



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

Investigation into possible human rights abuses of dancers at Mavericks
Gentleman's Club

Referral by Desai ADJP in *Mavericks Revue CC and Others v Director General
of the Department of Home Affairs and Another* (WCHA Case No
22369/20122)

File Ref No: WP/1213/0041

REPORT

1. Introduction

1.1 The South African Human Rights Commission (hereinafter referred to as "the Commission") is an institution established in terms of Section 181 of the Constitution of the Republic of South Africa 1996 (hereinafter referred to as "the Constitution").

1.2 In terms of Chapter 2 Section 184 (1) of the Constitution,

The South African Human Rights Commission must-

- (a) promote respect for human rights and a culture of human rights;*
- (b) promote the protection, development and attainment of human rights; and*
- (c) monitor and assess the observance of human rights in the Republic.*

Further, in terms of Section 184 (2):

The South African Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-

- (a) to investigate and to report on the observance of human rights;*
- (b) to take steps to secure appropriate redress where human rights have been violated;...*

- 1.3 The Human Rights Commission Act, 54 of 1994 (as promulgated in terms of Section 184(4) of the Constitution) further supplements the powers of the Commission.
- 1.4 Section 9(6) of the Human Rights Commission Act and Complaints Handling Procedures promulgated in terms of this Act determine the procedure to be followed in conducting an investigation regarding the alleged violation of/ or threat to a fundamental right.
- 1.5 It is within the framework of this constitutional mandate that the Commission undertakes this investigation.

2. The Parties

- 2.1 Mavericks Revue CC ("Mavericks") duly incorporated in terms of the laws of the Republic, with its principal place of business at 68 Barrack Street, Cape Town, Western Cape Province. The business operations of Mavericks is described by the sole member of the corporation as a "gentlemen's revue bar", which engages the services of a large number of foreign "exotic dancers".¹

¹ Para 2 of the judgment: *Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another* (22369/11) [2012] ZAWCHC 5 (3 February 2012)

2.2 Department of Home Affairs (DOHA), a national government department within the Republic and whose mandate is:

“Firstly, the DHA is custodian, protector and verifier of the identity and status of citizens and other persons resident in South Africa. This makes it possible for people to realize their rights and access benefits and opportunities in both the public and private domains. By expanding these services to marginalized communities, the department plays is a key enabler in deepening democracy and social justice.

*Secondly, the DHA controls, regulates and facilitates immigration and the movement of persons through ports of entry. It also provides civics and immigration services at foreign missions; and determines the status of asylum seekers and refugees in accordance with international obligations. The department thus makes a significant contribution to ensuring national security, enabling economic development and promoting good international relations”.*²

3. The Complaint

3.1 **Background into the Investigation into *Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another*.**³

3.1.1 Withdrawal of Corporate Permits by Department of Home Affairs (DOHA)

3.1.1.1. Mavericks was, until 7 October 2011, the holder of two corporate permits issued in terms of section 21 of the Immigration Act 13 of 2002 (the first issued on 20 July 2005 and the second issued on 29 November 2009), which entitled them to employ up to 200 foreign nationals as ‘exotic dancers’.⁴ The corporation has been in operation since 1 November 2001.

² <http://www.dha.gov.za/index.php/about-us> - Downloaded on 16 August 2013

³ *Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another* (22369/11) [2012] ZAWCHC 5

⁴ *Ibid* at paragraph 4.

3.1.1.2. On 7 October 2011 the Director-General of the DOHA took a decision that the two corporate work permits issued to Mavericks, as well as all outstanding corporate worker certificates,⁵ were to be returned to the DOHA by Friday 4 November 2011. He also directed that all foreign nationals employed in terms of the permits and certificates should have left the country by that date.⁶ The decision was communicated to Mavericks by a letter dated 21 October 2011.

3.1.1.3. After the permits were withdrawn, charges were laid by the DOHA against twelve foreign dancers in terms of section 49(6) of the Immigration Act 13 of 2002 for continuing to work without the required permits. Following representations made to the Western Cape Directorate of Public Prosecutions by their legal representative, charges were withdrawn against eleven of the twelve foreign dancers on 23 March 2012. Charges against the twelfth dancer were withdrawn on 14 September 2012.

3.1.2 Application for Interim Relief

3.1.2.1. In November 2011 Mavericks launched an application for interim relief suspending the Director-General's decision regarding the permits as well as the directive that the foreign nationals depart, pending an application for the judicial review of the decision.

