



# **SOUTH AFRICA'S STRATEGY TO ADDRESS HUMAN TRAFFICKING IN PERSONS**

***SANTAC Conference***

***Maputo***

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***South Africa***

# INTERNATIONAL FRAMEWORK

- United Nations Convention Against Transnational Organised Crime (signed 29 September 2003)
- Protocol to prevent, suppress and punish trafficking in Persons, especially women and children ('Palermo Protocol' – signed 14 December 2003)
- African Charter On the Rights and Welfare of the Child (signed 10 October 1997 and ratified 07 January 2000)

# PALERMO PROTOCOL

- **Obligations of ratifying States**

- Criminalise trafficking

- Investigate, prosecute and convict traffickers

- Undertake border control measures

- **In accordance with the means of each State**

- Provide measures to protect & assist victims

- Train law enforcement & border officials

- Inform & educate victims, potential victims & general public

- Cooperate with each other and civil society

# UN DEFINITION - Article 3 of the Protocol

- *The action of the recruitment, transportation, transfer, harbouring or receipt of persons*
- *By means of the threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim*
- *For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs*

# LEGAL FRAMEWORK – South Africa

## Common Law:

- Rape (cases prior to Criminal Law (Sexual Offences & Related Matters) Amendment Act 32 / 2007)
- Indecent Assault (cases prior to the Act 32 / 2007)
- Kidnapping  
'wrongful and intentional deprivation of the liberty of another'
- Abduction  
'unlawfully taking a minor out of the control of his/her custodian with the intention of enabling someone to marry or have sexual intercourse with that minor'
- Assault (common & with intent to commit GBH)
- Murder
- Extortion: threatening harm to a person to force them to comply with demands

# EXISTING LEGISLATION:

- Criminal Law (Sexual Offences & Related Matters) Amendment Act 32 of 2007/ Enacted 16 December 2007
- Prevention of Organised Crime Act, 121 of 1998
- Basic Conditions of Employment Act, 75 of 1997
- Immigration Act 13 of 2002
- Refugee Act 130 of 1998
- Films and Publications Act 65 of 1996
- Corruption Act 94 of 1992
- Extradition Act 67 of 1962
- International Cooperation in Criminal Matters Act 75 of 1996
- Children's Act 38 of 2005 (partly promulgated)

# **Criminal Law (Sexual Offences & Related Matters) Amendment Act 32 of 2007**

- Part 6 – ss 70 to 71: Transitional provisions relating to trafficking in persons (adults and children) for sexual purposes only
- Victims of Trafficking are not to be prosecuted for any directly related offence, e.g. contravention of immigration laws or prostitution

# Mind map process on Act 32 of 2007:

- NPA Task team was established
- Process mapping: To ensure standardisation of cases reported at the Thuthuzela Care Centres (TCC's) directed to linked dedicated courts and cases received at dedicated courts.
- Mind Mapping the Act:
  - Assist prosecutors and relevant stakeholders with the interpretation and application of the Act.
  - Task team designed and developed required annexures to charge sheets and directives (Sec 66(2)(a))
  - Developed a comprehensive training manual (Sec 66(2)(b))
  - Trained 406 prosecutors between June and September 2008

# Definition:

## Trafficking Section 70(2)(b)

includes the supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person, within or across the borders of the Republic, by means of

(i) a threat of harm;

(ii) the threat or use of force, intimidation or other forms of coercion;

(iii) abduction;

(iv) fraud;

