

COMMISSION ON GENDER EQUALITY

**SUBMISSION ON THE
PREVENTION AND COMBATNG OF
TRAFFICKING IN PERSONS BILL [
B 7 - 2010]**

CONSTITUTIONAL MANDATE

SECTION 187

**THE COMMISSION ON GENDER EQUALITY
MUST PROMOTE RESPECT FOR GENDER
EQUALITY AND THE PROTECTION,
DEVELOPMENT AND ATTAINMENT OF
GENDER EQUALITY.**

LEGAL MANDATE – CGE ACT

- **THE CGE SHALL EVALUATE ANY LAW PROPOSED BY PARLIAMENT LIKELY TO AFFECT GENDER EQUALITY OR THE STATUS OF WOMEN AND MAKE RECOMMENDATIONS TO PARLIAMENT.**

COMMENT 1

DEFINITIONS

- **1. CURRENT TEST FOR ANY PLEDGE TO BE RECOGNISED AS A DEBT BONDAGE IS LIMITED TO ECONOMIC FACTORS.**
- **2. THE ABOVE OFFERS LIMITED PROTECTION**
- **3. THE CGE RECOMMENDS AND EXTENSION TO THE DEFINITION TO INCLUDE *CONTRA BONIS MORES***

COMMENT 2: EXPLOITATION

- **DEPRIVATION OF ACCESS TO SUPPORT SERVICES AND BASIC RIGHTS TO BE INCLUDED IN THE DEFINITION OF EXPLOITATION.**
- **MEMBERSHIP OF A UNION, UIF, ACCESS TO HEALTH CARE AND SOCIAL SERVICES ARE BASIC RIGHTS.**
- **A FAILURE TO INCLUDE DEPRIVATION OF ACCESS TO BASIC SERVICES AND STATUTORY SUPPORT STRUCTURES WILL COMPROMISE DETECTION AND DETERRENCE OF TRAFFICKING.**

FURTHER COMMENTS

- **INCREASED PENALTY FOR CONVICTION OF THE OFFENCE OF DEBT BONDAGE FROM 10 YEARS TO 15 YEARS IS SUPPORTED.**
- **THE REVISION TO SECTION 6 RELATING TO THE DESTRUCTION, CONFISCATION, CONCEALMENT AND TAMPERING OF TRAVEL DOCUMENTS THAT BELONG TO A VICTIM OF TRAFFICKING INCLUSIVE OF THE INCREASED PENALTY FROM 5 TO 10 YEARS IS SUPPORTED. THE CONCERNS RAISED BY THE CGE IN ITS PREVIOUS SUBMISSION HAS BEEN ADDRESSED.**
- **IN ITS PREVIOUS SUBMISSION THE CGE RAISED A CONCERN WITH THE LENIENT PENALTY OF 5 YEARS FOR A CONVICTION OF THE USE OF THE SERVICES OF A TRAFFICKED PERSON. ACCORDINGLY, AN INCREASED PENALTY OF 10 YEARS IS SUPPORTED AS THIS WILL BE A SATISFACTORY DETTERENT ON THE DEMAND SIDE TO TRAFFICKING.**
- **THE REVISION TO SECTION 8 IS SUPPORTED AND THE CGE IS PLEASED TO NOTE THAT THE LICENCE OF AN INTERNET SERVICE PROVIDER MAY BE REVOKED ON CONTRAVENTION OF THIS SECTION.**

FURTHER COMMENTS

- ***IN SECTION 10 (6) THE NDPP WILL BE REQUIRED TO PROVIDE WRITTEN AUTHORISATION FOR PROSECUTIONS IN TERMS OF THIS ACT. SUCH AN APPROACH IS SUPPORTED BECAUSE IT WILL ENSURE THAT WATERTIGHT CASES ARE PREPARED FOR COURT. THIS IS LIKELY TO IMPROVE THE PROSPECT OF CONVICTIONS.***
- ***THE INCLUSION OF SECTION 11 WHICH REQUIRES A COURT TO CONSIDER CERTAIN FACTORS IS SUPPORTED. HOWEVER, THE CGE RECOMMENDS THE FOLLOWING ADDITIONAL FACTORS TO BE CONSIDERED :***
 - 1. RELATIONSHIP BETWEEN VICTIM AND PERPETRATOR***
 - 2. WHETHER A COMPENSATION ORDER WILL BE MADE***
 - 3. THE ARISING OF ANY LIFE THREATENING INFECTIONS AS A RESULT OF THE TRAFFICKING.***
- ***THE REPORTING AND REFERRAL OF CHILD VICTIMS IN TERMS OF SECTION 12 IS SUPPORTED IN THE CURRENT FORM.***