3.1.2.2. Judgment was handed down by Judge Desai ADJP on 3 February 2012 in which the application was dismissed with costs.

3.1.2.3. In terms of the judgement of the court requested the Commission to "*investigate whether the human rights of the dancers are being infringed and, if so, what steps can be taken to alleviate their plight.*"⁷

3.1.3 Review Application

⁵ These are the certificates in terms of which individual foreigners are employed by the holder of the corporate permit, and issued temporary residence (corporate worker permits) by DOHA. See paragraph 7.5 below on immigration law framework.

⁶ Page 8 of the Record : *Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another*

⁷ *Ibid* at paragraph 46.

3.1.3.1. Although Mavericks initially sought leave to appeal the judgment dismissing the application for interim relief, the appeal was not proceeded with. The review application was launched on 3 February 2012 under case number 1927/2012. The Rule 53 Record was filed on 24 April 2012 and the Respondents filed opposing affidavits on 21 January 2013.

3.1.3.2. In the review application, the court was asked to:

- (a) review and set aside the decision of the Director-General to withdraw the corporate permits in terms of section 21(3) of the Immigration Act;
- (b) declare Regulations 18(3)(c) and 18(4) to the Immigration Act inconsistent with the Constitution;
- (c) review and set aside Immigration Directive 27 of 2011 of 5 December 2011 (in terms of which directive DOHA officials were advised not to issue authorisation to work in terms of section 11(2) of the Immigration Act, to exotic dancers amongst other categories of foreigners).

3.1.3.3. While the application for the review was instituted it has however not been prosecuted.

3.2 Referral of complaint to SAHRC by Cape High Court, Judge Desai

3.2.1. On the 15 February 2012 the Commission received correspondence dated 7 February 2012 from the Director-General of the DOHA as per instruction of the Court requesting the Commission to conduct an investigation into *"whether human rights of dancers are being infringed and, if so, what steps can be taken to alleviate their plight."*⁸

⁸ Mavericks Revue CC and Others v Director General of the Department of Home Affairs and Another (22369/11) [2012] ZAWCHC 5 (3 February 2012) at paragraph 46

3.2.2. The concerns regarding the rights of the foreign dancers are set in the Court's judgment. The concerns relate to the vulnerable position of the dancers; the possible contravention of Article 3(a) of the Protocol to Prevent Suppress and Punish Trafficking in Persons; the nature of the contracts entered into between the dancers and Mavericks; and the conditions under which the foreign dancers are procured, housed and work makes them vulnerable to exploitation.

3.2.3. The Court noted the following:

"The so-called exotic dancers come to this country having concluded a flimsy one-sided contract. They are guaranteed nothing. They have to share a room for which they pay rent on a weekly basis. They are not paid at all and given no benefits whatsoever. More alarmingly they have to pay Mavericks R2000 per week. The contracts do not specify who pays for their plane ticket to South Africa and, if it is paid by Mavericks, when and how it is to be repaid. The contract does not specify what happens if they are unable to generate sufficient cash to pay the weekly R2000 and, if at all, they are entitled to keep certain basic sums - as a first payment - for food, shelter and clothing. Save to state vaguely that they are expected to model and dance on tables there is no job description. What do they model? Are they fully informed as to the exact nature of the work they are expected to do so that they can exercise some choice in the matter? Can they speak English? If not, are there people around with whom they can communicate?"

Though there have been several cases involving Mavericks and I assume that others have had sight of the contracts into which the dancers are obliged to enter, it appears that it has been blandly accepted that these are exotic dancers whatever that may mean. The conditions under which the foreign dancers are procured, housed and expected to work makes them susceptible to exploitation. They are in a vulnerable situation and the fact that the person in control of them demands or, at least, expects large sums of money on a weekly basis

places him in possible contravention of Article 3 para (a) of the
PROTOCOL TO PREVENT SUPPRESS AND PUNISH
TRAFFICKING IN PERSONS.”⁹

4. **Human rights under investigation**

Human rights issues raised in course of the investigation include:¹⁰

4.1. **Equality**

“9 (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.”

4.2. **Human dignity**

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

4.3. **Freedom and security of the person**

12 (2) Everyone has the right to bodily and psychological integrity...

4.4. **Slavery, servitude and forced labour**

13. No one may be subjected to slavery, servitude or forced labour.

4.5. **Privacy**

14. Everyone has the right to privacy...

4.6. **Freedom of movement and residence**

21 (1) Everyone has the right to freedom of movement.

