

## CHAPTER SEVEN

### PREVENTION OF TRAFFICKING IN PERSONS

#### SUBSTANTIVE MEASURES

##### Preventative measures

7.1 Although the rescuing and re-integration of victims of trafficking is important, a preventative approach is also needed. Trafficking in persons has its roots in the social and economic conditions in the countries of origin. These conditions often make persons vulnerable to becoming victims of trafficking.

7.2 From the discussions in the previous chapters, it is clear that persons, especially women and children, are being lured by traffickers mostly by means of false promises. Making persons aware of this should form a central part of any anti-trafficking strategy.

##### Comparative overview

7.3 Several countries have preventative measures in place against trafficking in persons. Just to name a few, in Moldova a country of origin for the trafficking of women, the Centre for the Prevention of Trafficking in Women, a local NGO, uses a variety of media and training tools to educate the public, particularly at risk groups. The Centre broadcasts radio programmes and has created several TV documentaries. It further publishes newspaper articles and trains youth volunteers across Moldova to conduct seminars with teenage youth, warning them about the dangers of trafficking.<sup>567</sup> Brazil conducts poster campaigns at Brazil's major airports.<sup>568</sup> In October 2004 the Brazilian Government launched an information campaign for women travelling abroad in order to alert potential victims of trafficking to the dangers of international trafficking. Each female Brazilian passport applicant between the ages of 18 and 35 receives a leaflet stating "First they take your

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<sup>567</sup> Mattar Mohamed, The Protection Project: Johns Hopkins University School of Advanced International Studies "The role of the Government in Combating Trafficking in Persons – A Global Human Rights Approach" Statement made to the Congress of the United States, House of Representatives, Committee on Government Reform and the Subcommittee on Human Rights and Wellness on 29 October 2003.

<sup>568</sup> US Department of State **Trafficking in Persons Report** June 2005, p.72.

passport, then your freedom". The leaflet includes a list of key human trafficking indicators and provides a national federal police contact number for filing complaints.<sup>569</sup> In the Czech Republic, the Ministry of Foreign Affairs provide information regarding trafficking in persons to applicants for Czech visas from identified source countries for victims of trafficking.<sup>570</sup> German embassies and consulates conduct outreach activities by distributing brochures available in 13 languages warning persons about the risk of becoming a victim of trafficking.<sup>571</sup> In Kenya, the Ministry of Labour inspects employment agencies that facilitate overseas employment for Kenyans and provides mandatory pre-departure counselling to citizens departing for work abroad.<sup>572</sup> The government of Malawi has conducted a number of public awareness-raising campaigns which included workshops for teachers and traditional authorities and meetings for rural families with young children in order to increase understanding of the root causes of trafficking in persons.<sup>573</sup>

### **Submissions received**

*What measures can be taken to reduce the trafficking of persons to South Africa?*

7.4 **Childline** suggested the following measures:

- (a) The development of -
  - (i) policies aimed at reducing poverty in a meaningful way, and which particularly target poor women and children;
  - (ii) policies and services which target specific vulnerable groups of children, e.g. children affected by HIV/AIDS where the absence of a care-giver has made them vulnerable to exploitation.
- (c) The provision of training on issues relating to trafficking in persons to -
  - (i) all role-players involved in cross-border movement of persons;
  - (ii) all government officials and NGOs involved in the management of refugees and undocumented children (many children who access

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<sup>569</sup> US Department of State **Trafficking in Persons Report** June 2005, p.36.

<sup>570</sup> US Department of State **Trafficking in Persons Report** June 2005, p.94.

<sup>571</sup> US Department of State **Trafficking in Persons Report** June 2005, p.112.

<sup>572</sup> US Department of State **Trafficking in Persons Report** June 2005, p.136.

<sup>573</sup> US Department of State **Trafficking in Persons Report** June 2005, p.150.

services for refugees on further probing appear to have been trafficked); and

- (iii) the judiciary.
- (d) Corruption amongst border and police officials should be reduced.
- (e) Greater co-operation between countries, relevant officials and NGO's, particularly in the Southern African Development Region should be established.
- (f) Greater monitoring of international adoptions should take place.

7.5 **Jhb Child Welfare Society** recommended that border control officials should be better trained to recognise and deal with trafficking cases. Furthermore, corruption amongst border officials should be dealt with severely.

7.6 **IOM** submitted as follows:

- (a) Provisions in trafficking legislation aimed at preventing trafficking in persons should recognise the demand for exploitative labour and services as a root cause of the phenomenon. Furthermore,
  - (i) trafficking legislation should criminalise the knowing purchase of the labour or services of victims of trafficking;
  - (ii) government, in partnership with relevant organisations, should develop information campaigns for the general public aimed at promoting awareness of the trafficking of persons to South Africa.
- (b) The state should co-ordinate data collection on trafficking in persons.
- (c) The capacity of law enforcement agencies should be strengthened to identify, arrest and prosecute those involved in trafficking as a preventive measure. Specifically, the Department of Justice and Constitutional Development, in partnership with relevant organisations and where appropriate, should
  - (i) Anticipate and remove obstacles to the successful prosecution of traffickers. Such obstacles may include: corruption, legal uncertainty, lack of resources, lack of understanding of the trafficking phenomenon and relevant legislation by police officials, ineffectiveness of the judiciary in applying the law, and failure to exchange information between law enforcement agencies.

- (ii) Create an inter-sectoral task team to combat trafficking. Specialised task teams may include police, immigration and customs officials, assets forfeiture experts, labour inspectors, prosecutors, and relevant international organisations, and should consist of a significant number of female members. In many countries, specialised counter-trafficking task teams have proved important in enhancing co-operation between immigration officials and the police.
- (iii) Provide training on trafficking in persons to all relevant officials involved in the activities of a task team mandated to investigate and prosecute traffickers, and to provide assistance to victims of trafficking.
- (iv) Encourage information exchange between law enforcement, immigration and other relevant officials as well as civil society groups.

