



Global Monitoring



Report on the
status of action against commercial
sexual exploitation of children

SOUTH AFRICA



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Glossary of terms and acronyms

AIDS: Acquired Immune Deficiency Syndrome

Code of Conduct: A code for travel and tourism companies, providing guidance on the protection of children from sexual exploitation

CPU: Child Protection Unit

CRC: Convention on the Rights of the Child

CSE: Commercial sexual exploitation

CSEC: The commercial sexual exploitation of children consists of criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children. There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. Commercial sexual exploitation of children comprises sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons.

CST: Child sex tourism, or the commercial sexual exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone under the age of 18.

CWSA: Child Welfare South Africa

ECPAT: End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes

FCS: Family Violence, Child Protection and Sexual Offences Unit

Grooming: Preparing a child for sexual abuse and exploitation

HIV: Human immunodeficiency virus

ILO: International Labour Organization

ILO/IPEC: International Labour Organization/International Programme on the

Elimination of Child Labour

ISASA: Internet Service Association of South Africa

ISPs: Internet service providers

NACCW: National Association of Child Care Workers

NGO: Non-governmental organization

NPA: National Plan of Action

PEPFAR: President's Emergency Plan for AIDS Relief

RAPCAN: Resource Aimed at the Prevention of Child Abuse and Neglect

SADC: Southern African Development Community

SANTAC: Southern Africa Regional Network against Trafficking and Abuse of Children

SAPS: South African Police Service

STIs: Sexually transmitted infections

TECL: Towards the Elimination of Child Labour

UN: United Nations

UNODC: United Nations Office on Drugs and Crime

YECSEC: Youth Ending Commercial Sexual Exploitation of Children

Foreword

Ten years have passed since the First World Congress against Commercial Sexual Exploitation of Children (CSEC) was held in 1996 in Stockholm, Sweden. The Stockholm Congress was a landmark event, providing testimony that convinced the world that sexual violations against children exist in all nations, irrespective of cultural differences or geographic location. It marked the first public recognition by governments of the existence of CSEC and resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by 122 governments, as a guide to the specific measures that must be taken for counteraction.

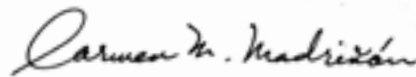
Since 1996, many actors around the world have focused their efforts around this common Agenda for Action and more government and non-government entities have linked, to ensure positive change for children and to protect their right to live free from sexual exploitation. This broad societal alliance (bolstered by a Second World Congress held in Yokohama in 2001, during which the number of countries adopting the Agenda rose to 159 - a figure which has since risen to 161) has made progress in improving protection for children from commercial sexual exploitation. However, the increasing sophistication of resources available to those who seek to exploit children have grown in equal measure. Responding to these challenges requires far more coordinated and targeted work to be undertaken to avoid retrogression.

Experience demonstrates that the level of responsibility and role that a government takes to set and uphold standards of protection, like the lead taken for protecting children's rights, determines the nature, quantity and quality of what the country achieves for its children. Governments can and have accelerated progress for implementation of the Agenda for Action, often opening new and important channels for such work. Nevertheless, their actions have not been uniform and, as these country profiles attest, far more urgent work must be done to protect children from such heinous violations, as these are still perpetrated with impunity in many countries.

This report aims to provide a baseline of information on actions taken and remaining gaps for addressing CSEC in each country, based on the framework of the Agenda for Action, to enable more systematic assessment of progress on implementation of this commitment. It also seeks to contribute to other international mechanisms that exist to protect children's rights; the *Convention on the Rights of the Child (CRC)* and the *Optional Protocol on the sale of children, child prostitution and child pornography* so as to strengthen the implementation and action against commercial sexual exploitation of children at all levels.

Another important objective of these reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC. While much has been achieved over the last 10 years, many gaps still remain. The implementation of the Agenda for Action is urgently required, for as the reports clearly illustrate, there is a compelling need for global action to protect children from these inhuman violations.

This project is the result of a broad and global collaboration. ECPAT International (EI) would like to thank all those who participated in the work and contributed their inputs, in particular the ECPAT member groups in the countries examined, local experts who provided valuable information and insights, other organisations that shared their experience and information, the dedicated staff and volunteers in the Secretariat of EI and the generous donors who backed the project (more extensive acknowledgements can be found in the Regional Report). This work would not have been realised without their support and solidarity.



Carmen Madriñán
Executive Director, ECPAT International

Methodology

The Agenda for Action against Commercial Sexual Exploitation of Children provides a detailed framework and categories of actions to be taken by governments in partnership with civil society organizations and other relevant actors for combating commercial sexual crimes against children. Broadly, these actions are focused on: 1) Coordination and Cooperation; 2) Prevention; 3) Protection; 4) Recovery, Rehabilitation and Reintegration; and 5) Child Participation. The Agenda for Action is thus the formal and guiding structure used by governments that have adopted it and committed to work against CSEC. As such, the Agenda for Action is also the main organising framework for reporting on the status of implementation of the Agenda as seen in the World Congress of 2001 and in the Mid-Term Review meetings held between 2004 and 2005. It has been used in the same way to structure and guide the research, analysis and preparation of information presented in these reports on the status of implementation of the Agenda in the individual countries.

Preparatory work for this report involved a review of the literature available on sexual exploitation for each of the countries where ECPAT works. A number of tools were prepared, such as a detailed glossary of CSEC terms, explanatory literature on more difficult themes and concepts and a guide to relevant CSEC-related research tools, to assist researchers in their work and to ensure consistency in the gathering, interpreting and analysing of information from different sources and parts of the world.

Early desktop research revealed a lack of information in the areas of Recovery, Rehabilitation and Reintegration; and Child Participation. After extensive efforts to collect information relevant to these areas for each of the countries covered, it was decided that as this information was not consistently available, the reports would focus only on those areas of

the Agenda for Action where verifiable information could be obtained. Thus, the report covers: Coordination and Cooperation; Prevention; and Protection, and where information on the other two areas was available, it has been included under the specific country or in the regional overview.

