

THE LANDSCAPE OF
SEXUAL EXPLOITATION
OF CHILDREN IN
SOUTH AFRICA



October, 2019

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This publication was written by:

Dr. Antoinette Basson, Prof. Benyam Dawit Mezmur,
Dr. Mark Kavenagh and Raphaëlle Lecler

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Manida Naebklang

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published by:

ECPAT International

328/1 Phaya Thai Road,
Ratchathewi, Bangkok
10400, Thailand
www.ecpat.org
info@ecpat.org

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EXECUTIVE SUMMARY

BACKGROUND

South Africa is the southernmost country in Africa and is bordered by the South Atlantic and Indian Oceans. The country is divided into nine provinces and is a mix of ethnicities leading to as many as 34 languages spoken across the country, of which 11 are official languages recognised and protected by the Constitution.

The World Bank estimates that South Africa is one of the world's most unequal countries and a range of disparities in economic status, gender, race, HIV status and other factors continue to impede economic and other development and have a significant impact on the country's 19.7 million children.

Protective factors for sexual exploitation of children like birth registration and access to full education are not available to all children, and vulnerabilities are exacerbated by factors like exploitative and dangerous forms of child labour, with as many as 80,000 children estimated to be working in prohibited and dangerous conditions. Numerous sources of data indicate that violence is widely experienced by children in different forms and settings, including in schools, families and communities. There are also indications of substantial proportions of children who have experienced some form of sexual abuse or exploitation.

METHODOLOGY

ECPAT International conducted this research project to collate and analyse what is currently known about the scope, nature, context and trends of the sexual exploitation of children in South Africa. The project was built around partnerships with South African researchers and was guided by an advisory committee of experts.

The main purpose of the project was to describe the basic landscape in which the

sexual exploitation of children occurs in South Africa. Four qualitative research approaches were used:

- a) Desk review of the available existing literature related to sexual exploitation of children;
- b) Expert analysis of the legal framework related to sexual exploitation of children;
- c) Individual interviews with 24 professionals working with victims/survivors of sexual exploitation of children in Gauteng and KwaZulu-Natal provinces;
- d) Two focus group discussions of eight people each representing workers from the education and health sectors from Gauteng and KwaZulu-Natal.

BRIEF SUMMARY OF FINDINGS

The review of existing literature on sexual exploitation of children in South Africa indicates that despite a scarcity of quantitative data and prevalence studies, there are numerous indications that South African children are exposed and vulnerable to a variety of forms of sexual exploitation.

Key research identified included a report highlighting that while children are encountering sexual content online and receiving sexual messages, many parents are not aware of the risks connected with the use of the Internet. Major concerns also were noted within the framework of the ongoing debate on the legal status of adult prostitution, currently criminalized, which has the potential to negatively affect children sexually exploited through prostitution by discouraging their help-seeking.

Research included in the report has also

identified the existence of international and domestic trafficking of children for sexual purposes, illegal adoption and child marriage. A common pattern is the exploitation of children coming from poor rural villages into residential brothels in urban areas like Cape Town or Johannesburg.

The risk of sexual exploitation in the context of travel and tourism is also high due to the importance of the sector to the South African economy. South Africa is considered a major destination for travelling sex offenders, with instances of travel agencies even coordinating with local pimps. Child, early and forced marriage continues to be an established reality, including by manipulating traditional and customary practices, such as *Ukuthwala*, or bride kidnapping.

In terms of national responses to the sexual exploitation of children, the analysis of legislation shows that South Africa has gradually adopted generally comprehensive and quality laws and regulations addressing the sexual exploitation of children in line with the relevant international legal instruments. Major exceptions arise, however, in regard to the unclear applicability to children of the provisions established to protect victims of trafficking as well as the unharmonised legislation around the legal age of marriage.

Although South Africa does not have a national plan of action specifically addressing the sexual exploitation children, a number of policies and frameworks, which partially address the issues, have been developed. While well-conceived child protection systems exist, very limited data is available to determine the extent of their effectiveness. The individual interviews and focus group discussions with professionals that were conducted as part of this project shed some light on the child protection systems related to sexual exploitation. 'Views from the field' are incorporated at relevant points throughout the report where important lessons can be taken. While professionals conveyed the sexual exploitation of children as a complex, continuously changing crime affected by the unique challenges faced by the country,

overall, issues with implementation, coordination and cooperation as well as a weak monitoring system cast a shadow over the positive developments of a robust legal framework and policies.

The respondents perceived increases in the number of cases of sexual exploitation of children in South Africa. The importance of multi-sectoral collaboration was identified as one of the main solutions, which is, however hindered by a shrinking pool of knowledgeable, committed professionals, sometimes due to the extreme work pressures that these people are under. There is a need for a comprehensive, structured training system for emerging professionals in South Africa who will be dealing with the sexual exploitation of children.

A lack of coordination between key government departments including the South African Police Service and Department of Social Development, was also perceived to result in a lack of guidance and knowledge sharing, significantly influencing the reporting, investigation and intervention of cases of sexual exploitation of children.

The respondents strongly perceived that limited resources (human and financial) were severely restricting effective responses to the sexual exploitation of children in South Africa, partly also due to the fact that the issue is not considered a priority by the South African government. This has an enormous impact on the availability of support systems and resources and increases the burden on non-governmental organisations. Based on the findings of this research project, concrete recommendations for action have been developed. The recommendations offer a framework for engaging efforts to prevent and combat the sexual exploitation of children in the country. The recommendations focus on strengthening the government response to this crime, cooperation between law enforcement agencies and other key stakeholders, the supported implementation of good legislation and policies, and the engagement and training of civil society in counter-SEC efforts.

INTRODUCTION

South Africa has, along with many other countries, obligated itself towards the protection of children from sexual abuse and exploitation by ratifying international legal instruments that seek to protect the rights of children, such as the Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. South Africa has also strongly articulated its commitments to protecting children with specific inclusions in national legislation. Foremost amongst these is the strong focus on children's rights within the 1996 National Constitution which has also given rise to the development of various legislative instruments such as the Children's Act of 2005 and the Prevention and Combating of Trafficking in Person's Act of 2013.

Yet the violation of children's rights through sexual abuse and exploitation continues to be a widespread concern in South Africa today. A major study on the topic that indicates prevalence showed that of the 4,086 young people interviewed by a researcher, 16.8% reported experiencing some form of sexual abuse. This rose to 26.3% when using a confidential, self-administered survey.¹

Effective and efficient protection of South Africa's children requires an evidence-based understanding of the contexts and forms of sexual exploitation of children (SEC) and the degree to which children are vulnerable. An understanding of the systems designed to protect children, and how well they are responding to the threat of sexual abuse and exploitation and supporting child survivors are also essential.

To address these needs, this research project on the sexual exploitation of children in South Africa was conducted to assess the current state of the problem in South Africa by means of a desk

review, legal analysis and interviews with professionals working in law enforcement and social services within the formal systems to respond to SEC cases and support survivors.

OBJECTIVES

ECPAT International conducted this study to investigate, analyse and collate information on the scope, nature, context and trends of the sexual exploitation of children in South Africa. It was carried out through close collaboration with South African research partners and guided by an advisory committee of experts. The overall goals of the project were to:

- Gather data from relevant government ministries, agencies, NGOs, academics and the private sector on the current situation of SEC in South Africa;
- Identify emerging trends and provide the government and relevant NGOs/agencies with reliable, evidence-based, contemporary data for building realistic and effective intervention programmes to eliminate SEC;
- Generate a firm commitment from all stakeholders and mobilise duty-bearers for a coordinated approach to eliminate SEC;
- Produce a comprehensive written report with country-specific findings in order to inform policy development and strengthen national legal frameworks.

ECPAT International led a desk-based review of existing secondary data relevant to understanding the context for children in the country in which to frame our understanding of SEC. This is captured in chapter 1. Available evidence illustrating the scope and forms of SEC is presented in chapter 2 as well as information about

government policy and responses in chapter 3.

A partnership with the University of Western Cape was developed to analyse the legislative framework for fighting sexual exploitation of children in South Africa. This is presented in chapter 4.

Finally, the Youth Research Unit of the Bureau of Market Research at the University of South Africa (UNISA) was commissioned to conduct qualitative primary research with professionals from law enforcement and welfare who are responding to SEC cases and supporting child victims. These 'views from the field' are incorporated at relevant points in the report, where lessons can be taken.

METHODOLOGY

ECPAT International conducted this research project to collate and analyse what is currently known about the scope, nature, context and trends of the sexual exploitation of children in South Africa. The project was built around partnerships with South African researchers and was guided by an advisory committee of experts. The main purpose of the project was to describe the basic landscape in which the sexual exploitation of children occurs in South Africa. Four qualitative research approaches were used:

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A draft report was compiled that was presented to a committee of experts in South Africa for detailed feedback and validation in early 2019 before final publication.

Desk Review of Literature

The literature review focused on publications written in English (predominantly used for written publications in South Africa despite there being 11 official languages). Few documents that dealt specifically with the sexual exploitation of children were identified and much of the literature cited refers to more general documentation that contained relevant information. Formal Government data and publications were prioritised as source material for the report. A small number of peer-reviewed journal articles and grey literature produced by NGOs and UN agencies are also cited. As a result of some interviews and feedback on the draft, some government programmes or sources of data were suggested, but despite best efforts to access these, most were not ultimately available and therefore are not included. With some notable exceptions, the methodologies used and the quality of data was often difficult to determine. Notes are made on limitations of sources where necessary throughout this report.

Notably, data on the sexual exploitation of children online, through prostitution or within the context of trafficking was largely unavailable. Despite growing efforts to address trafficking, very little continues to be published, particularly of the sub-category of trafficked children, in the South Africa context.

Expert Legal Analysis

A partnership with the University of Western Cape was formed in order for specialist South African expertise to be engaged to analyse the legislative framework for fighting sexual exploitation of children in South Africa. A number of relevant South African laws and regulations were analysed in comparisons with internationally agreed legal standards.

¹ UBS Optimus Foundation. (2016, May). *Optimus Study South Africa Report, sexual victimisation of children in South Africa*. 11. Zurich: UBS Optimus Foundation.

Interviews and Focus Group Discussions with Professionals

The design for this component of the project was developed in collaboration between ECPAT International and the Youth Research Unit for the Bureau of Market Research at the University of South Africa (UNISA). A methodology and tools were developed for individual interviews and focus group discussions to be conducted in Gauteng and KwaZulu-Natal – two of South Africa’s nine provinces which were selected for their perceived status as ‘hotspots’ for SEC.² The aims of the interviews and FGDs with professionals were:

- To determine the understanding of SEC from professionals’ perspective;
- To investigate the extent and nature of SEC cases from professionals’ perspective;
- To establish which procedures are followed and what supportive networks are available when dealing with SEC cases;
- To explore the awareness and comprehension levels of legislation pertaining to SEC among professionals dealing with the phenomenon in South Africa;
- To determine the extent to which legislation related to SEC cases is being applied;

- To determine potential gaps and recommend appropriate strategies to improve the effective handling of SEC cases.

A non-probability ‘snowball sampling’ technique was used to select the respondents. Due to heavy caseloads and professional activities, the researcher was dependent on the availability of the participants. In addition, government institutions including the National Prosecuting Authority (NPA) and the South African Police Service (SAPS), have strict policies with regard to the participation of employees in research studies, which required formal approvals for participation in the research study prior to proceeding with any interviews. A copy of the approval letters received from the NPA and SAPS are included in Annexes B and C. Interviewing key informants took place between August 2018 and January 2019 and all interviews were conducted by an experienced senior researcher.

Individual Interviews

A semi-structured interview guide (see Annex A) was developed in consultation with ECPAT International to ensure that the relevant information was obtained. Open-ended questions and probes were included to elicit deeper understanding. Twenty participants were targeted, however, an additional four were also included along the way due to their knowledge and experience.

Table 1. Professional categories for participants in individual interviews

Professional category	Gauteng	KwaZulu-Natal
Law officials (senior prosecutors/advocates)	2	2
Police officials/investigators	3	2
Psychologists/counsellors	3	2
Social workers	2	3
Welfare staff in faith-based organisations	2	3
Total participants	12	12

² According to South Africa’s provincial crime statistics (April 2017 – March 2018), the areas affected the most by crime – including sexual offences- are Gauteng (Johannesburg), the Western Cape (Cape Town) and KwaZulu Natal (Durban). Crime Stats Simplified (n.d.).

Focus Group Discussions

Two focus group discussions were held in Gauteng, consisting of 16 participants from the Education and Health Sectors, which are considered key sectors in dealing with SEC in South Africa. A semi-structured interview guide (see Annex A) was developed in consultation with ECPAT International to ensure that the relevant information was obtained. Open-ended questions and probes were included to elicit deeper understanding.

Table 2. Professional categories for participants for focus group discussions

Professional category	Gauteng
Health care professional	8
Educator/Education specialist	8
Total participants	16

Analysis

The individual interviews and focus group discussions were audio recorded and extensive notes were taken during the interviewing process. Despite assurance that participation was anonymous and confidential, two participants declined to grant permission for audio recording and the researcher had to rely on written notes taken during these interviews.

‘Thematic analysis’³ was used to collate the outcome of the interviews according to the main themes emerging from the discussions. Pertinent themes emerged from the notetaking and recording processes, which involved theme development and revision in an attempt to consolidate and align all inputs of participants according to the research objectives of the study.

³ Ayres, L. (2008). Thematic Coding and Analysis In Given L (Ed.) The SAGE Encyclopedia of Qualitative Research Methods.

Ethical Approval

Ethical approval to conduct the interviews and focus group discussions was obtained from the Bureau of Market Research’s Ethics Review Committee at UNISA. A copy of the ethical approval is attached as Annex D.

Strict ethical considerations were applied to the design. Prior to participating in the individual interviews or focus group discussions, all participants were thoroughly briefed about the study and requested to sign a letter of consent. Accordingly, the informed consent document made it clear that participation was voluntary, confidential and anonymous and that the information would be used solely for the purpose of research.

LIMITATIONS

Given their inherent vulnerability, research on sexual exploitation of children must be guided by an ethically sensitive research approach. A balance must be struck between children’s right to meaningfully participate and a responsibility to avoid circumstances where they might be harmed by taking part. It was decided that for this research project children would not be directly included as participants as the necessary evidence to establish the landscape of the problem could be identified in other ways. The research does however aim to fulfil a duty to represent children’s perspectives.

The desk review of the literature relies on the public availability of research reports and evidence. This limits the data contained here, such as in relation to reported cases and prosecutions by law enforcement.

However, in reality that data is just not available. The concluding observations from the Committee on the Rights of the Child in 2016 noted that South Africa has no centralised mechanism for quantitative data collection on victims of sexual exploitation, disaggregated by age and gender of victims and forms of sexual exploitation suffered. The recommendations of this report highlight the urgent need for this data to be collected and made available.

It should be noted that while the views from the field offer valuable insights from

those working within the child protection system, this is not a representative sample. While practical and convenient, a snowball method of sampling can result in some biases, and we note a likely under-representation of views from NGO service providers. Furthermore, there are a limited number of experts in the field of SEC and heavy caseloads and professional activities meant that the interviews were dependent on their availability to participate. Despite several follow-ups, it was not always possible to include all identified potential participants for the study.

