



TRAFFICKING OF PERSONS:

A SOUTH AFRICAN LEGISLATIVE PERSPECTIVE

LRC

LEGAL RESOURCES CENTRE

TRAFFICKING OF PERSONS: A SOUTH AFRICAN LEGISLATIVE PERSPECTIVE

A Summary and Analysis of the Laws relating to
Trafficking in Persons in South Africa

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Foreword

This Publication is produced by the Women's Rights Project of the Legal Resources Centre (LRC). The LRC is a non-profit, public interest law centre, which uses the law to pursue justice, democracy and the realisation of socio-economic rights in South Africa. The LRC works for the development of a fully democratic society based on the principles of substantive equality. It provides free legal services to the poor, homeless and landless, vulnerable and marginalised people and communities of South Africa who suffer discrimination by reason of race, class, gender disability, socio-economic status and historical circumstances.

The primary objective of the Women's Rights Project is to ensure substantive equality for all women in South Africa through the alleviation of poverty and inequality. This focus area includes work around gender based violence, harassment, discrimination, equality in the workplace, customary and religious laws and access to land and housing.

This publication is produced to assist individuals as well as Civil Society Organisations (CSOs) working towards the achievement of women's substantive equality in South African society.

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I. Introduction

South Africa currently has no legislation enacted that comprehensively and substantially criminalises the trafficking of persons. The Children's Act¹ attempts to define and make provision for the trafficking of children but its application is limited to children only and not to trafficking of persons as a whole. There are a number of legislative provisions which criminalise certain actions associated with the trafficking of persons. In addition to the statutory offences, acts ascribed to the trafficking of persons are criminalised in the South African Common Law.

This publication serves to inform members of the public and civil society organisations interested and working in the field of women and children's rights.

It also serves as a guide to the current legislation and laws that can be utilised to protect individuals at risk of being trafficked and to prosecute perpetrators who engage in trafficking of both children and adults.

¹ Act 38 of 2005.

2. What is Trafficking?

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons

South Africa is a signatory to the 2000 United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially of Women and Children. In relation to South African obligations, the Protocol is the only tool that comprehensively addresses all aspects of trafficking. Without enacting and implementing legislation the Protocol is not very beneficial to victims of trafficking or in combating trafficking.

According to *Article 3* of the Protocol there are three basic elements to 'trafficking'.

- i. *The recruitment, transportation, transfer, harbouring, or receipt of persons.*
- ii. *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 the giving or receiving of payments or benefits to achieve the consent of a person having control of another person.*
- iii. *For the purpose of exploitation.*

The Protocol defines 'exploitation' as "Sexual exploitation or prostitution, forced labour or slavery or servitude; or organ removal".

There is of course no definition in South African law for human trafficking. We therefore have to rely on the above definition to guide us when interpreting actions which may be construed as trafficking. It is currently these actions or elements that are synonymous with the act of trafficking that are prosecuted through the South African Criminal Justice System.



3. Current Legislative Framework

3.1. Children's Act 38 of 2005

Chapter 18 of The Children's Act is dedicated to trafficking of children. The purpose of this Chapter is to give effect to the provisions of the UN Protocol to Prevent Trafficking in Persons and to combat trafficking in Children.²

Trafficking in relation to a child in terms of the Act, includes the

- (i) *recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic, by any means, including the use of threat, force or other forms of coercion, abduction,*

² Section 281 of the Children's Act.

fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or

- (ii) *due to a position of vulnerability, for purpose of exploitation.*

The definition also includes the illegal adoption of a minor child.³ In addition, the Act defines the offence of commercial sexual exploitation to include the trafficking of a child for sexual activities including prostitution and pornography.

Section 284 of the Act prohibits child trafficking or permitting a child to be trafficked. It goes on to state that consent of the child to the exploitation or to an illegal adoption cannot be used as a defence to trafficking.

Section 285 of the Act prohibits anyone including juristic persons or partnerships from knowingly providing services like leasing or subleasing a room or house or building for the purpose of harbouring a child who is a victim of trafficking. Section 285 further prohibits both natural and juristic persons from offering any services including advertisement, printing or distribution of information alluding to trafficking. The section places an obligation on internet providers to report to the police any site that contains information that is contrary to the provisions of Section 285. It is important to note that a child is any person below the age of 18.

