



EXECUTIVE SUMMARY

South Africa*



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INTRODUCTION

South Africa has the continent's largest economy and is a member of the BRICS club of emerging world economic powerhouses.¹ Economic growth has not, however, translated into improvements in economic well-being for the majority of the population as indicated via a worsening Gini coefficient which was 0.63 in 2009.²

High levels of poverty among vulnerable families and communities affected by HIV/AIDS are creating a very dangerous situation for affected children, who become easy targets for sexual exploitation and trafficking.³ The lack of educational and employment opportunities within South Africa and neighbouring countries, coupled with the influx of migrant children from surrounding countries, constitute major driving factors behind human trafficking for sexual and other purposes.⁴

Prostitution of Children

There is no updated data on prostitution of children in South Africa, but estimates place the number of children involved at 28,000 – 30,000.⁵ Prostitution of children occurs in different locations, from beachfront areas to suburbs and townships, and is difficult to detect because it often happens behind closed doors.⁶ Prostitution can also take many forms including young girls, sometimes with complicit parents, involved in monetary or other reward arrangements with older men.⁷ Poverty, urbanisation, domestic violence, family breakdown as a result of HIV/AIDS and family rejection are all contributory factors to children exploited in prostitution in South Africa.⁸

Trafficking in children for sexual purposes

South Africa is a source, transit, and destination country for men, women, and children subjected to forced labour, sex trafficking and other criminal activities.⁹ Both domestic and cross-border trafficking for sexual exploitation appear to have a strong link to organised criminal groups operating within South African borders and across the African continent. Young children, particularly girls, make up a large component of trafficked persons. Girls are mainly trafficked for sexual exploitation while young boys are used to smuggle drugs and for other criminal activities.¹⁰ Key driving factors concerning trafficking of children include poverty and unemployment as well as the demand for commercial sex from local men and travelling sex offenders.¹¹

Child pornography/child sexual abuse materials

As mobile – and mobile Internet – proliferation continues, attention is being focused on the vulnerability of children to abuse and exploitation in the online sphere. A number of studies recently undertaken have identified risks faced by South African children in their online interactions, which include exposure to distressing sexual content and online sexual harassment¹² as well as numerous reported incidents of sexual assault¹³ of young females who assumed initial contact with perpetrators online.

Sexual exploitation of children in travel and tourism

South Africa is considered one of the most popular destinations for travelling sex offenders in the African region.¹⁴ Evidence suggests that the country is becoming a major hub for

underage sex tourism in cities such as Cape Town, Johannesburg, Port Elizabeth and Durban.¹⁵ Establishing how often travelling child sex offenders are arrested in South Africa is difficult, mainly because they are usually charged with indecent assault or rape and not on account of sex tourism.

NATIONAL PLANS OF ACTION AND POLICIES ON CHILDREN AND CSEC

While a national plan of action specifically against CSEC is still lacking, South Africa has adopted various policy documents that are relevant to addressing this violation.

The *National Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation* identifies seven priority areas of action for addressing child abuse and CSEC, in addition to laying out roles and responsibilities for all sectors involved in child protection.¹⁶

The Child Labour Programme of Action (CLPA), first adopted in 2003, was updated in 2007 for a second five year-phase of implementation (known as CLPA-II). It aims to strengthen the implementation of a number of government policies against child labour and its worst forms, including CSEC.¹⁷

In 2009, the Trafficking in Persons Inter-sectoral Task Team drafted a National and Integrated Action Plan to combat human trafficking, which included interventions in the field of research, victim support, capacity building and awareness-raising. The strategy was implemented by the National Prosecuting Authority (NPA) in partnership with a number of institutions, including UN agencies and NGOs.¹⁸

Furthermore, the recently approved National Plan of Action for Children (NPAC), valid from 2012-2017,¹⁹ details a number of strategies to protect children from sexual exploitation. The NPAC focuses on five broad themes: child survival, child development, child protection, standard of living of children and child participation.²⁰

COORDINATION AND COOPERATION

Local and national levels

A number of coordinating mechanisms on child protection and CSEC have been or are being established nationally and locally in accordance with existing national legislation and policy documents.