4.7. **Labour relations**

23. (1) Everyone has the right to fair labour practices.

⁹ Para 43-44 of the Judgement

¹⁰ Chapter 2 of the Constitution of South Africa

5. SCOPE AND PARAMETERS OF THE INVESTIGATION

- 5.2** The scope and parameters of the investigation and this report were informed by both the Court's request and the mandate of the Commission however limitations and challenges in respect of the investigation are documented below.
- 5.3** The components of the investigation were identified from a reading of the extensive court record, which set out the concerns raised by the court in its judgment regarding the conditions under which foreign dancers are procured, and the contracts entered into between the dancers and Mavericks. These issues include trafficking; fair labour practices; human dignity; equality; privacy and freedom of movement.
- 5.4** Given that the dancers involved in the litigation that gave rise to the request for this investigation were foreigners, the Report also deals briefly with immigration policy.¹¹ Apart from the issues relating to permits to enter and work in South Africa, all the issues identified apply to both foreign and South African dancers at Mavericks.

6. CHALLENGES FACED DURING THE INVESTIGATION PROCESS:

6.1 Complexity of Issue under Investigation

6.1.1 Intersection of a range of legal questions.

The existence of overlapping issues in the investigation must be acknowledged as these have a bearing on the determination of findings and recommendations contained in the report. For instance, the absence or limitation of certain rights may

¹¹ It should be noted that shortly after the judgment was handed down and once charges against them had been withdrawn by the DPP, many [most] of the dancers working at Mavericks at the time the application was launched left South Africa. The Commission has therefore not restricted its investigation to the dancers specifically referred to by the court in its judgment, but has included all dancers, foreigners and South Africans, who work at Mavericks and whose human rights may have been infringed, or who may be vulnerable to exploitation.

be a potential indicator of the existence of trafficking; abuse of immigration laws may enable trafficking but may not necessarily meet the standard of evidence of trafficking;¹² and the issue of maintenance of labour standards would also be a component of immigration law and discussions therein.

6.1.2 Definitional and evidentiary challenges

The issues are complex, and are embedded in a context of diffuse and developing international and domestic legal frameworks, which in turn give rise to definitional and evidentiary challenges. The legislative challenges exist partly because of the complexity of both the ethical and policy underpinnings.

6.1.3 The contested nature of the issues

These intertwined issues and the shifting legislative frameworks in which they occur are not only complex, they are contested. The contested nature of the issues (the debate around the respective power relations of employees or independent contractors; what constitutes an exploitative contract; immigration policy and its implementation; or whether the legalization of sex work will result in the increase or decrease of trafficking)¹³ invariably influences the wider debate, and has an impact on proposed interventions and future policy direction. For instance, it was evident in the various interviews undertaken during the investigation that the position taken by the individual or organisation on one or more of these issues are informed by their view as to whether or not the human rights of the dancers at Mavericks are being infringed. This also shaped their critique of the Draft Report, including what facts and factors the Commission should consider relevant in coming to its conclusions and the recommendations it should make.¹⁴

The moral and political views underpinning the debate around prostitution/sex work have permeated some of the inputs and perspectives of individuals and

¹² But may be evidence of people smuggling

¹³ For instance, the Counter-Trafficking Coalition in Cape Town – a coalition of NGOs (and the IOM) which aims to co-operate on issues involving trafficking, be it advocacy, prevention and education campaigns or assistance to trafficking victims – apparently no longer operates effectively or even meets due to the different positions held on the legalization of sex work.

¹⁴ There are those who hold the view that stripping or performing lap dances in small booths in which the sex-act is simulated is in and of itself a violation of the dignity of the dancer. This is based on the position that women cannot consent to exploitation or commodification their bodies and by extension the violation of their human right to dignity.

organisations. If, as has been alleged, sexual intercourse for reward takes place at Mavericks, this would be a crime under the Sexual Offences Act 23 of 1957 as amended.¹⁵ Whether or not this would constitute a human rights abuse would depend on the facts of each case; the context (including the elements within the definition of trafficking, such as coercion and deception); as well as the theoretical and political positions taken on choice and agency in the sex-work debate.

Other contributors went further to argue that touching, simulation of sex acts and friction dancing should be included in the definition of sexual act (currently widened in the definition of sexual act and sexual violation in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. By implication, they argue that the sale of these 'services' should be considered as a form of prostitution and therefore a criminal offence.

