

SOUTH AFRICA'S OBLIGATIONS REGARDING SEXUAL EXPLOITATION OF CHILDREN

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Table of contents

List of abbreviations.....	i
1. Introduction.....	1
2. Special circumstances created by international events.....	2
3. Current position and regarding child-	
3.1 Pornography.....	5
3.2 Prostitution.....	7
4. Sex Tourism.....	10
5. Deficiency in current legislation.....	13
6. Prosecution.....	14
7. Initiatives taken by the South African Government.....	16
8. Evaluation.....	19
9. Conclusion.....	21
10. Bibliography	

LIST OF ABBREVIATIONS

ACRWC	African Charter on the Rights and Welfare of the Child
CRC	Convention on the Rights of the Child
CRIN	Child Rights International Newsletter
FTTSA	Fair Trade and Tourism South Africa
FIFA	International Football Federation
NGO	Non Government Organisation
ILO	International Labour Organisation
SIWSAG	Sex Industry Worker Safety Action Group
UNICEF	United Nations Children's Fund

"There can be no keener revelation of a society's soul than the way in which it treats its children"-Nelson Mandela.¹

¹ Former South African President

1 Introduction

Trafficking in children and the sexual exploitation of children is often referred to as modern-day slavery.² South Africa is a state party to both the Convention on the Rights of the Child³ and the African Charter on the Rights and Welfare of the Child.⁴ Thus the South African government has an obligation to take effective measures to protect not only South African children but all children within its borders. Article 34 of the CRC stipulates that Governments should protect children from all forms of exploitation, sexual exploitation and sexual abuse, including the use of children in the sex trade such as prostitution and pornography.⁵ This provision in the Convention is augmented by the Optional Protocol on the selling of children, child prostitution and child pornography. The provisions of Article 34 apply in conjunction with Article 36 that obliges state parties to protect the child against all forms of exploitation prejudicial to any aspects of the child's welfare.⁶

Article 16 of the ACRWC states that state parties to the present Charter should take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while also caring for the child. Furthermore Article 27 places an obligation on state parties to the present Charter to undertake to protect the child from all forms of sexual exploitation and sexual abuse and should in particular take measures to prevent:

- (a) the inducement, coercion or encouragement of a child to engage in any sexual activity;
- (b) the use of children in prostitution or other sexual practices;
- (c) the use of children in pornographic activities, performances and materials.

South Africa is a State Party to both these conventions

² Kreston S "Trafficking in children in South Africa: an analysis of pending legislation" 14;Solomons2006 www.parlement.gov.za/content/womans_parlement_reportpdf.

³ Further known as the CRC.

⁴ Further known as the ACRWC.

⁵ Van Bueren 1995 *International Journal of Children's Rights* 52.

⁶ Hodgkin and Newell *Implementation Handbook for the CRC* 481.

The *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007, the *Films and Publications Act* 65 of 1996 as well as the *Children's Act* 38 of 2005 contain measures to protect children from being sexually exploited. However, major international events such as the 2010 FIFA Soccer World Cup create special circumstances for practices such as sex tourism, and an influx of child pornography and prostitution based on the demand for cheap sex. The prompt prosecution of individuals charged with those crimes is an essential part of protecting children from being sexually exploited during international events, since they usually span over a period of only six to eight weeks.

This research aims to evaluate if the South African legislation and initiatives are sufficient to prevent and combat sexual exploitation of children during major international events and to determine whether the legislation and initiatives comply with the international obligations placed upon South Africa by international instruments.

2 Special circumstances created by international events

The various factors that contribute to children's sexual exploitation are diverse and encompass both supply and demand factors. Those factors are located in the political, social, economic and cultural structures within societies, both in South Africa and elsewhere in the world.⁷ The concept of 'demand' for sexual services and trafficking vary with regard to a diverse range of motivations and interests: from those who recruit, organise and profit from the sexual exploitation of women and children, to those who utilise their services.⁸ Children's sexual exploitation is generally viewed from the supply side, focusing on the factors in their environment that make them vulnerable, such as poverty and post-war conflict. It is however also necessary to focus on the demand side since it determines how and where children will be sexually exploited.

Major international sporting events such as the 2010 FIFA Soccer World Cup is one of the factors that escalate the demand for children to be exploited. One of the major challenges created by international events is how to deal with trafficking in persons and more specifically

⁷ Sandler and Sepel: "*Violence against children: Sexual Abuse*" 213.

⁸ Anderson and O'Connell Davidson "*Is Trafficking in Human Beings Demand Driven? Multi-Country Study.*"

trafficking in children. This is a global problem which South Africa cannot escape from.⁹ The trafficking in children is a direct result of the demand for children for exploitation purposes being increased during the major international sporting events, due to the influx of foreigners into South Africa.

