

TRAFFICKING IN PERSONS FOR THE
PURPOSE OF SEXUAL EXPLOITATION:
RELEVANT CASE STUDIES AND PRACTICAL
APPLICATION OF THE CURRENT LEGAL
FRAMEWORK

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INTRODUCTION

- South Africa does not have legislation that specifically prohibits human trafficking
- There are however legal measures (common and legislative law) that can be applied to prosecute possible offenders



The Constitution of the Republic of South Africa Act 108 of 1996

- Section 10: Provides for the right to human dignity and states that *“everyone has inherent dignity and the right to have their dignity respected and protected”*
- Section 12: Guarantees the constitutional right of everyone to freedom and security. This includes the right *to be free of all forms of violence...and not to be treated or punished in a cruel, inhuman or degrading way*
- The constitutional rights defined in the Bill of Rights apply to *everyone*, including children.
- Section 28 of the Bill of Rights provides for the special protection of children.



The common law

- There is no common law provision dealing with trafficking *per se*.
- Depending on the circumstances of a particular case, there are a number of options available to the prosecution in terms of which a suspected “trafficker” may be charged.
- These include:



Common Law cont.

- 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 (Masiya case; definition of rape unconstitutional; ruling of judge to be confirmed by Constitutional Court)
- Indecent assault – unlawful and intentional assault with the object of committing an indecency
- Assault – unlawful and intentional application of force to another person.

Statutory Law:

The Sexual Offences Act, 23 of 1957

- Various provisions when prosecuting a case involving trafficking
- Section 2 making it illegal to keep a brothel (*any house or place kept for the purposes of prostitution or for persons to visit for the purposes of having unlawful carnal intercourse or any other lewd or indecent purpose*)



Sexual Offences Act cont.

- Section 9 creates the offence of procuring a child to have unlawful carnal intercourse with another person. (The parent or guardian of a child under 18 will be prosecuted)
- Section 10 creates the offence of procuring an adult female to have unlawful carnal intercourse with another person.



Sexual Offences Act cont.

- 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 deals with proscribed sexual offences with youths (illegal offences)



Sexual Offences Act cont.

- Section 20 prohibits living off the earnings of prostitution or assisting in the commission of indecent acts.



THE CRIMINAL LAW (SEXUAL OFFENCES) AMMENDMENT BILL

- This proposed legislation contains a specific provision on the trafficking of persons (including children) for *sexual purposes* (Chapter 7 part 5)
- Definition:
 - supply, recruitment, procurement, capture, removal, transportation, transfer, harbouring, sale, disposal or receiving of a person
 - within or across the borders of SA
 - for use in sexual acts, including sexual exploitation or pornography of the person



The Child Care Act 74 of 1983

- Is aimed at the protection and welfare of children.
- Provides, amongst other things, for the removal of a child thought to be at risk and in need of care.
- It provides for the prevention of ill treatment of children.
- Section 50A provides protection specifically against the commercial sexual exploitation of children.
- Section 51 prohibits the unlawful removal of children
- Section 52A prohibits the employment of certain children



CHILDREN'S ACT 38 of 2005

- Act signed by State President in June 2006
- Not yet in operation - Child Care Act of 1983 therefore still governs child care (*2nd leg of Bill referred to National Council of Provinces for further deliberations - commencement date to be announced once finalised*)
- Introduces the crime of human trafficking relating to children
- Chapter 18 sections 281 – 291



Children's Act cont.

- Purpose of chapter 18 to
- (a) give effect to the UN Protocol to prevent trafficking in persons and
- (b) to combat trafficking in children in general



The Prevention of Organised Crime Act 121 of 1998

- It is possible to prosecute someone for trafficking activities in terms of this act.
- 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.
- This refers to the involvement of any offence referred to in schedule I of the Criminal Procedure Act (51 of 1977)
- For purposes of trafficking this would include offences such as rape, kidnapping, indecent assault and the statutory offences of sections 14 and 20 of the Sexual Offences Act.



The Films and Publications Act 65 of 1996

- Section 27 provides for the offences of possession, creation and distribution of child abuse images (child pornography)
- Act amended in 2004



Films and Publications Act cont.

- Definition of "Child pornography" has been re-defined as including...

"any image, however created, or any description of a person, real or simulated, who is, or who is depicted or described as being, under the age of 18 years –

(i) engaged in sexual conduct;

(ii) participating in, or assisting another person to participate in, sexual conduct; or

(iii) showing or describing the body, or parts of the body, of such a person in a manner or in circumstances which, within context, amounts to sexual exploitation, or in such a manner that it is capable of being used for the purpose of sexual exploitation;"



Miscellaneous Legislation

- The Immigration Act 13 of 2002 prohibits certain persons into the Republic.
- The Intimidation Act 72 of 1982 and the Corruption Act 94 of 1992 can be used productively as the context dictates



Identified cases (unreported)

- Amien Andrews case
- 1996 targeted young females in public areas
- Lured to a brothel under false pretences
- Sexual exploitation of these girls for financial gain
- Charged with kidnapping, assault to do grievous bodily harm, indecent assault and rape.



Identified cases cont.

- Children testified 7 years later (2003)
- Convicted of kidnapping, rape, assault GBH, indecent assault
- Sentence: total of 17 years imprisonment
- The Ranch case: Accused charged with running a brothel, living off the proceeds of prostitution, procuring women to have sex with clients and employing illegal immigrants at The Ranch complex. Not yet finalised.



Identified cases cont.

- Elizabeth Maswanganye case:
- Accused charged with kidnapping and charges of running a brothel. (Common Law and Sexual Offences Act)
- Facts: lured victims with promises of employment and forced them into prostitution
- Convicted of running brothel and soliciting girls for carnal intercourse. (sec 2 and sec 14 of SO Act)
- Sentenced June 2006 – 5 years imprisonment in terms of section 276(1)(i) of Criminal Procedure Act.

END

Thank you

