every year²⁶.

²⁰ US Department of State Victims of Trafficking and Violence Protection Act 2000: Trafficking in Persons Report June 2002, p 94; US Department of State Trafficking in Persons Report: Trafficking Victims Protection Act of 2000 June 2003, p 137.

²¹ IOM research study, page 123.

²² Id.

²³ IOM research study, Page 7.

²⁴ A country completely surrounded by South Africa consisting of about 2 million people.

²⁵ IOM research study, page 7.

²⁶ IOM research study, pages 7 and 8..

- d. Women and children from Malawi are trafficked in three ways. Young women are recruited by Malawian business women under false pretences and to work or study in Europe. The end result is having to perform sex work in Europe. Boys and girls are recruited in Malawi by European sex tourists with false promises of educational prospects only to be used as in pornographic videos and sexually exploited in private homes. Long-distance truckers also promise women and girl children marriage, work and education but are subjected to the same fate of others, but in South Africa.
- e. Women from Thailand, China, Russian and other Eastern European countries are lured to South Africa under false promises only to find out that they have to do sex work to pay off an enormous debt²⁷.

Despite the differences of the profiles of the trafficked women and children, the study suggests that;

“...the profiles of their traffickers, the tactics used to recruit, transport, and exploit victims remain similar. In most cases, women and children are lured with promises of employment or educational opportunities abroad; offers made appealing and credible within the context of historical migration patterns in the region which flow southwards to the relative prosperity of South Africa, or northwards to Europe²⁸.”

One of the key findings of the research for purposes of this paper is that; *“Trafficking victims from the [Southern African] region are recruited by deception, coercion, and force. Extra-regional victims are recruited by deception²⁹”.*

The *Molo Songololo* research found that children are being trafficked for *sexual exploitation* to South Africa from Angola, Botswana, Ethiopia, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Senegal, Swaziland, Tanzania and Zambia³⁰. Trafficking also occurs from Eastern Europe and South East Asia, including Thailand and Taiwan³¹.

2.3 Purposes for Human Trafficking

²⁷ IOM research study, page 9.

²⁸ *Id.*

²⁹ IOM research study, page 125.

³⁰ Molo Songololo research on The trafficking of children 2000, p 44 – 49.

³¹ *Id* at page 46.

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Purposes for which persons may be trafficked include sexual exploitation, forced labour, slavery, (including domestic work), drug couriers (including other economic activities), forced marriages, adoption and organ removal³².

Women and children are also being trafficked within the borders of South Africa for purposes of *domestic work* and *sexual exploitation*. Recruitment for sexual exploitation is often done through parents, gangs and brothel owners. Recruitment for domestic work at times takes the form of advertisements for employment. Once recruited for domestic work, they are subjected to poor and illegal working conditions and communication with their family would be prevented³³.

2.4 Methods used to ensnare people

Deception, threats, and coercion are used to lure people for the object of trafficking. A common means of recruiting women has been described as follow by the Law Reform Commission in South Africa: "*Traffickers usually make use of advertisements in which they offer work at, e.g. a health club or restaurant (usually in another province). These women's traveling expenses and accommodation costs are provided and on arrival at the place of destination, they are informed that they will also be required to work in the sex industry*". Interpol reported in 2002 that; "*Some victims responded to advertisements in the belief that they would secure a good job in a new country. Others were sold by family members, friends or a family friend into the modern equivalent of slavery*"³⁴. These advertisements would appear in the newspapers and there is no mechanism currently in place to regulate this form of recruitment of people for the purposes of trafficking³⁵. The IOM describes the distinction between earlier slavery and modern day human trafficking as follow: "*The slave trade depended primarily on wars, raids, and other chaotic theatres of forced abduction, while contemporary trafficking relies to a greater extent on*

³² *Legal Framework of Trafficking - Issues and Challenges*, Ashraf Mahomed, 28th April 2004 (Conference on Trafficking in Domestic Workers)

³³ *Child Domestic Workers: A National Report May 2002*, prepared by Debbie Budlender and Dawie Bosch, International Labour Organisation South Africa.

³⁴ SA: Gateway for human trafficking, (newspaper article) Barnie Louw, dated 01/08/2002, available at: www.news24.com, last visited on December 4, 2005.

³⁵ This method of recruitment is not unique to African countries, the following excerpt sheds some light of the situation in the United Kingdom: "*There appear to be four patterns of recruitment; (a) Complete coercion through abduction or kidnapping, (b) deception by promises of legitimate employment, (c) deception through half truths, such as that they will be employed in entertainment, dancing or even stripping, and (d) Whilst some women are fully aware that they are going to work in prostitution, but have to put themselves at the mercy of traffickers in order to migrate to Western Europe, they are not made aware of the extent to which they will be indebted, intimidated, exploited and controlled.*" Prepared by: Kelly, L & Regan, L (2000) '*Stopping Traffic: Exploring the Extent of, and Responses to, Trafficking of Women for Sexual Exploitation in the UK*'. Police Research Series, Home Office, page 24. On the same page the following comment is made with reference to Central and Eastern Europe; "*two main recruitment methods are currently observed:(a) adverts in the media for well paying jobs abroad, through a (possibly bogus) employment agency; and (b) approaches by young men to young women in clubs and bars where they also offer the possibility of making a lot of money.*"

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deception and false promises.³⁶”. There is, to those who are falling victim of this form of recruitment, inadequate measures at their disposal to verify the lawfulness of these devious schemes. A key strategy in combating human trafficking would be the exposure of the “*deception and false promises*”.