The sexual exploitation of children for economic purposes is amongst the worst forms of human rights abuses.¹⁰ The UN Protocol on the Prevention and Suppression of the Trafficking in Persons¹¹ defines the trafficking in children as the recruitment, transportation transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, or abduction, or fraud, or deception or the abuse of power or of a position of vulnerability or the giving or receiving of payment or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.¹² When dealing with the trafficking in children, the means used to traffic children are irrelevant. If the purpose is exploitation it is deemed to be trafficking.¹³ Section 1 of the *Children's Act*¹⁴ defines commercial sexual exploitation of children as the procurement of a child to perform sexual activities for financial or other reward, 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 it includes the trafficking of a child for use in sexual activities including prostitution or pornography.¹⁵

Children are sexually exploited when a person unlawfully and intentionally engages the services of a child, either with or without the child's consent for financial or other reward, favour or compensation to either the child or a third person for the purpose of engaging in a sexual act with the child, irrespective of whether the sexual act was committed or not, or by committing a sexual act with the child. The *Children's Act* defines the commercial exploitation of children as the procurement of a child to perform sexual activities for financial or other reward, including

⁹ Horn *South Africa's Legal Compliance with its International obligations with regard to child trafficking* 70; Goliath "Human Trafficking: Southern African Perspective" 3-4.

¹⁰ Article 3 of the Convention on the Worst forms of Child Labour; Defreis EF "protocol to prevent, suppress and Punish Trafficking in Persons: A new approach" 2003-2004 *International and Comparative law* 485.

¹¹ South Africa signed the Protocol on 14 December 2000 and ratified it on the 20th of February 2004.

¹² Art 3(a).

¹³ Art 3(c).

¹⁴ *Children's Act* 38 of 2005.

¹⁵ Section 1 of the Act.

acts of pornography or prostitution, irrespective of whether the reward is claimed by, payable to or shared by the procurer, the child, the parent or caregiver of the child, or any other person.¹⁶ The act makes specific provision for the trafficking in children.¹⁷

¹⁶ Boezaart *Child Law in South Africa* 554.

¹⁷ S284 and 285.

South Africa is a transit and destination country for the trafficking of children.¹⁸ It is feared that during major international events, such as the 2010 FIFA Soccer World Cup, children would be trafficked into South Africa for the sole purpose of being sexually exploited, and that the government will have to deal with the after effects of hundreds of children from foreign countries being 'dumped' after the games.¹⁹ Section 305(3) of the Act stipulates that it is an offence to abuse, neglect and abandon a child whom a person has parental rights and responsibilities over. Two main factors that have to be taken into account when dealing with the commercial exploitation of children are prostitution and pornography. The question that should be raised afterwards is whether the current legislation relating thereto did effectively protect children from being sexually exploited, taking into consideration the added fears of children being trafficked into South Africa for the purpose of being exploited during the 2010 FIFA Soccer World Cup.

¹⁸ Boezaart *Child Law in South Africa* 538.

¹⁹ Dottridge "Sexual Exploitation of Children and Adolescents" 9.

3 Current position regarding child pornography and prostitution

3.1 Pornography

The exploitation of children for purposes of prostitution and pornography is a growing industry in South Africa.²⁰ The real extent of the child pornography problem in South Africa is not known, and it is important to emphasise that the full reality will never be known, due to the clandestine nature of the crime. What is commonly referred to as 'child pornography', is the depiction of sexual abuse, exploitation and in some instances, torture of children.²¹ There is no country in the world where the distribution of this type of content is not illegal; which makes it the only area in which a degree of global consensus has been reached.²²

The *Film and Publications Act*²³ defined child pornography to include any image, real or simulated, however created, depicting a person who is or who is shown as being below the age of 18 engaged in sexual conduct or display of genitals amounting to sexual exploitation, or participating in, or assisting another person to engage in sexual conduct which amounts to exploitation. This act has been amended by the *Film and Publication Amendment Act* 18 of 2004, as a result of the decision in *De Reuck v Director of Public Prosecution Witwatersrand Local Division*.²⁴ The accused was charged with *inter alia* the possession of child pornography. He challenged the constitutionality of the sections relating to the possession and creation of child pornography. His application failed, but due to the controversy raised by his application to the Constitutional Court the definition of child pornography was amended to:

²⁰ Dottridge "Sexual Exploitation of Children and Adolescents" 9

²¹ Bezuidenhout and Boniface 2004 *Stellenbosch Law Review* 2; Hodgkin and Newell *Implementation Handbook for the CRC* 455; Article 37 of the CRC states that State Parties shall ensure no child shall be subject to cruel, degrading or inhumane treatment.

²² Nel 2008 *Comparative and International Law Journal of South Africa* 6

²³ *Film and Publications Act* 65 of 1996

²⁴ *De Reuck v Director of public prosecution Witwatersrand Local Division* 2003 (2) SCACR 445 (CC)

'Child Pornography includes any image, however created, or any description of a person real or simulated who is or who is being depicted as being, under the age of 18 years-

- (i) Engaged in sexual contact
- (ii) Participating in, or assisting another person to participate in sexual conduct or;
- (iii) Showing or describing the body, or parts of the body, of such a person in a manner or circumstances which, within the content, amounts to sexual exploitation, or in such a manner that is capable of being used for the purpose of sexual exploitation.

Section 27 of the *Film and Publications Act* prohibits and criminalises the possession, creation or production, importing or in any manner taking steps to procure, obtain or access or knowingly exporting, broadcasting or distributing a film or publication which contains child pornography or which advocates, advertises or promotes child pornography or the sexual exploitation of children.