The Department of Social Development (DSD) is the lead institution responsible for child protection and engages in variable levels of collaboration with key departments such as the Departments of Health and Justice. Although hindered by the lack of protocols, National, Provincial and Local Child Protection Committees have been established to facilitate coordination between government departments as well as between government and civil society organisations.²¹

The Government has also established a

Department for Women, Children and People with Disabilities (2009) responsible for coordinating and monitoring efforts towards addressing issues relevant to women and girls, including sexual abuse and exploitation.²² Additionally, in 2009, the Department of Home Affairs announced that it would be developing an inter-departmental protocol on the protection of children against child pornography, with a focus on advocacy and law enforcement.²³

An example of a comprehensive government initiative to combat trafficking in persons, including child sex trafficking, is the formation of a 30 member Human Trafficking Consultative Forum (drawn from diverse government departments, international organisations, South African civil society organisations and foreign representatives), administered by the Sexual Offences and

Community Affairs Unit (SOCA) of the NPA, and the setting up of provincial-level Task Teams.²⁴

UN agencies and local NGOs (such as Child Welfare South Africa, the ECPAT Affiliate Group in the country) have also fostered partnerships and collaboration in the field of child protection.²⁵

Regional and international levels

South Africa has contributed to regional efforts in recent years centred on the trafficking of persons, including child trafficking. An example is the IOM-led Southern African Counter-Trafficking Assistance Programme (SACTAP), which aims to support and develop the capacity of governments and civil society groups to deal with the problem of trafficking in Southern Africa.²⁶

Similarly, the Southern Africa Development Community (SADC), of which South Africa is a member, has promoted initiatives to counteract human trafficking: the 10 Year SADC Strategic Plan of Action on Combating Trafficking in Persons, Especially Women and Children (2009) and the SADC Protocol on Gender and Development (2008), which contains specific provisions on trafficking. As a member of the African Union (AU), South

Africa has participated in the AU Commission Initiative Against Trafficking In Persons (AU COMMIT) campaign launched in 2009.²⁷ Furthermore, South Africa has concluded policy cooperation agreements with China in 2010²⁸ and Italy in 2012²⁹ to fight transnational crimes, including human trafficking.

In the international sector, ILO has been implementing its programme, *Towards the Elimination of the Worst Forms of Child Labour* (TECL), which includes CSEC, in all the countries of the Southern African Customs Union, including South Africa. The second phase (TECL II) ran from 2009-2012 and focused on information sharing and good practices among the countries.

On the subject of international cooperation against child pornography, the government's Film and Publication Board (FPB) engages in partnership agreements with international organisations and police departments from other countries to share information and bring perpetrators responsible for the production and dissemination of child abuse images to justice.³⁰

Civil society organisations, such as the Southern Africa Network against Trafficking and Abuse of Children (SANTAC), have also undertaken activities to promote and enhance regional cooperation against CSEC, including against child sex tourism.³¹

PREVENTION

Several awareness-raising activities against CSEC were conducted in the run-up to and during the 2010 FIFA World Cup, some with the participation of government institutions (especially the DSD). For instance, UNICEF - in collaboration with government agencies, NGOs, the private sector and civil society - implemented the 'Give a Red Card to Child Abuse and Exploitation' campaign.³²

The Nelson Mandela Children's Fund (NMCF), in cooperation with the DSD and numerous NGOs, also launched a campaign, called "the Champions for Children," to ensure the protection and safety of children during the World Cup and beyond.³³ Similarly, in conjunction with World Cup initiatives and facilitated by Fair Trade and Tourism South Africa (FTTSA), more than 30 South African

travel and tourism companies adopted the International Code against the Commercial Sexual Exploitation of Children in Travel and Tourism.³⁴ The government's FPB,³⁵ Child Welfare South Africa (CWSA),³⁶ and the Salvation Army³⁷ also launched noteworthy campaigns and initiatives in 2010, in contribution to the anti-child sex tourism efforts surrounding the World Cup.

National public education programmes on the different manifestations of CSEC include the Child Protection Week organised annually by the DSD in collaboration with other government agencies, civil society and the private sector.³⁸ The Human Trafficking Awareness Week, run by IOM's SACTAP, is another intervention promoted annually by the South African government to raise awareness

specifically against human trafficking, including the trafficking of children.³⁹ CWSA has also carried out various programmes on child protection such as the implementation of The

Body Shop – ECPAT anti-child sex trafficking campaign. The CWSA has also supported community and regional level trainings and victim support initiatives.⁴⁰

PROTECTION

South Africa has ratified all international and regional legal instruments relevant to combating CSEC, except the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*. As a non-member state, South Africa has also signed the *European Convention on Cybercrime*.

National legislation

The *Children's Act* 38 of 2005 (as amended by Act 41 of 2007) is the most comprehensive law for the welfare and protection of children in South Africa. Unfortunately, its full implementation remains hindered by numerous factors, including a lack of adequate human resources and a history of low budget allocation.⁴¹

In addition to the *Children's Act*, South Africa has further enhanced its child protection legal framework by enacting the *Criminal Law (Sexual Offences) Amendment Act 32 of 2007* (the "Act"). The Act includes new, expanded or amended provisions addressing sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming. Despite its progressive measures, the Act does very little to directly address the re-victimisation of victims of sexual offences in their interactions with the criminal justice and health systems.⁴²

South Africa has also expanded its legislation on human trafficking, including trafficking of children, by enacting the *Prevention and Combating of Trafficking in Persons Act*.