01

COUNTRY PROFILE AND SITUATION OF CHILDREN

COUNTRY PROFILE

South Africa is the southernmost country in Africa and is bordered by the South Atlantic and Indian Oceans. It shares land borders with Botswana, Mozambique, Namibia, Swaziland and Zimbabwe and it surrounds the enclaved country of Lesotho. The country is divided into nine provinces (Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Mpumalanga, Northern Cape, North West, Western Cape).⁴ South Africa is a mix of ethnicities leading to 34 languages spoken all over the country. Of these 11 are official languages, recognised and protected by the Constitution: Sepedi, Sesotho, Setswana, siSwati, Tshivenda, Xitsonga, Afrikaans, English, isiNdebele, isiXhosa and isiZulu.⁵

In 2019, Statistics South Africa, the national South African statistic service estimated the population at 58.78 million.⁶ In its latest country brief on poverty and equity (October 2019), the World Bank reported that in 2014, 55% of the population lived below the national poverty line and that poverty is consistently highest among certain categories including children.⁷ In 2015, people living in rural areas were more affected by poverty, with 65.4% of this population living below the poverty line, in comparison to just 25.4% in the urban population.⁸ According to the United Nations Development Programme, in 2018 South Africa was tied with the Philippines for 113th position out of 187 countries in its progress in key dimensions of human development.⁹ This places South African in the 'Medium Development' group.¹⁰

Following the momentous deconstruction of apartheid in 1994, the Government



of South Africa launched an ambitious reconstruction and development programme. It aimed to reverse the enormous structural inequalities, poverty, and a system of segregation South Africa suffered during 46 years of apartheid, through the implementation of policies on education, health services, social development, social security, public transport and housing.¹¹ Much progress has been made, and work continues to reverse inequality through a sequence of national plans. The current programme is the National Development Plan 2030: Our Future—Make It Work.¹² Despite these attempts, in 2018, the World Bank estimated that South Africa was one of the most unequal countries in the world.¹³ As an indicator, the World Bank referred to the net wealth inequality in South Africa between 2008 and 2015 which shows that the top 1% of households held 70.9% of the country's wealth while the bottom 60% held just 7.0%. For poor households, financial assets represent 36% of total

assets compared to 75% for the rich ones.¹⁴ South Africa has struggled to generate jobs leading to a very high unemployment rate. Unemployment was 27.2% in the second quarter of 2018 and reached as high as 50% among young people aged 15-34.¹⁵ The economy has been sluggish for a number of years, averaging 1.2% annual growth between 2015 and 2019.¹⁶ Gross domestic product per capita has been stagnant since 2013 at approximately US\$6,084.¹⁷ Finally, racial and gender disparities continue to be markedly present in the South African economy, with far-ranging consequences on the labour market, and a host of social circumstances.¹⁸

In terms of migration, according to the latest available estimates released by UNHCR, as of the end of 2018 there were more than 270,000 refugees and asylum seekers in South Africa.¹⁹ Although this data is not disaggregated by age, the abundance of research and media reports on the topic suggests that many of these are children.²⁰ A recent analysis of 109 case studies related to unaccompanied and separated children, revealed that main trends in terms of reasons for the migration were conflict related, death of caregiver in the country of origin, socio-economic reasons and the abandonment of the country of origin.²¹ The study highlights that in South Africa, no mechanism exists for the identification or registration of undocumented migrant children and that births of children born to undocumented foreign parents in South Africa are not

recorded which makes the presence of these children in the country unnoticed by the authorities.²² Unaccompanied and separated children have difficulties to meet the requirements set to regularize their stay once in South Africa. The lack of options available to unaccompanied and separated children make them highly vulnerable to exploitation, statelessness and under-development, due to restricted access to education and essential services.²³

South Africa was especially hard hit by the HIV/AIDS crisis in the 1990s, and a famously poor initial response is credited with ongoing struggles with the disease. The country still has the fourth-highest adult prevalence rate in the world.²⁴ In 2017, UNAIDS reported that 7.2 million people were living with HIV, of which 280,000 were children under 15 years old.²⁵

According to the latest statistics (April 2018-March 2019) provided by the South African Police Service (SAPS) together with Statistics South Africa, murder rates increased by 3.4% compared to 2017/2018, with 21,022 murders committed in South Africa in 2018/2019.²⁶ Sexual violence is high with the number of reported rates increasing to 41,583 cases per year compared to 40,035 in 2017/2018.²⁷

Children are highly impacted by this context. Efforts from the Government to reduce inequalities have been noted but high levels of poverty still persist, leaving children with an uncertain future and

4 South African Government. *Geography and climate*.

5 South Africa Gateway. (2018, July 18). The 11 languages of South Africa.

6 Statistics South Africa. (2019, July 29). *Mid-year population estimates 2019*. Pretoria: Statistics South Africa.

7 The World Bank. (2019, October). *Poverty & Equity Brief South Africa*. 1. Washington DC: The World Bank.

8 *Ibid.*, XIX.

9 *Ibid.*, 27.

10 UNDP. (2018). *Human Development Indices and Indicators: 2018 Statistical update*. 2. New York: UNDP; The Human Development Index classifies the countries in four groups: very high development group (59 countries), high development (53 countries), medium development (39 countries) and low development (38 countries).

11 The World Bank. (2018, March) *Overcoming Poverty and Inequalities in South Africa. An Assessment of Drivers, Constraints and Opportunities Report*. XIV. Washington DC: The World Bank.

12 Department The Presidency. (2012). *National Development Plan 2030: Our Future—Make It Work*. Pretoria: Department The Presidency.

13 The World Bank. (2018, March) *Overcoming Poverty and Inequalities in South Africa. An Assessment of Drivers, Constraints and Opportunities Report*. 42. Washington DC: The World Bank.

14 *Ibid.*, XVI.; Financial assets represent contractual claims on other agents and are as such differentiated from other physical or tangible assets such as land, buildings and machinery. Financial assets include cash (notes and coin), deposits at banks and other intermediaries, tradable equities, government and corporate bonds, and holdings of managed funds.

15 The World Bank. (2018, 31 October). *South Africa Overview*.

16 UNDP. (2018). *Human Development Indices and Indicators: 2018 Statistical update*. 45. New York: UNDP.

17 The World Bank. (2019).

18 The World Bank. (2018, March) *Overcoming Poverty and Inequalities in South Africa. An Assessment of Drivers, Constraints and Opportunities Report*. XIV. Washington DC: The World Bank.

19 UNHCR. (n.d.). UNHCR Statistics.

20 See e.g. Ackermann, M. (2018). *Unaccompanied and Separated Children in South Africa: is Return the Only Option?*, Scalabrini Centre of Cape Town; Ahmoudi, A., Mothapo, T. (2018, November). *Reception of Children on the Move in South Africa*. Kids Empowerment; Gaum, A and Esterhuizen, E. (February 2019). *Thousands of 'undocumented' children being deprived of basic right to education*. City Press.

21 Ackermann, M. (2018). *Unaccompanied and Separated Children in South Africa: is Return the Only Option?*. 979. Scalabrini Centre of Cape Town.

22 *Ibid.* 982-984.

23 *Ibid.*

24 The World Bank. (2019).

25 UNAIDS. (2018). *UNAIDS Data 2018*. 56. Geneva: UNAIDS.

26 South African Police Service. (2019). *Crime situation in Republic of South Africa twelve months April to March 2018_19.5*; See also: Statistics South Africa. (2019, October 3). *Victims of crime report 2018/2019* [Media release].

27 *Ibid.*

considerable risks of becoming victims of sexual exploitation and trafficking.

SITUATION OF CHILDREN

There are 19.7 million children in South Africa, of which 5.7 million are under five years old.²⁸ In 2016, UNICEF recorded that 56% of children in South Africa were living in families whose incomes or consumption levels fall below the national monetary poverty threshold.²⁹ South African children face multiple challenges from the perspective of their welfare and protection, a number of which can contribute to risks related to sexual exploitation.

Birth Registration

Birth registration is essential to enjoying the full rights of citizenship for every child including identity, nationality, access to services such as healthcare and education, and the ability to have rights defended when challenged.³⁰

In South Africa, birth registration is coordinated by the Department of Home Affairs. No fees are applicable when the child is registered within 30 days after birth.³¹ However, after 30 days the procedure is longer, fees apply, and punitive measures can even be applicable for parents.³² In 2016, only 85% of children in South Africa were registered.³³ In 2016, the Committee on the Rights of the Child (CRC) recommended the Government of South Africa remove punitive or discriminatory requirements,³⁴ however, no corrective action has been taken so far. Children without formal registration are

more vulnerable to a wide range of risks. These of course include risks of trafficking for sexual purposes, child labour and child early and forced marriage (CEFM).³⁵

Education

Education is essential to eradicating poverty and ensuring children's future economic opportunities. It is also a strong structure for children, who are thus integrated in a community and the inherent protections this then provides, reducing vulnerability. School can play also an important role in preventing SEC by raising awareness among students and parents as well as helping the child to connect with the right services in case the child is victim of SEC or sexual violence and abuse. Lack of educational opportunities and lack of school attendance leads to the social exclusion of the child who will be more likely to be targeted by adults for trafficking or other forms of sexual exploitation.³⁶

All South Africans have a right to basic and free education.³⁷ The South African Schools Act of 1996 protects child's rights to education stating that basic education is compulsory for children aged 7 to 15 years or from the first grade to the ninth grade.³⁸ Education is coordinated by the Department of Basic Education which implements the South African Education Plan 2019-2030.³⁹ In 2017, UNICEF reported that 83% of children were enrolled in primary school, 97% in lower secondary school and 88% in upper secondary school.⁴⁰ However, these percentages do not take into account children whose birth has not been registered, including unaccompanied child

migrants and displaced children.⁴¹

In 2017, 77% of students who attended public schools also benefited from school feeding schemes. Students in Limpopo (92.3%), Eastern Cape (90.7%), Mpumalanga (87.6%) and Northern Cape (85.3%) were the most likely to benefit from these.⁴² This governmental programme provides school meals to vulnerable primary and secondary school children from poor families.⁴³ Although education is free, families do still have to pay for costs for transportation, school supplies and uniforms.⁴⁴

The government has increased investment in early childhood development facilities and care (children from birth to four years old). In 2017, the annual General Household Survey showed that nationally, 50.2% of children under four remained at home with their parents or guardians, 36.9% attended formal early childhood development facilities, and 6.7% were looked after by other adults.⁴⁵ Attendance at early childhood development facilities was most common in Free State (45.9%), Gauteng (45.8%) and Western Cape (41.1%).⁴⁶ In comparison, around two thirds of children's parents or care givers in KwaZulu-Natal (69%), North West (64.2%), Northern Cape (61.9%) and Eastern Cape (60.4%) kept the children at home.⁴⁷

Children living with disabilities also face significant barriers to education due to a lack of resources and equipment in schools for children with disabilities, leaving

parents with the obligation to enrol their children in costly special needs schools.⁴⁸ In its 2010 decision in the case of *Western Cape Forum For Intellectual Disability v Government of the Republic of South Africa & Another*, the Western Cape High Court stated that the Government had not yet taken reasonable measures to meet the needs of children leaving with intellectual disabilities.⁴⁹ Although advocacy efforts are reportedly ongoing,⁵⁰ data suggests that the issue persists. In 2016, the Department of Basic Education reported that of the 99% of children aged seven to 15 years attending public schools, approximately 5% were children with disabilities.⁵¹ In the framework of the 2030 Agenda for Sustainable Development, the Washington Group on Disability Statistics undertook a review of data from some countries, including South Africa, to see the extent to which data on Sustainable Development Goals indicators can be disaggregated by disability status.⁵² According to the outcome report, 42.3% of students with disability completed primary school, which is below the completion rate for primary school students without disability (60.1%).⁵³ School completion rates are lower for students with disability also in both lower and upper secondary grades of education.⁵⁴

Child Labour

Article 3 of International Labour Organisation Convention No. 182 defines child sexual exploitation through prostitution as one of the worst forms of

28 UNICEF. (2019, October). *The State of the world's children 2019*. 194. New York: UNICEF.

29 UNICEF. (2017, December). *The State of the world's children 2017*. 204. New York: UNICEF.

30 UNICEF. *Why is registration important*.

31 South African Government. *Register Birth*.

32 Births and Deaths Registration Act, 1992.

33 UNICEF. (2017, December). *The State of the world's children 2017*. 184. New York: UNICEF.

34 Committee on the Rights of the Child. (2016, September 30). Concluding observations on the second periodic report of South Africa. CRC/C/ZAF/CO/2. Para 32 (a). Geneva: Committee on the Rights of the Child.

35 UNICEF. (2013). *Without birth registration, children are shut out of society altogether*. New York: UNICEF.; ECPAT International. (2015, October). Thematic Report: Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage. 24. Bangkok: ECPAT International.

36 London Metropolitan University, Centre of Expertise on child sexual abuse. (2017, March). Key messages from research on child sexual exploitation: Professionals in school settings. 5-6. London: Centre of Expertise on child sexual abuse.

37 Government Communication and Information system. (2017). *Official Guide to South Africa Education*. 2. Pretoria : Government Communication and Information system.

38 South African Schools Act 84 of 1996. Section 3(1).

39 Department Basic Education. (2015). *Action Plan to 2019 Towards the Realisation of Schooling 2030*. Pretoria: Department Basic Education.

40 UNICEF. (2017, December). *The State of the world's children 2017*. 156-188. New York: UNICEF.

41 Jelly Beanz. (2019, June). Personal Communication. See also: Gaum, A and Esterhuizen, E. (February 2019) . *Thousands of 'undocumented' children being deprived of basic right to education*. City Press; Maistry, A..(2019, January 21). The undocumented children denied the right to go to school. Daily Maverick.

42 Statistics South Africa. (2017). *General Household Survey*. 16. Pretoria: Statistics South Africa.

43 United States Department of Labour, Bureau of International Labour Affairs. (2017). *Findings on the Worst Forms of Child Labour South Africa*. 6. Washington DC: Bureau of International Labour Affairs.

44 *Ibid.*, 2.

45 Statistics South Africa. (2017). *General Household Survey*. 10. Pretoria: Statistics South Africa.

46 *Ibid.*

47 *Ibid.*

48 Martinez, E. (2017, December 4). *Children with Disabilities in South Africa Cannot Wait*.

49 Ngwena, C. (2013). *Western Cape Forum for Intellectual Disability v Government of the Republic of South Africa: A case study of contradictions in inclusive education*. African Disability Rights Yearbook. (2013) 1.pp. 139-164.

50 Jelly Beanz. (2019, June). *Personal Communication*.

51 Department Basic Education. (2016, March). *Revised Five-Years Strategic Plan 2015/16-2019/2020*. 31. Pretoria: Department Basic Education.

52 Washington Group on Disability Statistics (2018, October 30). *2030 Agenda for Sustainable Development: Selected SDG Indicators Disaggregated by Disability Status*. 7.

53 *Ibid.*

54 *Ibid.*

child labour.⁵⁵ Concurrently, certain forms of child labour also provide the risks and circumstances for other forms of sexual exploitation and/or abuse to occur. Working children are at high risk of being exposed to different forms of sexual violence and abuse in the workplace.⁵⁶ For example, child labour in domestic settings has been connected with sexual abuse by family members that the child is working for.⁵⁷ The unequal nature of the working relationship can put children under conditions of extreme powerlessness.

In March 2017, Statistics South Africa, published the Survey of Activities of Young People conducted in 2015 with children aged 7-17 years in South Africa.⁵⁸ This nationally representative survey indicated that of the 11.2 million South African children between ages of seven and 17 years, 577,000 were expected to be involved in various types of child labour.⁵⁹ Some of this labour would be classified under the worst forms. The survey showed that rural areas were more affected, with only 2% of children involved in child labour in urban areas.⁶⁰ The survey also indicated that in 2015, about 81,000 children would be involved in work that is prohibited by the Basic Conditions of Employment Act,⁶¹ 349,000 children were working excessive hours for their age on all types of work combined and 4,000 were absent from school or experienced difficulties at school

because of work-related activities.⁶² The survey highlighted that working boys (35.5%) were slightly more likely to be exposed to hazardous conditions than working girls (32.9%). 34.2% of all working children were exposed to at least one hazardous working condition.⁶³ Any children who work long hours are more vulnerable throughout their lives, including to sexual exploitation, being deprived of schooling and future economic opportunities.

Violence Against Children

The UN Convention on the Rights of the Child, Article 28(2) prohibits corporal punishment.⁶⁴ In South Africa, even if corporal punishment at school has been banned since 1997,⁶⁵ 5.7% of students reported experiencing it at school in 2018, with highest prevalence within Free State (12.1%) and Eastern Cape (11.5%) schools.⁶⁶ Corporal punishment at school is of course not necessarily linked with sexual abuse of children though in some cases this can be the case. For instance, in November 2017, in a well-publicised case, employees from a boarding school in Potchefstroom for learners with behavioural problems allegedly denuded a girl and held her in solitary confinement for nine days in response to misbehaviour. The case is still under investigation.⁶⁷ School cultures that permit institutional violence through

corporal punishment can foster ripe circumstances for sexual exploitation to occur. Furthermore when children have fear at school, this culture annuls the protective mechanism that positive school environments can have in reducing children's vulnerabilities, including to sexual exploitation.⁶⁸

Sexual violence against children includes both sexual exploitation and sexual abuse of children.⁶⁹ In 2016, the Optimus Foundation published a survey on this topic – the first of its kind to be conducted in South Africa. 4,086 male and female school students from 15 to 17 years old and 5,631 adolescents identified within households participated.⁷⁰ 35.4% of the school student sample reported some form of sexual abuse. Whereas in households the figures were a little bit lower at 26.3%.⁷¹

The first experience of sexual abuse was reported for girls at 14 years old, and a little later for boys at 15 years old.⁷² The survey established that children living with neither or just one biological parent were at higher rates of risk of facing some form of sexual abuse and children with disabilities were between 1.5 and 2.1 times more likely to be sexually abused.⁷³ The study also attests the positive influence of parent's presence on the reduction of the vulnerability of the child.⁷⁴ Finally, the survey showed that sexual abuse experiences are deeply related with mental health symptoms such as anxiety and depression as well as having problems with schoolwork and school attendance.⁷⁵

35.4%
**OF THE SCHOOL STUDENT
 SAMPLE FOR A RECENT SURVEY
 REPORTED SOME FORM OF
 SEXUAL ABUSE**

55 ILO Convention on the Worst Forms of Child Labour-1999 (No. 182), Article 3.
 "(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children"

56 This is expressly recognised by the 2006 UN Study on Violence against Children, which states that "the most common forms of violence against children in the workplace are: physical violence [...], psychological (emotional) violence [...], sexual violence, including sexual harassment, fondling and rape" (p. 242)

57 ILO. Child labour and domestic work.

58 Statistics South Africa. (2017, March 16). *Survey of Activities of Young People, 2015*. 9. Pretoria: Statistics South Africa.

59 *Ibid.*, 6.

60 *Ibid.*, 6.

61 *Ibid.*, 38.; Basic Conditions of Employment Act 1997, Section 43: Prohibition of employment of children: (1) No person may employ a child—(a) who is under 15 years of age; or (b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older. (2) No person may employ a child in employment—(a) that is inappropriate for a person of that age; (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development. (3) A person who employs a child in contravention of subsection (1) or (2) commits an offence.

62 *Ibid.*, 38.

63 *Ibid.*, 6.

64 The obligation to prohibit all corporal punishment of children falls directly under articles 19, 28(2) and 37 of the UN Convention on the Rights of the Child.

65 Abolition of corporal punishment Act 1997.

66 Statistics South Africa. (2019). *General Household Survey 2018*. 17. Pretoria: Statistics South Africa.

67 Ebrahim, S. (2017, November 9). Discipline in schools: What the law says you can and can't do. *Mail & Guardian*.

68 Landgren, K. (2005). The Protective Environment: Development Support for Child Protection. *Human Rights Quarterly*, 27, 214-228.

