



SOUTH AFRICAN HUMAN RIGHTS COMMISSION WRITTEN COMMENTS

On the
SOUTH AFRICAN LAW REFORM COMMISSIONS'

TRAFFICKING IN PERSONS DISCUSSION PAPER 111, PROJECT 131

Closing date for comments 31 July 2006

Introduction

In March 2004, the South African Human Rights Commission (SAHRC) submitted written comments to the South African Law Reform Commission (SALRC) on Issue Paper 25 on Trafficking in Persons. Since such time there have been a number of developments that impact on trafficking in persons, such as the inclusion of provisions regarding in the now passed Children's Act 2005 and provisions contained in the Sexual Offences Bill which is currently before the Justice and Constitutional Development Portfolio Committee in parliament. Whilst ad hoc development are underway in various areas of law in order to ensure that there is an adequate legal framework to address the phenomenon of trafficking it is concerning that South Africa appears still to be some way away from finalizing and implementing comprehensive trafficking legislation.

The Discussion Paper analyses and discusses the comments that were received in response to the Issue Paper. In the Discussion Paper a proposed draft Bill is set out in Annexure A. These written comments will focus on the proposed draft Bill as a vehicle through which to comment on the Discussion Paper.

In creating trafficking legislation that ratifies the Trafficking Protocol, South Africa joins other members of the international community in recognizing the pernicious effects of trafficking and creating the means to stop the problem. These solutions must encompass not only issues of stronger legal enforcement against traffickers and fair immigrant procedures for foreign victims of trafficking, but also honor the human rights that all victims of trafficking possess. In particular, trafficking efforts in South Africa must not forget the significant problem of domestic trafficking that is not reflected in the cross-border concerns of other countries such as the United States or in international documents such as the UN Protocol. Creating centers for trafficking in South Africa can be an important component in fighting trafficking, but these centers must be created with clear

guidelines for receiving treatment, funding, reporting, distribution of resources, and the prevention of trafficking.

Chapter 1 Definitions, Objects and Implementation of Act

Definition of trafficking

General comments

It is crucial that in order to prevent and protect people from becoming victims of trafficking that there is an adequate and clear definition contained in the legislation. It is recognized that the SALRC has taken cognizance of some of the comments on the current inadequacies contained in the international definitions, such as the Trafficking Protocol¹.

With regard to the definition contained in the proposed Combating of Trafficking in Persons Bill (proposed Bill) attached to the Discussion Paper the following comments are now made:

The definition is awkwardly situated in the Bill.

It does not make for easy accessibility nor good drafting practice to place the definition of the subject matter of a bill in the definitions section of the Bill. Trafficking is the main subject matter of the Bill and the definition ought to be placed appropriately in the main body of the Bill.

It does not make for good drafting to have definitions that cross reference each other within the definitions sections. This is confusing and makes the Bill difficult to access and understand. For example, the terms “abuse of vulnerability” slavery, sexual exploitation, servitude, forced labour, removal of body parts are defined within the definitions section.

The Bill is even furthermore difficult to negotiate in that there is cross - cross referencing within the definitions section. For example, the trafficking definitions refers to exploitation, which is then further defined within the definitions section with reference to further definitions such as sexual exploitation etc.

It is recommended that the definition of trafficking be placed in the main body of the Bill. This could be done within the first chapter.

Specific Comments

The SALRC proposes (paragraph 3.66, p50) that where in addition to the crime of trafficking other crimes have also been committed e.g. rape that the perpetrator is charged with these crimes as well. The paragraph goes further to state that where victims are subjected to abuse or exploitation then this should be regarded as an aggravating circumstance. This does not make logical sense. The purpose of defining trafficking and drafting specific trafficking legislation is to

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, also known as the Palermo Protocol, December 2000

fill a lacuna in our law. The exploitation and abuse referred to this in this paragraph is a component of the criminal offence and must be proved by the State in order to succeed in its prosecution of an offender. Therefore, the abuse or exploitation cannot be considered an aggravating circumstance. It is rather, the very essence of the crime, which the Bill seeks to create.

The proposed Bill correctly does not set out what would be considered aggravating circumstances by a criminal court. It also does not set out what serious forms of trafficking would be. The South African criminal law makes adequate provision for the prosecution to argue aggravating circumstances before a court. The comments that were made by the SAHRC in its March 2004 Comments are therefore still appropriate.