7.7 **SWEAT** suggested that labour-related protective measures should be put in place in respect of those forms of illegal and/ or unregulated work into which most victims are being trafficked. According to the respondent, this would provide victims access to protective services and the relevant authorities would be able to intervene when necessary. The respondent further proposed that information regarding work opportunities for women must be distributed through the relevant government departments and non-governmental organisations. Such information should be distributed internationally as well as at border posts and transit areas. Furthermore, communication must take place with membership-based organisations such as sex worker led projects and domestic work organisations in order to enable them to inform their constituencies about the situation in South Africa with regard to work opportunities and the areas where exploitative labour practices are prevalent.

7.8 **SAPS** submitted that severe penalties, public awareness campaigns, both nationally and internationally, sufficient and trained SAPS personnel at ports of entry and monitoring of the movements of both residents of and visitors to the South Africa will reduce the trafficking of persons.

7.9 The **Serious and Violent Crimes Unit** suggested that visa control should be made stricter for countries whose citizens are known to be trafficked to South Africa.

The respondent added that the problems relating to border control between South Africa, Lesotho and Swaziland should be addressed.

7.10 The **Department of Social Development** recommended that the underlying causes of trafficking such as poverty and unemployment should be addressed.

7.11 The **S A Human Rights Commission** submitted that consideration should also be given to what measures could be taken to reduce trafficking within the borders of South Africa. The respondent emphasised the need for public education and awareness-raising on issues relating to trafficking in persons.

7.12 **Anonymous** suggested that awareness on matters relating to trafficking should be raised amongst the public, police officials, custom officials and border officials. Furthermore, a toll free number should be established for victims of trafficking.

7.13 **Lawyers for Human Rights, Pretoria** suggested the following measures:

- (a) stronger border control;
- (b) crack down on corruption;
- (c) harsher sentences; and
- (d) public awareness.

7.14 **Mr Masoa** proposed that more police officials be made available at ports of entry and that specialised training be provided to them. Furthermore, the South African Police Service should liaise with the police service of neighbouring countries.

7.15 The **Sexual Offences and Community Affairs Unit** suggested that effective prosecution of trafficking cases (initially by a team of specialist prosecutors) should be conducted. The respondent said that the proposed trafficking legislation should provide for the establishment and implementation of a special victim assistance programme to address the peculiar needs of victims of trafficking. Furthermore, a linkage between the proposed trafficking legislation and the Witness Protection Act<sup>574</sup> must be made to provide victim protection in high-risk cases. A determination of

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which victims would be admitted to the witness protection programme would then be made according to the set existing criteria.

*With reference to article 9 of the Trafficking Protocol, what policies, programmes or other measures should be established in order to educate potential victims of trafficking about the risks of becoming a victim, and to prevent trafficking in persons? What should be the content of such policies, programmes or other measures? Which Department(s) or institution(s) should be responsible for establishing such policies, programmes or other measures?*

7.16 **Childline** submitted that, due to the fact that most persons become victims of trafficking in an attempt to escape from poverty, educational strategies must be combined with poverty reduction programmes, access to educational opportunities and the development of a children's and human rights culture. The respondent added that the above should be seen as inter-sectoral responsibilities.

7.17 **Jhb Child Welfare Society** emphasised the need for a Basic Income Grant. The respondent further stated that thorough law enforcement serves as a preventative measure in that the arrest and successful prosecution of a few traffickers, combined with good media coverage, would serve as a deterrent for others.

7.18 The **Department of Foreign Affairs** stated that it, in collaboration with the South African Police Services and Intelligence Services, has a role to play in preventing the trafficking of persons, by monitoring trends, practices and developments relating to trafficking in persons, especially in countries identified as "hot spots" from where or to which persons are being trafficked.

7.19 **SWEAT** suggested that, in consultation with relevant non-governmental organisations, the relevant government bodies must:

- (a) develop curricula on and conduct training for relevant government bodies regarding the rights of victims, the prevalence of and the risks of being trafficked;
- (b) develop awareness-raising and education campaigns regarding trafficking in persons which should be conducted through the mass media and community education programmes;

- (c) distribute materials describing the potential risks of being trafficked, including information on the rights of victims in foreign countries and the names of support and advocacy organisations in countries of origin, transit and destination;
- (d) take measures to ensure that women have viable economic opportunities to support themselves and their families in their home countries;
- (e) ensure that anti-trafficking legislation is gender sensitive and provide protection for the human rights of women;
- (f) provide training for diplomats and foreign service employees on issues relating to trafficking in persons;
- (g) establish labour information centres to provide up-to-date information on all aspects relating to labour migration.

7.20 **SAPS** submitted that the SAPS's Crime Prevention Division, the Departments of Justice and Constitutional Development, Social Development, Home Affairs and Education could play an important role in educating the public about trafficking in persons. The respondent stated that education campaigns should also be conducted in foreign countries since more persons are being trafficked to South Africa than those trafficked from South Africa. Furthermore, embassies, diplomatic personnel and foreign liaison officers in source countries could play an invaluable role in educating persons from these countries about trafficking in persons.

7.21 The **Department of Social Development** submitted that child victims of trafficking should be targeted by the Family Policy and Moral Regeneration Programme of government.

7.22 **Anex Cdw** said that various preventative measures, including the radio, drama and education programmes in schools, could be used to reach rural communities. Parents in rural communities should be thought how to value their children and should be made aware of the dangers that face their children in urban areas such as forcing them to work as domestic servants. Furthermore, urban communities should be made aware of issues relating to trafficking in persons and should be mobilized to assist and to report such instances. Contact details of the police and organisations assisting victims of trafficking should be provided to such victims. Continuous radio inputs on issues relating to trafficking in persons and how to access help need to be advertised.

