



**Address by the Deputy Minister of Justice and Constitutional
Development
of the Republic of South Africa, the Hon John Jeffery, MP,
at the 13th UN Congress on Crime Prevention and Criminal Justice,
as panellist at the high-level panel in the Workshop on
“Trafficking in persons and smuggling of migrants: successes and challenges in
criminalization, mutual legal assistance and in the effective protection of
witnesses and trafficking victims”,
Doha, Qatar, Tuesday 14 April 2015: 10.30 to 12h00**

Executive Director of UNDOC, Mr Yuri Fedotov

Esteemed delegates,

Ladies and gentlemen

Human trafficking is modern day slavery.

As Pope Francis recently remarked – *“The human person ought never to be sold or bought as if he or she were a commodity. Whoever uses human persons in this way and exploits them, even if indirectly, becomes an accomplice of injustice.”*

South Africa fully recognises the existence of human trafficking and smuggling activities. These crimes are mostly perpetuated by transnational syndicates, hence the calls from many states for regional and international cooperation as well as the introduction of aligned legislation and immigration procedures.

It is clear that although there are overlaps between the two issues of smuggling of migrants and human trafficking, they remain worldwide multi-

dimensional social phenomena that are growing daily and that no country, developed or developing, has managed to escape.

These phenomena are perpetuated by socio-economic challenges facing populations which make them vulnerable to recruitment as well as the exploitative use of individuals, whether in forced labour or the commercial sex industry. They are also lucrative global criminal enterprises causing severe hardship to the poor and the vulnerable. It has been recognized that these transnational organized crime forms represent a clear threat to health and safety, security, good governance and the sustainable development of all Member States.

In order to address those challenges, Member States therefore require fair, responsible, ethical and efficient criminal justice systems and crime prevention strategies that contribute to sustainable economic and social development. It also imposes a responsibility on States to work together.

These scourges have also had a negative impact on the people of South Africa, and we therefore fully support the United Nations' promotion of the objectives relating to the continued and focused national and international prevention and combating of these crimes.

We have found that in South Africa migration and human trafficking remain to be the result of a complex set of interrelated "push and pull" factors. On the "push" side factors such as poverty, a lack of opportunities, dislocations from family and community, gender, racial and ethnic inequalities and the break-up of families are all relevant. "Pull" factors in South Africa, include the promise of a better life, consumer aspirations, and lack of information on the risks involved, established patterns of migration, porous borders and fewer constraints on travel.

As a result of these factors, South Africa has become a source, transit, and destination country for trafficked and smuggled men, women, and children. South African girls are trafficked or smuggled for the purposes of commercial sexual exploitation and domestic servitude, while boys are trafficked or smuggled for use in street vending, food service, and agriculture.

Despite law enforcement activities, child sex tourism remains prevalent in a number of South Africa's cities. Women and girls from other African countries, such as Angola and Mozambique, but also from beyond the region, as far as Ethiopia and Senegal, are furthermore trafficked to South Africa for commercial sexual exploitation, domestic servitude, and other jobs in the service sector. Occasionally, these women are trafficked onward to Europe for sexual exploitation. Thai, Chinese, and European women are, however, also trafficked/ smuggled to South Africa for debt-bonded commercial sexual exploitation. Young men and boys from Mozambique, Zimbabwe, and Malawi are trafficked/ smuggled to South Africa for farm work. Organized criminal groups - including Nigerian, Chinese, and Eastern European syndicates, local gangs and corrupt official - facilitate trafficking and smuggling of persons into and within South Africa, particularly for the purpose of commercial sexual exploitation.

The trafficking in and smuggling of persons is thus a significant threat to our young democracy. Tackling human trafficking and exploitative labour practices are thus a priority for our government.

South Africa has illustrated its intention to deal forcibly with these crimes in that we have signed and ratified several relevant international instruments in this regard, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

Domestically, and although fragmented and not comprehensive, there has been existing law in South Africa that could, and was, used to prosecute traffickers and we have, for example, been successful in using laws relating to child welfare and sexual offences in the prosecution of crimes of this nature. The Children's Act, 2005 (Act No. 38 of 2005) provides for the criminalization of the trafficking of children, whilst the Criminal Law Sexual Offences and Related Matters Amendment Act, 2007 (Act No. 32 of 2007), contains provisions which criminalize trafficking in persons for sexual purposes. Provisions under this Act are viewed as a transitional mechanism until the comprehensive legislation that has been promulgated comes into operation. South Africa has also been successful in using the racketeering offences in the Prevention of Organized Crime Act (POCA), 1998 (Act No. 121 of 1998) to deal with criminal organizations involved in trafficking.

Whilst it is our view that it is undesirable to combat the scourge of trafficking in persons by using fragmented legislation, I wish to strongly dispel a myth that South Africa has not been able to do anything about this crime phenomenon.

The position is clear both under common law and in other statutes that certain forms of conduct have been characterised in broad terms as falling within the ambit of trafficking in persons. The prosecution of traffickers/ smugglers of persons have therefore continued to be pursued on the basis of those laws.