69 Interagency Working Group on Sexual Exploitation of Children (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg*. 16. Bangkok: ECPAT International.

70 UBS Optimus Foundation. (2016, May). *Optimus Study South Africa Report, sexual victimisation of children in South Africa*. 11. Zurich: UBS Optimus Foundation.

71 *Ibid.*, 30.

72 *Ibid.*, 45.

73 *Ibid.*, 55-56.

74 *Ibid.*, 20.

75 *Ibid.*, 64.

02

SCOPE AND NATURE OF SEXUAL EXPLOITATION OF CHILDREN

SEC occurs when a child takes part in a sexual activity in exchange for something (e.g. gain or benefit, or even the promise of such) from a third party, the perpetrator, or by the child her/himself.⁷⁶ Different forms of SEC include exploitation of children in prostitution,⁷⁷ online child sexual exploitation, sale and trafficking of children for sexual purposes, sexual exploitation of children in the context of travel and tourism⁷⁸ and some forms of child, early and forced marriage (CEFM).

EXPLOITATION OF CHILDREN IN PROSTITUTION

In South Africa, prostitution, the selling and buying of sexual services and related activities as cited in the legislation, is criminalised by the Sexual Offences Act 23 of 1957 and the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.⁷⁹ However, a progressive exception applies when the victim is under 18 years old as the child victim of exploitation in prostitution will not be criminalised.⁸⁰

VIEW FROM THE FIELD NO. 1

ESTIMATING THE SCALE AND SCOPE OF SEXUAL EXPLOITATION OF CHILDREN

During the interviews and focus group discussions, participants explained that government attention to combatting SEC depended on available statistical information, which is minimal due to a number of factors including the unspoken nature of the crime, a knowledge and skills deficit, as well as inadequate systems. The lack of statistical information concerning the scale and scope of the phenomenon was highlighted by respondents who emphasised urgent need to establish standardised data systems that would enable organisations to better track the scale, scope and emerging trends around SEC. It was clear that at present information about SEC is not being captured accurately:

“Most of the cases we deal with refer to sexual abuse, I very seldom come across a trafficking charge, so they will charge as sexual abuse, all the trafficking will go under the radar. We just slot it under sexual abuse, our stats are pathetic.”

(Participant FG2, Gauteng).

“We have the chicken and egg situation, no stats no resources, no resources no stats”

(Participant 9, KZN).

The participants consistently identified limited availability of resources (human and financial) to effectively deal with SEC in South Africa, despite what they saw as a notable increase in cases:

“I can tell you, we have seen an increase in cases and that is only limited to the amount of cases we are identifying. And that is limited, because our capacity is limited”

(Participant 8, KZN).

⁷⁶ Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg*. 24. Bangkok: ECPAT International.

⁷⁷ *Ibid.*, 28.

⁷⁸ *Ibid.*, 54.

⁷⁹ Sexual Offences Act 23 of 1957; Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007.

⁸⁰ South African Law Reform Commission. (June 2015). *Report Sexual Offences Adult Prostitution*. 8-10. Pretoria: South African Law Reform Commission.

In 2017, after investigations and the publication of an issue paper and a discussion paper, the South African Law Reform Commission published a report recommending to continue criminalising adult prostitution. But the report left open the possibility for sex workers to access supportive resources and systems in order to exit prostitution.⁸¹ As the debate has continued, the recommendations have been criticised by activists and health workers who are concerned that the criminalisation of adult prostitution would not help to reduce the stigmatisation of sex workers and the lack of access to health services and protection.⁸²

Although this ongoing debate is strongly focused on adult prostitution, it also affects the potential exploitation of children in prostitution. Some in South Africa have argued that the decriminalisation of adult prostitution could positively impact child victims exploited through prostitution in two main ways: It would prevent authorities from ignoring the fact that child victims of exploitation in prostitution cannot be criminalised under the law. Decriminalisation of adult prostitution could also mean a safer environment for adult sex workers to report any cases of

exploitation of children in prostitution as they would be unlikely to do now from fear of reprisals.⁸³

Despite a number of older reports on prostitution generally, there are no updated studies nor reliable statistics on the prevalence of children exploited in prostitution in South Africa. Some newspapers reported that children between 8 to 15 years old were involved in sexual exploitation at truck stops in exchange for food or money.⁸⁴

ONLINE CHILD SEXUAL EXPLOITATION

In 2017, it was reported that more than half of the population had Internet access in South Africa,⁸⁵ and mobile phone penetration was as high as 150 subscriptions per 100 people.⁸⁶ The increasing use of mobile phones and the proliferation of Internet access in South Africa certainly contributes positively to social and economic development, however, it also presents potential new vulnerabilities for children to sexual exploitation online. The misuse of available

technologies gives perpetrators new avenues to groom and exploit children. Moreover, the anonymity of the Internet facilitates opportunity for child sex offenders to share and disseminate child sexual abuse material (CSAM).⁸⁷

In 2016, the Centre for Justice and Crime Prevention piloted the Global Kids Online research tools with 913 children aged from nine to 17 years and 532 parents in a study of the impact of the Internet on the lives of South African children. 51.2% of child participants reported having seen sexual images and 30.5% reported having received sexual messages via the Internet.⁸⁸ The study showed that more boys than girls experienced unwanted sexual contact such as shared links to pornographic content, but more girls had been asked unwanted sexual questions about themselves.⁸⁹ The study also examined parental mediation and found that 57% of parents had never suggested any guidance for safe use of the Internet to their children. Nearly 50% of child participants had never spoken to their parents about their Internet use and 86.7% of the parents did not consider that their child could experience any harmful situations online.⁹⁰ This limited awareness of risk by parents certainly exacerbates children's vulnerabilities to sexual exploitation online.

51.2%
OF CHILD PARTICIPANTS
REPORTED HAVING SEEN
SEXUAL IMAGES AND

30.5%
REPORTED HAVING RECEIVED
SEXUAL MESSAGES VIA THE
INTERNET

A Cybercrime Unit of the South African Police Service's Family Violence, Child Protection and Sexual Offences department has been formed to tackle cases of cybercrime such as CSAM-related crimes. For instance, in the Western Cape Province, the Cyber Crimes Investigation received information about a man in possession of CSAM. In 2018, the man was arrested and recorded in the National Sexual Offenders register.⁹¹

Beyond these sources, there is limited research indicating the scope and context of online child sexual exploitation in South Africa. Notably, a major piece of research coordinated by the African Union is

VIEW FROM THE FIELD NO. 2

THE BLESSER-BLESSEE PHENOMENON OR CHILDREN SEXUALLY EXPLOITED IN A FORM OF PROSTITUTION?

The 'Blesser-Blessee' phenomenon was mentioned as an evolving practice in South Africa, during which young girls are sexually exploited by older men in exchange for monetary incentives. This type of transactional relationship exists in other parts of the world (under different names such as 'compensated dating') but is often defined as a form of prostitution:

"The Blesser phenomenon is a huge problem at our university...huge problem"
(Participant 9, KZN).

"One of the major threats we have in schools at the moment is the Blesser that is a major issue"
(Participant FG 2, Gauteng).

According to participants, it is disturbing to note that in many South African communities, this practice is not considered as sexual exploitation of children.

81 *Ibid.*, ii-x.
82 Chakamba R. (2017, August 28). Debate Rages Over Legal Status of Sex Workers in South Africa. *NewsDeeply*.
83 ASIJKI. (2016). *Children and Sex Work*.
84 Bamford, H. (2015, October 16). Concern over child prostitution in Karoo. *IOL News*.
85 ITU. *Internet users by region and country 2010-2016*.
86 ITU. *Mobile cellular 2000-2017*.

VIEW FROM THE FIELD NO. 3

THE EVOLVING NATURE OF ONLINE CHILD SEXUAL EXPLOITATION

Participants described SEC as a complex, continuously evolving crime, regularly instigated and operated by professional criminals. Further exploration of the changing nature of SEC found that the increasing use of technology has greatly influenced criminal practices involving children, namely:

"What I have seen especially in South Africa, is the increasing role of technology in SEC, the ability to exploit children is literally in the hands of every person"
(Participant 5, Gauteng).

"I believe with the advancement of technology, the availability of various online forms of sexual exploitation such as pornography, has created a huge demand which increases the supply for more victims being sold into sexual exploitation"
(Participant 4, KZN).

87 ECPAT International. (2018, April). *Trends in online child sexual abuse materials*. Bangkok: ECPAT International.
88 Centre for Justice and Crime Prevention. (2016, September). *South African Kids Online: A glimpse into children's internet use and online activities*. 7. Cape Town: Centre for Justice and Crime Prevention.
89 *Ibid.*
90 *Ibid.*
91 South African Police Service. (2018, July 29). FCS secures hefty sentences for perpetrators who committed crimes against women and children. [Press release].

underway to begin to map the nature and extent of online child sexual exploitation across the continent. This project may promote governments to further seek data on problem within their borders.

SALE AND TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC) defines the sale of children as:

*“any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration”.*⁹²

In South Africa, no public data was discovered during this review about the sale of children for sexual purposes. In October 2016, the Committee on the Rights of the Child recommended South Africa develop and implement a strong, integrated and effective system of data collection and analysis on the sale of children, and all forms covered by the OPSC, to be used by law enforcement authorities.⁹³ However, no evidence of progress was identified at the time of writing.

The sale of children can also occur via nefarious intentions through illegal adoption or child marriage. For example,

in 2017, a newspaper reported that a very poor family in the province of KwaZulu-Natal had sold its four daughters into marriage.⁹⁴ In 2016, the Committee on the Rights of the Child recommended South Africa to define and criminalise the sale of children, in particular the sale of children through illegal adoption, transfer of organs of the child for profit and for child labour. The Committee specified that these forms should have their own definition and not only be addressed under responses for trafficking of children (where they are currently defined).⁹⁵ Indeed, the Children’s Act 2005 only includes the notion of sale of children and adoption under its definition of trafficking.⁹⁶

Data on human trafficking, and more specifically, trafficking of children for sexual purposes is scarce in South Africa. No official database on human trafficking has been established and only limited cases are reported to the police and successfully prosecuted.⁹⁷ As reported by the US State Department’s TIP report, over the past five years: “South Africa is a source, transit and destination country for men, women and children subjected to forced labour and sex trafficking”.⁹⁸ International trafficking syndicates involving Bulgarian, Chinese, Nigerian, Russian, or Thai traffickers, participate in the commercial sex industry in South Africa.⁹⁹ Small-sample research has also indicated that trafficking for sexual purposes regularly takes place across South Africa’s six porous land borders and within specific contexts like travel and tourism¹⁰⁰ – a sector that increasingly contributes to the national economy.

In most identified cases, victims come from poor rural villages to be exploited in urban areas like Cape Town, Durban, Bloemfontein or Johannesburg.¹⁰¹ For example, in April 2018, two members of a human trafficking ring were convicted. In this case, girls from poor rural villages in Northern Cape, were recruited with promises of economic opportunity. However, once they arrived in Gauteng province, girls were forced to take drugs and work in sexual slavery.¹⁰² In 2015, another publicised case involved a 15-year-old girl from a rural area who was picked up by a Nigerian male with the promise of work in Cape Town. However, once she arrived, she was forced to sell sex on the streets. Fortunately, she managed to escape and an investigation was conducted.¹⁰³

The US State Department’s 2019 TIP Report stated that among the 244 foreign victims of trafficking recognised, there were children from the Democratic Republic of Congo, Zimbabwe and Mozambique.¹⁰⁴ In July 2018, a man was convicted for human trafficking and child rape after luring a mother and her 15-year-old daughter to

come to South Africa for work and instead keeping the daughter imprisoned in sexual slavery.¹⁰⁵

In August 2015, the Prevention and Combating of Trafficking in Persons Act 7 of 2013 (PACOTIP) came into force, legally defining and enabling prosecution of human trafficking as a crime.¹⁰⁶ However, knowledge and correct application of the PACOTIP law has been limited. Offences that could be prosecuted under the law are often instead characterised as other crimes such as kidnapping, abduction, rape, domestic violence etc. Cases are also often not well-documented and victims not identified.¹⁰⁷ Training on human trafficking should be compulsory for law enforcement authorities as well as a strong and systematic collection and analysis of data.

With the implementation of the PACOTIP law, the South African Government has made progress to tackle trafficking. However, critics have noted that no special unit in the police has been established to investigate trafficking cases and that a system to facilitate the monitoring and implementation of the PACOTIP law is

SOUTH AFRICA AS A HUB FOR CHILD TRAFFICKING

The geographic location of South Africa is considered by the professionals interviewed for this report as a prime destination for international sex trafficking syndicates to operate from. They explained this was due to easy access to travel routes to other countries, or to travel from other countries via land, air or sea to South Africa. Furthermore, the majority of participants indicated that border and immigration control was perceived to be weak in South Africa and high levels of corruption existed amongst officials:

“The South African borders are very porous. People come and go as they wish”

(Participant 7, KZN).

“They see South Africa as the land of milk and honey”

(Participant FG1, Gauteng).

92 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Article 2(a); and 3: ‘(a) In the context of sale of children as defined in Article 2: Volume 2171, A-27531 249 (i) The offering, delivering or accepting, by whatever means, a child for the purpose of: a. Sexual exploitation of the child; b. Transfer of organs of the child for profit; c. Engagement of the child in forced labour; (ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption; (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2; (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2’.

93 Committee on the Rights of the Child. (2016, October 26). *Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. CRC/C/OPSC/ZAF/CO/1. Para 6-7. Geneva: Committee on the Rights of the Child.

94 Cole B. (2017, November 3). South Africa child brides ‘sold off to lascivious’ men. IOL News.

95 Committee on the Rights of the Child. (2016, October 26). *Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. CRC/C/OPSC/ZAF/CO/1. Para 29. Geneva: Committee on the Rights of the Child.

96 Children’s Act No. 38 of 2005, p17.

97 Van Der Watt, M. and Burger, J. (2018, November 30). The perplexities of human trafficking in South Africa.

98 United States Department of States. (2018, June). *Trafficking in Persons Report*. 390. Washington DC: United States Department of States., 390.

99 *Ibid.*, 388.

100 ECPAT Netherlands, (2014). Don’t Look Away: Be aware and report the sexual exploitation of children in travel and tourism 79.

101 United States Department of States. (2019, June). *Trafficking in Persons Report 2019: South Africa*. Washington DC: United States Department of States., 390.; Germaner, S. (2018, April 28). Two men on six human trafficking charges. IOL News.

102 Germaner, S. (2018, April 28). Two men on six human trafficking charges. IOL News.

103 Minister of the Department of Social Development. (2016). *Second State Party Report to the African Union’s Committee of Experts on the Rights and Welfare of the Child*. 130. Pretoria: Minister of the Department of Social Development.

104 United States Department of States. (2019, June). *Trafficking in Persons Report 2019: South Africa*. Washington DC: United States Department of States.

105 South African Government. (2018, July 30). *Deputy Minister John Jeffery: Public workshop on Child Trafficking in commemoration of World Day against Trafficking in Persons*. [Press release].

106 Prevention and Combating of Trafficking in Persons Act 7, 2013.

107 Van Der Watt, M. and Burger, J. (2018, November 30). *The perplexities of human trafficking in South Africa*.

absent.¹⁰⁸ Finally, a lack of trust from the community towards law enforcement, and a high level of corruption are factors noted that prevent good prosecution of traffickers and solid assistance to victims.¹⁰⁹

SEXUAL EXPLOITATION OF CHILDREN IN TRAVEL AND TOURISM

From January 2019 to July 2019, 5,885,384 tourists visited South Africa.¹¹⁰ The tourism industry contributes significantly to the South African economy, and in 2017 was estimated to directly support 4.5% of total employment and contribute 2.9% of the total GDP.¹¹¹ An essential part of South African economic development, tourism nevertheless can put children at higher risk of sexual exploitation in a number of ways. In 2016, the Global Study on Sexual Exploitation of Children in Travel and Tourism indicated that travel and tourism are closely linked to the sex industry, with increasing numbers of local and international travellers increasing the risks to children.¹¹² This may include foreigners taking advantage of limited legal restrictions imposed on prostitution generally who then may become situational¹¹³ child sex offenders. It is essential to highlight that child sexual exploitation also occurs in the context of domestic travel and tourism without being restricted to the crossing of a national border.¹¹⁴ A survey conducted by

Statistics South Africa in 2017 on domestic tourism in South Africa showed that 48 million day trips and 44.4 million overnight trips occurred in 2017.¹¹⁵ South Africa is nowadays considered a major destination for travelling sex offenders,¹¹⁶ with instances of travel agencies coordinating with local pimps, tourist guides, taxis, landlords and car guards identified.¹¹⁷ However, beyond these top-line findings, more detailed data on the sexual exploitation of children in travel and tourism in South Africa is not available.

