

Immigration Law Enforcement & Human Trafficking

**SEMINAR: PROSECUTING TRAFFICKING IN
PERSONS IN THE SOUTH AFRICAN CONTEXT**

10-11 AUGUST 2006



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A few background Issues:

- The purpose of this presentation will be to place the role of DHA (immigration) on the human trafficking agenda
- The presentation will provide generic information to serve as a basis for in-depth interaction on the topic
- The presentation is also informed by:
 - The fact that there are various organizations that will be speaking on trafficking more authoritatively (e.g. IoM, SA Law Commission etc.)
 - The fact that there is still very little information (research) conducted in the area of trafficking
 - DHA's participation at national (interdepartmental fora as well international for a on matters of human trafficking & smuggling)



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Structure of Presentation

- **Introduction: Location of Immigration in DHA**
- **Legal Framework**
- **The Immigration Act as a ‘law enforcement tool’**
 - **Immigration Processes – Critical nodes for trafficking detection**
- **Partnerships (Public & Private)**
- **Key Challenges**
- **Conclusion**



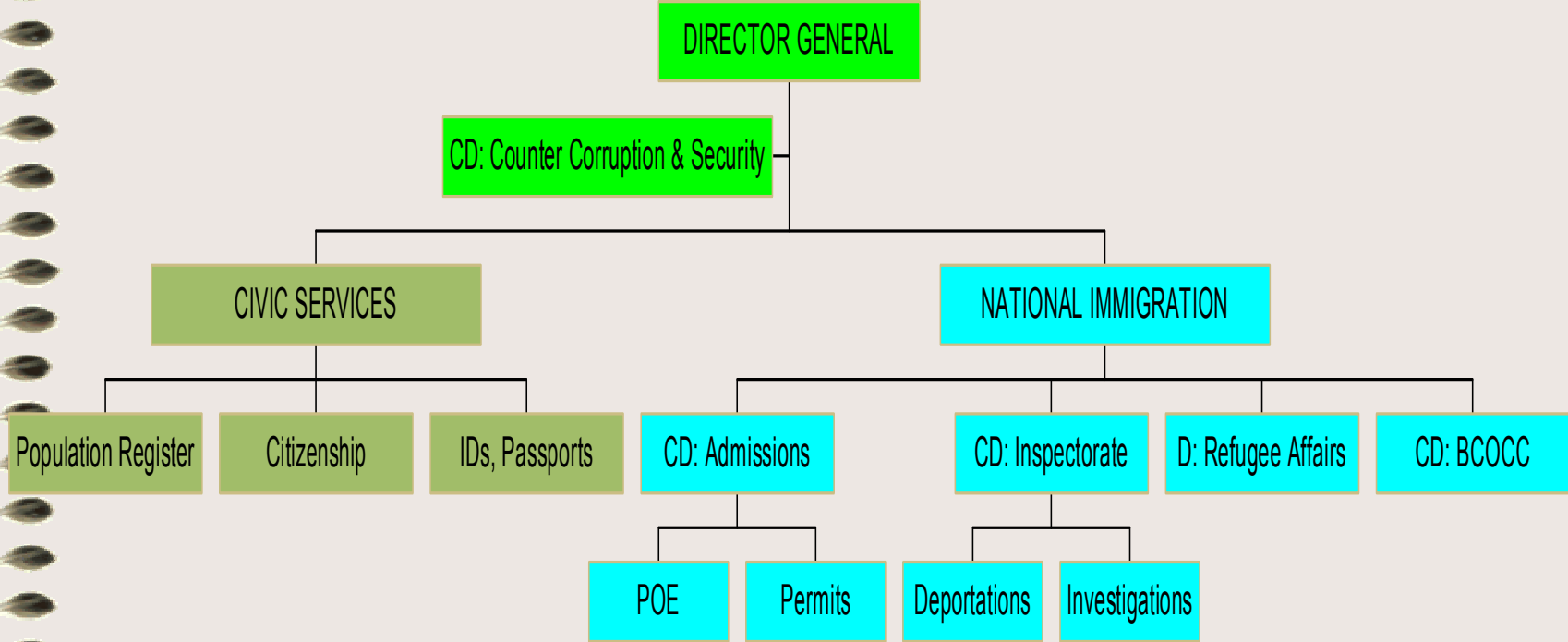
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Location of Immigration in DHA

SIMPLIFIED DHA STRUCTURE



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Legal Framework

- Administered by DHA:
 - Immigration Act
 - Refugees Act
 - Marriages Act
 - Identifications Act
 - SA Passports & Travel Documents Act
 - Citizenship Act
 - Electoral Act
- Other Important legislation:
 - Constitution
 - Criminal Procedure Act
 - PAIA
 - PAJA