FURTHER COMMENTS

- **THE REFERRAL OF ADULT VICTIMS IN TERMS OF SECTION 13 IS SUPPORTED SAVE FOR SUBSECTION 7. THIS SECTION MAY RESULT IN SECONDARY VICTIMISATION WHERE AN OFFICIAL EXERCISES HIS /HER DISCRETION IN A MANNER WHICH IS UNREASONABLE, UNLAWFUL OR PROCEDURALLY UNFAIR. NO REVIEW OR APPEAL LIES IN SUCH INSTANCES AND THE VICTIM MUST PROCEED TO THE HIGH COURT FOR RELIEF. THEREFORE, THE CGE RECOMMENDS AN INCLUSION OF A REVIEW MECHANISM TO BE PROVIDED WHERE A VICTIM IS AGGRIEVED WITH AN UNLAWFUL DECISION MADE IN TERMS OF SUBSECTION 7.**
- **THE REVIEW MECHANISM COULD BE INTERNAL OR ASSIGNED EXTERNALLY TO THE SAHRC / CGE**

PERMANENT RESIDENCE – SECTION 19

- **THE CGE DOES NOT SUPPORT THE FACT THAT THE 5 YEAR PERIOD FOR PERMANENT RESIDENCE WILL COMMENCE ON THE DATE THAT THE TEMPORARY RESIDENCE PERMIT WAS ISSUED.**
- **THE CGE CONSIDERS IT IS REASONABLE TO CALCULATE THE 5 YEAR TERM FROM THE STAGE WHEN THE VICTIM FIRST ENTERED THE REPUBLIC AS A TRAFFICKED PERSON.**
- **THE EXISTING PROVISION WILL PREJUDICE VICTIMS WHO HAD BEEN IN DEBT BONDAGE FOR PROTRACTED PERIODS.**

MINIMUM STANDARDS

SECTION 21 (3)

- **SECTION 21(3) DOES NOT MEET THE CONSTITUTIONAL STANDARDS CONTEMPLATED IN SECTION 28.**
- **IN THIS REGARD THE CGE RECOMMENDS THAT CHILDREN IN THE CARE OF ADULT VICTIMS MUST ALSO BE ASSESSED IN RESPECT OF THEIR NEED FOR CARE PROTECTION AND *DEVELOPMENTAL NEEDS*. FINDINGS HEREIN SHOULD BE REPORTABLE TO THE DSD WITHIN 24 HOURS FOR FURTHER INTERVENTIONS IN TERMS OF THE CHILD CARE ACT OR OTHER LAW.**

COMPENSATION – S 27

- **THE CGE IS IN SUPPORT OF THIS SECTION SAVE FOR THE FACT THAT MONETARY JURISDICTION IS IN KEEPING WITH THE RELEVANT COURT. THIS MEANS DIST. COURT = MAXIMUM R 100 000, REGIONAL = R 300 000 AND HIGH COURT = UNLIMITED.**
- **THE PROBLEM IS THAT A DISTRICT COURT MAY HEAR A MATTER AND AT THE END WHEN COMPENSATION IS BEING AWARDED THERE IS A FINDING THAT THE VICTIM IS ENTITLED TO R500 000 DUE TO HIV INFECTION ARISING OUT BEING TRAFFICKED.**
- **IN SUCH AN INSTANCE THE COURT IS STILL LIMITED TO R100 000. THIS WILL PREJUDICE THE VICTIM.**
- **THE CGE RECOMMENDS THAT IN CASES INVOLVING TRAFFICKING OF PERSONS MONETARY JURISDICTION BE WAIVED ALTERNATIVELY DISTRICT COURTS SHOULD NOT BE ALLOWED TO PRESIDE OVER SUCH MATTERS.**

ESTABLISHMENT OF AN INTERSECTORAL COMMITTEE (IC)

- **THE CGE SUPPORTS THIS PROVISION AND TAKES NOTE THAT THE REVISED SECTION ALLOWS FOR THE SAHRC AND CGE TO BE INVITED AT THE DISCRETION OF THE IC. THE CGE IS STILL NOT SATISFIED WITH THIS CHANGE. IT MUST BE BORNE IN MIND THAT THIS FALLS SHORT OF THE RECOMMENDATIONS MADE BY THE CGE AND FULL MEMBERSHIP OF THE CGE AND SAHRC IS STILL PROPOSED.**
- **THE CGE NOTES THAT THE MINISTRY FOR WOMEN, CHILDREN AND PEOPLE FOR DISABILITIES HAS BEEN IGNORED AND RECOMMENDS ITS INCLUSION WITHIN THE IC.**