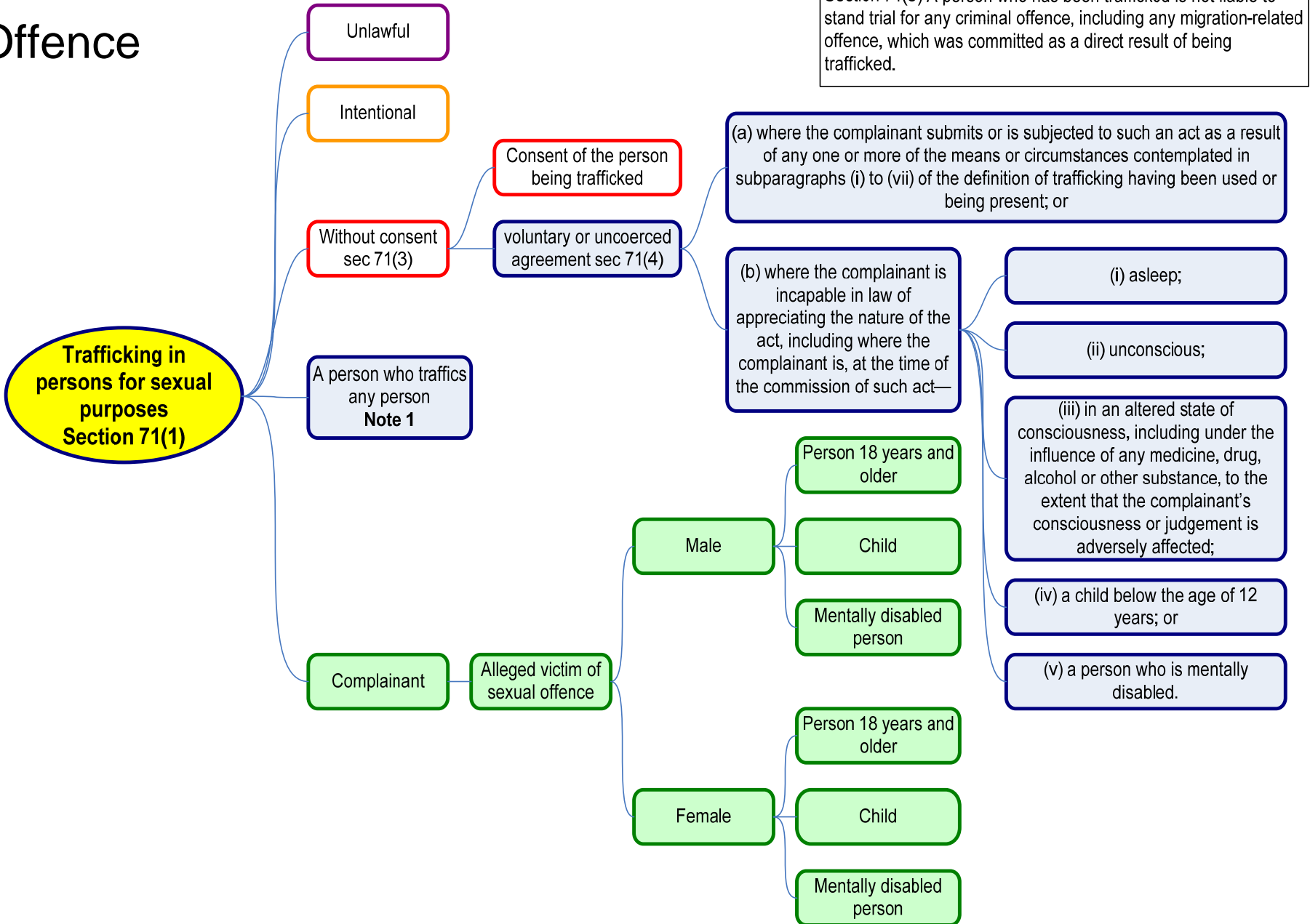
(v) deception or false pretences;

(vi) the abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his or her unwillingness or resistance to being trafficked, or unwillingness to participate in such an act; or

(vii) the giving or receiving of payments, compensation, rewards, benefits or any other advantage,

for the purpose of any form or manner of exploitation, grooming or abuse of a sexual nature of such person, including the commission of any sexual offence or any offence of a sexual nature in any other law against such person or performing any sexual act with such person, whether committed in or outside the borders of the Republic,

# Offence



**Note 1:**  
Section 71(5) A person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked.

**Trafficking in persons for sexual purposes Section 71(1)**

Unlawful

Intentional

Without consent sec 71(3)