Section 18(1)(a) of the *Criminal Law (sexual offences and related matters) Amendment Act* criminalises the manufacture, production, possession, distribution or facilitation of the manufacture, production, possession, or distribution of an article which is exclusively intended to facilitate the commission of a sexual act with or by a child. The Act criminalises the grooming of a child for sexual purposes as well, and stipulates in Section 18(1)(a)(i-iii) what acts are considered to be "grooming".

The *Criminal Law (Sexual Offences and Related Matters) Amendment Act*²⁵ deals specifically with the fact that consent cannot be averred as a defence when children are exploited for the purpose of prostitution or pornography.²⁶

The internet has created an environment where child sex exploiters can network, and has emerged as a route through which children can be targeted. At the same time it provides pornographers and sex exploiters with much easier access to children. However, the very public nature of the internet has also allowed law enforcement agencies to track and trace child pornography; and it is this benefit that has enabled cross-border investigations by law enforcement agencies around the world. Child pornography on the internet is regulated and criminalised by the *Electronic Communications and Transactions Act* 25 of 2002.

²⁵ *Criminal Law (sexual offences and related matters) Amendment Act* 32 of 2007;Snyman *Criminal law* 362.

²⁶ S17.

Prior to the commencement of this act, crimes such as the possession and distribution of child pornography could be prosecuted in terms of s 27(1) and s 28 of the *Films and Publications Act* 65 of 1996. The incorporation of the prohibition of child pornography into various legislation indicates that the legislator is serious regarding the intent to protect children from this form of exploitation.²⁷

3.2 *Prostitution*

Children are increasingly becoming the victims of sexual abuse, within their family contexts as well as outside the family context.²⁸ This reflects an excessive disregard for the human rights of children.²⁹ Some children are kidnapped and taken to foreign countries to be used as child prostitutes.³⁰ An additional problem is that an increasing group of unemployed children and young people could choose prostitution as a career.³¹ Child prostitutes are regarded as victims of their circumstances who are forced into prostitution in order to survive.³² Child prostitution is not exclusively a form of child abuse.³³ It is increasingly a form of labour performed for income and often survival. Many young women turn to prostitution as a means of supporting themselves and their families financially. Prostitution is often the only solution seen by children that are heads of child headed households.³⁴

Child prostitution is increasing alarmingly in South Africa. Various reasons for the increase include poverty due to a lack of employment of adults and children above the school-leaving age,³⁵ a breakdown in family support mechanisms, gender inequality, an increasing demand for cheap sex, and HIV/AIDS.³⁶

²⁷ *De Reuck v Director of public prosecution Witwatersrand Local Division* 2003 (2) SCACR 445 (CC)

²⁸ Molo Songololo "The Trafficking of Children for Purposes of Sexual Exploitation – South Africa: A Report" 2.

²⁹ Molo Songololo "The Trafficking of Children for Purposes of Sexual Exploitation – South Africa: A Report" 2.

³⁰ Bezuidenhout and Boniface 2004 *Stellenbosch Law Review* 2

³¹ Bezuidenhout and Boniface 2004 *Stellenbosch Law Review* 2

³² Bezuidenhout and Boniface 2004 *Stellenbosch Law Review* 2

³³ Perschler-Desai 2001 *African Security Review* 10

³⁴ Perschler-Desai 2001 *African Security Review* 10

³⁵ The *School Act* 84 of 1996 stipulates that this age is 16.

³⁶ Perschler-Desai 2001 *African Security Review* 10.

The sexual exploitation of children is generally regarded as the “use of a child for sexual purposes in exchange for cash or favours between the customer, intermediary or agent and others (parent, family member, procurer, and teacher) that profit from the trade in children for these purposes”.³⁷ When considering child exploitation in this context, the child is therefore not committing an act of prostitution. It is the person exploiting the child as well as those who facilitate the exploitation who commit the act of prostitution.³⁸ Child exploitation is often viewed by some as a purely economic activity, in the sense that a child’s labour force is exploited through the exploitation of his or her sexuality. It has on the other hand been argued that to use “child prostitution” as a descriptive term is “inaccurate because it implies consent” and that the sexually exploited child “is rather victimised into sexual slavery”.³⁹ There is however an alternate view that “child prostitution is both an abuse and a form of work, carried out by children in order to satisfy their needs; these needs could be those of their survival and frequently their families”.⁴⁰

The *Sexual Offences Act* 32 of 2007 contains various prohibitions relating to brothels and prostitution.⁴¹ Those offences are not specifically aimed at children, but those sections have been interpreted so that children may also be regarded as victims of or involved in those offences.⁴² Section 10 of the Act criminalises various acts relating to prostitution. The concept “pimp” is described in section 23 of the Act. Section 10 of the Act deals specifically with pimping or “procuration”. It stipulates that a person is guilty of an offence if this person:

- (i) procures or tries to procure a woman or a young girl to commit unlawful carnal intercourse with another person (excluding the pimp);
- (ii) in any way helps to bring about such intercourse;
- (iii) inveigles or entices a woman or young girl to a brothel for the purposes of unlawful carnal intercourse or prostitution;
- (iv) hides the inveigled or enticed woman or young girl in such a house or place; procures or tries to procure a woman or young girl to become a common prostitute; procures or tries to procure a woman or young girl to become an inmate of a brothel;
- (v) applies or administers a drug, intoxicating liquor, matter or thing to a woman or young girl or causes her to take it with the intent to stupefy her; or

³⁷ Perschler-Desai 2001 *African Security Review* 10.