2.5 A recent media report on internal recruitment

In an article entitled *Maid to Order* published by *Fair Lady*³⁷ Magazine in South Africa it was reported that women are being recruited in the rural parts of South Africa to work in Cape Town. They are recruited by an individual in Cape Town for the purposes of doing domestic labour for people in Cape Town. The report states that these women are being transported during the night and brought to his home where they will be selected by his customers for purposes of domestic labour. One of ladies interviewed by *Fair Lady*, being called Wanda³⁸, describes the selection process; ‘*You feel like a sheep at an auction. I imagine the woman looking at me, thinking: "Shall I take the fat or the thin lamb? Which one will give me least hassles?" When a madam likes your face, she points at you and then you go with her into Hendriks' sitting room*³⁹’. The article ends of by stating; “*Wanda is one of hundreds of women arriving in Cape Town every month from rural towns, where women are recruited and brought to Cape Town with promises of a well-paid job and even of receiving training*”.

3. Interventions and challenges in South Africa

Interventions on the African continent are focused on the following objectives; defining the different forms of abuse, locating the perpetrators, devising policy instruments to counteract the problem and promoting cooperation amongst different agencies dealing with the problem⁴⁰. In South Africa, the South African Police Services (SAPS) is responsible to *prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law*⁴¹. The SAPS is faced with the situation of having to deal with trafficking in an environment where there are no specific laws dealing with human trafficking. Existing

³⁶ IOM research study, page 13.

³⁷ Published in the December issue of *Fair Lady* by Pearlie Joubert, available online at: <http://www.women24.com/Fairlady>,

³⁸ Not her real name.

³⁹ It is further reported that “*Wanda earns R500 a month. She works seven days a week for a household of three adults and three children and gets three hours off on Sunday afternoons. She has to clean the four-bedroomed house, do the washing and ironing, look after the children after school, and make breakfast and lunch. She lives in an outside room. There's no bathroom or toilet – she has to use the bathroom inside the house. Her room gets locked by her employers' children in the evening – usually at about 9pm – and unlocked again in the morning at 6am. They say they lock me in because of crime. If she needs the toilet at night, she uses a pot under the bed*”.

⁴⁰ *Searching for best practices to counter human trafficking in Africa: A focus on women and children*, by Thanh-Dam Truong and Maria Belen Angeles, Report Commissioned by the United Nations Educational, Scientific and Cultural Organization, March 2005.

⁴¹ Section 205 (3) of the Constitution of the Republic of South Africa, No. 108 of 1996.

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statutes and the common law are accordingly being used in the fight against human trafficking. It is anticipated that this will in the near change.

The approach adopted by the SAPS is to deport foreigners who have been found without the required documentation in South Africa to their country of origin⁴². In situations where syndicates may be involved the matter will be transferred to the *Organised Crime Unit*. The SAPS has established a special Desk dealing with Trafficking in Human Beings to deal with human trafficking⁴³. Separate statistics are *not* kept by the SAPS on crimes relating to human trafficking⁴⁴. As part of its national strategy to deal with human trafficking, the SAPS identified the following six pillars in an effort to tackle the problem of human trafficking⁴⁵:

- a. *Information,*
- b. *Capacity Building and Development,*
- c. *Victim Support and Integration,*
- d. *Legislation and Policy Development,*
- e. *Monitoring and Evaluation, and*
- f. *Liaison and Consultation.*

Given the fact that there are no specific laws dealing with trafficking in South Africa, it also poses problems with regards to the prosecution of traffickers. The court process is challenged further with prosecutors not being sufficiently trained to prosecute traffickers and traffickers being able to afford expensive legal representation⁴⁶. The situation is however about to change and new laws will soon be introduced that deal with the issue of human trafficking. It is however submitted that a key aspect of human trafficking, namely; recruitment, is not addressed adequately within the law.

4. Recommendations to deal with human trafficking

4.1 Recommendations made by the *International Organization for Migration*

The IOM has made several recommendations aimed at addressing human trafficking. These recommendations include:

- a. With reference to legislation, the ratification and implementation of international treaties relating to human trafficking and implementing national legislation that defines and criminalizes human trafficking and its exploitive practices. The law

⁴² Presentation made by the South African Police Services to the Improvement of Quality of Life and Status of Women Joint Monitoring Committee, *Trafficking in Women and Children*, Prepared by Director JL Oosthuizen and Senior Superintendent A Pienaar, dated 24 June 2005.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Legal Framework of Trafficking - Issues and Challenges*, Ashraf Mahomed, 28th April 2004 (Conference on Trafficking in Domestic Workers)

- should introduce sufficient protection to victims of trafficking, including care and should prevent summary deportation without having regard to the safety of the victims⁴⁷.
- b. With reference to law enforcement, the establishment of a *National Task Force on Trafficking in Persons* to promote consultation amongst various stakeholders. The provision of guidelines and procedures for state departments dealing human trafficking. The establishment of a specialized police unit that only deals with human trafficking cases and providing training for other law enforcement and relevant officials⁴⁸.
 - c. With reference to data collection and information sharing, an improved system of collecting statistical data on human trafficking. Improved information sharing amongst state departments and countries. Raising public awareness on human trafficking⁴⁹.
 - d. With reference to victims of trafficking, it is proposed that *reception centers* be established where assistance and support can be provided to trafficked persons, including; medical care, physical security, psychological counseling and legal assistance. The establishment of a fund to assist with the voluntary reintegration of trafficked people⁵⁰.
 - e. With reference to regional cooperation, promoting cooperation in efforts aimed at combating human trafficking, including judicial and investigative cooperation and the reintegration of victims of trafficking⁵¹.

4.2 Recommendations made by Molo Songololo

Molo Songololo made the following recommendations:

- a. In addition to recommendations for the development of legislation, the establishment and training of specialized police and prosecutorial units to increase the detection and prosecution of human trafficking⁵².
- b. The provision of compensation for people who were victims of human trafficking, including the confiscation and disposal of the assets of traffickers for the purpose of providing compensation and restitution⁵³.