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Legal Framework

- **Immigration Act: Preamble**
 - Ensure foreign labour does not adversely impact on labour standards and rights and expectations of SA workers
 - Ensure security and improve border management
 - Ensure SA economy has access to foreign skill
 - Ensure human rights based enforcement
 - Counter xenophobia



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Immigration Act as a “law enforcement tool”

- S29 – Prohibited Persons
- S30 – Undesirable Persons
- S33 – Establishment of the Inspectorate
- Act & Regulations deal with the powers of immigration officers.
- Fact: Immigration offences are not treated as seriously as criminal offences and are generally considered to be administrative offences that can be remedied through compliance steps etc.
- The role of the courts in shaping the future of immigration law enforcement is critical.



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Immigration Processes- Detecting Trafficking

- Admissions:
 - Permits:
 - Missions Abroad
 - Advanced Passenger Profiling (APP)
 - Airline Liaison
 - Ports of Entry:
 - Intelligence led profiling (identification of traffickers and their victims)
 - BCOCC (integrated border security)



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Immigration Processes- Detecting Trafficking

- Law Enforcement:
 - Discourage “pavement policing” (weekend swoops)
 - Compile detailed profiles of traffickers and their victims to inform future ops
 - Deportations:
 - Not a quick fix solution
 - Know who is deported and why
 - Integrated justice systems and processes

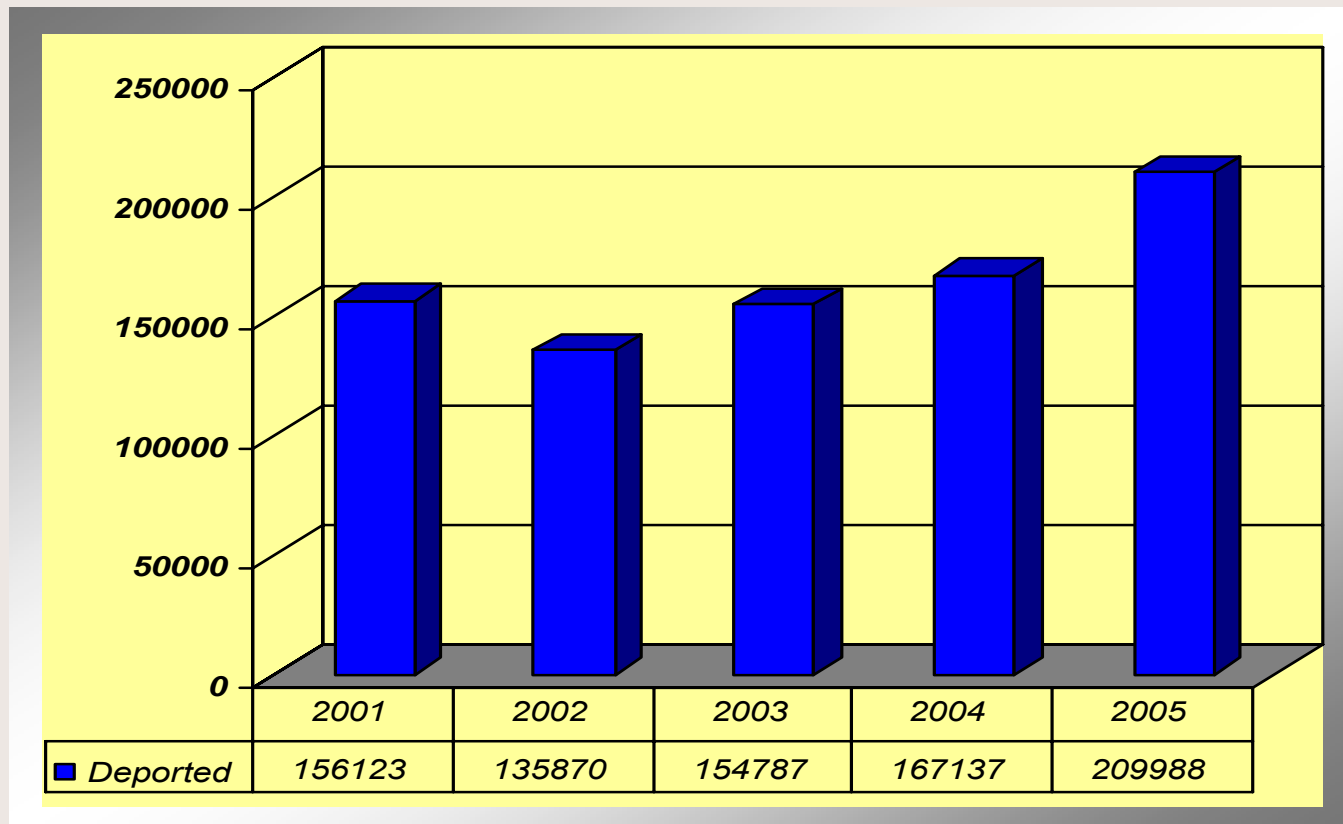


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Immigration Processes- Detecting Trafficking