³⁸ UNICEF “Profiting from Abuse: An investigation into the sexual exploitation of our children” 20.

³⁹ Report of the UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography to the Social and Economic Council. 2-3.

⁴⁰ Perschler-Desai 2001 *African Security Review* 10.

⁴¹ See for example S1, S2 and S10.

⁴² Horn *South Africa’s Legal Compliance with its International obligations with regard to child trafficking* 92; Boezaart *Child Law in South Africa* 535.

- (vi) overpowers a woman or young girl to enable another person (excluding the pimp) to have unlawful carnal intercourse with her.

In cases where child prostitution is an issue, the pimps also transgress section 12 of the Act. Section 12 deals with detaining a woman or young girl against her will in a house or at a place or in a brothel for purposes of prostitution.⁴³

The Act also criminalises enticement in sections 19(a) and 19(b) as the offence of enticing, soliciting, or importuning a person in a public place for immoral purposes, or as the prostitute wilfully and openly exhibiting herself in indecent clothes or in an indecent manner in a doorway or at a window or a place where she can be seen from the street, or is in the public view. Sections 19(a) and 19(b) of the Act are deficient in that they only apply to adult persons who entice children for sexual purposes, and do not cover children who solicit adults. The definition of “soliciting” should include behaviour by which children who are minors solicit adults for immoral purposes, or by which adults entice children to commit sexual acts.⁴⁴

The involvement of organised criminal groupings and crime syndicates, both local and foreign, in the trafficking of children for sexual purposes, has become evident. Gang involvement in child sexual exploitation has escalated this problem, indicating that children are most commonly prostituted on the street.⁴⁵ There have also been reports of children being held in cheaper brothel hotels where they are sexually exploited.⁴⁶ The *Prevention of Organised Crime Act*⁴⁷ may be used to regulate and prevent crimes such as commercial sex with children, the sexual exploitation of children, and child prostitution. Child pornography and prostitution are problems that the South African legislator and government are faced with everyday; however major international sporting events escalate this problem, as “sex tourism” has become a worldwide industry.

⁴³ In terms of this section, the woman or young girl will be considered detained against her will if she is under the age of 16 years; if she is 16 years or older but under the age of 21 years; and she is taken away or detained against her will or against the will of her father or mother or the person who lawfully cares for her.

⁴⁴ S12(a)(iii).

⁴⁵ Bezuidenhout and Boniface 2004 *Stellenbosch Law Review* 2.

⁴⁶ Molo Songololo “The Trafficking of Children for Purposes of Sexual Exploitation – South Africa: A Report” 3.

⁴⁷ *Prevention of Organised Crime Act 24 of 1999*.

4 Sex tourism

“Child sex tourism” is defined as “the commercial sexual exploitation of children by persons who travel from their own country to another usually less developed country to engage in sexual acts with children.”⁴⁸

As a result of the sex tourism industry, children are raped, sodomised and abused.⁴⁹ They are not permitted or are not able to attend school or receive basic health care or nutrition, and they are denied the safety and security of a decent childhood.⁵⁰ This is a violation of basic human rights as stipulated in the Bill of Rights.⁵¹ Those children may be exposed to sexually transmitted diseases, including HIV and AIDS. Many of those young people lose their lives, but all of them lose their childhood.⁵²

Sex tourists benefit from the privacy of committing those acts free from the social constraints of their home countries.⁵³ Many persuade themselves that in a foreign country social and moral restraints can be discarded, along with the belief that one will not be held responsible for his behaviour.⁵⁴ Others claim that they are helping those children financially and that without the financial benefit the children might not have enough food or basic necessities to survive.⁵⁵

Sex tourism is not a recent phenomenon. Over the past decades the industry has shown daunting growth: “there is no hemisphere, continent, or region unaffected by the child-sex trade.” It is difficult to measure the exact number of children affected by sex tourism and the exact number of sex tourists.⁵⁶ Estimates vary greatly; nevertheless, there is no dispute that the industry is growing and that the ages of the victims are decreasing.⁵⁷

⁴⁸ Molo Songololo” The Trafficking of Children for Purposes of Sexual Exploitation – South Africa: A Report”.

⁴⁹ *Farley St John’s Law Reveiw 2005.*

⁵⁰ *Farley St John’s Law Reveiw 2005.*

⁵¹ The South African constitution states that every person has a right to dignity this right includes the protection of children against physical and mental abuse, especially sexual abuse.

⁵² Horn *South Africa’s Legal Compliance with its International obligations with regard to child trafficking* 90.

⁵³ *Farley St John’s Law Reveiw 2005.*

⁵⁴ *Farley St John’s Law Review* 79:445.

⁵⁵ *Farley St John’s Law Review* 79:445.

⁵⁶ *Farley St John’s Law Review* 79:445.

⁵⁷ Klain 1999 www.missingkids.com.