Prostitution of children

The enactment of the *Criminal Law (Sexual Offences) Amendment Act 32 of 2007* has closed several gaps pertaining to CSEC. Section 17 of the Act addresses the offense of "child sexual exploitation" which is defined and criminalised in accordance with Art. 2(b) and 3(b) of the *Optional Protocol to the Convention on the*

Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC), which respectively define and prohibit child prostitution. However, South African criminal legislation does not specifically refer to "child prostitution."

Child trafficking for sexual purposes

As a result of the enactment of the *Prevention and Combating of Trafficking in Persons Act* (July 2013),⁴³ the South African legal framework addressing trafficking is now in full conformity with international legal standards set forth in the Trafficking Protocol. The objectives of the Act underpin a holistic approach and include the internationally accepted three 'Ps', namely the prevention of human trafficking, the prosecution and appropriate punishment of offenders, and protection and assistance for victims of trafficking.⁴⁴

Child pornography/child sexual abuse materials

South African law offers strong protection and exceeds international standards for banning the creation, possession and distribution of child pornographic materials. South Africa's *Films and Publications Act*, and subsequent amendments, define and prohibit various activities related to the production, distribution and possession of child pornography.⁴⁵ South Africa is also one of the few countries that regulates Internet Service Providers (ISPs) and requires them to take measures to prevent access to child pornography.⁴⁶

With the enactment of the *Criminal Law (Sexual Offences) Amendment Act 32 of 2007*, South Africa has also introduced new offences, namely exposure or display of child pornography or pornography to children and sexual grooming of children (including via the Internet and other information and communication technologies). If approved, the

Internet and Cell Phone Pornography Bill, tabled in 2010, will provide further protection for children from pornography distributed via the Internet and mobile phones.⁴⁷

Extraterritorial legislation with regard to child sex tourism related offences

South African law has adopted specific extraterritorial legislation for offences related to child sexual abuse and sexual exploitation.

The *Children's Act* and the *Criminal Law (Sexual Offences) Amendment Act* include extraterritorial jurisdiction over all South African citizens or permanent residents who violate their provisions outside South Africa.⁴⁸ The *Films and Publications Amendment Act, 2004*⁴⁹ and the *Trafficking Act* also contain extraterritorial jurisdiction provisions for related crimes committed outside South Africa. To enhance protection of children from sex tourism, Section 17(6) of the *Criminal Law (Sexual Offences) Amendment Act* criminalises the promotion of child sex tours to persons within or outside the country.

South Africa currently has extradition agreements with thirteen countries and has negotiated, but not yet signed, similar agreements with another nine countries.⁵⁰ The country has also concluded the Mutual Legal Assistance in Criminal Matters Treaties with several states, has acceded to the *European Convention on Extradition* and has ratified the SADC Protocols on Extradition and Mutual Legal Assistance in Criminal Matters. In addition, Section 3(2) of the *South African Extradition Act* provides for extradition between South Africa and foreign countries where there is no extradition agreement.⁵¹

Child protection units

The Family Violence, Child Protection and Sexual Offences Units (FCS) within the South African Police Service (SAPS) were re-instituted in 2011,⁵² but their current effectiveness in detecting and investigating sexual offences against children, including CSEC, must be accurately assessed, especially in light of the expertise lost as a result of their previous disbandment.⁵³ In addition to the FCS, a Human Trafficking Desk⁵⁴ and a specialised Cyber Crime Unit⁵⁵ have been established within SAPS to monitor human trafficking

investigations and for forensic examination of child pornographic images, respectively.

Despite their high degree of success in delivering child-friendly justice, the number of Sexual Offences Courts (SOC) was cut from 64 to 42 in 2009,⁵⁶ seemingly because of the unwillingness of magistrates to specialise in these crimes.⁵⁷ The SOC is staffed by specialised officials (prosecutors, social workers, investigating officers, magistrates, health professionals and police) who foster victim-friendly practices. However, the ministerial task team on the matter pushed for a revised model for Sexual Offences Courts.⁵⁸

Support services for children

In collaboration with UNICEF, the government of South Africa has established Thuthuzela Care Centres (TCCs) in different parts of the country that provide professional medical care, counselling, and access to investigators and prosecutors to victims of sexual violence. TCCs have improved the process of reporting and prosecuting rape and other sexual offences, including CSEC, and have contributed to an increase in offenders' conviction rates.⁵⁹ Based on the TCC model, several "One-Stop Centres" have also been established by the DSD with support from the UN and other international partners. They offer a wide range of services (legal, counselling, medical and forensic) to survivors of gender-based violence, specifically women and children.⁶⁰