Research of secondary sources, including CRC country reports, alternative CRC reports, the reports of the Special Rapporteurs, submissions for the recent UN Study on Violence against Children, as well as research and field studies of ECPAT, governmental and non-governmental organizations, and UN agencies, provided the initial information for each report. This information was compiled, reviewed and used to produce first draft reports. In-house and consultant specialists undertook a similar process of review to generate information on specialised areas of the reports, such as the legal sections. Nevertheless, researchers often encountered a lack of information. While sources also included unpublished reports and field and case reports of ECPAT and other partners, many countries lacked up-to-date data and information on areas relevant to this report.

Despite these limitations, sufficient information was gathered to provide a broad overview of the situation in each country. Subsequently, first drafts were prepared and shared with ECPAT groups, which then supplemented the information with other local sources and analysis (taking care to identify them and source appropriately). Upon receipt of these inputs, a series of questions were generated by the ECPAT International team for deeper discussion through teleconferences, which involved ECPAT groups and specialists invited by them. The information from these discussions was used to finalise inputs to each of the reports. These consultations proved to be invaluable for analysis of the country situation.

They also served as a measure for triangulating and validating information as different actors offered their perspective and analysis based on their direct work.

As previously noted, the information of each country report is organised to correspond to the structure of the Agenda for Action. Thus all reports feature: (i) an overview of the main CSEC manifestations affecting the country; (ii) analysis of the country's National Plan of Action (NPA) against CSEC and its implementation (or the absence of an NPA); (iii) overview and analysis of coordination and cooperation efforts during the period under review; (iv) overview and analysis of prevention efforts; (v) overview and analysis of protection efforts, which includes detailed information on national legislation related to CSEC (see www.ecpat.net for further details); and (vi) priority actions required.



SOUTH AFRICA

The occurrence of sexual exploitation of children through prostitution, child pornography and trafficking for sexual purposes has been acknowledged by the South African Government through their commitment to the *Stockholm Agenda for Action* and other international conventions. Despite this commitment, progress towards the reduction and elimination of commercial sexual exploitation of children (CSEC) in the country has been slow and incidents of such violations against children continue to grow.

Violent gangs forcing children into commercial sex

Four teenage schoolgirls walking through a shopping mall in Cape Town one afternoon were approached by a group of men who threatened to shoot them. Too scared to shout for help, the girls were escorted to a car in full view of unsuspecting passersby and taken to a house in Salt River. Once there, they were beaten, raped and had their hands tattooed with the gang leader's name, which completed the gang's 'ritual' of turning them into sex slaves. One girl tried to resist but was forced to drink alcohol to the point of drunkenness, then pinned down and tattooed. The girls were given drugs regularly and forced into prostitution. Their ordeal ended after three months when one of the girls managed to escape and called her mother from a public telephone.¹

The full extent to which South African children are affected by child pornography is unknown,² but law enforcement statistics show a sharp increase in related criminal activities in recent years. In addition, South African children's exposure to pornographic materials was confirmed by a recent survey conducted by the Films and Publications Board among students aged 13 to 17+ in schools in Cape Town, Durban and Johannesburg.³

Severe child abuse on the rise in South Africa

South African children urgently need more protection against sexual crimes. Recent figures presented by the Safety and Security Ministry showed that during one year, a total of 15,857 children were reported to have been raped in the country. More than 40 children are raped everyday. This high number, however, only includes cases that are reported to the police and analysts believe that the majority of child rapes are never registered. Additionally, only 22 per cent of registered cases end up with a conviction of the rapist.⁴

The Deputy Minister of Home Affairs also reported a rise in child pornography cases currently under investigation or before the courts: "For those of you who have never seen an image of child pornography, be grateful that you have never and please keep it that way, for the image is too gruesome and never escapes your memory. Obviously we need to engage in a sustained campaign involving schools, religious institutions, NGOs, the media, parents, teachers and children themselves to combat this dangerous crime."⁵

The extent of trafficking in children both within and across borders is unknown due to the absence of a comprehensive and current national study on child trafficking.⁶ However, it is well-known that South Africa is a source, transit and destination country for trafficking in children for sexual exploitation and forced labour. A notorious route for child trafficking for sexual exploitation is along major haulage roads leading to South Africa from Malawi. Along these routes, long distance truck drivers deceive children by promising to marry them or provide them educational opportunities if they agree to go to South Africa. "Once in Johannesburg, the victim is held as the trafficker's sex slave in a flat in the central business district, and he will bring in perpetrators who pay him to have sex with the child. Malawian businesswomen also traffic girls to brothels in Johannesburg."⁷ Girls are also trafficked internally,⁸ most of them from poor rural areas. Parents of victims are usually tricked by pimps, who offer to provide the children with education and good jobs, but force the children into prostitution after obtaining parental consent to travel with the child to another town.⁹ Girls are also kidnapped, trafficked into gangs, held captive and forced into prostitution.¹⁰

In recent years, a period in which sex tourism as an 'industry' grew significantly in South Africa, several child sex tourism cases were reported. There is public recognition that sex tourism is occurring in large numbers in South Africa and that this may affect underage youth, particularly in Cape Town, which is increasingly being promoted as a sex tourism destination.¹¹ However, no statistical data is available and no comprehensive research has been conducted on the subject so far.

Light sentences encourage child sex tourism perpetrators

In 2005, a 46-year-old Swiss man caught having sexual relations with a 14-year-old in a hotel in Johannesburg escaped harsh punishment and was fined 10,000 South African Rands (US\$1,550) as a result of plea bargaining.¹² The lightness of his sentence prompted angry reactions by child rights organisations and highlighted the need for improved legislation to tackle sexual exploitation of children. The case also drew attention to a number of deficiencies within the South African judicial system, such as lack of awareness, training and resources to properly deal with CSEC cases.

