



6th September 2003

Department of Social Development

By e-mail

Dear

Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN) is an NGO that is committed to the development of innovative child abuse prevention strategies which combat the patterns of abuse which affect the lives of children and adults everywhere.

Over the last 10 years, RAPCAN has worked towards a vision of a safe environment for all South African children, free from all forms of abuse, neglect and violence, in a country in which children are loved, respected and treasured. In so doing, we are guided both by Section 28 of the South African Constitution and by the commitments made by our Government in signing and ratifying a number of UN and OAU Conventions, notably the Convention on the Rights of the Child and the Charter on the Rights and Welfare of the African Child.

It is of grave concern to us that our country is a long way from realising not only RAPCAN's vision, but the vision articulated by the international instruments we have subscribed to. Violence against children, neglect and abuse, and exploitation of children is rife. The number of children living in especially difficult circumstances is rising; children's vulnerability to abuse and neglect increases every day as poverty deepens. One of the many factors underlying this situation is the inadequate provisions of the current Child Care Act, rooted as it is in apartheid ideologies and priorities.

The SALRC version of the Draft Children's Bill was the culmination of a long period of research and consultation, and took a rights-based approach to issues relating to children. We were very pleased when we first saw the Draft Children's Bill as developed by the South African Law Reform Commission (SALRC, formerly the South African Law Commission). While the Draft Bill was by no means perfect and did not address all our concerns, overall it was a visionary and proactive approach to addressing the needs of South African children and protecting their rights. Significantly, it placed at the heart of the Bill issues of inter-sectoral co-operation and the adequate resourcing of services to children. While still paying attention to secondary and tertiary prevention, it focussed very directly on primary prevention. Furthermore, it was a holistic and comprehensive approach to ensuring that issues relating to children were viewed in terms of the best interests of the child.

RAPCAN's submission to the Department of Social Development concerns the situation with respect to children who are trafficked for the purposes of sexual or other exploitation.

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Causes and Extent

Research into child trafficking within, into, through and out of South Africa undertaken by Molo Songolo and the University of the Western Cape has identified that sexual exploitation and trafficking are the result of the interplay between meso and micro factors¹. They have also found that there are a wide number of "players" involved in trafficking, ranging from individuals to highly organized syndicates and that these "players" operate at all levels of society².

The contributing factors include poverty, high unemployment, economic inequality, migration, urbanization and the resultant family disintegration, lack of effective social work and an increased demand from sexual exploiters. According to Barnes-September et al, 'Globally, there seems to be acceptance of key factors that are linked to or contribute to children becoming involved in prostitution. The most frequently discussed factors are poverty, child abuse, and family disintegration'³.

These factors that contribute to the vulnerability of children to abuse and trafficking can be seen as falling into either meso or micro factors. The meso factors are considered to be those that are at the level of "family problems", such as poverty, substance abuse, parent or older sibling traffickers, and parents who are unable to provide for the needs of their children. The micro factors are those factors that are individual traits of the child such as prior sexual abuse, and/or emotional and/or physical abuse, a susceptibility to peer pressure, and a need for material gain⁴.

The extent of child trafficking is difficult to quantify given that statistics for trafficking are not clearly available. It is estimated that there are 28,000 children involved in prostitution⁵. The statistics on prostitution give an indication, but do not cover children who are trafficked into domestic or other labor. Furthermore, the SAPS statistics for prostitution do not account for age. The Network Against Child Labour (NACL) estimates that there are 400 000 children working in South Africa – which should be considered as a conservative estimate.

The extent of the trafficking of children is further disguised by the fact that there is no specific legislation that criminalises trafficking. In addition, trafficking is undertaken by a variety of persons such as adult sex workers, teachers, syndicates, and gangs. Parents and relatives are often involved, and this can reduce or hinder the chances of reporting of the trafficking. Trafficking is seen as a solution for some people to poverty, they are given money in exchange for their children, under the false premise that the child will be working in a hotel as a waitress or such like. The children are promised a better life in another city or country, but upon their arrival they are kept in debt bondage. Sometimes a child is trafficked for protection from rival gangs.

¹ Molo Songololo (2000) Trafficking of Children for Purposes of Sexual Exploitation – South Africa (p26)

² *Supra* (p28)

³ Barnes-September et al (2000) Child Victims of Prostitution in the Western Cape (p22)

⁴ *Ibid 1* (p35)

⁵ *Ibid 1* (p30)

The extent of trafficking is broad and varied; it can occur within a country, between cities or from rural areas into cities, or it can occur across borders.

Current Legislation

South Africa's current legislation does not protect children who are vulnerable and exposed to trafficking both within and into our country. Cross border trafficking causes a number of problems in that the children are treated as illegal immigrants under the Immigrations Act, rather than as victims of crime against them. There is no legislation to criminalise the traffickers, so police investigations and cases are hampered and the case is processed as an illegal immigrants case or if the child is involved in prostitution as a case of sexual abuse, or rape if the child is under 16.