⁴⁷ IOM research study, Page 133.

⁴⁸ IOM research study, Page 134..

⁴⁹ IOM research study, Pages 134 and 135.

⁵⁰ IOM research study, Page 135.

⁵¹ IOM research study, Page 135.

⁵² Molo Songololo research on The trafficking of children 2000, Page 86.

⁵³ Id. pages 86 and 87.

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- c. Coercion and duress should be taken into account either as a defense or for mitigation in matters where trafficked people have been charged or convicted of crimes whilst being trafficked⁵⁴.
- d. Educating and informing South Africans about human trafficking the establishment of an infrastructure to advise, assist and deal with complaints from children and others and monitoring children at risk.
- e. Setting up a register for sexual offenders.

These recommendations refer to a comprehensive approach towards combating human trafficking. Both organizations recommend the establishment of *specialized police units* that are trained and equipped to deal with human trafficking. An effective strategy against human trafficking can hardly be successful without a specialized police unit that plays a proactive role in dealing with human trafficking.

5. South African Domestic Legislation

South Africa is in the process of reforming its existing legislation in order to make it compliant with the Palermo Protocol. Existing legislation has not been accommodative towards those who have been ensnared in the trap of human trafficking⁵⁵. Some have argued that existing laws in South Africa are sufficiently dealing with the offences relating to human trafficking and there is no need to implement new laws⁵⁶.

5.1 Constitutional Provisions

Section 28 of the Constitution of the Republic of South Africa provides for the protection of the rights of children. This includes the right to be protected from *maltreatment, neglect, abuse or degradation and exploitive labour practices*⁵⁷. National legislation has to comply with the constitutional requirements and would inevitably include provisions dealing with human trafficking.

5.2 South African Common Law

⁵⁴ Id. Page 87.

⁵⁵ Immigration laws make provision for the compulsory deportation of illegal foreigners, who include everyone without the necessary documentation (Immigration Act, No. 13 of 2002, Sections 32 and 24.

⁵⁶ Hidden Agendas? The risks of human trafficking legislation, Ted Leggett, Institute for Security Studies, [Published in Crime Quarterly No 9 2004](#). He argues that by possibly locking the country into a law enforcement approach to the problem of adult prostitution, South Africa could lose its flexibility to deal more creatively with local problems. He further argues that the campaign [in South Africa] to ease the suffering of women working in brothels and on the streets could be derailed by poorly crafted anti-trafficking legislation. He suggests that South Africa should do more research on this issue before making policy decisions and dedicating scarce criminal justice system resources to it.

⁵⁷ Section 28 (1) (d) and (e) of the South African Constitution.

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The common law does not deal expressly with the situation of human trafficking. The common law does criminalize certain conduct relevant to human trafficking. These include the crimes of abduction, kidnapping, rape, indecent assault and assault⁵⁸.

5.3 The Sexual Offences Act

The Sexual Offences Act, passed in 1957, identifies a number of specific crimes relevant to human trafficking. These include the outlawing of brothels⁵⁹, the procurement of children⁶⁰ and adult females⁶¹ for unlawful carnal intercourse and detaining of a female against her will⁶². The Act also makes it unlawful to live off the proceeds of prostitution⁶³.

5.4 The Children's Bill:

Trafficking is being addressed under current proposals reform the existing law. Chapter 18 of the Children's Bill (revised 2005) is entitled *Trafficking in Children*. The purposes of this Chapter are to give effect to the Palermo Protocol and to combat trafficking in children⁶⁴. The Bill proposes that the provisions of the Palermo Protocol would apply in South Africa, subject to the provisions of the Act. In addition to the incorporation of the Palermo Protocol, the Bill also makes provision for the assistance of South African children who are victims of trafficking in the form of facilitating their return to South Africa⁶⁵.

The Bill makes provision for the criminalization of trafficking of children for commercial sexual exploitation, exploitive labour practices and the removal body parts. Section 284 of the Bill deals with the situation of children who are victims of trafficking being found in South Africa. Such children will be brought before the Children's Court to determine whether such child needs care and protection. The children maybe placed in temporary safe care pending the court proceedings⁶⁶. The Bill accordingly adopts the broad strategies contained in the Palermo Protocol as if it applies directly to South Africa. The most recent version of the Bill has introduced a procedural aspect to assist with the investigation and prosecution of traffickers. It provides for employers and principals to be liable in the event that the agent or employee is either acting within the scope of his or her authority or employment, or with the implied or express consent of a director, partner

⁵⁸ Do New Crimes Need New Laws? Legal provisions available for prosecuting human trafficking, Bronwyn Pithey, National Prosecuting Authority, [Published in Crime Quarterly No 9 2004](#)

⁵⁹ Section 2 of the Act.

⁶⁰ Section 10 of the Act.

⁶¹ Section 11 of the Act.

⁶² Section 12 of the Act.

⁶³ Section 20 of the Act.

⁶⁴ Section 281 of the Bill (2005 revised version).

⁶⁵ Section 286 of the Bill (2005 revised version).

⁶⁶ Section 284 of the bill (2005 revised version). The court may also grant an order that requires that assistance be provided to such children in an application for asylum status in South Africa.

or employer⁶⁷. A significant addition in the most recent version of the Bill aimed at combating the behaviour facilitating human trafficking in children is found in section 285 thereof:

Behaviour facilitating trafficking in children prohibited

285. (1) *No person, natural or juristic, or a partnership, may—*

(a) knowingly lease or sublease or allow any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking.

(b) advertise, publish, print, broadcast, distribute or cause the advertisement, publication, printing, broadcast or distribution of information that suggests or alludes to trafficking by any means, including the use of the Internet or other information technology.