EXAMPLE:

Craig owns a warehouse and leases it to Abdul who says he will use it to keep his children for a while before he moves them to a new house, but Craig knows they are not Abdul's children and that Abdul intends to sell these children. Both Craig and Abdul can be charged in terms of Section 284 and 285 of the Children's Act.

Section 285 further states that it is an offence to knowingly lease a building to a person whose intention is to utilise the building for harbouring a trafficked child.

³ Section 1 of the Children's Act.

EXAMPLE:

John leases his house to Arnold knowing that Arnold engages in criminal activity, which includes trafficking young girls for sexual exploitation. As John leases his house to Arnold, knowing that he will use the house in his process of trafficking children, John can be charged in terms of *Section 285*.

3.2. Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007

Various sections of the Amendment Act are relevant to trafficking in persons. Part 6 of the Act, specifically *Section 70(1)* of the Act states that pending the enactment of implementing legislation to the UN Trafficking Protocol, the interim measures in the Act relating to the trafficking in persons for sexual purposes are provided for temporarily in “partial compliance of our international obligations and to deal with this rapidly growing phenomena globally”.

Section 70(2) sets out a definition of trafficking as:

‘trafficking’ includes the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of—

- (i) a threat of harm;*
- (ii) the threat or use of force, intimidation or other forms of coercion;*
- (iii) abduction;*
- (iv) fraud;*
- (v) deception or false pretences;*
- (vi) the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or*

- (vii) *the giving or receiving of payments, compensation, rewards, benefits or any other advantage,*

for the purpose of any form or manner of exploitation, grooming or abuse of a sexual nature of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing any sexual act with such person, whether committed in or outside the borders of the Republic, and 'trafficks' and 'trafficked' have a corresponding meaning.'

Section 71(1) of the Amendment Act states that any person who trafficks another without their consent is guilty of the offence of trafficking in persons for sexual purposes.

Section 71(2) further states that any person who contributes or participates in any way in the trafficking of another is guilty of an offence of involvement in trafficking in persons for sexual purposes. It is worth noting that a person who has been trafficked will not be liable to stand trial for any offences including immigration related ones committed as a direct result of being trafficked.⁴

EXAMPLE:

Gillian a young girl from the rural areas is recruited by a stranger for a job as a domestic worker but when she reaches her place of employment in the City her employer Junaid forces her to have sex. Afterwards Junaid repeatedly forces Gillian to have sex with Tom and friends of his. Junaid, Tom and friends could then be charged in terms of Section 71(2) for participating in the trafficking of another for sexual purposes.

Although it remains unclear how many people in South Africa are trafficked for purposes of sexual bondage the Act may be used in such cases.

Commercial carriers can also be prosecuted in terms of this Act for their role in the transportation of a trafficked person without lawful travel documents who either enter or depart from the country.⁵ There are however exceptions to this offence for example where the carrier reasonably believed that the documents possessed by the trafficked person are lawful for travel into or out of South Africa.

⁴ Section 71(5) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2000.

⁵ Section 71(6) of the Amendment Act.

EXAMPLE:

Maria is trafficked from Japan to South Africa. She arrived in South Africa via CK Airways with an illegally obtained passport. She was allowed by CK Airways to fly on their plane as one of their employees was part of the trafficking syndicate and ensured that Maria was able to pass through all security checks. CK Airways can be charged for transporting a trafficked person in or out of South Africa without lawful documents.

Other Relevant Sections:

Section 3 of the Amendment Act states that any person who unlawfully and intentionally sexually penetrates another without their consent is guilty of rape. *Section 4* goes on to state that if anyone unlawfully and intentionally compels a third party to sexually penetrate another without their consent then he/she is guilty of compelled rape.

EXAMPLE:

Mark goes to a brothel where Maxine is being held against her will. Mark pays Maxine's captives and goes into a room with Maxine where he proceeds to engage in sexual intercourse with her without her consent. Maxine's captive then enters the room with another girl and forces her to join Mark and Maxine. She does so but under the threat of being beaten. Mark can be charged with raping Maxine and the other girl.

Section 5 states that anyone who unlawfully and intentionally sexually violates or threatens to sexually violate another without their consent is guilty of sexual assault.

Section 6 further states that anyone who intentionally and unlawfully compels another to commit an act of sexual violation is guilty of compelled sexual assault.