7.23 **Lawyers for Human Rights, Pretoria** suggested that public awareness on trafficking in persons should be conducted, particularly in poverty stricken areas, rural and disadvantaged communities. The respondent proposed that families at risk should receive counselling as a preventative measure. The respondent added that awareness-raising workshops or programmes could be conducted at schools, community centres, churches and through TV and radio programmes.

7.24 **Mr Masoa** suggested that use be made of radio and television programmes to educate potential victims of trafficking and that SAPS and the Department of Social Development be responsible for the establishment of such programmes.

*Given the fact that persons are also being trafficked from rural areas where little, if any, use is being made of television or radio, what is the most effective method to reach these persons through information campaigns?*

7.25 **Childline** suggested that information campaigns should be promoted through baby and immunisation clinics, schools, rural retail outlets such as spaza shops, pension payout points, churches and traditional leaders. Furthermore, any opportunity in which groups of people gather together – both formal and informal - should be seen as an opportunity to disseminate information.

7.26 **Jhb Child Welfare Society** said that it would be useful if *Soul City* could be persuaded to use trafficking as a theme for one of their multimedia series. The respondent added that *Soul City's* approach has shown to be extremely successful, and their radio productions do reach the rural areas. Also, their print material could be disseminated in rural schools and clinics.

7.27 **SWEAT** suggested that use should be made of informal communication networks and existing community-based organisations.

7.28 **RAPCAN** submitted that greater awareness in rural areas can be created through the following:

- (a) faith-based organisations;
- (b) schools;
- (c) chiefs and traditional leaders;

- (d) community and non-governmental organisations;
- (e) community radio stations;
- (f) information brochures;
- (g) the media; and
- (h) bill boards.

7.29 **Lawyers for Human Rights, Pretoria** suggested that workshops or awareness-raising programmes should be conducted in community centres, schools and churches in the area.

7.30 **Mr Masoa** proposed that information on trafficking in persons should be conveyed to rural communities through churches, schools and local non-governmental organisations.

*What measures can be taken to ensure that victims of trafficking in South Africa are provided with information on, inter alia, their rights, measures in place to ensure their safety, and how to contact appropriate law enforcement authorities?*

7.31 **Childline** recommended that victims of trafficking in South Africa should be provided with information by way of television, radio, posters in public places, including transit points such as railway stations, bus stops, and taxi ranks. Furthermore, staff and volunteers who work at existing toll free helplines that offer crisis intervention and assistance to children and adults should be well informed about issues relating to trafficking and rescue and rehabilitative assistance that may be offered to victims of trafficking.

7.32 **SWEAT** recommended that standards for the treatment of victims of trafficking should be developed and integrated into the proposed trafficking legislation. Furthermore, these standards should outline the duties and responsibilities of the State, in partnership with non-governmental organisations, to ensure that victims are fully informed and offered due protections and support services.

7.33 **Lawyers for Human Rights, Pretoria** submitted that campaigns, workshops and pamphlets should be used to provide victims of trafficking with the necessary information. The respondent added that the information should reach key areas such as schools, hospitals, churches, airports and ports of entry.

## Evaluation and recommendations

7.34 After due consideration of the submissions received, the Commission recommends as follows:<sup>575</sup>

Public awareness programmes or other measures should be established in order to-

- (a) inform and educate persons at risk of becoming victims of trafficking on issues relating to trafficking in persons, including
  - (i) common recruitment techniques used by traffickers;
  - (ii) tactics used to keep victims of trafficking in exploitative situations;
  - (iii) the forms of abuse to which victims of trafficking are subjected; and
  - (iv) organisations, institutions or law enforcement agencies in South Africa that may be approached for assistance or information.
- (b) inform and educate victims of trafficking on-
  - (i) their rights as victims;
  - (ii) legal or other measures in place to ensure their safety, recovery and repatriation; and
  - (ii) organisations, institutions or law enforcement agencies that may be approached for assistance or information.
- (c) discourage the demand that fosters the exploitation of victims of trafficking, especially women and children.<sup>576</sup>

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<sup>575</sup> See clause 37 of the Bill.

<sup>576</sup> The Commission has also recommended that the intentional use of the services of victims of trafficking be criminalised. This will help to discourage the demand for the services of victims of trafficking. See in this regard paragraph 5.103 above.

**7.35 Furthermore, the proposed public awareness programmes or other measures must include appropriate measures aimed at reaching rural communities and should be reviewed biennially in order to determine their effectiveness.**

**7.36 It is further important that educational and economic opportunities be improved and expanded for those at risk of becoming victims of trafficking.**

7.37 As an additional preventative measure, the Commission has recommended that the Minister for Justice and Constitutional Development may declare a country as a country of origin or destination for victims of trafficking. Persons travelling to and from such countries can then be screened in order to determine whether they are victims of trafficking.<sup>577</sup> As suggested by the Serious and Violent Crimes Unit, visa control can be made stricter for persons travelling to and from such countries. Furthermore, South African embassy staff situated in countries declared as countries of origin from where persons are being trafficked to South Africa should co-operate with anti-trafficking institutions or organisations in those countries in order to make the public aware about issues regarding trafficking in persons.

### **Database on trafficking in persons**

7.38 South Africa does not have a database for the recording of information on trafficking in persons. However, with regard to children, the National Child Protection Register established in terms of the Children's Bill makes provision for the recording of abuse and deliberate neglect inflicted on specific children and the circumstances surrounding such abuse or neglect. Information on child victims of trafficking who have been abused or deliberately neglected will be recorded in this register. However, information on child victims of trafficking who have not been abused or deliberately neglected will not be recorded.<sup>578</sup>

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<sup>577</sup> See paragraph 6.28 above.

<sup>578</sup> For example, if a child victim of trafficking is rescued before he or she is transported to the place of exploitation, information regarding the child will not be recorded.