A person who traffics any person  
**Note 1**

Complainant

Consent of the person being trafficked

voluntary or uncoerced agreement sec 71(4)

(a) where the complainant submits or is subjected to such an act as a result of any one or more of the means or circumstances contemplated in subparagraphs (i) to (vii) of the definition of trafficking having been used or being present; or

(b) where the complainant is incapable in law of appreciating the nature of the act, including where the complainant is, at the time of the commission of such act—

(i) asleep;

(ii) unconscious;

(iii) in an altered state of consciousness, including under the influence of any medicine, drug, alcohol or other substance, to the extent that the complainant's consciousness or judgement is adversely affected;

(iv) a child below the age of 12 years; or

(v) a person who is mentally disabled.

Male

Person 18 years and older

Child

Mentally disabled person

Female

Person 18 years and older

Child

Mentally disabled person

Alleged victim of sexual offence

# LEGISLATIVE PROCESS: TRAFFICKING IN PERSONS BILL

SA Law Reform Commission

- Issue Paper
- Discussion Paper and Combatting Trafficking in Persons Bill 2006
- Consultative process in mid-2007
- Written submissions from interested parties
- Revision of Draft Bill

Commencement of Parliamentary legislation  
review process



# HISTORY OF STRATEGY

- This process runs parallel to the Trafficking in Persons Inter-sectoral Task Team established on 6 Dec 2003, with 5 – pillar EC strategic framework
- Quarterly Trafficking in Persons Consultative Forum
- Development of pillars in 2-day workshop on 24-5 February 2004



# PROGRAMME CONTENT

## ■ EC RESULT AREAS

1. Knowledge & Understanding of Trafficking deepened
2. Cooperation & Coordination
3. Capacity Building & Training
4. Public Education & Awareness
5. Evaluation & Audit

# **RESULT AREA 1 – KNOWLEDGE & UNDERSTANDING OF TRAFFICKING DEEPENED**

## **Output 1 – Multi-Disciplinary Research Study**

- Current streams of trafficking in, to and from SA (Victim profiles, traffickers' profiles, routes, vulnerable groups, etc.)
- Sound estimates as to size and trend of each stream
- Tender dossier submitted for approval

# RESULT AREA 1 cont.

## Output 2–Dissemination of Research Report

- Publication of Research findings
- Dissemination Workshops and stakeholder meetings

## Output 3 – Inter-sectoral database

- Terms of Reference for Trafficking Information Management System **(TIMS)**

# RESULT AREA 2 – ENHANCED CO-ORDINATED CROSS-SECTOR RESPONSE

## Output 1–Establishment of Programme Coordinating Unit (PCU)

- Support to National Task Team
  1. Development of National Action Plan
  2. Establishment of Provincial Task Teams (KZN, W Cape, Mpumalanga, Limpopo prioritised)
- Secretariat to Programme Steering Committee

## Output 2 - Expert Response Team established

- Terms of Reference developed
- Manual of Operating Procedures/ Protocols developed
- Referral Mechanisms designed
- Monitoring for effectiveness

# RESULT AREA 2 cont.

## Output 3 – Victim Assistance Programme

- NGO Empowerment and Support Mechanism
- Victim Assistance Programme established
- Upgrading of facilities (Dedicated courts and Thuthuzela Care Centres)

## Output 4 – Regional Co-Operation and Coordination

- Regional Co-operation Mechanisms and structures
- Targeted Regional Interventions
- Information and Best Practice Knowledge Sharing

# RESULT AREA 3 – CAPACITY BUILDING AND DEVELOPMENT

## Output 1: SAQA-accredited curriculum for “Train-the-Trainer” workshops

1. Basics of Human Trafficking (Core)
2. Irregular migration and migration management aspects of human trafficking (for DHA)
3. Psychosocial and health aspects of trafficking (for DoSD & DoH)
4. Investigation (for SAPS)
5. Legislation (for DoJCD incl. NPA and LCMC)