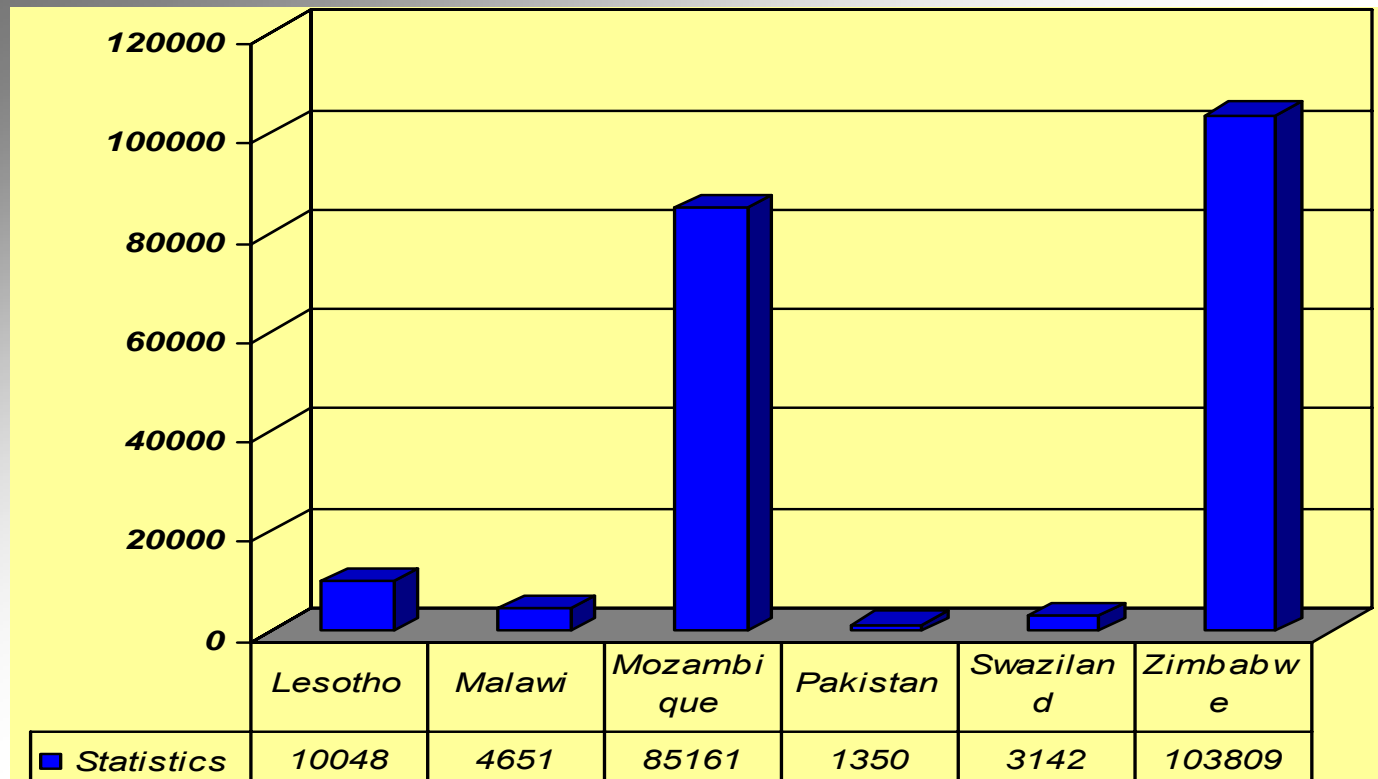


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Immigration Processes- Detecting Trafficking



DEPORTATIONS: MAIN NATIONALITIES



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Partnerships

- Trafficking is not just a security issue – it is a social phenomenon with various dimensions.
- Counter-Trafficking needs to be supported by better collection of data by law enforcement agencies, social cluster agencies and civil society
- Public Awareness + education of officials is critical
- A thorough strategic stakeholder & partner analysis is equally critical
- Going beyond legislation – define a comprehensive, multi-stakeholder strategy



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Key Challenges & Opportunities

- Poor data Collection, collation and analysis
- Lack of legislation vs. pressure)
- Poor operational coordination + Role clarification (national & international)
- Legislation in RSA has potential to be more contextual and responsive – informed by national, regional and international realities.