The loss of parental care due to HIV/AIDS, armed conflicts and natural disasters in central and southern Africa are contributing factors to children migrating, becoming refugees and finding themselves at high risk of commercial sexual exploitation. Children who seek to travel to South Africa to escape such tragedies find it very difficult to reach their destination. Drivers who ply the routes from the Democratic Republic of Congo, Zambia and Zimbabwe to South Africa are unsympathetic to their plight, and often refuse to give rides unless the child accepts to have sex as “payment for transport”.¹³ Once in South Africa, refugees find themselves competing in a tight job market, with resentful locals perpetrating acts of hostility. The large number of illegal immigrants coming into the country has further enhanced xenophobia. Child refugees “are harassed at school and in communities”,¹⁴ becoming easy targets for rape and commercial sexual exploitation. There is however no statistical data regarding the sexual exploitation of refugee children. In accordance with the Constitution, refugee children have the same rights as a South African child.

Negative gender constructions impact on CSEC

A social analyst writing about the situation in South Africa pointed out that “in South African society in general, masculinity is inextricably linked to an active sex life, and to a sense of entitlement about sex. Femininity is about being weak and subservient, about being unsure; it is inextricably linked to being in a relationship at any price, including a lack of space to negotiate sex”.¹⁵ Such perceptions underlie the appalling rates of rape found in South Africa, as it is felt that males are simply entitled to have sex with women and girls. These gender constructions also impact on the commercial sexual exploitation of children, as they justify sex with any female no matter her age or circumstances in which it happens.

The impact of HIV/AIDS on commercial sexual exploitation of children should also be highlighted. The pandemic has caused growing numbers of children to live without parental care, abandon school and experience higher levels of poverty, thereby exacerbating their vulnerability to commercial sexual exploitation. In 2005, the international HIV/AIDS charity AVERT estimated that 1.2 million children were living as orphans in South Africa due to AIDS,¹⁶ while a study conducted by the South African Department of Health concluded that 240,000 children under 15 were living with AIDS in the country in the same year.¹⁷

South Africa adopted the *Stockholm Declaration and Agenda for Action* in 1996 and reaffirmed its commitment in Yokohama in 2001.

NATIONAL PLAN OF ACTION (NPA)

A National Action Plan to Prevent and Combat the Commercial Sexual Exploitation of Children was developed in 1997¹⁸ but is now defunct. Some of the Plan's envisaged activities were absorbed into the *National Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation*, as well as into the *National Plan of Action against Child Abuse and Neglect*, and developed through a lengthy and wide consultation process involving civil society and relevant government departments. The National Child Protection Committee oversees their implementation. Task teams composed of governmental and non-governmental stakeholders were also formed to tackle the priority areas identified. Implementation of the tasks envisaged is still in the early stages as these policy documents are being finalised and several tasks are in the costing phase. A monitoring and evaluation mechanism is also yet to be designed.

In addition, a *National Plan of Action against Child Pornography* was adopted at the National Conference against Child Pornography¹⁹ held in 2005.²⁰ Its implementation has been delayed, however, as the Plan has to be further reviewed to align it with the amendments currently being made in the *Films and Publications Act* (the Act is presently with the Parliamentary Portfolio Committee). Such a review will hopefully include a clear timeframe for action as well as monitoring and evaluation mechanisms in the Plan, as these are lacking in the current version.

The Ministry of Home Affairs is yet to appoint a national advisory committee to monitor implementation of the *National Plan of Action against Child Pornography* and to advise on policy interventions that are required to effectively combat child pornography.²¹ The Ministry was also assigned to develop and implement a comprehensive national campaign to protect children from accessing harmful images through various media (which is also yet to be conducted). Other responsibilities assigned to the Ministry of Home Affairs include the creation of a specialised unit to tackle child pornography; engaging the Internet Service Association of South Africa (ISASA) to take measures against the dissemination of child pornographic materials on mobile technology; ensuring synergy and coordination among law enforcement agencies and the Judiciary to deal decisively with perpetrators of child abuse through pornography; and ensuring that local governments in the metropolitan councils vigorously crack down on illegal pornography shops operating in their jurisdiction. Furthermore, the Films and Publications Board shall develop and implement a programme in schools to raise awareness on the dangers of creating, possessing, distributing, importing, accessing, advertising and promoting child pornography.²² The Board's current core mandate, scope and structures are to be reviewed by the Ministry of Home Affairs, as they are too dated to deal with the increasing impact of modern technologies on child pornography.

Moreover, the Portfolio Committee of Home Affairs, accountable to the South African Parliament and generally comprising Members of Parliament from all political parties, plans to initiate a national debate in both the National Assembly and the National Council of Provinces with the objective of putting the fight against child pornography on the country's national agenda.

Also important has been the development and implementation of the *Child Labour Programme of Action*, which addresses commercial sexual exploitation of children as one of the worst forms of child labour. In implementing this programme, the organisation Towards the Elimination of Child Labour (TECL) was developed, resulting in research into CSEC as well as advocacy and lobbying initiatives. Six programmes focusing on CSEC have also been funded as pilot sites. A review of these programmes and their success in combating CSEC as well as in addressing the needs of child victims will be conducted. It is envisaged that through these reviews, South African-based best practice models for intervention and prevention will emerge.

COORDINATION AND COOPERATION

Local and National Level

The National Child Protection Committee oversees initiatives against commercial sexual exploitation of children and has played the role of a national focal point on CSEC. This Committee is led by the Department of Social Development and comprises representatives from this and other government departments (Education, Health, etc.) as well as local non-governmental organizations (NGOs). At present, the Committee meets triennially. In addition, Provincial Child Protection Committees as well as Local Child Protection Committees were established in some provinces. Nevertheless, key government departments have not contributed to the work of these committees, which has hindered coordinated and more effective work against CSEC in the country. For instance, the Department of Labour has taken the lead in combating commercial sexual exploitation of children, but is not presently working with or through such structures.

The Office on the Rights of the Child, based within the Presidency, is responsible for monitoring children's rights within South Africa. It is assigned with the development and implementation of a *National Programme of Action for Children*.

