



SUBMISSION

to the

**PORTFOLIO COMMITTEE ON
JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

by the

**SA CATHOLIC BISHOPS' CONFERENCE
PARLIAMENTARY LIAISON OFFICE**

on

**THE PREVENTION AND COMBATING
OF TRAFFICKING IN PERSONS BILL**

1. Introduction

Trafficking in persons has always been of considerable concern to the Catholic Church and consequently the Southern African Catholic Bishops' Conference (SACBC) warmly welcomes this second opportunity to comment on what is unquestionably an extremely important and very necessary piece of legislation.

The latest version of the Prevention and Combating of Trafficking in Persons Bill (B7-2010), which has been redrafted approximately one year after the initial draft, not only provides a robust legal framework within which persons accused of human trafficking can be prosecuted, but it also provides a holistic approach to the prevention of trafficking. We would also like to take this opportunity to commend the Department of Justice and Constitutional Development for the speed with which the second version of this Bill has been redrafted and brought before Parliament. It demonstrates to the public and civil society a necessary urgency and commitment on the part of government to deal with this deeply disturbing practice that has plagued our society.

While the latest version of the Prevention and Combating of Trafficking in Persons Bill (B7-2010) can be applauded on numerous grounds, there nevertheless remain for us a few areas of concern, which are highlighted below.

2. Aims

2.1 We welcome the strong alignment between the aims of the Bill and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000). However, the Bill does not make specific reference to the issue of 'demand' as it is outlined in Article 9, clause 4 & 5 of the Protocol, which reads as follows:

"4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking."

It is a well known fact that the supply of trafficked persons is highly dependent on the demand for trafficked persons. Thus, while we welcome clause 2(1)(d) in Chapter 2, which makes specific reference to this issue of demand, we feel that it is an important issue that also needs to be reflected within the broader aims of the Bill in addition to its incorporation within prevention strategies.

3. Preamble

3.1 The preamble of the Bill makes a necessary and appropriate reference to the Bill of Rights in the following manner:

"AND SINCE the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the right to human dignity, the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause, the right not to be subjected to slavery, servitude or forced labour, and the right of children to be protected from maltreatment, neglect, abuse or degradation;"

While reference is made to “*the right to human dignity*”, “*the right to freedom and security*”, “*the right not to be subjected to slavery, servitude or forced labour*” and “*the right of children to be protected from maltreatment, neglect, abuse or degradation*”, no reference is made to one of the fundamental rights enshrined in our Constitution, that is, the right to equality. Women and children are the most vulnerable to becoming victims of trafficking simply because of their gender and age. By specifically highlighting the right to equality, the proposed Bill would go some way to acknowledging and dealing with the inherent discrimination that women and children are faced with as the preferred victims of trafficking.

4. Chapter 1 – Definitions and Objects of Act

4.1 We welcome the definition of “*trafficking*” as it is currently conceptualized in the proposed Bill. Its broad conceptual base will ensure the prosecution of any person involved in the trafficking of another person.

4.2 We find the definition of “*Abuse of vulnerability*” slightly problematic. The ‘abuse of vulnerability’ can be more broadly understood as the abuse of a situation of vulnerability. By making specific reference to “*physical or psychological abuse*”, the Bill significantly narrows the conditions under which a victim’s vulnerable situation can be considered to have been abused. The words “*physical or psychological*” should be removed from the definition so as to ensure that trafficked victims who have not necessarily been physically or psychologically abused, but whose vulnerable situation has nonetheless been abused, are afforded the opportunity to seek justice.

5. Chapter 2 – Prevention and Combating of Trafficking in Persons

5.1 We welcome the establishment of an Intersectoral Committee which will be tasked with promoting public awareness on the issue of human trafficking. By placing emphasis on information and education, the government confirms its proactive commitment to preventing and combating trafficking in persons. We also welcome clause 3(2) of this chapter, which stipulates that information be made available in accessible languages and be disseminated in rural areas. It is absolutely vital that those most vulnerable to trafficking be targeted by such programmes.

5.2. Clause 3(1)(c) of this chapter tasks the Intersectoral Committee with the establishment and implementation of public awareness campaigns and other measures that will “*discourage the demand for and the supply of victims of trafficking that fosters the exploitation of those victims, especially women and children*”. Unlike clause 3(1)(a) and (b), however, the Bill remains extremely vague on how the Intersectoral Committee will go about achieving this. It is important to provide the Intersectoral Committee with as much guidance as possible so as to ensure that such public awareness campaigns are embarked upon quickly and efficiently.