The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism (The Code) provides tools to the travel and tourism sector to prevent and intervene in cases in this context. The Code is based on the voluntary engagement of travel companies and has been adopted by companies worldwide. Members commit to publicly take a stance against sexual exploitation in travel and tourism, train their staff, adopt policies and monitor adherence.¹¹⁸ As of October 2019, 33 companies based and/or operating in South Africa were member of the Code.¹¹⁹

CHILD, EARLY AND FORCED MARRIAGE

The Office of the United Nations High Commissioner for Human Rights (OHCHR) describes child, early and forced marriage (CEFM) as:

*“any marriage where at least one of the parties is under 18 years of age (...) marriages in which one and/or both parties have not personally expressed their full and free consent to the union”.*¹²⁰

As in most countries in Africa, South Africa has set a minimum age for marriage. However, the law discriminates against girls and applies the exception of judicial authorisation or parental consent. Under the civil law, the minimum legal age for marriage in South Africa is 18 years-old for boys and 15 years-old for girls.¹²¹ Exception can be granted by the Minister or any officer in the public service authorised thereto by him.¹²² It should be noted that before the amendment of the Marriage Act 1961 in 1992, the minimum legal age for marriage was set at 16 years-old for girls. According to UNICEF, in South Africa, as many as 1% of women aged 20-24 in 2010-2018 were married before the age of 15 and 6% before the age of 18 years.¹²³

CEFM can leave girls and boys at particular risk of domestic violence, sexual abuse, and exposed to HIV/AIDS and sexually transmitted infections. Research globally has found that married children are more vulnerable to be abused; to emotional and physical violence; often obliged to drop out of school; and have little access to economic opportunities. They are regularly isolated from their families and communities- natural support structures – and are likely to live in poverty.¹²⁴ CEFM often results in early pregnancies which can also lead to dangerous complications and death. In 2018, in the North-Eastern province of Mpumalanga, 5,609 deliveries from girls under the age of 18 years old were reported.¹²⁵

In some rural parts of South Africa, a tribal custom similarly common in other parts of the world is practiced – bride kidnapping. Known locally as *Ukuthwala*, primarily found among the Nguni, it continues to be practiced amongst some communities/ethnic groups. The *Ukuthwala* is the abduction of a girl by a man with the intention of compelling the girl’s family to endorse marriage negotiations; resulting in the marriage of the child with the man.¹²⁶ While this is sometimes these days used ceremonially, *Ukuthwala* can also represent a risk factor for SEC. When marriage involves a dowry in goods or money from the man to the girl’s family, commonly, only the parental consent is taken into account, leaving the girl without the right to refuse.¹²⁷ Although traditionally *Ukuthwala* was a way of strengthening social cohesion within communities, the abuse of it has led to violence and child rape.¹²⁸ Deviation of *Ukuthwala* can result in trafficking of children for sexual purposes and has been penalised under the PACOTIP.¹²⁹ In 2015, a man was condemned by the Western Cape High Court for rape, assault and human trafficking after he abducted a girl with her family’s consent. The court settled the case by stating an abuse of the practice of *Ukuthwala*.¹³⁰ In late 2015, a discussion paper on the practice of *Ukuthwala* earlier prepared by the South African Law Reform Commission was revised to include a chapter on public consultations and a draft Bill prohibiting forced marriages and child marriages.¹³¹ However, as of June 2019, no legislative reform nor law has been passed.

108 *Ibid.*

109 Transparency International Index. (2018).; Van Der Watt, M. and Burger, J. (2018, November 30). *The perplexities of human trafficking in South Africa.*

110 Statistics South Africa. (2019, September 23). *Tourism and migration. July 2019.*

111 World Travel and Tourism Council. (2018). *Travel & Tourism Economic Impact 2018.* 1. London: World Travel and Tourism Council.

112 ECPAT International. (2016, May). *Global Study on Sexual Exploitation of Children in Travel and Tourism.* 21. Bangkok: ECPAT International.

113 Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg.* 85. Bangkok: ECPAT International.

114 *Ibid.*, 55.

115 Statistics South Africa. (2018). *Domestic Tourism Survey 2017.* 8. Pretoria: Statistics South Africa.; Definition of day trip: A trip outside of the respondent’s usual environment, where they leave and return within the same day (i.e. do not stay overnight). Definition of an over-night trip: A trip outside of the respondent’s usual environment where one night or more is spent away from the usual environment.

116 ECPAT International. (2016, May). *Global Study on Sexual Exploitation of Children in Travel and Tourism.* 44. Bangkok: ECPAT International.

117 *Ibid.*, 55.

118 *The Code. (n.d.). About.*

119 *The Code (n.d.). Members – South Africa.*

120 OHCHR. *Child, early and forced marriage, including in humanitarian settings.*

121 Marriage act 25, 1961.

122 *Ibid.*

123 UNICEF. (2019, October). *The State of the world’s children 2019.* 235. New York: UNICEF.

124 Girls not Brides. *What is the impact of child marriage?.*

125 Andersen, Nic. (2018, August 16). *More health worries as teenage pregnancies rise by 78% in one year. The South African.*

126 Department of Justice and Constitutional Development. (2015). *Ukuthwala.*

127 *Ibid.*

128 South African Human Rights Commission. (2017). *Research Brief on Gender and Equality in South Africa 2013-2017.* 21. Braamfontein: South African Human Rights Commission.

129 Prevention and Combating of Trafficking in Persons Act 7, 2013, section 4.

130 *Jezile v S and Others 2015 (2) SACR 452 (WCC).*

131 South Africa Law Reform Commission. (2015, October). *Revised discussion paper 138. Project 138: The practice of Ukuthwala.*

HARMFUL TRADITIONAL PRACTICES SUCH AS CEFM

'*Ukuthwala*' is the abduction or kidnapping of a girl or a young woman by a man and his friends with the aim of forcing her family to accept a marriage. This harmful cultural practice found within South Africa related to child marriage was also explained in FGDs to be a form of child trafficking:

"It brings us to the issue of culture, where people practice 'Ukuthwala' in the rural areas, involving child abduction, they are not informed what is or what is not trafficking"

(Participant FG1).

03

POLICY AND GOVERNMENT RESPONSE TO SEC

POLICY FRAMEWORK

South Africa does not have a national plan of action specifically addressing SEC at present. A National Plan of Action for Children was developed between 2012-2017 to ensure the promotion of the rights of children and their protection.¹³² It is understood that revision and development of a new plan is currently underway.

In 2017, the Government adopted and published Phase IV (2017-2021) of the Child Labour Programme of Action for South Africa.¹³³ The programme gathers policies and highlights the mandate of key agencies related to child labour, to prevent and eliminate child labour.¹³⁴ However, it doesn't include a strong monitoring system to report on the progress or efforts to combat child labour.¹³⁵ Very little public information and data could be found during this review on the Phase IV 2017-2021 of the Child Labour Programme of Action.

A National Policy Framework on Trafficking in Persons was drafted in 2009, to progress anti-trafficking guidelines, in particular on the implementation of the planned PACOTIP and to be used as a tool by government entities and civil society. The Framework follows a strategy based on four pillars: Prevention, Protection, Prosecution and Partnership.¹³⁶ The National Policy Framework has been revised in late 2018,¹³⁷ and at the time of writing is understood to be awaiting final approval by the Minister of Justice and Constitutional Development.

In December 2007, the South African Government, recognising the high prevalence of gender-based violence

and sexual offences, particularly against women, children, and people with disabilities, and enacted the Criminal Law (Sexual Offences Related Matters) Act.¹³⁸ The Act required the drafting of a national policy framework to guide government entities and key stakeholders to implement it.¹³⁹ In 2012, the first draft of the National Policy Framework on the Management of Sexual Offences was published.¹⁴⁰

This Act aims to ensure adequate and efficient services to victims of sexual offences as well as strengthening the legal framework regulating sexual offences.¹⁴¹ For instance, it introduced a broader definition of the offence of rape, by recognising all forms of penetration without consent, and of the offence of indecent assault, by recognising all forms of non-penetrative sexual violence without consent.¹⁴² The Act also criminalises the:

*“compelling or causing of the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult”.*¹⁴³

Finally, it established a National Register for Sex Offenders.¹⁴⁴

In November 2017, a National Forum on the Implementation of the Act was held, gathering approximately 250 participants, including representatives from civil society, regional magistrates, and officials from the relevant departments to assess successes

and challenges in implementing the 2007 law.¹⁴⁵ Outcomes were mixed. The criminal justice system is complex, and involves many actors and several interlinking stages therefore making cooperation and coordination difficult.¹⁴⁶ The absence of professional skills and sensitive attitudes towards victims from government officials tasked with managing sexual offences also highlighted the need for ongoing social context training for all professional involved.¹⁴⁷ The lack of specific legal knowledge relating to sexual offences laws and procedures and the lack of a common monitoring and evaluation system used by all the stakeholders to effectively report the implementation of the Act were also pointed out.¹⁴⁸

COORDINATION AND COOPERATION

South Africa does not have a coordination body specifically addressing SEC at present. In 2015, the National Children's Rights Intersectoral Coordination Committee has been established to coordinate and monitor compliance on policies and legislation aimed at the realisation of children's rights across all sectors within government agencies but also coordination between the Government and the civil society.¹⁴⁹ However, in 2016, the Committee on the Rights of the Child (CRC) questioned the lack of authority, clear mandate, human resources and funding provided to the

VIEW FROM THE FIELD NO. 6

EXISTING POLICIES ARE ON PAPER ONLY

The participant responses indicated that at present there are numerous policies and legislative instruments in place to protect children and address issues related to SEC in South Africa. Participants even noted that some organisations and government departments have standard operating procedures that clearly specify the steps that need to be followed when dealing with cases involving SEC. However, it needs to be kept in mind that the professional systems, such as child welfare and criminal justice, were developed independently and have different mandates. This leads to differences in the way in which these departments respond to SEC, and may restrict their involvement.

Further exploration with participants of available policies related to working with victims of SEC identified that current policies look good on paper but are often not deliberated and the practical implementation becomes problematic:

“The legislation is not the problem, it is the implementation”
(Participant 6, Gauteng).

“On paper we have policies, but these policies are incongruent with the complexity of the crime”
(Participant FG1, Gauteng).

No, the legislation on paper it is very good. But in practice it is non-existing. Nobody follows through with it”
(Participation 1, KZN).

132 Department Women, Children and People with Disabilities. (2012). *National Plan of Action for Children in South Africa 2012-2017*. 13. Pretoria: Department Women, Children and People with Disabilities.

133 Department Labour. (2018, August 17). *Keynote address by the Minister of Labour, Mildred Oliphant, on the occasion of the National day against child labour held in Wesselsbron in the Free State province*. [Press release].

134 *Ibid.*

135 United States Department of Labour, Bureau of International Labour Affairs. (2017). *Findings on the Worst Forms of Child Labour South Africa*. 7. Washington DC: Bureau of International Labour Affairs.

136 South African Government. (2018, July 30). *Deputy Minister John Jeffery: Public workshop on Child Trafficking in commemoration of World Day against Trafficking in Persons*. [Press release].

137 UNODC. (2018, October 29). *GLO.ACT supports workshop on the Validation of the National Policy Framework (NPF) against Trafficking in Persons*. [Press release].

138 Department of Justice and Constitutional Development. (2012, June). *National Policy Framework Management of Sexual Offence Matters*. 10. Pretoria: Department of Justice and Constitutional Development.

139 Criminal Law (Sexual Offences Related Matters) Act 2007, section 62-65.

140 Department of Justice and Constitutional Development. (2012, June). *National Policy Framework Management of Sexual Offence Matters*. 10. Pretoria: Department of Justice and Constitutional Development.

141 *Ibid.*, 11.

142 Criminal Law (Sexual Offences Related Matters) Act 2007, 2.

143 *Ibid.*

144 *Ibid.*, 4.

145 Department of Justice and Constitutional Development. (2017, November 6). *Media Briefing: National Forum on the Implementation of the Sexual Offences Act*. [Press release].; The government departments include the SAPS, the NPA, the DOJCD and the Departments of Health, Social Development and Women.

146 *Ibid.*

147 *Ibid.*

148 *Ibid.*

149 Government of South Africa. (2016, September). *South Africa's Response to List of Issues in relation to its Second Periodic Report to the United Nation's Committee on the Rights of the Child*. CRC/C/ZAF/Q/2. Para 5. Pretoria: Government of South Africa.; Department Social Development. (2017, December). *South Africa's Child Care and Protection Policy*. 160-161. Pretoria: Department Social Development.

National Children’s Rights Inter-sectoral Coordination Committee.¹⁵⁰ It has not been possible to verify if any progress has been made in the past few years.

The South African Department of Labour enforces child labour laws in collaboration with the South African Police Service (SAPS) which is responsible to investigate cases jointly with the South African Department of Justice and Constitutional Development for prosecution.¹⁵¹ The South African Department of Labour is also in charge of labour centres, spread over the country, employing child labour inspectors in charge of addressing complaints on child labour.¹⁵² For instance, in August 2017, 23 children were rescued from two farms, in the province of Free State, and a case was opened against the farmer.¹⁵³ No information is available online regarding the outcome of this case.

The Child Labour Implementation Committee, chaired by the South African Department of Labour, coordinates and monitors the efforts of government agencies on child labour policies,¹⁵⁴ programmes and legislation.¹⁵⁵

The implementation of the strategy and policy on trafficking in person in South Africa is coordinated at the national level by the National Inter-Sectoral Committee of Trafficking in Persons.¹⁵⁶ At the provincial level, Provincial Task Teams of Trafficking in Persons are established to address cases of trafficking, ensure monitoring of reported cases and protection to the victims.¹⁵⁷ The 2019 US State Department’s TIP Report

indicated there was a lack of coordination and communication that often prevented the good functioning of these teams.¹⁵⁸

In addition, trafficking of children is addressed by the SAPS’s Human Trafficking Desk which monitors and evaluates police efforts to investigate human trafficking crimes and train investigators.¹⁵⁹ In 2016, the CRC recommended South Africa to provide more trainings to the officers.¹⁶⁰ In 2019, the US State Department’s TIP Report pointed out the essential need to train officers on the identification measures and protection of victims.¹⁶¹ However, no information was able to be identified during this review regarding whether these trainings have been conducted and the numbers of officers who benefitted from these.

Inter-departmental collaboration between key government departments including the Department of Social Development, Department of Health, Department of Education, Department of Justice, the National Prosecuting Authority and SAPS was felt to be problematic. To resolve this issue, participants proposed the establishment of an oversight body that can supervise and guide all activities related to SEC in South Africa. In addition, it was proposed that the oversight body needs to be a central hub of information regarding SEC as well as have the ability to also take on a formal mandated coordinating role amongst government and civil society actors.

150 Committee on the Rights of the Child. (2016, September 30). *Concluding observations on the second periodic report of South Africa*. CRC/C/ZAF/CO/2. Para 7. Geneva: Committee on the Rights of the Child.

151 United States Department of Labour, Bureau of International Labour Affairs. (2017). *Findings on the Worst Forms of Child Labour South Africa*. 6. Washington DC: Bureau of International Labour Affairs.

152 Department Labour. (2017, September 3). *Incidents of child labour uncovered by resolute Labour Inspectors in the Lejweleputswa District*. [Press release].

153 Department Labour. (2017, August 30). *Minister of Labour, Mildred Oliphant condemns all forms of child labour*. [Press release].

154 Departments of Labour, Basic Education, Justice and Constitutional Development, Social Development and Provincial Departments, Water and Sanitation, and the South African Police Service, and National Prosecuting Authority, and Statistics SA.

155 Department of Labour. (2013). *The National Child Labour Programme of Action for South Africa Phase Three 2013-2017*. 2. Pretoria: Department of Labour.

156 South African Government. (2018, July 30). *Deputy Minister John Jeffery: Public workshop on Child Trafficking in commemoration of World Day against Trafficking in Persons*. [Press release].

157 Ibid.

158 United States Department of States. (2019, June). *Trafficking in Persons Report 2019: South Africa*. Washington DC: United States Department of States.

159 United States Department of Labour, Bureau of International Labour Affairs. (2017). *Findings on the Worst Forms of Child Labour South Africa*. 3. Washington DC: Bureau of International Labour Affairs.

160 Committee on the Rights of the Child. (2016, October 26). *Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. CRC/C/OPSC/ZAF/CO/1. Para 14-15. Geneva: Committee on the Rights of the Child.

161 United States Department of States. (2019, June). *Trafficking in Persons Report 2019: South Africa*. Washington DC: United States Department of States.

WELL WRITTEN LEGISLATION IS NOT SUFFICIENT, COORDINATION AND COOPERATION IS NEEDED

Participants agreed that South Africa has adequate, well-written legislative instruments and some looked further to understand the implementation challenges that the country faced:

“We have enough, if we can’t even meet the requirements of what we have available, what will be the point of developing more policies and legislation?”

(Participant 8, KZN)

Participants expressed their frustration with the improper use of available legislation by professionals, which has disturbing consequences. Examples were provided of difficulties with penalties and sentences resulting in perpetrators being released due to the improper application of available legislation.

It was repeatedly noted that SEC is a complex crime that involves several criminal activities and requires the involvement and collaboration of inter-sectoral professionals as well as shared understanding of various policies and legal instruments. Therefore, it was felt essential for professionals dealing with SEC to have a multi-disciplinary professional support network (even if informal) and be well-informed about different policies and legislative instruments available in South Africa. It was explained as critical to establish and build relationships with individuals, organisations and government departments to be able to effectively deal with SEC, as verified in the following responses:

“We refer to one another and use each other’s strengths, which I think is really important. I wish it could be more; you have to build these relationships. Another thing is we need to lift each other up”

(Participant 6, Gauteng).

“I make friends with my colleagues in the SAPS, NPA, social workers and I do not work in isolation on such a case, I will not be able to handle the punch”

(Participant 3, Gauteng).

But informal coordination and cooperation also needs to be structured and systemised, otherwise as some said:

“We struggle, in terms of referring cases to the Department of Social Development and when we refer cases, we don’t know what is happening to them. We don’t get feedback and when we follow-up, we are told that they don’t have to report to us”

(Participant 1, KZN).