The patterns of the trafficking of children for purposes of being sexually exploited either for prostitution or sex tourism, occur regionally, as in Southern Africa, where South Africa is the country of destination for children trafficked from other Southern African countries.⁵⁸ The majority of children are trafficked by means of local and regional networks between African states and within the borders of states, from rural to urban areas.⁵⁹

Under South African law it is an offence to promote child sex tours.⁶⁰ A natural or juristic person who makes or organises any travel arrangements for or on behalf of a third person,⁶¹ with the intention of facilitating the commission of any sexual act with a child,⁶² is guilty of sex tourism. A natural or juristic person who prints or publishes any information that is intended to promote or facilitate conduct that would constitute a sexual act with a child is also guilty of promoting child sex tours. Essential elements of this crime that have to be proven are unlawfulness and intent.

South Africa was faced with an influx of tourists during the 2010 FIFA Soccer World Cup event and together with this an influx of “sex tourists”, thus it was essential for the government to take effective steps to protect children from being exploited. Even though the World Cup has already gone by it is important to develop effective child sex tourism legislation. It was crucial for sending countries to have incorporated extraterritorial jurisdiction into their legislation. Without that component states lack the ability to prosecute nationals for crimes committed abroad. The tourism industry of South Africa and various NGO’s have taken various steps to assist the government in this regard.

UNICEF and the ILO, in collaboration with Fair Trade and Tourism South Africa (FTTSA),⁶³ launched the International Code against the Commercial Sexual Exploitation of Children in Travel and Tourism on 8 June 2010.⁶⁴ This initiative was aimed at the protection of children from sex tourism, and the sexual exploitation that would result from it. Signatories to this code

⁵⁸ *Farley St John’s Law Review* 79:445.

⁵⁹ UNICEF 2001 www.unicef.org.

⁶⁰ S 17(6) *Criminal Law (sexual offences and related matters) Amendment Act* 32 of 2007.

⁶¹ whether the latter is resident within or outside the borders of South Africa.

⁶² whether with or without the consent of the child, irrespective of whether the act is committed or not.

⁶³ an independent non-profit organisation that promotes equitable and sustainable tourism development in the country.

⁶⁴ UNICEF 2001 www.unicef.org.

were required to raise awareness about commercial sexual exploitation of children in tourism during the 2010 FIFA World Cup, for example by placing material to make people aware of the problem, in hotel rooms and public spaces, and by inserting information into in-house publications.⁶⁵ The development of the code was done in collaboration with UNICEF, which provided technical support to produce the brochures that FTTSA distributed to signatories for further dissemination.⁶⁶ The compilation of acts protecting children from prostitution and actions relating thereto, cover and criminalise a vast number of crimes against children, although there are still areas that are lacking.

5 Deficiency in current legislation

The eagerly anticipated 2010 FIFA Soccer World Cup brought along a variety of challenges and issues which prompted the attention of the public as well as of decision-makers. One of the challenges was what the legislator would be doing to supplement the deficiency there might have been in the current legislation in relation to the protection of children against sexual exploitation. The legislation does however criminalise sexual exploitation in various acts.⁶⁷ It is thus the responsibility of the executives to ensure that the legislation is enforced.

The term 'child sexual exploitation' includes both technical and non-technical concepts of exploitation. This encompasses the financial exploitation of a child, as well as exploitation through taking advantage of a child's vulnerability.⁶⁸ Whilst offences such as rape are committed against children during acts of sexual exploitation the commission of those acts does not constitute child sexual exploitation. Child sexual exploitation should be distinguished from child sexual abuse since in occurrences of sexual exploitation of children there are elements of pecuniary gain, whether in the form of money or in kind.⁶⁹ Thus the legislator should ensure that legislation does not only deal with the acts of violence against the child but also with the essence of pecuniary gain acquired as a result of the exploitation of the child.⁷⁰

⁶⁵ UNICEF 2001 www.unicef.org.

⁶⁶ UNICEF 2001 www.unicef.org

⁶⁷ See for example the *Sexual Offences and Related Matters Amendment Act* 32 of 2007, the *Films and Publications Act* 65 of 1996 as well as the *Children's Act* 38 of 2005.

⁶⁸ UNICEF 2001 www.unicef.org

⁶⁹ UNICEF 2001 www.unicef.org

⁷⁰ UNICEF 2001 www.unicef.org.

The prompt prosecution of persons alleged to have committed sexual crimes against children was an essential part of protecting children from being exploited during the 2010 FIFA Soccer World Cup.

6 Prosecution

Prosecution of crimes that relate to the sexual exploitation of children had been and always will be a sensitive issue. Courts have adopted the practice of using intermediaries as well as closed-circuit television to try to avert the fear of the child for the perpetrator.⁷¹ The need to protect children has developed into specialised courts that are more child friendly and that have the objective to improve the inappropriate and insensitive treatment of the victims of especially sexually abused children.⁷² In camera proceedings, prohibition of publication of a child's identity, the using of intermediaries, closed-circuit television and one-way mirrors, have been instituted in the special courts.⁷³ With the utilisation of those technologies, the direct and scaring confrontation with the alleged perpetrator of the child victim, are being noted.