Similarly, if, as has been suggested, the only conclusion to be drawn from the "booking out" fee or the fines imposed on dancers wishing to leave before the Maverick's closes, is that this amounts to "pimping" the dancers.¹⁶

In this investigation context has therefore been key to understanding the issues and identifying patterns that aid in formulating questions in the investigation. The context and the results of the investigation have ultimately informed the recommendations.

6.2 Constraints of the Investigation

6.2.1 The Commission does not have the mandate, capacity or resources to conduct criminal investigations. Where the Commission finds *prima facie* evidence of a crime, it is required to refer such matters to the appropriate law enforcement agencies for further investigation.

¹⁵ Section 2 and 3 which deal with brothels; and Section 19 *Enticing to commission of immoral acts*

¹⁶ See Section 3 and in particular 3 (b), (c), (d), (e) of Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

- 6.2.1.1. The Commission does not have the expertise and resources required to conduct investigations into organised crime. Its mandate is to investigate human rights abuses, which may overlap with criminal activity. Where there is evidence of human rights abuses the Commission must investigate and where appropriate depending on the nature of the violation seek to remedy the matter either through conciliation or mediation process or to refer the matter to the Equality Court.
- 6.2.1.2. The Commission is required to cooperate with other statutory bodies. These procedures are provided for in Section 7(1)(b) of the Human Rights Commission Act, 1994 (Act No. 54 of 1994) which provides that the Commission shall co-operate with institutions, bodies or authorities similar to the Commission to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction. This is spelt out clearly in terms of its Complaints Handling Procedures, issued in terms of Section 9(6) of the Human Rights Commission Act 54 of 1994 (Gazette, 27 January 2012, No 34963), the Commission may refer a matter to an appropriate institution, body or authority having overlapping jurisdiction and who could more effectively or expeditiously deal with the matter.¹⁷ In instances where labour issues are involved, for example, the Commission may refer to the appropriate body such as the Commission for Conciliation Mediation or Arbitration (CCMA) or Labour Court, whichever is appropriate.
- 6.2.1.3. The Commission does not have the resources to conduct forensic investigations. "Follow the money" is always good advice for an investigator and evidence supporting trafficking may be unearthed, such as control of the dancers' money, or payments to agents for airline tickets.
- 6.2.1.4. The Commission is not equipped nor does it have access or powers to conduct organised crime investigations. The investigation of trafficking

¹⁷ The basis for the referral is Chapter 4 Sections 12(7) and 12(8) (a) respectively, of the Commission's Complaints Handling Procedures.

across borders is time and resource-intensive and requires a collaborative effort between other countries and international law enforcement agencies, to which the Commission is not privy. It was also not possible for the investigators to investigate the personal circumstances of the dancers – to establish, for instance, whether or not they came from poor backgrounds – or to investigate allegations against recruitment agencies in other countries.

6.2.2 Interviews with law enforcement officers and prosecutors confirmed the difficulties involved in investigating and prosecuting trafficking and trafficking-related offences. While it may be relatively easy to arrest a woman who is working without a permit or on a fraudulent permit, it would be more difficult to obtain information on the persons or organisations that brought a woman to South Africa and/or who were exploiting her. The nature of trafficking, it has been acknowledged, requires international networks and is organised in nature; occurring across borders and on a vast scale; is well resourced financially with complex networks including corrupt government officials; and by nature, violent or embedded with the threat of violence and intimidation.

6.2.3 It is also worth noting that the dancers for Mavericks represent what might be termed the “high end” of the trade. Some identified themselves as professional dancers who invest in their skills, spending long hours at the gym and in beauty parlours. This is the visible face of the industry, but many scholars/commentators have noted that the worst abuses occur at the lower end of this market, in poorer parts of the City, out of sight and hidden.

Concern was expressed by a range of stakeholders, during the interview process, that the Commission, by limiting the focus of its investigation into Mavericks was problematic and even counter-productive, given instances of human trafficking and exploitation which occurring in more serious cases and at the lower/bottom end of the market and involving children.

6.3 Hostility of dancers

6.3.1 The investigation was hampered by the initial hostility which the dancers displayed towards Commission staff. In addition to the reluctance of the dancers to be open, communication was hampered by the fact that most of the foreign dancers interviewed were not fluent in English.