Current legislation does protect those children who qualify for refugee status, and who are found under circumstances which clearly indicate that they are in need of care. This is held in the current Refugees Act of 1998. However, the question of those children who are trafficked from countries that are not considered to be refugee producing countries is not addressed. Molo Songololo's report cited earlier identified that there are several countries from which children are trafficked into South Africa, not all of which are considered refugee-producing countries. These are Russia, Bulgaria, Poland, Thailand, Senegal, Mozambique, Angola, Uganda, Tanzania, Zambia, Ethiopia and Kenya⁶. This problem is exacerbated by the fact that the refugee status of a country is susceptible to change.

A good example of how children are trafficked is Antonio, a 12-year-old boy whose mother is told he can get work on a farm and she is offered \$10 U.S. for his services. Antonio, as the eldest boy, feels responsible for looking after his family and is pleased to be able to help his family this way. However upon arrival at the farm, he is given no money for his work, gets only 2 meals a day, and shares a small room with a number of other boys in the same situation. They have nothing to sleep on except the concrete floor and are given only a thin wool blanket each. When Antonito gets tired of the conditions he has no idea how to get home, but he leaves the farm anyway. Upon leaving the farm he is apprehended by police as an illegal alien⁷.

Current legislation offers minimal protection to those children who are trafficked within the country. Such protection as exists is against trafficking for sexual exploitation, in that the Sexual Offences Act (1988) prohibits the sexual abuse and exploitation of children. It is also considered rape if a child is under the age of 16. However the onus of proof is placed on the child to prove that the child was not a prostitute at the time of the offence, or that they had not deceived the person into believing that they were over the age of 16.

It is our contention that there is a need for legislation to be developed to ensure:

- the protection of children from trafficking;
- support and protection after they have been trafficked;
- investigation of the alleged offence;
- protection for foreign children who have been trafficked into South Africa, including such measures as a humanitarian visa for the duration of the investigation;
- a mechanism for repatriation procedures and handing over of children who have been trafficked into South Africa to the relevant authorities within their country

⁶ *Ibid 1* (p48, Map 3 Cross-border trafficking of children)

⁷ IOM (2002) Scenario #3 Pretoria

(this is particularly relevant to children who are currently dumped at the border of neighboring countries).

Both the Departmental Draft and the South African Law Commission's Draft refer to the UN Protocol on Trafficking of Persons, thus recognizing our obligation to international conventions and treaties. The Commission recommended the inclusion of a general provision relating to the trafficking of children which makes it a criminal offence to traffic children for any of the reasons give in 317 (1). In other words, the Commission felt it necessary to state the kinds of exploitation that were prohibited (sexual exploitation and exploitative labour practices). This distinction is no longer present, and the new version of the Bill refers only to "exploitation". We are not averse to this broadening of the definition as it would enhance protection for children in these circumstances.

Arguments made in favour of specific "trafficking legislation"

In a submission made by a number of organisations to the South African Law Reform Commission related to the Sexual Offences Bill, it was argued that trafficking and/or the sale of persons is so critical an issue and such a growing problem that it requires comprehensive legislation in its own right. Among other reasons, this was considered necessary to facilitate prosecution. This debate is ongoing, and the issue of separate trafficking legislation is being pursued by a network of organisations. This does not mean that the Children's Bill should not deal with the issue. Indeed, if the Bill is intended to be comprehensive and complete, it would necessarily have to deal with trafficking. Article 1 of the Protocol states that relevant Convention provisions are incorporated into the Protocol, which includes article 34.2. Governments, therefore, have an obligation under the Protocol to adopt a trafficking law that covers both internal and cross-border trafficking as well as trafficking by one or more persons⁸.

The Department of Safety and Security is proposing to draft a Trafficking Bill. This does not, in our opinion, remove the need for the Children's Bill to deal also with this issue, provided that it does not contradict or undermine this proposed bill. There is a further attempt being made to criminalise the act of trafficking under the proposed Sexual Offences Bill at Section 12 Child Prostitution subsection 1(d), the supply recruitment, transport, transfer, harboring or receiving of children within or across the South African borders for the purpose or commission of indecent acts is considered an offence of child prostitution and carries a sentence of imprisonment for a period not exceeding 20 years with or without a fine.

However, as the Children's Bill aims to comprehensively protect children within the Republic, we need to ensure that the victim of trafficking is protected as well and that the act of trafficking is not just criminalised. Therefore the proposal is for a number of mechanisms that may protect the child. These could be included under the Child Protection Chapter and would include the granting of a humanitarian visa, access to services as required for their health and well being, and to have their case investigated and, if repatriation is required, to be handed to the relevant authorities within their

⁸ **Convention Article 10 - Liability of legal persons**

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

country rather than dumped at their border. Further that there be a single international Social Services office which deals with such cases and follows through the case from reporting to closure of the investigation rather than the referral system currently in place.

There also needs to be protective measures and support structures developed for children who are trafficked within the country, such as investigation into the reasons for the trafficking, and support for the child's reunification and reintegration into their families and societies.

Trafficking needs not only to be defined so that it can be identified and acted upon, but criminalised so that there is recourse against the perpetrator rather than the victim.

Thank you.

Sincerely

CAROL BOWER
Executive Director