7.39 The United States of America, in terms of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) as amended by the Trafficking Victims Protection Reauthorization Act of 2003, requires that governments of the countries listed in the annual U.S Department of State Trafficking in Persons Report should provide certain data on trafficking in persons in order to be considered as being in full compliance with the minimum standards in order to be rated as a tier 1 country. This Act lists inter alia the following factors that should be considered as indicia of serious and sustained efforts to eliminate trafficking in persons:<sup>579</sup>

(a) Whether the government of the country vigorously investigates and prosecutes acts of trafficking in persons and convicts and sentences persons responsible for such acts, taking place wholly or partly within the territory of the country. After reasonable request from the Department of State for data regarding investigations, prosecutions, convictions and sentences, a government which does not provide such data, consistent with the capacity of such government to obtain such data, shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

(b) Whether the government of the country vigorously investigates, prosecutes, convicts and sentences public officials who participate in or facilitate trafficking in persons, and takes all appropriate measures against officials who condone such trafficking. After reasonable request from the Department of State for data regarding investigations, prosecutions, convictions and sentences, a government which does not provide such data, consistent with its resources shall be presumed not to have vigorously investigated, prosecuted, convicted or sentenced such acts.

(c) Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to comply with the minimum standards for the elimination of trafficking as provided for in section 108 of the VTVPA.

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Section 108. See also the discussion under paragraphs 1.11 – 1.13.

## Submissions received

*Should a register for victims of trafficking be established? If yes, what should be the purpose of such register? Which Department or institution should be responsible for the administration of such register? Who should have access to such register?*<sup>580</sup>

7.40 The majority of respondents to this question agreed that a register for victims of trafficking should be established in order to –

- (a) record statistical information on trafficking in persons;<sup>581</sup>
- (b) monitor trafficking in persons;<sup>582</sup>
- (c) evaluate whether strategies for the combating of trafficking in persons are effective;<sup>583</sup>
- (d) identify trafficking “hot spots”;<sup>584</sup> and
- (e) develop the necessary interventions and programmes.<sup>585</sup>

7.41 **RAPCAN** proposed that the Departments of Social Development, Home Affairs and Health be responsible for the administration of the register. The **Serious and Violent Crimes Unit** suggested that the Department of Home Affairs should keep a record of victims who have been trafficked to South Africa. **Jhb Child Welfare Society** thought it good to assign the SA Human Rights Commission the task of collecting and analysing data on trafficking in persons and to establish whether appropriate “follow-ups” have occurred. Alternatively, a “beefed-up” International Social Services unit should gather the data, and monitor action taken with regard to persons trafficked within South Africa and across its borders.

7.42 **RAPCAN** suggested that it should be mandatory for officials from the Department of Health to report cases of trafficking as they may be the first point of contact with victims of trafficking. The **SA Human Rights Commission** agrees with

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<sup>580</sup> The Commission is of the view that consideration should rather be given to the establishment of a database on trafficking in persons because the establishment of a register for victims of trafficking is a narrower concept. The Commission’s recommendations will therefore focus on the establishment of a database on trafficking in persons.

<sup>581</sup> RAPCAN.

<sup>582</sup> RAPCAN and the S A Human Rights Commission.

<sup>583</sup> S A Human Rights Commission.

<sup>584</sup> S A Human Rights Commission.

<sup>585</sup> Jhb Child Welfare Society.

this, but is of the view that the reporting of trafficking cases should be mandatory in general, especially where the victims are children. The respondent stressed the need to back-up mandatory reporting provisions with broad education and awareness-raising programmes.

7.43 **SAPS** did not support the establishment of a register for victims of trafficking. In the respondents view, such a register will have no substantive value in practice.

7.44 **Anonymous** said that a register for victims of trafficking should not be accessible to the public. **Lawyers for Human Rights, Pretoria** stated that only the police and social workers dealing with the case should have access to the register. However, the Department of Home Affairs should be provided with limited access in instances where information is required in order to determine whether victims should be provided with residence permits or other documentation.

7.45 **The Department of Home Affairs** supported the establishment of a register and stated that such a register will help them to better police the movement of traffickers across national borders.

7.46 **Jhb Child Welfare Society** argued that it would be more logical to collect information regarding all trafficking cases and have subsets of data relating to children, than to collect it only for children via the Child Protection Register.

### **Evaluation and recommendations**

7.47 The Commission is, at this stage, not in a position to make recommendations regarding the recording of information on trafficking in persons. This is because the question posed to the respondents was restricted to information on victims of trafficking and did not enquire whether information on offenders should also be recorded.

7.48 Responding to RAPCAN's and the S A Human Rights Commission's suggestions regarding mandatory reporting, the Commission has made recommendations for the reporting of trafficking cases.<sup>586</sup> The Commission is further

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<sup>586</sup> See paragraphs 6.41 – 6.43 above.

of the view that only certain categories of professional persons should be obliged to report cases of trafficking in persons. Reporting of trafficking cases should be voluntary for the general public.

7.49 The Commission is of the view that a database on trafficking in persons could inter alia contain the following information:

- (a) the countries from which victims are being trafficked to South Africa;
- (b) the countries to which South Africans and other residents are being trafficked;
- (c) the nationality of victims transiting South Africa and the countries to which they are being trafficked;
- (d) the purposes for which the above categories of persons are being trafficked;
- (e) the profiles of the traffickers and their victims;
- (f) the methods and routes used by traffickers to enter South Africa;
- (g) the methods used by traffickers to recruit and transport their victims;
- (h) the types of travel documents that traffickers and their victims have used or attempted to use to cross the borders of South Africa;
- (i) statistics on the number of victims trafficked annually within South Africa and across its borders; and
- (j) the number of trafficking investigations, prosecutions, convictions and the form of sentences imposed on perpetrators.

