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The National Prosecuting Authority of South Africa
Iqumiso Shicileli Indobhakatho Indabakatho Afrika
Die Nasionale Anvoegingsmag van Suid-Afrika

PRESENTATION TO JOINT MONITORING COMMITTEE ON THE QUALITY
OF LIFE AND STATUS OF WOMEN
PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

"ENHANCED COMMUNICATION STRATEGIES IN SOUTH AFRICA"

TRAFFICKING IN PERSONS INTER-SECTORAL TASK TEAM
chaired by NATIONAL PROSECUTING AUTHORITY

24 March 2006

1. INTRODUCTION

The Sexual Offences and Community Affairs (SOCA) Unit is the directorate within the National Prosecuting Authority (NPA) entrusted with the effective prosecution of gender-based violence. The other units within the organisation are the Directorate of Special Operations (DSO), National Prosecution Services (NPS), Asset Forfeiture Unit (AFU), Specialised Commercial Crimes Unit (SCCU), Witness Protection Unit (WPU) and the Priority Crimes Litigation Unit (PCLU).

The SOCA Unit was established through a Proclamation by the president of the Republic of South Africa signed on 15 September 1999, in terms of section 13(1)(c) of the National Prosecuting Authority Act 32 of 1998. The Proclamation confers, imposes and assigns the following powers, duties and functions on Adv Thokozile Joy Majokweni, as a Special Director of Public Prosecutions:

- (a) The formulation of policy regarding capacity building, sensitisation and scientific functional training in respect of the prosecution of sexual offences;
- (b) The coordination of the establishment of Special Courts for the adjudication of sexual offences;
- (c) The facilitation and/or formulation of research techniques for the prosecution of sexual offences;
- (d) The development and implementation of community awareness programmes and of plans for the participation of nongovernmental organisations in processes and procedures aimed at the prevention or containment of sexual offences; and
- (e) The development of training and plans and mechanisms regarding the prosecution of sexual offences"

2. GENDER-BASED VIOLENCE

Some of those areas of vulnerability in gender-based violence are rape and other forms of sexual exploitation, forced and early marriages, abduction, trafficking in persons, destructive female genital mutilation, domestic violence and HIV/AIDS. Children are particularly vulnerable because of their innocence, their state of powerlessness, their trusting demeanour, their condition of 'having no voice' or being perceived as being voiceless, the widely-held belief that they will not comprehend what happens to them or will not be believed, their marginalization and their lack of knowledge of their rights.

Sexual abuse, especially of women and children, has always existed in society. A few decades ago victims considered it a 'shameful occurrence' and maybe even a rightful act on the part of their abusers. South African society is complex and diverse, with eleven official languages and as many and even more diverse cultures. We are still an emerging democracy, growing in our ability to deal with the previously neglected challenge of crime fighting.

The diversity of our society also manifests itself in the differing causality factors for and the diversity of the typology of a crime like rape. Today, public awareness campaigns, victim empowerment and support programmes as well as legislative and systemic improvements have seen victims of these

crimes expressing outrage and increasingly putting their faith in the Criminal Justice System by reporting and staying on within the system.

3. COMPLIANCE WITH THE INTERNATIONAL FRAMEWORK

South Africa signed and ratified CEDAW in December 1995, as well as the Convention on the Rights of the Child (CRC). The country's Interim Constitution which came into being in 1993, and the final version in 1996, made provision for the rights contained in these international instruments.

Various legislative enactments have seen South Africa cultivate a strong rights culture in its democratic period, viz.

- Domestic Violence Act
- Maintenance Act
- Films and Publications Act
- Criminal Law Sexual Offences Bill
- Child Justice Bill
- Children's Bill
- Employment Equity Act
- Equality Act

Within the criminal justice system, various policy enactments have reinforced the national rights-based agenda, as illustrated in the NPA Policy Manual, the NPA's Sexual Harassment Policy, the Department of Justice and Constitutional Development's (DoJCD) Gender Policy, the Uniform Protocol on Victim Management, the Minimum Standards for Diversion and Rehabilitation Programmes and the Memorandum of Understanding signed between government departments and traditional leaders in terms of Project Ndabezitha.

