



# **South Africa's input to the UN office Special Rapporteur on the sale and exploitation of children, including child prostitution, child pornography and other child sexual abuse material**

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1. What forms of existing societal norms, practices/behaviours (cultural, social, traditional or other) may explicitly or implicitly involve and /or manifest sale and sexual exploitation:

The country is governed by the Constitution, which promotes equality and non-discrimination, there are however instances where culture and tradition still continue to perpetuate societal norms, practices/behaviours that may have a negative impact on children, especially girl children, on how they perceive themselves as lesser equals to boys, and boys upholding toxic masculinity of superiority over the feminine gender.

Customary marriage of children under the age of 18 may be seen to imply sale or sexual exploitation of children. Furthermore, the practice of virginity testing has been argued in some settings to include sexual exploitation.

In a number of interventions, from different sectoral levels of communities, capacity and resilience are the cornerstone.

2. How is gender and gender identity incorporated in existing legislative and policy frameworks on the eradication and prevention of the sale and sexual exploitation of children?

The Inter sectoral Protocol on the Prevention and Management of violence on child abuse, neglect and exploitation is one of the key guiding international instrument in this regard for South Africa. This Protocol provide guidelines on managing the prevention and management of violence, child abuse, neglect and exploitation in order to render standardisation services to children in the communities.

In addition to the Inter-Sectoral Protocol, South Africa's Constitution is underpinned by equality values of human rights where every person is afforded these rights without fear or favour. As such all legislative instruments are audited to ensure that there is no unfair discrimination directly or indirectly against any person based on their race,

gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

South Africa has also adopted a National Strategic Plan Against Gender Based Violence and Femicide that specifies that consultation of related intervention should include all stakeholders to ensure that their concerns are addressed before such instruments can be approved by the relevant Minister or Cabinet.

3. Please provide information on relevant legislation or policy on the implementation of integrating gender dimension in the prevention and eradication of sale and sexual exploitation of children, online and offline.

**a) *Constitution of the Republic of South Africa, 1996***

This is the supreme law of the country. In its Preamble, the Constitution is clear on affording every citizen their human right in a just and fair manner. In that light, Chapter 2 which covers Bill of Rights, the realisation and application of these rights are underpinned under equality and non-discrimination clause.

**b) *Children's Act, 38 of 2005.(currently being amended)***

The Act regulates child care and protection in the country – including the prevention and eradication of the sale and sexual exploitation of children - it “applies to all children in the Republic of South Africa” which means that every child in the Republic should be able to access social services. The Bill further prohibits any marriage of a child.

**c) *Customary Initiation Bill***

The Bill was passed by Parliament recently and is awaiting Proclamation of the President. It provides for the effective regulation of customary initiation practices; to provide for the establishment of a National Initiation Oversight Committee and Provincial Initiation Coordinating Committees and their functions; to provide for the responsibilities, roles and functions of the various role-players involved in initiation practices as such or in the governance aspects thereof; to provide for the effective

regulation of initiation schools; to provide for regulatory powers of the Minister and Premiers; to provide for the monitoring of the implementation of this Act.

***d) Domestic Violence Amendment Bill***

This Bill seeks to amend the Domestic Violence Act of 1998 to ensure effective response to the challenges relating to GBV and to better protect victims of violent domestic relationships was published for public comments in 2020 .

***e) Criminal Procedure Amendment Bill (2020)***

This Bill of Parliament is intended to introduce stricter measures on bail and sentencing in cases relating to gender-based violence and femicide was also published for public comments in 2020.

***f) Victim Support Services (VSS) Bill***

The Bill seeks to address the gaps identified in all the existing victim empowerment legislation including the challenges in the provision of sheltering services.

***g) National Education Policy Act, 1996 (Act No.27 of 1996)***

Section 4(c) of NEPA provides for the achievement of equitable education opportunities, the redress of past inequalities and the advancement of the status of women.

***h) South African Schools Act, 1996 (Act No.84 of 1996)***

In the preamble, SASA undertakes to combat racism, sexism and all other forms of unfair discrimination and intolerance.