According to *Section 7* examples of compelled sexual assault include forced masturbation,

any form of arousal or stimulation of a sexual nature of the female breasts or sexually suggestive or lewd acts.

Section 15 and 16 creates the offence of statutory rape and statutory sexual assault. These sections provides that any person who commits an act of sexual penetration or sexual violation with a child, despite the consent of the child to the commission of such an act, is guilty of the offence of committing an act of consensual sexual penetration and or consensual sexual assault with a child. In terms of the Act, a child is any person under the age of 18 however in terms of *Section 15 and 16*, a child is a person of 12 years and older but under the age of 16.

In terms of *Section 17* it is an offence to unlawfully and intentionally engage the services of a child with or without their consent for financial or other reward, favour or compensation for themselves or another person for the purpose of engaging in sexual activities regardless of whether such activities are performed. This is an offence called sexual exploitation. Should a person be compensated or rewarded in any way for engaging the sexual activities of a child, that person will be guilty of an offence of benefiting from sexual exploitation of the child.⁶ In addition, anyone who lives off such rewards and compensation will be guilty of an offence of living off the proceeds of child exploitation.⁷

EXAMPLE:

Babalwa, a fourteen year old girl, was brought from the Eastern Cape to Cape Town by Mangi. Her parents had accepted money from Mangi in return for their daughter and he regularly sent money to her parents. In return she was meant to clean his house and engage in sexual intercourse with him. Mangi can be charged with sexual exploitation as he has engaged the services of Babalwa for her parent's financial benefit for the purposes of engaging in sexual activity with Babalwa. Babalwa's parents can be charged with the offence of benefiting from sexual exploitation of the child as they receive money from Mangi for exploiting Babalwa.

⁶ *Section 17(4)* of the Amendment Act.

⁷ *Section 17 (5)* of the Amendment Act.

Section 18 prohibits the sexual grooming of children. The elements of this offence includes facilitating the commission of a sexual act, manufacturing or producing a film that promotes or is intended to be used in the commission of a sexual act with a child and arranging or facilitating a meeting with a child with the intention that another person will perform a sexual act with the child.

Section 19 criminalises the exposure or display of or causing exposure or display of child pornography or pornography to children.

EXAMPLE:

Lisa is a 14 year old girl whose father has been showing her photographs and magazines with naked women in sexual poses. One day her father tells her to put on lacy underwear and he takes pictures of her. Not long thereafter he instructs her brother to engage in sexual acts with her which he then photographs.

3.3. Refugees Act 130 of 1998

Section 32 deals with situations where an unaccompanied foreign minor child is found in South Africa, under circumstances indicating that he/she could be “*a child in need of care*” and ‘*appears to qualify for refugee status in terms of Section 3*’ of the Refugees Act.

Section 32 states that such a child should be brought to the Children’s Court. The Children’s Court may order that this child be assisted with applying for asylum in terms of the Refugees Act.

EXAMPLE:

Deborah is a sixteen year old girl who after the death of her father is taken from her mother’s home and brought to South Africa against her will by her Uncle. Her Uncle then hands her over to another man who uses her as a domestic, but refuses to pay her anything for her work.

3.4. **Basic Conditions of Employment Act 75 of 1997**

Section 43 prohibits child employment in that a person below the age of 15 years or younger than the school leaving age may not be employed. The Act further states that employing a child in work that puts the education, physical or mental health, or spiritual, moral or social development or generally child's well-being at risk is an offence.

Section 48 prohibits all forms of forced labour. The section goes on to state that no person 'may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour on another.'

EXAMPLE:

Blessing is fourteen years old and from a rural village. His father takes him out of school and forces him to work on a neighbouring farm with him without payment.

3.5. **Films and Publications Act 65 of 1996**

Section 18 provides for any form of pornographic film or publication depicting children to be classified as 'refused classification'. Such classification together with the reason thereof should be published in the Government Gazette. Where a film or game submitted to the Board contains child pornography, the Chief Executive Officer shall refer that film or game to the South African Police Service for investigation and prosecution.

3.6. **Intimidation Act 72 of 1982**

Section 1 prohibits unlawfully and intentionally compelling or inducing any person to abstain from doing any act or to assume or to abandon a particular standpoint. The section also prohibits assaulting, injuring or causing damage to any person; or in any manner threatening to kill, assault, injure or cause damage to any person in order to induce a person abstain from doing any act or to assume or to abandon a particular standpoint.