4. COMMUNICATION STRATEGIES

4.1 The multi-disciplinary approach

In realizing its objectives and mandate, the SOCA Unit has purposefully adopted the multi-disciplinary approach by involving all relevant stakeholders and role-players in designing and implementing its programmes, as demonstrated by the

- Inter-departmental Management Team on the development of an anti-rape strategy (IDMT)
- The Print Model on Thuthuzela Care Centres
- The Blue Print on Sexual Offences Management, and
- The Integrated Domestic Violence Training Manual.

4.2 Successful communication at various levels

4.2.1 NPA with other service providers (other government departments and organisations)

- Establishment of Sexual Offences Courts (non-governmental trauma counselors, police officers, social workers, prosecutors and the judiciary). From January and September 2003, the specialist courts in Bellville, Cape Town, Wynberg, Port Elizabeth, Welkom, Durban, Mmabatho, Mthatha and Thohoyandou achieved a conviction rate between 62% and 85%.

- Establishment of Multi-disciplinary Care Centres (Thuthuzela Care Centres) through the cooperation between health officials, non-governmental trauma counselors, police officers and prosecutors. Currently, ten Thuthuzela Care Centres are in existence in Manenberg (Western Cape), Mdantsane and Libode (Eastern Cape), Soweto, Mamelodi and Natalspruit (Gauteng), Mafikeng (North West), Kimberley (Northern Cape) as well as Umlazi and Phoenix (KwaZulu Natal).
- Multi-disciplinary training in the management of sexual offences (non-governmental trauma counselors, police officers, health officials, social workers and prosecutors)
- Increase in the number of child offenders diverted from the punitive prison system (89 425 from July 1999 to March 2005) and a decrease in recidivism (18 523 from April 2004 to March 2005). The stakeholders include correctional officers, social workers, prosecutors and the judiciary.
- Establishment of a structure to deal effectively with and monitor maintenance matters in the courts

4.2.2 NPA with the communities it serves (Public Awareness Campaigns)

- Adopt-A-School project
- SpeakOut Campaign on sexual violence (356 478 learners in 450 schools)
- Community Training Workshops (5163 adults in all provinces)

4.3 RESPONSE TO TRAFFICKING

4.3.1 Problem Statement

South African is widely perceived as a land of opportunity. The existence of poverty in close proximity to vigorous economic growth fuels supply and demand for exploitable labour, whether it be for sexual, farm, domestic or other forms of labour. Victims of trafficking can be difficult to recognise, with traffickers exploiting and cultivating their fear and distrust of authorities. Some victims are unaccustomed to basic rights as a result of the orientation in their countries of origin or their immediate environments. Their experiences during the trafficking episode can lead to feelings of guilt, shame, fear, or even loyalty to their traffickers.

Victims' fears are a result of fear of law enforcement based on their experiences in their countries of origin as well as fear of repercussions. The possibility of endangering key interests can be divided as follows:

- To self: safety, stigmatisation
- To family: safety, shame, debt burden
- To children under victim's care
- To other victims

Service providers have to engage in a gradual, intensive process to earn their trust. Thus victim assistance programmes have to address victims' immediate needs of safety (for the victim and his/her family), medical stabilisation, shelter and sustenance, communication in their language and acknowledgement of their culture, as well as assurance of their legal status in a foreign country. The

pursuance of investigative information has to be the last priority action after the victim's needs have been addressed to ensure a successful and humane outcome.

4.3.2 Country response

With the signing and ratification by South Africa of the United Nations (UN) Convention Against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children ("the Palermo Protocol"), which came into operation on 29 September 2003 and 25 December 2003 respectively, urgent steps were required to bring the country into compliance with these international instruments.

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

The South African Law Reform Commission (SALRC) launched Project 131, an Investigation into Trafficking in Persons and circulated Issue Paper 25 with comments due on 31 March 2004. The South African Police Service (SAPS) established a Human Trafficking Desk within its Organised Crime Unit, while international organisations like the United Nations Office on Drugs and Crime (UNODC) and the International Organisation on Migration (IOM) conducted research into the phenomenon as well as public awareness campaigns, initiated victim assistance as well as capacity-building programmes. Civil society mobilisation efforts saw non-governmental organisations such as Molo Songololo, Youth Ending Commercial Sexual Exploitation of Children (YECSEC) and Terres des Homes-South Africa.