6.3.2 The dancers exhibited high levels of suspicion.

The dancers were initially not willing to participate in interviews with the Commission staff following their alleged abusive treatment by the DOHA and the SAPS during a 'raid' when they were kept at the Barrack Street offices for a number of hours before being taken to the police station where they allege they were subjected to further abuse and held in police cells before being processed.

6.3.3 The women were not willing to comply with request to be interviewed due to the late nights that they work.

To circumvent this problem the Commission attempted to engage women both during its site visit and during formal interviews at the Commission's offices. Women were encouraged to approach the Commission on their own accord and in their own time after initial meetings with them at the Commission's offices.

6.4 Delays in Receiving Information from Relevant Parties

6.4.1. Prior to the investigation, the Commission had requested information from the DOHA, but this had not been forthcoming.

6.4.2. The Commission experienced further delays in obtaining information that was subsequently requested from the DOHA as well as information requested from the attorneys acting on behalf of Mavericks.

6.4.3. The Commission had been advised that the owner of Mavericks and his attorney had at the time, been out of South Africa, hence the delay.

6.4.4. The inaccessibility of officials from the government departments for purposes of consultation further frustrated the investigation.

6.4.5. The Commission remains concerned that the right to fair labour practices of dancers working at Mavericks (and many other clubs where dancers sign contracts as independent contractors, but are nevertheless subjected to significant management control) may be infringed.¹⁸ The Commission is not precluded from referring this aspect of the complaint to the CCMA and the Department of Labour for further investigation.

7. Investigation by the Commission

7.1. Site inspection and interviews

7.1.1 Following the referral of the matter to the Commission by the Court the Western Cape Provincial Office of the Commission conducted a site inspection visit on 9 July 2012. The inspection was unannounced; however, Mavericks attorneys had been given notice of the Commission's intention to visit the club in pursuant of its investigation and the power of the Commission in this respect. The Commission was met by the "Manager" who was interviewed, and a site inspection was undertaken of the club and living areas. The Commission also attempted to interview five women in their quarters – these unscheduled interviews were conducted between Commission staff and dancers without the "Manager". The dancers proved hostile and reluctant to communicate these initial interviews rendered little information.

7.1.2 Given the unannounced nature of the site inspection and the fact that many of the dancers were not at the club at the time (not all dancers reside at the club and some were on errands) the Commission scheduled further interviews at its offices in July 2012.

¹⁸ The recommendation that the Department of Labour investigate the contractual relationship as well as the working conditions of both foreign and local dancers may result in increased regulation of the industry to the benefit of the dancers.

7.1.3 The Commission obtained a register from management of the women who were working at Mavericks at the time of the investigation. Out of the 32 women working at Mavericks, four were on vacation and hence unavailable for interview. Out of the 28 available women, the Commission interviewed 19. Ten of the women interviewed were non-nationals and nine were South African women. Maverick's management was interviewed independently of the women and did not sit in on the focus groups.

On the 11 July 2012 a legal officer from the Commission met with all the dancers at Mavericks to introduce the Commission and to explain the process. Mavericks' management was also asked to submit a register of all the women employed to the Commission.

The Commission conducted further interviews with Maverick dancers between 17 July and 23 July in which 19 women were interviewed through focus group discussions and one on one interviews, a further interview was conducted with the Manager.¹⁹

Due to the unavailability of the women and their hostility during the one-on-one interviews conducted previously, it was decided that the Commission would host a combination of focus group discussion and one-on-one interviews to improve rapport and generate a level of trust with Commission staff. The dancers were also encouraged after this introductory process to approach the Commission at any time subsequently to discuss any concerns.

A total of three focus group sessions and five one-on-one interviews were held with dancers during this period.

No women from Mavericks approached the Commission after the interviews for assistance.

7.1.4 Interview Method

¹⁹ (17 July 2012 – 5 women (1 focus group with 4 women; 1 individual interview), 18 July 2012 - 4 women), 19 July - 8 women – focus group) and 23 July 2012 (3 women in one on one interviews).

7.1.4.1. The interviews were conducted in focus group discussions with four to eight women at a time. General discussions were undertaken with all the women in the focus groups, allowing for each woman to give their view and perspective. Certain women were more forthcoming than others. However, the focus groups were facilitated in such a manner as to allow maximum participation.

7.1.4.2. The one-on-one interviews were conducted according to a structured interview instrument, which had been prepared before the actual interviews. In some instances, interviewees asked additional questions.