CONCLUSION

- **THE CGE WELCOMES THIS BILL AND IS ENCOURAGED BY THE PROGRESSIVE NATURE OF THE PROVISIONS HEREIN.**
- **THE BILL TAKES COGNISANCE OF THE TRANSNATIONAL NATURE OF TRAFFICKING AND THIS IS COMMENDABLE.**
- **THE CGE LOOKS FORWARD TO THE GAPS THAT EXIST BEING ADDRESSED BECAUSE THESE MAY SERVE TO COMPROMISE THE EXCELLENT WORK DONE THUS FAR BY THIS COMMITTEE AND THE LEGISLATIVE UNIT OF THE DOJC.**
- **THANK YOU.**

**COMMISSIONER DR ABRAHAMS
ADV K ANIRUDHRA**

**COMMISSION ON GENDER
EQUALITY VISION**

**A SOCIETY FREE FROM
GENDER OPPRESSION AND ALL
FORMS OF INEQUALITY**

COMMISSION ON GENDER EQUALITY MISSION

- **THE CGE SHALL ADVANCE
PROMOTE AND PROTECT GENDER
EQUALITY IN SOUTH AFRICA
THROUGH UNDERTAKING
RESEARCH,PUBLIC
EDUCATION,POLICY
DEVELOPMENT,LEGISLATIVE
INITIATIVE, EFFECTIVE
MONITORING AND LITIGATION.**

SOME SERVICES

- 1. MONITORING OF GOVERNMENTAL COMPLIANCE WITH INTERNATIONAL INSTRUMENTS SUCH AS CEDAW, AFRICAN CHARTER, SADC GENDER DEVELOPMENT PROTOCOL**
- 2. LITIGATION IN THE EQUALITY COURT**
- 3. INVESTIGATIONS INTO POLICIES AND PRACTICES AIMED AT PROMOTING GENDER EQUALITY.**

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REPORTS AND
PUBLICATIONS**

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HARD COPIES AVAILABLE ON
REQUEST FROM OUR NATIONAL
AND PROVINCIAL OFFICES.**

Au pair job turned out to be a lure into prostitution for Durban woman

Nompumelelo Magwaza

DURBAN: A Durban woman left her home for a job as an au pair in the US, only for her "host family" to try to turn her into a prostitute.

The woman, from a Durban township, is due to return home from the major US city where she was based this week, after the intervention of local and US police and Interpol.

The police have asked newspapers to withhold certain details as their investigation into the matter continues, including the woman's name and that of the agency which facilitated the trip.

The woman was lured by the promise of a job as a nanny and the

opportunity to study at the same time. Her host family had promised her about R10 000 a month and a place of her own. Instead, she was refused food, given pills and told to drive prostitutes between states. She was also told she would join the prostitutes in their work.

The woman would return to South Africa this week with two other women in a similar position.

While the rest of the country celebrated Women's Day yesterday, her family was anxiously hoping for her safe return.

Her sister said the woman was recruited by a Durban woman and told that she would perform au pair duties and study at the same time.

Although the family had had concerns, they decided to rally behind her.

The woman's sister said her father was happy that his daughter would work in the US and took out a loan of R10 000 to assist her with preparations.

"We threw a party for her and bade her farewell. She promised our father that she would pay back the loan and help him renovate the house once she was paid."

The family saw the woman off at King Shaka International Airport last month.

A few days later, her sister called, saying that she missed home and

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'She was crying and forced to take pills'

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had been denied food.

She said girls went in and out of the house, but she stayed alone in a room outside. Her host family had given her pills to take and eavesdropped on her phone conversations.

"The last time she called me, she was crying and told me that she had headaches and nausea after she was forced to take pills. She then called her boyfriend and told him that she has been instructed to drive prostitutes around at night."

The woman's boyfriend, a policeman, immediately set the wheels in motion to mount a rescue operation.

Lieutenant Colonel Thuli Mvuyana said the Durban Central social unit contacted Interpol and human trafficking organisations.

"American police went to the house and rescued the woman, who is now placed in a safe house, waiting to return to South Africa."

Mvuyana said the woman had been about to be taken to another "home" in another state. She said traffickers recruited women they considered to be young and desperate.

"We want to warn people to speak to the police about these recruiters or agencies who promise young women jobs. People should approach the police so that we can try to help with screening the agency."

Speaking at a Women's Day function at Kwamisane sports ground, the Speaker of the KwaZulu-Natal legislature, Peggy Nkonyeni, said human trafficking reduced women to slaves.

"People are lured ... abroad, and when they get there...