The establishment of special child friendly courts is a result of the recognition that children need special protection in court proceedings. Alternative measures have however to be taken during major international events such as the 2010 FIFA Soccer World Cup, not only as a solution for this demand, but also to satisfy the need to prosecute accused persons from other countries before they leave the country. Therefore the government should institute special courts to function for the duration of the event.

In normal circumstances, foreign citizens who are subject to court processes are prosecuted within the host nation's normal judicial system. However, during major international events, due to the influx of foreigners into a country within a period of time as short as one month, courts

⁷¹ S170A *Criminal Procedure Act* 51 of 1977.

⁷² South African Law Reform Commission Project 73 "Simplification of the Criminal procedure" 31 August 2002.

⁷³ South African Law Reform Commission Project 73 "Simplification of the Criminal procedure" 31 August 2002.

specifically dedicated for matters related to transgressions by visitors during the 2010 FIFA Soccer World Cup have been created.⁷⁴

The Department of Justice, in conjunction with the Justice Prevention and Security Cluster, which included the South African Police Service, the National Prosecuting Authority, the Legal Aid South Africa and the Judiciary, developed an Administration of Justice Plan to be implemented in order to deal with alleged offences associated with the 2010 FIFA Soccer World Cup.⁷⁵ There were a total of 56 dedicated courts, consisting of 37 district courts and 19 regional courts across all nine host cities.⁷⁶ Those courts were run by 110 magistrates, 260 prosecutors from the National Prosecuting Authority (NPA), 110 Legal Aid Attorneys from Legal Aid South Africa (LESA), 93 foreign language interpreters and 110 local language interpreters from the Department of Justice and Constitutional Development, 1140 Court Officials from the Department of Justice and Constitutional Development to assist with court proceedings, and 327 Court Orderlies from the South African Police Service.⁷⁷ The courts operated from 28 May 2010 until 25 July 2010. The courts operated from 07:45 in the morning until 23:00 in the evening, seven days a week. Over and above special courts functioning for 24 hours per day, the government and NGO's have taken various steps to ensure the safety of children.

The success of the special World Cup courts can be measured against the fact that two hundred and twenty three accused persons appeared before the courts in 172 cases processed nationally.⁷⁸ Of the 172 cases, 139 cases were finalized.⁷⁹ Of the 139 cases 104 resulted in convictions.⁸⁰ Due to a lack of sufficient evidence 28 cases were withdrawn, whilst seven cases resulted in acquittals.⁸¹ A further 33 cases have yet to be finalised.⁸²

⁷⁴ Radebe J www.justice.gov.za/m_speeches.

⁷⁵ GN 423 in GG 33208 of 21 May 2010.

⁷⁶ Radebe J 2010 www.justice.gov.za/m_speeches.

⁷⁷ Radebe J 2010 www.justice.gov.za/m_speeches.

⁷⁸ Radebe J 2010 www.justice.gov.za/m_speeches.

⁷⁹ Radebe J 2010 www.justice.gov.za/m_speeches.

⁸⁰ Radebe J 2010 www.justice.gov.za/m_speeches.

⁸¹ Radebe J 2010 www.justice.gov.za/m_speeches.

⁸² Radebe J 2010 www.justice.gov.za/m_speeches.

7 Initiatives taken by the South African Government and NGO's

The South African Government, in partnership with other role players, such as NGO's and the private sector, was committed to make the 2010 FIFA Soccer World Cup a safe and successful experience for citizens and visitors alike, including for children. They aimed to leave behind a lasting social, cultural and economic legacy for the country so that it would not be the last time that South Africa would host a major international event on such a scale.⁸³ Support to vulnerable children and women who would need protection was a priority in the preparations for the event, and an opportunity to strengthen national child protection systems that would benefit children for years to come.⁸⁴

The Government's Justice, Crime Prevention and Safety cluster coordinated national and provincial task teams on human trafficking.⁸⁵ Those teams consisted of the collaboration of international partners, police and border officials who were trained on issues relating to human trafficking.⁸⁶

The National Department of Social Development created a child protection action plan. This included the establishment of a National Government-NGO working group and task teams in host cities charged with the designing and implementing of local child protection plans.⁸⁷

International Organisations such as UNICEF collaborated with civil society and the private sector to support the government in developing and implementing measures to prevent and reduce the possible abuse, exploitation and trafficking of people. The concern regarding human trafficking escalated due to the special circumstances created by the 2010 FIFA Soccer World Cup, therefore it was essential to strengthen the child protection system to be an ongoing legacy of the global event.⁸⁸

⁸³ Radebe J 2010 www.justice.gov.za/m_speeches.

⁸⁴ UNICEF 2010 www.unicef.org.

⁸⁵ UNICEF 2010 www.unicef.org.

⁸⁶ UNICEF 2010 www.unicef.org.

⁸⁷ UNICEF 2010 www.unicef.org.

⁸⁸ UNICEF 2010 www.unicef.org.