At community level, Child Care Forums were established to deal with commercial sexual exploitation of children as a form of child abuse.

The Gauteng CSEC Networking Forum

Local organisations felt that tackling commercial sexual exploitation of children through existing general child protection forums was creating a gap in networking as well as in service delivery. In order to address these concerns, the Gauteng CSEC Networking Forum was established, gathering all stakeholders within the Gauteng province: service providers (shelters, counselling services, etc.), law and policy makers (e.g. the South Africa Law Reform Commission), government departments (Social Development, Films and Publications Board) as well as research and funding organisations (such as TECL). Through the Forum, participants share knowledge and experiences as well as best practices. Funding has been obtained to replicate the Forum in all provinces, and it is envisaged that CSEC networking forums will be operating throughout South Africa by the end of 2007.

Child Welfare South Africa (CWSA), the ECPAT group in the country, is a membership organisation with 169 members, the largest network of child protection agencies in the country. In 2005, CWSA member organisations provided services for 63,273 children nationwide who were in need of statutory intervention, many of them victims of commercial sexual exploitation.²³

Development of the National Child Abuse Guidelines: a key achievement

National Child Abuse Guidelines are now in place to instruct service providers and other actors on the intervention, investigation and support services available to child victims of abuse, neglect and exploitation. These guidelines have been invaluable in mapping out the responsibilities of child protection services, police, health services, etc. They are currently being reviewed and updated and will guide the revision of provincial guidelines.

Regional and International Level

There are very few feedback mechanisms to inform the public about the Government's engagement in regional and international cooperation to fight commercial sexual exploitation of children. No information is available, for instance, on the existence of agreements for transnational cooperation against CSEC, or on how law enforcers from South Africa and other countries actually coordinate. This is particularly disturbing in view of the large number of girls trafficked from Mozambique to South Africa, as there are no signs of NGO involvement in tackling the problem in conjunction with the Government. Such a scarce exchange of information could be easily addressed through more involvement of all relevant government departments in the National Child Protection Committee. A Committee in which all stakeholders report on their interventions would also help to identify any gaps in international cooperation that may need to be addressed in order to enhance protection of children against CSEC and other abuses.

The Southern Africa Regional Network against Trafficking and Abuse of Children (SANTAC) was formed as part of the Southern African Development Community's (SADC) initiative to combat trafficking and abuse of children. It works "through networking, awareness raising, research, training, lobby and advocacy, cooperation, child participation and service delivery to victims" in South Africa, Malawi, Zambia, Tanzania, Namibia, Zimbabwe and Mozambique.²⁴

The United Nations Office on Drugs and Crime (UNODC) runs two regional projects to support SADC Member States in the ratification and implementation of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)* supplementing the UN *Convention against Transnational Organized Crime* (one project in collaboration with SADC and the other with the Southern African Police Chief's Organisation).²⁵

The Southern Africa Campaign against Abuse and Trafficking of Children was initiated in 2002 involving Angola, Mozambique, Namibia, South Africa, Zimbabwe and Zambia. With Graca Machel and Desmond Tutu as patrons, the organisation has established four shelters in South Africa and one each in Zambia and Mozambique, where child victims of trafficking and sexual exploitation are provided with meals, clothing, health, education and vocational training. Awareness raising campaigns, seminars, research and dissemination of research reports has also been organised. In South Africa, legal assistance is provided to child victims of trafficking through the local NGO Molo Songolo (only available in Cape Town).²⁶

In 2003, ECPAT International supported a regional youth partnership programme aimed to develop the skills of vulnerable and exploited youth in advocacy, lobbying and media relations and on peer counselling. A number of trainings were undertaken in partnership with the Sithabile Child and Youth Care Centre in South Africa, Rede da Criança in Mozambique and Eye of the Child in Malawi. The project resulted in the formation of Youth Ending Commercial Sexual Exploitation of Children (YECSEC), a youth-led NGO (based in South Africa) which has since been active in lobbying for improved rehabilitation and reintegration services for CSEC victims and for reforms in CSEC-related legislation. The group also carries out awareness raising initiatives using drama, dance and artwork to sensitise schools, churches and communities on the dangers of CSEC and child trafficking in general.²⁷

PREVENTION

Government initiatives such as the Sustainable Livelihood Programme, focusing on poverty reduction, have been extremely important in terms of reducing some of the factors contributing to the commercial sexual exploitation of children in South Africa. In addition, several initiatives have been undertaken by civil society regarding CSEC prevention - for instance, community-based interventions aiming at the early identification of and support for orphans and children living in child-headed households greatly reduce the risk of their involvement in the sex trade. Organisations such as Childline, Molo Songololo and CWSA have all conducted awareness raising training pertaining to child trafficking. More concerted efforts to prevent child sex tourism in particular are needed, as the problem is escalating.

No travel and tourism companies operating in South Africa have signed the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*.²⁸ CWSA formed a partnership with Fair Trade in Tourism South Africa, under which an implementation plan has been developed to conduct research on child sex tourism; sensitise the tourism industry; and promote the implementation of the Code of Conduct. However, lack of financial support has delayed the pursuit of these planned activities.

Molo Songololo is a local child rights NGO whose work is focused in the Western Cape Province and Cape Town in particular, a major transit point for child trafficking. Working closely with Terre des Hommes (Germany), UNODC and the Department of Community Safety in South Africa, it seeks to foster awareness and community responsiveness to child trafficking, as well as provide recovery and rehabilitation to child survivors and conduct research.²⁹

Between 2004 and 2005, CWSA organised 25 workshops to raise awareness on child trafficking, attended by nearly 700 participants from NGOs, relevant government agencies (police, health clinics and the Department of Education), the Taxi Association, youth, local community members and faith-based organisations.³⁰ During the same period, under their community-based programme Isolabantwana (Eye on the Children), trainings on identification of early warning signs of child abuse and sexual exploitation were offered to CWSA members in 74 areas around the country.³¹ The programme also recruits and trains adult volunteers to assist social workers in the prevention and management of child abuse. Funding was recently obtained for similar work in an additional 12 sites in the North West Province. Capacity building workshops have also been organised for child protection practitioners, focusing on child pornography and trafficking in children for sexual purposes.³²

Programmes to support vulnerable children include CWSA's Asibavikele Programme, through which 8,000 vulnerable children were identified in 2006. Also worth mentioning is the Isibindi Programme, run by the National Association of Child Care Workers (NACCW).