(2) Every Internet service provider operating in the Republic must report to the South African Police Service any site on its server that contains information in contravention of subsection (1).

This provision recognizes the need to introduce measures that is aimed at criminalizing other methods that facilitates human trafficking. The Bill is certainly an improvement compared to the existing provisions of the law that does not make any reference to trafficking⁶⁸. Although section 285 now prohibits the advertisement, printing, publishing and distribution of information that *suggests* or *alludes* to trafficking, it would be met with difficulties as the perpetrators are aimed at deceiving the victims and it may be difficult to assess which publications allude to trafficking compared to lawful employment. Publications aimed at recruiting victims would naturally be deceptive of nature.

5.5 Electronic Communications and Transactions Act, No. 25 of 2002

The internet is increasingly being used to conduct trafficking operations, which make the investigation of such conduct much more difficult⁶⁹. This has created new challenges in obtaining computer-related evidence against traffickers. The introduction of the *Electronic Communications and Transactions Act, No. 25 of 2002*, has made provision for the introduction of electronic data as evidence. The Act also makes provision for

⁶⁷ Section 284 of the Bill (2005 revised version)

⁶⁸ Another example of such improvement is contained in section 291 of the Bill which provides that: “A citizen or permanent resident of the Republic, a juristic person or a partnership registered in terms of any law in the Republic that commits an act outside the Republic which would have constituted an offence in terms of this Chapter had it been committed inside the Republic, is guilty of that offence as if the offence had been committed in the Republic and is liable on conviction to the penalty prescribed for that offence.”

⁶⁹ Law Commission report, page 43.

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“*cyber inspectors*” employed by the Department of Communication who can be called upon by the SAPS to assist with investigations⁷⁰.

5.6 Legislative reform dealing with Human Trafficking:

The process for introducing legislation relating to human trafficking has begun with the publication of the South African Law Reform Commission’s Issue Paper 25 entitled *Trafficking in Persons*. The Issue Paper marks one of the first steps in the public process of preparing legislation and raises a number of important questions for consideration that may be addressed in the contemplated legislation. Some of the questions asked through the paper include:

1. *Given the nature of the crime of trafficking in persons and the fact that different sectors within the police deal with cases of trafficking in persons, should special police units be established to deal with cases of trafficking in persons?*⁷¹
2. *Should guidelines be established for the police regarding the manner of identification and interviewing of victims of trafficking? If yes, what should be the content of these guidelines?*⁷²
3. *What measures could be put in place to detect whether children traveling unattended are victims of trafficking?*

Legislation dealing with Human Trafficking may inevitably introduce similar measures compared to those contained in the Children’s Bill.

CHAPTER III

Learning from efforts to combat money laundering

We can learn from the measures that have been implemented to combat money laundering in the world today. Various success stories have been reported on the method that has been used by the international community in the fight against money laundering. We can gain from the experience obtained in this regard. This Chapter will consider preventative measures adopted at an international level to combat money laundering and will have a brief look at South African legislation on money laundering.

6. International instruments on combating money laundering

The *United Nations Convention against Transnational Organized Crime* has introduced a number of specific measures to be introduced by member states to combat money laundering. These are without doubt important and innovative measurements to combat

⁷⁰ Id. Page 43

⁷¹ Id. Page 43.

⁷² Id.

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money laundering. Article 7 of the Convention makes provision for each party to institute *a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and other bodies particularly susceptible to money laundering within its competence*. The aim would be to *deter and detect all forms of money laundering, which regime shall emphasize requirements for customer identification*.

It also provides for the cooperation and exchange of information between different authorities and hints towards the *establishment of a financial intelligence unit* for member states for the purpose of collecting, analyzing and disseminating information regarding potential money-laundering. The Convention requires a comprehensive strategy by member states to combat money laundering. It is also explicit about certain specific measures that are required to be implemented by member states to combat money laundering. It provides for amongst other a *regulatory regime* for banks, non-bank financial institutions and other bodies *susceptible to money laundering*. This regulatory regime would in essence affect the banking sector in every member state, including the customers of those banks. This is without doubt a necessary measure to combat one of the most underhanded evils being faced by our globe today.

I would propose that this is precisely the kind of regulation that is necessary to combat the recruitment by human traffickers. Humans are being considered their “*commodity*” and some are disguising themselves as “*legal*” recruitment agencies in order to recruit unsuspecting women and children. If the banking industry can be subjected to regulation and supervision for the sake of combating money laundering, the recruitment industry can also be subjected to regulation and supervision for the sake of combating human trafficking. This form of intervention should not be an option for member states of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, but should be a compulsory way of combating human trafficking. This method of combating money laundering (*in particular the way in which it has been implemented*) is providing us with some helpful guidance on how a similar regulatory and supervisory regime can be used to combat human trafficking.

7. South African legislation on combating money laundering

7.1 Prevention of Organised Crime Act 121 of 1998

The introduction of the *Prevention of Organised Crime Act* is an important legislative instrument in the fight against organised crime. A brief look at this legislation is important for the purposes of combating the recruitment efforts of traffickers. It is *firstly* important because it recognises that simply outlawing specific forms of conduct is not enough. The law can be used to introduce innovative measures to combat crime. *Secondly*, it is important because it shows that the measures introduced in terms of this Act were not regarded as sufficient combat money laundering. Despite specific provisions dealing with money laundering, further legislation was introduced to combat money laundering.