Under the common law, depending on the circumstances of each case, persons suspected of trafficking could be charged with kidnapping, common assault, assault with intent to do grievous bodily harm, extortion, attempted murder and murder. Over and above the legislation already referred to, those involved in acts of trafficking in persons may be prosecuted using other acts that include the Immigration Act, 2002 (Act No. 13 of 2002), the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), the Intimidation Act, 1982 (No. 72 of 1982), the Domestic Violence Act, 1998 (Act No. 116 of 1998), and the Films and Publications Act, 1996 (Act No. 65 of 1996).

To give effect to South Africa's obligation to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Person, especially women and children, we have now promulgated the **Prevention and Combating of Trafficking in Persons Act, 2013 (Act No.7 of 2013)**. The Act deals comprehensively with human trafficking in all its various forms and in particular provides for the protection of and assistance to victims of trafficking. Persons engaged with trafficking will be liable on conviction to a severe fine or imprisonment, including imprisonment for life, or such imprisonment without the option of a fine or both.

Extra-territorial jurisdiction is an important feature of the Act and South African courts will have jurisdiction in respect of acts committed outside South Africa if those acts would have been an offence under the Act had they been committed in South Africa. The Act also enables the state to prosecute traffickers and confiscate their assets. In addition, it will provide mechanisms to the Department of Social Development in the eradication of "latter-day" slavery.

The Act further provides for social service professionals to play a role in the reporting, identification and assessment of a person who is a victim of trafficking. Once this is confirmed the victim is entitled to be placed under an approved programme; child victims are to be placed in temporary safe care.

Such programmes will offer accommodation, counselling and rehabilitation services as well as aim to reintegrate the victim back into their families and communities. The programme also offers education and skills development training for adults. Child victims of trafficking will fall under all the protective measures of the Children's Act, whilst organisations that provide services to adult victims must be accredited and must comply with certain norms and standards and must offer specific programmes to victims of trafficking.

We have furthermore developed a set of guidelines to ensure that minimum norms and standards are in place when dealing with child and adult victims of trafficking. This will ensure that we are able to treat victims of trafficking with the dignity enshrined in our Constitution.

To improve assistance to victims of these phenomena, various support measures have been instituted. This includes the setting up by the National Prosecuting Authority of multi-agency dedicated victim centres (called Thuthuzela Care Centres) to protect witnesses and victims in criminal proceedings – this is important, in particular when pertaining to sexual offences associated with the trafficking of persons. This victim centre model prioritises the welfare of such victims by ensuring the sensitive management by medical personnel, investigators and prosecution when dealing with victims of this nature.

Other protective measures in the Act include, amongst others, the prohibition of the prosecution of victims who have been certified as victims of trafficking; the prohibition of the summary deportation of foreign victims; proper repatriation processes and taking cognizance of the safety of victims during this repatriation process and the payment of compensation to victims of trafficking.

Various departments such as Social Development and Home Affairs are currently concluding the regulations required to put the Act into operation. **We are therefore looking at implementing the Act towards the end of July 2015.**

But, as is the case in all good criminal justice systems, having the law on the statute book is not enough. Successful implementation is crucial.

In this regard, a National Action Plan has already been developed for implementation purposes. This will enable the coordination of preventative initiatives, criminal justice responses, training, public education and improvement of services to victims of human trafficking.

In anticipation of the legislation being passed the National Prosecuting Authority (SOCA Unit) in December 2012 established a Trafficking in Persons Task Team.

The Task Team has since developed comprehensive policy directives; annexures to charge sheets; training manuals and data collection tools. The NPA has also during the 2013/14 financial year conducted 10 training sessions for prosecutors; which were attended by 193 prosecutors. During the 2014/15 financial year they conducted a further 6 training sessions; attended by 109 prosecutors. They have also trained police investigators on the new legislation, with 30 SAPS (Hawks) TIP co-ordinators attending the training.

In preparation of the coming into operation of the Act we have also, amongst others, done the following:

- The combating of trafficking and the smuggling of persons has been made a priority in the Government's National Development Plan.
- Extensive training of the personnel of the National Prosecuting Authority, members of the South African Police Service, social workers from the Department of Social Development, the Judiciary and officials from Immigration and Home Affairs has already been undertaken,
- General awareness campaigns to sensitise communities on these issues were dealt with by governmental departments in partnership with civil society,

- A multi-agency programme to coordinate strategic action against trafficking has been established. This includes the setting up of Provincial Task Teams which include all relevant stakeholders in the Criminal Justice System,
- An integrated and holistic Immigration Policy is receiving attention, and
- The Justice Crime Prevention and Security Cluster Departments have made the combating of trafficking of persons a priority in the Cluster's priority activities to ensure all persons in South Africa Are and Feel safe. In this regard a multi-disciplinary, interdepartmental Priority Committee has been established within the Cluster to coordinate activities relating to the combating of trafficking in and smuggling of persons.