It is very difficult to identify severe forms of trafficking, as each case must be dealt with individually. The severity of the form of trafficking should be dealt with through appropriate sentencing. It is suggested that legislation should include a section that provides for "factors to be considered by the court when determining an appropriate sentence". These factors could include:

- The number of victims
- The ages of the victims
- The length of time for which victims were held
- The conditions under which victims were held
- The nature of any physical or mental abuse that victims may have suffered and its impact
- Whether the perpetrator is a members of an organized criminal group
- Whether there was any profiteering out of the trafficking
- The nature of the exploitation that the victims were subjected to
- Whether the victims are members of a vulnerable group e.g. women and children
- Any other relevant factors

Clause 1 - Definitions

"abuse of vulnerability"

The term "abuse of vulnerability" is defined in the definitions sections of the proposed Bill. However, within the definition of trafficking the term abusing vulnerability is used. It is suggested that in order that there is consistency in the Bill that either the term abusing vulnerability be defined or that the definition state that 'abuse of vulnerability' and 'abusing vulnerability' have corresponding meanings and interpretations.

"accredited organization"

The term "accredited organization" is defined in the proposed Bill. This definition and the implications of the creation of "accredited organization" within the Bill need to be carefully reconciled with the Non Profit Organizations Act. It needs to be carefully assessed whether the provisions of the proposed Bill will duplicate any of the duties and responsibilities imposed on NPO's in terms of the legislation.

"Debt bondage"

The definition of exploitation refers to debt bondage. The Trafficking Protocol does not refer specifically to debt bondage and this therefore is an addition that has been added. Debt bondage is a different crime from trafficking and therefore it is correct that it is listed as a separate crime.

“Minister”

The definition of the “Minister” should state clearly that it refers to the Minister of Justice and Constitutional Development. Ministers with other portfolios should be referred to as such within the main body of the Bill.

Clause 2 Objects of Act

It is welcomed that the definition of trafficking refers to trafficking within the borders of South Africa. However, this is not followed through and integrated sufficiently in the proposed Bill. This creates the impression that the Bill is specifically designed to only address the phenomenon of international trafficking and that persons trafficked within the borders of South Africa are not catered for in the proposed Bill. This is not consistent with the definition of trafficking that is contained in the Bill. For example, clause 2 does not specifically state that persons who are trafficked within the borders of South Africa fall within the Objects of the proposed Bill. (In this regard, the Long Title of the Bill could be subject to similar criticism. The Preamble on the other hand is more acceptable in that it refers to the international law obligations at the end of the Preamble.) It is suggested that clause 2(a) be placed after (b) and (c). Sub-clause (c) could state specifically that the object of the Act is to combat trafficking in persons both within and across the borders of South Africa

The objects clause should not refer only to the protection aspect of dealing with trafficking. The clause should refer to the prevention of trafficking, protection of victims and prosecution of offenders.

Clause 4 Implementation of Act

The clause should also refer to the responsibilities of provincial and local government in the implementation of the Act.

There should be a further sub clause which states that all organ of State must co-operate in the development of a uniform approach aimed at coordinating and integrating the services delivered to victims of trafficking.

The Older Persons Act 2006 and the Children’s Act 2005 provides further examples of the types of additional clauses that can be included in this clause in order that it is more comprehensive in ensuring that the provisions of the Bill are implemented in a coordinated manner with the necessary cooperation from the various organs of State.

Rights of victims of trafficking

This chapter of the Bill should set out the rights of victims of trafficking. The proposed draft Bill seeks to honor the international obligations of the State towards foreign victims of trafficking and it seeks to provide for domestic victims of trafficking. In creating duties upon the State, rights are created for victims. These should be spelt out clearly in the bill. These rights could be contained amongst others:

To be treated with dignity

To be communicated with in a language which the victims understands

To have counseling services provided etc. ...

Chapter 2 Guiding Principles

Clause 4 – Guiding Principles when dealing with the question whether person is victim of trafficking

It is unclear why it is necessary to place the Guiding Principles to assist in determining whether a person is a victim of trafficking in the main body of the draft Bill. The Guiding Principles appear to be more in the nature of Directives to government officials to assist them in their duties of detecting victims of trafficking. By placing these 'directives' within the main body of the draft Bill it essentially provides a definition of who a "victim of trafficking" is. The lengthy Guiding Principles are in many places broad and vague. Considering that the existence of a victim of trafficking is an element of the crime of trafficking, the Guiding Principles provide ample opportunity for defense attorneys representing an accused in a criminal trial to attack the legal validity of whether the person alleged to be a 'victim of trafficking' by the State is in fact a 'victim of trafficking'.

