



*The slow development of  
legislature in South Africa to  
combat human trafficking-  
Challenges and Confusion*



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# BACKGROUND

- South African government and UN support-signatories to the United Nations Protocol to Prevent, Suppress and Punish Trafficking Persons, especially Women and Children (2000 & 2004)
- Yet there was no legislature that directly addressed human trafficking in South Africa
- South Africa needed to align its domestic law with international law and have a legal framework that directly addressed human trafficking

## BACKGROUND cont.

- In 2009 Prevention and Combating of Trafficking in Persons Bill would seek to prosecute culprits to prevent trafficking
- Rationale behind this was to address inadequacies in the South African common law and statutory law of trafficking in persons adequately

# BACKGROUND cont.

- The background the of the South African Constitution enshrines the right to human dignity,
- the right to freedom and security of the person, which includes the right not to be deprived of freedom arbitrarily or without just cause,
- the right not to be subjected to slavery, servitude or forced labour, and the
- right of children to be protected from maltreatment, neglect, abuse or degradation

# CURRENT STATUS

- **Act No7 of 2013: Prevention and Combating of Trafficking in Persons**
- On the 29<sup>th</sup> of July 2013 the President of South Africa signed into effect the Prevention and Combating of Trafficking in Persons Act
- The Act is significant as it provides a direct legal framework for human trafficking

# CURRENT STATUS cont.

- The objects of this Act are to—
  - (a) give effect to the UN Protocol to Prevent, Suppress and Punish Trafficking in
  - Persons;
  - (b) provide for the prosecution of persons involved in trafficking and for
  - appropriate penalties;
  - (c) provide for the prevention of trafficking in persons and for the protection of
  - and assistance to victims of trafficking;
  - (d) provide services to victims of trafficking;
  - (e) provide for effective enforcement measures;
  - (f) establish an Intersectoral Committee on the Prevention and Combating of
  - Trafficking in Persons,
  - (g) combat trafficking in persons in a co-ordinated manner.

# CURRENT STATUS cont.

- **Key defining elements**

- Prosecution of culprits of human trafficking.
- Possible for both victims of trafficking and the State to sue convicted culprits for damages.
- Rescued victims to remain in the country for 90 days to receive adequate healthcare. Victims who, in assisting the police in investigations, endangered their lives in their home country, would be allowed to apply for permanent residence in South Africa.
- Coordination and accreditation of organisations assisting victims of human trafficking

# CURRENT STATUS cont.

- **Key defining elements**

- Besides creating the main offence of trafficking in persons, the new legislation also creates offences such as debt bondage, possessing, destroying or tampering with travel documents, and using the services of victims of trafficking, all of which contribute to innocent persons becoming victims of this modern-day form of slavery.
- In addition to creating very specific offences that have a bearing on trafficking in persons, legislation also focused on the plight of the victims, providing them with protection and assistance to overcome their traumatic experiences.

# CURRENT STATUS cont.

- **Key defining elements**

- Coordination of government departments is under the direction of Director-General: Justice and Constitutional Development
- South African Police Service;
- Home Affairs;
- International Relations and Cooperation
- Social Development;
- Health;
- Labour;
- Women, Children and People with Disabilities;
- Public Prosecutions;
- South African Revenue Services
- State Security Agency
- Government Communication and Information System.

# CHALLENGES AND CONFUSION

- Delays in formulating legislature challenged by understanding the importance of having a specific policy that addresses human trafficking
- Prior to the Act legal framework perpetrators of human trafficking could be charged with traffickers could only be charged with kidnapping, or, when relevant, assault and murder.
- Debate during drafting of the Act included debate around penalties- R100 million rand fine or life imprisonment maximum sentence.
- Concern over the possibility of people making false claims of being victims of trafficking so as to gain residency status in South Africa

# COMPARATIVE LEGISLATURE cont.

- Laws covering criminal and social issues such as Sexual Offences Act, Children's Act, Labour Relations Act, Immigration Act etc were not extensive enough to deal with human trafficking; particularly with regard to prosecuting offenders and providing rehabilitation and support to victims
- **Sexual Offences Amendment Act, 2007**
  - Prevention and Combating of Human Trafficking Act allows for prosecution of individuals who have facilitated acts of sexual exploitation and abuse
  - Reporting of sexual exploitation and abuse now overrides other laws, policies or code of conduct that would prohibit reporting of suspicions of sexual exploitation and abuse in terms of human trafficking
- **Immigration Act, 2002**
  - Did not adequately provide support for victims of human trafficking,
  - direct officials in terms of reporting suspicion of human traffic
  - comprehensively criminalise fraud in terms of identity documents

# SOCIAL AND DEVELOPMENT CONFLICT

- South Africa history has created a fragmented society and extreme levels of inequality
- Income and racial stratification
- Government pressure to meet demands for development and social support
- Challenges include high unemployment, lack of infrastructure, government inefficiencies

# SOCIAL AND DEVELOPMENT CONFLICT

- Diepsloot, 2008
- Xenophobic attacks- Port Elizabeth, 2013



# CONCLUSION

- Positive government action
- Implementation is critical
- Overhaul of government departments and stakeholders- coordination and participation
- Education to foster informed public participation and understanding



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