Through funding from USAID's President's Emergency Plan for AIDS Relief (PEPFAR), a broader response was developed to support children orphaned due to AIDS, a group that is particularly vulnerable to CSEC, as they may be forced to turn to commercial sex for survival. Several national and international organisations are currently running programmes in response to the HIV/AIDS orphan crisis facing South Africa: these include, Save the Children Sweden, Save the Children UK, Hope Worldwide, NOAH, Heartbeat, NACCW, CWSA and Childline. For instance, the Johannesburg Child Welfare Society runs the Masibambisane Centre for HIV/AIDS Orphans, a day care home based in Kliptown Eldorado that supports more than 180 children. Through collaborations with palliative care community organisations, schools, churches and other service providers, the children are provided with one meal a day, school uniforms, blankets, bereavement and general counselling, and life skills training. The Centre also facilitates pre-school attendance for younger children, thus allowing older siblings, who are often household heads, to also attend school knowing that the youngsters are safe.³³

Finally, in 2004 the Ministry of Home Affairs launched a child pornography helpline³⁴ encouraging the public to make reports to authorities when they come across child pornography images or if they know of a website that contains or advertises child pornography.³⁵ Child pornography can also be reported to the South African Police Service (SAPS) via email at: childporn@saps.org.za.³⁶

PROTECTION

The Republic of South Africa ratified the *Convention on the Rights of the Child*³⁷ in 1995 and acceded to its *Optional Protocol on the sale of children, child prostitution and child pornography (Optional Protocol)*³⁸ in 2003. In 1994, South Africa ratified the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)*³⁹, and in 2000 it ratified *ILO Convention No. 182*.⁴⁰ As a non-member state, South Africa signed the Council of Europe's *Convention on Cybercrime*⁴¹ in 2001. At regional level, South Africa ratified the *African Charter on the Rights and Welfare of the African Child* in 2000.

Legislation

In recent years, South Africa has made positive strides in reforming legislation to better protect children from commercial sexual exploitation. However, the current laws still present many gaps with regard to CSEC, which should be addressed through the *Criminal Law (Sexual Offences) Amendment Bill* of 2003 - this law specifically defines and prohibits child prostitution - as well as through the *Children's Act* of 2005, once these are enacted. Although the drafting of such laws has entailed a slow and lengthy process, civil society has had the opportunity to comment and provide inputs through public hearings. Another public hearing needs to take place to include provisions on two essential elements that are still missing in the proposed laws: 1) it should be compulsory for courts to provide intermediaries when interviewing children during court proceedings (currently each court is free to set its own standards); and 2) the provision of proper protection mechanisms for child witnesses and victims should also be compulsory, for instance by ensuring that a perpetrator is not allowed to be released into the same community where the child is living. This is crucial, as it is very common for child victims of sexual crimes and their families to suffer threats and intimidation from perpetrators (particularly those in high positions in society).

Prostitution of Children

South Africa's existing legislation offers some protection against child prostitution, but requires significant strengthening to conform to international standards. The 1999 *Amendment to the Child Care Act* prohibits the "commercial sexual exploitation of children", but it is unclear whether this includes all of the prohibited acts considered commercial sexual exploitation under international law. Similarly, while South African law contains several provisions to criminalise the facilitation of child prostitution, such as prohibiting a parent or guardian from facilitating the prostitution of a child who is under 18 years of age, nowhere does the law specifically define child prostitution and prohibit the act of having sex with a child for remuneration. Moreover, while targeting unlawful carnal intercourse, immoral or indecent acts, the *Sexual Offences Act* actually undermines protection against child prostitution by allowing a defence to this crime if a victimised child is involved in prostitution. Some of these gaps have been addressed through the 2003 *Criminal Law (Sexual Offences) Amendment Bill*, which is still awaiting official adoption.

South African law prohibits certain sexual acts with children, but it does not specifically define and prohibit child prostitution - sex with a child for remuneration. Its most recent law in this area is a 1999 amendment to the *Child Care Act* of 1983, which makes it an

offence to participate or be involved in the commercial sexual exploitation of a child.⁴² It is also an offence for a person who owns, leases, manages, rents or occupies property where a child is commercially sexually exploited to fail to report this exploitation to the police.⁴³ Violators of these provisions may be punished with a fine, up to 10 years' imprisonment, or both.⁴⁴

Under South Africa's 1957 *Sexual Offences Act*, it is illegal for a parent or guardian of a child under 18 years of age to promote sex with a child or receive any remuneration as a result of prostituting a child.⁴⁵ It is also illegal to detain a female person against her will in any place where she may be used for sex or in a brothel.⁴⁶ Among other instances, a female is considered detained against her will if she is under 16 years of age; or if she is between 16 and 21 years of age and is detained against her will or the will of her parents or guardian.⁴⁷

The *Sexual Offences Act* contains additional provisions that could be used to prosecute crimes related to child prostitution. The Act prohibits a male person from having or attempting to have unlawful carnal intercourse with a girl under 16 years of age,⁴⁸ or a female person from having or attempting to have unlawful carnal intercourse with a boy under 16 years of age.⁴⁹ It is also illegal for any person to commit or attempt to commit an immoral or indecent act with any person under 19 years of age,⁵⁰ or to solicit or entice a person under 19 years of age to commit an immoral or indecent act.⁵¹ It is a defence to these crimes, however, if the victimised boy or girl is involved in prostitution, the person charged is under 21 years of age or if it is a first offence.⁵² It is also a defence to these crimes if the girl or boy deceived the offender into believing that s/he was over 16 years of age.⁵³ Thus, the defences to these crimes severely undermine this law's protection – which is already minimal – for prostituted children.