It is unclear throughout the proposed draft bill which state officials will be responsible in determining who a victim of trafficking is. It is further unclear whether such a determination would be subject to an administrative procedure and whether the provisions of the Promotion of Just Administration Act 2000(PAJA) would be applicable.

Chapter 3 – Offences

It may be considered to merge chapter 3 (Offences) with chapter 10 (Enforcement of Act). The current provisions contained in Chapter 10 only relate to penalties. Except for clause 37(8) all of the listed penalties in Chapter 10 refer to the offences created in terms of chapter 3. The Offences and Penalties created ought to be placed as a section within the Miscellaneous provisions chapter of the proposed Bill.

Alternatively, the offences created in chapter 3 could be moved to a separate chapter at the beginning of the Bill which sets out the definition of trafficking as suggested above). The penalties could then be placed in the Miscellaneous provisions chapter of the proposed Bill.

Clause 6 – Debt Bondage

It is supported that Debt Bondage remain a separate offence from trafficking. The elements of the crime are different. Whilst debt bondage has an element of exploitation it does not always share other elements of the crimes of trafficking such as the transport of the person.

Chapter 4 Identification and Protection of Victim of Trafficking

Clause 10 Declaring country as country of origin or destination

It needs to be carefully considered between government departments which one would be best placed to make declarations about countries. It is not entirely convincing that the Department of Justice is the department with information readily accessible to it internally, on which it could make these determinations. It would seem that the Department of Home Affairs or possibly the Department of Foreign Affairs might be better placed to deal with this issue.

Clause 12 Reporting and referral of victim of trafficking

This clause (clause 12(1)) provides for mandatory reporting in respect of specific professionals and officials (immigration official, labour inspector, social worker, social service professional, medical practitioner or registered nurse) where it is believed that a person is a victim of trafficking. Clause 12(2) however provides a discretion to report to those persons not specifically referred to in clause 12(1). Given the often-extreme vulnerability of victims of trafficking, everyone should be subject to mandatory reporting requirements.

It is also suggested that it may be appropriate to provide some mechanism whereby a social worker can also conduct the initial investigation.

A further suggestion is that all mandatory reporting should be channelled through the centres for victims of trafficking that are created in terms of chapter 6 of the proposed draft Bill. Though trafficking is a crime, and the police should be notified, the complex nature of trafficking cautions against using the police as the sole trackers of trafficking. Since the centre's role is to assess and treat victims of trafficking, it will be a useful check for the police in improving their responses to victims. In addition, requiring the delivery of reports to the centres creates a centralized reporting service that is currently lacking in the draft bill.

Clause 13 – Child who is victim of trafficking found in Republic

Clause 13 addresses the status of a foreign child victim of trafficking and also the accommodation of a foreign child victim of trafficking. The child's status should be dealt with in Chapter 5 (Status of Victim of Trafficking) whilst the manner in which the child will be accommodated should be dealt with in chapter 6 (Centers for Adult Victims of Trafficking). Chapter 6 should in turn deal with the accommodation and services provided to all victims of trafficking.

Clause 14 – Provision of health care service

This clause demonstrates again how the intention to provide for victims of trafficking within the borders of South Africa has not been followed through in the entire wording of the proposed Bill. The clause is worded in a manner that implies all victims of trafficking are non-nationals. This is further support for why such clauses should be contained in a separate chapter or part of the Bill that deals specifically with foreign nationals who are victims of trafficking.

Given that our constitution and in particular clause 27(1) provides that everyone has the right to have access to health care services it is unclear why there is a need to state this in the proposed Bill. However, there is no reason why this cannot be restated if it is felt that there is still ongoing discrimination against non-nationals when they access health care services.

In camera court proceedings

Victims of trafficking are vulnerable persons and provisions should be contained in the proposed Draft Bill that allow for court proceedings to be held *in camera*.

Chapter 5 Status of Victim of Trafficking

Clause 15 Suspension of deportation

Victims of trafficking should be repatriated to their countries. They should not be deported. Deportation has a punitive effect legally and is not fair considering that an element of the crime of trafficking is that the person did not consent and was coerced into coming to the country.

Chapter 6 Centers for Adult Victims of Trafficking

Solutions to the complex problem of trafficking must address criminal sanctions against traffickers, humanitarian aid to the victims of trafficking, and programs that prevent future trafficking. As one part of solving this problem, the proposed draft bill proposes the creation of centres for adult traffickers. While the care of victims of trafficking is of paramount concern, the centres in their current form carry risks that should be highlighted before the final version of the bill is drafted. Reformulating the components of the proposed draft bill that create the centres can help improve South Africa's response to the problem of trafficking. Before the provisions of the proposed draft Bill are considered it may be helpful to consider how other countries deal with providing services to victims of trafficking.