7.1.4.3. It is important to note that due to the secrecy and shame often associated with 'stripping', women do not often share the nature of their work with their families. Even though Mavericks is considered to employ a large number of foreign women, at the time of this investigation there were more South African women employed than foreign women. Hence the experiences, reasons for engaging in this nature of work, and other factors may vary in some instances between foreign and South African women.

7.2 Submission of draft report to Desai ADJP

On 21 September 2012 a draft report was handed to Desai ADJP. Draft reports were also submitted to the parties to the litigation on 26 September 2012. The parties were afforded an opportunity to make inputs/provide comments on the Draft Report. The Commission has taken these comments and criticisms into account in the final report. Subsequent to this process the Commission also broadened its scope of engagement with other individuals and organisations into the broader context in which such violations might take place.

7.3 Unannounced site inspection during operating hours

7.3.1 The Commission conducted an unannounced visit to the club on the evening of 10 October 2012. Two male members of the Commission's staff visited the Club as

paying guest to observe and gather further information in support of the investigation.

7.3.2 The objective of the visit was to:

7.3.2.1. assess and observe the operation of the club generally;

7.3.2.2. *modus operandi* of the club including allegations of “forced alcohol” consumption by the dancers;

7.3.2.3. clarify the “services” being offered and/or rendered; and

7.3.2.4. identify any other matters arising from such observations which may corroborate, enhance or highlight any further concerns raised by the court and in the draft report of the Commission on matters identified to date in the investigation.

7.3.3 The feedback and observations of the investigators were as follows:

7.3.3.1. The entrance fee included supper (a choice between three meals). Within a few minutes of having been seated the investigators were approached by an Asian woman dressed in traditional black attire and who enquired whether they wanted a shoulder or neck massage, which was priced at approximately R120.

7.3.3.2. There was a mix of patrons, both foreign (mainly Chinese, Indian, Pakistani, European) and South African.

7.3.3.3. Patrons were approached by the dancers, who tried to entice patrons into having a table or lap dance. If no interest was shown, they moved on to other patrons.

7.3.3.4. Dancers took turns dancing around the central pole dance area. Some of the dancers stripped by just removing their tops while other dancers stripped down completely as part of their routine.

7.3.3.5. A lap dance was priced at R200 per person for a period of six minutes only. Dancers adhered to the allocated dance time. The Commission's investigators were taken to a small room with a leather couch where the dancer went through her routine.

7.3.3.6. The investigators did not observe any illicit drug activity in the club. The bouncers were not around in the main area and nobody seemed to have been monitoring the dancers closely. There were no obvious signs of restrictions on movement of dancers.

7.3.3.7. The dancers were drinking; however, it was within the patrons' discretion whether they bought a drink(s) for any of the dancers.

7.3.3.8. The investigators were offered the option of a dance at a cost of R1000, which lasts for 15 minutes and in terms of which touching was permitted.

7.3.3.9. In the course of the evening a parade took place. All the girls in the club were introduced one by one (each had to parade to the central dancing pole while being introduced, then proceeded downstairs and formed a line). Once all the dancers had been introduced they then paraded through the central seating area around the patrons. At that point the investigators observed 37 dancers were counted, all of whom were topless.

7.3.3.10. There was a VIP area where dancers performed a private dance for a patron. The curtains which were thick were drawn in the booth at that stage. The booth itself was small - just large enough for two patrons to be seated plus the dancer who would perform the dance.

7.3.3.11. Another area within the club was noted, though not visited by the investigators, called the "The Library". This area the investigators were

informed was more exclusive than the VIP area. The fee for a dance in "The Library" commenced at a cost of R1750 and could last up to 30 minutes.

7.3.3.12. From the investigators observations none of the dancers, at any point appeared to be under any kind of duress.

7.4 Informal interviews conducted with patrons and dancers.

One patron interviewed informally declined to go on record indicated that he had witnessed sex between dancers and patrons in the library and that this was common knowledge as to "what went on there".

Interviews conducted with a former dancer who previously performed at Mavericks confirmed that sex took place within the booths. She further indicated that patrons were allowed to touch dancers. However, she, for fear of her life and previous threats against her family from other establishments in which she alleges she was trafficked and held against her will, declined to go on record.

7.5 Interviews with management of Mavericks

Management of Mavericks were interviewed and responded to requests for information.