In addition to consolidating the prosecution of trafficking in persons cases under the current legislation (Sexual Offences Act 23 of 1957, Child Care Act 74 of 1983, as amended, Prevention of Organised Crime Act 121 of 1998, Prevention and Combatting of Corrupt Activities Act 12 of 2004, Films and Publications Act 65 of 1996, as amended, Corruption Act 94 of 1992, Intimidation Act 72 of 1982 and Immigration Act 13 of 2002, as amended) the SOCA Unit extended an invitation to all stakeholders and role-players to a working session on 5 December 2003, with the objectives listed hereunder:

- Audit the strategies being implemented against the phenomena, where they exist
- Identify stakeholders involved in the arena
- Initiate a discussion of the gaps and mechanisms to be employed in closing those gaps
- Assess the impact of the absence of data and how this information could be reliably obtained

- What the various role-players had been able to do thus far within the limited and almost non-existent policy and legal framework

The working session culminated in the establishment of a ten-member Trafficking in Persons Inter-sectoral Task Team ("the Task Team"): Human Trafficking Desk, Organised Crime Unit – SAPS

- Ports of Entry Policing (formerly Border Police) – SAPS
- Legislation Directorate - Department of Justice & Constitutional Development
- International Affairs - Department of Home Affairs
- International Organisation for Migration (IOM)
- Department of Social Development
- Department of Labour
- Molo Songololo
- United Nations Office on Drugs and Crime (UNODC)

It is a unique formation in that it brings together government departments, international organisations and civil society in preventing, reacting and providing support to one common cause. A six-pillar national strategy was developed by the Task Team consisting of the following:

- Information (Research and Public Awareness)
- Policy and Legislation Development
- Capacity building and Training
- Victim Assistance and Integration
- Liaison and Consultation
- Monitoring and Evaluation

The appropriate implementation of this strategy necessitates the appointment of a National Coordinator and a Project Manager. At provincial level, Provincial Coordinators will be appointed in each province and they will assume responsibility for coordinating the activities of local service providers.

4.3.3 Modes of detecting victims of trafficking and General Investigative Steps

The reporting of suspicious conduct by the community has been shown to be a crucial element in the detection of trafficking activity, in addition to the primary source of information through the reporting of escaped victims. Victims seeking medical attention but not intending to report are also another source which needs to be carefully managed in assisting with preventative and reactive efforts by service providers, complemented by specially-designed proactive law enforcement projects.

5. INTEGRATED DATA SYSTEMS AND CONSOLIDATED STATISTICS

5.1 Collection points

Accurate information on the abuse of women and children can be collected from various sources in different levels. Persons who abuse women and children are but one such source:

- In the Home
Fathers, siblings, extended family members

- At School
Teachers, Peers, Coaches, other staff members
- In the Community
Gang rapists, drug lords, community leaders, other community members
- Persons in Authority
Law enforcement officers, Peacekeepers, Soldiers

5.2 The impact of the multi-disciplinary approach on statistics

A comparison of the sexual offences courts linked to the TCCs and those which receive cases directly from the police stations has shown that the former has a very high success rate. By way of illustration, statistics from five courts at the Wynberg Magistrate's Court were analysed over a 12-month period (April 2004 to April 2005). The court which processed the cases from the TCC in Manenberg returned a 95% conviction rate, while the remaining four sexual offences courts ranged from 56% to 77%. Thus the effectiveness of the TCC model has been clearly demonstrated.

In relation to trafficking in persons, the absence of legislation specific to the offence limits prosecutors to dealing only with the perpetrator directly linked to the offences in issue at the time; to the exclusion of those 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 a lack of a definition in the current legal framework.

6. IN CONCLUSION

Emerging challenges across countries from the experts Round Table & other sources

- Implementation of policy is poor and difficult
- Response mechanisms are inadequate and ineffective
- Response mechanisms are based on anecdotes
- Lack of minimum standards
- Inaccessibility of services-non child friendly
- Insufficient training and awareness programmes
- Little focus on prevention
- Growing number of orphans and child-headed households
- Political will not matched by resource allocation
- Marginalisation of rural areas
- Lack of knowledge and information management

Guiding Principles

- Adopt a human rights approach to development of legislation, policies and programmes
- Child participation in development
- Data driven initiatives
- Integrated response mechanisms
- Standard operating procedures (based on minimum standards)- reliability, consistency & dependability

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- Shift from crisis management to strategic management Strategy development must ensure:
- Prevention, Reaction, Support
- Focused and appropriate messaging for public awareness and education
- Strong focus on education which blends cultural practices with law enforcement