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The Act provides for the introduction of measures to combat organised crime, money laundering and criminal gang activities and the obligation to report certain information in relation to money laundering⁷³. The Act recognizes the difficulty in proving the involvement of organised crime leaders, it is therefore regarded as necessary to criminalize the management and related conduct. The proceeds of organized crime may therefore be forfeited and can be used for purposes of combating organized crime and combating money laundering. The Act also introduced measures to combat money laundering by criminalizing efforts to conceal or disguise the nature, source, location, disposition or movement of property suspected as being the proceeds of crime⁷⁴. The Act makes it for example an offense for persons in charge of business not to report instances where property which comes into his or her possession is suspected to be part of or the proceeds of unlawful activities⁷⁵.

7.2 The Financial Intelligence Centre Act

This *Prevention of Organised Crime* was followed by the *Financial Intelligence Centre Act* of 2001 (FICA) which provides for the established of the Financial Intelligence Centre in South Africa with the aim of assisting with the identification of proceeds of unlawful activities and to combat money laundering activities⁷⁶. The Centre is responsible for collecting, retaining, compiling and analyzing all information obtained by it and provide such information and advice to other law enforcement and intelligence agencies for investigation⁷⁷. The Centre must also monitor and provide guidance to institutions that are accountable in terms of the FICA.

7.3 The Money Laundering Advisory Council

Section 17 of the FICA makes provision for the establishment of the *Money Laundering Advisory Council* with the aim of advising the Minister of Finance on policies and best practices to combat money laundering activities, and the exercise of his powers under the FICA⁷⁸. The Council is also mandated with the tasks of providing advice to the Centre on the performance of its functions and to act as a forum of consultation for various state and non-state institutions⁷⁹.

7.4 Obligations of Accountable Institutions

⁷³ Preamble to the Act.

⁷⁴ Section 4 of the Act.

⁷⁵ Section 7 of the Act.

⁷⁶ Section 3 of FICA.

⁷⁷ Section 44 of FICA.

⁷⁸ Section 18 of FICA.

⁷⁹ Id.

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Primarily accountable institutions⁸⁰ are required to comply with a number of duties in terms of the Act. These duties include;

- a. *Identifying clients,*
- b. *Retaining records of business transactions,*
- c. *Reporting certain transactions,*
- d. *Appointing a compliance officer who will train employees on the relevant duties of the Act⁸¹,*
- e. *Establishing and verifying the identity of a prospective client before entering into a business relationship with such prospective client⁸², and*
- f. *Keeping records must be kept by the accountable institution of the clients, their agents and principals and the transactions (including the parties and amounts involved) for a period of at least five years⁸³.*

Further information to be retained includes details of the person who captured the information and any document that was used to verify the details of a client. The FICA, through regulation, requires accountable institutions to comply with a number of reporting duties in relation to cash amounts exceeding a prescribed amount, suspicious and unusual transactions and the transfer of cash across the borders of South Africa.

7.5 Reporting, Confidentiality and Access to Information

The FICA⁸⁴ requires a person who carries on or manages a business (including an employee) and has knowledge about or suspects certain situations⁸⁵, to report such situations within a prescribed period. Proof that an employee, director, trustee or partner in an accountable institution has reported the matter in terms of the internally within an accountable institution in the prescribed manner would constitute a valid defense⁸⁶.

Except for the right to legal professional privilege⁸⁷ between and attorney and a client, no duty of secrecy or confidentiality or any other restriction on the disclosure of information would affect the duties imposed upon an accountable institution and others in terms of the FICA⁸⁸. The *Financial Intelligence Centre* may with a warrant examine and make copies

⁸⁰ The FICA identifies 19 kinds of accountable institutions which include, attorneys, banks, long-term insurance companies, foreign exchange businesses and money remitter businesses.

⁸¹ Part 2 of the FICA.

⁸² Section 22 of the FICA.

⁸³ *Id.*

⁸⁴ Section 29 of the FICA.

⁸⁵ Including that the business has or is about to receive proceeds of unlawful activities or that the business facilitates or is likely to facilitate the transfer of the proceeds of unlawful activities and if the business has been used in any way for money laundering purposes.

⁸⁶ Section 69 of the FICA.

⁸⁷ This is limited to communications made in confidence between the attorney and the attorney's client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced and a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.

⁸⁸ Section 37 of the FICA.

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records kept by accountable institutions. Records kept by accountable institutions would include information identification of clients and business relations. The FICA also allows the *Centre* to provide information to investigating authorities, including foreign entities performing similar functions to that of the Centre⁸⁹.

These provisions illustrate the importance of capturing and having access to information that can be used by the authorities in the fight against money laundering.

8. What can we learn from the fight against money laundering?

The fight against money laundering has included specific efforts to enable the law enforcement agencies to identify suspicious activities. Money launders have to bring their proceeds into the public sphere at one or other point in order to experience the worth thereof. Significant effort is invested to identify when this occurs. It is a crucial stage in the fight against money laundering. The identification and verification of clients of financial institutions are key methods used in limiting the environment within which the transfer from the private to public sphere takes place. Mechanisms have also been used to actively monitor and scrutinize the relevant movement of money. The reporting duty has also play a key role in identifying suspicious transactions and bringing criminals to justice.

I submit that, in our fight against human trafficking, we are in need of more specific efforts to combat trafficking at the point where criminals are actively deceiving people into trafficking. Legislation should limit their ability to deceive people and it should provide for mechanisms that will enable law enforcement agencies to actively monitor and scrutinize suspicious recruitment efforts. In essence, the same kind of vigilance is required with regards to human trafficking. The duty to report would be an essential component of a regulatory regime for the recruitment industry.

CHAPTER IV ***Examples of Regulation***

9. Examples of regulation of the recruitment sector in the world

Regulation of the recruitment industry is not an uncommon phenomenon in the world today. The industry has been regulated for different purposes in different countries. The following are some examples of countries that chose to regulate the recruitment industries for different purposes.

9.1 United Kingdom

⁸⁹ Section 40 of the FICA.