7.6 Court appearance on 18 December 2012

The Commission was summoned to Court on 18 December 2012 by Desai ADJP. During court proceedings Desai ADJP stated that the Commission had not sufficiently applied its mind to the Palermo Protocol and accordingly requested the Commission to relook at this aspect of its Report. The Commission was requested to file its report on the 15 February 2013. (The Commission subsequently made representations to the Judge regarding an extension of time required to complete the investigation and procedures in respect of investigation and finalisation of its

Report as determined by the Human Rights Commission Act and Procedures of the Commission. All parties were duly notified thereof).

7.7 Appointment of Counsel

Following the court appearance the Commission briefed counsel to assist it with the finalisation of the report and to provide specialist input migration policy, immigration law, labour law and criminal law in order to boost the Commission's capacity to address the gaps in the report in relation to the concerns raised by Desai ADJP and others.

7.8 Further engagement with government departments and interest groups.

In the course of its investigation the Commission conducted interviews with a number of government departments and interest groups in order to gain a wider understanding of the context of within which clubs such as Mavericks operate as well as understanding the legal and policy challenges associated with these clubs.

Government departments interviewed:

- (1) DOHA;
- (2) National Prosecuting Authority;
- (3) The Hawks;
- (4) South African Police Services;
- (5) Metro Police.

Chapter 9 Bodies

- (1) Commission for Gender Equality;

Interest groups-

- (1) SWEAT;
- (2) Annex;
- (3) Embrace Dignity;
- (4) Rape Crisis;
- (5) Stop Trafficking;

- (6) Concerned civil society group/individuals who requested anonymity;
- (7) Women who worked within the industry.

The DOHA and the South African Police Services provided an extensive and detailed background of the intergovernmental structures established in order to counteract trafficking and trafficking-related offences, as well as details of current and past investigations in Cape Town, and the challenges involved in obtaining successful prosecutions. This input provided significant background understanding of the methods used by traffickers, profiles of traffickers, the various agents or middle-men (and women), as well as the victims.

In the interviews conducted with the IOM and NGOs who deal with trafficking and sex work more generally, the Commission sought information on the work of the organisation as well as their interaction with other NGOs; policy makers and law enforcement agencies; and victims of trafficking and related human rights abuses.

The investigation also dealt with the specific situation at Mavericks. All the organisations and individuals were asked to provide details as to their involvement with Mavericks; for instance, whether a dancer had approached that organisation for assistance or used a hot line. Law enforcement agencies were asked about investigations specifically pertaining to Mavericks or their dancers.

7.9 Desktop research

Desktop research included a literature review; examination of international and domestic legal frameworks (including case law); the court record; and online sources.

8. Legal Framework

8.1 International Legal Framework

8.1.1 Convention on the Elimination of all Forms of Discrimination against Women (1979) [CEDAW]²⁰

South Africa signed the CEDAW Convention on 29 January 1993 and ratified it on 15 December 1995. The Convention prohibits all discrimination that has “*the effect or purpose of impairing women’s enjoyment or exercise of their fundamental rights and freedoms.*”²¹ Article 6 provides that States Parties must take all appropriate measures, including legislating, to suppress “*all forms of traffic in women and exploitation of prostitution of women*”. CEDAW further recommends that all States Parties take specific punitive and preventative measures to overcome trafficking and sexual exploitation.

8.1.2 Convention on the Rights of the Child (1989) [CRC]²²

South Africa ratified the Convention on the Rights of the Child on 16 June 1995. A number of provisions in this Convention are relevant to child trafficking.

8.1.3 Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) [OPSC]²³

The Optional Protocol is a supplement to the Convention on the Rights of the Child, requiring that States Parties prohibit child pornography, child prostitution and the sale of children. South Africa ratified this protocol on 1 July 2003. While trafficking is not specifically mentioned, there is a definition of the “*sale of children*”... “*any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.*”

²⁰ UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p.13, available at: <http://www.unhcr.org/refworld/docid/3ae6b3970.html> [accessed 28 August 2012]

²¹ Id, Article 1

²² UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b38f0.html> [accessed 28 August 2012]

²³ UN General Assembly, Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 25 May 2000, United Nations, vol. 2171, p. 227, available at <http://www2.ohchr.org/english/law/crc-sale.htm> [accessed 28 August 2012]

8.1.4 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000) [Palermo Protocol]²⁴

South Africa signed the Palermo Protocol on 14 December 2000 and ratified it on 20 February 2004.