“If you know the right people, it gets done”

(Participant FG1, Gauteng).

In addition, the participants identified that some organisations and departments in fact work in isolation. This independent functioning can impact negatively on the effective and desired collective approach to handling SEC cases:

“Everybody does what they want...”

(Participant 2, KZN),

“People are doing things, their own things”

(Participant 1, KZN).

Inter-departmental collaboration between key government departments was felt to be problematic. To resolve this issue, participants proposed the establishment of an oversight body that can supervise and guide all activities related to SEC in South Africa. In addition, it was proposed that the oversight body needs to be a central hub of information regarding SEC as well as have the ability to also take on a formal mandated coordinating role amongst government and civil society actors.

PREVENTION AND AWARENESS RAISING

As mentioned above the National Sex Offenders Register was established in 2007. The register operates like a database recording the names of perpetrators of sexual offences against children.¹⁶² In addition, the National Child Protection Register gathers names of people found guilty of crimes against children and names of people not guilty but declared by the court to be unsuitable to work with children.¹⁶³ Due to the nature of the two registers and issues with their implementation the current models are under some scrutiny which may see changes in the works.¹⁶⁴

Provincial Child Labor Inter-sectoral Support Groups have been established in order to prevent all types of child labour. The groups

participate in awareness raising activities, notably on human trafficking.¹⁶⁵ For instance, in October 2017, the task team joined the Human Trafficking Awareness Week to share best practices.¹⁶⁶

The Government organises an annual campaign, the Child Protection Week, to educate and mobilise society on the rights of the child.¹⁶⁷

The Government also introduced programmes such as the Child Support Grant, which supports, in the form of cash transfers, primary caregivers of poor and vulnerable children.¹⁶⁸ In 2017, the programme benefited approximately 12 million of children, hopefully helping vulnerable children avoid falling into sexual exploitation through increased enrolment in schools and better access to basic services.¹⁶⁹

VIEW FROM THE FIELD NO. 8

THE IMPORTANCE OF APPROPRIATE AWARENESS RAISING AMONGST ALL SOUTH AFRICANS

“They think it happens to other people”

(Participant 1, Gauteng).

Participants proposed that a possible means to increase awareness and knowledge among all South Africans, would be to involve available structures such as the media (including social media) in sharing information about SEC in South Africa. However, this needs to be done in a constructive way by continually sharing relevant information:

“Don’t shy away from sharing the facts, share information in the media

(Participant 4, Gauteng).

Unfortunately, concerns were also raised regarding several civil society organisations and individuals embarking on awareness campaigns. It was said that there is no control over the information shared and often campaigns exclude important information related to SEC. In addition, participants highlighted the fact that certain individuals and organisations embark on awareness campaigns for personal gain, which can lead to further exploitation of vulnerable individuals:

“There are people who are very passionate about the field, but their personality, world views are incongruent to do a good job”

(Participant 5, Gauteng).

162 South African Government. National Register for Sex Offenders (NRSO).

163 South African Government. Child Protection Register (CPR).

164 Jelly Beanz. (2019, June). *Personal Communication*.

165 United States Department of Labour, Bureau of International Labour Affairs. (2017). *Findings on the Worst Forms of Child Labour South Africa*. 5. Washington DC: Bureau of International Labour Affairs.

166 Western Cape Government. (2017, October 2). *Human Trafficking Awareness Week: Department to continue fight against scourge*. [Press release].

167 South African Government. (2019). *Child Protection Week 2019*. [Press release].

168 Government of South Africa.; Department Social Development. (2017, December). *South Africa’s Child Care and Protection Policy*. 61. Pretoria: Department Social Development.

169 *Ibid*.

VIEW FROM THE FIELD NO. 9

EXAMPLE OF GOVERNMENT PREVENTION AND AWARENESS RAISING GOOD PRACTICE

“You can have the best policy, legislative framework, Act, but if you do not have implementation, don’t have dissemination of information and people are not made aware of this, then you have nothing”

(Participation 8, KZN).

The South African government has undertaken a range of activities over the past decade to create more awareness about SEC, in particular in relation to human trafficking. This increased focus was ascribed by participants during the interviews and focus group discussions to the 2010 Soccer World Cup hosted in South Africa and an increase in concern over possible increased sex tourism at the time. It was noted that the increased awareness regarding human trafficking has also resulted in the establishment of several Task Teams on national and provincial level, focusing specifically on issues related to human trafficking.

CHILD PROTECTION SYSTEM

Within the state system, child protection is primarily the responsibility of the Department of Social Development (DSD), which leads the National Interdepartmental Child Care and Protection Committee (NICCPC) and the National Child Care and Protection Forum (NCCPF). The Committee is a space for government stakeholders to deliberate on child issues before releasing to the civil society.¹⁷⁰ The Forum is an entity monitoring the implementation of the relevant policies regarding children’s rights and coordinating government entities and non-governmental organisations cooperation.¹⁷¹ Moreover, the Forum acts as a multi-sectoral platform comprising more than 180 entities including civil society, government agencies, researchers and development partners.¹⁷²

The DSD provides access for children who are victims of abuse, neglect or

abandonment, to child and youth care centres.¹⁷³ In 2018, the DSD reported that 4,817 children accessed services through 109 child and youth care centres.¹⁷⁴ In addition, the Government operates through the National Prosecution Authority’s Sexual Offences and Community Affairs Unit, Thuthuzela Care Centres which, provide assistance, medical and psychological services, to rape and sexual violence victims including minors.¹⁷⁵ Those centres aim to reduce secondary victimisation.¹⁷⁶

In 2009, the Government published the National Policy Guidelines for Victim Empowerment. Based upon the concept of restorative justice, the guidelines provide guidance to child victims of sexual abuse and rape, and victims of trafficking, in order for them to more easily access specific services.¹⁷⁷ These guidelines are for example applied when a child is found engaged in prostitution, by leading to the use of restorative justice instead of a

170 Government of South Africa.; Department Social Development. (2017, December). *South Africa’s Child Care and Protection Policy*. 159. Pretoria: Department Social Development.

171 *Ibid*.

172 UNICEF. (2019, June). *Personal Communication*.

173 Department of Social Development. (2018). *Annual Report 2017-2018*. 18. Pretoria: Department of Social Development.

174 *Ibid*.

175 National Prosecution Authority. (2009, August). *Thuthuzela Care Centre Turning Victims into Survivors*. 3. Pretoria: National Prosecuting Authority.

176 Human Rights Council. (2017, May). *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 South Africa. A/HRC/WG.6/27/ZAF/1*. Para 61. Geneva: Human Rights Council.

177 DSD. (2009). *National Policy Guidelines for Victim Empowerment*. 3. Pretoria: Department Social Development.

custodial sentence.¹⁷⁸

While promising child protection systems exist, very limited data is available to determine the extent of their effectiveness. The limited data is also an indication that there are challenges. In 2017, the University of Cape Town published a study exploring how the South African child protection system deals with reported cases of child abuse and to make

recommendations on how to improve services provided.¹⁷⁹ The study indicated, *inter alia*, that poor record-keeping prevented social workers and justice actors to coordinate, impacting children directly.¹⁸⁰ Among its recommendations, the research report included the need for inter-sectoral collaboration and joint case management.¹⁸¹

VERY LIMITED CHILD PROTECTION SYSTEMS

The lack of an effective child protection system which covers all children in South Africa was given ample illustration in participant discussions. Specific reference was made to certain policies within the education and health sector that urgently needed to be reviewed. For example, reference was made to foreign children that cannot access the education system because they do not have any documentation as required by educational policies. Consequently, the lack of a functioning child protection system is setting them up for further risk of exploitation as illustrated in the following quotes:

“A minor from Mozambique, she does not speak English, she is waiting in a children’s home before she can go to court to be repatriated, she cannot go to school because of the system, she is in limbo. She is really receiving the worst kind of treatment”

(Participant FG2, Gauteng).

“The health care system is ignoring foreign nationals; they do not have access to health care. A lot of stuff are happening and we are not aware of it. We cause a lot of illegal stuff to happen because they are excluded from the system due to policies”

(Participant FG 2, Gauteng).

178 Committee on the Rights of the Child. (2016, October 26). *Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. CRC/C/OPSC/ZAF/CO/1. Para 90. Geneva: Committee on the Rights of the Child.

179 University of Cape Town. (2017). *Tracking child abuse cases through the child protection system at five selected sites in South Africa*. Cape Town: University of Cape Town.

180 *Ibid.*, 54.

181 *Ibid.*, 55-56.

CONSTRAINTS IN CHILD PROTECTION HUMAN AND FINANCIAL RESOURCES

During interviews and focus group discussions with professionals working in the field to combat SEC, it was clear that participants had extensive knowledge, experience and professional expertise. In most instances, professionals confirmed that they had heavy caseloads and that each case was unique and involved different dynamics, there is no one size fits all approach when dealing with SEC. However, they also expressed concern that not enough support was provided to professionals working with SEC, which further impacts on the efficiency of the individual:

“Your commitment and dedication diminish if you are not supported”

(Participant 9, Gauteng).

Participants also explained that several key institutions – government and civil society - in South Africa responsible for dealing with SEC, experience a high staff turnover, including at managerial level. Consequently, individuals are placed in authority positions without the required knowledge and vacancies are not always filled potentially resulting in a limited number of individuals who are willing and capable to work on SEC:

“One of the biggest problems we experience, you have such a high turnover of senior officials, so every time you are playing catch-up, because they have no idea of what is going on”

(Participant 9, KZN).

“The pool is getting smaller because lack of financial support, more-and-more NGOs are closing down”

(Participant 6, KZN).

Of particular concern is the stress that this can place on remaining professionals. On the basis of the heavy caseloads and intense dedication, it is understandable that most professionals feel overwhelmed by their involvement in cases and matters involving SEC as stated by one interviewee:

“If nobody teaches you, how will you know how to self-care? The volume of vicarious trauma is very high”

(Participant 8, Gauteng).

“To give somebody eight hours of training on sexual exploitation of children is not enough”

(Participant FG2, Gauteng).

“We did not even receive training how to work with the basics of sexual abuse, never mind commercial sexual exploitation”

(Participant 3, Gauteng).

04

LEGAL FRAMEWORK FOR SEC

This chapter analyses the legislative framework that is applicable in the context of SEC in South Africa. The legal framework is in part informed by the international legal obligations that South Africa has undertaken to uphold, which includes the Convention on the Rights of the Child (ratified in 1995) and its Optional Protocol on the sale of children, child prostitution and child pornography (ratified in 2003); the United Nations Convention against Transnational Organized Crime (ratified in 2004); and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (ratified in 2004).

In South Africa, the legislative framework to protect children from SEC is available within different pieces of legislation.¹⁸² Some of these laws are more directly relevant than others and are thus prioritised in the discussion. Indeed, the Prevention and Combating of Trafficking in Persons Act No 7 of 2013 (PACOTIP) is an attempt to consolidate the regulatory framework to combat trafficking of children for sexual purposes and fill gaps left by common-law and statutory law. The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (Sexual Offences Act) is another directly relevant piece of legislation that seeks to prevent and address SEC. It seeks to:

“comprehensively review and amend all existing laws relating to sexual offences.”¹⁸³

The law aspires to ensure that prosecutions relating to sexual offences are dealt with as expeditiously and successfully as possible. The Sexual Offences Act aims to achieve

greater protection of vulnerable groups especially women and children from the scourge of sexual violence, abuse and exploitation. To that end, the law contains very detailed and expansive provisions prohibiting different forms of SEC.

SEXUAL ABUSE AND EXPLOITATION / SEXUAL OFFENCES

Section 1(1)(a) of the Sexual Offences Act defines a child as a person under the age of 18 years.¹⁸⁴ However for purposes of the offence of having “consensual sexual penetration with certain children” (statutory rape) provided under section 15 and the offence of “consensual sexual violation of certain children” (statutory sexual assault) under section 16, a child is “a person 12 years or older but under the age of 16 years.”¹⁸⁵ Indeed, these provisions criminalise any act of sexual penetration and violation with a child despite his/her consent, which the law deems statutory sexual rape and assault.¹⁸⁶ It is worth noting that the provisions do not provide for a close-in-age exemption aimed at preventing criminalisation of young people in consensual sexual relationships but, in a similar fashion, section 15 and 16 establish that, in case both parties were children at the time of the alleged commission of the crime, prosecution must be authorised by the National Director of Public Prosecutions.¹⁸⁷ If prosecution is authorised, both children would be charged with the offence.¹⁸⁸

Section 57 of the Sexual Offences Act provides that a child under 12 years old is incapable of consenting to a sexual act.¹⁸⁹ However, the Act does not contain any specific provision criminalising sexual

182 South Africa is a legally pluralistic country and allows for the application of common law and Roman-Dutch law. Some common law ‘crimes’ related to SEC can be prosecuted using unwritten law such as kidnapping, abduction, common assault, assault to do grievous bodily harm and indecent assault. The strengthened codification of statutory law has rendered the reliance on common law and Roman-Dutch law to prosecute these crimes almost obsolete.

183 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007

184 *Ibid.*, Section 1(1)(a).

185 *Ibid.*, Section 1(1)(b). However, in *Teddy Bear Clinic for Abused Children and Another v Minister of Justice and Constitutional Development and Another* 2014 (2) SA 168 (CC) sections 15 and 16 were found to be inconsistent with the Constitution and invalid to the extent that they impose criminal liability on children under the age of 16 years. The declaration of invalidity was suspended for a period of 18 months in order to allow Parliament to correct the defects.

186 *Ibid.*, Section 15-16.

187 *Ibid.*

188 *Ibid.*

189 *Ibid.*, Section 57.

acts with a child below 12 years of age or recognising them as statutory rape and/or sexual assault.

Section 17 of Sexual Offences Act criminalises sexual exploitation of children as the engagement of a person or for a person in a sexual act with a child with or without consent, in exchange of financial or other compensation, whether the sexual act is committed or not.¹⁹⁰ Section 17 of Sexual Offences Act in addressing sexual exploitation of children complies with Article 3(b) of the OPSC.

The Sexual Offences Act was the first to require that victims of sexual abuse and sexual exploitation who have been exposed to the risk of being infected with HIV be provided with post-exposure prophylaxis at the state's expense on condition that they report the commission of the offence within 72 hours.¹⁹¹ Victims of sexual offences may also apply to court within 90 days after the crime for an order directing that a suspect be tested for HIV/AIDS and have the results made available to the victim or any interested person on behalf of the victim.¹⁹² In this context, the Act does not distinguish between adult and child victims of sexual offences,

including children who have fallen prey to SEC. Moreover, short timeframes for reporting the crimes do not seem to take in consideration that victims of sexual crimes, children in particular, are likely to never report the abuse or wait a very long period of time before doing so.¹⁹³

Another definition of sexual exploitation of children is provided for by the Children's Act 2005, which defines 'commercial sexual exploitation' as:

*“the procurement of a child to perform sexual activities for financial or other rewards, including acts of prostitution or pornography, irrespective of whether that reward is claimed by, payable to or shared with the procurer, the child, the parent or caregiver of the child, or any other person; or trafficking in a child for use in sexual activities, including prostitution or pornography”.*¹⁹⁴

LEGAL DEFINITIONS CONSIDERED TOO BROAD

With regard to current legal definitions, participants shared the opinion that many formal definitions related to SEC in laws (for example in the PACOTIP law and Sexual Offences and Related Matters Act 2007) are too broad and can result in cases being not prosecuted or lost due to technical difficulties. The way in which SEC is defined influences understanding and dealing with cases on a daily basis:

“Like somebody said the definition ‘it is as open and wide as God’s grace’. That is why we have so many knowledge deficits”
(Participant 5, Gauteng).

“If we do not define accurately, we will not be able to educate effectively. There is a massive problem, even among professionals”
(Participant 5, Gauteng).

190 *Ibid.*, Section 17.

191 *Ibid.*, Section 27-30.

192 *Ibid.*, Section 30- 31.

193 ECPAT International. (2017). *Through the eyes of the child: barriers to access justice and remedies for child victims of sexual exploitation*. 49. Bangkok: ECPAT International.

194 Children's Act No. 38 of 2005, Chapter 1.

EXPLOITATION OF CHILDREN IN PROSTITUTION

The Sexual Offences Act, as amended in 2007, criminalises both the acts of buying and selling sex although it does not provide a definition of prostitution but rather refers to it as “unlawful carnal intercourse”.¹⁹⁵ Child victims of exploitation in prostitution cannot be found guilty of engaging in prostitution.¹⁹⁶ Indeed, although South African legislation does not have a specific provision criminalising the exploitation of children in prostitution, this is included in the definitions of sexual exploitation of children described in the previous section. Using a child in sexual activities for financial or other reward, and the act of prostitution are criminalised by the Sexual Offences Act and the Children's Act 38 of 2005 (Children's Act 2005).

ONLINE CHILD SEXUAL EXPLOITATION

Child sexual abuse materials

Section 1 of the Sexual Offences Act gives a clear and complete definition of ‘child pornography’,¹⁹⁷ mostly in line with the OPSC.¹⁹⁸ Indeed, section 19 and 20 of the Sexual Offences Act criminalise the exposure, display, creation, producing,

making of child sexual abuse materials.¹⁹⁹ It is worth noting that the mere possession, as well as the distribution of child sexual abuse materials, are not explicitly criminalised by the Sexual Offences Act.

