INTRODUCTION BY CARINA COETZEE

AGENDA ITEM 3: BEST PRACTICES IN JOINT INVESTIGATIONS AND SPECIALIZED PROSECUTIONS

THE 10TH SESSION OF THE WORKING GROUP ON TRAFFICKING IN PERSONS
(10 TO 11 SEPTEMBER 2020)

HELD AT THE UNITED NATIONS, VIENNA

Introduction and Overview
1. On behalf of the Government of South Africa we wish to express a special gratitude to the United Nations Office on Drugs and Crime for the support they rendered to South Africa in reinforcing our efforts to combat trafficking in persons and related matters.

South African National Context
2. Trafficking in persons is a grave violation of human rights posing a serious challenge to communities and society at large.

3. South African Government enacted the Prevention and Combating of Trafficking in Persons Act, No. 7 of 2013 (hereinafter referred to as the TIP Act). It is a
comprehensive legislative instrument to prevent and combat trafficking in persons in all its forms and the prosecution of offenders.

4. Section 41(1)(a) of the TIP Act, requires the Director-General of Justice and Constitutional Development to develop a National Policy Framework on TIP in collaboration with the all the relevant departments in the Justice, Crime Prevention and Security Cluster of Government.

Gaps and challenges:

5. Investigating and prosecuting cases of TIP can be a difficult task due the clandestine nature of the crime, social factors that cause TIP victimisation, and effect of complex trauma on the victims. Cases are seldom reported, as victims of trafficking are often cowed into silence by the offenders and/or unable to self-identify due to trauma, and the general public therefore has minimal awareness of their plight. Adult victims can also be mistaken for criminals themselves, and punished without receiving help.

6. The need to conduct investigations or pursue criminals across international borders renders the work of prosecutors and law enforcement agencies particularly challenging. Substantive and procedural criminal law dispositions do not always support effective and proactive prosecutors’ responses. Relying on evidence collected abroad and on the services of interpreters and translators, and the potential for victims and witnesses to be intimidated and/or uncooperative.

To address some of these challenges the following has been achieved with the support of the UNODC and the IOM:

7. South Africa has developed and launched the National Policy Framework on TIP (NPF), so as to establish a fostered and shared understanding of the TIP phenomenon, the roles and responsibilities of each government department as well as a coordinated response among different stakeholders.
Criminal prosecution of victim of trafficking

8. Section 22 of the TIP provides, “When deciding whether to prosecute a victim of trafficking, the prosecutor must give due consideration to whether the offence was committed as a direct result of the person’s position as a victim of trafficking.” No criminal prosecution may be instituted against such person without the written authorisation of the Director of Public Prosecutions having jurisdiction.

Furthermore: Directives issued in terms of section 44(8) of the TIP Act provides:

- Prosecutors should take note that a victim of trafficking may not be prosecuted for any offence committed as a direct result of being trafficked, without the written authorization of the DPP, in whose jurisdiction the offence was committed.

Joint investigations and specialized prosecutions

9. The Republic of South Africa has a solid legal basis for international cooperation. As a State Party to the United Nations Convention on Transnational Organised Crime (UNTOC), South Africa has an obligation to cooperate with other States when requested to do so and may request cooperation of other States.

10. South Africa’s International Cooperation in Criminal Matters Act 75 of 1996 allows domestication of its obligations under international law to provide mutual legal assistance through facilitating provision of evidence, executing sentences, and confiscation of proceeds of crime. South Africa also has bi-lateral treaties to facilitate extradition of fugitives from justice.

11. In addition to provisions of the UNTOC, the Extradition Act 1962 (Act no. 67 of 1962) together with bilateral treaties with other States provide the legal basis to facilitate extradition of fugitives from justice. Furthermore, the legal framework on trafficking in persons and on transnational organised crime provides for extraterritorial jurisdiction in specific circumstances.
12. The establishment of the Directorate of Priority Crime Investigations in the South African Police Service as well as a specialised unit in the National Prosecuting Authority dealing with sexual and related offences, South Africa is seeing an increase in reporting and investigations of TIP, more prosecutions, and improved convictions of TIP cases.

13. We are confident that South Africa’s legislation on Trafficking in Persons, along with the National Policy Framework launched on 25 April 2019, will bring us a step closer to this much-needed systemic response to eradicate trafficking in persons. **I thank you.**