7.50 The Commission agrees with the respondents on the purposes for which the database (register) on trafficking in persons could be used. In addition to the purposes identified by the respondents, the database could also be used —

- (a) to determine the budget to be allocated for the fight against trafficking in persons;
- (b) to assess the impact and adequacy of measures against trafficking in persons;
- (c) to determine whether there is an increase or decrease in the trafficking of persons;
- (d) to develop co-operation between practitioners in the field of prevention, victim assistance and criminal justice responses; and
- (d) for statistical purposes.

7.51 The establishment of a database on trafficking in persons was discussed at an inter-departmental meeting on trafficking in persons.<sup>587</sup> At this meeting a representative of the South African Police Service strongly argued for the recording of information on trafficking in persons in the existing register on missing persons. The Commission has investigated this possibility and has found that the register on missing persons is not the appropriate place to record information on trafficking in persons. This register makes provision only for identifying information on missing persons such as the name and identification number of a missing person. A photo of the missing person, if available, is always placed on the register. Consequently, the Commission has requested the South African Police Service to provide it with information regarding the feasibility of recording information relating to trafficking in persons into one of the police databases such as the one used for the recording of crime statistics. The South African Police Service indicated that information relating to trafficking in persons is not being recorded into one of its existing databases. This is because trafficking in persons is currently not a criminal offence in South Africa. They are, however, of the view that the existing Crime Administration System will be feasible to record information relating to trafficking in persons and to provide statistics relating to this crime.<sup>588</sup>

**7.52 The Commission invites comments as to whether the existing Crime Administration System of the South African Police Service should be used to record information on trafficking in persons or whether a separate database on trafficking in persons should be established.**

**7.53 If a separate database on trafficking in persons is to be established, should it be established in terms of the proposed trafficking legislation or be dealt with in terms of policy and which department or institution should be responsible for the establishment and administration of such a database?**

7.54 Whether information on trafficking in persons is recorded in the Crime Administration System of the South African Police Service or a separate database established for this purpose, it will be important to establish a process prescribing the method by which the relevant information should reach the Crime Administration

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<sup>587</sup> See paragraphs 1.6 – 1.8 above.

<sup>588</sup> Information received from the Crime Intelligence Division of the South African Police Service on 28 February 2006.

System or the database. In this regard the Commission invites comments on the following proposals:

**7.55 The Department or institution that will be responsible for recording the information must be provided with the following information:**

- (a) The South African Police Service must provide information on reported cases of trafficking in persons as well as those under investigation.<sup>589</sup>**
- (b) The National Director of Public Prosecutions must provide information regarding all prosecutions, convictions and sentences imposed relating to trafficking cases.**
- (c) All non-governmental and international organisations that work with or provide services to victims of trafficking and that receive any form of funding from the South African government must provide information on victims of trafficking they have come in contact with.**
- (d) The Department of Home Affairs must provide information regarding the travel documents issued to victims of trafficking repatriated back to South Africa as well as those repatriated to their countries of origin or the countries from where they have been trafficked.**

**7.56 Furthermore, guidelines should be established regarding the kind of information to be provided by each of the above institutions.**

**7.57 The Commission invites comments on which departments, institutions or organisations should have access to the recorded information.**

## **PROCESS AND PROCEDURE**

### **Border control**

7.58 The Department of Home Affairs through its National Immigration Branch controls entry to and from South Africa at the following types of locations: land border posts, airports and harbours (sea ports). Co-operation amongst the departments

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<sup>589</sup> It may not always be possible to reveal information regarding trafficking cases still under investigation as this could compromise the police investigation. However, such information should be provided where possible.

responsible for border control is established through a national Border Control Operational Co-ordination Committee (BCOCC).<sup>590</sup> The Department of Home Affairs is chairing the BCOCC. Amongst the tasks of the BCOCC are the development of infrastructure and the improvement of the appalling conditions and state of the South African border posts.<sup>591</sup> The BCOCC is to operate on a national, provincial and local level. The following committees play a pivotal role to the work of the BCOCC: Aviation, Maritime, and Land and Rail Committees.<sup>592</sup>

7.59 The South African Police Service has also established a new division called the Protection and Security Services Division. This division is responsible for policing key strategic points in South Africa. Amongst these are certain ports of entry. Pilot projects in this regard have already been established at Johannesburg International Airport, Durban Harbour and Beit Bridge border post.<sup>593</sup>

7.60 The police, in general, play a significant role in border control. In terms of section 13(6) of the South African Police Service Act,<sup>594</sup> any member of the South African Police Service may, where it is reasonably necessary for purposes of control over the illegal movement of people or goods across the borders of South Africa, without a warrant search any person, premises, other place, vehicle, vessel or aircraft or any receptacle at any place within 10 kilometres or any reasonable distance from any border between South Africa and any foreign state. Such a search may also be conducted in the territorial waters of South Africa, or inside South Africa within 10 kilometres or any reasonable distance from such territorial waters, or at any airport or within any reasonable distance from such airport. A member is authorised to seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle which may lawfully be seized.

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<sup>590</sup> This Committee has replaced the National Inter-Departmental Structure on Border Control which was created in 1980 through a Cabinet decision and resolved in 2001 through a Cabinet decision.

<sup>591</sup> Address by Honourable Nosiviwe N Mapisa-Nqakula, Minister of Home Affairs, on the occasion of the presentation of the Home Affairs Budget Vote (Vote 4) to the National Council of Provinces on 25 May 2005.

<sup>592</sup> Briefing of the Department of Home Affairs to the Parliamentary Portfolio Committee on Home Affairs, September 2005.

<sup>593</sup> Steinberg Johny "An overview of South African border control: 1994-2004" **Institute for Security Studies Paper 103** April 2005.

<sup>594</sup> 68 of 1995.

