

# CHILD PORNOGRAPHY TRAINING SEMINAR

HUMAN TRAFFICKING: STATUTORY  
LAW AND RELEVANT BILLS  
(SOCA UNIT)

18.10.2006

# LATEST DEVELOPMENT: CHILDREN'S ACT OF 2005

- Children's Bill-Sec. 75 – Children's Act No 38 of 2005
- Signed by President on 8 June 2006
- Commencement date to be fixed by President
- Child Care Act of 1983 still in operation

# Children's Act No 38 of 2005

- Gives effect to rights in the Constitution; care & protection of children principles
- Define parental responsibilities & rights
- Provision regarding children's courts
- Adoption of children; inter-country adoption
- Hague Convention on Inter-country Adoption
- Prohibits child abduction & gives effect to the Hague Convention on International Child Abduction
- Surrogate motherhood
- New offences relating to children

# Children's Amendment Bill- Sec 76 [Bill 19 of 2006]

- Minister of DSD introduced the Bill in the NCOP on the 25 July 2006.
- The Bill affects the provinces
- DSD will brief NCOPs about the Bill at the workshop in Pretoria ( 12-13.10.2006)
- Public hearings to all provinces during October 2006
- Formal hearings by DSD to NCOP on 17/10/2006
- 31.10.06 consideration of the negotiation mandates from provincial parliaments

18.10.2006

# Children's Amendment Bill cont.

- Consideration of final mandates from provincial parliaments 14.11.2006
- Plenary session to be conducted on the 16.11.2006
- Objectives of the Bill: to amend the Child Care Act, 1983.
- Insert new definitions i.e “child headed household” and “cluster foster care scheme”
- Provide for partial care of children
- Provide for early childhood development
- Provision regarding the protection of children

18.10.2006

# Children's Amendment Bill: Objectives cont.

- Provide for prevention & early intervention of services
- Provide for children in alternative care
- Provide for foster care
- Provide for child and youth care centers, shelters and drop-in centers
- Create certain new offences relating to children & provide for matters connected therewith
- DSD is in the process of appointing a service provider to draft regulation to the Act and the Bill

# Criminal Law Amendment (Sexual Offences & related matters) Bill B-2006

- Still undergoing parliamentary processes
- The aim of the Bill is to comprehensively and extensively review and amend all aspects of the laws and the implementation of the laws relating to sexual offences in a single legislation, by making interim provisions relating to the trafficking in persons for sexual purposes

# Sexual Offences Bill

- Part 5, Section 65 deals with Transitional provisions relating to trafficking in persons for sexual purposes pending the adoption of legislation in compliance with UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Trans-National Organised Crime (signed on 14.12.2000) and the repeal are provided for in partial compliance of our international obligations and to deal with to deal with this rapidly growing phenomena globally 18.10.2006

# Sexual Offences Bill cont.

- The Bill proposes definition for “commercial carrier” – includes a company, or the owner, operator or master of any means of transport that engages in the transportation of goods or people for commercial gain;
- “Trafficking” – 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-
  - a threat of harm

18.10.2006

# Sexual Offences Bill cont.

- The threat or use of force, intimidation or other forms of coercion;
- Abduction;
- Fraud;
- Deception or false pretences;
- The abuse of power or of a position of vulnerability, to the extent that the complainant is inhibited from indicating his/her unwillingness / resistance to being trafficked, or unwillingness to participate in such an act; or

# Sexual Offences Bill cont.

- The giving or receiving of payments or benefits, for the purposes 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 sexual offences or sexual act, or sexual exploitation or sexual grooming as contemplated in this Act, or exploitation for purposes of pornography/prostitution, with, against or of such person, and “trafficks” and “trafficked” have a corresponding meaning.

18.10.2006

# Children's Act No. 38 of 2005

- Aims to give effect to the UN Protocol and generally to combat trafficking in children.
- “trafficking’ in relation to a child means the recruitment, sale, supply, transportation, transfer, harbouring or receipt of children, within or across the borders of the Republic-
- By means, including the use of threat, force or other forms of coercion, abduction, fraud, deception, abuse of power or the giving or receiving of payments or benefits to achieve the consent of a person having control of a child; or

18.10.2006

# Children's Act No 38 of 2005 cont.

- Due to position of vulnerability, for the purpose of exploitation and
- Includes the adoption of a child facilitated or secured through illegal means; “UN Protocol to Prevent Trafficking in Persons” means the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime, 2000.