The Films and Publications Act 65 of 1996 regulates the creation, production, possession, and distribution of specific publications, interactive computer games and films through classification, imposition of age restrictions and the provision of consumer advice.²⁰⁰ In 2009, the Act's objects were amended to include the protection of children from

*“premature exposure to adult experiences [... and] make the use of children in and the exposure of children to pornography punishable”.*²⁰¹

According to the Act:

“child pornography includes any image, however, created, or any description of a person, real or simulated who is or who is depicted, made to appear, look like, represented or described as being, under the age of 18 years engaged in sexual conduct; participating in, or assisting

195 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, 90; Sexual Offences Act 23 of 1957, section 20.

196 South African Law Reform Commission. (June 2015). *Report Sexual Offences Adult Prostitution*. 8-10. Pretoria: South African Law Reform Commission.

197 ECPAT prefers the term ‘child sexual exploitation material’ or ‘child sexual abuse material’ over the often in legal context still used ‘child pornography’ in line with the recently widely adopted Terminology Guidelines. Interagency Working Group on Sexual Exploitation of Children. (2016). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg, 28 January 2016*. P. 39. Bangkok: ECPAT.

198 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 1: “‘child pornography’ means any image, however, created, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such image or description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such image or description of such person— (a) engaged in an act that constitutes a sexual offence; (b) engaged in an act of sexual penetration; (c) engaged in an act of sexual violation; (d) engaged in an act of self-masturbation; (e) displaying the genital organs of such person in a state of arousal or stimulation; (f) unduly displaying the genital organs or anus of such person; (g) displaying any form of stimulation of a sexual nature of such person's breasts; (h) engaged in sexually suggestive or lewd acts; (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature; (j) engaged in any conduct or activity characteristically associated with sexual intercourse; (k) showing or describing such person— (i) participating in, or assisting or facilitating another person to participate in; or (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or (l) showing or describing the body, or parts of the body, of such person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18 or is capable of being used for the purposes of violating or offending the sexual integrity or dignity of that person, any person or group or categories of persons”.

199 *Ibid.*, Section 19 and 20.

200 The Films and Publications Act 2009.

201 *Ibid.*, Section 2(a)-(c).

*another person to participate in sexual conduct; or showing or describing the body, or parts of the body, of such a person in a manner or in such a manner that it is capable of being used for the purposes of sexual exploitation”.*²⁰²

The Films and Publications Act also sets an obligation for Internet service and mobile cellular telephones providers as well as any operators who provide child-oriented services, such as chat-rooms, to moderate their services and act in case of any offence committed against a child, share safety messages and provide a mechanism for children to report any suspicious behaviour, and transferring this report to the police.²⁰³

The Cybercrimes Bill 2017 has been adopted in November 2018 by the Portfolio Committee for Justice and Correctional Services and sent to the National Assembly for debate.²⁰⁴ According to media reports, it is aimed to be adopted by the end of 2019.²⁰⁵ It proposed several amendments to the Sexual Offences Act and the Films and Publications Act 65 of 1996, in order to align the definition of CSAM with those provided by the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Budapest Convention on Cybercrime.²⁰⁶

In April 2019, the South African Law Reform Commission approved the publication of its discussion paper on “Sexual Offences: Pornography and Children”. The discussion paper seeks to review the legislative framework that currently applies to the topic. The aim is to identify the gaps and prevent children from being exposed to exploitation and abuse. It also makes several recommendations and contains a

draft bill. The South African Law Reform Commission’s mission is the continuous reform of South African legislation in accordance with the principles and values of the Constitution to meet the needs of a changing society operating under the rule of law. The South African Law Reform Commission investigates, researches and makes reform proposals.²⁰⁷

In its discussion paper, the South African Law Reform Commission stated it was in favour to substitute the term ‘child pornography’ for ‘child sexual abuse material’.²⁰⁸ The Commission provisionally recommended that the definition of ‘child pornography’ should be substituted with the definition below and that this definition should be used to interpret what is understood as ‘child sexual abuse material’ in the Sexual Offences Act, and related legislation:

“child sexual abuse material means any live display, image or sequence of images, however create or portrayed, or any description or presentation of a person, real or simulated, who is, or who is depicted or described or presented as being, under the age of 18 years, of an explicit or sexual nature, whether such live display, image, sequence of images, description or presentation is intended to stimulate erotic or aesthetic feelings or not, including any such live display, image, sequence of images, or description or presentation

of such person – (a) engaged in an act that constitutes a sexual offence; (b) engaged in an act of sexual penetration; (c) engaged in an act of sexual violation; (d) engaged in an act of self-masturbation; (e) displaying the genital organs of such person in a state of arousal or stimulation; (f) unduly displaying the genital organs, anus or breasts of such person; (g) displaying any form of stimulation of a sexual nature of the female breasts; (h) engaged in sexually suggestive or lewd acts; (i) engaged in or as the subject of sadistic or masochistic acts of a sexual nature; (j) engaged in conduct, or activity characteristically associated with sexual intercourse; or (k) showing or describing such person –(i) participating in, or assisting or facilitating another person to participate in; or (ii) being in the presence of another person who commits or in any other manner being involved in, any act contemplated in paragraphs (a) to (j); or (l) showing or describing the body, or parts of the body, of that person in a manner or in circumstances which, within the context, violate or offend the sexual integrity or dignity of that person or any category of persons under 18, that could be used to advocate, advertise or promote a child for sexual purpose or is capable of being used for the purposes of violating or offending the

*sexual integrity or dignity of that person, any person or group or categories of persons.”*²⁰⁹

The South African Law Reform Commission is also in favour of reforming South African legislation in order to have only one law to cover all child sexual abuse materials, and preferably in the Sexual Offences Act.²¹⁰

As reported by media, there have been few cases related to CSAM that landed in court. In 2018, a 22 years-old mother of young twin daughters was charged with the importing, possession and distribution of films or publications that depicted the rape, torture and murder of babies. She entered a plea agreement with the prosecutor and pleaded guilty to the charges.²¹¹ In July 2018, the Newcastle Regional Court sentenced a man to 30 years imprisonment for possession of CSAM.²¹²

Other forms of online child sexual exploitation

Section 18 of the Sexual Offences Act introduced the crime of sexual grooming of a child into the South African corpus juris.²¹³ This expansive provision aims at providing additional protection from the danger of offenders who systematically groom children for sexual exploitation. This includes situations where potential victims are lured and groomed, through digital and social media, to participate in sexual acts. The section is in line with international standards and criminalises the person who is promoting the sexual grooming of a child as well as the person who is guilty of the offence of sexual grooming of a child.

South Africa is part of a small handful of countries who meet the five key criteria listed by the International Center for Missing and Exploited Children (ICMEC)’s model, which are namely: the existence of a specific crime addressing online grooming of children for sexual purposes; the fact that grooming is defined; the inclusion in the offence of online grooming with

202 *Ibid.*, Section 1(a)-(c). The Act criminalises the unlawful possession; creates, produces or in any way contributes to, or assists in the creation or production of; imports or in any way takes steps to procure, obtain or access or in any way knowingly assists in, or facilitates the importation, procurement, obtaining or accessing of; or knowingly makes available, exports, broadcasts or in any way distributes or causes to be made available, exported, broadcast or distributed or assists in making available, exporting, broadcasting or distributing, any film, game or publication which contains depictions, descriptions or scenes of child pornography or which advocates, advertises encourages or promotes child pornography or the sexual exploitation of children. Section 24B(1)(a)-(d) of the Films and Publications Act.

203 *Ibid.*, Section 24C.

204 Go Legal. (2019). Cybercrime legislation on South Africa’s Horizon: Is your organization ready?

205 The Daily Swig. (2019). South Africa welcomes new cybercrime legislation; South African Institute of International Affairs (SAIIA). (2019, June 12). *New bill offers robust game plan against cybercrime in South Africa*.

206 Portfolio Committee on Justice and Correctional Services (2018). *Cybercrimes bill*.

207 National Government of South Africa. (n.d.). South African Law Reform Commission.

208 South Africa Law Reform Commission. (2019, April). Project 107 – Sexual Offences: Pornography and children – Discussion paper 149, 189.

209 *Ibid.*, 211.

210 *Ibid.*, xix and 212.

211 The Citizen. (2018, February 22). *Plea agreement for woman linked to child porn syndicate*.

212 The Citizen. (2018, July 25). *Man given 30 years for possession of child pornography*.

213 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 18.

and without the intent of meeting the child; and the criminalisation of showing pornography to the child.²¹⁴ In 2017, ICMEC published the first edition of its assessment on the national legislation of 196 countries against the five key criteria it developed. 63 countries out of 196 have some legislation regarding the online grooming of children for sexual purposes, but only 24 countries meet the five criteria and only 34 countries criminalize grooming regardless of the intent to meet the child offline.²¹⁵

However, in April 2019 the South African Law Reform Commission noted in its report that the Sexual Offences Act does not contain any offence to punish parents or legal guardians who are participating in the sexual grooming of a child.

The Commission suggested to include this crime and requested for comments on whether it should be included in the Sexual Offences Act.²¹⁶

Although the Sexual Offences Act does not include any specific provision on live streaming of child sexual abuse, the South Africa Law Reform Commission argued in its report that the inclusion of the word ‘portrayed’ in the suggested definition of CSAM, would cover the real-time portrayal via webcam or live-streaming of sexual abuse and exploitation.²¹⁷

Regarding sexual extortion, currently not criminalised by the Sexual Offences Act, the South African Law Reform Commission suggested inserting a clause into section 20 to include the act of coercion as

“the targeting and commoditization of a child, or the visual depiction of that child, by technological means, using sexual images and/or videos depicting that child through coercion or extortion

*for the purposes of sexual gain (for example for new CSEM or a sexual encounter), financial gain or other personal gain (such as psychological gain, e.g. popularity or malicious satisfaction)”.*²¹⁸

The South African Law Reform Commission also suggested enacting a standalone offence.²¹⁹

TRAFFICKING OF CHILDREN FOR SEXUAL PURPOSES

There are extensive legal provisions in South African legislation on both human trafficking generally and trafficking of children.

The PACOTIP’s definition of trafficking of persons is in line with the one provided by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol),²²⁰ therefore requiring specific conducts, means and exploitative purposes to constitute the crime.²²¹ The PACOTIP defines exploitation as including but not limited to: “a) all forms of slavery or practices similar to slavery; b) sexual exploitation; c) servitude; d) forced labour; e) child labour as defined in section 1 of the Children’s Act; f) the removal of body parts; g) or the impregnation of a female person against her will for the purpose of selling her child when the child is born”, with sexual exploitation defined as:

“the commission of a) any sexual offence referred to in the Criminal Law (Sexual Offences and Related) Amendment Act;

*b) or any offence of a sexual nature in any other law.”*²²²

The PACOTIP also criminalises in the framework of trafficking in persons the adoption – through legal or illegal means – of a child and forced marriage across the country’s borders and for the purpose of exploitation.²²³ It is unclear whether or not forms of trafficking other than adoption are inclusive of child victims and no specific provision on child trafficking can be found. The PACOTIP specifies that the consent of a child who is victim of trafficking or the consent of the person having control over him/her will not be taken as a defence to the charge of trafficking.²²⁴

An omission is that while the PACOTIP establishes inter-sectoral and coordinated service delivery to adult victims of trafficking there is no similar provision for child victims of trafficking. Regarding child victims of trafficking, the PACOTIP only gives provisions on the reporting and dealing of the child victim of trafficking.²²⁵ The Act requires that mandatory services, including accommodation, medical care, counselling, legal assistance and reintegration into their families and communities are provided to adult victims of trafficking.²²⁶ The PACOTIP also makes provision for the deportation and repatriation of victims of trafficking. Summary deportation of foreign victims is prohibited. The repatriation of child victims to their country of origin is prohibited without due consideration of their best interests, the safety and the possibility that such children might be harmed or killed, safety of the child during the repatriation process, availability and suitability of care arrangements and the safety of the child in the country to which the child is to be repatriated.²²⁷ Adult victims of trafficking must also be informed of any arrangements in place for their secure reception in the country to which they are returning.²²⁸ There is an omission to address child

victims of trafficking under this particular provision.

According to Section 35(1) dealing with the escorting of the child victim of trafficking:

*“If it is considered to be in the best interests of a child who has been trafficked, the Director-General: Social Development (DGSD) must authorise an adult at State expense to escort the child from the place where the child was found to the place within the Republic from where the child was trafficked or to the child’s country of origin or the country from where the child was trafficked”.*²²⁹

The provision also specifies that:

*“The DGSD may not authorise a child’s return unless he or she is satisfied that the parent or guardian or another person who has parental responsibilities and rights in respect of the child does not have the financial means to travel to the place where the child is in order to escort the child back”.*²³⁰

The PACOTIP allows the court to suspend all parental rights and responsibilities over a child if it has reason to believe that its parents or guardian has trafficked the child.²³¹

Chapter 18 of the Children’s Act 2005, is specifically dedicated to child trafficking.²³² The general purpose of the Chapter is to give effect to and operationalize the Palermo Protocol. The Children’s Act 2005 is explicit in its prohibition of trafficking in children²³³ by providing that:

214 ICMEC. (2017). Online Grooming of Children for Sexual Purposes: Model Legislation & Global Review, 7. 1st Edition. 6.

215 *Ibid.*, 7.

216 South Africa Law Reform Commission. (2019, April). Project 107 – Sexual Offences: Pornography and children – Discussion paper 149, 280.

217 *Ibid.*, xix and 211, see footnotes 16 and 828.

218 *Ibid.*, 262.

219 *Ibid.* 263, 264.

220 Office of the United Nations High Commissioner for Human Rights. (2000). Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

221 Trafficking in Persons Act No 7 of 2013, Section 4.

222 *Ibid.*, Section 1.

223 *Ibid.*, Section 4.

224 *Ibid.*, Section 11.

225 *Ibid.*, Section 18.

226 *Ibid.*, Chapter 5, Sections 24-28.

227 *Ibid.*, Section 31(1)(a)-(d).

228 *Ibid.*, Section 34(1).

229 *Ibid.*, Section 35(1).

230 *Ibid.*, Section 35(2).

231 This, however, does not exclude the individual’s liability for committing the offence of trafficking in persons. Section 36(1)(a) & (b) of the PACOTIP.

232 Children’s Act No. 38 of 2005.

233 *Ibid.*, Section 281(a).

*“no person, natural or juristic, or a partnership may traffic a child or allow a child to be trafficked”.*²³⁴

Further, the Children’s Act 2005 specifies that:

*“it is no defence to a charge (of trafficking) that a child who is a victim of trafficking or a person having control over that child has consented to the intended exploitation; or that the adoption of the child facilitated or secured through illegal means; or the intended exploitation or adoption of a child (...) did not occur”.*²³⁵

The Act also prohibits behaviours that facilitate trafficking in children, this includes:

*“knowingly leasing or subleasing or allowing any room, house, building or establishment to be used for the purpose of harbouring a child who is a victim of trafficking; and advertising, publishing, printing, broadcasting, distributing or causing the advertisement, publication, printing, broadcasting or distribution of information that suggests or alludes to trafficking by any means, including the use of the internet or other tools of information technology”.*²³⁶

South African Internet services providers are also required to report sites which contain any information related to child trafficking.²³⁷

The Children’s Act 2005 also requires that children that are victims of trafficking who are citizens or permanent residents of South Africa be given assistance and facilitation by the Director General Foreign Affairs to help them return to the country.²³⁸ This process includes ascertaining and verifying that the child is a citizen or a permanent resident of South Africa, the delivery of travel documents or other authorisations that might be required, and the referral of the child to a designated social worker for investigation.²³⁹ The Act also permits a court to suspend all parental responsibilities and rights of a parent, guardian; and place the child in temporary safe care pending an inquiry by a children’s court where it has reason to believe that the parent, guardian or another person who has parental responsibility and rights over the child has trafficked the child or allowed to be trafficked.²⁴⁰

The Director-General may not return a child who is a victim of trafficking to his or her country of origin or the country from where the child has been trafficked without giving due consideration to the availability of care arrangements in the country to which the child is to be returned; the safety of the child in the country to which the child is to be returned; and the possibility that the child might be trafficked again, harmed, or killed. Any decision to return a child victim of trafficking must be taken with due consideration to the best interests of the child.²⁴¹ These provisions are augmented by the Children’s Amendment Act 41 of 2007. That law specifically refers to child labour and exploitation of children by prohibiting the procurement of “a child for the purpose of commercial sexual exploitation”.²⁴²

Section 71 of the Sexual Offences Act refers to the trafficking in persons for sexual purposes without the consent of the victim. It provides that only a child below the age of 12 is “incapable in law of appreciating the nature of the act”, implying then that children between 12 and 18 years old can

voluntarily or with coercion understand and agree to be trafficked.²⁴³ This provision is in contravention of the Palermo Protocol. The section provides that victims of trafficking for sexual purposes cannot be prosecuted for offences such as the contravention of immigration laws or prostitution – offences directly related to the circumstances of which they are victims.²⁴⁴

According to the Criminal Law (Sentencing) Amendment Act No. 38 of 2007, trafficking in persons for sexual purposes (section 71(1) and 71(2)) is punished with mandatory life imprisonment.²⁴⁵ In 2011, pursuant to the prosecution of a case in terms of section 71 of the Sexual Offences Act, a life-imprisonment sentence was handed down in the case of *the State v. Aldinah dos Santos* involving a Mozambican trafficker and Mozambican child victim.²⁴⁶

The Prevention of Organised Crime Act 121 of 1998 has been relied on by prosecutors in South Africa to convict sex traffickers, especially in cases where it is difficult to prove the elements of trafficking for sexual offences and SEC.²⁴⁷ The Act prohibits and criminalises organised crime, money laundering and criminal gang activities; involvement in certain racketeering activities; offences that relate to the proceeds of such unlawful activities which includes the assistance of another individual in benefiting from the proceeds of unlawful activities.²⁴⁸

The Immigration Act 13 of 2002 prohibits certain people from entering South Africa and also determines the granting of temporary and permanent residence to foreigners.²⁴⁹ Any foreigner living in South Africa in contravention of this law shall depart or be deported unless authorised by the Department of Home Affairs to remain pending the determination of their status.²⁵⁰ Moreover, the Act criminalises

those that assist a person to enter or remain in the country.²⁵¹ Therefore, those trafficking children for sexual exploitation would be guilty of contravening provisions of this law if caught facilitating the illegal entry of their victims into the country. However, also trafficked children who are brought into the country for purposes of sexual exploitation would be regarded as illegal foreigners under the law.