3.7. The Prevention of Organised Crime Act 121 of 1998

In terms of *Section 2* it is an offence to be involved in racketeering activities, and to receive, use and/or invest in, any property derived from a pattern of racketeering activity.

'*Pattern of racketeering activity*' means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1.⁸

Section 5 prohibits assisting another to benefit from proceeds of unlawful activities. In addition, if the crime committed is part of gang activities then *Section 9* applies. *Section 9* states that anyone who willfully aids and abets any criminal activity committed for the benefit of, at the direction of, or in association with any criminal gang or threatens to commit a violent act on behalf of the gang is guilty of an offence.

The proceeds/assets acquired from such activities can be forfeited to the State upon application to court.

EXAMPLE:

The Jewel gang are involved in trafficking young girls to South Africa from Asia. When they arrive they are held hostage in a house owned by the gang leader and used as sexworkers. The Jewel gang leaders live lavish lifestyles owning houses and driving expensive cars, which has all been paid for from the money earned through their trafficking operations. When the gang leaders are arrested and charged for their illegal activities the Prosecutor also applies for the property to be forfeited to the State.

⁸ Schedule 1 offences include murder, rape, kidnapping, assault with intent to do grievous bodily harm, the statutory offence of unlawful carnal, extortion.



4. Common Law Offences

In the absence of legislation dealing with trafficking comprehensively, the Common Law can also be relied upon for the prosecution of persons suspected of human trafficking and related activities. The Common Law is law developed through judgments handed down in court and not laws developed through statutes. Perpetrators can therefore be charged with the following offences:

4.1. Kidnapping

Kidnapping is very often an element of trafficking as the traffickers usually have to resort to kidnapping their victims in order to take them from one place to another. Kidnapping is when a person is unlawfully and intentionally deprived of their liberty and freedom of movement.⁹ This deprivation of movement may also involve physically

⁹ Burchell Jonathan (2005) Principles of Criminal Law (third edition) Lansdowne: Juta at 758.

moving a person from place to place or by deceiving them into leaving their home in promise of something, which is then not delivered on.

In relation to minors, kidnapping is the unlawful taking of a minor out of the control of their custodian.

EXAMPLE:

Jenny is thirteen years old and is taken from her mother's home by John. He keeps her at his house and has sex with her while forcing her to clean his house. When confronted he then says he has taken her as a wife.

Should a person be trafficked through kidnapping, the perpetrator can be charged with kidnapping in addition to being charged with trafficking.

4.2. Common Assault

Victims of trafficking are normally threatened with violence and assaulted as a means for the perpetrators to remain in control of them. Common assault can be defined as unlawfully and intentionally applying force or threatening to apply force to another.¹⁰ In South African constitutional and criminal law physical integrity of a person is of paramount importance and any violation of this can be prosecuted as assault.¹¹

EXAMPLE:

Adnaan is trafficked by Matt and forced to work in a car factory and is beaten when he attempts to leave. He is held against his will along with other workers who are not paid any salary for their work. Matt can be charged with common assault.

The threat of assault is punished because the perpetrator's intention is do the victim harm which induces emotional distress similar to what would be experienced if he

¹⁰ Milton JRL (1996) South African Criminal Law and Procedure Vol II (Juta) at 406.

¹¹ Section 12 of the Constitution of the Republic of South Africa.

was being beaten.¹² In this regard, a perpetrator who beats or threatens to beat a victim to ensure they comply with his demands can be charged with assault.

4.3. Extortion

In order to seek compliance a perpetrator will very often resort to extortion. Extortion is when one obtains an advantage over another person by unlawfully and intentionally subjecting him to pressure which induces him to submit to the will of the perpetrator.¹³

EXAMPLE:

Marie was trafficked from Thailand and is now forced to work for Christina for free as Christina's husband Philip has threatened to report her to the authorities as she is in the country without valid papers. Christina's husband can be charged with extortion.

4.4. Murder

Murder is the unlawful and intentional killing of another living person.¹⁴ In cases where compliance is not obtained from the victim or where the trafficked person becomes an inconvenience the perpetrator might resort to killing the victim.