# Sexual Offences Bill

- Section 66 deals with trafficking in persons for sexual purposes
- A person who trafficks any person, without the consent of that person is guilty of the offence of trafficking in persons for sexual purposes
- “consent” is defined as a voluntary or uncoerced agreement
- Where a person does not voluntarily/ without coercion agrees to being trafficked as contemplated above include, but is not limited to the following

18.10.2006

# Sexual Offences Bill cont.

- (a) Where a person submits or is subjected to such an act as a result of any/ more of the means or circumstances contemplated in the definition of trafficking having been used or being present; or
- (b) Where a person is incapable in law of appreciating the nature of the act, including where the person is at the time of the commission of such act-
  - (i) asleep

# Sexual Offences Bill cont.

- (ii) Unconscious
- (iii) in an altered state of consciousness, incl. under the influence of any medicine, drug, alcohol / other substances, to the extent that the person's unconsciousness/judgments is adversely affected ;
- (iv) a mentally disabled person; or
- (v) a child
- A person who orders, commands, organizes, supervises, controls / directs trafficking;

# Sexual Offences Bill cont.

- Performs any act which is aimed at committing, causing, bringing about, encouraging, promoting, contributing towards or participating in trafficking; or
- Incites, instigates, commands, aids, advises, recruits, encourages or procures any other person to commit, cause, bring about, promote, perform, contribute towards / participate in trafficking, is guilty of an offence
- A person who has been trafficked is not liable to stand trial for any criminal offence,

18.10.2006

# Sexual Offences Bill cont.

- including any migration-related offence/prostitution, which was committed as a direct result of being trafficked
- A commercial carrier commit an offence if he/she brings a person into or removes a person from the Republic and upon entry into/departure from the Republic, the person does not have the travel documents required for lawful entry into/departure from the Republic

# Sexual Offences Bill cont.

- A commercial carrier is not guilty of an offence if-
- The carrier had reasonable grounds to believe that documents are lawful for entry into or departure from the Republic
- The person possessed lawful travel documents when he/she boarded, or last boarded, the means of transport to travel to or from the Republic
- Entry into the Republic occurred only because of illness/ injury to a child / adult, stress of weather/ any other circumstances beyond the control .

# Sexual Offences Bill cont.

- In addition to any offence under this section a commercial carrier is liable to pay the costs of the trafficked person's care and safekeeping and return to the Republic.
- A court must when convicting a commercial carrier of an offence under this section, in addition order the commercial carrier concerned to pay as contemplated above.

# Children's Act: child trafficking

- Chapter 18 deals with trafficking in children
- Purpose to give effect to UN Protocol to Prevent Trafficking in Persons and its provisions to be law in the Republic & to combat child trafficking in children (Sec. 281 & 282)
- Sec. 283 State President to enter into an agreement with a foreign state not part to the UN Protocol in respect of any matter pertaining to child trafficking

# Children's Act: child trafficking cont.

- Sec. 284 prohibits trafficking in children by any person, natural/ juristic, or a partnership
- Sec.305 person guilty of an offence liable to a fine or imprisonment not exceeding 10 years or if convicted more than once liable to fine/imprisonment for a period not exceeding 20 years or both
- Sec. 285 prohibits a behaviour facilitating trafficking in children

# Children's Act: child trafficking cont.

- Sec. 286 provide assistance to a child who is a victim to child trafficking
- Sec. 287 Suspension of parental responsibilities and rights
- Sec. 288 person to report child trafficking victims are Immigration official, social worker, social service professional, medical practitioner/ registered nurse
- Sec.289 how to deal with a child who is a victim
- Sec. 290 Repatriation of a child who is a victim

# Children's Act: trafficking cont.

- Sec. 291 deals with extra-territorial jurisdiction
- Sec. 305 (1) A person is guilty of an offence if that person commits an act in contravention of the prohibition set out in section 285(1) or in section 284(1)

# Children's Amendment Bill

- Sec. 191 (2) (e) a child and youth care center must offer a therapeutic programme designed for the residential care of children outside the family environment, which may include a programme designed for the reception and temporary safe care of trafficked or commercially sexually exploited children

THANK YOU !!!

18.10.2006