7.61 The South African National Defence Force plays a supporting role in crime prevention and, for the moment, monitors and patrol border lines.<sup>595</sup>

7.62 Despite current measures to control the movement of persons across the borders of South Africa, a significant number of victims of trafficking are being moved across the borders of South Africa without detection. One of the reasons for this is the fact that those tasked with border control are not able to identify possible victims of trafficking. Another reason is corrupt officials who facilitate the crime of trafficking in persons in exchange for payment.

### **Submissions received**

*How can border control be strengthened in order to prevent and detect trafficking in persons effectively?*

7.63 **Childline** suggested that cases of corruption at border posts should be actively investigated, prosecuted and heavy sanctions should be imposed on perpetrators. Furthermore, staff at border posts should be monitored in the management of their duties.

7.64 The **IOM** submitted as follows -

- (a) Police units with counter-trafficking expertise should be established at all air, land, and sea ports of entry. Such units should consist of police officials already working at various South African ports of entry who are grouped together under a special mandate to monitor trafficking and other irregular movements. Amongst them should be trained detectives to investigate trafficking operations suspected to be active around a port of entry. One such unit already exists at a key international airport with the purpose of monitoring migrant smuggling to or via South Africa – such units and operations could have their mandates expanded to encompass a counter-trafficking function.
- (b) Law enforcement intelligence gathering systems in place at some ports of entry that are being used to inter alia collect data on migrant smuggling should have a

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broader focus to include the collection of data on human trafficking. Such intelligence systems could, for example, be used to analyse arrivals from countries known to be points of origin for victims of trafficking, or profiles of persons arriving in South Africa that fit the profile of a victim of trafficking.

- (c) Law enforcement and immigration officials, particularly those at key ports of entry, should receive specialised training on trafficking in persons. The training should distinguish between the phenomena of trafficking in persons and migrant smuggling, trafficking trends in Southern Africa, common profiles of victims and traffickers, intelligence gathering, identification of victims, victim assistance and referral. Training should have a particular focus on facilitating co-operation between actors with port of entry functions, particularly border police, immigration and customs officials, and the South African National Defence Force. Regular refresher courses should be offered, backed by the latest findings on trafficking operations ongoing within the region, and profiles of victims and traffickers. Where appropriate, training should be offered simultaneously to South African and neighbouring country officials and encourage the participation of female officials. The training should be offered by a combination of port-of-entry policing specialists within South African law enforcement agencies, relevant government departments (especially DHA and DSD), and inter- and non-governmental organisations with expertise in the area of counter-trafficking.
- (d) Immigration and law enforcement officials at key ports of entry should co-operate with relevant government departments and international or non-governmental organisations to conduct information campaigns in border towns, villages, and farms to raise public awareness of the problem of trafficking in persons. Information campaigns should also offer the general public an official channel to supply information on suspected or existing trafficking operations in their communities.
- (e) Law enforcement officials at South African land border posts should conduct joint counter-trafficking operations with officials from neighbouring countries and regularise data collection and information exchange on issues relating to trafficking in persons.

7.65 **SWEAT** suggested that border police should be trained on the following:

- (a) understanding the prevalence and the risks of being trafficked and the rights of victims;
- (b) information on resources and organisations to which victims can be referred;
- (c) training on gender issues;
- (d) networking and communication with other officials and sharing of information; and
- (e) contents of relevant legislation.

7.66 **RAPCAN** recommended that border control should be strengthened as follows:

- proper training should be provided to officials at the borders;
- international agreements on trafficking in persons should be concluded;
- Interpreters should be made available; and
- an independent investigative unit for corruption should be established.

7.67 **SAPS** submitted that border control should not only be the responsibility of the Department of Home Affairs, but should be a concerted effort by all law enforcement agencies, intelligence structures and the S A National Defence Force. The respondent further stressed the importance of co-ordination between itself and the Department of Home Affairs.

7.68 **Lawyers for Human Rights, Pretoria** suggested that border officials should be trained on issues pertaining to trafficking in persons.

7.69 **Molo Songololo (Consultative Workshop)** proposed that the Ministry for Safety and Security should be obliged to implement stricter border control measures to enable the detection of trafficking of foreigners into South Africa.

*What measures could be put in place to detect whether children travelling unattended are victims of trafficking?*

7.70 **Jhb Child Welfare Society** proposed that children travelling unattended should be interviewed by trained persons in order to establish whether such children are victims of trafficking.

7.71 The **Western Cape Ministry of Community Safety** proposed that children suspected of being trafficked should be interviewed or those travelling with them should prove that they are their parents or guardians.

7.72 The **SA Human Rights Commission** submitted that the Department of Home Affairs should review its legislation to determine whether current legislative measures are sufficient for the protection of unaccompanied minors who travel to South Africa. The respondent mentioned that in the Philippines the Special Protection of Children against Child Abuse, Exploitation and Discrimination Act provides that any child travelling outside the country without his or her parents must obtain a travel clearance document from the Department of Social Welfare and Development. The respondent further mentioned that in the United Kingdom, a private members bill called the Children (Safeguards for Unaccompanied Travel) Bill creates a tracking system for children who travel without their parents into the United Kingdom. The Bill also ensures that social and education services are provided to the children.

7.73 The **Ministry of Home Affairs** recommended that the Immigration Act should address the issue of travel documents or other documentation that should be required when unaccompanied minors exit or enters South Africa or do so with persons other than their parents.

7.74 **NCWSA** suggested that it should be a requirement for children to have their own passports when travelling.

7.75 **Mr Masoa** suggested that guidelines be established on the interviewing of children travelling unattended. This will help to establish whether such children are victims of trafficking.

### **Evaluation and recommendations**

7.76 After due consideration of the submissions received, the Commission is of the view that it is not appropriate to address issues relating to border control in the proposed trafficking legislation. This is because the detection of victims of trafficking is just but one of the purposes of effective border control. Legislative measures on border control will be better addressed in the Immigration Act. The Commission has, however, recommended in paragraph 5.162 and paragraph 6.22 above that national instructions and directives should be issued for police and immigration officials

respectively. One of the matters to be covered by such national instructions or directives relates to the identification, interviewing and treatment of victims of trafficking.