The police, social workers, auxiliary social workers and child and youth care workers were the first to respond to children in need of care and protection.⁸⁹ During the soccer matches, emergency teams were deployed at essential positions in each of the host cities.⁹⁰ The number of children at risk of abuse and sexual exploitation in South Africa is continuously growing, thus it is fundamentally important that, in the long term, the capacity of those professionals has to be strengthened.⁹¹

The Department of Social Development, in collaboration with UNICEF, trained approximately 1000 social and child welfare workers from government and NGO's.⁹² This training focused on protocols and procedures for responding to children in need of care and protection, referral mechanisms to designated places of safety, legal and health assistance, and psycho-social care.⁹³

UNICEF launched a project exclusively focused on human trafficking. The Red Card Campaign, which aimed to create awareness of child abuse and exploitation and to urge members of the public to protect children, was initially launched by the International Labour Organisation (ILO) in 2002.⁹⁴ The symbol of the campaign, a 'red card', represented the red cards given to soccer players who severely violate the rules of the game, and are then

disqualified from further participation in a game.⁹⁵ The symbolism behind the red card indicated that exploitation of children would not be tolerated by South Africa during the 2010 FIFA Soccer World Cup.⁹⁶ Credit card sized little red cards with the slogan "Give the red card to child exploitation: Be aware and keep children safe", were handed out via service stations, hotels and car rental companies.⁹⁷ The cards provided contact details for reporting cases of child exploitation to the South African Police, and for referring children to nationally known children's protection service partners such as Childline and Child Welfare South Africa. The little red cards have also been distributed to children and adults by Love Life, Fair Trade and Tourism.

⁸⁹ UNICEF 2010 www.unicef.org.

⁹⁰ UNICEF 2010 www.unicef.org.

⁹¹ UNICEF 2010 www.unicef.org.

⁹² UNICEF 2010 www.unicef.org.

⁹³ UNICEF 2010 www.unicef.org.

⁹⁴ UNICEF 2010 www.unicef.org.

⁹⁵ UNICEF 2010 www.unicef.org.

⁹⁶ UNICEF 2010 www.unicef.org.

⁹⁷ UNICEF 2010 www.unicef.org.

The trafficking of children, and child prostitution, are tangible threats faced by South African society, not only for the duration of the 2010 FIFA Soccer World Cup, but continuously on a day to day basis. The internet, however, has created a broad spectrum of possibilities for children to be sexually exploited.

The Film and Publication Board was established by parliament to regulate the distribution of films and publications with the aim to protect children from exposure to inappropriate material.⁹⁸ Acting upon this mandate the Film and Publication Board created an internet hotline, which provides to members of the public an instrument whereby they can report any child pornography or sexual abuse images accidentally discovered on the internet.⁹⁹ This may also include child grooming activities hosted in the chat rooms, as contemplated by Section 18(1)(a)(i-iii) of the *Criminal Law (Sexual Offences and Related Matters) Amendment Act*.¹⁰⁰ The primary purpose of the internet hotline is to prevent the distribution of child pornography (images concerning the sexual abuse of children) when detected through the internet.¹⁰¹

The internet hotline forwards a detailed report related to child pornography, for prosecution, to the law enforcement agencies within the country.¹⁰² International networking and imminent partnerships allow action to be taken against child pornography on the internet hosted outside South Africa.

8 Evaluation

Major international events undoubtedly have a considerable effect on the economy as well as on civil society. Prior to the FIFA Soccer World Cup in Germany in 2006, substantial international concern existed that the event would contribute to a sharp increase in human trafficking for sexual exploitation; those fears were echoed during the 2010 FIFA Soccer World Cup in South Africa.¹⁰³ Child trafficking is a lucrative business and linked with criminal activity and corruption.¹⁰⁴ Trafficking always violates the child's right to grow up in a normal family

⁹⁸ Film and Publication board 2010 www.fpbprochild.org.za.

⁹⁹ Film and Publication board 2010 www.fpbprochild.org.za.

¹⁰⁰ Film and Publication board 2010 www.fpbprochild.org.za.

¹⁰¹ Film and Publication board 2010 www.fpbprochild.org.za.

¹⁰² Film and Publication board 2010 www.fpbprochild.org.za.

¹⁰³ Sutherland C 2010 www.ngopulse.org.

¹⁰⁴ UNICEF "The Yokohama Global Commitment" 2.

environment.¹⁰⁵ In addition, children who have been trafficked face a range of dangers, including violence and sexual abuse. Trafficked children are even arrested and detained as illegal aliens.¹⁰⁶ The fears of child trafficking and prostitution, echoed during the 2010 FIFA Soccer World Cup, did fortunately not become a reality due to the publicity surrounding the concern that heightened the awareness of children's rights to safety, and local communities who were made aware of local sexual exploitation of children and acted in harmony to protect their children.¹⁰⁷ There were also no reports received of large numbers of lost or strayed children, and the places of safety successfully cared for any children that had been taken in.¹⁰⁸ During the 2010 FIFA Soccer World Cup period no children were living and working on the streets in the host cities; resources had been made available to house them elsewhere.¹⁰⁹

During the 2006 FIFA Soccer World Cup in Germany an increase in human trafficking was expected, and it was concluded that an estimate of 40,000 foreign or forced prostitutes would enter Germany for the duration of the event.¹¹⁰ This, however, was unfounded and unrealistic.¹¹¹ In 2006 the number of known victims of trafficking for sexual exploitation in Germany was roundabout 1,000 persons per year.¹¹² Based on the assumption that only one out of ten cases of trafficking will ever be discovered, the 40,000 figure represented a very high estimate.¹¹³ Statistics on human trafficking during the 2010 FIFA Soccer World Cup in South Africa have not yet been made available; however, based upon the statistics obtained from Germany, it is expected that the number of children trafficked during the event will be much lower than estimated in the period approaching the event.