6. Chapter 3 - Offences, Penalties and Extra-territorial Jurisdiction

6.1. The provisions and penalties set out in clauses 4, 5, 6, 7, 8 and 9 are welcomed, especially those pertaining to internet service providers. These penalties will, however, need to be strictly enforced in order for them to constitute a reasonable deterrent. Moreover, those prosecuted and convicted of a trafficking in persons offence, but whose role in the trafficking process was relatively insignificant, should be more eligible to receive a fine rather than imprisonment.

7. Chapter 4 – Identification and Protection of Victims of Trafficking

7.1. Due to their differing needs, the separate reporting and referral guidelines for child and adult victims of trafficking in clauses 12 and 13 are generally welcome. We also welcome the right of foreign victims of trafficking to access public health care services (clause 15) and the prohibition of criminal prosecution against victims of trafficking (clause 16).

7.2 Clause 12, however, does not take into consideration instances in which members of the local police service are involved in the trafficking process. There is evidence of this currently occurring in relation to young girls and women being trafficked from rural to urban areas as domestic workers. Therefore some provision needs to be made within the Bill in order to account for instances such as these.

7.3. Furthermore, clause 13(1)(b), which stipulates that a “*social worker, social service professional, medical practitioner, nurse, traditional health practitioner, traditional healer or traditional leader may only report a matter to a police official as provided for in paragraph (a) if the victim has given his or her written consent in the prescribed manner*” is somewhat problematic. Not only is it rather curious why immigration officers and labour inspectors have been exempted from obtaining such consent, but such a requirement would significantly reduce the reporting of trafficking incidents.

Victims of trafficking have, in most cases, suffered severe emotional and physical trauma and as such are usually frightened, despondent and untrusting of everyone around them. Obtaining written consent would require some level of trust between the trafficked victim and the person reporting the incidence of trafficking, which may not only take some time to establish, but because of the lived experience of the trafficked victim, be difficult to obtain. While we understand the need to respect an individual’s agency, serious consideration needs to be given to the grave nature of trafficking before such a restriction is enforced.

7.4. Clause 13(7) stipulates that “*If, after an assessment referred to in subsection (5)(b), it is found that the person concerned is a victim of trafficking (a) a certificate, as prescribed, must be issued to him or her, certifying him or her to be a victim of trafficking*”. We understand the need for some form of certification, especially for victims of trafficking who need to access services, but we feel that ‘branding’ a trafficked person in such a manner would further dehumanize him or her. More sensitive consideration therefore needs to be given to how best to afford trafficked victims the opportunity to access services without this form of ‘branding’.

8. Chapter 5 – Status of Foreign Victims of Trafficking

8.1. We welcome clauses 17, 18 and 19, which allow foreign victims of trafficking a recovery and reflection period not exceeding 90 days, and entitles them to apply for temporary or permanent residence in South Africa respectively.

8.2. Clause 17(2) stipulates that:

“If a foreigner referred to in subsection (1), after a period of 30 days since he or she has been granted a recovery and reflection period, is unwilling to co-operate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker, an investigation into his or her circumstances must be conducted by the Director-General: Social Development in order to determine whether it is safe to return him or her to his or her country of origin or the country from where he or she has been trafficked.”

It is somewhat concerning that trafficked victims who choose not to cooperate with law enforcement and prosecuting authorities in the investigation of and the prosecution of a trafficker are subject to repatriation. It is not uncommon for trafficked victims, who have suffered severe trauma, to not cooperate with law enforcement and prosecuting authorities precisely because of their traumatic experience. Moreover, repatriation is not always an option, especially when victims of trafficking are from countries in crisis as a result of civil wars, genocide, natural disasters or famine. Should victims of trafficking not want to cooperate with law enforcement and prosecuting authorities, provision must be made for them to be assisted to apply for asylum or refugee status under the applicable legislation, once their recovery and reflection period has ended.

9. Chapter 6 – Services to Adult Victims of Trafficking

9.1. The minimum norms and standards and the intersectoral approach outlined in this chapter are encouraging. It is our hope that the facilities and services will be established with great urgency once the Bill has been enacted. We particularly welcome the provision, in clause 20(2)(b), for financial assistance to be made available to accredited organisations.

10. Conclusion

While a large portion of the guidelines outlined in the Bill are yet to be gazetted, it is undeniable that the government seeks to find a holistic approach to address the issue of trafficking in persons. The Catholic Church commends the South African Law Reform Commission and the Department of Justice and Constitutional Development for its work in drafting this important Bill. Trafficking in persons is a serious violation of human dignity, and we take this opportunity to pledge our ongoing support for government's efforts to tackle this growing scourge.

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