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## Human trafficking strategy

### South Africa's response to trafficking in persons

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#### 1. Background

Law enforcement agencies and research institutions<sup>1</sup> have identified South Africa as one of the countries in the southern part of Africa that is used by organised traffickers of human beings as a destination, transit and country of origin of victims in pursuing this abominable trade.

In recognition of this, the country has signed and ratified the United Nations Convention Against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ('[Palermo Protocol](#)' [\[PDF\]](#)) which came into operation on 29 September 2003 and 25 December 2003 respectively.

The Palermo Protocol obliges member states to:

- Criminalise trafficking
- Investigate and prosecute traffickers
- Undertake border control measures

In accordance with the means of each country:

- Provide measures to protect and assist victims
- Train law enforcement and border officials
- Inform and educate victims, potential victims and the general public
- Cooperate with each other and civil society

Parallel processes have seen the governmental line functions take the initial steps in addressing the phenomenon of trading in persons in order to further various purposes, such as the investigation by the [South African Law Reform Commission](#) (SALRC), with a view to producing a comprehensive Trafficking in Persons Bill on the matter by 31 March 2007, and the establishment of a **Human Trafficking Desk** within the Organised Crime Unit at the South African Police Service (SAPS).

The [National Prosecuting Authority](#) has encountered unique problems in ensuring an adequate response to the occurrences of this phenomenon, in the absence of specific legislation. Trafficking cases present as a whole host of other offences in the criminal justice system, e.g. sexual exploitation, farm labour, domestic labour and murder. Prosecutions have proceeded on an *ad hoc* basis overtly

demonstrable to the facts, such as kidnapping, indecent assault and rape, which do not individually attract as heavy sentences as a specific trafficking in persons offence would impose.

Legislation currently utilised in the prosecution of trafficking cases include the Sexual Offences Act 23 of 1957, the Child Care Act 74 of 1983, as amended, the Prevention of Organised Crime Act 121 of 1998, the Prevention of and Combatting of Corrupt Activities Act 12 of 2004, the Immigration Act 13 of 2002, as amended, the Films and Publications Act 65 of 1996, as amended, the Corruption Act 94 of 1992, the Intimidation Act 72 of 1982 and the Riotous Assemblies Act 17 of 1956 in framing conspiracy and incitement charges.

The absence of legislation specific to human trafficking limits prosecutors to dealing only with the perpetrator directly linked to the offences resulting from the trafficking of the victim, to the exclusion of the perpetrators behind the scenes, as this is often an organised crime activity. The National Prosecution Service (NPS) is also not in a position to record statistics, due to lack of definition in the current legal framework.

The presidential mandate of the SOCA Unit is to deal efficiently and effectively with sexual offences, hence the emphasis on trafficking for sexual exploitation purposes.

A comprehensive mechanism in response to trafficking in human beings thus clearly becomes a priority, in light of the above circumstances.

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## **2. Co-ordinating South Africa's response to Human Trafficking**

The Sexual Offences and Community Affairs (SOCA) Unit's mandate in dealing with the prevention and reduction of sexual offences through effective prosecutions, formed the basis of the Trafficking in Persons seminar on 5 December 2003, with the following objectives:

- Audit the strategies being implemented against human trafficking, where they existed
- Identify the stakeholders involved in the arena
- Initiate a discussion of the gaps and the mechanisms to be employed in closing those gaps
- Assess the impact of the absence of data and how this information could reliably be obtained
- What the various role-players had been able to do thus far within the limited and almost non-existent policy and legal framework
- An examination of the pros and cons of fast tracking interim legislation, while a more comprehensive investigation was being undertaken by the South African Law Reform Commission (SALRC)
- Establishment of an inter-sectoral Task Team to commence a process of coordination and refinement of activities towards the development of a multi-sectoral and comprehensive strategy

In an effort to make the process as inclusive as possible, a very broad approach was adopted to distil the critical role-players. The stakeholders listed hereunder were invited: Department of Home Affairs, Department of Foreign Affairs, various units within the South African Police Service (SAPS), various directorates within the Department of Justice and Constitutional Development (DoJCD), Office on the Status of Women- The Presidency, National Treasury, International Organisation for Migration (IOM), South African Law Reform Commission (SALRC), Youth Ending Commercial Sexual Exploitation of Children (YCESEC), various United Nations agencies,

Terres des Hommes – South Africa, Justice and Peace Commission, and all the Foreign Missions in the country identified in research studies as being affected by the phenomenon. The Witness Protection Unit (WPU), Asset Forfeiture Unit (AFU) and the Directorate of Special Operations (DSO) were also in attendance.