This provision is in contrast with what established by Article 71(5) of the Sexual Offences Act, as described above. It is unclear how the two provisions coexist in practice.

SEXUAL EXPLOITATION OF CHILDREN IN THE CONTEXT OF TRAVEL AND TOURISM

South African legislation specifically addresses SEC in travel and tourism in the Sexual Offences Act, as amended in 2011. Indeed, section 17 includes in the range of criminalised SEC-related conducts, the making or organising of travel arrangements aimed at committing sexual acts with a child, with or without his/her consent and irrespective of whether the act is actually committed or not.²⁵² This section also criminalises printing of publishing materials promoting or facilitating SEC in travel and tourism.²⁵³ It is worth noting that also juristic persons are liable for this crime.

CHILD, EARLY AND FORCED MARRIAGE

Like most countries in Africa, South Africa has set a minimum age for marriage and ratified the African Charter on the Rights and Welfare of the Child,²⁵⁴ whose Article 21 (2) explicitly states that:

234 *Ibid.*, Section 284(1).

235 *Ibid.*, Section 284(2)(a)-(b).

236 *Ibid.*, Section 285(1)(a) & (b).

237 *Ibid.*, Section 285(2).

238 *Ibid.*, Section 286(1).

239 *Ibid.*, Section 286(b)(i)-(iv).

240 *Ibid.*, Section 287(a)-(b).

241 *Ibid.*, Section 290.

242 *Ibid.*, Section 141(1)(b).

243 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 71(4)(b).

244 *Ibid.*, Section 71(5): provides that a person who has been trafficked is not liable to stand trial for any criminal offence, including any migration-related offence, which was committed as a direct result of being trafficked.

245 Criminal Law (Sentencing) Amendment Act No. 38 of 2007.

246 *Dos Santos v State* (A26/2014) [2017] ZAGPPHC 641

247 Mollema N. (2013, June). *Combating Human Trafficking in South Africa: A Comparative Legal Study*. 436.

248 Prevention of Organised Crime Act No. 121 of 1998.

249 Immigration Act No. 13 of 2002, as amended in 2011.

250 *Ibid.*, Section 32(1) and 49(1)(a)-(b).

251 *Ibid.*, Section 49(2).

252 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 17(6)(a).

253 *Ibid.*, Section 17(6)(b).

254 African Commission on Human and Peoples’ Rights. (n.d.). Ratification Table: African Charter on the Rights and Welfare of the Child.

“child marriage and the betrothal of girls and boys shall be prohibited”

and that:

*“effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years”.*²⁵⁵

However, the law discriminates against girls and applies the exception of judicial authorisation or parental consent. Indeed, under civil law, the minimum legal age for marriage in South Africa is 18 years old for boys and 15 years old for girls.²⁵⁶ An exception can be granted by the Minister or any officer in the public service authorised thereto by him or her.²⁵⁷ It should be noted that before the amendment of the Marriage Act 1961 in 1992, the minimum legal age for marriage was set at 16 years old for girls.²⁵⁸ The lowering of the marriageable age of girls in South Africa is against the current trend to increase the legal age of marriage.²⁵⁹

UNDER CIVIL LAW, THE MINIMUM LEGAL AGE FOR MARRIAGE IN SOUTH AFRICA IS

18
FOR BOY

15
FOR GIRLS

Provisions of the Children’s Act in relation to the minimum age of marriage are vague. Indeed, if the Children’s Act 2005 defines a child as “a person under the age of 18

years”²⁶⁰ section 12(2) states that a child may not get married or engaged if he or she did not reach the minimum age set by the law for a valid marriage and that even if the child is older than the minimum age, he or she cannot marry without his or her consent.²⁶¹ It is worth noting that Section 12 of the Children’s Act 2005 uses the term “may not”, which does not imply strong prohibitions and therefore allows for exceptions.

Under customary law, the Recognition of Customary Marriages Act 120 of 1998 is a controversial addition to the corpus of laws intended to combat SEC. Section 3 (1) of the Recognition of Customary Marriage Act prescribes the marriageable age of boys and girls at 18 years and states that prospective spouses must both consent to be married to each other under customary law.²⁶² Exceptions to the marriageable age can be granted by the Minister, or any authorised officer in the public service, if he or she considers the marriage desirable and in the interests of the parties.²⁶³

The Act defines a customary marriage as:

“a marriage concluded in accordance with customary law”

which refers to:

*“the customs and usages traditionally observed among the indigenous African peoples of South Africa and which form part of the culture of those peoples”.*²⁶⁴

Marriage under customary law, which complies with the Act, will then be recognised as a marriage.²⁶⁵

As described in the sections above, the *Ukuthwala* custom, which may also contribute to sexual exploitation, has been abused especially by parents or guardians who give their consent to the marriage, *de facto* coercing children into marriages with the view to using the marriage for financial gain. Moreover, considering that some cases of *Ukuthwala* can result in trafficking of children for sexual purposes, it is worth noting that as mentioned above, this would fall under the prohibition of forced marriage as a form of trafficking as provided by the PACOTIP.²⁶⁶

EXTRATERRITORIALITY AND EXTRADITION PROVISIONS

Section 61 of the Sexual Offences Act states that if a citizen or ordinarily resident of South Africa committed abroad an act which is considered an offence under this Act, or if a citizen or permanent resident of South Africa has been victim abroad of an act which is considered an offence under this Act, South African courts have jurisdiction if the offender is found in the country’s territory.²⁶⁷ Article 61 also explicitly states that the principle of double criminality does not apply, therefore offenders would be prosecuted even if the act does not constitute an offence in the place of commission.²⁶⁸

The Children’s Act provides for extraterritoriality of prosecution of crimes related to child trafficking. It states that a citizen or permanent resident of South Africa that commits an act outside the country which would have constituted an offence under Chapter 18 of the Act had it been committed within South Africa is guilty of that offence as if the offence had been committed in the country.²⁶⁹

In terms of extradition, since the Extradition Act No. 67 of 1962 which provides for the extradition of fugitives accused or convicted of an “extraditable

offence” – defined as those punishable by deprivation of liberty of six months or more – it can be argued that SEC as an offence would qualify as an extraditable offence.²⁷⁰ The Extradition Act specifies the necessity of the offence to be committed within the jurisdiction of a foreign State, which is party to an extradition agreement with South Africa. In case the foreign State did not agree to an extradition agreement, only the President can consent in writing to the extradition of any person accused or convicted of an offence.²⁷¹

CHILD-SENSITIVE JUSTICE, ACCESS TO JUSTICE AND RIGHTS TO REMEDIES FOR CHILD VICTIMS OF SEXUAL EXPLOITATION

In South Africa, wide ranges of stakeholders play a role to identify and provide services to child victims of SEC. These services include legal (for instance representation to children in criminal and Children’s Court proceedings), social (for instance social reintegration services), medical, psychosocial and other forms of services and support with a view to uphold their best interests as enshrined in section 28 of the Constitution.²⁷²

In terms of child-sensitive justice, the Children’s Act protects victims of SEC, among others, by closing or limiting attendance in court proceedings, and also prohibiting the publication of information that may reveal the identity of a SEC victim who is a party in, or a witness to proceedings.²⁷³ Section 42(8)(a) of the Children’s Act states that Children’s Court hearings must be held in a room which is furnished and designed in a manner aimed at putting children at ease.²⁷⁴ The Service Charter for Victims of Crime and the Minimum Standards for Victims of Crime (2004) is also relevant for victims of SEC in governing their rights and the services they

255 African Commission on Human and Peoples’ Rights. (1990). African Charter on the Rights and Welfare of the Child, Article 21 (2).

256 Marriage Act 25 of 1961 as amended.

257 Marriage Act 25 of 1961 as amended.

258 Marriage Act 25 of 1961.

259 Global Citizen. (2017). 27 African countries just met and agreed to end child marriage. For example, in 2015, Malawi officially banned child marriage and raised the age of marriage to 18 years old for both girls and boys. The Parliament amended the Constitution accordingly in 2017. Girls not bride. (2017). Malawi: Constitution no longer allows child marriage.

260 Children’s Act No. 38 of 2005, Section 1(1)(g).

261 *ibid.*, Section 12(2).

262 *Recognition of Customary Marriages Act 1998*, Section 3(1)(a)

263 *ibid.*, Section 3(4)(a)

264 *ibid.*, Section 1.

265 *ibid.*, Section 2(2)

266 Prevention and Combating of Trafficking in Persons Act 7, 2013, section 4.

267 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 61.

268 *Ibid.*

269 Children’s Act 2005, Section 291.

270 Extradition Act No. 67 of 1962, Section 1.

271 *Ibid.*, Section 2.

272 The South African Constitution, Section 28.

273 Children’s Act No. 38 of 2005, Section 74.

274 *Ibid.*, Section 42.

should receive.²⁷⁵ The Witness Protection Act (1998), which is aimed at protecting all witnesses that are intimidated or threatened because of their cooperation with law enforcement may be applicable to victims of SEC.²⁷⁶ In order to prevent the child victim to face the perpetrator, South African courts have remote witness rooms linked to the courtroom via CCTV or video link.²⁷⁷ Section 158 of the Criminal Procedure Act allows a witness to testify via this system. It can be based on the court's initiative or the prosecutor's application.²⁷⁸

Reporting a sexual offence committed against a child is mandatory in South Africa. Section 54(1) of the Sexual Offences Act makes guilty anyone who knew that a sexual offence has been committed against a child and does not report it immediately to a police official.²⁷⁹ Similarly, Section 18 of the PACOTIP makes mandatory the reporting of a child victim of trafficking by anyone who knows or has suspicion that a child is a victim of trafficking to a police official for investigation

*“despite any law, policy or code of conduct prohibiting the disclosure of personal information”.*²⁸⁰

Section 288 of the Children's Act makes mandatory the reporting of a child victim of trafficking to a designated social worker for investigation, by immigration officials, police officials, social workers, social services professionals, medical practitioners or registered nurses.²⁸¹

In South Africa, section 28(1)(h) of the Constitution provides that every child has the right to have a legal practitioner assigned to him/her by the state,

*“and at state expense, in civil proceedings affecting the child if substantial injustice would otherwise result”.*²⁸²

Similarly, Section 14 of the Children's Act states that:

*“every child has the right to bring, and to be assisted in bringing, a matter to a court, provided that matter falls within jurisdiction of that court”.*²⁸³

Unfortunately no updated information are available regarding the actual implementation of these provisions.

With regards to child victims' rehabilitation, section 110 of the Children's Act 2005 states that the provincial department of social development or designated child protection organisation which has conducted an investigation of a child victim of abuse or in need of care and protection must take measures to assist the child, including rehabilitation, family reconstruction and rehabilitation.²⁸⁴

According to the PACOTIP, the Director-General: Home Affairs may issue a foreigner victim of trafficking a visitor's visa to remain in the country for a recovery and reflection period which can be extended up to a maximum of 6 months in total.²⁸⁵ This provision, however, is not specific to child victims and it is mainly aimed at:

*“enabling the foreigner to make informed decisions regarding his or her cooperation with law enforcement and prosecuting authorities in the investigation and prosecution of a case of trafficking in persons”.*²⁸⁶

275 Department Justice and Constitutional Development. (2004). *Service Charter for Victims of Crime and the Minimum Standards for Victims of Crime*. Pretoria: Department Justice and Constitutional Development.

276 Witness Protection Act (1998), Section 7.

277 Universiteit Leiden. (2018). Leveraging technology to enhance access to justice for children in Africa.

278 Criminal Procedure Act 51 of 1977, section 158.

279 Criminal Law Amendment (Sexual Offences and Related Matters) Act No. 32 of 2007, Section 54.

280 Prevention and Combating of Trafficking in Persons Act 7, 2013, section 18.

281 Children's Act No. 38 of 2005, Section 288.

282 The South African Constitution, Section 28.

283 Children's Act No. 38 of 2005, Section 14.

284 *Ibid.*, Section 110.

285 Prevention and Combating of Trafficking in Persons Act 7, 2013, Section 15.

286 *Ibid.*

In terms of provisions related to compensation for child victims of sexual exploitation, these are limited to trafficking and not specific to children. Indeed, the PACOTIP provides that victims of trafficking are entitled to appropriate compensation from a convicted trafficker at the discretion of a court or at the request of the complainant or a prosecutor.²⁸⁷

The compensation may be paid for a number of reasons according to the Act including for loss of property; physical, psychological or another injury; being infected with a life-threatening disease;

loss of income or support and any expenses incurred.²⁸⁸

The Act also provides that a civil action may also be instituted by the victim to recover any amounts not covered by the order for compensation.²⁸⁹ A convict may also be ordered by a court to make a payment of compensation to the state for expenses it has incurred with regard to the care, accommodation, transportation and repatriation of the victim of the offence.²⁹⁰

CHALLENGES FOR LAW ENFORCEMENT

In interviews and FGDs, participants emphasised the pertinent role SAPS officials play with regard to SEC. They noted that they are often the first point of contact for community members and their response is critical in reporting and investigating cases. It was explained that the initial response was not always good:

“In South Africa there is a strong culture of victim blaming...the child deserved it”
(Participant 3, Gauteng).

“They don't want to take your case because they don't see anything wrong”
(Participant FG 2, Gauteng).

Some expressed their concern that the lack of knowledge among SAPS officials exposed children to secondary trauma, and also led to cases falling through the system and not being addressed. This it was felt, has a negative effect on determining the true magnitude of SEC in South Africa.

To address the identified knowledge deficits among police officials, the need for dedicated training was emphasised:

“Your charge officers need to be trained. If the training does not take place, of course the gap is there. When the person walks into the police station and say there is a case of trafficking and the police official does not understand the elements of trafficking, then the case will be misallocated...”
(Participant 8, KZN).

“Skill them (referring to SAPS officials), these guys need to operate at a way higher level in order to tackle this then what they are operating now, this is not your conventional reactive investigation”
(Participant 8, KZN).

287 *Ibid.*, Section 29(1)(a).

288 *Ibid.*

289 *Ibid.*, Section 29(2)

290 *Ibid.*, Section 29(2).

05

SUMMARY AND RECOMMENDATIONS

SUMMARY

The review of literature, analysis of legislation, and interviews with SEC professionals in this report demonstrates the range of risks for sexual exploitation that South African children face. There is clear need for complex and multi-faceted responses.

A significant implication of the desk review needs to be underscored in the extremely limited existing data that was available for our attempts to quantify the scope and context of this problem. While responses from SEC professionals seemed to suggest an ever-increasing problem, it was at times a challenging task for the team to identify and acquire published evidence.

Despite calls for attention, including recommendations from the Committee on the Rights of the Child in 2016,²⁹¹ South Africa is still yet to develop and implement an integrated system for data collection on the sale and trafficking of children (nor for other forms of SEC). SEC professionals reinforced the urgent importance of this data:

“We don’t know how many prosecutions; nobody can give you any statistics.”
(Participant 7, Gauteng)

and highlighted how this unavailability of data hinders evidence-based advocacy for improved resources and responses. An increasingly online population means that more South African children are encountering sexual content online – with

up to a third in one study reporting that they had received sexual messages.²⁹² In that study, parents’ risk response was very low, with more than half never giving their children any guidance about safe Internet use.²⁹³ Interviews with SEC professionals identified a clear sense that technology was increasingly a part of the SEC cases they are seeing. The establishment of the Cybercrime Unit of the SAPS is a welcome development from law enforcement.

Cases of sexual exploitation through trafficking occur from rural to urban areas, where economic opportunity is used as a guise to recruit.²⁹⁴ As field research participants confirmed, poverty is a huge driving factor:

“There is such a problem with poverty in this country. People are so desperate for jobs, they get exploited”
(Participant 8, KZN).

Research has also identified the illegal movement of children across the country’s porous borders²⁹⁵. The introduction of the 2013 PACOTIP law has helped to address sexual exploitation through trafficking, yet use of the law for prosecutions continues to be limited.²⁹⁶ Field research suggested this was affected by law enforcement not being trained in the law.

The tourism industry contributes substantially to the South African economy, with foreign visitors and as many as 44 million overnight domestic trips occurring

291 Committee on the Rights of the Child. (2016, October 26). *Concluding observations on the initial report submitted by South Africa under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. CRC/C/OPSC/ZAF/CO/1. Para 6-7. Geneva: Committee on the Rights of the Child.

292 Centre for Justice and Crime Prevention. (2016, September). *South African Kids Online: A glimpse into children’s internet use and online activities*. 7. Cape Town: Centre for Justice and Crime Prevention.

293 Ibid.

294 Ibid., 390.; Germaner, S. (2018, April 28). Two men on six human trafficking charges. *IOL News*.

295 ECPAT Netherlands, (2014). Don’t Look Away: Be aware and report the sexual exploitation of children in travel and tourism 79.