Our courts have also handed down severe sentences in trafficking cases. For example, in *S v Aldina Dos Santos* a sentence of life imprisonment for trafficking in persons for sexual exploitation of children was handed down in 2011. In *S v Jezile* the accused was sentenced to 20 years in January 2014 for trafficking for sexually exploiting a child. The full bench on appeal confirmed the conviction and sentence. The judgment was delivered on the 23 of March 2015. And there are many other cases.¹

In our region and on our continent the prevention and combating of trafficking is also receiving attention. Prosecutors in Africa face daunting challenges in responding to these complex crimes. Collaboration between member states in prosecutorial matters is vital in alleviating some of these challenges through providing forums for prosecutors to share resources and best practices in combating crimes. The trans-boundary nature of trafficking and smuggling require responses that are not confined to national borders. International cooperation in the area of prosecutions is vital.

¹ In *S v Nahima Allima* the accused was sentenced to life imprisonment for trafficking in persons for sexual exploitation in June 2014. In *S v Foster Simelane* a sentence of 30 years for trafficking for sexual exploitation of a child was handed down in August 2014. In *S v Gwambe* the accused was sentenced to 15 years in 2013 for trafficking for sexual exploitation of children. In *S v Vukile Shembe* the accused was sentenced to 23 years in 2012 for trafficking for sexual exploitation. In *S v Lloyd Mabuza* the accused was sentenced to 8 life sentences for trafficking. There are currently 19 pending trafficking in persons matters on the roll throughout South Africa.

With regards to witness protection, Karen Kramer of the UNODC is correct when she says that *“witnesses are the cornerstones of successful national criminal justice systems.”*

She argues, correctly, that the entire process of investigating and prosecuting offenses depends largely on the information and testimony of witnesses. Prosecutors depend upon witnesses who are reliable and whose testimony can be accepted as truthful, accurate and complete.

Witness protection is an indispensable tool in the fight against domestic and international crime. Because of the importance of witnesses, it is good practice for criminal justice systems to provide assistance and support measures to victims and other witnesses, so as to facilitate their ability to fully participate in the criminal justice system and to give the kind of testimony that is required for the maintenance of the rule of law.

For a witness protection programme to be successful, good national legislation is crucial. Witness protection in South Africa has come a long way and the system looked very different before the dawn of our democracy. We are proud to say that our Witness Protection Act is an internationally acclaimed piece of legislation. A witness is defined as any person who is or may be required to give evidence, or who has given evidence in any proceedings. This definition therefore permits the provision of temporary protection for whistle blowers, as they are potential witnesses. The Office of Witness Protection is an independent covert unit.

Witnesses must voluntarily agree to be admitted to the programme. Witnesses may, furthermore, not be held under protection in any prison or police cell. And witness protection is not limited to criminal proceedings, but can also include proceedings before a commission or tribunal or proceedings under the Inquest Act. It can also include proceedings relating to investigations by IPID, our Independent Police Investigative Directorate, which is responsible for independent oversight over our police service.

We are proud to say that no witness or related person killed or harmed on the programme in the last 14 years. With regards to law enforcement, witness protection has assisted in sentences such as a cumulative 789 years in prison

and 23 life terms. In 2014 we had 322 witnesses on the Witness Protection Programme and a total of 339 related persons.

On average, 300 people are protected in the programme each year and on average only 6 people abandon the programme, mainly due to the failure to adjust to the stringent rules and protection agreement. These stringent rules are necessary to ensure the safety of the witness and related persons.

We are also proud the programme complies with international standards and had been chosen as a case study by the UN's Office on Drugs and Crime to develop a code of best practice. Our Office for Witness Protection is currently ranked in the top 5 in the world.

This does not mean, however, that we do not still have challenges that we have to face. For example, one challenge is the need for more protectors so as to comply with international best practice of having a ratio of one protector to every one witness.

Ladies and gentlemen, Kofi Annan said “human beings are not property”.

Our government remains unrelenting in our commitment to fight crime, however way it may manifests itself, but especially in the form that seeks to prey on the most vulnerable members of our communities, women and children. We will also continue make every effort as the Department of Justice and Constitutional Development, working together with the departments in the Justice, Crime Prevention and Security Cluster, to ensure that law enforcement arsenal is well positioned to respond in the most effective manner against crime.

To conclude, in our view the Foreword to the United Nations Convention against Transnational Organized Crime and the Protocols thereto, aptly capture what we are required to do - *If crime crosses borders, so must law enforcement.*

If the rule of law is undermined, not only in one country, but in many, then those who defend it cannot limit themselves to purely national means. If the enemies of progress and human rights seek to exploit the openness and

opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings.

We need regional and international cooperation to address these phenomena and the discussions at this Congress are thus viewed as appropriate and are heartily supported.

The writer JRR Tolkien, who was born in Bloemfontein in South Africa in 1892, writes: *“All we have to decide is what to do with the time that is given us.”* When it comes to addressing these crimes, time is of the essence. The fight against trafficking, smuggling and other forms of transnational crime requires our immediate and on-going attention.

I thank you.