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MEDIA STATEMENT BY THE SOUTH AFRICAN LAW REFORM COMMISSION CONCERNING ITS INVESTIGATION INTO TRAFFICKING IN PERSONS (PROJECT 131)

The South African Law Reform Commission hereby releases its discussion paper 111 on trafficking in persons for general information and comment. The discussion paper sets out the Commission's preliminary recommendations for law reform regarding trafficking in persons. The legislative proposals can be summarised as follows:

A) OFFENCES

The proposed Bill criminalises the act of trafficking in persons. In addition to this, the proposed Bill criminalises the following acts: debt bondage; the destruction, confiscation, possession and concealment of documents; using the services of victims of trafficking; and conduct facilitating trafficking in persons.

B) PROTECTION OF VICTIMS OF TRAFFICKING

The proposed Bill lists several guiding principles which must be considered when deciding the question as to whether a person is a victim of trafficking. This will facilitate the identification of victims of trafficking. Apart from dealing with the trauma of being trafficked, victims of trafficking are faced with arrest and prosecution for offences committed as a direct result of their situation as victims of trafficking. In South Africa, victims of trafficking may be prosecuted for prostitution, even though they were forced into prostitution by their traffickers. Victims of trafficking may also be prosecuted for illegal entry in terms of the Immigration Act 13 of 2002. The proposed Bill therefore provides that the decision as to whether criminal proceedings should be instituted against a victim of trafficking for an offence committed as a direct result of his or her situation as a victim of trafficking should rest with the National Director of Public Prosecutions. Foreign victims of trafficking are provided with a non-renewable suspension of their deportation period. This will allow such victims to come to terms with what has happened to them and to make informed decisions as to whether they want to assist in the investigation of and the prosecution of their traffickers. The decision whether to grant such a period should rest with the Director-General of the Department of Home Affairs. If victims of trafficking decide to assist with the investigation of and prosecution of traffickers, they should be provided with a temporary residence permit. The

Commission has taken cognisance of the fact that some victims of trafficking may never be able to return to their countries of origin or the countries from where they have been trafficked because they may be harmed, killed or trafficked again by their traffickers or the associates of their traffickers. In this regard the following options are proposed:

Option 1

In terms of this option section 3 of the Refugees Act should be amended to provide that a person qualifies for refugee status if that person is a victim of trafficking and proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked. Such victims would be able to apply for a permanent residence permit in terms of section 27(d) of the Immigration Act which states that the Director-General of the Department of Home Affairs may issue a permanent residence permit to a foreigner of good and sound character who is a refugee referred to in section 27(c) of the Refugees Act. Section 27 (c) of the Refugees Act provides that a refugee is entitled to apply for an immigration permit after five years continuous residence in the country from the date on which he or she was granted asylum, if the Standing Committee certifies that he or she will remain a refugee indefinitely.

Option two

In terms of this option a victim of trafficking should be entitled to apply for a permanent residence permit in terms of the Immigration Act 13 of 2002, after five years continuous residence in the country from the date on which he or she was granted a temporary residence permit. This should, however, be on the condition that the victim of trafficking proves to the satisfaction of the Director-General of the Department of Home Affairs that he or she may be harmed, killed or trafficked again if returned to his or her country of origin or the country from where he or she has been trafficked.

Option three

Instead of providing victims of trafficking with some kind of permanent residency status, this option proposes that the Director-General of the Department of Home Affairs may, on humanitarian grounds, extend a temporary residence permit granted to a victim of trafficking.

The Director-General's decision should further be guided by the likelihood that the person may be harmed, killed or trafficked again.

With regard to the provision of services to victims of trafficking, the following options are proposed:

Option 1

The Department of Social Development should have the responsibility to establish centres for adult victims of trafficking.

Option two

The Director-General of the Department of Social Development should accredit organisations to provide accommodation to adult victims of trafficking.

A centre for adult victims of trafficking or an accredited organisation as proposed above must offer a programme suited for the needs of victims of trafficking. Such a programme should be aimed at the provision of counselling and rehabilitation services to victims as well as the reintegration of victims into their families and communities. It is further important that the safety of adult victims of trafficking should be ensured if they are at risk of retaliation by their traffickers.

In respect of the provision of compensation to victims of trafficking, the proposed Bill provides that a court may, in addition to any punishment which it may impose in respect of any offence provided for in the Bill, order a person convicted of such offence to pay appropriate compensation to any victim of the offence.

Foreign victims of trafficking are often deported. This is because they are not identified as victims, but labelled as illegal immigrants. Furthermore, victims of trafficking are being returned to their countries of origin without an investigation into their circumstances in order to establish whether protective systems are in place in their countries so as to ensure that they are not returned to the same circumstances that made them vulnerable to being trafficked in the first instance. It is therefore proposed that the summary deportation of victims of trafficking be prohibited prior to an investigation being done into their circumstances. Victims of trafficking should therefore be repatriated in terms of a process

that takes cognisance of their safety not only during the repatriation process, but also in the countries to which they are to be returned as well as the possibility that they might be harmed, killed or trafficked again. With regard to child victims of trafficking, due consideration should be given to the availability and suitability of care arrangements in the countries to which they are to be returned.

C) PREVENTION OF TRAFFICKING IN PERSONS

The proposed Bill provides that 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;
- (b) inform and educate victims of trafficking on their rights as victims; legal or other measures in place to ensure their safety, recovery and repatriation; and organisations, institutions or law enforcement agencies that may be approached for assistance or information; and
- (c) discourage the demand that fosters the exploitation of victims of trafficking, especially women and children.

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.

CONCLUSION

In an effort to consult all interested parties, the Commission will host a series of workshops during June 2006. The workshops are scheduled to be held as follows: 6 June (Pretoria), 13 June (Nelspruit), 20 June (Cape Town), 22 June (Eastern Cape), 27 June (Durban), 29 June (Bloemfontein). Persons interested in attending should contact the Commission at (012) 392 9567 (**contact person Ms L Stuurman**).

The discussion paper is obtainable free of charge from the Commission upon request. (**Contact person Mr J Kabini at (012) 392 9580**). The discussion paper has been published on the Commission's website at <http://www.doj.gov.za/salrc/index.htm>

The Commission invites comments and suggestions on the discussion paper. Comments or suggestions should reach the Commission by 30 June 2006 at the following address:

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The South African Law Reform Commission was established by the South African Law Reform Commission Act 19 of 1973. It is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

ISSUED BY THE SECRETARY: SA LAW REFORM COMMISSION, PRETORIA

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