7.77 With regard to IOM's suggestion that police units with counter-trafficking expertise be established at all air, land and sea ports of entry, the Commission proposes that the monitoring of trafficking in persons across the borders of South Africa should form part of the mandate of the Protection and Security Services Division of the South African Police Services. Furthermore, such divisions should be established at all major points of entry.

7.78 With regard to the protection of children travelling unaccompanied, the Commission recommends that section 35 of the Immigration Act be amended as follows:<sup>596</sup>

#### **Duties with regard to conveyances**

(1) Save for extraordinary circumstances necessitating otherwise, no person in charge of a conveyance shall cause that conveyance to enter the Republic at any place other than a port of entry.

(2) An immigration officer or other authorised person employed by the Director-General may-

(a) board any conveyance which is entering or has entered into any port of entry and for good cause prohibit or regulate disembarkation from, or the offloading of, such conveyance in order to ascertain the status or citizenship of its passengers; and

(b) request the person in control of a port of entry or any person acting under his or her authority to order the person in charge of a conveyance to park, moor or anchor that conveyance in such port of entry at such distance from the shore or landing place or in such position as he or she may direct.

(3) The person in charge of a conveyance entering or prior to entering a port of entry shall upon demand deliver to an immigration officer-

(a) a list stating-

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See Schedule 1 to the Bill.

- (i) the names of all passengers on board the conveyance, classified according to their respective destinations; and
- (ii) such other details as may be prescribed;
- (b) a list of stowaways, if any have been found;
- (c) a list of the crew and all other persons, other than passengers and stowaways, employed, carried or present on the conveyance; and
- (d) a return, under the hand of the medical officer of that conveyance or, if there is no such medical officer, under the hand of the person in charge of a conveyance himself or herself, stating-
  - (i) any cases of disease, whether infectious or otherwise, which have occurred or are suspected to have occurred upon the voyage;
  - (ii) the names of the persons who have suffered or are suffering from such disease;
  - (iii) details of any birth or death which occurred upon the voyage between such port of entry and a previous port; and
  - (iv) any other prescribed matter or event:

Provided that such immigration officer may-

(aa) exempt from the requirements of this subsection the master of a ship destined for any other port in the Republic, subject to compliance with the duty to deliver such lists or return at such port and with any directive such immigration officer may issue to the master; and

(bb) if satisfied that a name should be added to or deleted from any of such lists, authorise such addition or deletion.

(e) a list of unaccompanied children on board of the conveyance.

(3A) If an immigration officer has reason to believe that an unaccompanied child listed on the list referred to in section 3(e) is a victim of trafficking, he or she must forthwith report the matter, in terms of section 12 of the Combating of Trafficking in Persons Act, ... (Act No. ... of ...) to a police official.

(4) If a conveyance arrives at a port of entry with a passenger on board bound for a destination outside the Republic who is not on board when the conveyance leaves such port of entry and has not been admitted, the person in charge or the owner of that conveyance shall forfeit a sum fixed by the immigration officer within a prescribed limit.

(5) An immigration officer may require the person in charge of a conveyance to muster the crew of such conveyance on the arrival of such conveyance in any port of entry and again before it leaves such port of entry.

(6) The competent officer of customs at any port of entry may refuse to give to the person in charge of a conveyance clearance papers to leave that port of entry, unless he or she has complied with this Act and produced a certificate of an immigration officer to that effect.

(7) A person in charge of a conveyance shall ensure that any foreigner conveyed to a port of entry-

(a) for purposes of travelling to a foreign country, holds a valid passport and transit visa, if required; and

(b) holds a valid passport and visa, if required.

(8) A person in charge of a conveyance shall be responsible for the detention and removal of a person conveyed if such person is refused admission in the prescribed manner, as well as for any costs related to such detention and removal incurred by the Department.

**7.79 The Commission recommends that immigration officials should be trained on how to interview unaccompanied children in order to determine whether they are victims of trafficking.**

7.80 The Commission's views and recommendations regarding corruption and training are set out in paragraphs 5.105 – 5.124 and paragraphs 8.24 – 8.34 respectively.

## **Security and control of travel and other identification documents**

### **Current position**

7.81 The crime of trafficking in persons is often facilitated by the production and supply of forged and/or fraudulently acquired documentation. Air tickets may be altered by removing the details on the ticket with a soft eraser or chemical and then re-type new details on the ticket. These tickets are sold on the black market at a nominal fee. Local criminals have mastered the ability to alter air tickets. For example, on 13 January 2004, check-in staff at Angola Airlines detected that flight codes and fare details were altered in three Angolan citizens' air tickets departing from Johannesburg International Airport to Angola.<sup>597</sup> Some syndicates use "cloned

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<sup>597</sup> This information corresponds with intelligence on the issue.

passports". Cloned passports are genuine, but stolen passports. The details in the passport are copied by printing it in a passport with an illegal immigrant's photo. Such passports are difficult to detect depending on the quality of the printing used.<sup>598</sup>

7.82 South Africa is in possession of advanced equipment to determine whether travel documents have been forged. However, given the high cost of this equipment, it is not available at all ports of entry. Training is also being provided to immigration officials to facilitate the detection of forged documents. Immigration officials have less than 30 seconds to scan travel documentation at ports of entry such as airports where large number of persons arrive simultaneously. It is therefore possible that some persons succeed in entering the country with forged travel documentation without being detected.