296 Van Der Watt, M. and Burger, J. (2018, November 30). *The perplexities of human trafficking in South Africa*.

in the country in a year.²⁹⁷ The risk of sexual exploitation of children in this context is known to be high, and South African is considered a major destination for traveling sex offenders.²⁹⁸

While a formal review of prostitution legislation is underway, South African law currently criminalises all forms of buying and selling sex. However, the law includes provisions that allow exceptions to applying the law to prosecute child victims of exploitation in prostitution²⁹⁹ though this exception is not consistently applied, meaning children continue to be punished by law enforcement. In fact, SEC professionals noted serious concerns with the response of law enforcement:

“There is nothing worse when a child goes to the police station and the police officer looks at her and say ‘what do you want?’”
(Participant 2, KZN).

The risk of sexual exploitation of children through child, early and forced marriage continues in a country where as many as 6% women aged 20-24 got married before 18.³⁰⁰ The traditional custom of *Ukuthwala*, or bride kidnapping is practiced in some areas and can be manipulated to facilitate trafficking or other forms of sexual exploitation of children. Responses from SEC professionals confirmed this. Prosecutions through the courts have happened which may go some way to helping eradicate this practice but on the government side, despite a draft bill in circulation, no legislative reform on this issue has yet occurred.

The government has undertaken initiatives to promote awareness of sexual exploitation of children, for example via trafficking awareness training and activities through Provincial Child Labour Intersectoral Support Groups, or the annual Child Protection Week campaigns.³⁰¹

However, the success of these general activities has not necessarily cut through broadly with the general public.

“Government needs to drive this from an awareness point of view. There is not enough information getting to the man on the street”
(Participant 6, KZN).

Responses from the SEC professionals described that this lack of awareness was even present amongst relevant professionals. Participants described that individuals within key departments sometimes lack basic knowledge on the topic, which significantly impacts on the reporting and dealing of SEC cases.

Major findings related to awareness and knowledge among professionals were also linked to overwork and limited resources, a lack of early career technical education on the topic, limited exposure to working with SEC cases and limited structured training opportunities. In the field research, participants indicated that the pool of professionals in South Africa is gradually decreasing and that a dwindling number of individuals are willing and capable of working with SEC. Working with SEC within the limitations of the current child protection system was emphasised to be difficult and stressful.

These findings show that there is a clear need to provide education and training to all workers that is inclusive of the role of the professional as an integral resource. Without comprehensive information, training and guidance across the welfare, law enforcement and justice sector, SEC in South Africa will not be effectively addressed despite perhaps a strong availability of legal and policy tools.

It is clear for the literature review and legislative analysis that South Africa has made significant progress with regard to

the development of a legislative network and supporting policies addressing SEC. However, the study clearly identified that there is a shortfall with regard to the implementation of policies and legislation. Collaborations between service provider and policy-makers that focus on facilitating implementation are essential for addressing practical considerations.

Another finding of both the legislative and policy review and from SEC professionals was the importance of collaboration between different agencies involved in the care and protection of children. Sexually exploited children need responses from many mechanisms which thus requires multi-sectoral intervention. In structure and in practice, the lack of coordination among various government entities dealing with SEC issues results in an unclear division of tasks and overlapping responsibilities. The unclear mandate, lack of authority and limited funding provided to the Children’s Rights Intersectoral Coordination Committee was noted by the Committee on the Rights of the Child in 2016.³⁰² Likewise, more coordination is also needed between central government departments and local organisations.

Furthermore, the potential for corruption, and need for greater accountability were also identified by interview participants. SEC is greatly under-resourced in South Africa. In particular, increased support from the South African government is required. Resource constraints present a major barrier to professionals and their ability to effectively deal with and curb SEC, presenting a need for policy action for more resources to support various organisations. These challenges will not be eliminated immediately, but will require dedicated commitment and resources.

“There is a shortfall of political will and it goes with money”
(Participant 3, Gauteng).

297 Statistics South Africa. (2018). *Domestic Tourism Survey 2017*. 8. Pretoria: Statistics South Africa.; Definition of day trip: A trip outside of the respondent’s usual environment, where they leave and return within the same day (i.e. do not stay overnight). Definition of an over-night trip: A trip outside of the respondent’s usual environment where one night or more is spent away from the usual environment.

298 Interagency Working Group on Sexual Exploitation of Children. (2016, January 28). *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, adopted by the Interagency Working Group in Luxembourg*. 55. Bangkok: ECPAT International., 44.

299 South African Law Reform Commission. (June 2015). *Report Sexual Offences Adult Prostitution*. 8-10. Pretoria: South African Law Reform Commission.

300 UNICEF. (2019, October). *The State of the world’s children 2019*. 235. New York: UNICEF.

301 South African Government. (2019). Child Protection Week 2019. [Press release].

302 Committee on the Rights of the Child. (2016, September 30). *Concluding observations on the second periodic report of South Africa*. CRC/C/ZAF/CO/2. Para 7. Geneva: Committee on the Rights of the Child.

RECOMMENDATION 1:

RAISE AWARENESS

- Share public information on different platforms and about SEC in the community.
- Create resources and provide training to media, and social media actors to highlight the role they play in increasing public awareness and understanding of SEC by providing accurate information about criminal cases involving children.
- Parents and caregivers are a critical target group, as with the right risk knowledge, they can make prudent choices in protecting their children, and can also prevent exposing them to risks.
- Empower children in schools with adequate, age-appropriate information about SEC. This should include an increased focus on sexual exploitation of both boys and girls and focus on risk awareness and protective strategies for children online.
- Engage with the faith-based community to increase awareness and empower leaders to encourage prevention and identify cases through existing pastoral care mechanisms for referral.

RECOMMENDATION 2:

TRAIN AND SUPPORT SEC PROFESSIONALS

- Provide professional and psychosocial support for all professionals dealing with SEC to avoid burnout and the human resource loss in this area. Resourced professional supervision and mentoring mechanisms could encourage transfer of skills from experienced to emerging professionals.
- Provide training for all professionals working with child service systems including; child welfare, law enforcement, health and education to better identify children at risk, provide specialised services and support.
- Early career welfare workers need adequate, specific and practical training about SEC. Build their capacity to identify victims and effectively respond to SEC.
- Increase appropriate training on SEC for law enforcement, justice officials, health and education workers, with the emphasis on identification and effective handling of cases without re-victimisation of individuals and proper record keeping.
- Train and support SAPS at all levels on SEC, the relevant legislation (such as PACOTIP), appropriate procedures and victim support.

RECOMMENDATION 3:

PRIORITISE SEC AND COMMIT RESOURCES

- The South African government needs to take a strong standpoint against the sexual exploitation of children and ensure political willpower behind the issue. A clear overarching strategy via a National Plan of Action must be developed for addressing SEC.
- Substantial and dedicated funds are vital for programmes and implementation of the current strong legislative and policy framework for SEC in South Africa.
- Further policy and procedure development must focus on implementation and needs to be monitored and evaluated.
- Resource the Cybercrime Unit and the Human Trafficking Desk of the SAPS. Support these units to spread knowledge on SEC through a combined mandate of response and further training across the force.
- Identify good practice therapeutic interventions and provide resources to make these available to victims across the country, including to victims outside urban areas.
- Support victim empowerment programmes that are reintegration-focused and offer livelihood options, including basic education and skills training for victims of child sexual exploitation.

RECOMMENDATION 4:

PROMOTE COLLABORATION ACROSS ALL THE NECESSARY ACTORS

- Establish a central body to coordinate both government actions and to promote collaborative relationships and efforts between government departments and civil society in the range of related sectors (this may be achieved through clarifying the role and responsibilities of the National Children's Rights Intersectoral Coordinating Committee).
- Enhance awareness and information sharing among civil society and professional sectors by funding opportunities for multi-sectoral teams and referral networks.
- Involve the South African business sector. Employers and employees need to be knowledgeable about SEC.
- Engage faith-based actors in referral networks and responses.
- Corruption can dramatically undermine any response to SEC. Irregularities, especially within key government departments, need to be investigated and dealt with as a matter of urgency.
- The responsibilities of individuals involved in SEC need to be clearly specified and people need to be held responsible when not handling their responsibilities or meeting expectations.

RECOMMENDATION 5:

RESEARCH AND GOOD DATA COLLECTION SYSTEMS

- Develop a central, national mechanism for data collection on cases related to all types of SEC.
- Undertake, support and enhance research activities investigating the extent, nature and impact of SEC within the South African context.
- Establish a central research hub that can make information available to all stakeholders dealing with SEC.
- Build on existing research, lessons learned from other countries, emerging and promising practices and survivor input.

ACRONYMS

BMR	Bureau of Market Research
CEFM	Child, early and forced marriage
CRC	Convention on the Rights of the Child
CSAM	Child sexual abuse material
DSD	Department of Social Development
KZN	KwaZulu-Natal
NAP	National Action Plan
NPA	National Plan of Action
OPSC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
PACOTIP	Prevention and Combating of Trafficking in Persons Act
SAPS	South African Police Service
SEC	Sexual exploitation of children
UNISA	University of South Africa
YRU	Youth Research Unit

ANNEXES

ANNEX A: Questionnaire for interviews

SEXUAL EXPLOITATION OF CHILDREN IN SOUTH AFRICA: A STUDY AMONG PROFESSIONALS

INTRODUCTION

Interviewer Notes:

- Explain the purpose of the study and why the participant was chosen.

The purpose of the study is to obtain an in-depth understanding of the sexual exploitation of children (SEC) in South Africa from the perspectives of various professionals dealing with the protection of children. You were identified as a key informant or experienced professional in this regard. It is anticipated that the research information generated from this interview will contribute to the efficient and effective service delivery aimed at protecting children in South Africa. Therefore, it is envisaged that the study will assist to identifying potential gaps that exist in the field on child protection services, which hinder service delivery and the implementation of intervention strategies, including the investigative and judicial administration of criminal cases related to SEC.

- Explain the ethical considerations and obligations of the researcher.

All personal information shall be treated with utmost confidentiality and participation in the study is voluntary and anonymous. Most importantly, your identity will not be disclosed even to the stakeholder commissioning the study. In addition, your identity will not appear in the research report or any related information disseminated in relation to the outcome of the study. In view of the above, you are welcome to provide as much information as possible. A consolidated and thematic analysis of the entire qualitative study will be infused into the research report. A copy of the executive summary, based on a thematic analysis of the study, will be made available to all key informants on request (subject to approval from the stakeholder commissioning the study).

Section A: Professional Background

- Please tell me more about your professional background.
- How would you describe your involvement with issues/cases involving sexual exploitation?

Section B: Understanding and Nature of SEC in South Africa

- From your professional perspective, how would you describe SEC?
- In your opinion, did SEC change over the past few years?
- Do you think SEC in South Africa differs from other countries around the world? (*Probe what possibly make the South African situation unique*).
- With your professional experience dealing with SEC, how would you describe the overall impact of SEC on an individual and society?
- Are there adequate services available to deal with SEC?

Section C: Available Procedures/Policies and Legislation on SEC

- What legislative instruments are you aware of pertaining to SEC in South Africa?
- In your opinion, are these legislative instruments effective in addressing SEC?
- Can you provide any examples of strong and weak points of these legislative instruments?
- What recommendations do you have to improve the available legislative instruments?

Section D: Multi-Stakeholder Approach to SEC

- What has been your experience in engaging with other stakeholders involved in SEC cases? (*Probe positive and negative experiences*)
- What challenges face stakeholders in South Africa dealing with SEC?
- In your opinion, do you think a collective effort from various stakeholders will improve the situation and ultimately reduce SEC?
- Are there any existing joint efforts in the form of task teams or working groups operating in South Africa to address SEC?
- In your opinion, what roles do international bodies play in addressing SEC in South Africa?
- Can you provide any examples of what other countries are doing to address CSEC that might be relevant in South Africa?

Section E: Way Forward

- In conclusion, how would you describe your overall experience in dealing with cases involving CSEC?
- If you can make one recommendation to effectively address SEC in South Africa, what will it be?

Thank you very much for your participation.

Administration



Tel: +27 12 845 6000

Victoria & Griffiths
Mxenge Building
123 Westlake Avenue
Weavind Park
Pretoria

P/Bag X752
Pretoria
0001

Enquiry: Ms. Z. de Bruyn
Email: zdebruyn@npa.gov.za
Phone: 012 845 6267
Date: 08/10/2018

Dr. A. Basson
Per email: bassoa@unisa.ac.za

RE: Approval of Request to Conduct Research in the National Prosecuting Authority

Dear Dr. Basson

Thank you for showing interest in conducting research in the National Prosecuting Authority (NPA). The purpose of this memorandum is to inform you that your request to conduct research in the NPA's Sexual Offences and Community Affairs (SOCA) has been approved.

The NPA appreciates that the thesis topic has been approved by the University of South Africa (UNISA) Bureau of Market Research: Research Ethics Review Committee.

Please consider and/or adhere to (whichever is applicable) the below-mentioned in support of your research:

1. The request is supported by SOCA of the NPA and it should be noted and understood that information about the work can only be utilised with the NPA's explicit written approval and permission.
2. The research request focuses on "Commercial Sexual Exploitation of Children in South Africa: A Study among Professionals", and therefore should be in line with all relevant policies and acts that govern SOCA and the National Prosecutions Service (NPS).

3. Permission to conduct research is only limited to interviewing selected prosecutors from SOCA and NPS as per indication in the research proposal "Commercial Sexual Exploitation of Children in South Africa: A Study among Professionals".
4. Upon completion of the research project, it is suggested that a copy of the report be sent to the NPA for perusal and approval. This is specifically to prevent the inappropriate interpretation and publication of the latter mentioned information.
5. It is also suggested that in the event of the author publishing an article on research which contains NPA information, it be approved by the NPA.
6. Please inform the Director of Public Prosecutions (DPP) and/or the Head of SOCA of the province where the selected prosecutors are stationed of your intent to conduct interviews before approaching them.

In your case, there will be no need to complete FORM A, which is the request for access to records of a Public Body, Section 18(1) of the Promotion of Access to Information Act, 2000, since you indicated that your research study only involves interviews with participants.

Kindly keep the NPA informed about further developments on this research, and please direct all correspondence to the Senior Researcher on the following:

Name: Ms. Kefentse Mojaki-Moremogolo
 Telephone number: 012 845 6506
 E-mail address: KMojaki-Moremogolo@npa.gov.za

Dr. Silas Ramaite, SC
Deputy National Director of Public Prosecutions: Administration and Office for Witness Protection
Date: 23/10/2018

Corporate Service Centres

- Finance & Procurement
- Human Resources
- Development & Management
- Information Management
- Research & Policy Information
- Risk & Security

ANNEX C: Approval to conduct research study from South African Police Service



Privaatsak / Private Bag X94, Pretoria 0001, Faks No. / Fax No. (012) 393 2128

Your reference/U verwysing:

My reference/My verwysing: 3/34/2

THE DIVISIONAL COMMISSIONER: RESEARCH
SOUTH AFRICAN POLICE SERVICE
PRETORIA
0001

Enquiries/Navrae: Lt Col Joubert
A/C Thenga
Tel: (012) 393 3118
Email: JoubertG@saps.gov.za

Ms AH Basson
UNIVERSITY OF SOUTH AFRICA

RE: PERMISSION TO CONDUCT RESEARCH IN SAPS: COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN SOUTH AFRICA: YOUTH RESEARCH UNIT: UNIVERSITY OF SOUTH AFRICA: RESEARCHER: AH BASSON

The above subject matter refers.

You are hereby granted approval for your research study on the above mentioned topic in terms of National Instruction 1 of 2006.

Further arrangements regarding the research study may be made with the following office:

The Provincial Commissioner: Gauteng:

- Contact Person: Capt Nevumbani
- Contact Details: (011) 547 9132
- Email Address: nevumbanivj@saps.gov.za

Kindly adhere to paragraph 6 of our Attached letter signed on the 2018-11-29 with the same above reference number.


MAJOR GENERAL
ACTING DIVISIONAL COMMISSIONER: RESEARCH
DR PR VUMA

DATE: 2019-01-09

ANNEX D : Ethics Approval



BUREAU OF MARKET RESEARCH: RESEARCH ETHICS REVIEW COMMITTEE

Date: 18 July 2018

Ref #: CR138

Name of applicant: Dr A Basson

Dear Dr Basson

Decision: Ethics Approval

Expiry date: March 2019

Name: Dr A Basson
Bureau of Market Research
bassoa@unisa.ac.za
Tel: (012) 429 3099

Proposal to identify existing challenges in dealing with commercial sexual exploitation of children.

Qualification: Commissioned research

Thank you for the application for research ethics clearance by the Bureau of Market Research (BMR) Research Ethics Review Committee (RERC) for the project entitled: "ECPAT International: Situational analysis of commercial exploitation of children."

Final approval is granted to commence with this study for ECPAT International.

Kind regards,


Signature

Prof DH Tustin
Acting Head: Bureau of Market Research
Chairperson: BMR RERC



Bureau of Market Research (BMR)
University of South Africa
Pretorius Street, Muckleneuk Ridge, City of Tshwane
PO Box 392 UNISA 0003 South Africa
Telephone: +27 12 429 3566 Facsimile: +27 12 429 3170
www.unisa.ac.za/bmr
e-mail: bmr@unisa.ac.za



International

ECPAT International

328/1 Phaya Thai Road, Ratchathewi, Bangkok, 10400, Thailand

Telephone: +662 215 3388

Email: info@ecpat.org | Website: www.ecpat.org