Need to expedite adoption of the 2003 *Criminal Law (Sexual Offences) Amendment Bill*

The 2003 *Criminal Law (Sexual Offences) Amendment Bill*, when enacted, would address several gaps in the present laws pertaining to the commercial sexual exploitation of children. It would make it illegal to prostitute a child under 18 years of age by inviting, persuading, inducing, arranging, supplying, recruiting, trafficking within or across South Africa's borders, managing a brothel, or promoting or making profits from prostitution. Violators could be punished with a fine, up to 20 years' imprisonment or both.⁵⁴ The Bill would also address child sex tourism by making it illegal to organise travel arrangements for or on behalf of any person, whether or not that person resides in South Africa; facilitate any sexual offence against a child, irrespective of whether that offence is committed; and print or publish any information that promotes or facilitates conduct that would constitute a sexual offence against a child. Offenders could be punished with a fine or up to 20 years' imprisonment.⁵⁵

Trafficking in Children for Sexual Purposes

South Africa's current law does not specifically describe the acts that constitute trafficking, so it is uncertain whether acts such as harbouring, receiving or transporting a child are considered trafficking under this law. Presently, criminal acts such as kidnapping, abduction, assault, etc. are thus being used to prosecute cases related to child trafficking. Such gaps will be addressed once the *Children's Act* of 2005 is enacted into law, as it specifically defines and prohibits child trafficking in accordance with the *Trafficking Protocol*. It will also offer solid support to child trafficking victims through assistance with return and repatriation, access to social workers and a referral network for professionals that may come into contact with child victims.

Children's Act must be promptly adopted

The Chapter on Trafficking in Children within the *Children's Act* stipulates that all definitions of trafficking as outlined in the *Trafficking Protocol* are viewed as law.⁵⁶ Under the *Children's Act*, it is illegal for a person or 'partnership' to traffic a child or allow a child to be trafficked.⁵⁷ Consent of the child, or a person having control over the child, is not a defence to this crime.⁵⁸ Violators may be punished with a fine, up to 20 years' imprisonment, or both.⁵⁹ It is also illegal to facilitate child trafficking by knowingly leasing, sub-leasing or allowing any space to be used to harbour a child trafficking victim; advertising, publishing or distributing information, by any means, that suggests or alludes to trafficking.⁶⁰ Offenders may be punished with a fine, up to 10 years' imprisonment, or both.⁶¹ Internet service providers

must report to the police any websites on their servers that contain information that facilitates child trafficking in violation of this Act.⁶² The law also provides for extraterritorial jurisdiction, which allows South Africa to prosecute any citizen, permanent resident, juristic person or partnership for child trafficking, even if the offence is committed outside South Africa.⁶³

In addition, the law attends to child trafficking victims by, among other things, providing assistance to a child trafficked outside South Africa with returning to South Africa; assisting in the repatriation of a foreign child trafficked into South Africa;⁶⁴ suspending the rights and responsibilities of parents or guardians who traffic or allow a child to be trafficked;⁶⁵ and providing social workers to assist child trafficking victims and requiring certain professionals - police, doctors, social workers - to refer victims to a designated social worker.⁶⁶

Child Pornography

South African law offers strong protection and exceeds international standards for banning the creation, possession and distribution of child pornographic images. South Africa is one of the few countries that prohibit the possession of child pornography, regulates ISPs and requires them to take measures to prevent access to child pornography. The law also contains broad definitions of child pornography and the various media by which child pornographic images can be created and distributed.

South Africa's *Films and Publications Act*, 1996, and its subsequent amendments in 1999 and 2004, define and prohibit various activities related to the production, distribution and possession of child pornography. Child pornography is any real or simulated image or description of a person who is, or is depicted as, under 18 years of age, where the person is engaged in sexual conduct, participates in or assists another person to participate in sexual conduct. Real or simulated images showing or describing the body or parts of a person in a manner that amounts to or that may be used for purposes of sexual exploitation are also child pornography.⁶⁷ Sexual conduct includes real or simulated sexual intercourse, undue display of genitals or the anal region, sexual contact involving intimate body parts, oral genital contact or oral anal contact.⁶⁸

Films and publications are broadly defined under this Act. A film includes any sequence of visual images recorded on any substance, such as film, magnetic tape, disk or other material; soundtracks and any exhibited illustrations associated with any film; or any picture

intended for exhibition using a mechanical, electronic or other device.⁶⁹ A publication⁷⁰ includes: (1) newspapers, books, periodicals, pamphlets, posters or other printed matter; (2) writing or typescript that has been duplicated in any manner; (3) drawings, pictures, illustrations, paintings, prints, photographs, engravings or lithographs; (4) any record, magnetic tape or soundtrack that is not associated with a film, or any other object in or on which sound has been recorded for reproduction; (5) computer software that is not a film; (6) the cover or packaging of a film; (7) any figure, carving, statue or model; or (8) any message or communication, including a visual presentation,⁷¹ placed on any distributed network, including but not limited to the Internet.⁷²

It is illegal to possess, create, produce, contribute to or assist in the creation or production of; import, or take steps to procure, obtain or access; or knowingly export, broadcast or distribute or cause to be exported, broadcast or distributed a film or publication that contains child pornography or that advocates, advertises or promotes child pornography or the sexual exploitation of children⁷³ (a very detailed definition of sexual exploitation of children is provided in both the *Criminal Law (Sexual Offences) Amendment Bill* and the *Children's Act*, which are yet to be enacted). The law supplies definitions for some of these terms: possession includes keeping or storing in or on a computer, computer system, or computer data storage medium, and also having custody, control or supervision on behalf of another person.⁷⁴ Similarly, distribute includes selling, renting out, offering or keeping for sale or hire.⁷⁵ Offenders may be punished with a fine, up to 10 years' imprisonment, or both.⁷⁶ In prosecuting these offences, if it is proved that a registered subscriber or user placed, accessed or attempted to access child pornography through a distributed network, including the Internet, it shall be presumed that the registered subscriber or user placed, accessed or attempted to access the child pornography, in absence of evidence to the contrary.⁷⁷