7.83 South African law deals with the problem only to a limited extent. The Immigration Act makes it an offence for any civil servant to (a) provide false or intentionally inaccurate or unauthorised documentation or benefit to an illegal foreigner, (b) facilitate such illegal foreigner to disguise his or her identity or status, or (c) accept any undue financial or other consideration to perform an act or to exercise his or her discretion in terms of the Act. Any person, other than a civil servant, who manufactures or provides or causes the manufacturing or provision of a document purporting to be a document issued or administered by the Department of Home Affairs, is guilty of an offence.<sup>599</sup> Also, any person who through offers of financial or other consideration or threats, compels or induces an officer to contravene the Act or to breach such officer's duty, is guilty of an offence.<sup>600</sup>

### **Measures to improve the security of identification documents and passports**

7.84 South Africa is making significant efforts to improve the security of identification documents and passports. The introduction of smart identification (ID) cards was approved by Cabinet on 25 July 2001. The Department of Home Affairs is currently in the process of introducing smart identification cards which will replace the green bar-coded identification books. The smart ID cards will form part of the Home Affairs National Identification System (HANIS) which consists of an Automated

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<sup>598</sup> Ibid.

<sup>599</sup> Section 49(9).

<sup>600</sup> Section 49(10).

Fingerprint Identification System (AFIS) and the System Integration. The Department has started to implement the AFIS and System Integration components of HANIS with the introduction of the Electronic Document Management System as well as a Back Record Conversion process to convert all fingerprint records into electronic format to allow for online biometric verification.

7.85 The smart ID card will be based on integrated chip technology. The bearer's personal information such as the bearer's name, date of birth, photo and fingerprint will be stored encrypted on a chip. The smart ID card will cater for at least the following three levels: (a) visual inspection, (b) off-line verification and (c) on-line verification. Because of these characteristics, it would be very difficult and expensive to forge the smart ID cards.<sup>601</sup>

7.86 In addition to the smart ID cards; the Department of Home Affairs plans to issue passports which will, similarly to the smart ID cards, be based on integrated chip technology.

### **Comparative overview**

7.87 False or altered travel and/or other identification documents allow traffickers and their victims' virtually free passage from country to country. Recognising this, various countries have taken measures to improve the security of their documents. Germany is currently in the process of producing electronic passports with highly secure chips which will make counterfeiting and unauthorised use virtually impossible. In the new German electronic passport, the printed information about the bearer's identity such as the bearer's name, date of birth, and photo, as well as the passport's validity period and number will be stored encrypted on a chip. Germany also plans to store the fingerprint of each of the bearer's index finger in encrypted form as from March 2007. The data stored on the chip would be accessible only when the passport is opened, and when transmitted contactlessly to an authorised and certified read-write device. More than 50 individual security features burned deep inside the chip using state-of-the-art technology will help ensure that personal data is protected against unauthorised read-out and manipulation. The security features integrated into the chips also include active protective shields on the surface of the

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<sup>601</sup> Telephonic discussion with Mr Reynecke from the Department of Home Affairs on 26 July 2005.

chip and sensors that prevent hackers from being able to read out the chip by applying different voltages.<sup>602</sup> The Czech Republic uses new visa foil with increased security features.<sup>603</sup> In the Philippines, the Department of Foreign Affairs is responsible for taking the necessary measures to ensure the efficient implementation of machine readable passports to protect the integrity of Philippine passports, visas and other travel documents.<sup>604</sup>

### **Submissions received**

*What can be done to improve the detection of forged travel documents at ports of entry?*

7.88 The **University of Cape Town Legal Aid Clinic** said that immigration officials should always bear in mind the rights enshrined in the Bill of Rights regarding freedom of movement, privacy, search and seizure. Thus, there must be a reasonable suspicion that a travel document is forged or fraudulent before it can be seized. The respondent suggested that highly advanced equipment that can detect forged documents must be installed, at least, at the main ports of entry which are high risk areas.

7.89 **NCWSA** mentioned that several countries are using biometric documentation in order to improve the detection of forged travel documents.

7.90 **Lawyers for Human Rights, Pretoria** suggested that immigration officials should be provided with training and the necessary equipment which will enable them to detect forged documents.

7.91 **Mr Masoa** proposed that the number of immigration officials should be increased and that the necessary training should be provided to them.

*With reference to article 12 of the Trafficking Protocol, how can the Department of Home Affairs ensure that travel or identity documents issued by it are of such quality*

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<sup>602</sup> Smart Card Alliance "New German Passport to Contain Contactless Secure Chips from Infineon" Industry News: Alliance News 9 June 2005.

<sup>603</sup> US Department of State **Trafficking in Persons Report** June 2004, p.134.

<sup>604</sup> Section 16(a) of the Republic Act No. 9208 – Anti-Trafficking in Persons Act.

*that they cannot easily be misused, readily falsified, unlawfully altered, replicated or issued?*

7.92 The **Western Cape Ministry for Community Safety** suggested that travel and other identification documents should be equipped with film cover, similar to that used in the Australian dollar which will make it difficult to forge.

7.93 **Lawyers for Human Rights, Pretoria** proposed that the Department of Home Affairs should make use of the latest technology to improve the security of its documents.

### **Evaluation and recommendations**

7.94 As smart ID card technology is widely recognised as the best choice for improving the security of identification documents and passports, the Commission endorses the Department of Home Affairs' efforts to improve the security of South African identification documents and passports. The Commission would like to urge the Department to finalise the process of introducing smart ID cards as soon as possible.

7.95 The Commission further urges the Department of Home Affairs to ensure that all ports of entry are provided with the necessary equipment to detect forged travel and other identification documents and that immigration officials at ports of entry are provided with the necessary training to detect forced documents.

7.96 **The Commission further recommends that the Director-General of the Department of Home Affairs must, at the request of another state that is a party to the Trafficking Protocol or to an agreement relating to trafficking in persons, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued by the department and suspected of being used for the commission of the offence of trafficking in persons.**<sup>605</sup>

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See clause 45 of the Bill.