The Palermo Protocol provides a definition of human trafficking in Article 3 as follows:

- (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 a position of vulnerability or of the giving or receiving of payment 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 services, slavery or practices similar to slavery, servitude or the removal of organs;*
- (b) *The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) are used;*
- (c) *The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;*
- (d) *"Child" shall mean any person less than eighteen years of age.*

²⁴ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.unhcr.org/refworld/docid/4720706c0.html> [accessed 28 August 2012]

As a result of the ratification of these international legal instruments, South Africa is bound to these provisions and required to ensure that the rights of women and children are adequately protected.

8.2 Regional Human Rights Instruments

8.2.1 African Charter on Human and Peoples' Rights (1981)²⁵

South Africa acceded to this Charter on 9 July 1996. The African Charter on Human and Peoples' Rights (also known as the "Banjul Charter") is the foundational document in the African human rights system. A number of rights set out in the Charter are important in the context of human trafficking. Article 4 provides that all persons are entitled to respect for their life and the integrity of their person. Article 5 states that every person has the right to human dignity and prohibits all forms of exploitation and degradation of persons; particularly slavery, slave trading, torture, cruel, inhuman or degrading punishment and treatment.

8.2.2 African Charter on the Rights and Welfare of the Child (1990)²⁶

South Africa ratified the Charter on 7 January 2000. In terms of Article 29 on Sale, Trafficking and Abduction, "*States Parties to the present Charter shall take appropriate measures to prevent: (a) the abduction, the sale of, or trafficking of children for any purpose or in any form, by any person including parents or legal guardians of the child; (b) the use of children in all forms of begging.*"

8.2.3 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003)²⁷

²⁵ Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), available at: <http://www.unhcr.org/refworld/docid/3ae6b3630.html> [accessed 28 August 2012]

²⁶ Organization of African Unity, African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990), available at: <http://www.unhcr.org/refworld/docid/3ae6b38c18.html> [accessed August 28 2012]

²⁷ African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003, available at: <http://www.unhcr.org/refworld/docid/3f4b139d4.html> [accessed 28 August 2012]

The Protocol to the Africa Charter on Human and Peoples' Rights on the Rights of Women in Africa ("the African Women's Protocol") was adopted in 2003 to expand on the rights set out in the Charter, with particular reference to Article 18(3). The Protocol specifically deals with human trafficking under Article 4, which guarantees the right to life and the integrity and security of the person. Certain other provisions, such as Article 3, setting out the right to dignity, are also relevant to this investigation. South Africa ratified this Protocol on 7 December 2004.

South Africa must adhere to all African regional legal instruments to which it is bound. It is clear that South Africa has a legal imperative to protect the rights of women and children and to ensure that appropriate legislation and policies are drafted and implemented.

8.3 South African Legislative Context

8.3.1 Constitution of the Republic of South Africa, 1996²⁸

The following provisions of the Constitution are relevant to the rights of women and specifically the rights of women working at Mavericks as dancers.²⁹ It is against the backdrop of the Constitution that this investigation has taken place:

Equality

"9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law."

Human dignity

"10. Everyone has inherent dignity and the right to have their dignity respected and protected. "

Freedom and security of the person

²⁸ Constitution of the Republic of South Africa, 1996, available at: <http://www.info.gov.za/documents/constitution/1996/index.htm> [accessed 28 August 2012]

²⁹ No dancers working at Mavericks were below the age of 18.

"12. (2) Everyone has the right to bodily and psychological integrity..."

Slavery, servitude and forced labour

"13. No one may be subjected to slavery, servitude or forced labour."

Privacy

"14. Everyone has the right to privacy..."

Freedom of movement and residence

"21.(1) Everyone has the right to freedom of movement. "

Labour relations

"23.(1) Everyone has the right to fair labour practices."

8.3.2 Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000

[PEPUDA]³⁰

Prohibition of unfair discrimination on ground of gender

Subject to section 6, no person may unfairly discriminate against any person on the ground of gender, including – gender-based violence; female genital mutilation; the system of preventing women from inheriting family property; any practice, including traditional, customary or religious practice, which impairs the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child; any policy or conduct that unfairly limits access of women to land rights, finance, and other resources; discrimination on the grounds of pregnancy; limiting women's access to social services or benefits, such as health, education and social security; the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably

³⁰ Promotion of Equality and Prevention of Unfair Discrimination Act, Act No.4 of 2000, available at: http://www.acts.co.za/prom_of_equality/whnjs.htm [accessed 28 August 2012]