The law also makes it illegal for a person with knowledge or reason to suspect that any of the above offences have been or are being committed to fail to report this knowledge or suspicion to the police, or fail to furnish information when requested by the police.⁷⁸ Violators may be punished with a fine, up to five years' imprisonment, or both.⁷⁹ The National Director of Public Prosecutions must provide written authority before this offence may be prosecuted.⁸⁰ The Films and Publications Board must also refer any submitted film or publication containing child pornography to the police for prosecution.⁸¹

South African law also regulates ISPs and requires every ISP to register with the Films and Publications Board⁸² and take steps to prevent their services from being used to host

or distribute child pornography.⁸³ If an ISP knows that its services are being used to host or distribute child pornography, it must take reasonable steps to prevent access to the child pornography;⁸⁴ report the presence of child pornography to the police, as well as particulars of the person maintaining, hosting, distributing or in any manner contributing to the Internet address;⁸⁵ and preserve evidence for purposes of investigation and prosecution.⁸⁶ At the request of the police, an ISP must provide information about users who gained or attempted to gain access to an Internet address that contains child pornography.⁸⁷ Failure to comply with any of these requirements may result in a fine, up to five years' imprisonment, or both.⁸⁸

Finally, this law provides for extraterritorial jurisdiction, which allows South Africa to prosecute its citizens or permanent residents who commit any of these offences outside South Africa, as if the offence had been committed in South Africa.⁸⁹

Extraterritorial Legislation

As mentioned above, South African law has extraterritorial legislation for offences related to child pornography. In addition, the *Criminal Law (Sexual Offences) Amendment Bill* and the *Children's Act*, once enacted, will include extraterritorial jurisdiction over all South African citizens or permanent residents who violate their provisions outside South Africa,⁹⁰ provided that the person could not be convicted for an offence if s/he has been tried for the same offence in the country where the offence was committed.⁹¹

Child Protection Units

The Child Protection Unit (CPU) was established in 1986 with a view to preventing and combating crimes against children, as well as rendering services to help the child victim. Over the years it became clear that the services provided by the CPU needed to be expanded to include adult victims of family violence and sexual offences. This led to the establishment of the Family Violence, Child Protection and Sexual Offences Unit (FCS) in 1995. However, in 2006 a unilateral decision, with no consultation with civil society, was made to restructure the FCS units. Reasons given included the need to strengthen expertise at local police station level, as the specialised officers may be deployed to local police stations. According to many legal experts and child protection organisations, this could

severely compromise the fight against child abuse, as it is feared that the specialised skills of the FCS will be lost and effective policing in crimes against children will be undermined, since dealing with such offences only at the local police level may not allow for the effective exchange of information and tracking of criminals.

South Africa has designated Sexual Offences Courts to reduce further traumatisation of victims. They employ victim-friendly practices and include a monitoring and reporting system.⁹² Many child welfare social workers have been trained as intermediaries to assist children during court proceedings, and they also work closely with the social worker involved in the investigation of the case to further minimise the traumatic process for the child victim. However, the Sexual Offences Courts are under-resourced, which often results in delays and inadequate preparation of children for the criminal proceedings. Intermediaries are not always available, and not all courts have child-friendly procedures in place. A possible restructuring of these courts is being studied to enhance the services provided.

The importance of victim and witness protection systems

The National Prosecuting Authority reported that child victims of sexual crimes often withdraw the charges against perpetrators for reasons such as fear; family pressure; guilt, especially if the abuser is the main breadwinner in the family; lack of support when reporting the matter; the impression that they are not believed; and intimidation from the offender.⁹³ As such, it is of great concern that the provisions within the *Criminal Law (Sexual Offences) Amendment Bill* pertaining to victim protection be removed. It is hoped that a public hearing will take place with a view to reintegrating them before the Bill is enacted.

Support Services for Children

While South Africa has a broad network of child protection organisations in all provinces, as well as a well-designed referral system for children in need of care and protection, support and rehabilitation services for children escaping CSEC (including trafficking for sexual purposes) are extremely deficient. In the past two years, child protection organisations such as CWSA and Childline have accompanied police raids of brothels, etc., in search of child victims of prostitution and trafficking. These activities are generally highly successful in rescuing victimised

children, but difficulties arise regarding their subsequent placement. The facilities available for their temporary placement and care are few and usually lack specialised personnel to provide adequate psychosocial support for this vulnerable group of children. The children often run away after some time, which places them at further risk of abuse and also impedes the prosecution of offenders, as prosecutions cannot take place if the child victim absconds. Another major gap in the child protection services in South Africa refer to the poor salaries and high staff turnover of social workers: they receive inadequate training, supervision, support and debriefing, and have large workloads - on average, only one social worker is available to assist 200 families.

Aside from providing some counselling services for children and running a programmes for perpetrators of abuse, Childline receives reports and enquiries regarding child abuse via their crisis line. These reports are referred to child welfare organisations or to the Department of Social Development for investigation and intervention. Social workers employed by CWSA member organisations are authorised to initiate court proceedings and to investigate suitable care options for children. CWSA has received funding to conduct training in psychosocial support and care for child victims of commercial sexual exploitation; a partnership with Childline is being discussed in order to develop a model of care for child and youth care centres.

The House Drop-in Centre located in Hillbrow, Johannesburg, rescues children and young women from CSE and drug abuse, and also runs a one-stop centre that offers meals, overnight shelter, individual and group counselling, and HIV/AIDS education.