Prevention and awareness campaigns in conjunction with increased law enforcement efforts during the 2010 FIFA Soccer World Cup might have reduced the risk of trafficking of human

¹⁰⁵ Section 28(1)(b) of the *Constitution of the Republic of South Africa*, 1996.

¹⁰⁶ UNICEF "The Yokohama Global Commitment" 2.

¹⁰⁷ CRIN (Child Rights International Newsletter) July 2010 www.crc-sa.co.za.

¹⁰⁸ CRIN (Child Rights International Newsletter) July 2010 www.crc-sa.co.za.

¹⁰⁹ CRIN (Child Rights International Newsletter) JULY 2010 www.crc-sa.co.za.

¹¹⁰ Henning, Craggs, Larson "Draft report on Trafficking in human beings and the 2006 World Cup in Germany" Organisation for Migration September.

¹¹¹ Henning, Craggs, Larson 2006 "Draft report on Trafficking in human beings and the 2006 World Cup in Germany" Organisation for Migration.

¹¹² Henning, Craggs, Larson 2006 "Draft report on Trafficking in human beings and the 2006 World Cup in Germany" Organisation for Migration.

¹¹³ Henning, Craggs, Larson 2006 "Draft report on Trafficking in human beings and the 2006 World Cup in Germany" Organisation for Migration.

beings and the sexual exploitation of children.¹¹⁴ There is no doubt about the success of the awareness campaigns in warning both the general public and the (potential) clients of prostitutes, as well as, important to notice, policy makers regarding threats relating to human trafficking and the sexual exploitation of children.¹¹⁵

Major sports events may pose a good opportunity for public awareness and advocacy campaigns regarding the sexual exploitation of children. It is essential that an early and sound situation assessment with regard to the sexual exploitation of children, in cooperation with local experts from the police, the legislator, international organisations, and NGO's has to be conducted. All campaigns and projects, by the government as well as NGO's, should be launched with a purpose of future sustainability.

The practical assistance to victims of trafficking and sexual exploitation, is as important as effective legislative measures to protect victims.¹¹⁶ The effective transnational investigation as well as transnational jurisdiction to investigate and prosecute the crimes, as well as tackling the causes of trafficking in countries of origin, should not be neglected.¹¹⁷ Information campaigns are important, but should never be regarded as the sole solution to the sexual exploitation of children and the trafficking of human beings.

9 Conclusion

There are various international instruments aimed at the protection of children's rights;¹¹⁸ the CRC sets the standard for the universal protection of the rights of the child.¹¹⁹ The CRC adequately protects children from being trafficked and sexually exploited. South Africa has ratified the CRC, as well as the various other international instruments, thus placing an obligation on the government to monitor, promote and protect the rights of the child. The South African Constitution states that every person has a right to dignity;¹²⁰ this right includes the

¹¹⁴ SIWSAG 2009 www.pivotlegal.org.

¹¹⁵ SIWSAG 2009 www.pivotlegal.org.

¹¹⁶ SIWSAG 2009 www.pivotlegal.org

¹¹⁷ SIWSAG 2009 www.pivotlegal.org

¹¹⁸ See for example The CRC, ACRWC, ICCPR, The Convention on the Worst forms of child Labour.

¹¹⁹ Detric *Commentary on the UN CRC* 721.

¹²⁰ S10 *Constitution of the Republic of South Africa*, 1996

protection of children against physical and mental abuse, especially sexual abuse. Children are supposed to be granted special protection by the law and cannot be treated or dealt with in a similar way as adults within the criminal justice system. A wide range of behaviours have been criminalised in an attempt to protect children from sexual abuse and against their inherent vulnerabilities. It becomes clear from the above mentioned that the legislator attempted to criminalise all forms of sexual abuse relating to child pornography, which includes the criminalisation of “grooming” of children and “pimping”.

Actions taken by the state, NGO’s, and the private sector, often only focus on children who have been sexually exploited. However, it is essential to also take into consideration the other side, namely the causes for the demand for children’s sexual exploitation, as well as the conditions that, and the persons who create and fuel the demand. In addition there is also a need to establish intervention strategies that will reduce the demand from sex exploiters, in an effort to understand the complexity of the sexual exploitation of children.

It is clear that the legislature has taken the necessary measures to protect children against sexual exploitation. The conditions that make children vulnerable to child trafficking should however be taken into account, and effective measures to combat this should be put in place.

From now on it will largely be the responsibility of executives and government to fulfil the mandate allocated to them under the Constitution and the relevant International Conventions. It can only be hoped that lessons learnt from the 2010 FIFA Soccer World Cup will lead to the effective implementation of the Conventions South Africa is party to, the Constitution, the *Children’s Act*, and various other legislation in relation to the protection of children, together with all the resources needed.¹²¹

¹²¹ CRIN (Child Rights International Newsletter) JULY 2010 www.crc-sa.co.za.

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