***i) South African Council for Educators Act, 2000 (Act 31 of 2000)***

The Act maintains and protect ethical and professional standards for educators. It establishes the Code of Conduct for Educators.

***j) Employment of Educators Act, 1998 (Act 76 of 1998)***

The Act intends to provide for the employment of educators by the State, for the regulation of the conditions of service, discipline, retirement and discharge of educators and for matters connected therewith.

k) ***Protocol on the Managing & Reporting of Sexual Abuse & Harassment in Schools, 2019,***

This guiding document provide schools, districts and provinces with standard operating procedures for addressing allegations, and to specifically detail how schools must respond to reports of sexual abuse and harassment perpetrated against learners, educators and other school staff.

l) ***Cyber Crimes Bill***

This Bill is currently being amended to ensure the inclusion of cyber violence to address on line sexual violence, violence and exposure of children to pornography

b) what are the existing gaps and challenges in incorporating the gender dimension in legislations, policies and practices? –

Although there are a number of institutional mechanisms in place to guard from such matters falling through the cracks, lack of disaggregated data is a key factor in ensuring evidence based policy making.

Secondly, implementation of policies in the spirit of their draft is a challenge. Cultural norms do play a role in delaying the implementation of gender sensitive dimensions. There is also very little guidance to schools on the social inclusion of diverse sexual orientations and gender identities. In this regard, the Department of Basic Education has now initiated a process of developing school guidelines for the social inclusion of Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC).

In the same manner, the South African Police Service regularly issues Practice Notices – these are official documents sent to all members of the police force highlighting key new policy and practice matters.

4. Please provide contextual information on any existing good practices, policies or legislation tackling sale and sexual exploitation of children that include a gender that takes into account different gender identities –

The Films and Publications Board of South Africa uses social media as a strategy to teach and provide public outreach on matters of sexual exploitation. This is effective in the sense that traffic figures suggest that the reach to targeted persons is high. In addition, the Board has an anonymous platform for reporting child pornography, easily accessible via its website.

Furthermore, the Board has assumed a stricter classification and compliance criteria for publications that may explicitly or implicitly include sexual exploitation of children, thus significantly reducing distribution of such material and those found in possession liable for a criminal offence in terms of the Films and Publications Act.

All of South African legislation frameworks are against exploitation of children and discrimination in any form including sexual orientation. The Constitution as an overarching framework gives clear guidance on a non-discriminatory frameworks that have to be undertaken. For DBE in particular, there is some work that is being undertaken on the inclusion guidelines of Sexual Orientation Gender Identity & Expression & Sexual Characteristics (SOGIESC).

5. What institutional, regional and national legal frameworks are in place to integrate gender dimension in the prevention, prohibition and protection of children from all forms of sale, sexual abuse and exploitation?

**South African Constitution of 1996** has a chapter dedicated to the Bill of Rights where every citizen may not be unfairly discriminated against anyone one or more of the following grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

***Southern African Development Community (SADC) Protocol on Gender and Development of 2008*** – in article 22, the protocol requires that the state parties enact legislative provisions, and adopt and implement policies, strategies, and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.

***African Charter on the Rights and Welfare of the Child of 1990*** – establishes that every child has a right to education, to develop his or her personality, talents and mental and physical abilities to their fullest potential (Article 11). According to the Charter, should be protected from all forms of torture, inhumane or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse (Article 16).

***SADC Care and Support for Teaching and Learning (CSTL) Framework*** - provides the over-arching initiation and expansion of care and support activities in and through schools. It is intended to coordinate and harmonise implementation to enable the delivery of a seamless package at school level, with the leadership of the Department of Education (national and provincial). The framework also places the care and support needs of teachers centrally in ensuring optimum teaching and learning. DBE recognises that barriers to education include:

- **Intrinsic barriers:** Located largely within the individual child, such as physical, mental and health related problems.
- **Systemic barriers:** Such as inadequate infrastructure, inappropriate teaching methods or materials, poorly trained teachers, insufficient support for teachers, and policy and curriculum issues.
- **Societal barriers:** Including severe poverty, unemployment, inadequate caregiving arrangements, child labour and violence against children including gender based violence, and HIV and AIDS.