International examples of how to deal with victims of trafficking

Since trafficking is a complex international problem, solutions vary widely depending on the country. The Center for Sexual Rights/Women's Room and the Center for Women Victims of War in Croatia provides long-term counseling for female victims of trafficking.² The Gambian government and the Government of the Netherlands created a police unit devoted to identifying and monitoring

² See "Croatia: A Human Trafficking Victim Speaks with RFE/RL." *Radio Free Europe/Radio Liberty*. 15 June 2006 at

Dutch paedophiles in Gambia.³ Southern Europe has created a regional law enforcement organization, the Southeast European Cooperative Initiative (“SECI”) that shares information and training to combat cross-border trafficking and improve responses to domestic trafficking.⁴ In the United States, the Department of Health and Human Services certifies people as victims of trafficking and provides a bundle of services including temporary housing, legal assistance and counselling through state and NGO organizations.⁵ These benefits are available to victims of trafficking who are undocumented immigrants and it is not initially conditioned upon formal legal proceedings against the alleged traffickers.

Clause 18 – Centre for adult victims of trafficking

The language of clause 18 implies that the principal factor for the centres is to provide temporary shelter and that the programs that the centres offer are of secondary concern (clause 18).

“A centre for adult victims of trafficking is a facility for the provision of temporary accommodation in accordance with a programme contemplated in section 21 suited for the needs of victims of trafficking admitted to the facility”

The prioritization of temporary accommodation over programming disadvantages domestic victims of trafficking in comparison to international victims of trafficking and underestimates the long-term consequences of victimization. Victims of trafficking need support to counteract the effects of trafficking that last beyond any temporary residential period at a centre. Furthermore, though domestic victims of trafficking may not require shelter, they may still suffer the consequences of trafficking and need assistance. Likewise, it is unclear whether unaccompanied children – who are not designated centre residents – could receive services from the centres (See clause 21(3) – (4)). In addition, though preventing future trafficking through aggressive visibility and educational efforts is an important component in reducing trafficking, it is unclear what role, if any, the centres will play in the prevention program.

Conditions of receiving treatment

Victims of trafficking should receive care in the least restrictive setting possible. Living in a centre should not be a condition of treatment or residential status. Given the long-term needs of victims of trafficking, especially in counteracting the emotional consequences of trafficking, centre services should not be limited to temporary residents of the centres, but should be available to anyone who self-identifies as a victim of trafficking. Therefore, domestic victims of trafficking and all children who are victims of trafficking themselves or accompanying an adult victim could utilize the services at their local centre without facing a residential requirement. For those victims who prefer to reside under the care of another

³ See www.protectionproject.org/netherlands.doc.

⁴ See www.secicenter.org

⁵ Trafficking Victims Protection Act of 2000. 22 USC 7104. PL 106–386. 28 October 2000.

Victims Protection Reauthorization Act of 2003. 22 USC 7101. PL 108-193. 19 December 2003.

organization than the centre, they should be free to do so. Moreover, for those victims who wish to return to their homes, yet still wish to cooperate with legal proceedings, centres can act as contact points. This may include providing temporary housing for foreign victims during legal proceedings.

Concerns about immigration and criminal procedures should not stand in the way of victims receiving services to alleviate the consequences of trafficking. Immigration and criminal determinations should be separated from the human rights and care delivery components of the problem of trafficking.

Clause 19 - Establishment of centres for adult victims of trafficking

Clause 19(b) places a duty on the Minister for Social Development of ensuring “an appropriate spread of centres throughout the Republic.” It is unclear what factors will be considered in determining an appropriate spread. Since South Africa faces the prospect of combating trafficking in destination areas – mostly urban – and preventing trafficking and aiding victims of trafficking over the long-term in source areas – mostly rural – the Ministry should take care to ensure that the distribution of centres reflects the dual-sided nature of addressing trafficking in the Republic.

The distribution of centres should take into account both concentrated source and destination areas for victims of trafficking. Since different areas of the Republic will face different concerns, the mix of resources available at each centre should reflect local issues in combating trafficking. Moreover, centres should play a pivotal role in the prevention of trafficking. Potential victims should know about the local centre and the resources that are available. Centre employees should take care to cultivate local networks of information to help investigate potential trafficking cases. If potential victims recognize centres as support and service networks for trafficking that recognize their social and medical needs and are not run by the police, they will be more likely to utilize their services if they need them.