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*The Conduct of Employment Agencies and Employment Businesses Regulations of 2003*⁹⁰ controls the conduct of employment agencies and employment businesses with the aim of protecting the interests of those making use of the services.

These regulations require agencies and businesses to authenticate the identity of the work-seekers, their experience, training and qualifications. These agencies and businesses are also required to provide notification to work-seekers of any charges relating to the employment⁹¹. Further requirements include the conclusion of an agreement between the work-seeker and the employment agency setting out a number of requirements including; the type of work that the agency will find for the work-seeker, details of the agent's authority and the fees that will be charged for the work⁹². Employment agencies are furthermore required to establish a number of factors including, the identity of the hirer, the position, duration, hours, location of the work and any health or safety risks⁹³. Without this information the agency cannot introduce the work-seeker to the hirer. The law accordingly imposes a number of obligations upon employment agencies in order protect the interests of the different parties.

Agencies are in addition prohibited from rendering services that will result in an *au pair* having to repay the hirer or the agency for the travel fees⁹⁴. In situations where the work-seekers is required to take up employment away, certain conditions must be satisfied before an agreement can be concluded, including, taking reasonably practicable steps aimed at making certain that suitable accommodation and travel arrangements are available for the work-seeker⁹⁵.

9.2 United States

In the state of New York the law provides for the regulation of employment agencies or persons who procures or attempt to procure employment either directly or indirectly. The law draws a distinction between those charging fees to the work-seeker and those that charge the employers once placements have been made.

Employment agencies doing business in New York State must for example abide by the conditions laid down in Article 11 of the *General Business Law*. This Article provides for maximum fees that may be charged to job applicants, licensing of employment agencies (with the *New York City Department of Consumer Affairs*), and preventing agencies from providing inaccurate information on employment positions⁹⁶.

⁹⁰ Came into operation during 2004, available at: <http://www.legislation.hmso.gov.uk/si/si2003/20033319.htm>

⁹¹ Regulation 13.

⁹² Regulation 14.

⁹³ Regulation 18.

⁹⁴ Regulation 24

⁹⁵ *Id.*

⁹⁶ New York General Business Law Art. 11 (§§ 170 – 191)

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In Illinois, the *Private Employment Agency Act* empowers to the Department of Labor to issue or refuse to issue licenses to employment agencies or agents. The Department is empowered to do so if an applicant is deemed to be unfit to be an employment agent. The applicant is required to provide the Department with an affidavit stating that he or she “*has never been a party to any fraud, has no jail or prison record, belongs to no subversive societies, is of good moral character, has business integrity and is financially responsible.*” Carrying on an employment agency in Illinois without a license is a Class B misdemeanor which can result in a \$1,000 fine and/or six months in jail. The law further requires the Department to investigate the credibility of an applicant before an application is approved. The employment agencies are also required to keep records in accordance with the law.

9.3 Republic of the Philippines

The regulation of recruitment agencies in the Republic of the Philippines is an example of a robust approach with the purpose of, amongst other, “*to facilitate and regulate the movement of workers in conformity with the national interest*”. The *Labor Code of the Philippines*, Presidential Decree No. 442⁹⁷, as amended, provides for amongst other that no person, except a public employment office authorized in terms of the Act is permitted to recruit and place workers⁹⁸. The Code goes as far as to prohibit any recruitment for overseas employment unless it is done *through entities authorized by the Secretary of Labor*, except for instances of *diplomatic corps*⁹⁹.

9.4 Comments on examples

A regulatory regime for the recruitment industry is not a foreign concept in the world today. These methods of regulation have however not been used to combat the recruitment by human traffickers in particular. There may therefore be no correlation between the regulation of the recruitment industry and efforts to combat recruitment of human trafficking in these examples. A regulatory regime, proposed under this paper, would include many of the factors present in these examples, but would primarily be focused at combating human trafficking.

CHAPTER V ***Proposals for Regulation***

10. International Legal Instruments

⁹⁷ Available at <http://poea.gov.ph/html/labcode.html>

⁹⁸ Article 16 of the Labor Code.

⁹⁹ Article 18 of the Labor Code.

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The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, is one of the most important international instruments in the fight against human trafficking. It recognizes the need for a “*comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights*¹⁰⁰”. State parties are required, amongst other in terms of article 9 (1) (a) “*to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in person*”.

Article 10 deals with the issue of information and exchange between different authorities of State parties and requires in terms of article 10 (1) (c) that such authorities must cooperate and exchange information for the purpose of determining “*the means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them*”.

These provisions are not prescriptive on the specific measures required by states to prevent and combat the trafficking of persons. It does however require member states to be *comprehensive* with its policies and programmes. It further acknowledges that there are various means of recruiting being used by traffickers to recruit people. Information on these methods is crucial and should therefore be shared amongst law enforcement agencies and other authorities to ensure a comprehensive and effective strategy to prevent and combat trafficking.

Member states can be innovative in adopting strategies to combat human trafficking. This broad approach in combating human trafficking is in contrast with the specific measurements provided for combating money laundering in terms of the *United Nations Convention against Transnational Organized Crime*. Although there are other relevant Conventions and Protocols, none of those international instruments suggest a regulatory framework in relation to recruitment industries for purposes of combating human trafficking. I submit that the international instruments should at the very least contain suggestions on how member states can combat human trafficking. One of these ways would be to provide for the regulation of the recruitment industry.

11. Regulating the recruitment industry

Deceptive recruitment strategies have been identified as key components for human traffickers. Merely outlawing recruitment for the purposes of human trafficking is not sufficient to combat human trafficking in the same manner that merely outlawing the receipt of proceeds of unlawful activities is not sufficient for combating money

¹⁰⁰ Preamble of Protocol.

laundering. More efforts should be vested in curbing the recruitment of people for the purpose of human trafficking.