The outcome of the forum was the establishment of a 10-member Trafficking in Person Intersectoral Task Team (“the Task Team”), which would be a Working Group defining and implementing strategy, with the clear understanding that the broader Consultative Forum had to be kept abreast of developments on a quarterly basis. The SOCA Unit within the National Prosecuting Authority was unanimously chosen to chair and also play a secretarial function for the Task Team and the Consultative Forum. The departments and organisations outlined hereunder were elected to the Task Team:

- Human Trafficking Desk, Organised Crime Unit – SAPS
- Ports of Entry Policing – SAPS
- Legislative Directorate – Department of Justice & Constitutional Development
- International Affairs – Department of Home Affairs
- International Organisation for Migration
- Department of Social Development
- Department of Labour
- Molo Songololo
- United Nations Office on Drugs and Crime (UNODC)

Provision was made for the ad hoc co-option of technical knowledge and expertise in various departments and organisations, such as the Department of Justice and Constitutional Development and the South African Law Reform Commission.

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### **3. Proposed strategy**

The Task Team identified six pillars of a national strategy to effectively address trafficking in persons, as an instance of organised crime: Information, Capacity-Building & Development, Victim Assistance & Integration, Policy & Legislation Development, Liaison & Consultation as well as Monitoring & Evaluation. The Task Team also developed Terms of Reference and a Process Flow Chart in this regard.

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### **4. Current legal framework**

South Africa does not have a legal definition of human trafficking, either in the common law or in statute. Depending on the circumstances of a particular case, there are a number of offences in terms of which a person or persons suspected of being involved in the trafficking of persons for the purposes of *sexual exploitation* may be charged.

In the common law, these options include abduction – the unlawful and intentional removal of an unmarried minor from the control of her/his parents or guardian with the intention of having sexual intercourse with the minor; kidnapping – the unlawful and intentional deprivation of a person of her/his freedom of movement; rape – unlawful and intentional sexual intercourse with a woman without her consent; indecent assault – unlawful and intentional assault with the object of committing an indecency; assault (either common or with the intent to inflict grievous bodily harm) – unlawful and intentional application of force to the person of another.

In terms of legislation, the Sexual Offences Act 23 of 1957 has a number of provisions that may be of use when prosecuting a case involving trafficking. A broad selection of these includes section 2 which makes it illegal to keep a brothel. Section 9 creates the offence of procuring a child to have unlawful carnal intercourse with another person, with section 10 making it unlawful to procure an adult female for the same reasons. Section 12 criminalises the detaining of a female against her will, either with the intention that she would have sexual intercourse with a male, or with the intention that she be detained in a brothel. Section 14 prohibits proscribed sexual offences with youths, while section 20 prohibits living off the earnings of prostitution or assisting in the commission of indecent acts.

The Child Care Act, 74 of 1983, as amended is specifically targeted at the protection of children, and provides for protection specifically against the commercial sexual exploitation of children in section 50A. Section 51 prohibits the unlawful removal of children, while section 52A prohibits the employment of certain children.

[The Prevention of Organised Crime Act, 121 of 1998](#) [PDF]: Chapter 2 of the Act covers offences relating to racketeering activities. Broadly, it makes it an offence to be involved in racketeering activities, and to receive, use and / or invest in, any property derived from a pattern of racketeering activity. Included in Schedule 1 are the offences of rape, kidnapping, indecent assault, and the statutory offences of sections 14 and 20 of the Sexual Offences Act. It is submitted that in terms of this Act, a number of other provisions may also be of use in this context – Chapter 3 dealing with the proceeds of unlawful activities, Chapter 4 dealing with criminal gang activities, and Chapters 5 and 6 dealing with the forfeiture of assets obtained unlawfully.

### **Miscellaneous legislation**

There are a number of other pieces of legislation that may be used to prosecute activities that may constitute trafficking conduct. The Films and Publications Act provides for the offences of possession, production and distribution of child pornography (s27). The [Immigration Act 13 of 2002](#) [PDF] prohibits certain persons into the Republic, while various provisions of the Intimidation Act 72 of 1982 and the Corruption Act 94 of 1992 may be used creatively as the context dictates.

The [Children's Act 38 of 2005](#) [PDF] contains a chapter on trafficking in children. This Act, *inter alia*, criminalises child trafficking (sections 281, 282 & 284) and provides for a fine or imprisonment of up to 20 years or both a fine and such imprisonment for anyone convicted of this crime (section 305(8)). The provisions in this Act as reflected, limit trafficking offences to those committed against "children"; whilst the inclusion of trafficking in the Sexual Offences Bill is directed at both adults and children, but are limited to trafficking for sexual purposes.