Clause 21 Programmes offered by centre for adult victims of trafficking

The proposed draft bill does not state clearly what the prerequisite circumstances and procedures are for receiving shelter at a centre. Adult victims of trafficking and any children that accompany them receive temporary accommodation (clause 21(1)(a) & (2)). However, it is unclear whether a victim of trafficking may simply present himself or herself to a centre and request shelter or if the recommendation of a social service, medical, labour, immigration professional, or police officer is necessary (clause 12 (1) – (4))

Moreover, it is not clear:

- under what conditions this request is granted;
- the duration of temporary accommodation; and
- whether the victim of trafficking can leave at any time of her or his choosing.

Lack of provisions for information management

Fulfilling the requirements of the proposed draft bill creates multiple reports on the victims' status. Social service, medical, labour and immigration professionals must report their suspicions on possible victims of trafficking to police officers (clause 12 (1) & (2)) 12.1-2. In turn, police officers are required to assess those reports and conduct an investigation on any non-trivial claims (clause 12 (4)). As centre residents, victims of trafficking will receive assistance from social service and medical professionals as they undergo counselling and possibly medical, educational, and vocational assistance (clause 21(1)(b) –(d)). Furthermore, social workers are required to create a report assessing the risks to the victim of trafficking and his or her short-term and long-term needs (clause 22). Since victims cases may result in asylum claims or legal action against the traffickers, information management by the centres is a crucial component on whether these efforts will be successful. Additionally, proper management of centre records allows victims of trafficking to receive long-term assistance and researchers to provide more accurate advocacy and assistance. At the same time, the privacy of the victim must remain of paramount concern.

Clauses 23 – 26 Accreditation of organisation to provide accommodation

The clauses relating to the creation of accredited organisations essentially provides a mechanism whereby the State can provide funds to an organisation to become a 'centre for adult victims of trafficking'. Chapter 6 essentially provides for state run and non-state actor run centres for victims of trafficking. As the creation of these centres is in order to comply with the Trafficking Protocol it would seem that there ought not to be a differentiation in terms of services received at these centres. Both types of centres should be subject to the same regulation, norms and standards and should offer the same programmes. The only difference would be that in those instances where the state chooses for whatever reasons to allow a non-state organisation to provide these services that funds will be made available.

There is no in built monitoring mechanism for these centres. Given the experiences over the years of places such as the Lindela Repatriation Centre at which many human rights abuses have been reported it would be appropriate to ensure an effective monitoring mechanism.

The proposed draft bill also needs to determine whether the organisations are intended to be for profit or non profit organisations(NPO's). If it is intended that the organisations are NPO's then this should be specifically stated in order that the legal requirements contained in that legislation become applicable to these organisations. This would cut down on reporting requirement provisions in the draft bill. However if for profit organisations are entitled to apply to become accredited then the reporting requirements needs to be adequately spelt out in the legislation.

Chapter 7 Compensation

Clause 31 Compensation to State

Chapter 7 seeks to create a system in which compensation can be claimed and paid to a victim of trafficking. Clause 31 of the chapter goes further to provide that the State may also claim compensation. In light of the latter clause, it is unclear what the relationship between clause 31 and clause 39 (Liability) is. It is suggested that the liability clause (clause 39) ought to be included in the compensation clause. However, clause 6(6) of the Trafficking Protocol only requires the State "... to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered." It does not provide that there is a duty on the State to ensure that there are measures in place for the State to recover its expenses incurred in assisting victims of trafficking. It therefore needs to be further considered whether it is appropriate to include in a chapter that is aimed at providing compensation mechanisms to victims to also include mechanisms for the State to recover its costs. This may well lead to a conflict of interest between state organs.

Chapter 8 Deportation and Repatriation of Victim of Trafficking

As this chapter addresses issues related specifically to international victims of trafficking, it should be placed in either a Chapter or a Part of the proposed Bill that contains specific provisions relating to foreign victims.

Provisions relating to the manner in which foreign national children who have been trafficked should be dealt with together in one place in the proposed Bill. The provisions should not be dispersed in an ad hoc manner throughout the Bill. For example, clause 33 (Repatriation of victim of trafficking) addresses foreign children and also addresses issues concerning adult victims. Clause 36 (Escorting of child victim of trafficking) addresses foreign national children.