## Output 2: (Interim) Training Workshops

- 60 country-wide counter-trafficking workshops from July to Dec 2008
- Targeted at 5 institutional clients:
  1. Home Affairs
  2. Social Development
  3. Health
  4. Justice & Constitutional Development (NPA & LCMC)
  5. South African Police Service (SAPS)

# RESULT AREA 3 cont.

## Output 3: Support & Monitoring

- Follow-up visits among government instructors trained by IOM in second half of 2009
- Training support to, and monitoring & evaluation of the newly-trained instructors
- Support the curriculum integration process into existing training programme

## Role of PCU/NTT

- Ensure appropriate content and Curriculum Development and Delivery
- Ensure Harmonisation of Workplans
- Provide Support
- Monitor Performance and
- Evaluate for Effectiveness


# RESULT AREA 4 – PUBLIC EDUCATION & AWARENESS

## Output 1–Prevention Strategy

- Development of messaging by Task Team
- Design Targeted Prevention Programme for Vulnerable Groups
- Implement Interim Awareness Programme (June to Dec '08)

## Output 2 – Public Awareness Strategy

- Tender dossier submitted for approval
- Implement Full Scale Awareness Programme
- Launch National Action Plan (**NAP**) and Provincial Plans
- Develop 'low cost-high impact' Regional Prevention & Awareness Strategies



# **RESULT AREA 5 – EVALUATION & AUDIT**

## EC Delegation

- Annual Financial and Compliance Audits
- Mid-term Operational Review
- Final Review

# FRAMEWORK OF VICTIMS RIGHTS: Consolidation of Rights in Existing Legislation

Right in the Victims Charter	Right in existing legislation
Dignity and privacy	Constitution: s10 and s12 Prevention of the Elimination and Prohibition of Unfair Discrimination Act 4, 2000
Information: Receive and Offer	Constitution: s 32, Promotion of Access to Information Act 4, 2000 Promotion of Access to Justice Act 3, 2000
Protection	Witness Protection Act 112, 1998 Domestic Violence Act 116, 1998
Assistance	Domestic Violence Act 116, 1998 Sexual Offences Act 32,2007 (HIV & AIDS compulsory services for Victims of Sexual Offences)
Compensation	Criminal Procedure Act 51, 1977 s 297
Restitution	Criminal Procedure Act 51, 1977 s 300

# The Victims Charter


- The Victims Charter contains SEVEN rights:
  - The right to be treated with fairness and with respect for your dignity and privacy
  - The right to offer information
  - The right to receive information
  - The right to protection
  - The right to assistance
  - The right to compensation
  - The right to restitution
- The Minimum Standards on Services for Victims of Crime - developed in order to strengthen the rights of victims contained in the Victims Charter
- CJS Departments drafted 5 year implementation plans (currently in year 2)

# Victim Support Structures

- Thuthuzela Care Centre Model [National Prosecuting Authority] (Victim Centered, Court Directed and Prosecutor Guided Focus)
  - Currently 10
  - 17 by March 2009
  - Envisage further roll out based on footprint and audit of services
  - Goal: 50 by 2010
- One Stop Centres [Department of Social Development]
  - Currently 3
  - Roll out of 6 more by 2010
- Ikhaya Lethemba [Department Community Safety]
- Victim Support Centres [South African Police Service]
- Civil Society interventions

# Milestones

- Skills Development (Multi Disciplinary)
- Total of all officials trained is 617
  - 155 social service providers,
  - 126 law enforcement officials,
  - 249 border officials,
  - 32 journalists and
  - 55 nurses
- 406 prosecutors (Trafficking in terms of Act 32 of 2007)
- Presentations and meetings with relevant stakeholders to ensure effective and efficient coordination and cooperation in the management of projects / initiatives to combat Trafficking in Persons
- Draft an Anti Rape Strategy: Prevention, Response, Support
- National Action Plan for No Violence Against Women and Children
- Establishment of Provincial Forums to ensure implementation of the EC Strategy



I thank you  
Obrigado