### **Proposed legislation**

The [Sexual Offences Bill](#) [PDF]

This proposed legislation contains a specific provision, as stated *supra*, relating to the trafficking in persons for sexual purposes.

Chapter 7, part 5 of the Bill defines trafficking (section 65) as:

'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—

(a) athreat of harm;

- (b) the threat or use of force, intimidation or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception or false pretences;
- (f) 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
- (g) the giving or receiving of payments or benefits, for the purpose of any form or manner of sexual exploitation, grooming or abuse of such person, whether committed in or outside the borders of the Republic, including for the purpose of the commission of a sexual offence or sexual act, or sexual exploitation or sexual grooming as contemplated in this Act, or exploitation for purposes of pornography or prostitution, with, against or of such person.'

Section 66, formulates the offence of 'trafficking in persons for sexual purposes'.

The SOCA Unit participated in the consultative process towards the drafting of Trafficking in Persons legislation (Project 131) held in June 2006 by the South African Law Reform Commission (SALRC) and also submitted written comments to the Discussion Paper and Draft Bill. A legislative framework focusing exclusively on the relatively new crime type of human trafficking will give much-needed assistance to the identification, investigation and prosecution of perpetrators.

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## 5. Initiatives

### 5.1 Interim legislation

The members of the Task Team made individual submissions to the SALRC in relation to Chapter 5 of the [Criminal Law \(Sexual Offences\) Amendment Bill, 2003](#) [PDF] (Working Document 24 February 2004) regulating the criminalisation of trafficking in persons for sexual purposes.

### 5.2 "Next Steps to Path-breaking Strategies in the Global Management & Prosecution of Sex Trafficking In South Africa" Conference – 22 to 24 June 2004

The War Against Trafficking Alliance (WATA) led by Shared Hope International, a non-governmental organisation based in the United States of America, collaborated with the Task Team to convene the "Next Steps to Path-breaking Strategies in the Global Management & Prosecution of Sex Trafficking In South Africa" Conference in Benoni, Gauteng from 22 to 24 June 2004.

The 120 Conference participants from relevant government departments, civil society and international bodies were provided with the opportunity to work through different international cases of trafficking with South African and United States experts on the subject.

### 5.3 Consultative process

The Task Team convened quarterly meetings in 2004 with a broader group of stakeholders involved in the management of trafficking, who collectively for the **Trafficking in Persons Consultative Forum**, to ensure broader consultation in the development and implementation of plans in this sphere.

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## 6. Way forward

A three-year funding agreement between the European Union Commission (EU) and the National Prosecuting Authority was entered into for the implementation of the strategy from January 2006. Accordingly, in terms of the EU provisions, the Teac Cegos Consortium in Brussels was appointed on a 28-day consultancy assignment to work on the Design Study for the Task Team.

As part of the Design Study, the consultants examined in detail the 6-pillar strategy developed by the Task Team in 2004, with a view to assessing its implementability and sustainability; as well as exploring parallel interventions in the SADC region. The consultants conducted expert interviews nationally, focusing on border locations and cities with a higher proportion of commercial sexual activity.

A Validation Workshop was held in Centurion, Pretoria in order to obtain stakeholder inputs to the comprehensive proposal, based on the empirical and desktop research findings made by the consultancy.

At the conclusion of the signing-off process by the Task Team on 27 June 2005, the Financing Agreement entitled "Programme of Assistance to the South African Government to Prevent, React to human trafficking and provide Support to the victims of the crime (2006-2009)" was presented to EU member states represented in South Africa on 30 June 2005, before its submission to EU headquarters in Brussels. The agreement was then presented to various committees of the EU in Brussels before its final signature on 21 December 2005. National Treasury in South Africa signed the agreement on behalf of the South African government on 15 June 2006, following the amendment of inaccuracies in the document.

In the interim, positions in the soon-to-be established Programme Co-ordinating Unit (PCU) were advertised and interviews held at the NPA. A National Coordinator, Project Manager, Finance Manager and an Administrator will be appointed to the PCU to manage the day-to-day implementation of the strategy over the three-year term.

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1) "The trafficking of women into the South African sex industry" by Molo Songololo, 2000; "Seduction, sale and slavery: Trafficking in Women and Children for sexual exploitation in South Africa" by the International Organisation for Migration, May 2003

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