EXAMPLE:

Emily is abducted from her home and forced to perform sexual acts on John by Rushda. Police raid Rushda's house but before they come in Rushda shoots Emily in the head to prevent her from testifying against them in court. Rushda can be charged with murder.

¹² Milton (note 11) d at 407.

¹³ Ibid at 681.

¹⁴ Ibid at 310.

4.5. Culpable Homicide

Culpable homicide can be defined as the negligent killing of a person.¹⁵ In this crime the perpetrators kill someone but without intending to do so.¹⁶

EXAMPLE:

Mike seeks to abduct Eva in order to take her to another country to work as a sex worker. Mike injects Eva with heroine every day in order to make her dependant on him. When he injects her with too much she overdoses and dies. Mike can be charged with culpable homicide.

¹⁵ Ibid 364.

¹⁶ Ibid 360.



THE CURRENT DRAFT OF THE TRAFFICKING IN PERSONS BILL

In response to the international obligations set out in Article 5 of the Protocol requiring signatories to pass domestic legislation on trafficking, the Department of Justice and Constitutional Development began drafting the Trafficking Bill in 2003. The Bill aims to provide for the offence of trafficking in persons and other offences associated with trafficking in persons and to prevent and combat the trafficking in persons within or across South Africa.

The following is a brief introduction to the Department of Justice and Constitutional Development's latest draft Bill dealing with combating trafficking and meeting government's international obligations:

5. The Prevention and Combating of Trafficking in Persons Bill, B7 of 2010

Objectives of the Bill:

The Bill seeks to:

- Prosecute persons involved in trafficking;
- Provide appropriate penalties for trafficking;
- Prevent trafficking;
- Protect and assist victims of trafficking;
- Provide effective enforcement measures; and
- Create an Intersectoral Committee on the Prevention of Combating of Trafficking in Persons with a duty to develop a draft national policy framework.

5.1. Definition of ‘trafficking’ (s.1):

‘trafficking’ includes the delivery, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, exchange, lease, disposal or receiving of a person, or the adoption of a child facilitated or secured through legal or illegal means, within or across the borders of the Republic, of a person trafficked or an immediate family member of the person trafficked, by means of—

- (a) a threat of harm;
- (b) the threat or use of force, intimidation or other forms of coercion;
- (c) the abuse of vulnerability;
- (d) fraud;
- (e) deception or false pretences;
- (f) debt bondage;
- (g) abduction;

- (h) kidnapping;
- (i) the abuse of power;
- (j) the giving or receiving of payments or benefits to obtain the consent of a person having control or authority over another person; or
- (k) the giving or receiving of payments, compensation, rewards, benefits or any other advantage,

for the purpose of any form or manner of exploitation, sexual grooming or abuse of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing any sexual act with such person, whether committed in or outside the borders of the Republic.

The Bill expands upon the definition in the UN Protocol in the following ways:

- i. The first element of the definition is extended to include delivery, procurement, capture, removal, sale, exchange, lease, or disposal of a person, or the adoption of a child facilitated or secured through legal or illegal means. This can be within or across the borders of South Africa.
- ii. The second element is extended to include threat of harm, debt bondage and kidnapping as a means by which a person can be trafficked.
- iii. The third element is not limited to exploitation alone, but includes the purposes of sexual grooming or abuse including the commission of any sexual offence or the performing of any sexual act.

5.2. Definition of ‘exploitation’ (s.1):

‘**exploitation**’ includes, but is not limited to—

- (a) all forms of slavery or practices similar to slavery;
- (b) forced marriage;
- (c) sexual exploitation;
- (d) servitude;

- (e) debt bondage;
- (f) forced labour;
- (g) child labour as defined in *Section 1* of the Children's Act;
- (h) the removal of body parts; and
- (i) the impregnation of a female person against her will for the purpose of selling her child when the child is born.

The Bill extends the list of examples of exploitation given in the protocol, but it is important to note that this list is not exhaustive.

5.3. Main Offences:

- i. *Section 4(1)* A person is guilty of an offence of *trafficking in persons* if that person 'trafficks' another person.
- ii. *Section 4(2)* A person is guilty of an offence of *involvement of trafficking in persons* if that person:
 - (a) Performs any act aimed at committing trafficking in persons;
 - (b) Incites, instigates, commands, direct, aids, promotes, advises, recruits, encourages, or procures any other person to commit trafficking in persons; or
 - (c) Conspires with any other person to commit trafficking of persons.