***Protocol for the Management & Reporting of Sexual Abuse and Harassment in Schools*** has been developed to equip the Department at all levels, especially School

Management Teams (SMTs) with necessary guidelines to manage and effectively report all incidences of sexual abuse and harassment. It further provides a guide to the management and reporting of sexual abuse and harassment, ensuring an appropriate and timely responses to cases perpetrated against learners and educators. It responds to the need for a standardised response to allegations by learners, whether they are perpetrated by fellow learners, educators or by other persons.

***Education White Paper 6 on Inclusive Education (2001)*** describes the Department of Education's intention to implement inclusive education at all levels in the system. The system will facilitate the inclusion of vulnerable learners and reduce the barriers to learning through targeted support structures and mechanisms that will improve the retention of learners in the education system, particularly learners who are prone to dropping out.

6. What forms and manifestations do gender dimensions take in the context of the eradication and prevention of the sale and sexual exploitation of children, boys in particular, including online, and which ones are the most prevalent. Please provide information about causes and manifestations of gender dimension, and how it affects the eradication and prevention of sale and sexual exploitation of children.

South Africa participated in a regional study conducted between July 2018 and January 2019, a desktop review and in-depth fieldwork in four SADC Member States; Eswatini, Lesotho, Malawi and South Africa. The study aimed to undertake and understand boys' vulnerabilities with regards to supporting gender equality and female empowerment, as well as to address their own specific social, emotional and development needs, including their access to sexual and reproductive health and rights services.

There were 4 major findings which prompted the current strengthening of the promotion of positive masculinity; socio-economic vulnerabilities and gender norms, knowledge and attitudinal vulnerabilities, vulnerabilities around HIV testing and access to care and behavioural vulnerabilities. Such vulnerabilities unearthed the necessity to



strengthen existing services, support to parents as well as access to services. In response and in support of the study, DBE began some advocacy work focusing on the promotion of positive masculinity through social media platforms.

7. Please indicate any specific measures aimed at reducing vulnerability of children to sale and sexual exploitation in a gender and disability responsive, as well as age and child sensitive manner.

South Africa is working towards the finalisation of overarching policy and legal framework for Response Care & Support: Victim Empowerment Support Services (VESS) Bill and White Paper on Social Welfare Services (WPSWS) in adopted; Development of a core package of services and related costing is in place.

Furthermore, work has begun towards Standardisation approach to sheltering in place i.r.t. funding, services, housing children in shelters, referrals, service level agreements and addressing the needs of specific groups, including disabled women, lesbian and trans-women. Priority is given also to victims of sexual exploitation.

Additional human resourcing, infrastructure and capacity is provided for existing and new shelters to adequately respond to the needs to the LGBTQIA+ community, and for the children of survivors.

There are particular topics covered in the **Curriculum under Life Orientation** subject such as Development of Self in Society. Under this topic information on Comprehensive Sexuality Education, emotional changes, maturing personality, depth and control of emotions, feelings of insecurity, changing needs, interests, feelings, beliefs, values and sexual interest, strategies to make responsible decisions regarding sexuality and lifestyle choices are shared. However, it is important to note that age appropriateness and the development stages of children is always considered when sharing this information.

**Jamboree for Future Choices** - is a service delivery platform seeking to promote socially cohesive and inclusive schools. The platform addresses barriers related to *social welfare, life skills and career development services* for marginalised groups.

Through this platform schooling communities have access to a range of services aimed developing socially inclusive practices focused on addressing the inequities of the past. This “*platform*” augments the deliverable highlighted by the Curriculum and Assessment Policy Statement (CAPS) in its intent of equipping learners, irrespective of their socio-economic background, race, gender, physical ability or intellectual ability, with the knowledge towards skills acquisition, values, self-fulfilment and a meaningful participation in society.