Besides these facilities, there are a number of NGO-run shelters that provide services to victims of different crimes, including trafficking in persons. Some of these shelters are DSD-accredited and partially funded by the government.⁶¹ There are also various hotlines managed by NGOs and intergovernmental organisations that provide a platform for reporting CSEC cases, including those run by IOM, CWSA, the Salvation Army and Child Line South Africa. Long-term sustainability of these hotline/helpline services is threatened, however, by funding issues.⁶²

Despite the South African government's efforts to ensure trafficking victims' access to protective services, survivors continue to face major obstacles since an official mechanism and/or standard operating procedure for assisting victims of trafficking, including children, does not exist. This gap contributes to problems

of victim identification and referral to police authorities.⁶³ Furthermore, there is an urgent need for more integrated services, shelters and safe houses, as well as for different types of shelters to suit the different stages of recovery of the victim.⁶⁴

Training law enforcement personnel

Efforts to build the capacities of law enforcers and other relevant authorities to fully address child trafficking and sexual offences against children have intensified in recent years. In 2010, the NPA, with inputs from DSD, led inter-sectoral trainings of relevant officials (law

enforcement personnel, prosecutors and judges) on child trafficking provisions of the *Children's Act* and the *Criminal Law (Sexual Offences) Amendment Act* in all nine provinces.⁶⁵ In 2011, the NPA and the Department of Home Affairs also provided training on trafficking to their respective officials.⁶⁶

During the 2010 FIFA World Cup, DSD delivered provincial training and capacity building for different stakeholders on the *Children's Act* and collaborated with other sectors in training customs and immigration officials.

CHILD AND YOUTH PARTICIPATION

The South African government has increasingly recognised the importance of child participation in its national legislation and policies concerning children and young people. The NPAC contains an entire section on child participation. However, formal mechanisms to facilitate regular and meaningful consultations with and participation of children in addressing CSEC issues do not exist,⁶⁷ and

only scattered small-scale interventions have been implemented to date. As a result, NGOs have taken the lead in ensuring children's participation (e.g. Save the Children supports over 140 Children's Committees in schools and communities⁶⁸ and Molo Songololo offers a child and youth participation programme that focuses on different issues relevant to children, including CSEC and child trafficking).⁶⁹

PRIORITY ACTIONS REQUIRED

National Plans and Policies

All policy formulation and service delivery designs should be done in collaboration with key stakeholders and implementing partners. The community-driven and participatory approach, adopted by civil society organisations such as CWSA, should be considered and replicated for the National Plan of Action for Children to efficiently address areas of greatest need.

Coordination and Cooperation

Coordination between government sectors and smaller community-based organisations and informal structures, should be enhanced to ensure effective service delivery and reduce re-victimisation of CSEC survivors. The government should also engage in further bilateral, regional and international judicial, police and victim-oriented cooperation in order to better counteract all forms CSEC.

More human and financial resources should be allocated to ensure the effective functioning of the Department for Women, Children and People with Disabilities which is currently in charge of promoting and monitoring children's rights. The South Africa Human Rights Commission (SAHRC) also needs to enhance its capacity to deal with CSEC violations and establish child-sensitive complaint mechanisms at regional and local levels, which are accessible to children.

Prevention

Research on all manifestations of CSEC should be conducted with a view to gather accurate information on at-risk groups and locations, number of children involved, and changes in trends and modalities of exploitation.

The government should support sustained public awareness-raising campaigns to address

all forms of CSEC and, in cooperation with NGOs and community-based organisations, should conduct sensitisation activities in at-risk communities, villages, urban and rural areas, targeting children, parents, community leaders and other actors. Access to educational and vocational activities for youth, girls in particular, should be improved.

A larger involvement of the private sector, especially the tourism and ICT industries, in addressing and preventing CSEC is also urgently needed.

Protection

Adequate human and financial resources should be allocated for the implementation of the *Children's Act* and the *Trafficking Act*. The proposed *Internet and Cell Phone Bill* (2010) should also be enacted. In addition, an official mechanism and/or standard operating procedure to ensure the referral of victims of trafficking, including children, should be developed.

The Sexual Offences Courts should be re-established across the whole country and funds should be provided for running existing Thuthuzelas as well as for setting up new centres to cover the entire national territory; support should also be secured for similar services offered by the NGO sector. In-depth and specialised training also needs to be delivered to social workers, police officers, judges and other actors responsible for child protection, focusing on CSEC and current legislation addressing these crimes. Furthermore, strengthening partnerships, particularly with civil society, should be the focal mandate of the government in the area of child protection.

Child Participation

Platforms should be created to ensure institutionalised child and youth participation and promote the meaningful involvement of children in programmes and projects addressing the different forms of CSEC.

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