IMPORTANT POINTS TO NOTE:

Children – it is not a defence if:

- *A child who is a victim of trafficking or a person having control or authority over a child who is a victim of trafficking has consented to the intended exploitation; or*
- *The intended exploitation or action did not occur.*

This is so even if none of the means referred to in element two of the definition of trafficking have been used.

IMPORTANT POINTS TO NOTE:**Adults – it is not a defence if:**

- *An adult person who is a victim of trafficking has consented to the intended exploitation; or*
- *The intended exploitation or action did not occur.*

This is so unless none of the means referred to in element two of the definition of trafficking have been used.

Employers – *The conduct of an employee or agent of or any other person acting on behalf of an employer or principal may be attributed to the employer or principal. However, this does not exclude the personal liability of the employee or agent for committing the offence of trafficking in persons.*

5.4. Other offences:

Other offences in terms of the Bill include:

- i. Intentionally engaging in conduct causing another person to enter debt bondage. (s.5)
- ii. Possession, destruction, confiscation, concealment of or tampering with actual or purported identification, passport or travel documents. (s.6)
- iii. Using services of victims of trafficking. (s.7)
- iv. Conduct facilitating trafficking in persons. (s.8)
- v. Acting as a carrier by transporting victims across the border of South Africa without the required travel documents, unless entry of the victims occurred because of circumstances beyond the control of the carrier. (s.9)

5.5. Extra-territorial jurisdiction:

The Bill gives South African courts extra-territorial jurisdiction to prosecute acts of trafficking committed outside its borders. This means that perpetrators can be prosecuted in South Africa regardless of whether or not the acts (trafficking) constitute an offence in the country where they were committed. These provisions would come into operation if the person to be charged:

- *Is a citizen of South Africa;*
- *Is ordinarily resident in South Africa; or*
- *Has committed the offence against a citizen of South Africa or person ordinarily resident in South Africa.*

5.6. Protection of victims of trafficking:

The Bill sets out various obligations and requirements which must be met by government as well as private individuals and institutions aimed at protecting victims of trafficking including:

- Compulsory reporting of suspected child victims to police officials for investigation and further referral;
- Compulsory reporting of suspected adult victims to police officials for investigation and further referral, subject to the victims' consent;
- Provision for the suspension by the court of parental responsibilities and rights in respect of a child who was trafficked by a parent or guardian;
- Provision of public health care services to victims who are foreigners;
- Prohibition of criminal prosecution against victims for certain acts committed in connection to their trafficking;
- Provision of a recovery and reflection period of 90 days whereby foreign victims may stay in South Africa, subject to certain conditions;
- Provision for the issue of a renewable visitor's permit to victims,

subject to certain conditions and the discretion of the Director General of Home Affairs;

- Entitlement for a victim to apply for a permanent residence permit after five years' continuous residence in South Africa;
- Prohibition of summary deportation of a victim and restrictions on repatriation;
- Accreditation of organisations to provide services to adult victims and the provision of minimum norms and standards for their operation;
- Provision for the establishment of public awareness campaigns by the Intersectoral Committee designed to inform and educate both the public and victims; and
- Provision of power to the court to order compensation to victims of trafficking.

CURRENT STATUS OF THE BILL

The Prevention and Combating of Trafficking in Persons Bill was introduced into parliament by the Minister of Justice and Constitutional Development in early 2010. In the same year the Portfolio Committee on Justice and Constitutional Development (PCJCD) invited stakeholders and interested persons to make written submissions on the Prevention and Combating of Trafficking in Persons Bill.

These submissions are being reviewed by the PCJCD and the Department of Justice and Constitutional Development. A number of Civil Society Organisations from different sectors including women and children made oral and written submissions to the PCJCD. Civil Society Organisations are now hopeful that many of their comments will be incorporated into a new draft Bill.

The Bill has been tabled as a *Section 75*¹⁷ Bill, which means that the Parliamentary Committee on Justice & Constitutional Development must consider and finalize the draft Bill after which it will be sent to the National Assembly for adoption. Once adopted by the National Assembly it will be referred to the National Council of Provinces (NCOP) who has the option of passing the Bill, amending the Bill or rejecting the Bill. If the NCOP passes the Bill without proposed amendments, the Bill must be submitted to the President for assent.