**Girls and Boys Education Movement (GBEM)** – This the gender empowerment schools programme called Girls and Boys Education Movement. The aim of the programme is to encourage girls and boys to work together as equals and to foster respect for the human dignity and rights of both sexes. The programme is biased towards girls from disadvantaged backgrounds to ensure their retention at school but particular emphasis is put on promoting the uptake of Science, Technology, Economics and Mathematics (STEM) subjects especially among girls.

**Care and Support for Teaching and Learning (CSTL) Framework** situates the DBE as a lead agency in addressing school-level barriers to education within a larger collaborative and multifaceted response that addresses the multiple barriers to education that vulnerable children face. It offers a comprehensive, coordinated, multisectoral response to address the barriers to teaching and learning for learners and educators. Its goal is to realise the education rights of all children through schools becoming inclusive centres of learning, care and support.

8. What measures and safeguards can be put in place to identify the protection needs of vulnerable children in order to prevent, prohibit and protect them from all forms of sale and sexual exploitation, including examples of child friendly, independent, timely and effective reporting and complaints mechanisms made available without discrimination in child friendly spaces at community, national and regional level?

The National Plan of Action for Children has highlighted development of child-friendly version of key child protection documents to be published and made available. These could be in a form of charts or short child friendly documents in various languages. This would ensure access to information.

Furthermore, there is a great need for Operational research conducted to better understand the drivers of secondary victimization and develop appropriate responses to it. This will ensure that the country can develop interventions in this regard.

The Government of South Africa understands and supports collaborations within its Departments. For example, the Department of Basic Education and of Social Development who by their mandate, will submit the country's statistics on the sale of and exploitation of children. Further than that there are national organisations and civil society groups that contributes to the prevention and protection of children.

For an example, non-governmental organisations such as Childline, Lifeline, South African Police Service Crime Stop & Emergency, Teddy Bear Clinic, Tshwaranang Legal Advocacy Centre, People Opposing Women Abuse etc. On the other hand, Chapter 9 Institutions such as Commission on Gender Equality, South Africa Human Rights Commission, Foundation for Human Rights assists largely with advocacy work around prevention of maltreatment for children.

9. Please indicate any other areas of concern and provide any additional information, which is relevant in the context of gender dimension and eradication of sale and sexual exploitation of children –

Covid-19 has presented a challenge for accessing services that are not classified as essential services. In this regard, especially in times of strict government initiated lockdown, children may not have access to services and backlogs to service delivery as a result. For example, some regions of the judicial system have postponed all new criminal cases to 2022 while they finalise older cases on the roll. The children's courts have also been affected as these are not yet equipped for virtual sitting.

There is also a need to look at critical policy and service delivery issues relating to undue length of remand detention of youth, inadequate use of diversion programmes, overcrowding in correctional facilities, rape within correctional facilities and limited rehabilitation and welfare programmes for first time offenders who are still children to ensure that they are not placed at harm by the system thus exposing them to sexual exploitation due to institutional limitations.

Furthermore, in South Africa, the Constitution, which is the fundamental guide in the work that government pursues; prohibits unfair discrimination directly or indirectly against any person based on their race, gender, sex, pregnancy, marital status, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The challenge is in the realisation, implementation and interpretation of all of the relevant pieces of legislation, prescripts, laws, policies *etc.*

10. In what context do external environment factors exacerbate the prevalence and / or magnitude of sale and sexual exploitation of children? Do the vulnerabilities of the surrounding environment play a significant role in terms of rural/urban; war/conflict zones, different forms of migration, emergency contexts (e.g. natural & manmade disaster, climate change, COVID 19) and religious context –

South Africa has high rates of gender based violence and children, especially girl child are most affected. It was noted that during the period of stricter lockdown (as part of the COVID-19 interventions by government), there were more reported cases on violence against women and girls. This is one example of how much external environment factors may exacerbate prevalence of sexual exploitation of children.

Furthermore, the advent of COVID 19 has presented usage of online, virtual and digital interactions. As such, children are also forced to learn using technology based methods. With this online teaching, comes a responsibility of teaching children digital literacy so they are aware of possibilities of unsafe internet usage. Lack of access and affordability is another presenting challenge especially in a country like South Africa where inequities still largely persist.