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A global context

- The Bahamas
- Global Discourse
 - G77 & China
 - World Trade Organization (WTO) Mode 4

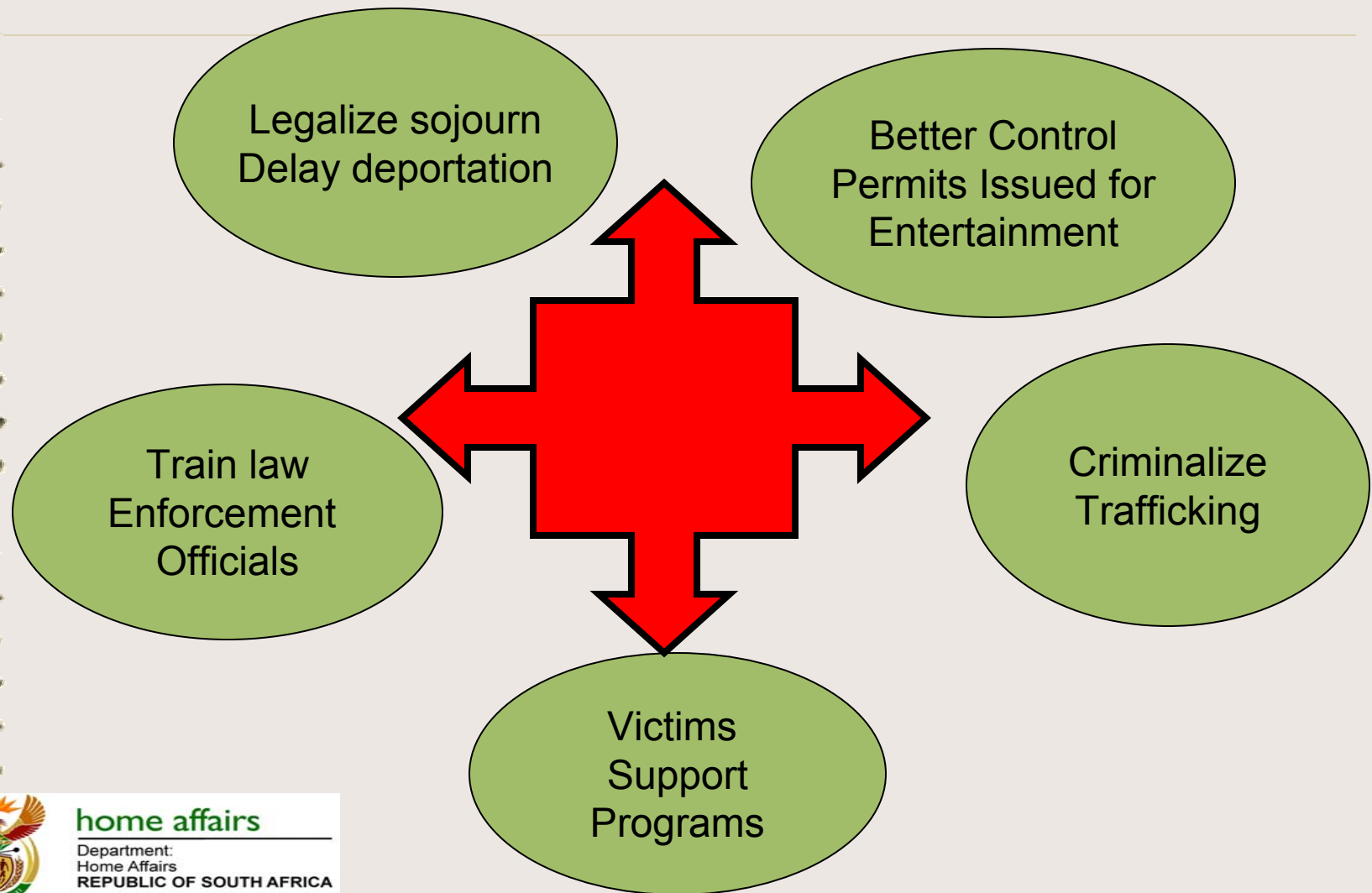


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Standard Responses



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Conclusion

- The victim of trafficking is a vulnerable person – the DHA has the responsibility to:
 - Protect the dignity of trafficked persons
 - Grant status (to legalize sojourn) during and (if necessary) after investigations by relevant agencies – This is critical!
 - Ensure the repatriation of victims in a humane manner whenever necessary
 - Ensure that the counter-trafficking regime does not get abused as an alternative way of gaining residence (temporary or permhanent) to RSA



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THANK YOU FOR YOUR ATTENTION!