Chapter 9 Prevention of Trafficking in Persons

Chapter 9 of the proposed Bill addresses the Prevention of Trafficking in Persons and the footnote indicates that the Chapter is in line with article 9 of the Trafficking Protocol. Thus, the chapter clearly seeks to give effect to the prevention obligations placed on South Africa within the Trafficking Protocol.

Prevention ought to be a precursor to protection. It is therefore suggested that this chapter should be placed towards the beginning of the Bill and not towards the end of the Bill.

Chapter 9, clause 37(3) effectively delegates responsibilities of the Minister to the Director-General of the Department of Justice. It would be more appropriate for this clause to be placed in a general delegations clause within the General Provisions chapter (Chapter 11). In fact, it is surprising that there is no standard

delegations clause contained in the Bill as a whole. It would be expected in a Bill of this nature where a great deal of delegation powers would need to be provided for in order for the effective implementation of the Bill that such clauses would appear.

Prevention hotline

The SALRC states in response to the SAHRC's March 2004 suggestion that a toll-free hotline be established to report trafficking that the IOM has set up such a hotline and there is regular contact between the IOM and relevant government departments (paragraph 3.89, p57). It ought to be pointed out that the international obligations to prevent trafficking are placed on the State and not on civil society organizations. Thus whilst such a hotline is to be welcomed, it does not take away the responsibility from the State to consider setting up such a toll-free hotline or providing financial assistance for the hotline to operate.

Chapter 10 – Enforcement of Act

See the comments in the discussion above on chapter 3.

Chapter 11 - General Provisions

General comment

This chapter appears to deal with matters related to foreign nationals who are victims of trafficking. The provisions are therefore not general in nature but are rather quite specific in that they are necessary in order that the international obligations contained in the Trafficking Protocol are given effect to. It is suggested that provisions of the Bill that relate only to persons who have been brought across the border of South Africa should be placed together in a specific chapter. This will ensure that all victims of trafficking are treated equally in terms of access to services and assistance that is necessary. In addition, it would give specific recognition to the international obligations in respect to foreign nationals who are victims of trafficking.

Clause 39 - Liability

The word conveyance ought to be defined in the definitions section of the Bill. It is not a word that is currently defined in terms of the Immigration Act 13 / 2002.

Section 35(7) of the Immigration Act 2002 refers to persons who are illegally brought into the country on ships. The Trafficking Protocol in article 11(2) – (3) refers to commercial carriers. The term carrier is not defined within the Protocol. However, an interpretation of the term commercial carrier would be broader than just ships. Section 49(11) of the Immigration Act 2002 states that:

“A court may make an order as to costs in favour of the Department to the extent necessary to defray the costs referred to in section 37(3) against:

- (a) any illegal foreigner referred to in section 37(3)
- (b) any person who contravened section 45

- (c) any person who conveyed into the Republic a foreigner without the required transit visa; or
- (d) any persons who committed an offence contemplated in subsection (5), (7), (8) or (10), which order shall have the effect of a civil judgment of that court.

It is suggested that the Liability clause of the Bill be carefully reconsidered in order to ensure that all forms of transporting a person into the country during an act of trafficking are covered. The Liability clause should make reference to the sections in the Immigration Act that provides that the Department of Home Affairs may recover certain costs from a convicted person. The Trafficking Bill should identify those additional costs that are not referred to in the Immigration Act and which arise out of the act of trafficking and refer to these specifically in the Trafficking Bill.

Section 50(3) of the Immigration Act provides that a contravention of Section 35(7) of the Immigration Act is an administrative offence and if found guilty a fine of R10 000 may be imposed. This amount may be too low to pay for the care, safe keeping and repatriation of a victim of trafficking.

Clause 40 Trafficking of child by parent, guardian or other person who has parental responsibilities and rights in respect of child

It is unclear why there is a need for clause 40(2). The proceedings to suspend parental rights and responsibilities are civil in nature and these proceedings cannot remove the prosecutorial prerogative of the State. Thus, clause 40(2) appears superfluous in nature and is not necessary.

Chapter 12 – Administration of Act

Clause 46 – Regulations

This chapter should be placed within a chapter dealing with miscellaneous provisions.

Chapter 13 Miscellaneous matters

Clause 47 – Laws repealed or amended & clause 48 Short Title and commencement

These clauses should be more suitably placed in a chapter dealing with Final provisions

Final Comments

Language

The proposed Bill needs to be redrafted in a manner in which the language used is gender neutral. Currently there is inconsistency in the Bill. For example: There is the use of he or she (e.g. clause 42(1) which refers to the President as he or she).