An unregulated recruitment industry has left the playing field largely open for human traffickers to deceive many people, mainly women and children under the guise of legitimate recruitment agencies. Investigating authorities have limited means of combating such illegal means of recruitment. This is partly because of the limited means to distinguish between legitimate and illegitimate agencies. The investigation is further restricted due to the limited access to information on the human traffickers. The intimidation of trafficked persons is another factor that may negatively impact on prosecuting traffickers.

I propose that a regulatory regime for the recruitment industry should be implemented to combat human trafficking, similar to that found in money laundering legislation.

11.1 Principle motivations for need to regulate the recruitment industry

There are several motivations in support of the regulation of the recruitment industry. This paper suggests the following principle motivations in support of such a regulatory regime:

- a. Proactive efforts are required by governments to expose and combat efforts to recruit people for the purposes of human trafficking. Governments have a justifiable interest in regulating the recruitment industry if the objective is to combat human trafficking. Similar strategies have been employed in the fight against money laundering. Effective regulation of the recruitment industry would limit the ability of recruiters to ensnare people into the trap of human trafficking. It would further empower governments to monitor the conduct of recruiters.
- b. Deception is a key element of recruiters and without appropriate means to expose the deceptive nature thereof, it would be difficult for the public to differentiate between legitimate and illegitimate recruitment agencies. Regulation would provide the public with an easy method to establish the credibility of recruitment agencies.
- c. Access to information is limited in the absence of regulation. The regulation of the industry would make important information more readily accessible to law enforcement agencies. The availability of appropriate and relevant information is essential in combating human trafficking. Law enforcement agencies should be able to assess, within a short period of time, if a recruitment agency is accredited.
- d. Regulation would shift the evidential burden of proving certain facts to those who do not comply with the law. For example, if the law requires the registration of a recruitment agency before commencing business, the failure to do so will constitute an offence. Once non-compliance of this requirement has been proved,

the burden shifts to the alleged offender. The burden would be eased on the part of the state in proving that an offense has been committed. The state may still, in appropriate circumstances, prosecute for other offenses if sufficient evidence can be obtained.

- e. Regulation would not exceed the comparable methods being used to regulate the banking sector in efforts to combat money laundering. The regulation of the banking industry has already set a precedent for lawful methods used to deal with a legitimate government interest. Legitimate recruitment agencies would in essence be required to register with a public authority and to keep certain records. Their ability to trade and conduct normal business would not be impacted through regulation. The result is to conduct their affairs in a more accountable and transparent manner.

11.2 Essential characteristics for proposed regulation

In order for the regulation of the recruitment industry to be effective, some essential characteristics should be present. Comparable reference to the regulation of the banking industry in combating money laundering is once again important in this regard. The essential factors would include:

- a. Regulation of the recruitment industry in one country alone will not be sufficient to curb the recruitment strategies of human traffickers. Regulation requires an international approach and is especially important for transit and destination countries. International treaties should strongly encourage member states to introduce a *regulatory regime for the recruitment industry*. Without a global approach to regulate the recruitment industry, recruiters may merely relocate their activities to countries without such regulatory regime.
- b. Legislation should be introduced at national level that provides for a regulatory regime for recruitment agencies. Legislation should define important terminology (i.e.; recruitment, recruitment agency, etc.), make registration compulsory, and set out the consequences for non-compliance.
- c. Legislation should provide for the establishment a *National Registration and Accreditation Centre for Recruitment Agencies*. The functions of this centre will include the receipt of applications from recruitment agencies and the registration and accreditation of such agencies.
- d. Recruitment agencies should be required to submit prescribed information to the national centre upon registration, including; registered address and details of office-bearers, trustees, directors, or owners of the agency.
- e. Recruitment agencies should be required to provide minimum information to recruited persons on certain aspects of the employment, including information

- relating to its accreditation, details of the remuneration, place, conditions and costs relating to the employment for which the person is being recruited. For example, recruited person must be informed in advance of the costs relating to the employment. This requirement should also apply to direct individual recruitment for employment.
- f. Recruitment agencies should be required to display the accreditation details in all forms of advertisements and all its official documents.
 - g. Records of certain information should be kept by recruitment agencies, including details of their clients, recruited persons and the place of employment. Details of clients and recruited persons should be verified in the same manner as contemplated under money laundering legislation.
 - h. Legislation should prohibit recruitment agencies from retaining personal documentation belonging to clients, including identity documents and passports.
 - i. Recruitment agencies should be required to report suspicious conduct concerning clients to the relevant authorities. The requirement of reporting suspicious recruitment activities should also be extended to other relevant people. Sufficient legal and other protection mechanisms should be adopted to protect those who report suspicious conduct.
 - j. Legislation should provide for the appropriate penalties and offenses in the event of non-compliance. Legislation should shift the evidentiary burden to the defaulter if certain factors establishing non-compliance have been proved by law enforcement agencies.
 - k. Legislation should prohibit recruitment agencies from conducting business without being registered and accredited in terms of the Act.
 - l. The *Centre* established in terms of the Act should create and maintain a register containing the registered details of accredited recruitment agencies which should be made available to the public.
 - m. Other records kept by the recruitment agencies, including details of clients, those being recruited and business relations, should be available to law enforcement agencies upon the production of a warrant for their examination.
 - n. The provisions of the law should apply to those recruitment agencies that are operating from in the applicable country and recruiting people from outside the borders of the country. Basic provisions should also apply to those who are recruiting people without making use of recruitment agencies.

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- o. Provide for the establishment of a *Recruitment Intelligence Unit* (similar to the *Financial Intelligence Units*, established for money laundering purposes) to collect, analyze and disseminate information on recruitment practices.