If the NCOP passes the Bill subject to proposed amendments or if the NCOP rejects the Bill, it goes back to the National Assembly. The National Assembly must then reconsider the Bill by taking any amendments proposed by the NCOP into account and may pass the Bill again (with or without the NCOP proposed amendments) or may decide not to proceed with the Bill. A Bill that has been passed by the National Assembly must then be submitted to the President for assent.

It is therefore crucial for Civil Society Organisations to participate in the process to ensure that comprehensive legislation is enacted. CSOs must ensure that they understand the parliamentary process so as to participate constructively towards the drafting and enacting of the trafficking legislation.

¹⁷ *Section 75* of the Constitution of the Republic of South Africa.

6. Resources

- As incidents of trafficking have occurred in South Africa and as legislation is not in place to specifically target the offence of trafficking, several initiatives have been introduced to address this gap. These initiatives include the establishment of the Human Trafficking Desk within the Organised Crime Unit of the South African Police Service (SAPS).
- We have also seen the establishment of the National Prosecuting Authority (NPA) lead Inter-governmental Task Team against Trafficking in Persons.
- The creation of Thuthuzela Care Centres. The 'Thuthuzela Care Centres are one-stop facilities that have been introduced as a critical part of South Africa's anti-rape strategy, aiming to reduce secondary victimisation, improve conviction rates and reduce the cycle time for finalisation of cases.'¹⁸ The care centres are located around South Africa and for further information about the Thuthuzela Care Centres please contact the National Prosecuting Authority at Tel (012) 845 6000 or visit this website http://www.info.gov.za/events/2009/TCC_2009.pdf
- Helpline for victims of Trafficking: 0800 555 999 and South African Police Service number 08600 10 111.
- A number of Civil Society Organisations also provide support to victims of trafficking such as
 - ♦ **Activists Networking Against Exploitation of Children and Domestic Workers (ANEX CDW)**
Saartjie Baartman Centre,
9 Klipfontein Road, Manenberg.
Tel: 021 638 5521
Website: <http://www.anexcdw.org.za>

¹⁸ http://www.info.gov.za/events/2009/TCC_2009.pdf Accessed on 7 July 2011.

- ♦ **Sex Workers Education and Advocacy Taskforce (SWEAT)**

19 Anson Street, Observatory, Cape Town, 7925.

Telephone number: 021 448 7875

Website: <http://www.sweat.org.za>

Help Line (24 hours): 0800 60 60 60

- Trafficking in Persons Intersectoral Task Team – which the current draft of the Bill refers to. Currently, the Task Team comprises stakeholders from various government departments: the Sexual Offences and Community Affairs Unit (SOCA) of the National Prosecuting Authority, the South Africa Police Service’s Border Police and Organised Crime Unit, the Department of Home Affairs, the Department for Social Development, the Department of Labour and the following international organisations, the International Organisation for Migration (IOM), the United Nations Office on Drugs and Organised Crime (UNODC) and the NGO Molo Songolo. Provision was made for the ad hoc co-option of technical knowledge and expertise in various departments and organisations, such as the South African Law Reform Commission within the Department of Justice and Constitutional Development.¹⁹
- Tsireledzani Anti-Trafficking Programme which is aimed at ensuring that South Africa complies with its international obligations particularly the Un Protocol on Trafficking.

¹⁹ Tsireledzani: Understanding The Dimensions Of Human Trafficking In Southern Africa Research Report (March 2010) conducted by the Human Sciences Research Council (HSRC) on behalf of the ‘Programme of Assistance to the South African Government to Prevent, React to Human Trafficking and Provide Support to Victims of Crime’ at <http://www.hsrc.ac.za/Document-3562.phtml> [Accessed on 7 July 2011].

7. Conclusion

The Parliamentary process is an extensive and lengthy process and certainly this has been the case with the drafting of the current Bill and legislation. It remains unclear when the next draft of the Bill will be gazetted for public comment by the Department of Justice and Constitutional Development.

Until such time as comprehensive legislation is in place the Common Law and other statutory laws can and should be used to prosecute perpetrators. Victims should be empowered through the knowledge that the absence of comprehensive legislation does not pave the way for perpetrators to act with impunity.

They should therefore be encouraged to come forward and make their voices heard.

8. Bibliography

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