The House also operates a three-month shelter programme where employment and life skills are taught.⁹⁴ In addition, Kids Haven is a residential shelter for abused and abandoned children who have been living on the street. It provides counselling services aimed at rehabilitation for children and their families.⁹⁵

Finally, the Thembalethu Life Skills Centre in Johannesburg collaborates with the police and the Department of Justice to provide guidance to child victims of sexual abuse and exploitation during court appearances. The Centre also reunites the children with their parents and provides them skills training in “sewing, cooking, hairdressing, home nursing, dress making and crafts”.⁹⁶ The Child Witness Project, run by the NGO Resource Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), also prepares child victims of sexual abuse or exploitation and their caregivers for testifying in Sexual Offences Courts.⁹⁶

Training Law Enforcement Personnel

The restructuring of the Family Violence, Child Protection and Sexual Offences Unit has implications for the trainings undertaken within the South African Police Service on how to combat CSEC crimes. SAPS has expressed the intention of broadening training of police officers on investigation of child abuse cases at local level, but no definite plan has been presented to date.

During 2004, the International Centre for Missing and Exploited Children, Interpol and Microsoft trained members of the FCS on how to tackle crimes against children committed through the use of the Internet. The trained officers were dispatched to different local police stations after FCS broke up.

The Ministry of Home Affairs announced that a larger number of police officers are undergoing specialised training to deal sensitively with cases of violence against women and children.⁹⁷



PRIORITY ACTIONS REQUIRED

- ✦ The priority areas identified in the *National Policy Framework and Strategic Plan for the Prevention and Management of Child Abuse, Neglect and Exploitation* must now be translated into action through adequate allocation of resources and support from relevant government departments, especially the Department of Social Development. It is hoped that the activities planned, especially those related to commercial sexual exploitation of children, do not fail to materialise, as happened in the case of the 1997 NPA against CSEC.
- ✦ Apart from the Department of Social Development, other key government departments need to effectively engage in action against CSEC and participate in the work undertaken by the National Child Protection Committee and its provincial and local committees: more active involvement of the Department of Education; Health; Home Affairs; and Labour is essential for effective and orchestrated action against the commercial sexual exploitation of children in South Africa. The establishment and strengthening of these committees in all provinces as well as at local level is also recommended.
- ✦ Forums that focus specifically on commercial sexual exploitation of children - such as the Gauteng CSEC Networking Forum - need to be replicated in other provinces; this requires governmental support in terms of financial and technical resources, as well as assistance from the Department of Social Development, law enforcement agencies and health services.
- ✦ The enactment of the *Criminal Law (Sexual Offences) Amendment Bill* and the *Children's Act* must be expedited so that children in South Africa are adequately protected against prostitution and trafficking. Before official adoption, provisions must be included in the former so that a) it is compulsory for courts to provide intermediaries when interviewing children during court proceedings; and b) it is compulsory to provide proper protection mechanisms for child witnesses and victims.
- ✦ As part of the restructuring of the Family Violence, Child Protection and Sexual Offences Unit, it is necessary to clearly define the system whereby police officers trained to deal with child abuse and CSEC will be available in every police station. Furthermore, such a system should facilitate consultations between the police, service providers and NGOs.

- Resources must be made available so that all Sexual Offences Courts are able to provide training for judges, prosecutors, interpreters and social workers on how to tackle CSEC crimes and deal with child victims. It is also very important that children testify on-camera instead of in open court, a procedure that is not yet followed in all courts around the country. These measures will reduce secondary trauma and enhance the ability of child victims to tell their story, thus improving rates of conviction. Collaboration between prosecutors, police and social workers should also be enhanced.
- Training on how to provide adequate support and rehabilitation services for children rescued from commercial sexual exploitation must be systematically provided to social workers and caregivers. Their excessive workloads must also be speedily addressed through the recruitment of more professionals. In addition, a much larger number of specialised placement facilities must be made available for rescued children.
- A monitoring board should be set up to specifically support implementation of the law against child pornography and to formulate initiatives to tackle child pornography. Members of the Films and Publications Board, government departments working on CSEC as well as key role players within civil society should be part of such a board. The board should not only serve as a monitoring body but should also conduct lobbying and advocacy as deemed necessary – for instance, by liaising with the Internet Service Association of South Africa to block access to all websites that show child pornographic materials.
- There is a need to provide information to the public regarding child safety online and child pornography, especially information on how to identify transgressions, report and act on them.
- South Africa should undertake comprehensive national research into the causes and extent of both internal and external trafficking in children for sexual purposes in order to inform adequate policies and interventions. Further, models of best practices in tackling the problem need to be replicated.
- It is also necessary to conduct research on child sex tourism in order to assess the scope and magnitude of the problem and devise appropriate preventative measures. In addition, support is required for organisations promoting the adoption and implementation of the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*.
- Programmes to enhance gender sensitivity should be undertaken by human rights organisations together with the Government, especially focusing on its impacts on commercial sexual exploitation of children and other child rights concerns.
- HIV/AIDS interventions should consider the close linkages between CSEC and HIV/AIDS in the country so that appropriate measures will be adopted to protect children from exploitation in commercial sex and to halt the cycle of spread of the disease.

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- ⁷⁹ Ibid. Section 15(a), amending the *Films and Publications Act*, 1996, Section 30(1).
- ⁸⁰ Ibid. Section 11(b), amending the *Films and Publications Act*, 1996, Section 27(2) and the *Films and Publications Amendment Act*, 1999, Section 8.
- ⁸¹ Ibid. Section 11(d), inserting into the *Films and Publications Act*, 1996, Section 27(4).
- ⁸² Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(1)(a).
- ⁸³ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(1)(b).
- ⁸⁴ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(2)(a).
- ⁸⁵ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(2)(b).
- ⁸⁶ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(2)(c).
- ⁸⁷ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(3).
- ⁸⁸ Ibid. Section 12, inserting into the *Films and Publications Act*, 1996, Section 27A(4), and *Films and Publications Amendment Act*, 2004, Section 15(a), amending the *Films and Publications Act*, 1996, Section 30(1).
- ⁸⁹ Ibid. Section 16, inserting into the *Films and Publications Act*, 1996, Section 30A. ⁹¹
- ⁹⁰ *Criminal Law (Sexual Offences) Amendment Bill*, 2003, Section 22(1). Also: *Children's Act* of 2005, Chapter 18.
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