Special attention should be given to the migration of people from countries that have not implemented a regulatory regime for the recruitment industry. It is anticipated that some countries will not be able (*or unwilling*) to implement such a regulatory regime, but may be a source country for purposes of human trafficking. The destination and transit countries will have to be vigilant in monitoring the conduct of recruiters from their countries.

This system would require cooperation and the exchange of information amongst different states on the patterns identified on cross-border movement.

11.3 Implementation of the regulatory regime

A regulatory regime for the recruitment industry cannot be successful if it operates in isolation of other efforts aimed at combating human trafficking. Having a register containing certain detail would be of no effect if it is not used adequately by law enforcement agencies in the fight against human trafficking. As within money laundering legislation, *the collection, analysis and dissemination of information* plays an important role, hence the need to establish Recruitment Intelligence Units.

The collection, analysis and dissemination of information will play an important role in identifying those agencies that recruit people for purposes of human trafficking. This would require efforts at local level to expose illegal recruitment agencies and individuals that are making use of deceptive recruitment efforts. The *Unit* will have to be proactive in searching out such agencies and individuals who are in default and raising awareness amongst the public about the human trafficking and requirements for recruitment agencies. Resources and effort should be invested in preventing the key strategy of recruiting unsuspecting victims of human trafficking. This requires cooperation from different departments.

The *National Registration and Accreditation Centre for Recruitment Agencies* would also play a crucial role in identifying defaulters and informing the relevant authorities when there is suspicion of recruitment for purposes of human trafficking. The *Centre* and the *Unit* should therefore be provided with the necessary resources to fulfill its task and receive appropriate training.

10.4 Limitations of proposed regulatory regime

The proposed regulation of recruitment agencies is only aimed at dealing with deceptive recruitment and will not address other forms of recruitment. Although it would address a significant component of recruitment for human trafficking, it would not be an effective strategy in preventing recruitment through force or coercion.

The establishment and operation of a registration and accreditation centre would demand resources and may be an unaffordable burden for impoverished countries. Poor countries are often the source countries for purposes of human trafficking and do not serve as destination countries for obvious reasons. The regulation of recruitment industries in destination and transit would therefore compensate for this shortfall. These countries would normally have the resources to implement a regulatory system and ensure that recruiters in such countries are scrutinized.

Deception is only one way through which people are caught up in the web of human trafficking. Recruitment also takes the form of coercion, intimidation and force. The proposed form of regulating the recruitment industry would not assist in combating these forms of recruitment. Human trafficking legislation aimed at combating human trafficking in line with international treaties should be used in this regard. A different strategy is therefore required when some form of force or violence is involved. The regulation of the proposed nature is aimed at dealing with recruitment of a deceptive nature.

11. Benefits of regulation

Regulating recruitment agencies would provide a number of benefits in the fight against human trafficking. These benefits would include, amongst other:

- a. *Proactive approach to recruitment* – Regulation would be illustrative of a proactive approach by the international community in the fight against human trafficking. It would allow law governments to put mechanisms in place to fight the recruitment of people for purposes of human trafficking.
- b. *Access to Information on Recruiters* – Regulation would increase the availability of information to law enforcement agencies. Unscrupulous agencies will either have to register in order to comply with the law or operate in secret. Information campaigns on the law can however be aimed at warning the public of the dangers of contracting with unregistered recruitment agencies.
- c. *Increased protection for job hunters* – Those who are seeking employment would be able to establish within a short space of time, either through the internet or a call center, whether a recruitment agency is registered in terms of the law. They will also be required to be informed beforehand of key components of an employment agreement before entering such agreement.
- d. *Curtailing human trafficking* – Regulation would unfortunately not decrease the perverse demand for people for purposes of human trafficking, but it would limit the ways in which the demands can be supplied. If the regulation operates

effectively it would leave recruiters with very limited means of deceiving people into human trafficking.

12. Conclusion

Having a regulatory regime for the recruitment industry is not a guarantee of an effective combating strategy. It can only be effective within a focused effort to combat human trafficking. A regulatory regime does however provide an important legislative means to restrict a key activity in the fight against human trafficking. Recruiters can either force or deceive people into human trafficking. The second method requires recruiters to convey some information relating to their fabricated opportunities to those whom they plan on deceiving. It is at this point at which the proposal contained in this paper is important. It would enable *proactive* law enforcement agencies to identify those recruiters that are recruiting people without complying with the standards laid down by the law.

The following quotation sums up the position in relation to those who become the victims of trafficking:

It is not necessarily the most defenceless people who become victims of trafficking. Rather, it is those who are looking for alternatives to their present living conditions. Generally, it is young people with a sense of initiative who do not wish to simply resign themselves to a socio-economic situation that offers them no prospects. Often, such people make an error of judgement. This group of people easily fall prey to the promise of an attractive job abroad. Sadly, in many cases prospective migrants are not told what kind of work they are being offered. And even if the nature of the work is made clear to them, they are misled about the remuneration, employment conditions and the nature of work relations¹⁰¹.

This statement is reflective of the broader socio-economic context within which human trafficking occurs. A regulatory regime for recruitment industries would by no means address the wider spectrum of challenges being faced by developing countries, but it would at the very least provide a mechanism that would enhance the protection for individuals who are deceived with the hope of increasing their situations.

The effectiveness would, amongst other, depend upon an effective campaign to inform citizens of the strategies of recruiters and the protection mechanisms that have been provided in terms of the law. Non-governmental organizations, government departments,

¹⁰¹ Taken from the website of the Victims of Trafficking at:
<http://victimsoftrafficking.esclavagemoderne.org/UK/index.html>

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Champaign, Illinois

law enforcement agencies and businesses would play an important role in disseminating such information to the public.

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